TO THE PRESIDENT AND MEMBERS OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

WRITTEN OBSERVATIONS

submitted pursuant to Article 23 of the Statute of the Court of Justice by the European Commission represented by Ms Julie Samnadda, member of its Legal Service, acting as agent with an address for service in Luxembourg at the office of Ms Merete Clausen also a member of the Commission's Legal Service, Bureau F3/907, Bâtiment BECH, 5 Rue A Weicker, L-2721 Luxembourg, who consent to service by e-Curía

in Case C-360/13

a request for a preliminary ruling by the Supreme Court of the United Kingdom pursuant to Article 267 of the TFEU in proceedings between

PUBLIC RELATIONS CONSULTANTS ASSOCIATION

Appellants

v

THE NEWSPAPER LICENSING AGENCY LIMITED and others

Respondents

1. **THE LEGAL CONTEXT**

   *The Directive*

1. Articles 2 (a) of the Directive provides as follows

   **Reproduction right**

   *Member States shall provide for the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part:*

   *(a) For authors, of their works;*

2. Article 5(1) provides for a mandatory exception to the exclusive right of reproduction set out in Article 2.

   1. Temporary acts of reproduction referred to in Article 2, which are transient or incidental and an integral and essential part of a technological process and whose sole purpose is to enable:

      *(a) A transmission in a network between third parties by an intermediary, or*

      *(b) A lawful use of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.*

3. Article 5(5) provides as follows:

   *The exceptions and limitations provided for in paragraphs 1, 2, 3 and 4 shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder.*

4. Recital 33 sets out:

   *(33) The exclusive right of reproduction should be subject to an exception to allow certain acts of temporary reproduction, which are transient or incidental reproductions, forming an integral and essential part of a technological process and carried out for the sole purpose of enabling either efficient transmission in a network between third parties by an intermediary, or a lawful use of a work or other subject-matter to be made. The acts of reproduction concerned should have no separate economic value on their own. To the extent that they meet these conditions, including those which enable transmission systems to function efficiently, provided that the intermediary does not modify the information and does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information. A use should be considered lawful where it is authorised by the rightholder or not restricted by law. This exception should include acts which enable browsing as well as acts of caching to take place,*
2. **THE MAIN PROCEEDINGS AND THE REFERENCE FOR A PRELIMINARY RULING**

5. This is a reference dated 24 June 2013 from the Supreme Court of the United Kingdom that country's highest court ("the Reference") and ("the Referring Court") respectively.

6. The issue that has been referred is whether acts of reproduction that occur in acts of browsing including via the cached memory on one's computer fall within the scope of the exemption in Article 5(1) of the Directive in which case no licence is required from the relevant rightholder. Although the issue, as such, arises in the context of a commercial dispute which the Commission summarises below, in the view of the Referring Court, it has wider consequences for all ordinary internet users. The Referring Court considers that the factual situation on which the questions are based is as described in paragraph 7 of the Order for Reference.

7. The Referring Court has not set out the wider and rather complicated background to the commercial dispute. The Referring Court has only focused on the point of law which needs to be referred. The facts are as set out at paragraphs 3-4 of the Supreme Court Judgment in its judgment of 17 April 2013 ("the Supreme Court Judgment") at [2013] UKSC 18.

8. The appellants before the Referring Court, Public Relations Consultants Limited ("the Appellants") are a company whose members use the services of media monitoring companies. The respondents are the Newspaper Licensing Agency ("the NLA"), a body whose role is to license its members' online publications; and also the publishers of national newspaper publishers who are members of the NLA namely MGN Limited, Associated Newspapers Limited, Express Newspapers Guardian news and media Limited, Telegraph Media Group Limited and Independent Print Limited ("the Respondents").

