

EU court agrees not to break the web

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Europe's highest court has ruled that it will not break the web in the name of EU copyright law. Specifically, it has ruled that redirecting website visitors to other peoples' "protected" works via hyperlink does not constitute a legal breach.

Key to the European Court of Justice ruling is that material linked to must be "freely available" and the ruling stands "even if the internet users who click on the link have the impression that the work is appearing on the site that contains the link". If the Court had ruled otherwise, websites would need to seek permission every time they link to other material.

The case came about when the Svea Court of Appeal in Sweden redirected a complaint to it made by journalists in the country. It related to articles posted on the website of *Göteborgs-Posten*, a morning newspaper in western Sweden. Swedish company Retriever Sverige owns a website that works as an aggregator, providing links to, among other sites, *Göteborgs-Posten*. The Swedish court wanted Europe to decide on a rule of law that might mean hyperlinks could constitute "communication to the public" under Directive 2001/29/EC, which would make it problematic.

Under EU law, rights holders control the communication of their works to the public, exclusively, while producers can control how it's made available to the public. To breach the former part, a company or individual must have communicated the copyrighted work to a new audience, which the European Court ruled it had not. So although it found hyperlinks constituted communication, and Retriever Sverige's users constitute the public: "the communication must be directed at a new public, that is to say, at a public that was not taken into account by the copyright holders at the time the initial communication was authorised.

According to the Court, there is no such "new public" in the case of the site operated by Retriever Sverige. As the works offered on the site of the *Göteborgs-Posten* were freely accessible, the users of Retriever Sverige's site must be deemed to be part of the public already taken into account by the journalists at the time the publication of the articles on the *Göteborgs-Posten* was authorised."

The only point where it would become an issue, the Court ruled, is where hyperlinks work to "circumvent restrictions" -- i.e. paywalls.

Commenting on the news, Iain Connor of Pinsent Masons said, "The slight wrinkle is that where content is freely available, the decision appears to allow it to be 'framed' on a third party website. However, it should be possible to manage the framing issue by robust website terms and conditions and other legal means such as the author's right not to have his work falsely attributed to another."

Anyone operating behind a paywall would, after this ruling, have the ammunition to take a linking website to court under EU copyright law. The only thing that may have been left a little vague for some, however, is the word "restrictions". Although it's assumed this means paywalls, Field Fisher Waterhouse privacy expert Stewart Room told Wired.co.uk the language has the potential to be interpreted in a number of ways. For instance, the term restrictions could refer to technically restricted works such as those on the deep web and pages that are password protected. However it could include articles that are now freely available but initially came with a proviso that they were not to be read by the public. "Are restrictions technical ones, or can they be merely the use of language?" asked Room.