
Kluwer Copyright Blog

European Copyright Society issues opinion on Svensson hyperlinking case

P. Bernt Hugenholtz (Institute for Information Law (IViR)) · Friday, February 15th, 2013



The European Copyright Society, a group of prominent European scholars, today issued an opinion on the *Svensson* case (Case C-466/12), which is currently before the European Court of Justice. The case, which was referred to the Court by the Swedish Court of Appeal (Svea hovrätt) on 18 October 2012, raises the important question whether setting a hyperlink to a copyright protected work amounts to ‘communication to the public’ within the meaning of Article 3(1) of the Information Society Directive.

In a detailed, 17-page opinion the European Copyright Society argues that the answer to this question should be a resounding **no**. According to the Society, “The importance of this particular reference should be evident to the Court. Although hyperlinking takes many forms and has multiple functions, there can be no doubt that it is the single most important feature that differentiates the Internet from other forms of cultural production and dissemination. Hyperlinking is intimately bound to the conception of the Internet as a network, and hyperlinks constitute paths leading users from one location to another. [...] The legal regulation of hyperlinking thus carries with it enormous capacity to interfere with the operation of the Internet, and therefore with access to information, freedom of expression, freedom to conduct business, as well – of course – with business ventures that depend on these types of linkages.”

Following an in-depth analysis of the right of communication to the public, the Society concludes: “If hyperlinking is regarded as communication to the public, all hyperlinks would need to be expressly licensed. In our view, that proposition is absurd. “

The European Copyright Society (ECS) was founded in January 2012 with the aim of creating a platform for critical and independent scholarly thinking on European Copyright Law. Its members are renowned scholars and academics from various countries of Europe, seeking to promote their views of the overall public interest.

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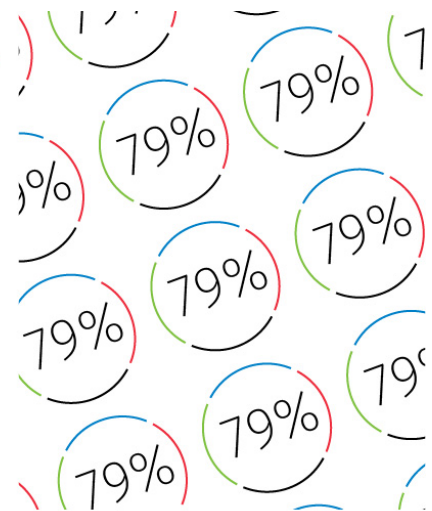
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