[PT] Portuguese Supreme Court’s Decision on the Absence of Licensing for the Use of Extra Speakers

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On 16 December 2013, the Portuguese Supreme Court of Justice published a decision (Ruling no. 15/2013, File no. 124/11.9GAPVL.G1 -A.S1, 3rd Section, dated 13 November) which states that additional speakers connected to a television in commercial public spaces, with the intention of amplifying the sound, do not constitute a new use of the work and therefore do not require further permission of authors. According to the decision, the use of autonomous sound expansion devices on radio or television is not a re-transmission of the broadcast work, meaning that it does not require an extra authorization and consequently it is not a crime of usurpation, as laid down in articles 149º, 195º and 197º of the Author’s Right and Related Rights Code. Part of the court’s reasoning is that there is a distinction between “communication” and “reception”. While this practice is not of “reception-transmission”, the principle of freedom of reception prevails as it is the terminus of the transmission process and necessary authorisations take place at the earlier stages for broadcasting. This is, according to the Portuguese Supreme Court of Justice, an activity of “reception-amplification” which guarantees that what is broadcast remains the same, without copyright violations.

In short, this case derives from an appeal from a first instance decision (of the Tribunal da Relação de Guimarães), since there were two contradictory decisions on the subject. On the one hand, a decision (first instance decision of the Court placed in Guimarães city - Process no. 124/11.9GAPVL.G1, dated 7 January 2013), considered that the cafe owner was not infringing the law by using three speakers connected to a TV set when a music channel was being broadcast. According to the Court, it was a matter of reception and it did not require authorization from authors. A police inspection of the cafe, however, led to the seizure of the equipment and to criminal procedures against the owner based on the absence of authorization for broadcasting protected works. On the other hand, the Public Attorney’s appeal was also based on a contrary decision (first instance decision of the Court placed in Guimarães city - Process no. 974/07-2, dated 2 July 2007), from the same court, on a similar issue. In this case, the court considered that a crime of usurpation had occurred due to the fact that the defendant did not just receive the broadcast signal but modeled and directed it through the use of four sound speakers.

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The decision from the Supreme Court of Justice represents a major departure from previous decisions of other courts and it is an Acórdão de Fixação de Jurisprudência (a type of decision with the role of creating precedent) due to its character of providing non-binding interpretative guidelines for lower courts.

The Portuguese Society of Authors (Sociedade Portuguesa de Autores) has publicly announced its disagreement with the SC decision; it argues that this ruling is opposed to certain EU directives, which have been implemented into national law in Portugal, and to the jurisprudence of the Court of Justice of the European Union.

Acórdão do Supremo Tribunal de Justiça n.º 15/2013 (Proc. n.º 124/11.9GAPVL.G1 -A.S1 — 3.ª Secção) publicado no Diário da República, 1.ª série — N.º 243 — 16 de dezembro de 2013

https://dre.pt/pdf1sdip/2013/12/24300/0682106828.pdf

Supreme Court of Justice Ruling no. 15/2013, File no. 124/11.9GAPVL.G1 -A.S1, 3rd Section, published in the oficial news bulletin no. 243, 1st. Series, 16 December 2013

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