

Broadcasting (Major Events Television Coverage) Act, 1999

1999 28



Number 28 of 1999

BROADCASTING (MAJOR EVENTS TELEVISION COVERAGE) ACT, 1999

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Number 28 of 1999

**BROADCASTING (MAJOR EVENTS TELEVISION
COVERAGE) ACT, 1999**

AN ACT TO PROVIDE FOR TELEVISION COVERAGE OF EVENTS OF MAJOR IMPORTANCE TO SOCIETY, TO GIVE EFFECT TO ARTICLE 3a OF COUNCIL DIRECTIVE NO. 89/552/EEC OF 3 OCTOBER, 1989, AS AMENDED BY COUNCIL DIRECTIVE NO. 97/36/EC OF 30 JUNE, 1997, AND TO PROVIDE FOR OTHER RELATED MATTERS. [13th November, 1999]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

1.—(1) In this Act—

“broadcaster” has the meaning assigned in the Council Directive;

“Council Directive” means Council Directive No. 89/552/EEC of 3 October 1989⁽¹⁾ as amended by Council Directive No. 97/36/EC of 30 June 1997⁽²⁾ ;

“EEA Agreement” has the meaning assigned in the [European Communities \(Amendment\) Act, 1993](#) ;

“event” means an event of interest to the general public in the European Union, a Member State or in the State or in a significant part of the State that is organised by an event organiser who is legally entitled to sell the broadcasting rights to the event;

“free television service” means television broadcasting service for the reception of which no charge is made by the person providing the service;

“Member State” means a member state of the European Communities (within the meaning of the [European Communities Act, 1972](#)) and includes a state that is a contracting state to the

EEA Agreement;

“the Minister” means the Minister for Arts, Heritage, Gaeltacht and the Islands;

“near universal coverage” means—

(a) free television service, reception of which is available to at least 95 per cent of the population of the State, or

(b) if at any time fewer than three broadcasters are able to provide the coverage required under *paragraph (a)*, free television service, reception of which is available to at least 90 per cent of the population of the State;

“qualifying broadcaster” means a broadcaster who is deemed under *subsection (2)* to be a qualifying broadcaster;

“television broadcasting” has the meaning assigned in the Council Directive.

(2) The following broadcasters are deemed to be qualifying broadcasters:

(a) until the 31st day of December, 2001, a broadcaster who provides free television service coverage of a designated event to which at least 85 per cent of the population of the State have access;

(b) on and after the 1st day of January, 2002, a broadcaster who provides near universal coverage of a designated event.

(3) For the purpose of *subsection (2)*, two or more broadcasters who enter into a contract or arrangement to jointly provide near universal coverage of a designated event shall be deemed to be a single broadcaster with respect to that event.

(4) A broadcaster may request the Minister to resolve any dispute as to the extent of free television service being provided by a broadcaster in the State for the purpose of *subsection (2)* and the definition of “near universal coverage” in *subsection (1)*.

(5) The Minister may consult with any technical experts or other persons or bodies he or she considers appropriate before resolving a dispute under *subsection (4)*.

(6) In this Act—

- (a) a reference to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended by or under any subsequent enactment including this Act,
- (b) a reference to a section is a reference to a section of this Act unless it is indicated that reference to some other enactment is intended, and
- (c) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

Designation of major events.

2.—(1) The Minister may by order—

- (a) designate events as events of major importance to society for which the right of a qualifying broadcaster to provide coverage on free television services should be provided in the public interest, and
- (b) determine whether coverage on free television services of an event designated under *paragraph (a)* should be available—
 - (i) on a live, deferred or both live and deferred basis, and
 - (ii) in whole, in part or both in whole and in part.

(2) The Minister shall have regard to all the circumstances and in particular each of the following criteria in making a designation under *subsection (1)(a)*:

- (a) the extent to which the event has a special general resonance for the people of Ireland;
- (b) the extent to which the event has a generally recognised distinct cultural importance for the people of Ireland.

