

# ECJ PIRACY CASE LEAVES EPL IN LIMBO

A Landmark case involving the English Premier League could see the future sales of intellectual property rights dramatically altered for good.

Alex Miller reports.

**THE EUROPEAN COURT OF JUSTICE** (ECJ) will rule next March in a landmark case involving the Premier League which could potentially change the landscape of how sports broadcasting rights are sold across Europe.

The case began in 2006 when Media Protection Services, a company employed by the Premier League to crack down on the growing number of pubs showing coverage from overseas broadcasters, took Portsmouth-based landlady Karen Murphy to court.

The High Court ruled that Murphy was prohibited from streaming Premier League matches for customers through a Greek satellite broadcaster (costing less than the Sky Sports subscription). She purchased the system through UK-importer QC Leisure and paid an annual subscription. However, using foreign subscription cards breaches UK copyright laws

as they are not streamed through an authorised broadcaster. The case went to the ECJ for guidance and was heard last month.

At the centre of the clash are two principles of European law. These are the free movement of goods and services between EU member states and the right of content producers to sell licenses for their intellectual property on an exclusive national basis.

While the Premier League - which sells its rights exclusively to Sky in the UK - argues Murphy and other pubs using foreign signals to show English Premier League games are breaking the law, her lawyers argue its position contravenes the EC Treaty which guarantees free trade between member states and is anti-competitive because it hands Sky a monopoly.

The Premier League is also seeking a ban on the import, sale, installation and use of these

# Foto

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League and other TV companies both in the UK and across Europe.

While most analysts and legal brains believe the Premier League will come out of the case triumphant, until the ECJ ruling actually arrives, niggling doubts will remain. "BSkyB has a strong argument - its contracts will be watertight," Andrew Nixon, an Associate in the Sports Group at legal firm Thomas Eggar LLP, told *SportBusiness International*.

"The ECJ should recognise that these rights contracts are in place for a number of logical and commercial reasons. They generate considerable revenue and to interfere with those contracts will have a significant and wide impact.

"There are strong arguments that the ECJ should rule in favour of BSkyB and the TV companies' contracts upheld with the exclusivity maintained. However, the reality is that the ECJ has been known to make rulings that go against the grain and it has, in the past, shown a determination to uphold free trade among member states. If that happens then football clubs, for one, which rely heavily on TV rights income, could feel a painful impact."

### Restructuring deals

If the judge rules against the Premier League, it could eventually have a major impact on how live broadcasting deals are structured. Within mature markets such as Europe, which boast a large number of broadcast partners, the Premier League and rivals including the Bundesliga and Serie A currently negotiate deals on an individual market basis. The value of rights for the Premier League and other content vary from market to market.

However, if this principle is undermined, there could be significant implications - not just for sport, but any seller of content on a territory-by-territory basis. According to *TV Sports Markets*, the League's overseas broadcasting rights for the period 2010-11 to 2012-13 are worth 1.45 billion. And while the ECJ case will not directly impact any deals struck outside Europe, it would affect major agreements such as the €120 million deal with Mledge Consulting (covering Scandinavia), and of course the domestic UK agreement worth £1.8 billion from 2010-11 to 2012-13.

Rights experts believe that in the event of the decision going against the Premier League, it would be forced to sell rights on a pan-European

basis, for less money. A leading competition lawyer told *SportBusiness International* that: "In practice, the Premier League would no longer be able to divide Europe into separate markets and it could mean prices determined by the marketplace rather than by Sky."

"The Premier League has very successfully negotiated a number of deals that cover the 2010-11 to 2012-13 seasons in the UK and related international markets, with record TV rights values demonstrating the strength of the Premier League in international markets," added a director from a leading media rights company. "But should the Premier League lose, all member clubs are facing massive losses, as are players and agents."

A more moderate view is that defeat for the Premier League would mean nothing more than an expansion of the 'grey market', where viewers subscribe to overseas television services.

Another crumb of comfort for the Premier League, should the ruling go against them, is the popularity of the Premier League in the Far East and Asia Pacific. Many analysts believe revenue growth will continue to accelerate faster in these regions than in Europe over the next few years.

Analyst Kevin Alavy, Director of futures sport + entertainment, doesn't believe a decision against the Premier League would bring about doomsday scenario: "The single most important market is the UK domestic market - and this is where the main concerns lie with this case.

"However, the vast majority of revenues earned by the Premier League, in terms of its international rights, come from outside of Europe, principally Asia, where of course the legal situation is different. The rights revenues in the rest of Europe, while they run into hundreds of millions of pounds are actually not that much compared with regions such as Asia Pacific."

There is also a fascinating prospect should the Premier League be forced to sell its rights to Europe as a single market. The ruling could lead to a fall in investment in quality content across Europe, while culturally distinct services may struggle to compete in what would effectively be a pan-European market.

If this were to be the case, it would be an outcome that would go against the competitive market that EC competition authorities are attempting to create. After all, one of the few companies with enough reach and financial clout to bid for the rights would be BSkyB.

decoders. It believes its ability to sell its rights on a territory-by-territory basis is part of the essential function of its copyright.

With the hearing now out of the way, the ECJ will consider written pleas and give opinion on January 13 - with a ruling expected in March. After the ruling, the case will revert to the UK's High Court. The ECJ ruling is binding on EU member states and cannot be appealed unless it can be demonstrated the court made an error in law.

If the Premier League wins the case, it is likely to signal a new wave of anti-piracy actions from itself and other rights holders. As a result, hundreds of publicans may be landed with hefty fines. Ironically, a Premier League victory could also see large numbers of pub owners switching off Premiership football rather than paying steeper UK licence prices - but a victory would reinforce the status of Sky, the Premier