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Judgment of the Court in Case C-788/24 | Anne Frank Fonds

Copyright in the European Union and geo-blocking: a work that is in the public domain can be published online free of charge in a Member State even if it remains protected in another Member State

The website on which the work is made available must incorporate an 'effective' technological measure to prevent its being accessed by internet users visiting the website from a Member State in which that work is protected

At the time of the occupation of the Netherlands by Nazi Germany during the Second World War, Anne Frank was a German-Jewish teenager living in Amsterdam (Netherlands) with her family. Between 1942 and 1944, she kept a personal diary of her daily life in hiding which bears witness to the Shoah. Her father, Otto Frank, the sole survivor of the family, published his daughter's writings in 1947. He subsequently established the Anne Frank Fonds (Anne Frank Fund) in 1963, an organisation intended to continue Anne Frank's social, educational and cultural legacy.

Since Otto Frank's death, copyright in the works of Anne Frank has been held by the Anne Frank Fund. In the Netherlands, parts of those works are protected until 2037. However, in many other countries, including Belgium, copyright has already expired and those works are now in the public domain.

The Anne Frank Stichting (Anne Frank Foundation) was established in 1957. Its purpose is, *inter alia*, to maintain the Anne Frank House in Amsterdam and to spread the ideals bequeathed to the world in *The Diary of Anne Frank*. In September 2021, on the initiative of that foundation and other entities, ¹ a scholarly edition of Anne Frank's manuscripts was published online, free of charge, in the Dutch language. Access to that website is, however, restricted by a geo-blocking system which prevents the site from being accessed from States in which the manuscripts are protected by copyright. In 2021, the Anne Frank Fund brought legal proceedings to stop this dissemination of the manuscripts.

The Supreme Court of the Netherlands, the court of last instance in this dispute, has referred questions to the Court of Justice. The national court wishes to know whether, under EU law, ² making these works available online qualifies as a 'communication to the public' if Dutch internet users can circumvent the geo-blocking by means of a Virtual Private Network (VPN) or similar service.

In its judgment today, the Court of Justice rules that a work that is in the public domain in certain Member States can be published free of charge on a website even if it remains protected by copyright in another Member State. That is subject, however, to the proviso that the website must incorporate a geo-blocking measure designed to ensure that access to that website is blocked for internet users who visit it from that other Member State. As long as it is state of the art, such a measure may be regarded as being effective, even if it can be circumvented by a VPN or similar service.

The Court recalls that the concept of 'communication to the public' includes two cumulative criteria, namely an act of communication of a work and the communication of that work to a public.

Where a work is protected by copyright only in certain Member States but is in the public domain in others, any person

who knows this to be the case and who publishes the work free of charge for the first time on a website must ensure that that work is made accessible only to internet users who are liable to access that website from the Member States in which the work is in the public domain. Otherwise, that person would be infringing the right of the copyright holder to authorise or prohibit any communication to the public.

That person must therefore adopt effective technological measures to restrict access to the website. The Court considers that state-of-the-art geo-blocking constitutes an effective technological measure given that, even if it can be circumvented by the use of a VPN, it does not impair free access to the work, free of charge, in the Member States in which the work is in the public domain, yet protects the interests of the copyright holder in the Member States in which the work is still protected.

The Court also makes clear that if there is a communication of a work to the public because the geo-blocking of the website is not an effective technological measure, responsibility for the communication lies with the person who put the work online, not the provider of the VPN used to circumvent that geo-blocking.

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 EU law or the validity of an EU 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 and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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Images of the delivery of the judgment are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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² [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.