Court of Justice of the European Union: Sky Österreich GmbH v. Österreichischer Rundfunk

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Article 15 of the Audiovisual Media Services Directive (AVMSD) allows television channel operators to acquire exclusive broadcasting rights to events of high public interest. Other channels, however, must be able to have access to such events for the purpose of short news reports. The owner of an exclusive right must therefore provide other broadcasters with access to its signal to allow them to freely choose short extracts. The Directive permits that owners be compensated for access to their signal, but this compensation may not exceed the additional costs directly incurred in providing that access.

In accordance with the Directive, KommAustria, the Austrian regulatory authority for electronic audio media and electronic audiovisual media, decided in 2010 that Österreichischer Rundfunk, the country's public broadcaster, did not need to pay for the use of privately-owned broadcaster Sky Österreich's signal of certain Europa League matches for short news reports, because the additional costs incurred in providing ORF access to Sky's satellite signal were zero.

Sky brought the case to the Bundeskommunikationssenat, the Austrian Federal Communications Tribunal, which referred the issue to the Court of Justice of the European Union (CJEU) asking whether Article 15(6) of the AVMSD on compensation for the use of short extracts infringed the right to conduct a business and the right to property of holders of exclusive rights, as protected in Articles 16 and 17 of the Charter of Fundamental Rights of the European Union.

The CJEU, relying on Article 11 of the Charter of Fundamental Rights of the European Union, rules that the EU legislature was entitled to adopt the provision on compensation for the use of short extracts for the purpose of short news reports. The importance of safeguarding the fundamental freedom to receive information and the freedom of pluralism of the media (recital 48 of the Audiovisual Media Services Directive) allows the legislator to prioritize rights of public access to information over contractual freedom in conducting a business. When Sky bought the exclusive rights, EU law already limited the amount of compensation to the additional costs directly incurred in providing access to the signal. Thus, Sky cannot rely on any (contractual) legal position that allows it to autonomously exercise its exclusive broadcasting rights for the purpose of short news extracts.

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Judgment of the Court of Justice of the European Union, Case C-283/11, Sky Österreich GmbH v. Österreichischer Rundfunk, 22 January 2013

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