OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN
delivered on 20 March 1985

My Lords,

Article 89 of French Law No 82-652 of 29 July 1982 on audio-visual communication provides that:

'No cinematographic work being shown in cinemas may simultaneously be exploited in the form of recordings intended for sale or hire for the private use of the public, in particular in the form of video cassettes or video discs, before the expiry of a period to be determined by decree and to run from the date of the issue of the performance certificate. That period shall run from 6 to 18 months. That requirement may be waived subject to conditions to be determined by decree.'

This provision was implemented by Decree 83-4 of 4 January 1983, which fixed the relevant period at one year from the grant of the performance certificate authorizing the showing of the particular film in question. The same Decree provides that this rule may be waived by the Ministry of Culture on the application of the copyright owner after an opinion has been delivered by a committee set up under the auspices of the Centre national de la cinématographie.

There is thus a ban on selling or hiring video-cassettes of any film which is simultaneously being shown, unless a dispensation is granted, for one year from the date of the authorization certificate granted for the film. It is clear that the ban is only on private showing; it does not ban the showing of video-recordings in public, a practice which exists and, the Court is told, is likely to increase. It seems also clear that the ban does not prohibit the production or importation of such video recordings during the year in question. There is a dispute between the parties as to whether the ban can be applied to cassettes intended for export. There is also some doubt, as a matter of interpretation of the French law, as to what constitutes 'simultaneous exploitation' for the purposes of the law and what would be the position if the video cassettes were lawfully shown before a film was shown, if the latter were subsequently authorized to be shown.

According to the Commission, no comparable legislation exists in any other Member State. However, in Germany it is provided by statute that where State subsidies have been granted for a film, no video cassettes or video discs of that film may be distributed within 6 months of its first showing in the cinemas. This was confirmed at the hearing by the representative of the German Government. In Denmark films subsidized by the Danish national film institute are, according to the Commission, subject to a similar prohibition for a one year period. That is stipulated by the national film institute itself.

In addition, in a number of Member States the same result has been achieved by the film industry itself without legislation. Thus, in Italy an agreement between trade associations provides that a film may not be exploited in the form of video-cassettes within 12 months of its first showing in the cinemas. A similar agreement between trade associations has been concluded in Germany and in the Netherlands, where the period is 6 months. In some other Member States a similar ban is laid down on an *ad hoc* basis in contracts for the distribution of films. In such cases the period varies between 3 and 6 months.

The plaintiffs in both these cases claim that these provisions of the French Law are contrary to Articles 30, 34 and 59 of the Treaty.

Case 60/84 *Cinéthèque* concerns 'Merry Christmas, Mr Lawrence', which is described by the Fédération Nationale des cinémas français as being 'of New Zealand nationality'. The film first appeared in the cinemas in France under the name 'Furyo' on 1 June 1983, although it did not receive its performance certificate until 28 June 1983. Glinwood Films Ltd, the second plaintiffs, are a British company which owned the copyright in the film. It granted to AAA, a French company, the exclusive right to distribute and show the film in French cinemas. By a contract dated 28 July 1983 it granted to Cinéthèque, the first plaintiffs, the exclusive right to produce and sell video-cassettes of the film for a 6 year period starting on 1 October 1983 in France and 1 June 1984 in Belgium and Switzerland. AAA, which had a share in the royalties of the video cassettes, thereupon agreed in writing to this contract concluded between Glinwood and Cinéthèque. Cinéthèque then proceeded to produce the video cassettes, some of which it sold to Discophile Club de France (DCF) and Téléfrance. No request for a waiver of the one-year rule with respect to 'Furyo' was ever made to the Ministry of Culture.

On the basis that the plaintiffs had contravened the French legislation referred to, the Fédération nationale des cinémas français sought and obtained on 19 October 1983 an interim order that the cassettes of the film in the possession of Cinéthèque and of the dealers be seized until the expiry of the one-year period, subject to a waiver being granted by the Ministry of Culture. By the same order Cinéthèque was enjoined from distributing any further copies of the cassettes. That order was confirmed by a second order dated 15 November 1983. Cinéthèque and Glinwood then brought an action against the Fédération nationale to have the order lifted. DCF subsequently intervened of its own volition in support of the plaintiffs and Téléfrance was joined as a co-plaintiff.

