



C-5/08 Infopaq International A/S v Danske Dagblades Forening, judgment of 16 July 2009

The Court interprets the provisions of Directive 2001/29/EC on copyright, pronouncing in particular on the concept of reproduction in part of a work and on the conditions relating to the requirement of the author's consent.

Infopaq is a firm which, by means of a "data capture process", draws up summaries of articles from Danish newspapers and sends them by e-mail to its customers, on the basis of agreed subject criteria. Danske Dagblades Forening ("DDF"), an association of Danish daily newspaper publishers, whose function is inter alia to assist its members with copyright issues, became aware of these practices and of the fact that Infopaq was acting without authorisation from the relevant rightholders. Taking the view that such consent is necessary, DDF formally required Infopaq to request this consent, in accordance with the copyright rules. Infopaq, disputing DDF's claim, applied to the competent courts for acknowledgement that it is entitled to apply the procedure in question without the consent of DDF or of its members.

The case was brought before the *Højesteret*, which referred questions to the Court of Justice concerning the interpretation of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society, and in particular on the concept of reproduction in part and on whether the procedure in question can be used without the consent of the rightholders.

The Court first emphasises that the author's right to authorise or prohibit reproduction applies to a "work", i.e. the author's own intellectual creation. The protection also extends to parts of a work, since, as such, they share the originality of the whole work and contain elements which are the expression of the intellectual creation of its author.

The Court then specifies that, as regards newspaper articles, their author's own intellectual creation is evidenced from the manner in which the subject is presented and the linguistic expression. Newspaper articles are therefore literary works covered by Directive 2001/29/EC. The Court does not rule out that certain isolated sentences, or even certain phrases of a newspaper article are suitable for conveying to the reader the originality of the intellectual creation of its author and are therefore liable to come within the scope of the protection provided for in the Directive as constituting reproduction in part of a protected work.

Finally the Court analyses whether the procedure implemented by Infopaq fulfils the conditions provided for under Article 5 of Directive 2001/29/EC to be exempt from the requirement to obtain the consent of the author, even for the reproduction in part of a protected work. It concludes that this is not the case here, as the act of reproduction under this procedure is neither transitory nor incidental.