Court of Justice of the European Union: Member States may provide for more protective provisions with regard to live streaming

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In 2007, Swedish TV channel Canal+ (now C More) broadcast ice hockey games on pay per view, inter alia through live streaming on the Internet. The broadcasts were produced by the company C More Entertainment AB (C More) and the rights to the transmissions were owned by the same company.

In October and November 2007, a person published links to the broadcasts of the games on his website, an unofficial fan site of his favourite Swedish ice hockey team. By following hyperlinks visitors were granted direct and free access to the games via their computers. C More filed charges and the perpetrator was prosecuted for violating the Swedish Copyright Act. The claims were based on the grounds that the broadcasts as such constituted works of art, as well as being protected on the basis of neighbouring rights granted to producers of recordings of sounds and images.

In previous judgments on this matter, the District Court and Court of Appeal had both found the perpetrator guilty of violating C More's neighbouring rights under the Swedish Copyright Act. However, the courts reached opposite conclusions on whether the commentary and broadcasts in their entirety were subject to copyright. The previous rulings have been reported in IRIS 2011-1/47 and IRIS 2011-9/33.

The case is now pending before the Swedish Supreme Court, which decided to refer the following question to the Court of Justice of the European Union (CJEU) for a preliminary ruling: "May the Member States give wider protection to the exclusive right of authors by enabling 'communication to the public' to cover a greater range of acts than provided for in Article 3(2) of [Directive 2001/29 'InfoSoc Directive']?"

The CJEU noted that the concept of "making available to the public" - which refers to interactive on-demand transmissions - forms part of the wider notion of a "communication to the public". It was further concluded that live streaming does not meet the criteria for on-demand transmission and is not an act harmonised by the InfoSoc Directive.

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Since the InfoSoc Directive does not prescribe full harmonisation, the CJEU concluded that member states could extend the definition of "communication to the public" to give wider protection to authors and broadcasters. Consequently, there is nothing that precludes member states from legislating in order to bring the provision of links to paywall-protected live streaming within the scope of national legislation.

The CJEU's ruling does not answer the question of whether the broadcasts as such will be protected under the Swedish Copyright Act. This issue remains to be settled by the Swedish Supreme Court eventually.

Judgment of the Court (Ninth Chamber) in C-279/13 C More Entertainment AB v. Linus Sandberg, of 26 March 2015

http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d2dc30ddebe044ea1ae14caea663f8b6a854f386.e34KaxiLc3qMb40Rch0SaxuPc3j0?text=&docid=163250&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=106979

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