9. The dispute began in the lower courts as to whether one of the companies that provides a service to the Appellants, a company called Meltwater needed a licence

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1 The judgments of the lower courts (the Court of Appeal [2011] EWCA Civ 890 and the High Court [2010] EWHC 3099 Ch) may prove of assistance by way of background.
to provide its media monitoring service to their subscribers. This media monitoring service involved preparing a so called "monitoring report" using automated software to create an index of words appearing on newspaper websites. The monitoring report presents the opening words of the article, the keyword together with several words on either side of it, and a hyperlink (in the form of a reproduction of the headline) which enables the user to access the article on the relevant source website. It should, however, be noted that if that website has a pay wall, the link will not enable the user to avoid it. He will have to pay for access to the material behind the pay wall on the same terms as anyone else.

10. In the course of the dispute, Meltwater which had initially disputed whether any of the material taken from the newspapers and included in the media monitoring report was protected by copyright, agreed to provide their service under licence granted by the NLA on behalf of the right holders in this case, the newspaper publishers.

11. As regards the mode in which Meltwater provided the service to their customers—an issue then arose as to whether the customers of Meltwater required a licence to receive the service provided by the Appellants, as in its present form, the service automatically involves the transmission of the monitoring report by e-mail. The Appellants then further agreed that the licence acquired from the Respondents should also cover in its scope, Meltwater's customers when Meltwater sends the monitoring report to the customer by email.

12. However, another way of using Meltwater's service would be for the customer to access the monitoring report on Meltwater's website. This is the point on appeal to the Supreme Court. What is in dispute is whether in circumstances where the monitoring report is merely available on the media monitoring service provider's own website, in this case Meltwater, (where it is to be lawfully displayed and can be accessed as it has been licensed by the relevant rightholders in this case, the Respondents), the question that arises is whether in such circumstances, user subscribers require a licence to view the monitoring report found on the website of the media monitoring service provider itself.

13. In the earlier litigation, the lower Courts had concluded that a licence was required by the end users i.e. the clients of Meltwater in order to view material on an e-mail
or webpage on Meltwater’s own website. The Referring Court was asked to re-examine the decisions of the High Court and the Court of Appeal.

14. On this point, the Referring Court strongly disagrees with both its lower courts that a licence is required to view a webpage on Meltwater’s own website.

15. In the view of the Referring Court, although this point arises in the context of a commercial dispute concerning a newspaper clipping online service which is provided to user subscribers, it has consequences beyond the scope of this dispute as it may also apply any user who is a member of the public, when a user browses content that is protected by copyright.

16. The Referring Court situates this issue in a wider context and considers that the interpretation sought by the Respondents in relation to Article 5(1) would also necessarily means that any end users in the normal course of accessing the internet in their everyday life would require a licence for acts of browsing any material including any material which is retained in the cached memory of a computer. This is because, as argued by the Respondents, those acts give rise to copies which fall outside the scope of Article 5(1).

17. In this regard, it should be pointed out that at the time that the High Court and the Court of Appeal had come to their respective decisions that a licence was required for the activity in dispute before this Court had handed down its judgments in Case C-403/08 Judgment of the Court of 4 October 2011 FAPL v QC Leisure and Case C-429/08 Murphy V Media Protection ("Premier League") and Case C-302/10 Order of the Court of 17 January 2012 Infopaq International v Danske Forening ("Infopaq II"). At the time of the decisions in the lower court in the national proceedings, this Court had only ruled in Case C-5/08 Judgment of 16 July 2009 Infopaq International v Danske Forening ("Infopaq I").

18. Accordingly, the Referring Court has decided to refer to the Court the question of whether the conditions in Article 5(1) of the Directive whereby acts of reproduction in order to qualify should be (i) temporary, (ii) transient or incidental and (iii) an integral and essential part of the technological process, are satisfied by the technical features described at paragraphs 2 and 31-32 of the Supreme Court judgment.
3. **The question referred**

1. In circumstances where:

   (i) an end-user views a web-page without downloading, printing or otherwise setting out to make a copy of it;

   (ii) copies of that web-page are automatically made on screen and in the internet "cache" on the end-user's hard disk;

   (iii) the creation of those copies is indispensable to the technical processes involved in correct and efficient internet browsing;

   (iv) the screen copy remains on screen until the end-user moves away from the relevant web-page, when it is automatically deleted by the normal operation of the computer;

   (v) the cached copy remains in the cache until it is overwritten by other material as the end-user views further web-pages, when it is automatically deleted by the normal operation of the computer; and

   (vi) the copies are retained for no longer than the ordinary processes associated with internet use referred to at (iv) and (v) above continue;

Are such copies (i) temporary, (ii) transient or incidental and (iii) an integral and essential part of the technological process within the meaning of Article 5(1) of Directive 2001/29/EC?

