

ECJ: hyperlink no infringement, even when embedded

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The ECJ recently rendered its eagerly awaited decision in the *Svensson* case. The Court held that the provision on a website of clickable links to works freely available on another website does not constitute an 'act of communication to the public' and therefore is not a copyright infringement. Only when the additional requirement of reaching a new public is met does the provision of a hyperlink require the copyright holder's authorisation.

The ECJ held that there was no new public because the public targeted by the initial communication consisted of all potential visitors to the site: the site was freely accessible without any access restrictions. This is different where a clickable link circumvents restrictions on the site on which the protected work appears or where the work is no longer available to the public on the site on which it was initially communicated. Users are considered a new public when the link constitutes an intervention without which those users would not be able to access the works transmitted.

The above even applies when Internet users click on the link at issue and the work appears in such a way as to give the impression that it is appearing on the site on which that link is found, whereas in fact that work comes from another site. Also in that case, only the work on the original site constitutes a communication to the public for which authorisation is required.

The ECJ also held that EU member states do not have the right to give wider protection to copyright holders by legislating that authorisation for hyperlinking to freely available content on a website is required.

Practical relevance

Since [Svensson](#) allows hyperlinking to freely available content, copyright holders are advised to restrict public access, for example, by way of subscription, installing a paywall or controlling access through protection software.
