First, the AG explained that VCAST's service would be lawful if the communication to the public is confined to a restricted communication (i.e., the service would make available works to users within the 'catchment area' of the original broadcasts). The AG then examined whether the referred questions could be answered by considering whether the making available by VCAST is in accordance with the first exceptions of Article 5(2)(b). Since the making available is not itself a communication to the public, the AG concluded that the exception would be available if the making available is in line with the communications to the public foreseen in Article 5(2)(b).

Concluding Remarks

In sum, the AG's analysis of the specific facts of the VCAST case is crucial. It is not clear whether the CJEU will adopt the AG's interpretation. However, the case highlights the legal uncertainties and the need for further clarification on the application of the private copying exception in the context of cloud services.