Court of Justice of the European Union: Advocate General Kokott on Territorial Exclusivity in the Transmission of Football Matches

IRIS 2011-3:1/2

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On 3 February 2011 Advocate General Juliane Kokott delivered her opinion in cases C- 403/08 and C-429/08. Both cases involve the import of decoder cards from Greece into the United Kingdom in attempts to circumvent the exclusivity agreements concluded between the UK's Football Association Premier League (FAPL) and the broadcasters to whom the FAPL grants the right to broadcast matches. By using a Greek decoder card, pubs in the UK are able to show the live transmission of Premier League football matches at more favourable rates then those offered by broadcasters in the UK.

In an attempt to squash the practice, the FAPL has initiated judicial proceedings. Case C-403/08 concerns civil law actions brought by the FAPL against the use of foreign decoder cards. Case C-429/08 concerns criminal proceedings brought against the landlady of a pub that used a Greek decoder card to show Premier League football matches. The High Court of England and Wales has referred several questions concerning both sets of proceedings to the Court of Justice on the interpretation of EU law.

In her opinion Advocate General Kokott held that the imposition of exclusivity has the effect of segmenting the internal market into national markets, something which constitutes an impairment of the freedom to provide services. The Advocate General further noted that the economic exploitation of the rights in question does not require a partitioning of the internal market, as the charges corresponding to the foreign decoder cards, although not as high as the charges imposed in the United Kingdom, have nonetheless been paid. No specific right to charge different prices in different Member States exists; on the contrary, it forms part of the logic of the internal market that price differences between the Member States should be offset by trade.

As far as concerns the question whether the showing of live transmissions of football matches in pubs infringes the right of communication to the public of protected works, as guaranteed by the InfoSoc Directive, the AG stated that, as EU law stands at present, no right protecting the communication to the public of a broadcast where no entrance fee is charged exists.

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Advocate General's Opinion in Cases C-403/08 and C-429/08, Football Association Premier League Ltd & Others v QC Leisure & Others and Karen Murphy v Media Protection Services Ltd, 3 February 2011

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