



Press and Information

Court of Justice of the European Union  
**PRESS RELEASE No 125/17**  
Luxembourg, 29 November 2017

Judgment in Case C-265/16  
VCAST Limited v RTI SpA

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## **The making available of copies of television programmes saved in the cloud must be authorised by the holder of the copyright or related rights**

*The service constitutes a retransmission of the programmes concerned*

VCAST is a company incorporated under UK law which makes available to its customers via the Internet a remote video recording system for terrestrial programmes of Italian television organisations, among which are those of RTI (Reti Televisive Italiane). The customer selects a programme and a time slot. The system operated by VCAST then picks up the television signal using its own antennas and records the time slot for the selected programme in the cloud data storage space indicated by the user, thereby making the copy of the programmes broadcast available to the customer via the Internet.

VCAST has sought a declaration from the Tribunale ordinario di Torino (District Court, Turin, Italy) of the lawfulness of its activities. To that end, it invokes the private copying exception, according to which the authorisation of the copyright owner or holder of related rights is not necessary in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation<sup>1</sup>.

Turin District Court, following an application for interim measures submitted by RTI, provisionally prohibited VCAST from pursuing its activity. In that context, before delivering its ultimate decision, it decided to submit questions to the Court of Justice for a preliminary ruling asking, in essence, whether VCAST's service, provided without the consent of the copyright owner or holder of related rights, is compatible with the Copyright Directive.

By today's judgment, the Court finds that the service provided by VCAST has a dual functionality, consisting in ensuring both the reproduction and the making available of protected works.

To the extent that the service offered by VCAST consists in the making available of protected works, it falls within communication to the public. In that regard, the Court recalls that, according to the directive, any communication to the public, including the making available of a protected work or subject-matter, requires the rightholder's consent, given that the right of communication of works to the public should be understood, in a broad sense, as covering any transmission or retransmission of a work to the public by wire or wireless means, including broadcasting.

The Court takes the view that the original transmission made by the broadcasting organisation, on the one hand, and that made by VCAST, on the other, are made under specific technical conditions, using a different means of transmission for the protected works, and each is intended for its public.

The Court concludes that the (re)transmission made by VCAST constitutes a communication to a different public from that of the original transmission and must therefore receive the **consent of**

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<sup>1</sup> Article 5(2)(b) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

**the copyright owner or holder of related rights.** Accordingly, such a remote recording service cannot fall within the private copying exception.

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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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