

Mr. Molloy ✓ 10/7/2003

Secretary General ✓ 15/7/03

Rúnai Aire ✓ 16/7/03

Roy Murphy Case and the review of ban on religious advertising

- 1. Following on the public consultation on the review of the ban on religious advertising a report is being prepared for the Minister. A draft report dealing with the issues raised in the over 150 submissions received is well advanced. One of the key issues that will inform the recommendation to the Minister is the finding of the European Court of Human Rights in the Roy Murphy case.
- 2. A copy of the detailed decision of the Court which was published earlier today is attached. The Court has found that the ban on religious advertising as applied in the Roy Murphy case was not in violation of the European Convention on Human Rights. Had the Court found that Ireland had acted in a manner that contravened the Convention then that would certainly have limited the options in the case of the review that is in hand. The detailed decision of the Court will now be considered before a recommendation is made to the Minister.

Ciarán Ó hÓbáin
10 July 2003

FAO
 For Observations
 For Action
 For Follow up
 For Information
 C.C.
 Date

RECEIVED IN SECRETARY
 GENERAL'S OFFICE
 19 JUL 2003
 DEPARTMENT OF
 COMMUNICATIONS, MARINE
 AND NATURAL RESOURCES

From: Ciaran O hObain
Sent: 17 September 2003 09:19
To: Joe Meleady
Subject: FW: Political Advertising - European Convention - Human Rights
Joe

Please see email from BCI

Ciarán

-----Original Message-----

From: ckissane@bci.ie [mailto:ckissane@bci.ie]
Sent: 16 September 2003 16:45
To: John Larkin; Ciaran O hObain
Subject: RE: Political Advertising - European Convention - Human Rights

In the past the BCI has taken the view that a number of advertisements are not permitted because of the prohibition on political advertising under Section 10 (3) of the 1988 Act. This year alone there have been two high profile examples, one by Ryan and one by the Alliance for Insurance Reform (AIR). Copies of these are available for reference if that would be useful. In 2002 an advertisement by an organisation called Family and Life and one by An Taisce were also prohibited by the Commission due to Section 10 (3).

When considering such advertisements the judgement of O'Sullivan J, 20th July 1998, arising out of "Maurice Colgan and the Independent Radio and Television Commission and Ireland and the Attorney General" is a key reference point. Key sections from this are outlined below.

I hope this is useful.

Ciarán

'Maurice Colgan and Independent Radio and Television Commission and Ireland and the Attorney General' and the judgment of O'Sullivan J 20th July 1988.

This judgement outlines a legal view of the meaning of 'political end' in the context of Section 10(3) and also examines whether the nature of the client placing an advertisement has any bearing on how the advert should be considered under Section 10(3).

The Judgement states;

'In the absence of a statutory definition of "political end", I consider that an advertisement has a political end within the meaning of Section 10(3) if it is directed towards furthering the interests of a particular political party or towards procuring changes in the laws of this country (my emphasis) or, I would add, countering suggested changes in those laws, or towards procuring changes in the laws of a foreign country or countering suggested changes in those laws or procuring a reversal of Government policy or of particular decisions of Governmental authorities in this country (my emphasis) or, I would add, countering suggested reversals thereof or procuring a reversal of Governmental policy or of particular decisions of Governmental authorities in a foreign countries or countering suggested reversals thereof.' Judicial review no 320 JR/1996 Page 19

Examining the difference between the advertisement and the client placing the advert, the judgement in this case concluded that;

'...it was legitimate for the first Respondent [the IRTC] to take into account the general background information in relation to the advertisement and the advertiser derived from the media and general information in the public domain.' Page 20

The judgement continues:

'...the identity of the advertiser in the present case was relevant material of which the first Respondent [the IRTC] was obliged to take into account. That arises because the text of the advertisement itself specifies that the message was sponsored by Project Truth, a Youth Defence project. This was part of the information comprising the advertisement and to refuse to take account of it would have been to ignore part of the information and part of the impact.'
Page 21

-----Original Message-----

From: John Larkin [mailto:John.Larkin@dcmnr.gov.ie]
Sent: 11 September 2003 14:55
To: Ckissane (E-mail)
Subject: FW: European Convention - Human Rights

Ciaran

Please find below previous e-mails relating to the Danish query (Attached PDF file refers) on the ban on political advertising. Any comments would be appreciated and can be send to myself or Ciaran.

Many thanks

Regards

John

-----Oprindelig meddelelse-----

Fra: Ciaran O hObain [mailto:Ciaran.O'Hobain@dcmnr.gov.ie]
Sendt: 4. september 2003 16:19

Til: Maiken Michelsen

Emne: European Convention - Human Rights

Dear Maiken

I am just back from holidays and received your letter of 22 August. The copy of the VgT judgement was not enclosed. You might please send it by email or post. As you are probably aware Ireland has a legislative provision which bans advertisements directed towards a religious or political end or which has any relation to an industrial dispute.