The Tribunal de grande instance de Paris, which was hearing the case, made the present reference under Article 177. The reference contains the following three questions:

'(1) In establishing an interval between one mode of distributing cinematographic works and another by a prohibition on

the simultaneous exploitation of such works in cinemas and in the form of video cassettes for a period of one year, save where a dispensation is granted, are the provisions of Article 89 of the French law of 29 July 1982, as supplemented by the Decree of 4 January 1983, regulating the distribution of cinematographic works, compatible with the provisions of Articles 30 and 34 of the EEC Treaty on the free movement of goods?

(2) Are those same provisions of domestic law compatible with Article 59 of the EEC Treaty on freedom to provide services?

(3) If the answer to either of those questions is in the negative, are the rules enacted by Article 89 of the Law of 29 July 1982 and the Decree of 4 January 1983 compatible with the provisions of Article 36 of the EEC Treaty laying down derogations from Articles 30 and 34 of that Treaty?'

Case 61/84 *Editions René Chateau* relates to a French film, 'Le Marginal'. This film received its performance certificate on 27 October 1983 and appeared in the cinemas on the same day. By contract dated 20 June 1982 Cerito films and les Films Ariane had authorized Editions René Chateau, the first plaintiffs, to produce and issue video cassettes of the film for a 10-year period in France, Belgium, Luxembourg and a number of third countries as from 15 January 1984 at the latest. By letter of 20 December 1983 M. Jean-Paul Belmondo, the Managing Director of Cerito films and the leading actor in the film, authorized the distribution of video cassettes to commence on the date of the letter, apparently because of the existence of unauthorized ('pirated') copies of the film. Together with Cerito films, Editions René Chateau was also the distributor of the film in Paris and its environs. The second plaintiffs, Hollywood Boulevard Diffusion — Michel Fabre, own three cinemas in Paris, in which the film was shown.

Once again, the Fédération nationale sought and obtained a judicial order prohibiting René Chateau and Hollywood Boulevard from distributing the video-cassettes and ordering the seizure of such video-cassettes until 27 October 1984, subject to a waiver of the one-yearrule being granted by the Ministry of Culture. No such waiver was ever granted. At all events René Chateau then brought an action together with Hollywood Boulevard against the Fédération nationale seeking the same relief as the plaintiffs in Case 60/84. DGD, a Belgium company, was joined at its own request as third plaintiff, claiming that the court order prevented it from importing or exporting video cassettes of 'Le Marginal'.

There has been some argument as to the extent to which the law affects or has affected the importation or exportation of video-cassettes, or the master copy from which video cassettes can be made under licence in France, in the case of the present films. The questions posed seem to me to proceed on the basis that the law does not expressly ban either the importation or the exportation of video-cassettes or the master copy, of films which are simultaneously being shown in France.

So far as imports are concerned, that in no way disposes of the problems raised. For traders to be able lawfully to import, but to be prohibited from distributing for a period of up to 12-months, is in practice, by reason of financing and stocking charges, capable of having the result that goods are not

imported. There is little point in buying until the retailer knows that he can sell or let on hire.

The first question, therefore, is whether this law offends Article 30 of the EEC Treaty taken alone, since if it does not there is no need to consider Article 36. The applicants in the main proceedings contend that this is a case clearly falling within the principle laid down by the court in Case 8/74 *Dassonville* [1974] ECR 837. It is 'capable of hindering directly or indirectly, actually or potentially, intra-Community trade'. It is accordingly to be treated as a measure having an effect equivalent to a quantitative restriction. It is argued by the applicants that the law may be such a measure even if it is not applied only to imports but is 'indistinctly applicable' to imports and national products and if it cannot be said to be discriminatory. To violate Article 30 it is enough that the law in practice prevents video-recordings made in other Member States, or made in France from a master copy sent from another Member State, from being exploited in France.

As I understand it, there is no issue between the parties that video cassettes and the master copy constitute goods for the purposes of Article 30. On the basis of the Court's judgments in Case 7/68 *Commission* v *Italy* [1968] ECR 423 and Case 155/73 *Sacchi* (1974) ECR 409, it seems to me that clearly they do so. In the latter case it was said in terms that 'trade in material, sound records, film apparatus and other products used for the diffusion of television signals are subject to the rules relating to the free movement of goods'.

It is also clear, as the applicants argue, that a prohibition (e.g. on sale) has been held to breach Article 30, even though it is applied indiscriminately to domestic and imported goods (e.g. Case 120/78 *Cassis de Dijon* [1979] ECR 649, Case 788/79 *Gilli and Andres* [1980] ECR 2071, Case 220/80 *Robertson* [1982] ECR 2349). Moreover, the fact that a prohibition is limited in time does not prevent it from falling within Article 30 (Case 82/77 *Openbaar Ministerie* v *Van Tiggele* [1978] ECR 25) and there can be no argument that the restriction of one year is *de minimis* and to be ignored, either on the basis of the Court's judgment in Joined Cases 177-178/82 *Van de Haar* [1984] ECR 1797, or even if the *de minimis* rule did apply, on the facts.

