

ALLEN & OVERY



*Competition, copyright
licensing and the EU Digital single
market a fairness conundrum*

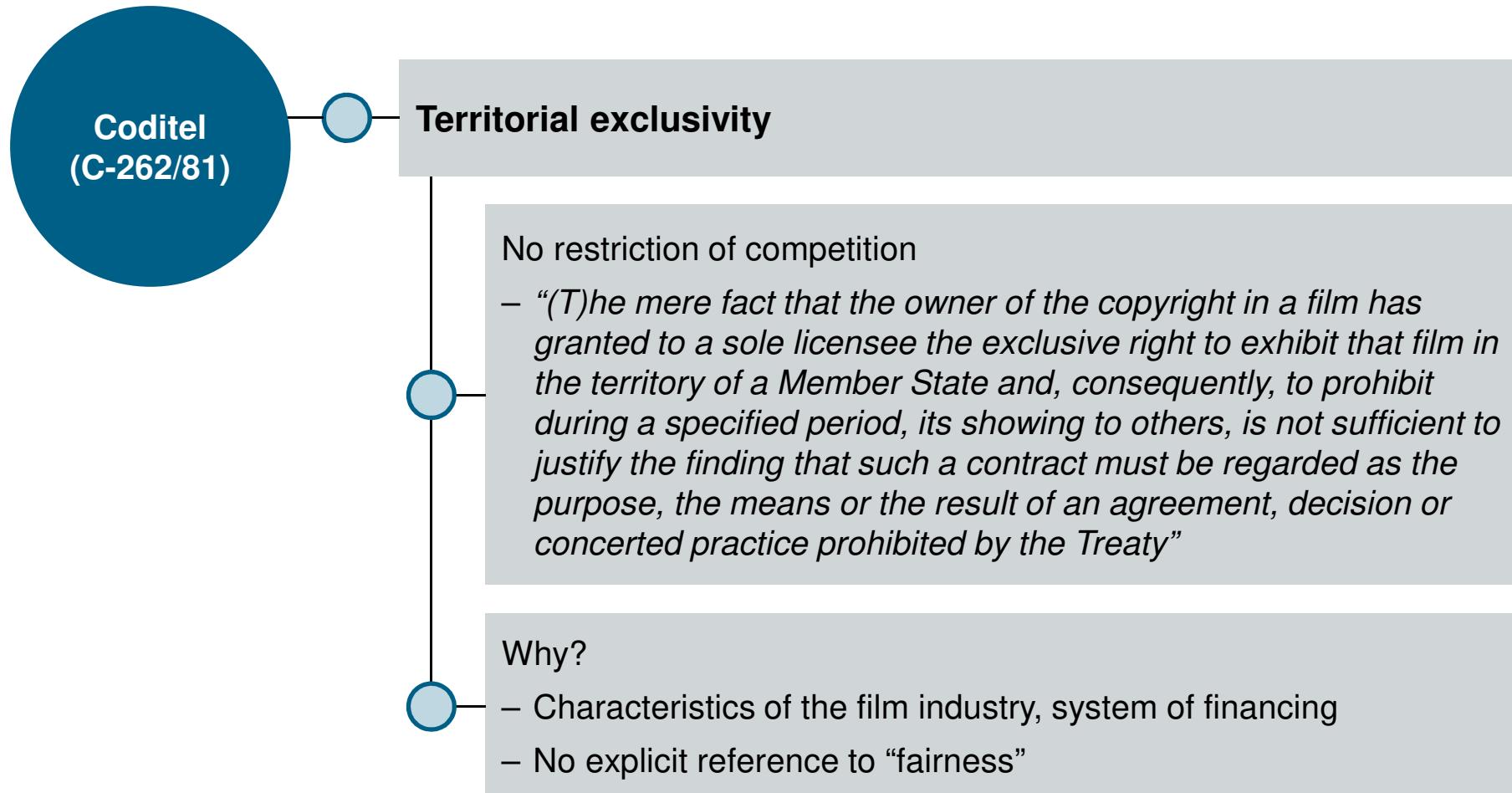
Dirk Arts

Identifying the issue?