Ireland's ban in the case of religious advertising was recently tested in a case in the European Court of Human Rights. I am attaching a copy of the judgement for information.

We are consulting with the Broadcasting Commission of Ireland in relation to your query and will be in touch again as soon as possible.

Kind Regards

Ciarán

<<COURT-#781852-v1-Murphy-44179_98-JNV_CHB3_10072003e.DOC>>

Mr. OhObain, *19.9.03*
Mr. Molloy, *24/11/2003*

Secretary General

Minister,

1. Background.

Section 20(4) of the Broadcasting Authority Act, 1960 provides that “ the Authority shall not accept any advertisement which is directed towards any religious or political end or has any relation to any industrial dispute”. The comprehensive ban on religious advertising contained in the 1960 Act is extended to the independent radio and television sector by Section 10(3) of the Radio and Television Act 1988 which mirrors the provision in the 1960 Act and reads ” No advertisement shall be broadcast which is directed towards any religious or political end or which has any relation to an industrial dispute”.

Section 65 of the Broadcasting Act, 2001 provides that the ban on religious advertising does not preclude “ the broadcasting of a notice of the fact that (a) a particular religious newspaper, magazine or periodical is available for sale or supply, or (b) that any event or ceremony associated with any particular religion will take place, if the contents of the notice do not address the issue of the merits or otherwise of adhering to any religious faith or belief or of becoming a member of any religion or religious organisation”.

2. Public Consultation Process.

Following the decision to review the ban on religious advertising, a public consultation process was embarked upon following advertisements placed in the national daily newspapers in March 2003. A total of 165 submissions were received from interested individuals and parties in response to the advertisements.

Arguments presented both in favour of the retention of the existing ban and the removal of the ban on religious advertising are set out in the attached report on the consultation process.

3. Options.

It is clear following the consultation process that the three options available are

- (a) retention of the ban
- (b) removal of the ban or
- (c) an adjustment of the existing arrangements which will address all of the issues and concerns raised during the consultation process.

(a) The case for retention of the ban.

The arguments put forward in favour of the retention of the existing ban are that the whole area of religion is still potentially a divisive factor in Irish society. The problem of defining what constitutes religion in the first place is a basic issue which poses potential problems in terms of antagonising those not covered in any agreed definition. Claims made through religious advertising, based as they are on matters of faith and doctrine, are considered to be difficult if not impossible to prove. The practical implications of a State Authority trying to decide as to what should be allowed or disallowed in terms of advertising content is also relevant. It is also argued that to allow religious advertising would open the public airwaves to financially powerful groups with the ability to intrude on what is essentially a private area.

(b) The case for removal of the ban.

Those in favour of removing the ban argue that it is no longer relevant in an open tolerant society. It is claimed that the ban promotes a secular society and does not reflect the Christian ethos of the country and that a mature society does not require legislation to regulate such issues but should operate on the basis of guaranteeing freedom of expression and free practice of religious beliefs. Removal of the ban would offer a counterweight to the advertising of tarot cards and advertising by psychics which are allowed at present. Removal of the ban would also facilitate a wider debate on religious issues generally. It is also claimed that the ban breaches the European Convention on Human Rights.

(c) A third group favours lifting the ban and its replacement by a set of codes along the lines of the Codes of Standards applied by the Independent Television Commission which licences and regulates commercially funded television services in the UK.

In arriving at a recommendation as to whether the ban should be removed, retained or amended, a number of points need to be borne in mind:

4. Legal Proceedings:

In legal proceedings to challenge the ban taken by Pastor Roy Murphy in the High Court, Supreme Court and the European Court of Human Rights, the following emerged:

1. the High Court found that the unspecified right to communicate guaranteed by Article 40.3.1 of the Constitution was subject to limitation in the public interest and had not been breached by the ban.
2. the Supreme Court in upholding the High Court judgement underscored the divisive nature of the issues covered by the ban and felt that citizens would resent having such material broadcast into their homes.
3. the Supreme Court considered that the ban was a restriction of the right to freely communicate (Article 40.3) and the right to freedom of expression (Article 40.6.1) but that these rights were subject to limitation in the common good.

4. the Supreme Court felt that Parliament might well have felt in introducing the ban that it would be inappropriate to involve agents of the State in deciding which advertisements, in this sensitive area, would be likely to cause offence and which not.
5. the European Court of Human Rights had found that the ban did not constitute a violation of the Convention on Human Rights. The Court found that the State must be allowed to decide “ when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or, especially religion” and upheld the views laid out in the High Court and Supreme Court Judgements. The ECHR found that there was “ some force in the Government’s argument that the exclusion of all religious groupings from broadcasting advertisements generates less discomfort than any filtering of the amount and content of such expression by such groupings”. The Court felt that to allow even limited advertising would benefit a dominant religion more than those with less adherents and resources.

