



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 101/19

Luxembourg, 29 July 2019

Judgment in Case C-516/17
Spiegel Online v Volker Beck

The use of a protected work for the purposes of reporting current events does not, in principle, require a prior request for authorisation

Furthermore, a work may be quoted by means of a hyperlink, provided that that quoted work, in its specific form, was previously made available to the public with the copyright holder's authorisation or in accordance with a non-contractual licence or statutory authorisation

Volker Beck, a former member of the Bundestag (Federal Parliament, Germany) is the author of a manuscript on criminal policy relating to sexual offences committed against minors, which was published under a pseudonym in an article to a book published in 1988. In 2013, that manuscript was discovered in certain archives and was put to him when he was standing for election to the Bundestag. Mr Beck, who contended that the meaning of his manuscript had been altered by the publisher of the book, provided various newspaper editors with that manuscript for the purposes of proving that it had been altered, but did not give consent for the editors to publish the manuscript. He did, however, publish the manuscript and book contribution on his own website indicating across those documents that he distanced himself from them.

Spiegel Online, which operates an internet news portal, published an article in which it contended that, contrary to Mr Beck's claim, the central statement in his manuscript had not been altered. In those circumstances, Spiegel Online made the original versions of the manuscript and book contribution available to its readers for download by means of hyperlinks.

Taking the view that making those documents available infringed his copyright, Mr Beck challenged the lawfulness of making those documents available before the German courts.

In that context, the Bundesgerichtshof (Federal Court of Justice, Germany) referred questions to the Court of Justice, in particular, on the scope of the exceptions, provided for under the Copyright Directive,¹ relating to the reporting of current events and to quotations which exempt a user from seeking the authorisation of the copyright holder.

In today's judgment, the Court rules, first of all, that the directive does not fully harmonise the exceptions and limitations to the copyright holder's exclusive right to reproduce his or her work and to communicate it to the public. The Member States therefore enjoy significant discretion, albeit highly circumscribed, in its transposition and application.

Next, the Court states that freedom of information and freedom of the press, enshrined in the Charter of Fundamental Rights of the European Union, are not capable of justifying, beyond the exceptions or limitations provided for in the directive in that regard, a derogation from the author's exclusive rights of reproduction and of communication to the public.

As far as concerns the balance which a national court must strike between the exclusive rights of the author and freedom of expression, the Court underlines that the protection of intellectual property rights is not absolute and that it is necessary, where appropriate, to take into account the

¹ 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, p. 10).

fact that the nature of the 'speech' or information at issue is of particular importance, notably in political discourse and discourse concerning matters of the public interest.

In particular, as regards the possibility for the Member States to allow the use of protected works in connection with the reporting of current events (to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible), the Court holds that, **in applying such an exception or limitation, the Member States cannot subject the exception or limitation to a requirement for the author's prior consent.**

The Court notes in that regard that it is for the Bundesgerichtshof to ascertain whether the publication of the original versions of the manuscript and of the article published in 1988, in full and without indicating that Mr Beck distanced himself from the content of those documents, was necessary to achieve the informatory purpose.

As far as concerns the quotation exception provided for in the directive, the Court finds that it is not necessary that the quoted work be inextricably integrated, by way of insertions or reproductions in footnotes, into the subject matter citing it. On the contrary, such quotations may also be made by including a hyperlink to the quoted work.

Nevertheless, the use in question must be made in accordance with fair practice, and to the extent required by the specific purpose. Accordingly, Spiegel Online's use of the manuscript and article from 1988 for the purposes of quotation must not be extended beyond the confines of what is necessary to achieve the informatory purpose of that particular quotation.

Lastly, the Court states that **the exception for quotations applies only if the quotation in question relates to a work which has already been lawfully made available to the public. That is the case where the work, in its specific form, was previously made available to the public with the rightholder's authorisation or in accordance with a non-contractual licence or statutory authorisation.**

It is for the Bundesgerichtshof to ascertain whether, at the time of Mr Beck's initial publication of the manuscript as an article in a book, the publisher had the right, whether contractually or otherwise, to undertake the editorial amendments in question. If not, it would need to be held that, in the absence of the rightholder's consent, the work, in the form in which it was published in that book, was not made lawfully available to the public.

However, when Mr Beck's manuscript and article were published on his own website, those documents were lawfully made available to the public in so far as Mr Beck's statements distancing himself from them were included.

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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