OUTER HOUSE, COURT OF SESSION

[2026] CSOH 108

A392/25

OPINION OF LORD LAKE

In the cause

THE SCOTTISH PROFESSIONAL FOOTBALL LEAGUE LIMITED

Pursuer

against

CHRISTOPHER AIRLIE

Defender

Pursuer: Mah; Burness Paull LLP
Defender: Party

4 November 2026

Introduction

[1] In this action, the pursuer alleges that the defender has infringed copyright owned by them and they seek interdict preventing this in future. The pursuer is the organiser of the Scottish Professional Football League and the matches played as part of it. The copyright with which the action is concerned lies in graphics incorporated by them into video transmissions of the matches. The defender is the owner and manager of the Troll Inn in Dundee ("the Bar"). He is the designated premises manager and premises licence holder of the Troll Inn in terms of the Licensing (Scotland) Act 2005.

[2] The graphics in which the pursuer claims copyright are reproduced in Appendix 1 and Appendix 2 to the summons ("the Works"). Infringement is said to have arisen when the defender caused or authorised a video feed featuring the Works to be shown on television screens in the Bar on 9 November 2025 and thereby communicated them to the public within the meaning of section 20 of the Copyright Designs and Patents Act 1988. The defender does not admit that the pursuer owns the copyright in the Works or that video footage featuring the Works was shown in the Bar on 9 November 2025. In addition, to the extent that the matches featuring the Works were shown in the Bar, he does not accept responsibility for this. He avers,

> "I believe the bar staff had switched on the screens but did not switch on the football games referred to. It is my belief this must have been actioned by a customer from their mobile phone and was not noticed by the busy barmaid."

I consider the various issues in turn below. I should note at this stage that the defender did not seek to advance an argument that he was entitled to show the video footage of the matches and thereby to communicate the Works to the public either by licence or otherwise.

The evidence

[3] The action came before me for proof before answer. The pursuer led two witnesses. The first was Andrew Sinclair. He is Head of Partnerships at the pursuer. He explained that some SPFL matches are broadcast by Sky UK Limited in terms of their agreement with the pursuer, other matches are filmed by a company appointed by the pursuer. The video feeds of the latter class of matches are then distributed to SPFL member clubs for use on the club channels in terms of a Media Licence Agreement ("MLA") between the pursuer and the member club in question. The club channels are subscription packages which can only be accessed via an internet browser by a person in the United Kingdom who has entered into

an agreement with the club in question ("a Subscriber Agreement"). Each MLA contains a term that the channel content is not used for commercial purposes even where the match in question may be viewed live on a pay-per-view basis. The Subscriber Agreements in turn all state that the channel content is solely for what is described as residential use.

[4] Mr Sinclair said that clubs could also offer subscriptions for services featuring video feeds of SPFL matches to overseas subscribers. It is a condition of these subscriptions that they are available only to persons located outwith the UK and Ireland and he explained that provision has been made for geo-blocking so that these cannot be accessed by persons in the UK. He also explained, however, that users in the United Kingdom may seek to use a virtual private network to conceal or alter their true geographical location to circumvent the measures taken and access a subscription available only to people who are overseas. Another means of accessing the club channels unlawfully is by means of IPTV services in which the video feed is "scraped" from legitimate broadcasts. It is a term of each MLA with a club that the video feed will be made available only by means of apps or digital services run by the clubs. Any broadcast which appears to be from a club channel but which is received via an IPTV service is not legitimate.

[5] Mr Sinclair said that neither of the matches shown in the Bar on 9 November 2025 were lawfully available in the United Kingdom on any platform - including satellite/cable broadcast, pay-per-view or club channels. In cross-examination, he accepted that he had heard of situations in which a video feed of a match was viewed on a person's mobile phone and the phone display was mirrored or cast onto a television screen so more people could watch it. He said that this was not permitted if it was an SPFL video feed as it entailed communicating the Works to the public. He said that to do this the mobile phone would first have to be paired with the television.

[6] Mr Sinclair gave evidence as to the position in relation to ownership of the copyright in the Works. He explained that the Works shown in Appendix 1 to the summons were created for the pursuer under contracts they had with two suppliers. The artistic works in question were prepared by employees of those suppliers. The copyright would therefore transmit from the employee to their employer and then, under the agreement for the creation of the graphics, to the pursuer. He explained that in the course of a season, certain of those Works might be modified to reflect, for example, a new sponsor for the SPFL. This had been done when the sponsor was William Hill. This resulted in what were termed the altered Works which were shown in Appendix 2 to the summons.