It is noted that while the majority of those who responded as part of the consultation process favoured the removal of the ban, it is not clear that this view is shared by the wider cross-section of public opinion. The complete removal of the ban and the consequential opening of the airwaves to religious groupings of various persuasions may elicit a hostile response from those who seek the removal of the ban. It is difficult to believe that those who favour removal of the ban as a means of promoting Christian values will be content with a system that facilitates advertising by non-Christian groups, some with considerable financial resources.

5. Recommendation:

It is considered that in the light of the above factors, the issues detailed in the attached report on the consultation process and the fact that the ban has been upheld in the Supreme Court and the European Court of Human Rights, the case for the retention of the existing ban is persuasive and it is accordingly recommended that the ban be retained.

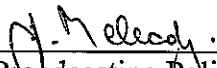
6. Alternative Course.

If however the final decision is that the ban is no longer relevant and should be removed, it can be anticipated that the lifting of the ban will give rise to a substantial rise in the amount of such advertising in the immediate aftermath. As such some form of regulatory control would be considered desirable.

In this scenario, it is suggested that the Broadcasting Commission of Ireland be requested to include in their codes on general advertising and children’s advertising provisions in relation to religious advertising. Guidelines on the operation of such

codes would set down how the new codes would operate. Such a request to the Commission is provided for in section 19 of the Broadcasting Act 2001.

Submitted for consideration, please.



Broadcasting Policy Division.

19 September 2003.

Mr. Molloy

Secretary General

Rúnaí Aire

Ban on religious advertising

36
- A very detailed submission which deserves to be read. Dinnia's view - the status quo - is one I'm happy with but there are other views out there the Minister will wish to consider.

Minister, You may wish to discuss as there are a number of options. I consider we should seek Govt. views before we finalise position.

1. Please see attached submission from Mr. Meleady on the review of the legislative ban on religious advertising. The submission outlines the key issues arising from the public consultation process and sets out the options available. A comprehensive and detailed report on the public consultation process is provided in the file pocket.
2. The European Court of Human Rights recently found, in the Roy Murphy case, that a ban on religious advertising did not constitute a violation of the Convention on Human Rights. This decision means that there is no external pressure on Ireland to remove the ban and a decision can be taken solely on the merits of the matter.
3. The decision to be taken now is should the ban remain. As I see it there are two issues:
 - (a) would Irish society be better off with or without religious advertising
 - (b) notwithstanding the answer to (a) is a ban on religious advertising an appropriate legislative provision in a modern liberal democracy.
4. While the review has focussed on the ban on religious advertising it is helpful to consider that the ban is contained in a very short provision that also bans political advertising and advertising in relation to an industrial dispute. Such advertising would be clearly directed at influencing or altering behaviour and opinions.
5. The primary purpose of advertising on radio and television is to influence decisions people make in relation to spending money. Through advertising, those selling goods attempt to both inform and influence people so as that they purchase a specific product.
6. Another form of advertising is to offer information about services. Advertisements from Government agencies or voluntary organisations (Samaritans, etc) would be included in this category. These advertisements generally give information about the availability of services as opposed to attempting to alter behaviour.
7. It is also true that advertisements for specific products can seek to influence and alter behaviour. There is, however, a very clear link between the advertisement and what a person receives if they purchase the product. With religious or political advertisements the objective is clearly to influence and

*B. G. G. G.
5/12/03*

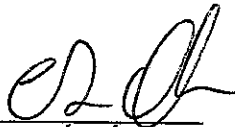
DA 12/12/03. On balance, & bearing in mind the Roy Murphy case, I recommend a maintenance of the status quo. I agree that ban should be retained. DA 12/12/03. On the other hand we need to publish all all. 9/12/03

alter behaviour in circumstances where it is likely to be difficult for the consumer to test the assertions made in the advertisement.

8. All advertisements that seek to influence or to alter behaviour are not banned. At present there is an example of an advertisement that is solely about altering behaviour and has been allowed. The "Race against Waste" campaign. In this case that the State, on behalf of the people, is promoting the campaign in the public interest. This is deemed to be legitimate as it is not advocating one political option (landfill versus incinerator say) but is rather advocating a form of behaviour that is in the interest of society as a whole.
9. The principal argument against allowing political or religious advertising is that it allows those who can afford to pay an opportunity to broadcast their message unchallenged. In television and radio this could be very intrusive, as a person who did not wish to receive the message does not have the simple option of turning over to the next page. Regulation of broadcast media in terms of content and of advertising is very different to regulation of the print media. This results from the enormous influence of broadcasting in modern society.
10. One option would be to remove the ban and ask the BCI to regulate religious advertisements. This might give rise to new problems. Indeed the European Court of Human Rights found that there was "*some force in the Government's argument that the exclusion of all religious groupings from broadcasting advertisements generates less discomfort than any filtering of the amount and content of such expression by such groupings*".
11. The ban on religious advertising does not prevent advertisements that give information about a magazine or periodical being available for sale, or about a religious event or ceremony taking place. It does preclude such advertisements addressing the merits or otherwise of adhering to any religious faith or belief or of becoming a member of any religion or religious organisation.
12. There has been no major call for the ban to be removed. Indeed the controversy surrounding the "Power to Change" campaign can be attributed to a large degree to the uncertainty that arose from the two regulators adopting different approaches initially. Had RTÉ taken a similar line to the BCI from the outset I expect there would have been less controversy. It is also worth noting that there is no campaign to remove the ban on political advertising.
13. The options available are outlined well in Mr. Meleady's submission and in the report on the public consultation. I would question to what degree it would be possible to introduce additional meaningful regulation if the ban were removed. Such regulation if indeed practicable could be divisive in itself (see Paragraph 10). The European Court of Human Rights accepted this point. Being realistic I would see that there is no middle ground and that in essence the options are to keep the ban or remove it entirely.

