In its groundbreaking judgment of 4 October 2011, the Court of Justice of the European Union has effectively legislated the harmonization of European copyright law concerning decoder cards. The judgment, which was given in two joined (originally British) cases, concerned decoder cards that provide access to encrypted satellite transmissions from Greek Premier League football matches. The judgment particularly addresses the issue of decoder cards, which are widely sold and used in the United Kingdom, both for private viewing and in public houses, for they provide access to Greek Premier League football at a substantially lower cost than in the British demand market.

In response to a request for a preliminary ruling by the British High Court, the Court of Justice held that possession of the cards did not purport the report, sale or use of foreign decoder cards on the Internet. The judgment, it was held, was not in conflict with the freedom to provide services and cannot be justified since the foreign broadcasts were also licensed by the Premier League and changers for the foreign decoder cards were being paid. Hence such cards were held not to be “illicit devices” within the meaning of Directive 98/84/EC (Conditional Access Directive) even if the cards were procured by providing false names and addresses and in breach with contractual restrictions, because the cards were originally manufactured and placed on the market with the authorization of the provider of the satellite service.

Most importantly, the Court of Justice also held that a system of exclusive broadcasting licenses that creates absolute territorial exclusivity in a Member State (i.e. Greece) by prohibiting the sale of decoder cards to foreign television viewers, is contrary to EU competition law. According to the Court, these impediments to the freedom to provide services and freedom of competition are not justified because there results from encrypted satellite transmissions can be based on actual audiences both in the Member State of the broadcast and in other states where the broadcasts are received. In this connection the Court observed that the Directive makes it clear that it relates to the broadcasting sector, and therefore is not applicable to the copyright sector. The judgment, in this respect, affects current practices regarding web-based television services and other online content services that are territorially restricted by way of “geoblocking” offered by satellite pay TV services. The judgment might also affect current practices regarding web-based television services and other online content services that are territorially restricted by way of “geoblocking” offered by satellite pay TV services.

The judgment is likely to have far-reaching ramifications for current business practices in the broadcasting sector, as licenses conferring absolute territorial exclusivity are common, not only as regards terrestrial broadcast matches, but also in respect of motion pictures and other premium content. The judgment is also likely to affect current practices regarding web-based television services and other online content services that are territorially restricted by way of “geoblocking” offered by satellite pay TV services.

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