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Case No: CO/7259/2007

**IN THE HIGH COURT OF JUSTICE**  
**ADMINISTRATIVE COURT**  
**ON APPEAL BY WAY OF CASE STATED**  
**FROM PORTSMOUTH CROWN COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 21/12/2007

Before :

**THE RT HON LORD JUSTICE PUMFREY**  
and  
**THE HON MR JUSTICE STANLEY BURNTON**

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Between :

**KAREN MURPHY**

**Appellant/  
Defendant**

- and -

**MEDIA PROTECTION SERVICES LIMITED**

**Respondent/  
Informant**

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**Winston R O Hunter QC and Martin Howe QC** (instructed by **Molesworths Bright Clegg**)  
for the **Appellant**

**Edward Jenkins QC, James Mellor QC, Aidan Robertson and Miles Bennett** (instructed by  
**Russell-Cooke LLP**) for the **Respondent**

Hearing dates: 29 – 30 November 2007  
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## **Judgment**

**Lord Justice Pumfrey :**

1. This is the judgment of the Court.
2. This is an appeal by way of case stated against the dismissal by the Crown Court at Portsmouth of Karen Murphy's appeal against conviction by Portsmouth magistrates for two offences contrary to s.297(1) of the Copyright, Designs and Patents Act 1988 ("the CDPA"). The charges against Ms Murphy were that on 19<sup>th</sup> August 2006 and on 25<sup>th</sup> September 2006 she "dishonestly received a programme included in a

broadcasting service provided from a place in the United Kingdom with intent to avoid payment of any charge applicable to the reception of the programme”.

### **The Facts**

3. So far as material, the facts stated are as follows. The Premier League (referred to as FAPL in the papers from time to time) owns the intellectual property rights in relation to the screening of live Premier League football matches. It grants exclusive licences to licensees to screen live Premier League matches in the licensees’ respective territories. In the United Kingdom and Ireland at all relevant times the sole licensee was BSkyB.
4. The programmes received by Ms Murphy had been uplinked to a satellite, the NOVA satellite, by a Greek television programme provider called NOVA. NOVA is the licensee for Greece for the football league’s material. It provides viewers with a satellite dish, decoder and decoder card. NOVA viewers watching live Premier League games will see a special logo, the “Live S7” logo, on their screen.
5. NOVA uses conditional access technology (CAT) via satellite, which means that the viewer needs a decoder card to watch the live Premier League games. These cards are authorised by the licence for use in the territory of the licensee.
6. BSkyB also uses CAT via satellite. It provides decoder cards in return for subscriptions paid by the viewer (whether domestic or non-domestic) and retains ownership of the cards. Without such a card a viewer is not entitled to watch BSkyB Premier League games, and he is not entitled to use the card outside the territory for which BSkyB is licensed.
7. Both the BSkyB satellite and the NOVA satellite have a “footprint” extending beyond the territorial limit of the licences they enjoy from the Premier League. Any person within a broadcaster’s “footprint” who has the appropriate satellite dish, decoder box and decryption card is technically capable of viewing the programmes provided by that broadcaster as part of its broadcasting service.
8. On 19<sup>th</sup> August 2006 and 25<sup>th</sup> September 2006, two matches, Bolton Wanderers v. Tottenham Hotspur and Portsmouth v. Bolton Wanderers, were screened on television sets at Ms Murphy’s public House, the Red White and Blue at Southsea in Hampshire.
9. So far as the making of the programmes was concerned, BSkyB had provided the crew, cameras and other equipment at the grounds of both games for the purpose of capturing the visual images and ambient sound from the grounds and its onward transmission to the viewers. The visual images and ambient sound from the grounds were seen at the same time wherever in the world the live Premier League games were being screened. The director chose the visual images to be screened by selecting the visual images captured by specific cameras. The sequence of images accompanied by ambient sound was sent to the BT Tower, from where feeds were sent to BSkyB and to the Premier League at Chiswick. At BSkyB, additional material (including a commentary) and the BSkyB live logo were added in real time to the feed and sent on to the satellite ground station at Chilworth in Hampshire, from where it was uploaded to the Astra satellite from which it was transmitted to BSkyB’s subscribers for live Premier League matches. At Chiswick, the Premier League adds

