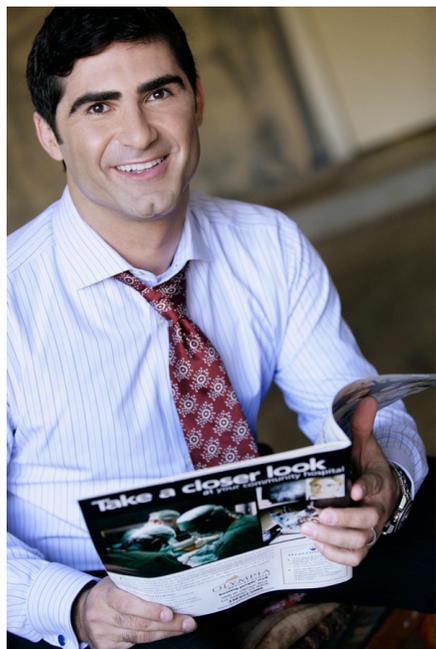


## Hyperlinks and Copyright

### Infringement:

### EU's New Rules

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#### Hyperlinks and Copyright Infringement

- No liability unless poster of links has knowledge, or has reason to know, material linked to is not authorized by copyright holder
- If link posted for-profit, the poster has a duty to make "necessary check" if work linked to is authorized by copyright holder

This month the Court of Justice of the European Union (CJEU) issued a ruling directly impacting the practice of posting links to works hosted on other websites, also known as hyperlinks. Even though an individual may not be hosting or displaying copyrighted material on their website, in certain circumstances outlined in this new ruling, an individual can still be liable for copyright infringement for the act of linking to said copyrighted work hosted on other websites.

This case was the result of a Dutch news website, *GeenStijl*, posting hyperlinks to Playboy photos of a popular model. Despite being asked multiple times by Playboy to stop linking to the copyrighted images, *GeenStijl* refused and posted links to the images in multiple different news stories. While *GeenStijl* were not directly hosting or displaying any of the images, Playboy argued that their repeated linking to third parties hosting said images, especially after multiple cease and desist requests, made them liable for copyright infringement. The CJEU agreed with Playboy and issued an important holding outlining the contours of copyright infringement in this area.

The crux of the case was what constitutes "communication to the public". In a 2014 case, *Svensson*, the CJEU ruled that posting a link to material that is already available to the public does not constitute "communication to the public" and hence does not infringe on the copyright holder's rights.

## Posting a link for profit, must carry out the checks necessary to ensure that the work concerned is not illegally published.

The theory was that there would need to be a new act where by the copyrighted material was communicated to a “new public” for infringement. According to the Svensson ruling, simply posting a link to material already available on the Internet was not communicating the material to the “new public”, so no infringement. However this most recent ruling adds some caveats to this rule.

Posting a hyperlink to a copyrighted work will now be deemed “communication to the public” and therefore an act of copyright infringement, in two new situations. First, in a case where an individual knows or should know that material they are linking to on the third party website is hosted there without the permission of the copyright holder, they will be liable for infringement. This operates on a basic negligence standard. In this case, GeenStijl was sent multiple cease and desist letters stating the copyright holder did not authorize the images being linked to. This clearly satisfied the “knowledge” requirement imparting liability under this first situation. The second situation, “when hyperlinks are posted for profit, it may be expected that the person who posted such a link should carry out the checks necessary to ensure that the work concerned is not illegally published.” This is a much stricter standard and lays the burden of implied knowledge and duty of checking the legitimacy copyrighted materials on individuals posting links in for-profit situations.

In conclusion this ruling is very important to anyone operating a website subject to EU laws, which posts hyperlinks to copyrighted works. If it becomes known that the works that are being linked to are not authorized by the copyright holder, the poster must immediately cease and desist or face infringement liability. More importantly, if an entity is posting links for-profit, they have the duty of checking the copyrighted work they are linking to are authorized. This is an important new area where operators of website can expose themselves to copyright liability, and as a result, must conduct careful due diligence whenever linking to material.



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