

Liability for website operator that published hyperlinks to copyright materials

- ▶ Website operator liable for publishing links to material made freely available on another website in breach of copyright
- ▶ Where a hyperlink is provided for financial gain, there will be a presumption of knowledge of illegality

What's it about?

This case concerns the publication of an article online, which included a hyperlink to another website where photographs taken for Playboy magazine were available to download in breach of copyright. The website operator refused to remove the hyperlink on request by the licensee of the copyright in the photographs. Proceedings for copyright infringement in the Dutch Courts were commenced by the licensee against the website operator.

On a reference from the Dutch Courts, the Court of Justice of the European Union considered the application of the Copyright Directive (2001/29/EC) and ruled that:

- it was necessary to balance the rights of copyright holders against the fundamental rights of freedom of expression and of information, and of the general interest;
- any communication to the public of a work protected by copyright must be authorised by the copyright holder;
- posting a hyperlink on a website to a work published in breach of copyright on another website only amounts in itself to a "communication to the public" where the website operator knows or could reasonably be expected to know that the work had been posted without the copyright holder's consent;
- where there is pursuit of profit, there will be a presumption of knowledge of the illegality of the work to which the website provides access

Why does it matter?

Although the presumption of knowledge of illegality is rebuttable, this introduces a potentially onerous obligation on website operators seeking profit to carry out checks necessary to establish (a) whether a work that has been published on another website is protected by copyright; and (b) if so, whether the author of the work has consented to its publication.

Now what?

We expect to see further cases clarifying the extent to which the "pursuit of financial gain" and "necessary checks" elements of this judgment will be applied, in particular, to smaller and less obviously commercial website operators.

[Case C-160/15 GS Media BV v Sanoma Media Netherlands BV, Playboy Enterprises International Inc., Britt Geertruida Dekker](#)

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