



Press and Information

Court of Justice of the European Union

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Judgment in Case C-161/17

Land Nordrhein-Westfalen v Dirk Renckhoff

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**The posting on a website of a photograph that was freely accessible on another website with the consent of the author requires a new authorisation by that author**

*By posting on the internet, the photograph is made available to a new public*

Mr Dirk Renckhoff, a photographer, authorised the operators of a travel website to publish one of his photographs on their website. A pupil at a secondary school in Land North Rhein-Westphalia in Germany (Gesamtshcule de Waltrop) downloaded that photograph from the travel website (on which it was freely accessible) in order to illustrate a school presentation. It was then published on the school website.

Mr Renckhoff brought an action against the Land North Rhein-Westphalia before the German courts seeking an order prohibiting the reproduction of his photograph. He also claims damages of €400.

Mr Renckhoff claims that he gave a right of use only to the operators of the travel website and that the posting of the photograph on the school website is an infringement of his copyright.

In that context, the Bundesgerichtshof (Federal Court of Justice, Germany) asks the Court of Justice to interpret the Copyright Directive,<sup>1</sup> according to which the author of a work has the exclusive right to authorise or prohibit any communication to the public of that work.<sup>2</sup>

The Bundesgerichtshof wishes to know **whether the concept of ‘communication to the public’ covers the posting on a website of a photograph which has been previously published on another website without any restrictions preventing it from being downloaded and with the consent of the copyright holder.**

**By today’s judgment, the Court answers that question in the affirmative.**

The Court states, first of all, that a photograph may be protected by copyright law provided (which is for the national court to ascertain) that it is the intellectual creation of the author reflecting his personality and expressing his free and creative choices in the production of that photograph.

The Court goes on to hold that, subject to the exceptions and limitations laid down exhaustively in that directive, any use of a work by a third party without such prior consent must be regarded as infringing the copyright of that work. The directive aims to establish a high level of protection for authors, allowing them to obtain an appropriate reward for the use of their works, including on the occasion of communication to the public.

In the present case, the posting on one website of a photograph previously posted on another website, after it has been first copied onto a private server, must be treated as ‘making available’ and therefore, an ‘**act of communication**’ within the meaning of Article 3(1) of Directive 2001/29. Such posting on the internet gives visitors to the website on which it is posted (in this case the school website) the opportunity to access the photograph on that website.

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<sup>1</sup> 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).

<sup>2</sup> Article 3(1) of the directive.

Furthermore, the posting of a work protected by copyright on a website other than that on which it was initially communicated with the consent of the copyright holder must, in circumstances such as those at issue, be regarded as making available to a **new public**. In such circumstances, the public taken into account by the copyright holder when he consented to the communication of his work on the website on which it was originally published is composed solely of users of that website, and not (1) of users of the website on which the work was subsequently published without the consent of the right holder or (2) other internet users.

In that connection, the Court observes that such posting must be distinguished from the making available of protected works by means of clickable link leading to another website on which the initial communication was made.<sup>3</sup> Unlike hyperlinks, which contribute to the smooth functioning of the internet, the publication on one website without the authorisation of the copyright holder of a work previously published on another website with the consent of that copyright holder does not contribute, to the same extent, to that objective.

Lastly, the Court states that it is of little importance if, as in the present case, the copyright holder does not limit the ways in which the photograph may be used by internet users.

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**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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<sup>3</sup> [C-466/12](#) Sevensson and Others see also Press Release No [20/14](#)