Conclusion

14. The ban on religious advertising does not preclude religious groups from access to the broadcast media or from advertising in other media. The ban simply provides that religious groups cannot buy airtime to deliver their message. In my view, it is difficult to construct a case that the ban significantly curtails the ability of religious groups to deliver their message.
15. If the ban were removed it is difficult to anticipate to what level and the nature of the advertising that would ensue. The experience of the UK would suggest an initial rush but without any great controversy. Religious advertising is, however, a potentially a more divisive issue on the island of Ireland.
16. On balance and having reflected on the arguments advanced in the public consultation process I would recommend against removing the ban. I do so primarily on the grounds that advertising on radio and television is significantly more intrusive than advertising in other media. I would contend that groups should not be able to buy air-time to deliver an unchallenged message that is aimed at influencing and altering the behaviour of society, in circumstances where it is difficult for the public to test or verify positions advanced. The same logic would apply to a consideration of the ban on political advertising.



Ciarán Ó hÓbáin
19 November 2003

Publication: Irish Independent
Date: Friday, January 9, 2004
Page: 10
Edition: 1 of 1
Page Number: 162.463
Author: David Quinn Religious Correspondent
Headline: Religious message frustrated by tight media restrictions



Religious message frustrated by tight media restrictions

David Quinn
Religious Correspondent

POWER to Change, the organisation behind the €1.8m Christian advertising campaign that took place in October 2002 has attacked the Department of Communications over its decision not to change the existing tight restrictions on religious advertising.

The campaign, which originally wanted to run ads on national radio and television with the message 'Jesus can change your life', was prevented from doing so by RTE and the Broadcasting Commission of Ireland (BCI) on the grounds that it was in breach of broadcasting legislation.

In the end it was only permitted to run a watered-down version of the advertisement even though the original version was allowed to air on Ulster Television.

Under Irish law no advertisement can be broadcast which addresses "the merits or otherwise" of belonging to a particular religion and it was judged that the Power to Change ads did this.

Paddy Monaghan of the Power to Change campaign said it was "grossly unfair" that the Minister of Communications, Marine and Natural Resources, Dermot Ahern, has decided not to amend the legislation when RTE and other broadcasters have run ads for tarot cards and horoscopes.

He said: "We note that RTE, Network 2, TV3 and TG4 have no problem in broadcasting ads from the informal spiritualities, eg tarot cards, horoscopes, psychic services, astrology etc and don't consider them as infringing Section 20 (4) of the Broadcasting Act 1980.

"At the same time they refuse to broadcast ads from the formal spiritualities as represented by the main religions in Ireland. This is grossly unfair".

Defending the decision not to amend the legislation, a spokesman for the department said advertising existed mainly to sell products. He stated that it would not be appropriate to allow people "to buy airtime to deliver an unchallenged message".

He denied this amounted to censorship and said if the legislation was amended it would open the airway to religious groups "with the moolah".

However, the Power to Change Campaign rejected this claim. Mr Monaghan said that Ireland should adopt version of the UK advertising regulations which permitted the Power to Change ads to run in their original form in the North, and have at the same time "prevented any abuse of this freedom of expression".

When the original version of the Power to Change ads was banned by RTE and the BCI, the campaign wrote to every member of the Oireachtas and received sympathetic replies from 4 TDs and senators.

The campaign was multi-denominational and was conceived and run by a group of business-people and supported by all the main churches.

Mr Monaghan said that if the broadcasting legislation isn't changed it is unlikely that it will run any future campaigns.

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117.565
PASY MCGARRY

Mixed reaction to Minister's ban on broadcasting religious adverts



Mixed reaction to Minister's ban on broadcasting religious adverts

PASY MCGARRY

There has been mixed reaction to a decision by the Minister for Communications, Mr Ahern, to uphold a ban on religious advertising in the broadcast media.

The Power to Change campaign director, Mr Paddy Monaghan, said last night they were "very disappointed" by the decision.

A review of the ban was initiated by the Mr Ahern in October 2002 when RTE decided not to carry Power to Change advertising. It also followed controversy over the banning of broadcast advertising for the weekly Irish Catholic newspaper. "The

apparent reason for this decision is that the Department could not draw up a more flexible system of regulation and was afraid that some religious group with a lot of finance could dominate the broadcast media," Mr Monaghan said.

