

# USE OF INTERNET LINKS TO COPYRIGHT PROTECTED CONTENTS FOR COMMUNICATION IN E-SPACE

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***Hyperlink*** – a highlighted word or picture in a document or Web page that you can click on with a computer mouse to go to another place in the same or a different document or Web page



Essential  
internet  
technology



Instrument for  
copyright  
infringement

## Berne Convention for the Protection of Literary and Artistic Works (1886)

Article 8(1) Authors of literary and artistic works protected by this Convention shall have the **exclusive right of authorizing** the reproduction of these works, **in any manner or form.**

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- 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
- Article 3 (1) Member States shall provide authors with the **exclusive right** to authorise or prohibit any **communication to the public** of their works, by wire or wireless means, including the making available to the public of their works.....

Court of Justice of the European Union

13 February 2014 judgment in case C-466/12 *N. Svensson, S. Sjögren, M. Sahlman vs. P. Gadd, Retriever Sverige AB*

Hyperlink is an ‘act of communication’

‘Communication to the public’ when -

- a) directed at a new public (circumvent restrictions);
- b) no longer available to the public on the site on which it was initially communicated.

*Court of Justice of the European Union*

*8 September 2016 judgment in case GS Media v Sanoma Media Netherlands and Others (C-160/15)*

Concept of hyperlink as ‘communication to the public’ requires an individual assessment **using several criteria:**

- accessibility on another website with or without the consent of the copyright holder;*
- knowledge of the consequences of its action*
- profit-making or nonprofit nature of hyperlink.*

**Rightholders** in all cases, have the possibility of **informing** such persons of the **illegal nature of the publication** of their work on the internet and of taking action against them if they refuse to remove that link



# Conclusions

- When hyperlinks to copyright-protected content are used **for commercial purposes**, the provider **must make sure** that this material is available on the Web with copyright holder's permission.
- When hyperlinks to copyright-protected content are used for **nonprofit** purposes, provider can not provide links **only in cases** when content availability is **obviously illegal**.
- In any case it is necessary to remove hyperlink to illegally available material within a reasonable time after copyright holder's request.
- The links can be legally provided if such provision is in accordance with copyright exceptions, established in article 5 of Directive 2001/29 / EC .