



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Cases C-403/08 and C-429/08  
Football Association Premier League Ltd & Others v QC Leisure & Others  
Karen Murphy v Media Protection Services Ltd

## **In the view of Advocate General Kokott, territorial exclusivity agreements relating to the transmission of football matches are contrary to European Union law**

*European Union law does not make it possible to prohibit the live transmission of Premier League football matches in pubs by means of foreign decoder cards*

The Football Association Premier League Ltd (the FAPL) is the marketing organisation for the top English football league. The FAPL essentially grants its licensees the exclusive right to broadcast matches and exploit them economically within their respective broadcasting areas, generally the country in question. In order to safeguard this exclusivity, licensees are obliged to prevent their broadcasts from being able to be viewed outside their respective broadcasting areas. To that end, each licensee is required to encrypt its satellite signal and to transmit it in encrypted form to subscribers within its assigned territory. Subscribers can decrypt the signal using a decoder, which requires a decoder card. The exclusivity agreement also imposes restrictions on the circulation of authorised decoder cards outside the territory of each licensee.

The main proceedings in the present references for preliminary rulings concern attempts to circumvent this exclusivity. Companies import decoder cards from abroad, in the present proceedings from Greece, into the United Kingdom and offer them to pubs at more favourable prices than the broadcaster in that State. This practice makes it possible for pubs in the UK to show the live transmission of Premier League football matches using a Greek decoder card. The FAPL is attempting to stop that practice by means of a judicial ruling. Case C-403/08 concerns civil-law actions brought by the FAPL against the use of foreign decoder cards. Case C-429/08 relates to criminal proceedings which have been brought against the landlady of a pub who used a Greek decoder card to show Premier League matches. The High Court has, in each set of proceedings, referred several questions to the Court of Justice on the interpretation of EU law.

Advocate General Juliane Kokott explains that the exclusivity rights in question have the effect of partitioning the internal market into quite separate national markets, something which constitutes a serious impairment of the freedom to provide services.

With regard to possible justification for the restriction of the freedom to provide services, the Advocate General examines the protection of industrial and commercial property and, in particular, addresses the question whether live satellite transmissions of football matches involve rights the specific subject-matter of which requires a partitioning of the internal market. In this connection she first states that the specific subject-matter of the rights in live football transmissions lies in their commercial exploitation. In the present cases, the live transmission of Premier League football matches is exploited, in particular, through the charge imposed for the decoder cards. Advocate General Kokott takes the view in this connection that the economic exploitation of the rights in question is not undermined by the use of foreign decoder cards, as the corresponding charges have been paid for those cards. Whilst those charges are not as high as the charges imposed in the United Kingdom, there is, according to the Advocate General, no specific right to charge different prices for a work in each Member State. Rather, it forms part of the logic of the internal market that price differences between different Member States should be offset by trade. The marketing of broadcasting rights on the basis of territorial exclusivity is tantamount to profiting from the elimination of the internal market. Consequently, the specific subject-matter of the rights in the

transmission of football matches does not justify a partitioning of the internal market, and thus also does not justify the resulting restriction of the freedom to provide services.

Advocate General Kokott further takes the view that the contractual restriction on using decoder cards in the State of origin only for domestic or private use, but not for commercial use – for which a higher subscription charge is payable – also cannot justify a territorial restriction of the freedom to provide services. The Member State concerned may, however, in principle make provision for rights which allow authors to object to the communication of their works in pubs.

So far as concerns the question whether the showing of live transmissions of football matches in pubs infringes the exclusive right of communication to the public of protected works within the terms of the Copyright in the Information Society Directive<sup>1</sup>, the Advocate General explains that, as EU law stands at present, there are no comprehensive rights which protect the communication of a broadcast to the public where no entrance fee is charged.

Advocate General Kokott further expresses the view that the application of the principle of the freedom to provide services is also in line with the Satellite and Cable Directive<sup>2</sup> and with European competition law. Equally, neither does the Conditional Access Directive<sup>3</sup> constitute a barrier to the use of foreign decoder cards.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in the present cases. Judgment will be given at a later date.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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*The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.*

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*Pictures of the delivery of the Opinion are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106*

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<sup>1</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

<sup>2</sup> Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ 1993 L 248, p. 15).

<sup>3</sup> Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access (OJ 1998 L 320, p. 54).