

Every Player Gets a Fine: UAE Criminal Court Issues Fines for Broadcast of Content Without Consent

Fiona Robertson - Senior Counsel, Head of Media - Digital & Data
- Dubai International Financial Centre

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Background

The broadcaster entered into a production agreement with a UAE based production company, whereby the latter would produce and deliver a television program to the broadcaster. The agreement obliged the production company to prepare, record and deliver the final complete series after satisfying all legal and non-legal requisites. The broadcaster obviously aired the program to the public on both its usual platform but also to its digital channels, as was anticipated by the agreement.

In one of the episodes, members of the public were video recorded without their knowledge. In this case, certain of those members of the public has not been asked if they could be included within the program, nor had they signed an appearance release, as would be usual for such programs.

The program was aired and these members of the public discovered that they were on television only as the program went to air. However they did not see the funny side of the program and filed criminal complaints under UAE Law No. 5 of 2012 (concerning Cyber Crimes) (the Cyber Crimes Law); charges were lodged against the broadcaster and the production company as well as each of the presenters of the program.

Public Prosecution

The Public Prosecution accused each of the defendants of recording and broadcasting footage of people, without obtaining their consent.

As part of the defence prepared for the broadcaster, a private media expert was appointed to prepare a report explaining the different roles and obligations of broadcasting and production companies in these situations. The expert explained that international and regional common practice was that broadcasters only bear responsibility for reviewing and censoring scenes from episodes that touch upon major issues that are not permitted to be broadcast by law, such as the promotion of drugs, insulting religions etc.

This responsibility does not generally include ensuring that approvals were taken from third parties whether they are for the appearance in the program, as in this case, or for material used such as music, photographs or artwork. This obligation traditionally always falls on the production company as does other practical production matters such as securing approvals and licenses required to record in public places.

The Court of First Instance issued its judgment imposing a fine of AED 50,000 to be paid by each defendant, with the fines totalling AED 450,000.

Deportation

The Public Prosecution appealed this judgment, asking that the court also consider Article 42 of the Cyber

Crimes law which relates to deportation. The article states that:

“The Court shall adjudge to deport the foreigner convicted for committing any of the crimes provided for in this Decree by Law after executing the prescribed punishment.”

The Court of Appeal agreed with the Public Prosecution in the Appeal judgment and added deportation to the initial ruling. The TV presenters challenged this judgment before the Court of Cassation. The challenge was rejected by the Court of Cassation and consequently, the judgment issued by the Court of Appeal is now final.

Comment

This case is a powerful reminder of the importance of ensuring proper legal checks are followed before material is broadcast.

Whilst it is usually the obligation of production companies within the media industry to seek all clearances , it is still recommended that broadcasters and publishers working in any digital environment ensure that production companies are aware of their obligations pertaining to obtaining all necessary approvals, and fulfil all legal requirements in relation to content that they deliver. This applies in relation to their legal requirements under the contract, and their obligations under the law.

Legal professionals should also be involved in the review of content production agreements and, in addition, of materials being considered for broadcast to ensure the proper filtering and removal of illegal scenes and materials.

Whilst a contract is always a good first step in the process, it cannot replace the implementation of proper legal checks to ensure that all parties understand what to expect beyond the boundaries of the contract, and how to mitigate risks by ensuring that all necessary approvals and licenses are in place.

Al Tamimi & Company’s Technology Media and Telecommunications team regularly works with the Litigation team on issues arising from media and content agreements and on regulatory matters and disputes. For further information please contact Fiona Robertson (f.robertson@tamimi.com or Omar Khodeir (o.khodeir@tamimi.com).