[MT] No Copyright in Live Football Matches

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In its 20 April 2012 judgment in the names Dr Henri Mizzi nomine et v. Telestarr Limited (C 8957), the Civil Court, First Hall, had to decide whether there was a breach of copyright law on the part of the defendant company Telestarr Limited. Dr Henri Mizzi was representing The Football Association Premier League (FAPL) Limited of London whilst the other plaintiff was Melita Cable plc which is the sole cable company operating in Malta. The first plaintiff company is the copyright owner of the Premier League of England, while the second company is the licensee of the first company authorised in Malta to cablecast the English Premier League. On the other hand, the defendant company, Telestarr Limited, is a Maltese registered company which sells to consumers decoders and decoder cards such as those of SKY (UK), SKY (Italia), TPS, ART and Digi Alb. According to the plaintiff companies, the defendant company was not authorised to sell cards by means of which viewers could see the English Premier League.

Following an unsuccessful attempt by all three companies to reach an out of court settlement to settle their dispute, the Civil Court, First Hall, was requested to hear and decide this case. In its judgment, the court held that copyright did not cover live football games. The court came to this conclusion after reviewing two judgments of the European Court of Justice: Football Association Premier League v. QC Leisure (C403/08 decided on 4 October 2011) and Karen Murphy v. Media Protection Services Limited (C429/08 decided on 4 October 2011). In its judgment, the European Court of Justice stated that: 'FAPL cannot hold copyrights in the live football matches since they cannot be classified as works ... To be so classified, the subject-matter concerned would have to be original in the sense that it is its author's own intellectual creation... However, sporting events cannot be regarded as intellectual creations, and football matches ... which are subject to rules of the game, leave "no room for creative freedom"'. Applying the case law of the European Court of Justice to the case before it, the Civil Court, First Hall, decided that FAPL did not enjoy any copyright in the English Premier League and therefore FAPL could not suffer any breach of an alleged copyright that it did not enjoy.

Basing itself on the case of Karen Murphy v. Media Protection Services Limited, the Civil Court, First Hall, concluded that once FAPL did not enjoy copyright in the Premier League, Melita Cable plc could not enjoy an exclusive right because such a right was not opposable with regard to third parties. The only rights that existed were the contractual rights between the first and second plaintiff companies. Hence there was nothing that could impede the defendant company from selling

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the decoders and the respective cards. Once FAPL enjoyed no copyright as to the English Premier League, there could be no connection between the exclusive rights that Melita Cable plc enjoyed over the Maltese territory and any derogation from the related principle of freedom to provide services. Therefore, the principle of freedom to provide services applied and the defendant company was well in its rights to sell decoders and their related cards.

Mizzi Henri Av. Dr. Noe Et v. Telestarr Limited, Ċivili, Prim Awla, 20 April 2012, Riferenza 451/2007

http://www.justiceservices.gov.mt/courtservices/Judgements/search.aspx?func=all.

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