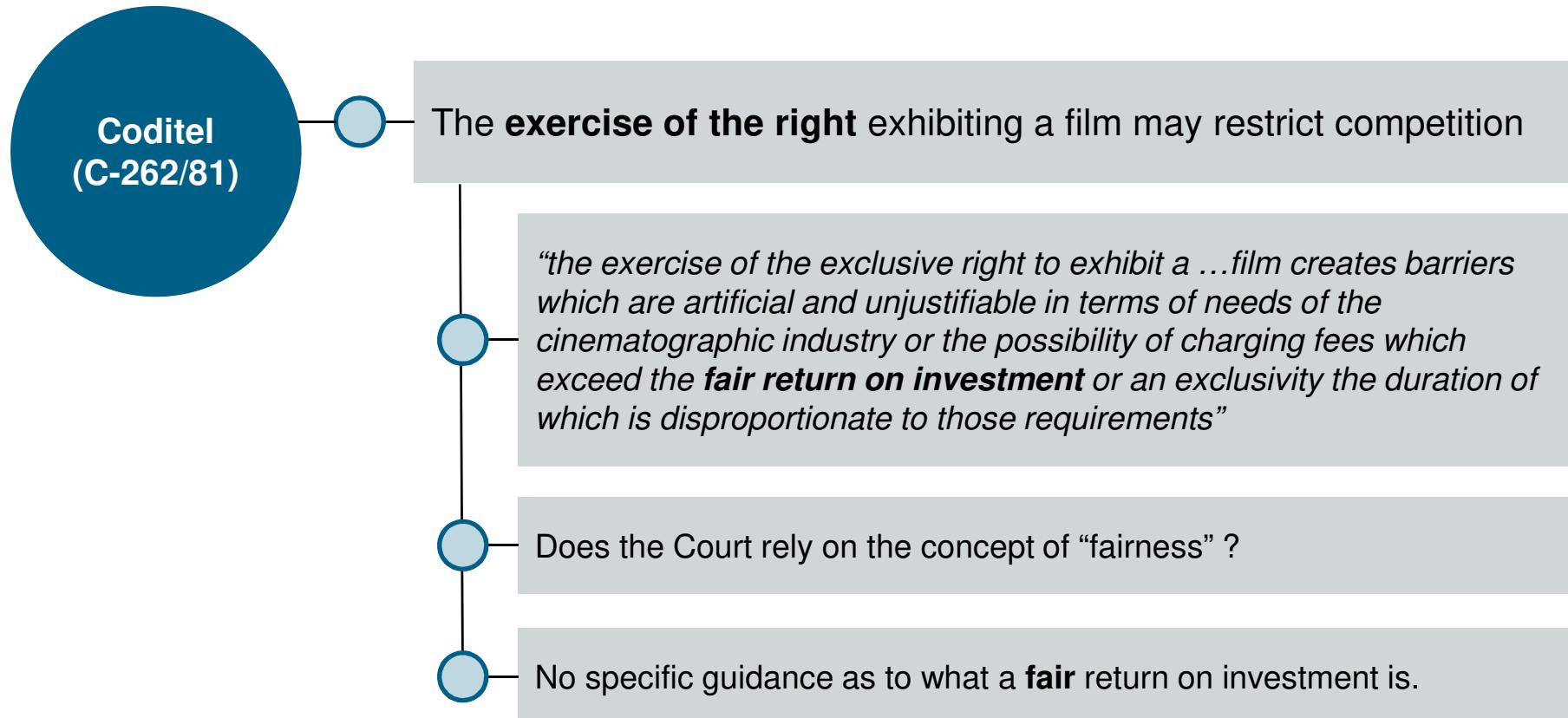


- Can the concept of “fairness” be a guiding principle for determining the competition law rules applicable to copyright licences?
- What does fairness mean?
 - Vague concept, with a strong subjective colouring
 - *“Implies a proper balance of conflicting economic interests”*
 - *“Impartial and just treatment or behaviour without favouritism or discrimination”*
 - Something is fair when it is perceived by those involved to be a *“proper balance of conflicting economic interests”*
- In the context of the EU Digital Single market, the offering or not offering of cross-border (performance) services seems to be a central issue in the current debate. Should or can fairness play a role in that debate?

