

ITALY



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. Case law:	
Topic:	<i>Copyright: In-house access to TV broadcasts, not necessarily a free ride! Free links to sports events broadcasted under exclusivity rights, easily a criminal offense and a copy right infringement.</i>
Who	<i>European Court of Justice - ECJ</i>
When:	<i>Fall 2006</i>
Where:	<i>EU, Spain, Italy</i>
What Happened?	<p>(i) In December 2006 the European Court of Justice (ECJ) delivered an important decision on the extension of copy right protection to content made accessible on a private TV circuit.</p> <p>The case originated from a dispute between a Hotel chain and the SGAE, the body responsible for the management of intellectual property rights in Spain. The key point, on which a Spanish court in Barcelona thought intervention of the ECJ, was to clarify whether:</p> <ul style="list-style-type: none">- the installation in hotel rooms of TV sets fed, through a cable connection, by a satellite or terrestrial television signal,- the fact that the signal was received and made available in a location like a hotel room, generally deemed as “private”,- access to the transmitted content by successive hotel guests, occupying the rooms, <p>could be held as “<i>communication to the public</i>” and make the provisions set by EU Directive no. 29 of 2001 applicable (the Directive is meant to regulate the harmonization of certain aspects of copyright and related rights in the information society; Section 3 of the Directive requires author's consent for communication to the public of material covered by</p>

copy right).

According to the ECJ's findings, the private nature of a hotel room does not preclude the application of Directive's no. 29 of 2001 provisions and *"the distribution of a signal by means of television sets"... "to customers staying in" (hotel) "rooms, whatever technique is used to transmit the signal, constitutes communication to the public"*.

In short, Hotel owners have to pay a levy to the Collective Societies for content covered by copy right broadcasted on the hotel's internal TV circuit.

(ii) In November 2006 the Criminal Chamber of the Italian Supreme Court (Sezione Penale della Corte di Cassazione) had to deal with another case in which a potential copy right violation was debated.

Earlier in January 2006 the AG in Milan had disposed a temporary seizure of two web portals, which allowed *"peering"* with respect to games of the Italian Soccer Premier League (on which a broadcasting company owns exclusivity rights as to diffusion through a pay per view system). Access to the games was made available through a free link to Chinese servers, who had uploaded the content on the Internet.

Interestingly a first instance court did not confirm the AG's temporary seizure, arguing that the two portals had not put into place technical means apt to circumvent copy right protection, but had simply offered free links to the Chinese servers (who had a license for transmitting the games locally) and had diffused information about possible, free access to the games. In addition the court questioned whether a soccer game could be considered as covered by copy right protection, consisting the event's diffusion in facts' reporting and lacking the requirement of illicit distribution of creative content.

The AG accessed the Supreme Court affirming that:

- a sports event, due to the peculiar characteristics of the recording techniques, could definitely result in an 'original work',
- the portals had actively contributed to the copy right infringement, having provided visitors with the technical means necessary for accessing the broadcasted games.

The Supreme Court shared the AG's views and found that:

- no proper proof had been achieved as to a potential break of the license agreement by the Chinese servers through the uploading of the games to the Internet (the plaintiff had failed to provide the court with a Italian translation of the original license agreement, drawn in

English, the first instance court had omitted to involve a translator and had also erroneously refused to watch the questioned games),

- content covered by exclusivity rights is to be held equal to original works benefiting from copy right protection,
- even if the portals had not made the games directly accessible on the Internet (an action performed by the Chinese servers), they nevertheless had to share co-liability as they had contributed to a increased diffusion of the sports events by offering the links and and the instructions necessary for accessing the games posted on Internet.

Subsequently the case was sent back to the first instance court in Milan for review.