an English commentary to the feed, which is then encrypted and sent to NOVA in Greece by a satellite link. NOVA add material to the feed (including an optional Greek commentary and their “Live S7” logo) and from time to time other material such as advertisements. The material assembled in this way is then uplinked to the NOVA satellite with a view to its ultimate reception by subscribers to the NOVA satellite service.

10. The visual images and ambient sound captured at the grounds are thus identical in the uplinks from BSkyB and from NOVA to their respective satellites, save that the visual images will have the broadcaster’s logo added. The additional material (advertisements and the like) is different, as are the respective English commentaries, BSkyB’s originating in-house and NOVA’s originating with the Premier League.
11. When the two premiership matches to which we have referred were transmitted and received, Ms Murphy did not have a subscription with BSkyB. She had cancelled that subscription on the grounds of expense on becoming licensee of the Red White and Blue. She did have a satellite dish, a decoder box and a NOVA viewing card that enabled her to receive and view programmes originating with the NOVA satellite. The television pictures of the two matches both carried the “Live S7” logo, confirming that the signals had come via NOVA. In these circumstances, the Crown Court upheld the convictions of Ms Murphy and stated the following questions for the opinion of the High Court:
  1. For the purposes of s.297(1) of the CDPA, is it a requirement that the broadcasting service or broadcaster providing the programme in question is based in the UK?
  2. Were the FAPL (i.e. the Premier League) or BSkyB broadcasters, or did they provide a broadcasting service within the meaning of s.297(1) and s.6 CDPA?
  3. Was the live feed of sounds and pictures provided to NOVA a broadcast or a programme included in a broadcasting service within the meaning of the CDPA?
  4. In the event that the feed of live pictures and sounds to NOVA is deemed to be a “programme” and/or a “programme included in a broadcasting service”, is the said signal from the BSkyB camera to the FAPL and from the FAPL to NOVA and from NOVA to the Appellant part of a continuous chain of communications within the meaning of s.6(4) of the CDPA and article 1(2)(b) of the EC Directive 93/83?
  5. Does the requisite “intent to avoid any charge applicable to the reception of the programme” within s.297(1) apply to circumstances where the Appellant paid a charge to AV Station (an entity selling NOVA decoders and cards in the United Kingdom) and then receives a programme from NOVA, a foreign broadcaster, but does not pay any other fee to any other broadcaster (in this case BSkyB) as the domestic broadcaster in question?

### **The Statutory Provisions**

12. Ms Murphy was charged under s.297(1) of the CDPA, which is as follows:

“A person who dishonestly receives a programme included in a broadcasting service provided from a place in the United Kingdom with intent to avoid payment of any charge applicable to the reception of the programme commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

13. Section 297 was, at the time of Ms Murphy’s conviction, found under the heading “Fraudulent reception of transmissions” and accompanied by a series of provisions creating offences relating to unauthorised decoders and providing also for search warrants and forfeiture in relation to unauthorised decoders – ss.297A - 297D.

14. The words “programme” and “broadcasting” are defined as follows in s.299(5):

“In sections 297, 297A and 298, and this section, “programme” and “broadcasting”, and related expressions, have the same meaning as in Part I (copyright).”

15. The CDPA is a complex statute, and, so far as copyright is concerned, deals not only with copyright properly so called, but also with what are called neighbouring and related rights. Broadcasts are copyright works independently of the copyrights in the materials of which they are composed. Copyright in a broadcast is conferred by s.1(1)(b) of the CDPA, and s.6 contains the necessary definitions. It is convenient to set out the whole of the section in its state at the date of the receptions forming the subject matter of the charges:

“6–(1) In this Part a “broadcast” means an electronic transmission of visual images, sounds or other information which –

(a) is transmitted for simultaneous reception by members of the public and is capable of being lawfully received by them, or

(b) is transmitted at a time determined solely by the person making the transmission to members of the public,

and which is not excepted by sub-section (1A); and references to broadcasting shall be construed accordingly.