4. **Analysis**

19. In the light of the judgments of the Court in *Infopaq I*, *Premier League* and *Infopaq II*, an act of reproduction is exempt from the reproduction right if it fulfils five cumulative conditions:

   (i) it is temporary,

   (ii) it is transient or incidental,

   (iii) it is an integral and essential part of a technological process;

   (iv) its sole purpose is to enable a transmission in a network between third parties by an intermediary or a lawful use of a work or protected subject-matter; and

   (v) the act has no independent economic significance
20. In *Premier League*, paragraphs 162-164, the Court set out the general approach to the interpretation of Article 5(1) which appears to threefold. The exception should be applied narrowly, yet at the same time it must be capable of being effectively applied; and last of all the exception should be applied in accordance with is objective to strike a fair balance for users of protected works that avail themselves of new technologies:

"162 It is clear from the case-law that the conditions set out above must be interpreted strictly, because Article 5(1) of the Copyright Directive is derogation from the general rule established by that directive that the copyright holder must authorise any reproduction of his protected work (Infopaq International, paragraphs 56 and 57).

163 None the less, the interpretation of those conditions must enable the effectiveness of the exception thereby established to be safeguarded and permit observance of the exception's purpose as resulting in particular from recital 31 in the preamble to the Copyright Directive and from Common Position (EC) No 48/2000 adopted by the Council on 28 September 2000 with a view to adopting that directive (OJ 2000 C 344, p. 1).

164 In accordance with its objective, that exception must allow and ensure the development and operation of new technologies and safeguard a fair balance between the rights and interests of right holders, on the one hand, and of users of protected works who wish to avail themselves of those new technologies, on the other."

21. It should be noted that the Referring Court's questions are confined to the first three conditions in Article 5(1) of the Directive which pertain to the process by which the copies arise. In *Premier League*, the Court considered these conditions to be fulfilled and addressed its reasoning to the last two conditions. The Court has interpreted the first two conditions in *Infopaq I*, paragraphs 61-71 and the third condition in *Infopaq II*, paragraphs 30-32.

22. In the present case, the Referring Court is satisfied that the last two conditions have been fulfilled. Those remaining conditions are that the sole purpose of the acts of reproduction in question is to enable a lawful use; and that those acts have no independent economic significance. The Referring Court has also determined that the condition which pertains to enabling a transmission in a network between third parties is not of relevance in the present case. The Commission will, nevertheless, also comment on these conditions (lawful use and lack of independent economic significance) for the sake of completeness.
23. The Commission notes that each feature of (i)-(vi) as set out in the Question of the Referring Court is likely to overlap and so far as possible, the Commission will address them together. In particular, it seems that the requirement of temporary nature of the copies in question could be interpreted together with the requirement of transience of the copy. In a similar vein, the condition concerning the incidental (to the main use) nature of the copy in question could be analysed together with the requirement that the reproduction forms an integral and essential part of the technological process. To date, though, the Court has sought to separate the first three conditions in its approach to Article 5(1) but in the view of the Commission there is, as the Referring Court acknowledges, a degree of overlap amongst the first three conditions themselves.

24. The reason that the first three conditions are in issue in the present case, is that the Respondents rely on the fact that there has been human intervention. The Respondents appear to rely on this argument as human intervention featured in *Infopaq I*. In the view of the Respondents, the acts of human intervention oust the exception. As far as the Question itself is concerned, the acts of human intervention in question are set out in (i), (iv) and (v) and would appear to be respectively, viewing, moving from one website to another and accessing a cache in a computer memory or indeed viewing a cache.

