Court of Justice of the European Union: ECJ on use of works in the reporting of current events

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In a judgment of 29 July 2019 (Case no. C-516/17 – Spiegel Online v Volker Beck), the European Court of Justice (ECJ) decided that, in principle, the use of a protected work in the reporting of current events does not require the author's prior consent under the Copyright Directive (2001/29/EC). The quotation of a work by means of a hyperlink is also permitted as long as the quoted work, in its specific form, has previously been made available to the public with the rightsholder's authorisation or in accordance with a non-contractual licence or statutory authorisation.

The dispute concerned politician Volker Beck who, in 1988, had published an article that he claimed had been amended by the publisher. In the article, the politician had expressed sensitive and controversial views from which he had subsequently distanced himself. During the 2013 German parliamentary election campaign, he provided various newspaper editors with the manuscript of the disputed article to prove that it had been amended. However, he did not give consent for the texts to be published in the media. Instead, he published both versions of the article on his own website, along with a statement dissociating himself from the article and claiming that the published article had been distorted by the publisher. Spiegel Online subsequently published an article in which it contended that the politician had misled the public because, contrary to Beck's claim, the central statement contained in the manuscript had not been altered. In addition to the article, the original versions of the manuscript and published article were available for download by means of hyperlinks. The politician believed that his copyright had been infringed and challenged the making available of the complete texts. The Bundesgerichtshof (Federal Court of Justice) referred the case to the ECJ with questions concerning the interpretation of the provisions of Directive 2001/29/EC, in particular in relation to freedom of expression and freedom of the media.

The ECJ stressed that the directive did not fully harmonise the scope of the exceptions and limitations to authors' exclusive rights of reproduction and communication to the public and gave the member states significant, albeit highly regulated, discretion.

Freedom of information and freedom of the press, enshrined in the Charter of Fundamental Rights of the European Union, were not capable of justifying, beyond

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the exceptions and limitations provided for in the Directive, a derogation from the author's exclusive rights of reproduction and communication to the public.

Regarding the possibility for member states to allow exceptions to an author's exclusive rights for the purposes of reporting current events, this should not be made dependent on a prior request for the author's consent. It was for the national courts to ascertain whether the publication of the original versions of the manuscript (without the author's statements of dissociation) was necessary to achieve the informatory purpose. In doing so, they should particularly bear in mind that the protection of intellectual property rights is not an absolute right and evaluate whether the nature of the information at issue is of particular importance in political discourse or discourse concerning matters of public interest.

As regards the exception for quotations, the ECJ ruled that it was not necessary for the quoted work to be inextricably integrated, by way of insertions or reproductions in footnotes, for example, into the subject matter citing it. A quotation could therefore be made by including a hyperlink to the quoted work. In such cases, however, the use must be made "in accordance with fair practice, and the extent required by the specific purpose", that is, only within the confines of what is necessary to achieve the purpose of the quotation (namely reporting). This only applied to works that had already been lawfully made available to the public – either with the authorisation of the copyright holder or in accordance with a non-contractual licence or a statutory authorisation. The German courts will therefore now need to ascertain whether the publisher who originally published the manuscript acted lawfully. In the ECJ's view, the fact that Beck published the texts on his own website was not sufficient to justify a corresponding quotation right. For, in this case, the documents were lawfully made available to the public only in so far as they were accompanied by Beck's statements of dissociation.

Judgment of the CJEU (Grand Chamber), Case C-516/17, 29 July 2019

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