



Press and Information

Court of Justice of the European Union

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Judgment in Case C-607/11

ITV Broadcasting Ltd and Others v TVCatchup Ltd

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## **Television broadcasters may prohibit the retransmission of their programmes by another company via the internet**

*That retransmission constitutes, under certain conditions, 'a communication to the public' of works which must be authorised by their author*

EU law<sup>1</sup> seeks to establish a high level of protection for authors of works, allowing them to obtain an appropriate reward for the use of those works, including on the occasion of communication to the public. To that end, authors have an exclusive right to authorise or prohibit any communication of their works to the public.

TVCatchup Ltd ('TVC') offers an internet television broadcasting service. This service permits its users to receive, via the internet, 'live' streams of free-to-air television broadcasts.

TVC ensures that its subscribers can obtain access only to content which they are already legally entitled to watch in the United Kingdom by virtue of their television licence. The terms to which users must agree include the possession of a valid TV licence and a restriction of use of TVC services to the United Kingdom alone. The TVC website has the facility to authenticate the user's location and thereby to refuse access where the conditions imposed on users are not satisfied.

Several British commercial television broadcasters take exception to the distribution by TVC over the internet, substantially in real time, of their television broadcasts. They have for that reason brought proceedings against TVC before the High Court of Justice (England and Wales) (Chancery Division) for breach of their copyright in their broadcasts and films, alleging, inter alia, that there is a communication to the public which is prohibited both by national law and by Directive 2001/29.

The High Court asks the Court of Justice whether there is a communication to the public, within the meaning of Directive 2001/29, in the case where an organisation such as TVC streams over the internet broadcasts to members of the public who would have been entitled to access the original broadcast signal using their own television sets or laptops in their own homes.

**First of all, the Court of Justice determines the meaning of the concept of 'communication'** and ascertains whether, in the present case, TVC's activity comes within the scope of that concept. Directive 2001/29 states that the right of communication to the public covers any transmission or retransmission of a work to the public not present at the place where the communication originates, by wire or wireless means, including broadcasting. In addition, authorising the inclusion of protected works in a communication to the public does not exhaust the right to authorise or prohibit other communications of those works to the public. The Court accordingly finds that, when a given work is put to multiple use, **each transmission or retransmission of that work using a specific technical means must, as a rule, be individually authorised by its author.**

Accordingly, given that the making of works available through the retransmission of a terrestrial television broadcast over the internet uses a specific technical means different from that of the original communication, that retransmission must be considered to be a 'communication' within the

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<sup>1</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167 of 22.6.2001, pp. 10-19).

meaning of Directive 2001/29. Such a retransmission cannot therefore be exempt from authorisation by the authors of the retransmitted works when these are communicated to the public.

**Second, the Court of Justice ascertains whether the protected works have in fact been communicated to a 'public'.** According to the Court's case-law, the term 'public' refers to an indeterminate number of potential recipients and implies, moreover, a fairly large number of persons. The Court points out that the cumulative effect of making the works available to potential recipients should be taken into account and that, in that connection, it is in particular relevant to ascertain the number of persons who have access to the same work at the same time and successively.

The Court finds that, in the present case, the retransmission of the works over the internet is aimed at all persons resident in the United Kingdom who have an internet connection and who claim to hold a television licence in that State. Those persons may access the protected works at the same time, in the context of the '*live streaming*' of television programmes over the internet. Thus, that retransmission is aimed at an indeterminate number of potential recipients and implies a large number of persons. Consequently, the Court holds that, by the retransmission in question, the protected works are indeed communicated to a public within the meaning of Directive 2001/29.

Accordingly, the Court answers that the concept of 'communication to the public', within the meaning of Directive 2001/29, must be interpreted as covering a retransmission of the works included in a terrestrial television broadcast, where the retransmission is made by an organisation other than the original broadcaster, by means of an internet stream made available to the subscribers of that other organisation who may receive that retransmission by logging on to its server, even though those subscribers are within the area of reception of that terrestrial television broadcast and may lawfully receive the broadcast on a television receiver.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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