[7] The second witness for the pursuer was Mr McLean. As at November 2025 he was employed by ID Inquiries Limited as an inquiry agent. As part of that employment he visited the Bar on 9 November 2025. He said that there were three television screens in the Bar and that when he first went in one of them was switched on. However, once he entered the Bar, the barmaid went into a space behind the bar and it was switched off. This was to the annoyance of the customers in the Bar, many of whom took out their mobile phones and began to watch something on them. From her actions at the time the screen was turned off and the reaction of the customers, he inferred that the screen had been turned off by the barmaid rather than any of the customers.

[8] Mr McLean said that later, after the match between Dundee and Rangers was finishing and the fans had started to arrive in the Bar so that there were approximately 30 people there, two of the screens were turned on. He said that one was showing that day's Hearts FC v Dundee United FC match and that he could see the logo of a company which he checked and ascertained was the sponsor of Dundee United. On that basis he concluded that the match was being shown on Dundee United TV - that team's club channel. On one of

the other screens, the Celtic FC v Kilmarnock FC match was being shown. At half time he saw the club branding on screen, and he was aware that the studio and presenters he saw were part of Celtic TV. On that basis he was able to conclude that the match was being shown on Celtic TV - that team's club channel. The first and third graphics shown in Schedule 1 to the summons were visible on the first screen and the third graphic from Schedule 1 and the graphic shown in Schedule 2 could be seen on the second screen.

[9] Mr McLean said that when these televisions were being put on to show these games, he saw an IPTV menu with a variety of channels available. The barmaid had gone into the room behind the bar and leaned out of the door into the bar looking towards the screens as the menus were changing. He inferred that it was the barmaid that was changing the channels on the basis of her having gone into the back room where she had been when the screens had been switched off earlier, from her looking out of the room to the screens apparently to see the menus, the fact that he could not see any customers touching the televisions or remote controls when the new channels were put on and the fact that the customers had seemed surprised when the screen was first switched off after he arrived.

[10] Mr McLean explained that he had checked and neither match was being shown on terrestrial or paid TV channels. He was shown the photographs forming the second production for the defender and said that he had not seen notices such as these asking customers not to cast their phone screen onto the televisions or to mirror their screen onto them during his visit.

[11] I found the evidence of both Mr Sinclair and Mr McLean to be credible and reliable in relation to all the matters I have noted. There was no substantial challenge to it in cross-examination.

[12] The defender gave evidence and accepted that he was the designated premises manager and the licence holder for the Bar. He accepted that he had responsibility for the running of the Bar on a day-to-day basis but said that he was not responsible for looking after the rights of Sky and other broadcasters. He accepted that he was not at the Bar on 9 November 2025 so could not give a first-hand account of what had happened. He said that staff could switch the televisions on and off but could choose from free-to-view channels only. He said that they do not have access to channels which require payment for showing football matches. He said it was not possible to control the television using the remote control from the room behind the bar. He suggested that a barmaid looking out from the room behind the bar area may have been looking to see if there was a customer to be served. He said that it was easy to control a television from a mobile phone but could not explain how it would be done. In relation to the notice shown in the photograph shown to Mr McLean, initially he said that it had been up for 6 months but later changed to saying that it had been up for a year. He said that there was CCTV recording equipment in the Bar that would have been operational on 9 November 2025. He initially said that the recordings were kept only for 28 days and then changed it to say that they were kept only for 20 days. It was pointed out to him in cross-examination that the pursuer's solicitors wrote to him 15 days after the visit on 9 November indicating what had been seen and he was asked why, in light of that, he had not kept the CCTV footage. He said he did not take the letter seriously and thought it was a joke. He had not called the barmaid as a witness as she had no recollection of the day in question and said again that this was because the pursuer did not contact him about the visit soon enough.