(1A) . . .

(2) An encrypted transmission shall be regarded as capable of being lawfully received by members of the public only if decoding equipment has been made available to members of the public by or with the authority of the person making the transmission or the person providing the contents of the transmission.

(3) References in this Part to the person making a broadcast, or a transmission which is a broadcast are –

- (a) to the person transmitting the programme, if he has responsibility to any extent for its contents, and
- (b) to any person providing the programme who makes with the person transmitting it the arrangements necessary for its transmission;

and references in this Part to a programme, in the context of broadcasting, are to any item included in a broadcast.

(4) For the purposes of this Part, the place from which a wireless broadcast is made is the place where, under the control and responsibility of the person making the broadcast, the programme-carrying signals are introduced into an uninterrupted chain of communication (including, in the case of a satellite transmission, the chain leading to the satellite and down towards the earth).

(4A) . . .

(5) References in this Part to the reception of a broadcast include reception of a broadcast relayed by means of a telecommunications system.

(5A) The relaying of a broadcast by reception and immediate re-transmission shall be regarded for the purposes of this Part as a separate act of broadcasting from the making of the broadcast which is so re-transmitted.

(6) Copyright does not subsist in a broadcast which infringes, or to the extent that it infringes, the copyright in another broadcast.”

16. Since it was originally enacted, this provision has been heavily amended by two statutory instruments, the Copyright and Related Rights Regulations 2003 (SI 2003/2498) and the Copyright and Related Rights Regulations 1996 (SI 1996/2967). The 1996 Regulations make provision for the purpose of implementing a number of EC Council Directives, including 93/83/EEC of 27<sup>th</sup> September 1993 on the co-ordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable re-transmission, and the 2003 Regulations implement *inter alia* Directive 2001/29/EC of the Parliament and the Council of 22<sup>nd</sup> May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. One other important Directive, Council Directive 89/552/EEC of 3<sup>rd</sup> October 1989 on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, as amended by Directive 97/36/EC, is not expressly referred to in the statutory instruments affecting the provisions of the statute with which this appeal is concerned. The relevance of the Directives to the points which arise is discussed below.

### **The Appellant’s Contentions**

17. At the risk of a failure to do full justice to Mr Howe QC's submissions on behalf of the Appellant, they are as follows. Section 297(1) uses the words "programme" and "broadcasting", which are by virtue of s.299(5) to be taken to be defined in s.6 of the Act. Section 6 defines also the place where the broadcast is made (sub-section 6(4)) and imports the additional requirement that the place is defined as being the place at which the programme-carrying signals are introduced into an uninterrupted chain of communication.
18. So far as the NOVA transmissions are concerned, that place is NOVA's premises in Greece. This consideration is reinforced by considering the definition of "television broadcasting" in Article 1(A) of Directive 89/552/EEC and of "communication to the public by satellite" in Article 1(2)(a) of Directive 93/83/EEC, as explained by the ECJ in Case C-293/98 *EGEDA* [2000] ECR I-629. It is from this definition that the words of sub-section 6(4) are evidently derived.
19. Mr Howe QC therefore submits that the NOVA transmissions received by Ms Murphy were not made from a place in the United Kingdom, and sub-section 297(1) is for that reason not satisfied.
20. Furthermore, he submits that the visual images, sounds or other information produced at the ground and transmitted first to FAPL and onwards to NOVA are not a broadcast satisfying the definition of paragraph 6(1)(a). Finally, he submits that there was no uninterrupted chain of communication within the meaning of sub-section 6(4), which consideration reinforces the submission that the programme was not "included in a broadcasting service provided from a place in the United Kingdom". He submits that the offence created by sub-section 297(1) is considerably narrower than that for which the prosecutor contends. Viewed in context in the statute, he says it may be seen immediately to be a provision directed at the use of unauthorised decoders and decoder cards for the purpose of decoding encrypted transmissions for which legitimate decoders and decoding cards are available on the domestic market. By way of example, the section is directed at users of fake BSkyB decoder cards for the purpose of viewing BSkyB's UK transmissions in the UK.
21. He also contended that it is impossible to find any programme to which the words "with intent to avoid payment of any charge applicable to the reception of a programme" refer, because his client has paid for a NOVA decoder card. The programme that she received is different from any other programme available, and therefore the section cannot be satisfied.

