



UvA-DARE (Digital Academic Repository)

European Copyright Society issues opinion on Svensson hyperlinking case

Hugenholtz, B.

Publication date

2013

Document Version

Final published version

[Link to publication](#)

Citation for published version (APA):

Hugenholtz, B. (Author). (2013). European Copyright Society issues opinion on Svensson hyperlinking case. Web publication or website, Kluwer Copyright Blog. <http://copyrightblog.kluweriplaw.com/2013/02/15/european-copyright-society-issues-opinion-on-svensson-hyperlinking-case/>

General rights

It is not permitted to download or to forward/distribute the text or part of it without the consent of the author(s) and/or copyright holder(s), other than for strictly personal, individual use, unless the work is under an open content license (like Creative Commons).

Disclaimer/Complaints regulations

If you believe that digital publication of certain material infringes any of your rights or (privacy) interests, please let the Library know, stating your reasons. In case of a legitimate complaint, the Library will make the material inaccessible and/or remove it from the website. Please Ask the Library: <https://uba.uva.nl/en/contact>, or a letter to: Library of the University of Amsterdam, Secretariat, Singel 425, 1012 WP Amsterdam, The Netherlands. You will be contacted as soon as possible.

Related Sites:

Kluwer Copyright Blog



Browse Options



Previous Post
Germany: What do YouTube and GEMA have in common?



Next Post
Google: "We made history in a very good way for the citizens of France."

15 FEB 2013

European Copyright Society issues opinion on Svensson hyperlinking case

By [Bernt Hugenholtz](#), [Institute for Information Law \(IViR\)](#)



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

CONTRIBUTORS

Bernt Hugenholtz
Institute for Information Law (IViR)


[Posts](#)

Lucie Guibault
Institute for Information Law (IViR)


[Posts](#)

Brad Spitz
YS Avocats


[Posts](#)

Jeremy Blum
Bristows


[Posts](#)

Pablo Hernández Elzaburu


[Posts](#)

Philippe Laurent Marx, Van Ranst, Vermeersch & Partners


[Posts](#)

Martin Husovec
IMPRS-CI Doctoral Research Fellow at Max Planck Institute



KLUWER COPYRIGHT CASES

Italy: [Riccardo Pagani v. Leo Burnett Company S.r.l.](#), Ordinary Court of Turin, 32855/2014, 31 March 2015

UK: [1967 Ltd v. British Sky Broadcasting Ltd.](#), High Court of England and Wales, Chancery Division, Case No.: HC14C02952, 23 October 2014

UK: [Twentieth Century Fox Film Corp v. Sky UK Ltd](#), High Court of England and Wales, Chancery Division, [2015] EWHC 1082 (Ch), 28 April 2015

Ireland: [Playboy v. EMN](#), High Court of Ireland, 2014 207 P, 19 February 2015

The Netherlands: [NSE v. Stichting BREIN](#), Court of Appeal of Amsterdam, ECLI:NL:GHAMS:2014:3435, 19 August 2014

[List All](#)

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.

CATEGORIES: [Case law](#), [Communication \(right of\)](#), [European Union](#), [Making available \(right of\)](#), [Reproduction \(right of\)](#), [Sweden](#) | Tagged [embedding: hyperlinking](#) |

 **Tweet** 49

 **Share**

7



20



Previous Post
Germany: What do YouTube and GEMA have in common?



Next Post
Google: "We made history in a very good way for the

for Innovation and Competition

[Posts](#)

Tatiana Sinodinou
Department of Law,
University of Cyprus



[Posts](#)

Maria Fredenslund
RettighedsAlliancen



[Posts](#)

Ana Ramalho
University of
Maastricht



[Posts](#)

AFFILIATES

Members
Kluwer Copyright
Cases



[Posts](#)



**AIPPI 2015 Rio de Janeiro
World Congress
10 - 14 October 2015**

SEE ALL POSTS ON:

AP Austria
Authorship Belgium
Case law
Collective
management
Communication
(right of)
Copyright
Copyright
Authority/Board Czech
Republic Database right
Denmark Distribution
(right of) Duration
Enforcement
European
Union Exhaustion
France Germany
Infringement
Italy
Jurisdiction
Kluwer Copyright
Cases
Legislative
process
Liability
Limitations
Making
available
(right of) Moral
rights Neighbouring
rights
Netherlands
Originality
Ownership Poland
Private International Law
Remedies
Remuneration
(equitable)
Reproduction
(right of) Software
Spain Subject
matter
(copyrightable)
Sweden Technological
measures Transfer (of
right) United