Nor does the fact that a derogation may be granted bring the measure outside Article 30 (*Van Tiggele* and Case 27/80 *Fietje* [1980] ECR 3839).

In many cases the Court has condemned a measure as having an effect equivalent to a quantitative restriction on imports on the basis that it was in form or in substance discriminatory. The discrimination against goods from another Member State itself constituted or created the restriction. Discrimination, however, although it may be sufficient, even conclusive, to bring a measure within Article 30, is not a necessary

precondition for Article 30 to apply. This seems to flow from the decision in *Cassis de Dijon* itself (paragraph 8) and is illustrated by Case 53/80 (*Officier van Justitie* v *Kaasfabriek Eyssen* [1981] ECR 409) where the Court held that the prohibition on the sale of processed cheese fell under Article 30 even though there was no evidence that it discriminated in any way against imports. Thus measures applied equally to imports and domestically produced goods may in practice require importers to take steps which otherwise they would not take and which indirectly discourage them from importing or, by creating additional problems, hinder them in doing so. Thus for one Member State to oblige a manufacturer in another Member State to put his product in a box or bottle of a shape or size different from that which he is accustomed to use for his national sales or for exports to other Member States may, even if such an obligation is imposed on the Member State's own domestic producers, amount to a restriction within Article 30. Even a law which does not directly concern imports may thus affect prospects for importing products from other Member States and thus breach Article 30 (Case 152/78 *Commission* v *French Republic* [1980] ECR 2299.

It is, on the other hand, well established that in the absence of discrimination, measures of the latter type do not necessarily fall within the ambit of Article 30.

In the first place as *Cassis de Dijon* made clear, in the absence of common rules relating to the production and marketing of a product, it is for the Member State to regulate all matters relating to the production and marketing of that product in their own territory. 'Obstacles to movement within the Community resulting from disparities between the national laws relating to the marketing of the products in question must be accepted in so far as those provisions may be recognised as being necessary in order to satisfy mandatory requirements relating in particular to the effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions and the defence of the consumer.' In *Gilli and Andres*, the Court recognized that rules relating to 'consumption on their own territory' as well as production and distribution may be 'justified as being necessary' in order to satisfy such mandatory requirements. It is, however, only where they are justified as being necessary that they may 'constitute an exception to the requirement of Article 30', i.e. requirements that they do not present an obstacle, directly or indirectly, actually or potentially to intra-Community trade. In that case, as in *Cassis de Dijon*, the Court considered that the measures taken did not 'serve a purpose which is in the general interest and such as to take precedence over the requirements of the free movement of goods, which constitutes one of the fundamental rules of the Community'. On the contrary, the 'principal effect of provisions of (the) nature (there to be found) is to protect domestic production by prohibiting the putting on to the market of products of other Member States which do not answer the descriptions laid down by the national rules'.

Further, on a different basis in Case 75/81 *Blesgen* v *Belgium* [1982] ECR 1211, the Court found that a prohibition of the

consumption or sale of spirits above a certain strength on premises open to the public was not caught by Article 30 since it made no distinction whatever based on the nature or origin of the products and did not affect the marketing in other forms of those spirits. The Court concluded that such a legislative measure has no connection with the importation of the products and for that reason is not of such a nature as to impede trade between Member States. In Case 155/80 *Oebel* [1981] ECR 1993, the Court accepted that German rules prohibiting the transport and delivery of bakers' wares to consumers and retailers before a certain hour were not contrary to Article 30 in that they did not restrict imports and exports between Member States so long as they did not curtail wholesale deliveries. In Case 58/80 *Dansk Supermarked* v *Imerco* [1981] ECR 181, it was said that a Member State could lawfully prohibit the marketing of imported goods if the conditions on which they were sold constituted an infringement of marketing usages considered fair and proper in the State of importation, so long as the prohibition did not relate to the importation itself.

The ambit of Article 30 has been explored by the Court in a very large number of situations, and must inevitably develop on a case-by-case basis as further situations are presented. I am not conscious that the present case is on all fours with any previous decision of the Court.