### **The Prosecutor's Contentions**

22. Mr Mellor QC submits that the crucial question in the case is the meaning of "broadcasting service" in sub-section 297(1), a term which, he submits, is of broad import. These are words that appear also in s.298, which creates a civil right in favour of a person who "makes charges for the reception of programmes including a broadcasting service provided from a place in the United Kingdom" in respect of a person who deals in "any apparatus designed or adapted to enable or assist persons to access the programmes or other transmissions or circumvent conditional access technology related to the programmes or other transmissions". This section was

substituted in order to implement Directive 98/84/EC of the European Parliament and of the Council of 20<sup>th</sup> November 1998, the Conditional Access Directive. The purpose of the Conditional Access Directive is concisely stated in Recital (13) in the following terms:

“ . . . It seems necessary to ensure that Member States provide appropriate legal protection against the placing on the market, for direct or indirect financial gain, of an illicit device which enables or facilitates without authority the circumvention of any technological measures designed to protect the remuneration of a legally provided service.”

23. The Directive requires the Member States to prohibit dealing in equipment or software designed or adapted to give access to television broadcasting provided against remuneration on the basis of conditional access (see Article 4, Article 2(e) and Article 2(a)). If there was any doubt, it is submitted that the term “broadcasting services” used in s.297(1) must bear the same meaning as in s.298, which must, in turn, be at least as wide as the “protected services” of Article 2(a) of the Conditional Access Directive. It is submitted further that in any event the approach to construction taken by the Appellant is wrong in principle. All that is imported into sub-section 297(1) by sub-section 299(5) is the definition of “broadcast” and “programme”, but not those provisions of s.6 which define other terms, or other features of a “broadcast” or a “programme”, for the purposes of Part 1 of the CDPA, in which s.6 is to be found. So, it is said, sub-sections 6(4), (5), (5A) and (obviously) sub-section 6(6) are all concerned with the conditions for the subsistence of copyright in a “broadcast”, but should not affect the meaning of that word in its context in s.297, whose purpose is quite different and which confers a class of protection on broadcasts which has nothing to do with the question whether or not copyright subsists in them. It is accordingly submitted that the Directives referred to by the Appellant are irrelevant to the problem with which sub-section 297(1) is concerned, since they are concerned with different questions and, in particular, with the subsistence of rights in respect of different classes of television broadcast. The methods used in those Directives to locate the right and the right-holder have no application to the problem of avoiding conditional access restrictions placed upon broadcasts, with which only the Conditional Access Directive is concerned, and this imports the definition of Directive 89/552/EEC. That definition is as follows:

“‘Television broadcasting’ means the initial transmission by wire or over the air, including that by satellite, in unencoded or encoded form, of television programmes intended for reception by the public. It includes the communication of programmes between undertakings with a view to their being relayed to the public. It does not include communication services providing items of information or messages on individual demand such as telecopying, electronic databanks and other similar services.”

24. It follows, it is submitted, that the service of providing “television broadcasting” is readily understood to include the supply from the ground via two satellites to Ms Murphy at the Red White and Blue. It also follows that the various cases upon the interpretation of similar phrases in the Rental Rights Directive (92/100), Copyright in

Satellite Broadcasting (93/83) and Copyright in the Information Society (2001/89) are not relevant.