[13] I do not accept Mr Airlie's evidence that the televisions could show only free-to-view channels. Principally this is because it is inconsistent with evidence to the contrary which I

accept but also consider it material that he has chosen not to lead evidence from his employee who was there on the day or the CCTV footage. I do not accept his explanation that when he got notification from the pursuer 15 days after the visit, he thought it was a joke. One of the authorities to which I was referred is a case brought by Sky Limited against Mr Airlie concerning copyright infringement by means of showing football matches in the Bar. On 1 March 2024, decree was granted against Mr Airlie in that action. Having been taken to court once before, I regard it as unbelievable that he thought a threat from another party to do so again was something he could ignore. If he felt he was being wrongfully accused of infringement, human nature is such that he would want to retain such evidence as he had to vindicate his position. As he was not in a position to challenge that the matches were shown on screens in the Bar, if his defence was that they were shown by a customer, I would have expected evidence at least to show that this was possible and how it could be done. He has done little more than put forward a hypothesis or suggestion that the matches were shown as a result of a customer mirroring their phone screen or casting it to the television and had provided no evidence that it could be done or, indeed, was done. I do not accept that the notice shown in the photograph put to Mr McLean was displayed on 9 November 2025. I accept his first statement that it has been up for 6 months but that would mean it was not up until 2026. My impression was that having said that it had been there for 6 months he realised that it would not have been there at the date of the visit and he therefore sought to change his evidence to say it had been there for a year.

The issues arising

Ownership of copyright in the Works

[14] The graphics depicted in the appendices to the summons are artistic works that attract copyright. I accept the evidence of Mr Sinclair as to the circumstances in which they were produced. That evidence was not challenged. The consequence of accepting that evidence is that the pursuer is the owner of the copyright in the Works.

Were the Works communicated to the public?

[15] As I have already indicated, I accept the evidence of Mr McLean as to what was shown on the screens when they were put back on after he arrived in the Bar. This means that some of the Works were shown on the screens. Although the issue as to whether this amounted to communication to the public was not argued before me, for completeness, I would add that, on the basis of the decisions in *Football Association Premier League Ltd* v *QC Leisure (C-403/08)* EU:C:2011:631, [2012] Bus LR 1321 and *Sky Limited* v *Airlie* 2024 SLT 279 (the earlier decision in respect of Mr Airlie that I refer to above), I conclude that it did.

Was there a licence to communicate the Works to the public?

[16] Reading sections 16(2) and 20 of the 1988 Act together, copyright is infringed where a copyright work is communicated to the public without the licence of the copyright owner. Although it was not specifically argued before me, for completeness I would note that I find that there was no such licence in respect of either of the matches shown in the Bar on 9 November 2025. I find that what was being shown was a feed from the club channels identified by Mr McLean. I accept the evidence from Mr Sinclair that in both the MLA under which the feed was made available to the club channel and the Subscriber Agreement

in terms of which it was made available by the club channel, there was a prohibition on showing it in commercial premises. If the feed being shown was one intended for overseas viewing, there was a prohibition on showing it in the United Kingdom at all. There was no permission for the feed of either of the matches to be shown in the Bar.

Who is responsible for the matches being shown?

[17] There are both factual and legal elements to this issue. The factual issue is whether the matches were shown on the screens because the defender's employee, the barmaid, chose the channels to show or whether, as Mr Airlie suggests, they were shown as a result of a customer casting or mirroring his or her phone screen to the televisions. I conclude on the balance of probabilities that the barmaid chose the channels to show. That the match showing when Mr McLean arrived was stopped to the displeasure of the customers so that they chose to watch on their phones indicates that they were not in control of the television and what was shown. I find it significant that when the screens were put on later, the barmaid appeared to be looking out of the room behind the bar to look at the IPTV menu then shown on the screens. This too is consistent with her having chosen what was to be shown and Mr McLean saw no other party appearing to control them. Weighed against that, there is nothing more than a suggestion by Mr Airlie that a customer may have used mirroring or casting to control what was shown. There has been no evidence even that it was possible. As the equipment was in the bar and under the control of the defender it would have been in his power to provide such evidence but, as with the CCTV evidence and the testimony of the barmaid, he has elected not to put it before the court. There is in my view very little to be weighed against the evidence suggesting that the barmaid was in control and I find that she was.

