



## European Court Decision: Copyright Owner Consent Not Required to Hyperlink or Embed links on Websites

Recently, the European Court of Justice ruled on the applicability of European copyright law in the case of placing hyperlinks or embedded links on websites to works protected by copyright, published elsewhere on the internet (Svensson, et al./Retriever Sverige AB, Case C-466/12). The Court assessed whether article 3(1) of the Copyright Directive (2001/29/EC), which provides authors in the EU member states with an exclusive right to authorize or prohibit any “communication to the public” of their works, is applicable in that case.

### Case

The case was brought to the European Court by several journalists. These journalists wrote press articles that were published, *inter alia*, on the website of the *Göteborgs-Posten* newspaper. Retriever Sverige AB (“Retriever”), an operator of a website, provided its clients with clickable internet links to the aforementioned articles. The journalists claimed damages from Retriever based on copyright infringement. In this matter, questions relating to article 3(1) of the Copyright Directive were referred to the Court by the Swedish Court of Appeal.

### Assessment

The most important question in this case was whether the provision on a website of clickable links to works protected by copyright, although the works concerned are freely accessible on the ‘original’ website, constitutes an act of “communication to the public” as meant in article 3(1) of the Copyright Directive.

The Court held that, although hyperlinking, as in the present case is in fact a “communication to the public”, it does not constitute a “communication to the public” as is meant in article 3(1) of the Copyright

Directive. In the case of a “communication to the public,” the new communication must be directed at a “new public,” meaning a public that was not taken into account by the copyright owners when they authorized the initial communication to the public. According to the Court, in this case the communication could not be deemed to be directed at such a “new public,” as the original publications were directed at all internet users, a target audience already included in the segment of the population at which the later communications were directed. This implies that for providing hyperlinks to freely accessible (digital) works on a website, no permission from the copyright owners is required.

Furthermore, in the event the user gets the impression that the related work appears on the site on which the link was found, the Court held that providing clickable links does not constitute a communication to the public, as is meant in article 3(1) of the Copyright Directive. This implies that the provision of embedded links on websites does not require permission of the copyright owner.

Last but not least, the Court held that member states are not allowed to provide copyright users with a broader protection by stating that the term “communication to the public” includes a wider range of activities than those referred to in article 3(1) of the Copyright Directive. This means that national laws of member states may not require permission from copyright owners for placing hyperlinks or embedded links on websites.

### Conclusion

In Europe, the provision of clickable links on a website to copyright protect freely accessible works published elsewhere on the internet, generally does not constitute a “communication to the public.” This implies that, in Europe, hyperlinks or even, embedded links can be provided to the public without permission of the copyright owner(s) of the original work(s), as long as the original communication was not subject to restrictive (accessibility) measures.

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