It is, however, clear that, although Article 30 appears to be couched in absolute terms, so that on the face of it any measure which restricts imports is absolutely prohibited, the Court has recognized that it is not to be so read.

It seems to me in summary that a measure is in breach of Article 30 (a) if it forbids imports or restricts imports quantitatively; (b) if it discriminates against imports by e.g. imposing more stringent standards on importers than on domestic producers so that in practice importation may be made more difficult and thereby imports may be restricted; (c) if, although not directed to importation as such but covering both national goods and imports, it requires a producer or distributor to take steps additional to those which he would normally and lawfully take in the marketing of his goods, which thereby render importation more difficult, so that imports may be restricted and national producers be given protection in practice. The last category (c) if, will not be in breach of Article 30 if it can be shown that the measure is justified by mandatory requirements of the kind contemplated in *Cassis de Dijon.*

On the other hand, in an area in which there are no common Community standards or rules, where a national measure is not specifically directed at imports, does not discriminate against imports, does not make it any more difficult for an importer to sell his products than it is for a domestic producer, and gives no protection to domestic producers, then in my view, *prima facie,* the measure does not fall within Article 30 even if it does in fact lead to a restriction or reduction of imports.

In the present case the law does not discriminate against imports. The importer can in fact import. He is then on exactly the

same footing as the domestic trader. The latter gets no extra benefit over the importer, the former suffers no extra detriment over the French trader as a result of the ban on the exploitation of video-cassettes. The factor which would lead a trader in France not to buy from a French video distributor (inability to sell or hire) is the same as that which would lead him not to buy from a distributor in another Member State. In this respect both distributors are subject to the same conditions of trade. They are effectively operating in the same market. Article 30 cannot have been intended in this respect to give the distributor in another Member State better conditions than the domestic distributor. It may be that if it was patently unreasonable to put imports on the same footing as domestic products that the measure could be bad for that reason. That however is not the position here and in my view this law does not fall within Article 30.

If I had not come to this conclusion I would in any event have been of the view that the ban contained in the French Law is a 'mandatory' requirement even though a dispensation may be granted from it both to domestic and imported video-cassettes. The justification put forward for the ban being applied to all, including imported, video cassettes is that it is necessary in order to protect the film industry upon which the video cassettes themselves depend. Put broadly, the argument is that films cost a great deal of money to make. The outstandingly greater part of recovery of these costs and the chance of profit depends on the showing in public cinemas of these films. There is a limited period in which this can be done. The decrease in the number of cinema-goers and competition from American films makes very difficult the lot of the European film maker, in this case the French film maker. To allow video tapes to be sold or hired and TV showings to take place simultaneously with the showing of films in public cinemas can only make the position of the film industry more difficult. It is essential to have a general provision; to leave it to individuals to regulate the position by contract would not protect the industry as a whole, and the fact that in these cases the owners of the copyright in the films and their distributors are willing to have the video-tapes released does not mean that the law is not justified.

These arguments are not accepted by the applicants. Their case broadly is that the proportion of the recovery of costs attributable to showings in public cinemas, as compared with that attributable to receipts from video-tapes, is not accurate. In any event, if video-tapes can be shown at once the sales will increase and royalties from them mount. Moreover, costs are only recovered from cinema showings in respect of a tiny minority of films. The effective time during which films can be shown in major centres is often very short. A period of 12-months is too long as a general rule. The owner of the copyright in a film should be able to decide how he wants to deal with his film and the industry can be protected as it is in other Member States by agreements

ad hoc for each film between the owner of the copyright and the distributors.

It is argued, particularly by the Commission, that films are part of contemporary culture. It is legitimate to adopt restrictions on the free movement of goods, which can override the principle contained in Article 30, in order to preserve or support cultural activities. I do not consider that it is necessary to put the matter so broadly, even assuming that cultural objectives can ever constitute one of the mandatory requirements. It is plain here that the support of cultural objectives is essentially dependent on economic factors. What is really being said is that the film industry can only reasonably be preserved on an economic basis if films can enjoy a period during which only they are available. If they do not, not only will the Community film industry not be able to make films for cinema showing, but such films will inevitably not be available on video-tape or to be shown on television. It is only fair competition that that part of the industry which bears the main costs should have a fair chance of recovery. It can only do so if cinemas are available, and they can only be made available if they can show films first, not least since the films are essentially made for a big screen rather than for the derivative video-tapes.

