



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-283/11  
Sky Österreich GmbH v Österreichischer Rundfunk (ORF)

**According to Advocate General Bot, the limitation of the compensation payable by a television channel for the use of short extracts of high-interest events to the public, such as football matches, is justified**

*That limitation establishes a fair balance between the various fundamental rights concerned*

The Audiovisual Media Services Directive<sup>1</sup> allows television channels to acquire exclusive rights to broadcast events of high interest to the public, such as football matches<sup>2</sup>. A channel which has such rights must however allow other channels established in the EU to use short extracts so that they may transmit short news reports on those events. Accordingly, that channel must provide other channels with access to its signal to allow them to freely choose short extracts. According to the directive, the compensation linked to that use may not exceed the additional costs directly incurred in providing that access.

Sky broadcasts the coded digital television programme 'Sky Sport Austria' by satellite in Austria. It acquired exclusive rights to broadcast certain Europa League matches in the 2009-2010 to 2011-2012 seasons within the licence territory of Austria. According to its own statements, Sky spends several million euros each year on the licence and production costs.

At the request of ORF (the Austrian public broadcaster), the Austrian regulatory authority in the field of communications, KommAustria, decided, in December 2010, that Sky was to grant ORF the right to transmit short news reports on Europa League matches involving Austrian teams. ORF was only required to pay Sky compensation for the costs of access to the satellite signal, which were zero in this case.

Sky takes the view that the systematic prohibition of the payment of compensation to the holders of exclusive broadcasting rights to enable other channels to use short extracts is unfair. The Bundeskommunikationssenat (Federal Communications Tribunal), before which the dispute was brought, asks the Court of Justice whether the directive, which limits compensation to the additional costs directly incurred in providing access to those extracts, constitutes a justified interference with the freedom to conduct a business and the right to property of holders of exclusive rights.

In his Opinion delivered today, Advocate General Bot points out that the freedom to conduct a business and the right to property are guaranteed by the EU Charter of Fundamental Rights. He states that the disputed provision of the directive interferes with the fundamental rights conferred on holders of exclusive rights of transmission because they can no longer freely decide the price they charge for access to short extracts of events.

However, that interference is justified and consequently the disputed provision of the directive is not contrary to the Charter of Fundamental Rights. By that provision, the EU legislature established

<sup>1</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (OJ 2010 L 95, p. 1).

<sup>2</sup> However, the directive allows Member States to ensure that events which they regard as being of major importance for society are not broadcast in such a way as to deprive a substantial proportion of the public of the possibility of following such events by live coverage or deferred coverage on free television.

a fair balance between, on the one hand, the right to property and the freedom to conduct a business and, on the other hand, the freedom to receive information and media pluralism. Moreover, with a view to the creation of a European opinion and information area, the limitation of the compensation to the costs directly incurred in providing access is the most effective way of avoiding the partitioning of the dissemination of information between the Member States according to the economic importance of television channels.

The Advocate General states that the interference of the disputed provision with the right to property and the freedom to conduct a business of holders of exclusive rights is greatly mitigated by a certain number of conditions and limits which are attached to the right to short reports. Consequently, that right exists only as regards events of high interest to the public. In addition, the extracts provided may be used solely for general news programmes and only for the purpose of short news reports. Furthermore, the short extracts should not exceed 90 seconds. Lastly, the obligation on secondary broadcasters to identify the sources of extracts ensures that the holders of exclusive rights are given publicity.

The Advocate General also states that the positions adopted both by the Verfassungsgerichtshof (Constitutional Court, Austria) and by the Bundesverfassungsgericht (Federal Constitutional Court, Germany) do not alter his assessment. According to those courts, the right to short news reports should not be granted free of charge and should therefore give rise to the payment of reasonable remuneration or of an appropriate consideration. From that point of view, it is envisaged that the cost of acquiring the exclusive rights should be taken into account. According to the Advocate General, the balancing of the various fundamental rights concerned does not necessarily call for the same response at a national level as at an EU level. In the present case, the requirements connected with the completion of the internal market and the emergence of a single information area militated in favour of the adoption by the EU legislature of a provision which constitutes a compromise between the free grant of a right to short extracts and the financial contribution of secondary broadcasters to the costs of acquiring exclusive rights of transmission.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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