CJEU: Opinion on copyright infringements through framing

IRIS 2020-9:1/19

Jan Henrich
Institute of European Media Law (EMR), Saarbrücken/Brussels

On 10 September 2020, Advocate General Maciej Szpunar published his opinion in the case between *VG Bild-Kunst* and *Stiftung Preußischer Kulturbesitz* (C-392/19) concerning copyright infringements resulting from the embedding of third-party content on websites. He concluded that embedding works using automatic links (so-called inline linking) requires the authorisation of the copyright holder, whereas embedding them using clickable links using the framing technique does not. The same would apply if the works were embedded by circumventing technical measures taken or instigated by the copyright holder to prevent framing. Framing is the division of a webpage into different parts, in each of which the content of a different webpage can be displayed.

The case, referred by a German court, involved the Stiftung Preußischer Kulturbesitz, a foundation under German law that operates the Deutsche Digitale Bibliothek, an online library devoted to culture and knowledge. The library website contains links to digitised content stored on the Internet portals of participating institutions. The library itself only stores thumbnails, that is, smaller versions of the original images.

The Verwertungsgesellschaft Bild-Kunst (VG Bild-Kunst) is a copyright collecting society for the visual arts in Germany. It makes the conclusion of a licence agreement for the use of its catalogue of works conditional on the licensee undertaking to apply effective technical measures against the framing by third parties of the thumbnails displayed on the Deutsche Digitale Bibliothek website. The Stiftung Preußischer Kulturbesitz had brought an action against this condition, which it considered unreasonable. The German Bundesgerichtshof (Federal Supreme Court) submitted to the Court of Justice of the European Union questions on the interpretation of Directive 2001/29/EC on the exclusive right of the copyright holder to authorise or prohibit the communication of its works to the public, including the making available to the public of works in such a way that members of the public may access them from a place and at a time individually chosen by them.

In his opinion, Advocate General Szpunar suggested that the embedding of third-party works made freely accessible to the public on other websites with the copyright holder’s consent, using clickable links based on the framing technique

© European Audiovisual Observatory (Council of Europe) 2026

did not require the authorisation of the copyright holder. It could be assumed that such permission had been given when the work had originally been made available. However, this did not apply to so-called inline links, in which works were automatically displayed when a webpage was opened without the need for the user to take any action. This form of embedding, which was usually used in the context of graphics or audiovisual files, required the rightsholder's permission because it made the content appear to be an integral part of the webpage containing the link.

Schlussanträge vom 10. September 2020 in der Rechtssache C-392/19

http://curia.europa.eu/juris/liste.jsf?language=de&td=ALL&num=C-392/19

Opinion of 10 September 2020 in Case C-392/19

http://curia.europa.eu/juris/document/document.jsf?docid=230872&text=&dir=&doclang=EN&part=1&occ=first&mode=DOC&pageIndex=0&cid=7383004

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026