



Press and Information

Court of Justice of the European Union
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Judgment in Case C-466/12
Nils Svensson and Others v Retriever Sverige AB

The owner of a website may, without the authorisation of the copyright holders, redirect internet users, via hyperlinks, to protected works available on a freely accessible basis on another site

This is so even if the internet users who click on the link have the impression that the work is appearing on the site that contains the link

Press articles written by several Swedish journalists were published on a freely accessible basis on the website of the *Göteborgs-Posten*. Retriever Sverige, a Swedish company, operates a website that provides its clients with clickable internet links (hyperlinks) to articles published on other websites, including the site of the *Göteborgs-Posten*. Retriever Sverige did not, however, ask the journalists concerned for authorisation to establish hyperlinks to the articles published on the site of the *Göteborgs-Posten*.

The Svea hovrätt (Svea Court of Appeal, Sweden) brought the matter before the Court of Justice to ascertain whether the provision of such links constitutes an **act of communication to the public** within the meaning of EU law¹. If so, the establishment of hyperlinks would not be possible without the authorisation of the copyright holders. EU law provides that authors have the exclusive right to authorise or prohibit any communication to the public of their works.

In its judgment delivered today, the Court holds that the provision of clickable links to protected works constitutes an **act of communication**. Such an act is defined as the making available of a work to the public in such a way that members of the public may access it (even if they do not make use of that possibility). In addition, the potential users of the site operated by Retriever Sverige can be regarded as a **public**, since their number is indeterminate and fairly large.

The Court points out, however, that the communication must be directed at a **new** public, that is to say, at a public that was not taken into account by the copyright holders at the time the initial communication was authorised. According to the Court, there is no such 'new public' in the case of the site operated by Retriever Sverige. As the works offered on the site of the *Göteborgs-Posten* were freely accessible, the users of Retriever Sverige's site must be deemed to be part of the public already taken into account by the journalists at the time the publication of the articles on the *Göteborgs-Posten* was authorised. That finding is not called into question by the fact that the internet users who click on the link have the impression that the work is appearing on Retriever Sverige's site, whereas in fact it comes from the *Göteborgs-Posten*.

The Court concludes from this that the owner of a website, such as that of Retriever Sverige, may, without the authorisation of the copyright holders, redirect internet users, via hyperlinks, to protected works available on a freely accessible basis on another site.

The position would be different, however, in a situation where the hyperlink permits users of the site on which that link appears to circumvent restrictions put in place by the site on which the protected work appears in order to restrict public access to that work to the latter site's subscribers

¹ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

only, since in that situation, the users would not have been taken into account as potential public by the copyright holders when they authorised the initial communication.

Lastly, the Court states that the Member States do not have the right to give wider protection to copyright holders by broadening the concept of 'communication to the public'. That would have the effect of creating legislative differences and, accordingly, legal uncertainty, when the directive at issue is specifically intended to remedy those problems.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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