### **Construction of Sub-section 297(1)**

25. It is tempting to take the view that the words of s.297 and s.299(5) have survived so far as material in the CDPA since it was passed on 15<sup>th</sup> November 1988, coming into effect on 1<sup>st</sup> August 1989 (see SI 1989/816). They have only been amended so as to remove the reference to cable transmissions when the protection afforded to the various wireless and non-wireless modes of broadcasting were assimilated. It follows that the provisions are not to be interpreted as if they were passed to implement the Directives to which we were referred.
26. Nevertheless, Mr Howe QC is correct in observing that the *Marleasing* principle (Case C-106/89 *Marleasing* [1990] ECR I-04135) requires us to construe the provisions so nearly as possible as to achieve the result required by the relevant Directive, once the time for the implementation of the latter has passed. We agree, therefore, that it is necessary to identify the community instruments which impose a relevant requirement on the United Kingdom. The relevant Directives have been listed above, and we now turn in more detail to consider their content and the manner in which they have been interpreted by the ECJ. We start with 89/552, which deals with the regulation of television broadcasting activities. The regulation is required to take place in the Member State of origin of the programming. The Eleventh Recital records that “it is . . . necessary and sufficient that all broadcasts comply with the law of the Member State from which they emanate”, and it defines “television broadcasting” in the manner set out above. Its definition of “broadcaster” – “the natural or legal person who has editorial responsibility for the composition of schedules of television programmes [as defined] and who transmits them or has them transmitted to third parties” – makes it clear that the Directive is primarily concerned with the jurisdiction of the Member State over the broadcasters who transmit television broadcasts within the jurisdiction of the Member State. In this Directive, the appropriate target is thus the individuals responsible for the broadcasting within the jurisdiction of the Member State.
27. Directive 93/83, the Copyright in Satellite Broadcasting Directive, is a harmonising measure intended to require the creation of a new copyright, that in satellite broadcasts. Article 2 defines the “broadcasting right”:

“Member States shall provide an exclusive right for the author to authorise the communication to the public by satellite of copyright works . . . ”
28. For the purpose of this right, the Directive defines “communication to the public by satellite” as “the act of introducing, under the control and responsibility of the broadcasting organisation, the programme-carrying signals intended for reception by the public into an uninterrupted chain of communication leading to the satellite and down towards the earth”. Encrypted signals are treated as communicated to the public if the public has means for decrypting the broadcast, and the author of the broadcast is defined to be the “principal director of a cinematographical or audiovisual work”. The general “wireless broadcast” right conferred by s.1(1)(b) and s.6 CDPA as amended is wider than the right contemplated by this Directive. In any event, the



Directive is concerned with fixing the right by reference to the place from which the programme-carrying signals intended for reception by the public originate. The restricted act is communication to the public of the copyright broadcast (see s.20 CDPA) mirroring Article 2 of the Directive.

29. The so-called Copyright in the Information Society Directive, 2001/89, imposes obligations on the Member States in relation to wire or wireless communication to the public of five classes of works which, between them, cover a very substantial part of the field of copyright works capable of being disseminated electronically. It is not concerned in any way with details as to the entitlement to the relevant copyrights, but it does impose obligations on the Member States to provide adequate legal protection against circumvention of effective technological measures for preventing or restricting acts not authorised by the relevant right-holder. It does not assist in elucidating the more detailed questions relating to the protection of broadcast programmes.
30. The Conditional Access Directive, 98/84, recites that:

