[GB] High Court Issues Ruling on Satellite Decoder Case

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Following the October 2011 preliminary ruling of the European Court of Justice (joined cases C-403/08 and C-429/08, see IRIS 2011-9/2), the High Court of England and Wales, in a decision handed down on 3 February 2012, has now confirmed that pub landlords in the UK can legally broadcast FA Premier League football matches using foreign satellite decoders, providing they can obtain a clean feed of the games, they broadcast sound during live play only and do not charge an entrance fee.

The decision concerned the liability of six publicans (the “Madden defendants”) for using decoder cards in order to transmit matches shown by cheaper foreign broadcasters thereby bypassing the official UK rightsholders, as well as two companies, QC Leisure and AV Station plc, which supplied such decoders.

The High Court established that showing FAPL matches in pubs using foreign satellite decoders does constitute an infringement of the FAPL’s exclusive communication to the public rights. However, s. 72 CDPA (implementing Article 8(3) of the Rental Right Directive) provides a defence in the case of the showing or playing in public of a broadcast to an audience who have not paid for admission to the place. In accordance with the court ruling, landlords will have to be careful to avoid copyright infringement of ancillary works contained in the broadcasts of football matches, such as logos or graphics. The FAPL’s anthem was also found to lie outside the defence, meaning that publicans playing broadcasts must turn the sound off during its transmission.

By contrast, the High Court confirmed his 2008 judgement finding QC and AV liable for authorising copyright infringement through the supply of the decoder cards for the purpose of committing infringing acts. AV has in the meantime gone out of business.

As far as a possible injunction restraining the defendants from further infringement is concerned, the judge accepted that, as a matter of general principle, the defendants who are continuing to trade must be entitled to carry on their businesses in a way which avoids infringement of FAPL's copyrights if they are able to do so. The judge also decided to issue a declaration stating that the FAPL’s terms of license for its broadcast rights constituted a restriction on competition prohibited by Article 81 EC (now Article 101 TFEU) and are void to the

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extent that they prohibited the supply of satellite decoder cards for use in the UK. The judge further decided to refer the case to the Patents County Court to determine to what extent further orders for disclosure of the extent of the defendants' dealings in and use of decoder cards are necessary and proportionate to dispose of any outstanding issues.

In a separate decision handed down on 24 February 2012, the High Court overturned the conviction of pub landlady Karen Murphy for using a Greek decoder to bypass BSkyB's official Premier League satellite feed to show matches cheaply at her Red, White and Blue pub in Portsmouth. According to the court, the territorial restrictions imposed on the use of Ms Murphy's NOVA viewing cards were unlawful under EU law, the viewing cards were not illicit devices, she had paid for her card, had not avoided any charge applicable to its use and had not acted dishonestly. The court did however note that the use of cards or devices originating from outside the European Union gives rise to different considerations, which are not examined in the appeal.

Football Association Premier League Ltd et al v QC Leisure et al. [2012] EWHC 108 (Ch), 2 February 2012

http://www.bailii.org/ew/cases/EWHC/Ch/2012/108.html

Karen Murphy v Media Protection Services Ltd [2012] EWHC 466 (Admin) 24 February 2012

http://www.casetrack.com/ct4plc.nsf/items/4-518-3747

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