25. The main submission of the Respondents is that it is human intervention which allows a screen copy to appear and be viewed; and it is also human intervention which causes the screen copy to disappear. In the submission of the Respondents, these acts of human intervention mean that by definition the first three conditions cannot be fulfilled: the nature of the human intervention is such that the acts in question do not give rise a temporary act of reproduction which is transient or incidental and an integral and essential part of the technological process.

26. As regards the first three conditions, in essence, as formulated by the Referring Court, the questions concern the status of the acts of reproduction which appear on the screen at the user's end i.e. the end user who can view the screen ("end user"). The images which the end user can view appear on the screen ("the screen copy").

27. As regards the human intervention in question, the Commission does not find the arguments of the Respondent convincing in this respect.
Acts of browsing and caching

28. For the sake of convenience, the Commission will also describe the screen copy which arises on a screen either through an act of browsing or because the end user moves from web page to web pages as a browsing copy ("browsing copy"); and/or the screen copy which is generated is a result of being retained in the cache memory of the computer as a cached copy ("cached copy").

29. First of all, Recital 33 which interprets Article 5(1) expressly refers to the exception applying to "acts which enable browsing as well as acts of caching to take place". It follows that the Union legislature envisaged that browsing copies and cached copies would fall within the scope of the exception. That Recital also addresses how certain types of caching can take place by referring to the role of intermediaries. These acts of caching can take place "including [emphasis added] those which enable transmission systems to function efficiently under certain conditions provided that "the intermediary". This means that the legislature envisaged both browsing and caching as within the scope of the exception in Article 5(1).

30. In the view of the Commission, the end user (the human) only intervenes to enable himself to view the screen copies whether or not these copies are browsing copies or cached copies. In the view of the Commission, the screen copies which constitute a browsing copy or a cached copy are dictated by technology and the acts of human intervention that occur are merely ancillary to the process of what otherwise occurs in a machine. The acts of human intervention in this respect are akin to switching on a television set for viewing; or loading a DVD player.

31. As the Commission understands it, copies are generated and may appear as screen copies available for viewing in the general course of operation of a computer when a person switches on his computer, and completes the process to log on and access the internet and thereafter moves from webpage to webpage with the "click of a mouse" or movement of a cursor.

32. As regards the transient nature of the reproductions, this condition is fulfilled in the case of browsing copies and cached copies. It has also has been confirmed by the Court in its case law on Article 5(1) in particular Infopaq I, paragraphs 63-64 where the Court stated:
This finding is supported by recital 33 in the preamble to Directive 2001/29 which lists, as examples of the characteristics of the acts referred to in Article 5(1) thereof, acts which enable browsing as well as acts of caching to take place, including those which enable transmission systems to function efficiently. Such acts are, by definition, created and deleted automatically and without human intervention.

In the light of the foregoing, the Court finds that an act can be held to be ‘transient’ within the meaning of the second condition laid down in Article 5(1) of Directive 2001/29 only if its duration is limited to what is necessary for the proper completion of the technological process in question, it being understood that that process must be automated so that it deletes that act automatically, without human intervention, once its function of enabling the completion of such a process has come to an end.

Neither the reference to the absence of "human intervention" nor the reference to "duration" in paragraphs 63 and 64 should be taken outside the context of the factual circumstances that applied in Infopaq I. Indeed, Infopaq I should be read as confirming that browsing and caching are "acts [which] are, by definition, created and deleted automatically and without human intervention".

It is, of course, possible to distinguish between the browsing copy and the cached copy and to argue that only a browsing copy is truly transient but a cached copy is not in that its duration is longer and it may be cleared from the cache. In the view of the Commission, this argument is not supported by the Court's judgments so far.

In Infopaq I, the Court stated that temporary and transient acts of reproduction are intended to enable the completion of a technological process of which they form an integral part when they do not exceed what is necessary for the proper completion of that process. Moreover, the Court confirmed that acts of browsing and caching are the examples of acts falling within the ambit of Article 5(1) as they enable transmission systems to function efficiently. Such acts, in the Court's view, are by definition created and deleted automatically and without human intervention. In this context, the Court, warned however, that the deletion should not be dependent of the end-user's will so that it could remain in existence for a longer period depending on the user's needs.

