



Press and Information

Court of Justice of the European Union

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Judgment in Cases C-403/08 and C-429/08

Football Association Premier League and Others v QC Leisure and Others

Karen Murphy v Media Protection Services Ltd

A system of licences for the broadcasting of football matches which grants broadcasters territorial exclusivity on a Member State basis and which prohibits television viewers from watching the broadcasts with a decoder card in other Member States is contrary to EU law

The screening in a pub of football-match broadcasts containing protected works requires the authorisation of the author of those works

The Football Association Premier League ('the FAPL') runs the Premier League, the leading professional football league competition in England, and markets the television broadcasting rights for Premier League matches. It grants broadcasters, under an open competitive tender procedure, an exclusive live broadcasting right for Premier League matches on a territorial basis. As the territorial basis generally corresponds to a single Member State, television viewers can watch only the matches transmitted by the broadcasters established in the Member State where they reside.

In order to protect such territorial exclusivity and to prevent the public from receiving broadcasts outside the relevant Member State, each broadcaster undertakes, in the licence agreement concluded with the FAPL, to encrypt its satellite signal and to transmit the signal, so encrypted, by satellite solely to subscribers in the territory which it has been awarded. Consequently, the licence agreement prohibits the broadcasters from supplying decoder cards to persons who wish to watch their broadcasts outside the Member State for which the licence is granted.

The disputes giving rise to the present cases concern attempts to circumvent that exclusivity. Certain pubs in the United Kingdom have begun to use foreign decoder cards, issued by a Greek broadcaster to subscribers resident in Greece, to access Premier League matches. The pubs buy a card and a decoder box from a dealer at prices lower than those of Sky, the holder of the broadcasting rights in the United Kingdom.

Since the FAPL takes the view that such activities undermine the exclusivity of the television broadcasting rights and the value of those rights, it is seeking to bring them to an end by means of legal proceedings. The first case (C-403/08) concerns a civil action brought by the FAPL against pubs that have screened Premier League matches by using Greek decoder cards and against the suppliers of such decoder cards to those pubs. The second case (C-429/08) has arisen from criminal proceedings against Karen Murphy, the landlady of a pub that screened Premier League matches using a Greek decoder card. In those two cases, the High Court of Justice of England and Wales has referred a number of questions concerning the interpretation of European Union law to the Court of Justice.

In its judgment delivered today, the Court of Justice holds that **national legislation which prohibits the import, sale or use of foreign decoder cards is contrary to the freedom to provide services and cannot be justified** either in light of the objective of protecting intellectual property rights or by the objective of encouraging the public to attend football stadiums.

So far as concerns the possibility of justifying that restriction in light of the objective of protecting intellectual property rights, the Court observes that the FAPL cannot claim copyright in the Premier League matches themselves, as those sporting events cannot be considered to be an author's own

intellectual creation and, therefore, to be ‘works’ for the purposes of copyright in the European Union.

Also, even if national law were to confer comparable protection upon sporting events – which would, in principle, be compatible with EU law – a prohibition on using foreign decoder cards would go beyond what is necessary to ensure appropriate remuneration for the holders of the rights concerned.

In this regard, the Court observes, first, that when calculating such appropriate remuneration it is possible to take account of the actual and potential audience both in the Member State of broadcast and in any other Member State where the broadcasts are received, and that it is thus not necessary to limit the free movement of services within the European Union. Second, payment by the television stations of a premium in order to ensure themselves absolute territorial exclusivity goes beyond what is necessary to ensure the right holders appropriate remuneration, because such a practice may result in artificial price differences between the partitioned national markets. Such partitioning and such an artificial price difference are irreconcilable with the fundamental aim of the Treaty, which is completion of the internal market.

For similar reasons, **a system of exclusive licences is also contrary to European Union competition law if the licence agreements prohibit the supply of decoder cards to television viewers who wish to watch the broadcasts outside the Member State for which the licence is granted.**

It is true that European Union competition law does not, in principle, preclude a right holder from granting to a sole licensee the exclusive right to broadcast protected subject-matter by satellite, during a specified period, from a single Member State of broadcast or from a number of Member States of broadcast. However, the licence agreements must not prohibit the broadcasters from effecting any cross-border provision of services that relates to the sporting events concerned, because such an agreement would enable each broadcaster to be granted absolute territorial exclusivity in the area covered by its licence, would therefore eliminate all competition between broadcasters in the field of those services and would thus partition the national markets in accordance with national borders.

Finally, as regards the questions asked concerning the interpretation of the Copyright Directive¹, the Court notes first of all that only the opening video sequence, the Premier League anthem, pre-recorded films showing highlights of recent Premier League matches and various graphics can be regarded as ‘works’ and are therefore protected by copyright. By contrast, the matches themselves are not works enjoying such protection.

That being so, the Court decides that **transmission in a pub of the broadcasts containing those protected works, such as the opening video sequence or the Premier League anthem, constitutes a ‘communication to the public’ within the meaning of the copyright directive, for which the authorisation of the author of the works is necessary**, because when a pub transmits those works to the customers present on the premises the works are transmitted to an additional public which was not considered by the authors when they authorised the broadcasting of their works.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

¹ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10, corrigendum at OJ 2002 L 6, p. 70).

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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