[GB] Supreme Court Decides that Internet Browsing Does Not Infringe Copyright, but Refers the Issue to the European Court of Justice

IRIS 2013-6:1/20

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On 17 April 2013, the UK Supreme Court overturned earlier decisions of the High Court and the Court of Appeal and decided that reading or viewing copyrighted material online does not require the permission of the rightsholders, despite that fact that a temporary copy is made in the computer's cache and screen.

The case was brought by an association of public relations professionals who use on-line monitoring or search services; a company sends them monitoring reports with the opening words of an article, selected text, and a hyperlink. This requires a licence from the publishers of the newspapers involved as a permanent copy is transmitted by e-mail. However, the lower courts decided that a licence would also be required where a customer simply views a report on the company's website without downloading it as this also involves making a copy.

Section 28A of the Copyright, Designs and Patents Act 1988 was added to the Act to implement provisions in the 2001 Information Society Directive, Article 5.1 of which exempts temporary acts of reproduction which are 'transient or incidental' and 'an integral and essential part of a technological process' for transmission between third parties or for a lawful use. The reproduction must have no independent economic significance.

The Supreme Court considered the case law of the European Court of Justice, and concluded that the Article does in principle apply to browsing, as was made clear from the recitals to the Directive. Browsing is part of the process of transmission; the Article also extends to lawful use of the work, which includes browsing by an end-user. All the other conditions of the Article are satisfied by browsing. In particular, storage of the copy is simply to permit viewing, rather than downloading or other forms of copying, and thus temporary and transient. There is no discretionary decision by the user about how long the copy should be retained, unlike, for example where a decision has to be made to delete it. Moreover, in English and EU law it has never been an infringement of copyright simply to view or read an infringing article. If it was, anyone browsing who came across copyrighted material would incur civil liability.

Given the implications of the decision for many millions of people across the EU, the Court decided to make a reference to the European Court of Justice on

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whether the technical features at issue in the case satisfy the exemption in the Directive.

Public Relations Consultants Limited v The Newspaper Licensing Agency and others, [2013] UKSC 18, 17 April 2013

http://www.bailii.org/uk/cases/UKSC/2013/18.html

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