



St. Gallen, 20 September 2018

Press Release

regarding judgment B-1714/2018 of 12 September 2018

TV broadcasters without right of appeal for catch-up TV

TV broadcasters have no right to appeal the tariff of compensation for time-shift television negotiated by the collective rights management organisations and associations of users. The Swiss Federal Administrative Court therefore decides not to admit the appeal of 23 broadcasters.

On 16 February 2018, the Federal Arbitration Commission for the Exploitation of Copyrights and Related Rights approved the new common Tariff 12 that had been negotiated by the collective rights management organisations and the relevant associations of users. The tariff regulates the compensation that providers of catch-up TV – also known as replay or time-shift TV – have to pay to TV broadcasters.

Collective or individual exploitation

The Arbitration Commission takes the view that since catch-up TV is subject to collective exploitation TV broadcasters are not entitled to exercise their rights by themselves but only by means of collective rights management organisations. In their appeal that is targeting the approval of this tariff, TV broadcasters essentially assert that the relevant rights are subject to individual rather than collective exploitation.

No right to appeal as a third party

Since the TV broadcasters had not been parties in the procedure before the Arbitration Commission, the Swiss Federal Administrative Court (FAC) examined whether or not they are entitled to challenge the approval of the tariff as third parties. As the FAC states third parties generally have no right of appeal in the field of copyright. They may exceptionally be entitled to file an appeal if they differ from the majority of the right holders and are able to demonstrate a divergent and independent interest. The FAC ascertains that the TV broadcasters differ neither individually nor collectively from the majority of the right holders affected by the tariff. Thus it can be assumed that their interests were represented by the collective rights management organisations in the approval procedure for the tariff. The court decides not to admit the appeal of the TV broadcasters. The issue raised as to whether catch-up TV is at all subject to compulsory collective exploitation was not to be assessed.

This judgment may be appealed to the Federal Supreme Court.

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About the Federal Administrative Court

Located in St. Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 357 employees (307.65 FTE) and its 76 judges (68.2 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal authorities. In specific matters, the FAC may grant review on decisions rendered by cantonal authorities. Recourse actions are also reviewed by the Court. The FAC is composed of six divisions. It renders an average of 7,500 judgments every year.