If the Fédération is right on the facts, then it seems to me that it is commercially fair and in the general interest that the showing of films in cinemas, on video-tape and television should be regulated in such a way that the industry is preserved and supported. Only in such a way can the 'consumer' be assured of a supply of films.

If, therefore, I had not come to the conclusion that this law fell outside Article 30 for the first reason given, I would accept that it is capable of doing so if the measure adopted can be shown to be justified as being necessary for the maintenance of the film industry and the supply of films to the consumer. That objective is a legitimate one.

Whether the actual provisions adopted are 'justified as being necessary' is in my view for the national court to decide, as the Commission contends, since it is not in my opinion for the Court to resolve the issues between the parties. Thus the national court must be satisfied that the film industry and the supply of films does require this kind of protection. Is it right that film-making is essentially supported by receipts from cinema showings; to what extent would the industry suffer if video-tapes were released simultaneously; is it necessary that such a ban as is adopted here should be for as long as 12-months? Of considerable importance is the question whether it is necessary for the ban to cover cases where the owner of the copyright and the film distributor are willing that video-cassettes should be released at the same time as the film.

I do not, however, consider that the law in question falls within any of the exclusions contained in Article 36 of the Treaty. By the law the owner of the copyright cannot exploit his rights to the full during the first

year and it does not seem to me to be right to say that the law protects his copyright in the film so that any loss on the video tapes is incidental. Nor does it seem to me that this law fits into any of the other categories specified in Article 36.

So far as exports are concerned, the position is on the facts less clear. The French Government says that the law does not apply to exports at all, yet the applicants say that orders for seizure have been general regardless of the intended destination of the video cassettes, and those intended for export to Belgium have been impounded.

In any event it seems to me that neither the law nor the measures allegedly taken by the French authorities were caught by Article 34. In Case 155/80 *Oebel* [1981] ECR 1993 at p. 2009 the Court held that 'Article 34 concerns national measures which have as their specific object or effect the restriction of patterns of exports and thereby the establishment of a difference in treatment between the domestic trade of a Member State and its export trade, in such a way as to provide a particular advantage for national production or for the domestic market of the State in question'. The judgment in Case 237/82 *Jongeneel Kaas* v *Netherlands* [1984] ECR 483 shows that the concept of an 'advantage for national production or for the domestic market of the State in question' is to be construed broadly. Quoting its earlier judgment in Case 53/76 *Bouhelier* [1977] ECR 197, the Court held there that a measure requiring inspection documents for exports only constitutes a measure of equivalent effect within the meaning of Article 34. Nevertheless, the legislation at issue here does not discriminate either in form or in substance against goods intended for export, nor does it aim specifically to restrict exports. It therefore falls outside Article 34.

Finally, it should be added that neither Article 30 nor Article 34 applies to transactions which are purely internal to a Member State: see Cases 314 to 316/81 and 83/82 *Waterkeyn* [1982] ECR 4337 and 286/81 *Oosthoek's Uitgeversmaatschappij* [1982] ECR 4575. This would be the case where the whole cycle of production of the film and the video-cassettes took place within France and exports were not in issue. On the evidence before the Court such may be the situation in Case 61/84 but that is a question of fact to be decided by the national court.

The second question asks whether the provisions of the French law referred to are compatible with Article 59 of the Treaty which requires the abolition of restrictions on freedom to provide services within the Community by the national of one Member State established in a State other than that of the person for whom the services are intended.

Although it does not seem to me that either the grant of a copyright licence by the owner or the exploitation of the licence by the licensee have been shown to constitute services within the meaning of Article 60, a prohibition on the hire of video-cassettes during the one-year period is capable of being a restriction on the freedom to provide services in so far as it prevents a person in another Member State from renting video-cassettes to persons resident in France during the one-year period. If the legislation also prevents French distributors

from hiring to persons in other Member States that could amount to a similar restriction.

However the restrictions which are forbidden must either be discriminatory or constitute a requirement 'imposed on the person providing the service by reason in particular of his nationalty or of the fact that he does not habitually reside in the State where the service is provided, which do not apply to persons established within the national territory or which may prevent or otherwise obstruct the activities of the person providing the service' (Case 33/74 *Van Binsbergen* v. *Bedrijfsvereniging Metaalnijverheid* [1974] ECR 1299 at p. 1309; Case 39/75 *Coenen* v *Sociaal-Economische Raad* [1975] ECR 154 at p. 1555). Most recently the Court has underlined that Article 58, 59 and 65 are all aimed at eliminating measures which impose on the national of one Member State more rigorous rules, or put him in law or in fact in an unfavourable position compared with the national of the Member State imposing the measure (Case 251/83 *Haug-Adrion* v *Frankfurter Versicherungs AG* [1984] ECR 4277.

