

Judgment of the English High Court in Premier League broadcasting case – an update

Following the judgment on 4 October of the European Court of Justice (ECJ), the English High Court (the Court) has issued a ruling in the Premier League case concerning the licensing of broadcasting rights for Premier League football matches. The Court's judgment illustrates that attempts to divide the internal market by creating exclusive territorial restrictions between EU Member States cannot be justified on copyright grounds where the effect prevents the free movement of goods or services within the EU. Certain copyright elements can be legitimately protected, but it is advisable for rights-holders to review their distribution agreements to check that the correct legal balance is achieved, as a failure to do so could result in clauses which are void and therefore unenforceable.

Background

In June 2008, the Court referred various questions to the ECJ with regard to territorial restrictions in the Football Association Premier League's (FAPL) license agreements and to copyright protection of the copyrighted elements of the screening of the Premier League football matches.

In its judgment of 4 October 2011, the ECJ found that:

- The license conditions that were designed to provide absolute territorial exclusivity in broadcasts of the Premier League created an inadmissible restriction on competition within the internal market.
- The transmission of copyrighted elements (such as the FAPL logo and anthem) in the screening of football matches to a pub audience constituted a "communication to the public", which required authorization from the FAPL as copyright holder.

For a summary of the ECJ's judgment please [click here](#).

Judgment of the English High Court

On 3 February 2012, the Court passed down its [judgment](#) which clearly indicates that it has followed the ECJ's conclusions, in particular in relation to the competition aspects of the case and the implications these have on copyright issues.

Territorial restrictions

The Court found that licensing conditions prohibiting the licensee to sell decoders outside its licensed territory constitute a restriction on competition prohibited by Article 101 of the Treaty on the Functioning of the European Union (TFEU). The Court however also states that FAPL's contracts are not entirely void, but only the clauses containing such restrictions.

Copyright

On the question whether the transmission to a pub audience constituted copyright infringement, the Court found that although such transmission involves communication of copyright works to the public, there is an exception under the English Copyright, Patents and Design Act (Section 72) for free public showing or playing of broadcasts: "*the showing or playing in public of a broadcast to an audience who have not paid for admission to the place where the broadcast is to be seen does not infringe copyright in (a) the broadcast, (b) any sound recording (...) or (c) or any film included in it.*" The pre-recorded highlights and video sequences included in broadcasts of Premier League matches fall within the definition of a film. Therefore, the showing of such copyrighted elements to a pub audience who have not paid admission to the pub, does not constitute an infringement of such copyrighted elements. However, in relation to FAPL's copyrighted materials shown during the broadcasts that do not fall under this exception (such as the FAPL logo and anthem), the transmission of these in the pub did create a copyright infringement for which a damages claim could be brought. The Court has transferred this part of the dispute to the English Patents County Court, which will now assess the appropriate compensation for breach of copyright with respect to these elements.

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