



Communication to the Public

A Perspective for the AV Industry

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WIGGIN

Introduction



- ▶ Focus today on the audiovisual sector
- ▶ Article 3 of the Copyright Directive
- ▶ CJEU and the exclusive right of communication to the public (CTTP)
- ▶ Recent developments at the Court of Justice
- ▶ Related legislative proposals affecting the CTTP right

Audiovisual sector in the EU



- © Reliant on strong exclusive rights and contractual freedom to finance, produce, exploit and protect content. Copyright is the currency
- © AV content tends to be licensed on an exclusive territorial basis
 - © Pre-sale of rights to finance production
 - © Producers maximise revenue in markets where demand is the highest and tailor content to the particularities of each territory
 - © Producers to share the financial risk with distributors and invest in new content
- © Issues with the Proposed Broadcasters Regulation and Directive on © in the DSM
- © Meanwhile the Commission's PAY-TV investigation ...
- © Enforcement focused on structurally-infringing websites goal is to protect new business models from unfair competition. Notice and takedown does not work here...

The Exclusive Right of Communication to the Public



- © Article 3 of the Copyright Directive (and Berne and WIPO © Treaty)
- © Including in particular the making available right
 - © Interactive, on-demand
 - © The link to DRM (technological measures)
 - © Not subject to exhaustion
- © A crucial right for funding, exploiting and protect content in the digital environment
- © Underpins all new business models and enforcement strategies

CJEU Communication to the Public



- ▶ A wide range of caselaw: Spanish Hotels, English Pubs, Romanian Circuses, Italian Dentists, ...
- ▶ Grand Chamber/Reha Training:
 - ▶ Several complementary criteria, which are not autonomous and are interdependent.
 - ▶ The criteria may, in different situations be present to varying degrees, they must be applied both individually and in their interaction with one another.
- ▶ A case by case analysis – the industry carefully considers emerging caselaw affecting business models and enforcement. It looks for tests it can apply...
- ▶ Concerns beyond what is CTPP...where does it happen, who does it, enforcement remedies...

CJEU: CTTT – The Test



Transmission

Public

**Different Tech
Means
Or
New Public**

CJEU: Recent Key Developments



GS Media v Sanoma

The Pirate Bay

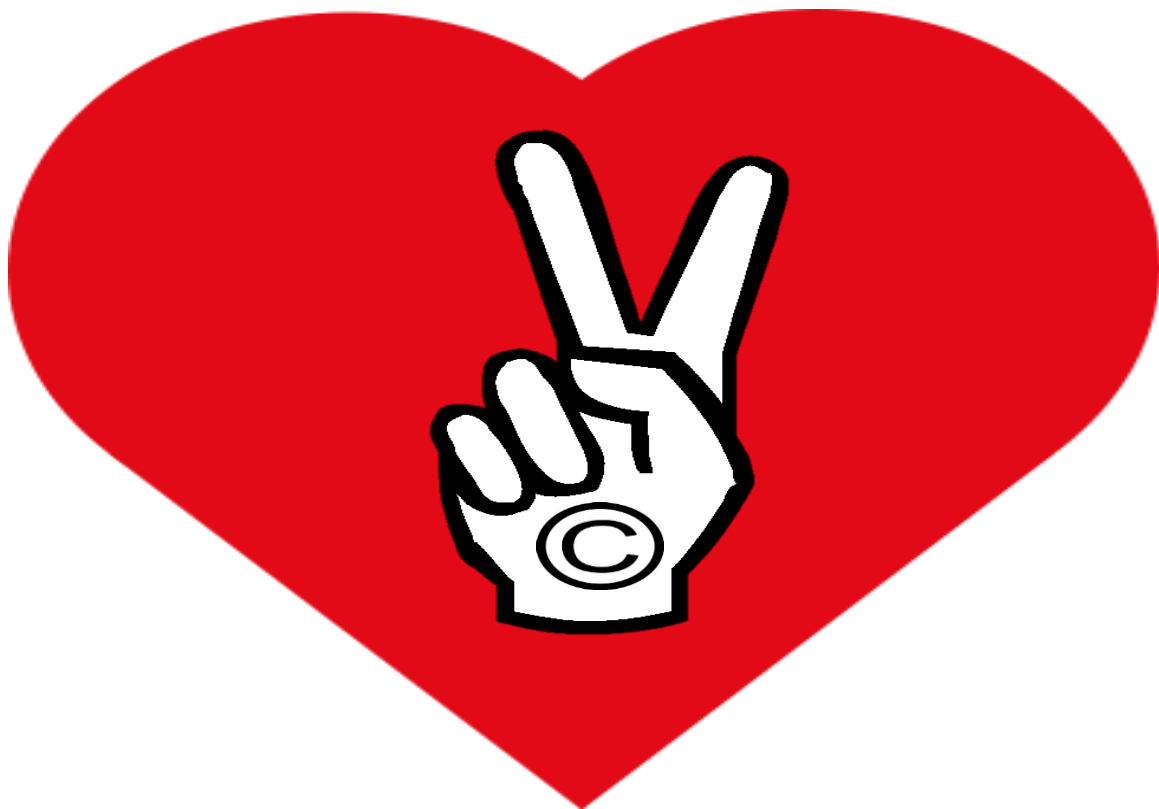
VCAST: AG Opinion

- ✓ Application of the communication to the public right to different online situations/business models.
- ✓ Flexible for many situations in the online environment
- ✓ See also the *AKM* case.

CTTP issues in the Proposed DSM (c) Legislation...



- ▶ Proposed Broadcasters Regulation
 - ▶ Country of origin – (and what is a broadcaster anyway?)
 - ▶ Retransmission
 - ▶ Direct Injection
- ▶ Copyright in the DSM Directive
 - ▶ The Value Gap – or threading the needle
 - ▶ When do certain platforms CTTP?
 - ▶ When does E-Commerce Directive apply?
 - ▶ Licensing v. Enforcement



PEACE LOVE AND COPYRIGHT

Thank you



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