He said religious advertising was allowed in the UK and that safeguards there had been sufficient to prevent any abuse.

"Given the contentious nature of religion in Northern Ireland, it is ironic that UTV had absolutely no difficulty in broadcasting the Power to Change ads in full," he said. "We note that RTE, Network 2, TV3 and TG4 have no problem in broadcasting ads from the informal spiritualities, e.g.

tarot cards, horoscopes, psychic services, astrology etc, and don't consider them as infringing Section 20 (4) of the Broadcasting Act 1960. At the same time they refuse to broadcast ads from the formal spiritualities as represented by the main religions in Ireland. This is grossly unfair," he said.

However, the Irish Humanists' Association welcomed the decision, describing it as "very wise". The association's vice president, Mr Dick Spicer, said it would have been an impossible situation to expect State and advertising authorities to arbitrate on religious claims. It would have been "such a can of worms".

Publication: Sunday Tribune

Date: Sunday, January 4, 2004

Page: 4

Extract: 1 of 2

Circulation: 80,095

Author: Stephen Collins

Headline: Religious advertising ban on TV and radio to remain

Religious advertising on TV and radio to re-

Minister Dermot Ahern exercises power not to change folk in wake of RTE's refusal to accept 'Power to Change' advert

Stephen Collins

Political Editor

THE ban on religious advertising on radio and television is to remain in force, the *Sunday Tribune* has learned.

The Minister for Communications, Dermot Ahern, has decided not to lift the traditional ban on religious advertising following a review of the legislation covering the matter.

The review took place after a decision by RTE last year to refuse to accept part of a €1m advertisement campaign called "Power to Change" which was sponsored by the main Christian religions in Ireland.

However, after a detailed review of the position by his department, the minister has decided not to change the legislation on the basis that a more flexible system of regulation was not feasible and the only alternatives were to retain the ban or abolish it completely.

The ban on religious advertising is contained in a short legal provision that also bans political advertising and advertising in relation to industrial disputes on the basis that such advertising would be clearly directed at influencing or altering behaviour and opinions.

The review drew a distinction between advertising on radio and television that

against allowing political or religious advertising that it would allow those who could afford to pay an opportunity to broadcast their message unchallenged.

He considered the option of removing the ban and asking the Broadcasting Commission of Ireland to regulate religious advertisements. However, he took the view that this might give rise to new and more intractable problems.

A recent European Court of Human Rights decision that the ban did not constitute a violation of the Convention of Human Rights formed part of the minister's thinking.

Officials outlined the difficulties of introducing regulations if the ban were removed and pointed out that such regulations, even if practicable, could be divisive in themselves. In the circumstances they recommended to the minister that the options were either to keep the ban or remove it entirely as there was no workable middle ground solution on offer.

It was also pointed out that the ban on religious advertising does not prevent advertisements that give information about a magazine or periodical being available for sale or about a religious event or ceremony taking place. What the ban did was to

advertisements in newspapers and those in the broadcast media. The broadcasting of unchallenged political or religious views on radio or television could be very intrusive as a person who did not wish to receive the message did not have the simple option of turning over to the next page.

Another key point was that the ban on religious advertising did not preclude religious groups from access to the broadcast media.

COUR EUROPEENNE
DES
DROITS DE L'HOMME

EUROPEAN COURT
OF
HUMAN RIGHTS

CONSEIL DE L'EUROPE
STRASBOURG
11 DEC 2003
Local Dublin

Patricia O'Brien

COUNCIL OF EUROPE
STRASBOURG

Ms Patricia O'BRIEN
Agent of the Government of Ireland
Department of Foreign Affairs
Hainault House
69/71 St. Stephen's Green
IRL - Dublin 2

cc. For information

① Director General, Office of the
Attorney General, for the attention
of Christopher O'Toole.

② Ciarán Ó hÓbáin, Dept. GRAND CHAMBER
of Communications, Marine and Natural Resources.

ECHR-LE21.3G ③ Donal O'Donnell S.C. 8 December 2003
AMA/ds ④ Brian Murray S.C.

Application no. 44179/98
MURPHY v. Ireland

SMcArade
11-12-03

Dear Sirs,

With reference to Mr Berger's letters of 29 July and 27 August 2003, I write to inform you that the panel of five judges of the Grand Chamber decided on 3 December 2003 not to accept the applicant's request that the above-mentioned case be referred to the Grand Chamber.

Pursuant to Article 44 § 2 of the Convention, the judgment of 10 July 2003 therefore became final on 3 December 2003. It is available on the Court's Internet site (<http://www.echr.coe.int>) (Article 44 § 3 of the Convention and Rule 78 of the Rules of Court).

Yours faithfully,

Paul Mahoney

Paul Mahoney
Registrar

cc: Permanent Representative

PARLIAMENTARY QUESTION

Dail Eireann

To ask the Minister for Communications, Marine and Natural Resources if he will make a statement on the decision not to lift the ban on religious advertising.