[18] The legal issue is whether it can be said, using the words of section 16(2), that the defender authorised the barmaid to show the matches. He has accepted that he was the designated premises manager with day-to-day control of the bar and was responsible for giving instructions to the staff. In *British Sky Broadcasting Group Plc* v *Avalonbar Ltd* [2014] CSOH 39, another case concerning infringement of copyright in the context of showing football matches in a bar, Lord Glennie concluded that the role of a designated premises manager was to give instruction about what could and what could not have been done in the bar. In addition to this, it is admitted in the pleadings that following an incident in June 2024 when a match was shown in the Bar resulting in infringement of the pursuer's copyright in the Works, the defender had provided an undertaking to the pursuer that there would be no further infringement. I refer to this as I consider that it indicates that the defender was aware of the issue and in giving the undertaking accepted an obligation to prevent it from happening again. As he was in a position to exercise control over the staff and had already had an infringement drawn to his attention in 2024, I consider that it can be inferred from the fact that it happened on 9 November 2025 that he had authorised it. In this regard, it is also relevant that in relation to the issue of the television being switched off when Mr McLean entered the Bar, Mr Airlie said in submissions that he and the bar staff know there is a person making a report on them when a stranger comes in to the bar and orders a juice or a half pint. Taken with Mr McLean's evidence of the television being switched off when he arrived, it suggests that there is a response to that situation to conceal what was happening and that the barmaid on duty had been told of this. I conclude that the defender had authorised the barmaid's actions on 9 November 2025.

[19] The defender expressed unhappiness that he felt that he and others who owned and managed pubs were required to, as he saw it, look after Sky or the pursuer and their

product. He objected to the money spent by Sky and the pursuer investigating him and people like him and felt they should provide a better way to protect their rights. He expressed the view that the pursuer could have come to him at the start but did not elaborate on what that meant and in what way their initial communication shortly after 9 November was not them doing just that. I do not attach any significance to this.

[20] The pursuer submitted that even if there had been use made of screen mirroring or a facility to cast a phone screen onto a television screen by a customer, the defender was still responsible for the infringement by means of communicating the Works to the public. I was referred to the decision in *Sky* v *Airlie* where Lord Sandison had considered this argument and found in favour of the pursuers. However, the facts there were very different to the present. It appeared that in that case Mr Airlie had given permission for computer monitors to be brought into the Bar for the purpose of showing matches and had allowed them to be plugged in (para [39]). These factors are absent in this case.

[21] As I have noted there is a paucity of evidence in relation to casting or mirroring a phone screen and what would be required. On the basis of the evidence before me, I cannot conclude that for the customers to be able do this would have entailed some act by the defender which could be seen as authorisation. It was submitted that not disabling the television from accepting a cast signal or mirroring was in itself authorisation, but I do not accept that submission. As noted by Lord Sandison in *Sky* v *Airlie* by reference to *Falcon* v *Famous Players Film Co Ltd* [1926] 2 KB 474, to authorise means, expressly or by implication, to grant a right to do the act in question. Although the grant may be implied, some active step is still required and there is nothing in the evidence presented which identifies such an active step. All that could be said on the evidence led in this case was that there has been a failure to take some action to prevent casting or mirroring. While questions of degree might

arise in different factual circumstances, on the present facts, I do not consider that failing to prevent something can be equated with authorising it.

Conclusion and disposal

[22] I conclude that the pursuer has established that the defender infringed their copyright by showing video feeds incorporating some of the Works in the Troll Inn on 9 November 2025. I accept that in the circumstances in which it is admitted that in 2024, following an earlier infringement, an undertaking was given that there would not be further infringement of the pursuer's rights and that, despite this, there was such further infringement, it is reasonable for the pursuer to fear that there will be a recurrence. Interdict is therefore justified. It has occurred to me, however, in the course of preparing this Opinion that the drafting of the conclusion has come adrift in relation to Appendix 2. Rather than incorporate the error into a final interlocutor, I will put the matter out By Order.

[23] I would add that I have not overlooked the defender's complaints as to the whether he and his staff would be able to tell that this was an infringement. I have reviewed his arguments and conclude that they have no merit. As I note above, I accepted the evidence of Mr Sinclair which is to the effect that they do not make live video feeds of matches available to be shown in commercial premises in the UK. The defender should therefore be aware that any live feed of a match provided by the SPFL and bearing their graphics, may not be shown in the Bar. My decision does not turn on this matter, but it is appropriate to state it.