

ECJ: Unauthorized Streaming of TV content constitutes Copyright Infringement

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Last week, the European Court of Justice ruled in a preliminary ruling that live streaming of television channels is a 'communication to the public' within the meaning of the EU Copyright Directive (Directive 2001/29). Therefore, the website TVCatchup, a free streaming service that offers over fifty channels of UK television on computers, smartphones and other devices connected to the internet, infringes the copyrights of commercial television broadcaster ITV.

To communicate protected works to the public under the Copyright Directive, permission of the right holder is needed. According to TVCatchup, only users with a valid television license are allowed to subscribe to its service. As users were already entitled to watch the streamed content on television, no additional permission is needed, argues TVCatchup. Besides, TVCatchup says it doesn't aim at a new public, as users are able to watch the broadcast on television anyway and users without a valid television license are disabled from the streaming service.

The Court judges differently. "Given that the making of works available through the retransmission of a terrestrial television broadcast over the internet uses a specific technical means different from that of the original communication, that retransmission must be considered to be a 'communication' within the meaning of the Directive." it says. "Each of those two transmissions must be authorised individually and separately by the authors concerned given that each is made under specific technical conditions, using a different means of transmission for the protected works, and each is intended for a public. In those circumstances, it is no longer necessary to examine the requirement that there must be a new public." As TVCatchup doesn't have ITV's permission to retransmit the television broadcasts, its streaming service constitutes a copyright infringement.

ITV welcomes the judgment of the Court of Justice. It means that dozens of websites showing live TV in the UK must now get rights clearance from broadcasters. We look forward to the UK court's implementation of this judgment. Nevertheless, TVCatchup claims that its service is hardly affected by the ruling. "Whatever the outcome of the ECJ, TVCatchup has already emerged as the clear victor from years of legal wrangling, and has established itself as the de facto online broadcast platform for web, tablet, mobile and numerous other applications." the company states in a press release. "TVCatchup is here to stay, we are not thinly disguised purveyors of filth, we remain Europe's first and only legal internet cable service and the ECJ opinion affects only a handful of channels we carry." But for the ECJ being a leader doesn't mean to be legal. It makes sense.