-Bernard Allen

For WRITTEN answer on Tuesday, 27th January 2004

Ref No: 1812/04

Reply

Minister for Communications, Marine and Natural Resources (Mr. D. Ahern)

I am of the view that the ban on religious advertising as provided for in Section 20(4) of the Broadcasting Authority Act, 1960 (as qualified by section 65 of the Broadcasting Act, 2001) and section 10(3) of the Radio and Television Act 1988, should remain.

In arriving at my decision, I had regard to a diverse range of opinions expressed during a public consultation process I conducted last year. In arriving at the view that the ban should remain I was conscious of the potential intrusive nature of advertising on radio and television, which is different to other forms of advertising. I am of the view that it is not desirable that individual groups would be in a position to buy air-time to deliver an unchallenged message that is aimed at influencing and altering behaviour in society in circumstances where it is difficult for the public to test or verify positions advanced.

Submissions received as part of the consultation process are available on my Department's website. I will also publish the report on the consultation process and the documents, which set out the basis for my decision.

29/1/04. 43
Not Issued

DRAFT PRESS RELEASE.

RELIGIOUS ADVERTISING.

MINISTER DECIDES TO RETAIN BAN ON RELIGIOUS ADVERTISING.

The Minister for Communications, Marine and Natural Resources has decided to retain the statutory prohibition on the broadcasting of advertisements directed towards a religious end as contained in section 20(4) of the Broadcasting Authority Act, 1960 and qualified by section 65 of the Broadcasting Act 2001.

Section 20(4) of the Broadcasting Authority Act, 1960 provides that the RTE Authority shall not accept any advertisement which is directed towards any religious or political end or has any relation to any industrial dispute. The comprehensive ban on religious advertising contained in the 1960 Act is extended to the independent radio and television sector by Section 10(3) of the Radio and Television Act 1988 which mirrors the provision in the 1960 Act.

Section 65 of the Broadcasting Act, 2001 provides that the ban on religious advertising does not preclude the broadcasting of a notice of the fact that (a) a particular religious newspaper, magazine or periodical is available for sale or supply, or (b) that any event or ceremony associated with any particular religion will take place, if the contents of the notice do not address the issue of the merits or otherwise of adhering to any religious faith or belief or of becoming a member of any religion or religious organisation.

The European Court of Human Rights recently found in the case of Murphy v Ireland that a ban on religious advertising did not constitute a violation of the European Convention on Human Rights. This decision meant that there was no external pressure on Ireland to remove the ban and a decision could be taken solely on the merits of the case.

Following a review of the legislative provisions in this area, including a public consultation process which generated in excess of 150 submissions, the Minister has decided that the principal argument against allowing religious advertising is that to do so would allow those who can afford to pay an opportunity to broadcast their message without challenge.

In considering the retention of the existing ban, it was noted that advertising on radio and television is significantly more intrusive than advertising in other media given the pervasive nature of the media. It would be difficult if not impossible to avoid advertising by religious groups through this medium. In addition, it was felt that religious interests should not be able to buy air-time to deliver an unchallenged message that is aimed at influencing and altering behaviour in society in circumstances where it is difficult to test or verify positions advanced.

The Minister pointed out that the ban on religious advertising does not prevent advertisements which provide information about a magazine or periodical being available for sale, or about a religious event or ceremony taking place. It does not preclude religious groups from gaining access to the broadcast media or from advertising in other media. It merely provides that religious groups cannot buy airtime to deliver their message and prevents such advertisements addressing the merits or otherwise of adhering to any religious faith or belief or of becoming a member of any religion or religious organisation.

Joe Meleady

From: Ciaran O hObain
Sent: 27 January 2004 09:21
To: Joe Meleady
Cc: Eamonn Molloy
Subject: FW: RE PQ 1812/04 - Ban on religious advertising

Joe

For info

Ciaran

-----Original Message-----

From: Ciaran O hObain
Sent: 27 January 2004 09:20
To: Ciara O'Sullivan
Subject: RE: RE PQ 1812/04 - Ban on religious advertising

Ciara

We had a draft Aide-Memoire for Government prepared with a view to it being on the Government agenda for next week. The PQ clearly would impact on that timetable.

I discussed this with the Minister when in Brussels yesterday and he told me he does not require an Aide Memoire. I understand he has briefed the Taoiseach and the Tanaiste on the matter. The Minister also decided that we should publish the report on the public consultation, along with the submissions to him, on the Department's website. We are making arrangements for this.

Regards

Ciarán

-----Original Message-----

From: Ciara O'Sullivan
Sent: 26 January 2004 18:59
To: Ciaran O hObain
Subject: RE PQ 1812/04 - Ban on religious advertising

Ciaran,

After clearing the above PQ, the Secretary General made the following file note for your attention. He requested that the report on this matter should be brought to the Government's attention before publication.

Regards,
Ciara

Dermot Ahern Retains Ban on Religious Advertising

Minister Rules Out Allowing Advertising Which Could Serve Those With Deepest Pockets

Dermot Ahern TD, Minister for Communications, Marine and Natural Resources, today announced that he is to retain the ban on religious advertising on radio and television.