“It seems necessary to ensure that Member States provide appropriate legal protection against the placing on the market, for direct or indirect financial gain, of an illicit device which enables or facilitates without authority the circumvention of any technological measures designed to protect the remuneration of a legally provided service.”
31. “Conditional access” is defined to mean “any technical measure . . . whereby access to the protected service in an intelligible form is made conditional upon prior individual authorisation”, and “protected service” is defined to mean, *inter alia*, television broadcasting as defined in Article 1(A) of Directive 89/552/EEC where provided against remuneration and on the basis of conditional access. This Directive defines infringing activities, in summary, as the manufacture of and dealing in, in the course of trade, any equipment or software designed or adapted to give access to a protected service in an intelligible form without the authorisation of the service provider.
32. In this country, the provisions of s.297A were somewhat amended to accommodate the provisions of the Conditional Access Directive, but the first part of the definition of “transmission” – “any programme included in a broadcasting service which is provided from a place in the United Kingdom ...” – is unchanged from the form in which it was originally inserted by s.179 of the Broadcasting Act 1990.
33. It seems likely that the effect of this definition is unchanged, and that it is therefore a matter of comment, as Mr Mellor QC submits, that these words appear to have been accepted to embrace the definition of television broadcasting found in the Television Directive 89/552/EEC.
34. We cannot accept that this is a legitimate approach to the interpretation of the provisions of ss.297 and 297A, where the relevant words are the same, but it is possible, we suppose, at least to draw some comfort from these considerations if we are otherwise of the view that the correct interpretation is one in which the location of the emission of the signals in question is of no relevance.

35. By this circuitous route, we arrive at Mr Mellor QC's primary submission, which is that s.299(5) imports into s.297 only the definition of sub-section 6(1) and probably sub-section 6(1A) also. With that submission we agree. Sub-section 299(5) states that the words "programme", "broadcasting" and related expressions have the same meaning as in Part 1 of the CDPA. We do not think that these words are wide enough to import into s.297(1) the definition of "the place from which a wireless broadcast is made" in considering whether a broadcasting service is provided from a place in the United Kingdom. The provisions of the Copyright and Satellite Broadcasting Directive (93/83) have been interpreted by the ECJ for the purpose of guiding the national court in determining the place from which a wireless broadcast is made for the purpose of that Directive and for the purpose of computing royalties under the Rental Rights Directive (92/100) – see Case C-192/04 *Lagardere* [2005] ECR I-7199. We consider that this case is irrelevant to the question which we have to decide. As we have attempted to explain, the Satellite Broadcasting Directive (93/83) is concerned with the location of a broadcast for the purposes of subsistence of copyright and the description of the restricted act, but it is not relevant to the present case. The same is true also of Case C-293/98 *EGEDA v. Hoasa* [1999] ECR I-629.
36. We think, therefore, that it is wrong to attempt to determine whether a programme included in a broadcasting service is provided from a place in the United Kingdom by reference to Directive 93/83 and the cases decided in respect of that Directive. The question is to be answered by identifying what is said to be the "programme included in a broadcasting service", then determining where that broadcasting service is provided from. Employing the definitions of s.6 CDPA, a "programme" is "any item included in a broadcast", itself defined as "an electronic transmission of visual images, sounds or other information". We do not consider that for this purpose a "broadcasting service" is anything more than a succession of such transmissions. In every case, however, it must be determined whether the broadcast, and so the programme, is capable of being lawfully received by members of the public. In the present case, there is no doubt that the core of the transmissions received by Ms Murphy, the visual images and the ambient sound of the matches themselves, was transmitted for simultaneous reception by members of the public and was capable of being lawfully received by them from BSkyB.

### **The Questions**

*Q1 – For the purpose of s.297(1) of the CDPA, is it a requirement that the broadcasting service or broadcaster providing the programme in question is based in the UK?*

37. The question in every case is to identify the "programme" received by the Defendant. In the present case, the programme in question comprised visuals and ambient sound transmitted from the ground in the United Kingdom, the broadcasting service being the supply of such programmes for simultaneous reception by members of the public in the UK. The fact that this programme had added to it, first, an English commentary and, second, a Greek commentary and a Greek visual logo, did not change the identity of the programme as received by the Appellant.
38. The question is accordingly ambiguous, since it is necessary in every case to identify the first point at which the programme which is the subject of the charge came into existence to be included in the broadcasting service. The place from which the broadcasting service is provided is the point at which the initial transmission of the

programme for ultimate reception by the public took place. That place is the United Kingdom.