(3) In order to determine the extent to which the criteria in *subsection (2)* have been met, the following factors may be taken into account by the Minister:

- (a) whether the event involves participation by a national or non-national team or by Irish persons;

(b) past practice or experience with regard to television coverage of the event or similar events.

(4) The Minister shall consider the following in making the determination under *subsection (1)(b)*:

(a) the nature of the event;

(b) the time within the State at which the event takes place;

(c) practical broadcasting considerations.

(5) The Minister may by order revoke or amend an order under this section.

(6) The Minister shall consult with the Minister for Tourism, Sport and Recreation before making, revoking or amending an order under this section.

(7) Where it is proposed to make, revoke or amend an order under this section, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving the draft has been passed by each House.

Consultation.

3.—(1) Before making an order under [section 2](#), the Minister shall—

(a) make reasonable efforts to consult with the organisers of the event and with broadcasters who are under the jurisdiction of the State for the purpose of the Council Directive,

(b) publish a notice of the event which the Minister intends to designate under that section in at least one newspaper circulating in the State, and

(c) invite comments on the intended designation from members of the public.

(2) The inability to establish who is the organiser of an event or the failure of the organiser or a broadcaster under the jurisdiction of the State to respond to the Minister's efforts to consult shall not preclude the making of an order under [section 2](#).

Broadcasters' duties with respect to designated events.

4.—(1) Where a broadcaster under the jurisdiction of the State who is not a qualifying broadcaster acquires exclusive rights to broadcast a designated event, that broadcaster shall not broadcast

the event unless the event has been made available to a qualifying broadcaster, in accordance with the order under [section 2](#) , on request and the payment of reasonable market rates by the qualifying broadcaster.

(2) Where a qualifying broadcaster acquires the right to broadcast a designated event (under this section or directly), the qualifying broadcaster shall broadcast the event on a free television service providing near universal coverage in accordance with the order under [section 2](#) .

(3) In this section, “designated event” means an event that is designated in an order under [section 2](#) .

Broadcasters' duties with respect to Member States events.

5.—Where another Member State has designated an event as being of major importance to society in that Member State and the European Commission has communicated the measures taken by that Member State in accordance with Article 3a.2 of the Council Directive, no broadcaster under the jurisdiction of the State who acquires exclusive rights to the designated event shall exercise the exclusive rights in such a way that a substantial portion of the public in that Member State is deprived of the possibility of following the events in accordance with the measures taken.

Civil remedies.

6.—(1) Where it is alleged by a broadcaster (the “aggrieved broadcaster”) that any activity or conduct prohibited by [section 4](#) or 5 is being, has been or is about to be carried on by one or more other broadcasters (the “other broadcaster”), the aggrieved broadcaster shall be entitled to apply to the High Court for the following remedies against the other broadcaster:

- (a) an order restraining the other broadcaster from carrying on or attempting to carry on the activity or conduct prohibited by [section 4](#) or 5;
- (b) a declaration that the contract under which the other broadcaster received exclusive rights to the designated event is void;
- (c) damages from the other broadcaster;
- (d) a direction that the right to provide television coverage of the event shall be offered to the aggrieved broadcaster at reasonable market rates.

(2) An application to the High Court for an order referred to in *subsection (1)* shall be by motion and the court, when considering the matter, may make such interim or interlocutory

order as it considers appropriate.

Reasonable market rates.

7.—(1) For the purpose of [section 4 \(1\)](#), if broadcasters are unable to agree on what constitutes reasonable market rates with respect to television coverage of an event, either of the broadcasters may apply to the High Court in a summary manner for an order determining reasonable market rates for an event.

(2) An order under *subsection (1)* may contain such consequential or supplementary provisions as the High Court considers appropriate.

Short title.

8.—This Act may be cited as the [Broadcasting \(Major Events Television Coverage\) Act, 1999](#) .

⁽¹⁾ O.J. No. L298/23, 17.10.89

⁽²⁾ O.J. No. L202/60, 20.7.97