The Minister's decision follows a lengthy consultation during which over 150 submissions from the public were received by his Department. The Minister said: "The choice effectively was whether we left in place what, by and large, has served us well over the past 40 years or threw open the airwaves to religious advertising which could result in those with the deepest pockets presenting an unchallenged message. On balance, I felt we should leave the status quo in place."

The statutory prohibition on the broadcasting of advertisements directed towards a religious end – it also includes a ban on political advertising and that concerned with industrial disputes - originated in legislation from 1960. It applies to all broadcast media, both State and independently owned. Last year the Minister announced a review of the ban on religious

Minister Ahern said: "This is a very emotive subject and I can understand the views of those who believe they have a right to advertise their religious beliefs. Ultimately, however, as Minister responsible for broadcasting policy, I have to take account of the greater good. I don't believe we would be well served by throwing open advertising to those who are best resourced. An individual's creed is a precious and private concern. I don't feel a set of religious beliefs should be subject to the same pressures as obtain in the normal course of broadcast advertising."

"Advertising on radio and television is significantly more intrusive than advertising in other media given the pervasive nature of the media. I don't believe that Irish people would want, on balance, that religious interests should be able to buy air-time to deliver an unchallenged message – one which other interests through lack of resources might not be able to match or counter."

Minister Ahern said the ban on religious advertising does not prevent advertisements which provide information about a magazine or periodical being available for sale, or about a religious event or ceremony taking place. "It does not preclude religious groups from gaining access to the broadcast media or from advertising in other media."

Editor' Note

The ban of religious advertising is contained in section 20(4) of the Broadcasting Authority Act, 1960 and qualified by section 65 of the Broadcasting Act 2001.

Section 20(4) of the Broadcasting Authority Act, 1960 provides that the RTE Authority shall not accept any advertisement which is directed towards any religious or political end or has any relation to any industrial dispute. The comprehensive ban on religious advertising contained in the 1960 Act is extended to the independent radio and television sector by Section 10(3) of the Radio and Television Act 1988 which mirrors the provision in the 1960 Act.

Section 65 of the Broadcasting Act, 2001 provides that the ban on religious advertising does not preclude the broadcasting of a notice of the fact that (a) a particular religious newspaper, magazine or periodical is available for sale or supply, or (b) that any event or ceremony associated with any particular religion will take place, if the contents of the notice do not address the issue of the merits or otherwise of adhering to any religious faith or belief or of becoming a member of any religion or religious organisation.

The European Court of Human Rights recently found in the case of *Murphy v Ireland* that a ban on religious advertising did not constitute a violation of the European Convention on Human Rights. This decision meant that there was no external pressure on Ireland to remove the ban and a decision could be taken solely on the merits of the case.

Publication: Irish Independent
Date: Friday, January 30, 2004
Page: 3

Section: 1 of 1

Page Number: 162.463

Author: David Quinn Religious Correspondent

Headline: Thou shalt not advertise just because you're loaded, Ahern says



Thou shalt not advertise just because you're loaded, Ahern says

David Quinn
Religious Correspondent

THE current tight restrictions on religious advertising are to be retained in order to keep religious

groups "with the deepest pockets" off the airwaves, Communications Minister Dermot Ahern announced yesterday.

A review of the restrictions was ordered in 2002 after an advertising campaign by Power to Change, an inter-denominational group of Christian businessmen, was forced to water down its original ad so that it could be broadcast on Irish television.

Earlier this month it was made known that the present restrictions would be kept in place; however, yesterday was the first time that Mr Ahern gave the rea-

sons for his decision.

He said: "The choice effectively was whether we left in place what, by and large, has served us well over the past 40 years or throw open the airwaves to religious advertising which could result in those with the deepest pockets presenting an unchallenged message. On balance, I felt we should leave the status quo in place."

A spokesman for the department denied that the decision was intended mainly to keep fundamentalist groups, sects and cults off the airwaves. He said it was intended to prevent any

religious organisation with large amounts of money from "bombarding radio and television with their ads".

Mr Ahern said he could "understand the views of those who believe they have a right to advertise their religious beliefs". However, he added: "An individual's creed is a precious and private concern. I don't feel a set of religious beliefs should be subject to the same pressures as obtain in the normal course of broadcasting advertising."

Publication: Irish Examiner
Date: Friday, January 30, 2004
Page: 4
Extract: 1 of 1
Circulation: 60.229
Author:
Headline: RELIGIOUS ADS

◆ **RELIGIOUS ADS:** The government is to keep in place a four-decade ban on TV and radio religious advertising. The move was confirmed last night by Communications Minister Dermot Ahern after his department had received more than 150 submissions during a lengthy consultation process.

