Reflections on the CJEU’s judgment in Spiegel online: is there a golden intersection between freedom of expression and EU copyright law?

Part I

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Digital Democracy: The Quest for Copyright

On 29 July 2019, the CJEU delivered its latest judicial decision in the case Spiegel Online GmbH v. Medien & Demokratie e.V. (C-469/17), which dealt with the interpretation of copyright limitations and exceptions in the European Union (EU) and their application in the context of news reporting and online publications. The CJEU’s decision has significant implications for the future of online publishing and the balance between copyright protection and freedom of expression.

1) The degree of freedom of Member States in relation to copyright exceptions

One of the central questions of the dispute concerns the delineation of the degree of latitude afforded to the MS in interpreting copyright exceptions and limitations. While the CJEU may impose a degree of uniformity on its Member States, the CJEU recognizes the need for flexibility in applying these exceptions and limitations to accommodate the diverse legal contexts of each MS.

2) Fundamental rights as external limits to copyright protection

Indeed, one of the fundamental principles of the EU is the respect for fundamental rights, which are integral to the interpretation of copyright exceptions and limitations. The CJEU, however, is not bound by these rights and can vary its interpretation of copyright exceptions and limitations to accommodate the specific legal context of each MS.

3) The role of the CJEU in shaping copyright law

The CJEU is far more austere and restrictive than the AG in its interpretation of copyright exceptions and limitations. While the AG is more inclined to favor a flexible interpretation of copyright law, the CJEU is more inclined to favor a restrictive interpretation of copyright exceptions and limitations.

4) The future of copyright law

The CJEU’s decision in Spiegel Online GmbH v. Medien & Demokratie e.V. (C-469/17) has important implications for the future of copyright law and its application in the context of online publishing. The CJEU’s decision is an important reminder that copyright exceptions and limitations must be interpreted in the context of the specific legal context of each MS.

Conclusion

The CJEU’s decision in Spiegel Online GmbH v. Medien & Demokratie e.V. (C-469/17) is an important step forward in the interpretation of copyright exceptions and limitations in the context of online publishing. The CJEU’s decision is an important reminder that copyright exceptions and limitations must be interpreted in the context of the specific legal context of each MS.

Endnotes


3) The Advocate General in his opinion (Opinion of the Advocate General (AG) in Spiegel Online GmbH v. Medien & Demokratie e.V. (C-469/17)) and (Spiegel Online GmbH v. Medien & Demokratie e.V. (C‑476/17)) and (Spiegel Online GmbH v. Medien & Demokratie e.V. (C-469/17)).


