[SE] Supreme Court rules linking was a breach of broadcaster's signal right but not copyright

IRIS 2016-7:1/27

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The Swedish Supreme Court has decided that a hockey game does not reach the originality threshold to receive copyright protection. The hockey game in question was made available to the public on C More through linear broadcast on its television channel, as well as its pay-per-view service online. To view the game the viewers had to register, accept the user terms and pay for the game.

The hockey game on C More's website was linked to by a private individual. The Court of Appeal for Southern Norrland had previously established that the linking was a making available and that the linking breached the signal rights of C More (see IRIS 2011-1/47 and IRIS 2011-9/33). C More appealed the decision and claimed that the linking also breached the copyright of the game. The Supreme Court had asked the Court of Justice of the European Union (CJEU) whether member states may "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 ruled in 2015 that member states could extend the definition of "communication to the public" to give wider protection to authors and broadcasters (see IRIS 2015-5/2).

The Supreme Court had to evaluate whether the game constituted a copyright protected work. The judges of the Court disagreed, but the majority did conclude that a hockey game could not reach the threshold of originality. The linking did not breach the copyright, but only the neighbouring signal right of the broadcaster.

Högsta domstolen, Mål B 3510-11, 29/12/2015

http://www.hogstadomstolen.se/Domstolar/hogstadomstolen/Avgoranden/2015/2015-12-29%20B%203510-11%20Dom%20Skiljaktig%20mening%20Till%C3%A4gg.pdf

Supreme Court in Stockholm, Mål B 3510-11, 29 December 2015

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