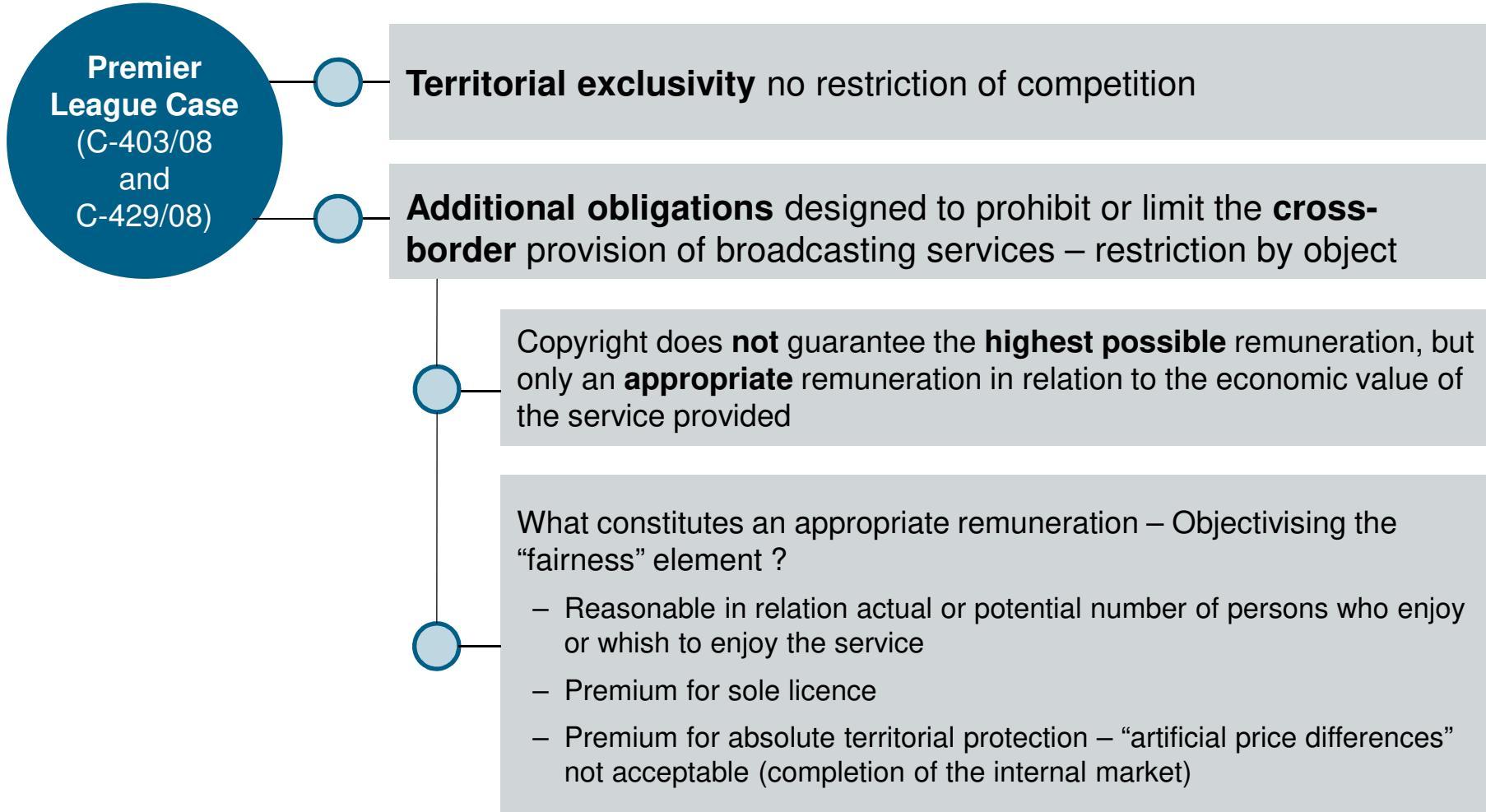
Coditel (C-262/81)



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Premier League Case (C-403/08 and C-429/08)





Blocking of unsolicited requests from customers established in the EEA but outside the broadcaster's licensed territory



- Single licence for a territory is not restrictive
- Geo-blocking does potentially raise a competition law issue (amongst others)

Territorial protection in the EU Digital Single Market : the issue

	Territorial scope of copyright is still linked to the territory of a Member State.
	License agreements regularly mirrors territorial scope of the copyright involved.
	Holder of a copyright has right to receive “appropriate remuneration” compared to the economic value of the service.
	“Value” of a work protected copyright may significantly differ from Member State to Member State, which almost naturally should result in significant differences in the appropriate remuneration received.
	Can in a digital context consumers established outside the territory covered by the licence easily (from a technical perspective) and arguably lawfully (from a copyright perspective) get access to content in the licensed territory?
	If so, significant “risk” or “opportunity” of arbitrage by migration of consumers from “high value” territory” to “low value” territory.

Does “absolute” territorial protection constitute an infringement ?

- What could be the “classic” assessment?
- Could considerations of “fairness” add anything?

Questions?

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