In the present case no distinctions are made, in my view, on the basis of the nationality or residence of the supplier or the place of manufacture or distribution of the video-cassettes: the provider of the cassettes outside France is in no worse position than the provider inside France and he is not subject to more rigorous rules. The distinction or discrimination is not between national and non-national providers of the same service but between two services, the supply of films and the supply of video-cassettes.

Accordingly I do not consider that the provisions of the law referred to in the question are incompatible with Article 59 of the Treaty. If I had not come to this view I should have considered that they were, subject to the facts, potentially capable of being justified in the 'general good' *(Van Binsbergen)*. Although I do not consider that Article 36 can be applied by analogy in this case so as to save the provision in question, justification parallel to that relevant to a mandatory requirement for the purposes of Article 30 may be shown on the same grounds as indicated previously.

It was argued by the applicants at the hearing that the law was contrary to the principle of the freedom of expression. Reliance was placed on Article 10 of the European Convention on Human Rights which guarantees the freedom of expression subject to exceptions set out in paragraph 2 of the Article.

If the view I have come to is correct on the first point, it is unnecessary to consider this contention.

The French Government, however, replies that it is not for the Court to consider whether measures taken by the Member States are compatible with the Convention and that on the basis of the Report of the European Commission of Human Rights in Case 5178/81 *De Geïllustreerde Pers* v *The Netherlands* which was endorsed by the Committee of Ministers by Resolution of 17 February 1977 (Decision and reports, 1977, No 8), there is here no breach of the Convention.

The Commission on the basis of the Court's judgment in Case 36/75 *Rutili* v *Minister for the Interior* [1975] ECR 1219, contends that exceptions to the fundamental principles set

out in the Treaty are to be construed in the light of the Convention and that on the basis of the *De Geillustreerde Pers* case the French law was compatible with the Convention since it amounted to a 'protection of the rights of others' because it aimed at ensuring a viable future for the film industry.

It is clear from Case 4/73 *Nold* v *Commission* [1974] ECR 491, at p. 507 and Case 44/79 *Hauer* v *Rheinland-Pfalz* [1979] ECR 3727 at page 3745, that the Convention provides guidelines for the Court in laying down those fundamental rules of law which are part of Community law, though the Convention does not bind, and is not part of the law of, the Community as such. (Case 48/75 *Royer* [1976] ECR 497 and Case 118/75 *Watson and Belmann* [1976] ECR 1185, where the Court did not accept arguments that the Convention was an integral part of Community law).

In my opinion it is right, as the Commission contends, that the exceptions in Article 36 and the scope of 'mandatory requirements' taking a measure outside Article 30 should be construed in the light of the Convention *(Rutili,* Mr Advocate General Warner in Case 34/79 *Regina* v *Henn & Darby* [1979] ECR 3795 at p. 3821).

That freedom of speech, or expression, is part of Community law in those areas where it is relevant to the activities of the Community, may for present purposes be accepted. I am not, however, satisfied on the arguments adduced in this case that Article 10 of the Convention is violated by the mere fact that the sequence in which particular methods of exhibiting the same filmed material are shown is regulated by a State, or that a rule of Community law, based on or ensuring compliance with the Convention, exists which prohibits such regulation.

I am not satisfied either that it has been shown in this case that, independently of the Convention, there exists any rule of Community law governing freedom of expression which would be violated by the present law which regulates the sequence and timing of the exploitation of various forms of the same material.

In this case I have confined my opinion to the Articles of the Treaty referred to in the question and have deliberately left aside any possible question under Article 5 read with Articles 85 and 86 of the Treaty read in the light of the Court's decision in Case 229/83 *Leclerc and Thouars* [1985] ECR 17. Those are different questions which are not raised here.

Accordingly I consider that the questions referred should be answered on the lines that the provisions of Article 89 of the French Law of 29 July 1982 as supplemented by a Decree of 4 January 1983, regulating the distribution of cinematographic works in France, in so far as they establish an interval between one mode of distributing cinematographic works and another by a prohibition on

the simultaneous exploitation of such work in cinemas and in the form of video-cassettes for a period of one year, save where a dispensation is granted, have not been shown to be incompatible with Articles 30, 34 or 59 of the EEC Treaty.

The costs of the parties to the main proceedings fall to be dealt with by the national court; the other parties intervening should bear their own costs.