



17 April 2013

PRESS SUMMARY

Public Relations Consultants Association Limited (Appellant) v The Newspaper Licensing Agency Limited and Others (Respondents) [2013] UKSC 18

On appeal from: [2011] EWCA Civ 890

JUSTICES: Lord Neuberger (President), Lord Kerr, Lord Clarke, Lord Sumption, Lord Carnwath

BACKGROUND TO THE APPEAL

This appeal raises an important question about the application of copyright law to the technical processes involved in viewing copyright material on the internet.

Where a web-page is viewed by an end-user on his computer, without being downloaded, the technical processes involved will require temporary copies to be made on screen and in the internet “cache” on the hard disk of the computer. The end-user’s object is to view the material. He does not make a copy unless he downloads or prints the image. The copies temporarily retained on the screen or in the cache are merely an incidental consequence of using a computer to view the material.

Temporary copies of copyright material on a computer are dealt with by section 28A of the Copy, Designs and Patents Act 1988. S28A gives effect to Directive 2001/29/EC (“the Directive”). The Directive gives copyright owners various rights. Article 5.1 qualifies rights in relation to “temporary acts of reproduction” which are “transient or incidental [and] an integral and essential part of a technical process whose sole purpose is to enable: (a) the transmission in a network between third parties by an intermediary, or (b) a lawful use of a work or other subject-matter to be made, and which have no independent economic significance...”

The appellant is a professional association of public relations professionals who monitor news coverage for clients, using on-line monitoring and search services. The Meltwater group of companies provides members of the association with automated software programmes to create a daily index of words appearing on newspaper websites. Meltwater’s customers supply them with search terms, and Meltwater produces a monitoring report listing the results. Meltwater sends the monitoring report to the customer by email, but the customer can also access it through Meltwater’s website.

The question in this appeal is whether Meltwater’s customers need a licence to receive its service if a monitoring report is made available only on Meltwater’s website. Proudman J held that the end-user needed a licence and the Court of Appeal agreed, largely on the ground that making copies, however temporary, in the end-user’s computer while browsing was not part of the technological process but generated by the user’s voluntary decision to access the web-page.

JUDGMENT

Before making an order, the Court refers the question of whether the requirements of article 5.1 of the Directive are satisfied to the CJEU for a preliminary ruling. Lord Sumption gives the judgment of the Court.

REASONS FOR THE JUDGMENT

Lord Sumption reviewed and summarised the effects of a series of CJEU decisions [26]. He rejects the idea that article 5.1 does not apply to temporary copies generated by an end-user of the internet. Recital 33 to the Directive makes clear it was intended to “include acts which enable browsing as well as acts of catching to take place.” Browsing by its very nature is an end-user function. These acts are “acts of temporary reproduction” which “enable” browsing and are the making of temporary copies in the end-user’s cache and screen. The exception is wider than the process of transmission in a network between third parties by an intermediary. Article 5.1(b) also extends it to “lawful use”. This covers use of work subject to copyright, whether or not authorised by the copyright owner, provided it is not restricted by legislation. This necessarily includes use of the work by an end-user browsing the internet [27]. Once it is accepted that the purpose of article 5.1 is to authorise the making of copies to enable the end-user to view copyright material on the internet, the various conditions laid down by it must be constructed consistently with that purpose, and apply to ordinary technical processes associated with internet browsing [28].

As to the other conditions of article 5.1, copies in the cache and on screen are an integral part of a technological process as they are basic features of modern computers. The technical process required to browse the internet could not function “correctly and efficiently” with the acts of reproduction concerned [29]. Copies are stored automatically by browsing and deleted automatically by a lapse of time coupled with continuing browser use, rather than being dependent on discretionary human intervention. The technological processes are those necessarily associated with browsing including retention of material in the cache for no longer than the ordinary processes associated with internet use continue. The restriction to “temporary” and “transient” is designed to prevent downloading or copying which is permanent until the user chooses to delete the material. The copying has no independent economic value unless Meltwater’s customers download or print the material. The sole economic value is from accessing information on Meltwater’s website which is derived from merely reading it on screen [31].

The above conclusions would not result in large-scale piracy. It has never been an infringement of EU or English law to view or read an infringing article in physical form. Making mere viewing, rather than downloading or printing, the material an infringement could make infringers of millions of ordinary internet users across the EU. Nothing in article 5.1 stops Meltwater needing a licence to upload copyright material on their website. The copyright owner still has remedies against pirates including the remedies provided in the Directive itself.

Given the appeal’s transnational dimension and potential implications for internet users across the EU, the Court, while expressing its own view of the matter, proposes to refer the matter to the CJEU for a preliminary ruling. The question which it will refer is (in substance) whether the requirements of article 5.1 of the Directive that acts of reproduction should be (i) temporary (ii) transient or incidental and (iii) an integral and essential part of the technological process are satisfied, having regard in particular to the fact that copies may remain in the cache after the browsing session that generated them has ended until overlaid by other material, and a screen copy will remain on screen until the browsing session is terminated by the end-user [38].

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html