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Satellite broadcasts from Qatar found not to enjoy copyright protection in Sweden

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In this criminal case,⁽¹⁾ the Supreme Court dealt with complicated questions of territoriality and clarified when broadcasting signals from abroad may enjoy protection under the Copyright Act.

Facts

A television company with its domicile in Qatar, whose business consisted of broadcasting sporting events and producing its own content which was broadcast during breaks, transmitted broadcasting signals through fibre cable to their branch in France. The signals were then transmitted to Great Britain and Spain for an uplink to satellites before the signals were received by their subscribers on the ground.

Pursuant to section 48 of the Copyright Act, radio and television companies have certain exclusive rights to their broadcasting signals. It is the broadcasting signals themselves (and not what is being broadcast) that enjoy protection under this so-called "signal right", which establishes inter alia that radio and television companies have an exclusive right to re-broadcast their broadcasting signals. However, the Copyright Act only applies to broadcasts which:

- take place in Sweden; or
- are transmitted by a company that has its domicile in Sweden.

Pursuant to the International Copyright Regulation, the Copyright Act also applies to:

- broadcasts which are made in a country that is a party to the Rome Convention; and
- broadcasts which are made by companies that have their domicile in a country that is a party to the Rome Convention.

The Copyright Act also contains a provision applicable to situations when the broadcast is communicated to the public via satellite. This provision stems from Directive 93/83/EEC⁽²⁾ and expresses the so-called principle of "broadcasting country" (in Swedish, *sändarlandsprincipen*). According to this provision, the act that is relevant from the point of view of copyright and neighbouring rights will be deemed to take place in the country where the broadcasting company, which has responsibility for and control over the act, initiates the performance (in this case, the broadcast). In this context, the performance is in an uninterrupted chain of communication to the satellite and then back down to the ground.

In this case, two representatives of a Swedish company were, among other things, alleged to have re-broadcasted the television company's broadcast. The first-instance court, the Swedish Patent and Market Court (PMC), considered the broadcast to enjoy protection under the Swedish Copyright Act given that the broadcast was deemed to have been made in Spain and Great Britain, which were both parties to the Rome Convention. The Court thus found the two defendants to be guilty of criminal copyright infringement.

However, contrary to the PMC, the second-instance court, the Swedish Patent and Market Court of Appeal (PMCA), dismissed the prosecution and held that the broadcasts did not enjoy protection under the Copyright Act. The PMCA found that the broadcasts were deemed to have been made in Qatar which was not a party to the Rome Convention.

Decision

The Supreme Court confirmed that it is established that the Rome Convention – which was adopted in 1961 when only traditional terrestrial broadcasts occurred – is applicable also to broadcasts made by satellite.

By referring to *Airfield*⁽³⁾ and *Canal Digitaal*,⁽⁴⁾ the Supreme Court stated that an intervening technical step should not be seen as an interruption in the broadcasting chain. Rather, all steps should be considered to constitute one single communication to the public, provided that the chain is completely controlled by the TV company. The Supreme Court also stated that this applies when applying the International Copyright Regulation. Thus, the Supreme Court in this case found that a broadcast by satellite, which included several technical steps, was made in the country where the transmission of the signals was initiated. The Supreme Court found that the broadcasting signal was initiated in Qatar and thus did not enjoy protection under the Copyright Act. The two representatives therefore were found not guilty of criminal copyright infringement.

Comment

As stated by the Supreme Court, the assessment of where a broadcast was made from can be difficult when the broadcast, as in the present case, includes several technical steps – which most broadcasts do. The Supreme Court has therefore issued an important judgment, clarifying how the provision in the International Copyright Regulation should be applied.

The judgment also shows that the Rome Convention fulfills its purpose; the investments that had most likely been made by the television company in Qatar would have enjoyed protection under the Copyright Act if Qatar, at the relevant time, had been a party to the



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Rome Convention. Treaties between states will thus gain even greater importance.

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Endnotes

- (1) Supreme Court, B 1513-22.
- (2) Also known as "SatCab".
- (3) C-431/09.
- (4) C-432/09.