

Premier League case: ECJ Reference (Cases C-403/08 and C-429-08)

Implications for the Audio-visual Sector

Ted Shapiro

Senior Vice-President, Deputy MD and General Counsel – EMEA

Session 11 (Day 2)

- I) Introduction/Background
 - a) UK courts make ECJ references on cases arising out of Premier League legal actions to defend exclusive UK licensee on 17/29 September 2008
 - b) Questions relate to:
 - i) Conditional Access Directive
 - ii) Copyright Directive
 - iii) Cable & Satellite Directive
 - iv) EC Treaty's rules on the free movement/Competition law.
 - c) At stake some core copyright issues including territoriality in EU.
- II) ECJ decision could have broader impact - will coincide with new Commission and Parliament
- III) MPA, Canal Plus, Setanta, UEFA and BskyB joined as claimants by High Court in London on 25 November 2008 for purposes of making submissions to ECJ.
 - a) Still not formally acknowledged by the ECJ
- IV) Issues
 - a) ECJ decision may impact functioning of the sector AV sector
 - b) Financing , Production, Distribution (windows), National Regulations
 - c) Scope of exclusive rights (reproduction/communication to the public)
 - d) Notion of illicit device in CA Directive – scope of ban on unauthorised access to protected services – impact on ability to protect territorial exclusivity of services
 - e) Such services include AV works which are also protected by © law
 - f) Territorial exclusive rights under EC © acquis consistent w/EC Treaty which allows licensing in the most commercial manner on a national, linguistic, exclusive/non-exclusive, delivery-type or multi-territorial basis.
 - g) Concept of exhaustion/Relevance of CabSat Directive
 - h) Competition law - Coditel cases are good law
 - i) Market has not changed to extent it is time to overrule them
 - ii) Specific subject matter and essential function of copyright protection at issue, Article 81 does not apply --- particular features of the sector.