

# FAPL shown red (decoder) card



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The Court of Justice of the European Union today handed down its long awaited judgment in the joined cases of *Football Association Premier League Ltd and ors v QC Leisure and ors* and in *Karen Murphy v Media Protection Services Limited*. A copy of the judgment of the court and a shorter press release are available on our website.

The Court held that the licences between the broadcaster and rights owner preventing the free movement of the decoder cards within the EU were contrary to EU competition law. Licence agreements must not prohibit broadcasters from any cross-border provision of services, as that would create an absolute territorial restriction and eliminate competition between broadcasters. Further, any national legislation that prohibited the importation, sale and use of decoder cards from other member states cannot be justified either. Whilst there is no copyright in the sporting events themselves, there were copyright works carried in the broadcast, such as opening video sequences. The acts of reproduction in the decoder box and on the screen are excepted from protection, as they fulfil the requirements of Art.5(1) and (5) of the Information Society Directive, but the transmission of the broadcast works via a television screen and speakers to the customers in the pub constitutes a communication to the public.

The effect of the decision in this country is still to be determined by the High Court but it should mean that satellite decoder cards from other EU countries will be lawfully available for sale in the UK. The popularity of these foreign decoder cards will depend largely on how much cheaper they are than their UK counterpart. It may well also result in significant changes to the way that programmes are licensed in the EU though the use of pan-EU licences rather than licences being granted on a country by country basis.

**Andrew Norris** and **Tom St Quintin** of **Hogarth Chambers** acted as junior counsel for the QC Leisure defendants.

If you would like to speak to someone about this news release, please contact:  
**Alastair Wilson QC:** [awilson@hogarthchambers.com](mailto:awilson@hogarthchambers.com) or  
**Briget Harrison,** Marketing & Business Development: [bharrison@hogarthchambers.com](mailto:bharrison@hogarthchambers.com)  
or call Hogarth Chambers on **+44 (0)207 404 0404**  
[www.hogarthchambers.com](http://www.hogarthchambers.com)

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