*Q2. – Were the FAPL or BSkyB broadcasters or did they provide a broadcasting service?*

39. It is not clear to us why this question arises. The question is the identification of the broadcasting service, not the person responsible for it. It seems to us, however, that both FAPL and BSkyB are the broadcaster for this purpose, since it is they who have editorial responsibility “for the composition of schedules of television programmes” so far as the transmitted match is concerned.

*Q3. – Was the live feed of sounds and pictures provided to NOVA a broadcast or a programme included in a broadcasting service within the meaning of the Act?*

40. For the reasons set out above, the answer to this question is plainly “Yes”.

*Q4. – In the event that the feed of live pictures and sounds to NOVA is deemed to be a “programme” and/or a programme “included in a broadcasting service”, is the said signal from BSkyB cameras to the FAPL and from the FAPL to NOVA and from NOVA to the Appellant part of a continuous chain of communication within the meaning of s.6(4) of the Act and Article 1(2)(A) of the EC Directive 93/83?*

41. For the reasons set out above, this question does not arise. The definition of s.6 is unaffected by the manner of transmission between origin and public, providing the identity of the programme is not affected.

*Q5. – Does the requisite intent to avoid any charge applicable to the reception of the programme within s.297(1) apply to circumstances where the Appellant paid a charge to AV Station and then receives the programme from NOVA, a foreign broadcaster, but does not pay any other fee to any other broadcaster, in this case BSkyB as the domestic broadcaster in question?*

42. The requisite intent to avoid a charge is proved if it is shown that the defendant knows that the broadcaster has the exclusive right in this country and makes a charge for reception of its broadcasts, and he or she makes arrangements to receive its broadcasts without paying that charge. The fact that a charge is paid to a broadcaster who the defendant knows does not have the right to broadcast in this country is not inconsistent with an intent to avoid the UK broadcaster’s charge. Thus the answer to this question is “Yes”.

43. BSkyB had the exclusive right to screen (i.e. broadcast) the football matches in question in the UK. NOVA’s right was limited to Greece. Paragraph 17.5 of the Case is as follows:

“The Court found that the appellant had cancelled her earlier subscription with BSkyB and that she chose to take out a very much cheaper subscription to her substantial financial benefit, she knew the risk involved. She had been prosecuted and acquitted in relation to similar allegations. She chose to ignore the warnings which she agreed had been given to her by District Judge Arnold and she had chosen to ignore the

request/demand from Fullers (her landlord) to disconnect the equipment. She chose to rely on legal advice from her solicitors but she did not have to follow it. She hid behind the legal advice as a convenient shield behind which to hide her dishonesty.”

44. It is apparent from this that Ms Murphy knew that BSkyB had the exclusive right to screen (i.e. broadcast) the football matches in question in the UK and made a charge for the screening of the broadcasts, and that NOVA’s right was limited to Greece. It follows from these facts that she had the requisite intent. Indeed, it is significant that she did not appeal against the finding of dishonesty, which implies an intent to avoid a payment understood by her to be lawfully due.
45. The answer to the question stated must depend upon the circumstances of each individual case, so far as dishonesty is concerned, but certainly the requisite intent to avoid any charge applicable is satisfied in the circumstances set out in the question.

### **Conclusion**

46. We did not hear argument upon the impact of the Single Market Rules (Articles 28 – 30 and 49 EC) or upon the suggestion that there is here a competition law issue in that “the Respondent’s case is effectively founded on an agreement or a network of agreements imposing restrictions unlawful and void under Art.81 EC”. As we have construed the English provisions, they are consistent with the EC legislation to which we have referred, and, since the rights which we have discussed are essentially territorial in nature, it is unclear to us how there can be a relevant free movement case. So far as the competition law case is concerned, we do not at present follow how it is to be developed, and this appeal must therefore be restored for these points to be argued if that is what the Appellant wants.
47. Subject to the points of EC law to which we have referred in the preceding paragraph, we would dismiss this appeal.