

High Court confirms landmark CJEU ruling on Premier League copyrights, overturns Portsmouth landlady's criminal convictions

The High Court has confirmed the recent landmark decision of the Court of Justice of the European Union (CJEU) and allowed the appeal of Karen Murphy, the Portsmouth landlady who was convicted of two offences under section 297(1) of the Copyright, Designs and Patents Act 1988 (CDPA), of fraudulently receiving Premier League broadcasts by using a Greek decoder card, to show live football matches in her pub.

Karen Murphy v Media Protection Services Limited
(24 February 2012)

The High Court quashed Mrs Murphy's convictions because the CJEU has held that:

1. The decoder cards in question were not "illicit devices" for the purposes of Directive 98/84/EC (the Conditional Access Directive), which has been implemented into UK law under s297 of the CDPA.
 2. National law cannot prevent individuals from importing non-illicit decoder cards into a territory outside of the Member State in which the card was issued as this constitutes a restriction on the freedom to provide services that is prohibited by Article 56 of the Treaty on the Functioning of the European Union (TFEU).
- To the extent Premier League broadcasts contain copyright works, publicans may be infringing the rights of the FAPL when they screen live matches in their pubs using decoder cards imported from other Member States into the UK without the FAPL's permission. Examples of copyright works that would result in infringement include the Premier League anthem, highlights sequences and on-screen graphics and logos.
 - Companies supplying decoder cards to publicans are authorising infringement of those works, to the extent that any infringement occurs and will therefore also be liable for damages and injunctions imposed by the courts.
 - The High Court confirmed the CJEU's decision from October 2011 that contractual provisions prohibiting the sale of decoder cards from one Member State into another are void as they constitute a restriction on trade in breach of Article 101 TFEU (previously Article 81 EC).

This decision will be of particular interest to rights holders that license their rights territorially.

Legal background

This is one of a pair of UK cases that referred questions of European Community law to the CJEU. Those questions were jointly ruled upon by the CJEU in 2011 and analysis of the CJEU's decision can be found in our [Legal Update of October 2011](#).

The High Court has now applied the CJEU's decision to both cases. As discussed in our recent [Legal Update of February 2012](#), in *FAPL Ltd and others v QC Leisure and others*, the second of the two cases in question, the High Court ruled that:

Summary and implications

The use of imported decoder cards in the UK cannot be prevented by s297 of the CDPA. Similarly, contractual provisions that prohibit the supply of decoder cards from one Member State to another are void as they too fall foul of European law. Rights holders who have licensed rights on the basis of such provisions may need to reconsider their current and future contractual arrangements.

The FAPL can, however, rely on its copyright in the parts of the broadcasts containing copyright works to bring actions against publicans using decoder cards imported from other Member States (as well as the companies supplying those devices) to show live matches without authorisation.

The European Commission has announced that in 2012 it will report on the implications of the CJEU ruling and table proposals to create “a legal framework for the collective management of copyright, with a view to enabling multi-territory and pan-European licensing”.

If you would like more information about this subject please contact:

Mark Prinsley

Partner

T: +44 20 3130 3900

E: mprinsley@mayerbrown.com

Gillian Sproul

Partner

T: +44 20 3130 3313

E: gsproul@mayerbrown.com

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