Publication: Irish Daily STAR

Date: Friday, January 30, 2004

Page: 13

Extract: 1 of 1

Circulation: 108,191

Author:

Headline: RELIGIOUS AD BAN TO STAY

RELIGIOUS AD BAN TO STAY

THE ban on religious ads on TV and radio is to stay, Minister for Communications Dermot Ahern said yesterday.

He said he had the option to allow religious ads but chose not to — due to fears that wealthy religious groups would monopolise the airwaves.

Joe Meleady

From: Karen Sheil
Sent: 12 February 2004 15:49
To: Joe Meleady
Subject: FW: Meeting request from Mr.. Paddy Monaghan, Power to Change

FYI

-----Original Message-----

From: Karen Sheil
Sent: Thu February 2004 15:02
To: Ciaran O hObain
Subject: RE: Meeting request from Mr.. Paddy Monaghan, Power to Change

Ciaran,

Yes, I sent him a letter today stating that due to the Minister's Presidency commitments he is not in a position to meet but he has asked his officials to contact him directly to arrange a meeting at official level.

Karen

-----Original Message-----

From: Ciaran O hObain
Sent: Thu February 2004 14:40
To: Karen Sheil
Subject: RE: Meeting request from Mr.. Paddy Monaghan, Power to Change

Karen

Has Mr. Monaghan been told by Minister's Office that Minister will not meet him.

Ciarán

-----Original Message-----

From: Karen Sheil
Sent: 12 February 2004 13:01
To: Ciaran O hObain
Cc: Marie Gibney
Subject: Meeting request from Mr.. Paddy Monaghan, Power to Change

Ciaran,

Further to your advice attached the Minsiter has asked for a meeting to be set up at official level. Can you please contact Mr. Monaghan directly on 236 9821 with a view to setting up a meeting.

Regards

Karen Sheil
MInister's Office
ext: 2008

<< File: Shortcut to Mr. Paddy Monaghan, Power to Change, 6 Jan 04.doc >>

MEETING REQUEST

**To meet with Mr. Paddy Monaghan, Project Manager of Power to Change
Re: changes in the ban on religious advertising**

To: Ciarán Ó hÓbáin

CC: Ciaran O Cuinn, Eamonn Molloy

From: Karen Sheil

RE: Please advise on the following Invitation

Ciarán Ó hÓbáin's comments:

I would not advise a meeting. At the time Mr. Monaghan wrote the Minister had decided that the ban on religious advertising should remain. Since then the Minister has formally announced his decision and a copy of the papers submitted to the Minister have been published on the Department's website.

I would suggest that instead of a meeting that we write to Mr. Monaghan outlining the position. I will arrange for a suitable draft reply to be prepared.

Ciaran's comments

Other Comments

Minister's Decision

Accept []

Regret []

Officials []



Power to Change

c/o 72 Hillcourt Road, Glenageary, Co. Dublin
Tel: 01 2369821 Fax: 01 2369800 Email: info@powertochange.ie

6th Jan. 04

Mr Dermot Ahern T.D.,
Minister for Communications, Marine & Natural Resources
29-31 Adelaide Road
Dublin 2

Dear Minister

We are very disappointed to read in the Sunday Tribune yesterday that the Department is not planning to make any changes in the ban on religious advertising. The apparent reason, we understand, for this decision is that your Department could not draw up a more flexible system of regulation and was afraid that some religious group with a lot of finance could dominate the broadcast medium. In our submission to you dated 31st March 2003 submitted on behalf of a representative number of church leaders, we outlined the case for deleting the ban on religious advertising. We considered that the safeguards that exist in the UK would be more than adequate to control religious advertising in Ireland. Religious advertising is allowed in the UK and the safeguards have been sufficient to prevent any abuse of this freedom of expression.

We consider that Power to Change was a success despite RTE refusing to honour the contract to broadcast our ads, which UTV had no problem with. Given the contentious nature of the abuse of religion in the conflict in Northern Ireland, it is ironic that UTV had absolutely no difficulty in broadcasting the Power to Change ads in full and they were favourably commented on by all sides. However our campaign would have been all the more successful if RTE were allowed to broadcast our ads as they are the national broadcaster. We note that RTE, Network 2, TV3 and TG4 have no problem in broadcasting ads from the informal spiritualities eg tarot cards, horoscopes, psychic services, astrology etc. and don't consider them as infringing the Section 20 (4) of the Broadcasting Authority Act 1960. At the same time they refuse to broadcast ads from the formal spiritualities as represented by the main religions in Ireland. This is grossly unfair.

The Power to Change ads set out some of the positive things that Christianity has to offer such as proper relationships between people, good morality, responsible citizenship, right living etc. This is in marked contrast with some of the ads currently broadcast by RTE. We would like to run a campaign such as in Sept/Oct. 2002 on a regular basis but the maintenance of the Religious ad ban would militate against this.

Minister, we would value a meeting with you to discuss our concerns in more detail. I spoke to your private Secretary, Eamonn Confrey, yesterday about this. Look forward to hearing from you.

Kind personal regards

Yours Sincerely

Paddy Monaghan
Project Manager