[SE] Direct Linking to Streamed Broadcasts Is Copyright Infringement

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During the autumn of 2007 Swedish television channel Canal+ broadcast ice hockey games on a pay per view basis, inter alia, through live streaming on the Internet. The broadcasts were produced by the company C More Entertainment AB and the rights to the transmissions were owned by the same company.

In October and November 2007, a person published links to the broadcasts of the games on his website, an unofficial fansite of his favourite Swedish ice hockey team. By following hyperlinks visitors were granted direct and free access to the games via their computers.

C More Entertainment AB filed charges and the perpetrator was prosecuted for violating the Swedish Copyright Act (CA). The claims were based on the fact that the broadcasts constituted works of art, as well as being protected by the neighbouring rights granted to producers of recordings of sounds and images.

The defence disputed all charges claiming, amongst others, that the broadcasts were not subject to copyright and that the alleged actions did not amount to any relevant exploitation within the meaning of the CA.

The court established that an ice hockey game per se could not be copyright protected. This was because ice hockey players neither create works of art, nor are they performing artists within the sense of the CA.

However, the court found that, adhering to a legal opinion of a law professor submitted by the plaintiff, if the elements of the broadcasts (sounds and visual effects, commenting etc.,) amounted to a work of art, then TV broadcasts could be subject to copyright.

In this respect the court considered that the broadcasts in question consisted of elements such as complex camera work, which were not possible to determine in advance. Moreover, it stated that the broadcasts in their entirety, i.e., the coordination by the technical producer, choice of focus, timing etc., were individual and original performances that rendered copyright to the technical producer (C More Entertainment AB). Furthermore, the court concluded that the commenting on the games was original and of a personal character.

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Consequently, the broadcasts were considered to fall within the protective scope of the CA. Additionally, as the producer of the broadcasts, C More Entertainment AB also held neighbouring rights to broadcasts.

The court then went on to consider that, by granting users direct and free access to the games though links on his website (direct linking) the perpetrator had communicated the broadcasts to the public. Since the broadcasts had been made available without C More Entertainment AB's consent, this action constituted an infringement of the company's rights to the broadcasts.

In conclusion the perpetrator was found guilty of violating the CA. Therefore, he was ordered to pay a fine and damages to C More Entertainment AB.

Hudiksvalls tingsrätts dom den 10 november 2010 i mål nr B 1230-09

Judgment of the District Court of Huddiksvall of 10 November 2010 in case No. B 1230-09

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