The Commission would observe that as regards the acts of reproduction occurring in the course of viewing copyright protected material on computer's screen that those acts by their very nature do not last longer than is necessary for the proper
completion of the process of browsing including browsing that arises with a cached copy. The technological characteristics of computer screens make the acts of reproduction in question transient by definition, as they are continuously overwritten by materials which are shown on computer screen subsequently i.e. once the process of moving from a given website or part of a website is concluded.

37. The Commission would conclude on that basis that acts of reproduction involved in viewing copyright protected material on computer screen in the course of the process of internet browsing do meet the requirement of being of a temporary and transient nature. This conclusion should not be affected by the fact that there are instances when the user can artificially stretch the time of the reproduction on the screen, for example by hibernation of his computer. Such activity would merely extend the length of those temporary acts of reproduction but would certainly not deprive them of their essential characteristic of being an integral and essential part of the technological process.

38. In a similar vein, insofar as the temporary acts of reproductions occurring in end users' computer memory are concerned, it should be observed that those acts should also be viewed as part of the same process even though such cached copies can last longer. However, they should be considered temporary for as long as they are created and deleted without any human intervention (most of the users are not even aware of the existence of those copies). The latter conclusion is not affected by the fact that the end-user is free to decide about the size of the cache memory of its computer (and consequently the period of time after which the cache copy is going to be deleted/overwritten) as such a decision in no way affects the automated nature of the creation and deletion of those copies.

39. Although the cached copies seem not to be indispensable for the process of internet browsing to be successfully accomplished e.g. caching can be disabled; it can also be cleared. However, cached copies facilitate that process and it can be concluded that they enable the transmission system to function efficiently. The acts of reproduction occurring in the cache memory of the end-user's computer could therefore be considered as being purely incidental to the main use of the copyright protected content and as forming an integral part of the process of web-browsing.
40. As regards the condition of "an integral and essential part of a technological process" where once again as in the present case, human intervention is involved, the Court was clear that a manual involvement does not mean that the exception does not apply. This was confirmed in *Infopaq II* paragraphs 30-32 where the Court stated:

"30 The concept of the 'integral and essential part of a technological process' requires the temporary acts of reproduction to be carried out entirely in the context of the implementation of the technological process and, therefore, not to be carried out, fully or partially, outside of such a process. This concept also assumes that the completion of the temporary act of reproduction is necessary, in that the technological process concerned could not function correctly and efficiently without that act (see, to that effect, *Infopaq International*, paragraph 61).

31 Furthermore, given that Article 5(1) of Directive 2001/29 does not specify at which stage of the technological process the acts of temporary reproduction must be carried out, it cannot be excluded that such an act can initiate or terminate that process.

32 Similarly, there is nothing in that provision to indicate that the technological process must not involve any human intervention and that, in particular, manual activation of that process be precluded, in order to achieve a first temporary reproduction."

41. It is true that it is often the end-user's intervention that causes the act of reproduction on the screen to start or to cease. However, such acts form an inherent part of the process of internet browsing. In *Infopaq II*, the Court was faced with the question whether the stage of technological process at which temporary acts of reproduction occur and the fact that that technological process involves human intervention matters for article 5(1) of the Directive to apply. The Court stressed that the Directive does not specify at which stage of the technological process the acts of temporary reproduction occur.

42. Consequently, according to the Court, it cannot be excluded that those acts of reproduction can initiate or terminate that process. In addition, the involvement of manual intervention in the technical set-up such as the one in the case at stake does not deprive those acts of reproduction of their temporary nature as long as they are an integral part of the entire technological process and they are indispensable for its correct and efficient functioning. Moreover, in the case of the reproductions on the screen, they are also deleted because of the user's activity. Nevertheless, in the
majority of cases those acts of triggering/deletion take place without awareness on
the part of the user.

43. In the view of the Commission, when applied to acts of browsing or caching which
give rise to cached and browsing copies, paragraphs 30-32 of Infopaq II merely
affirm that acts of browsing and caching are not dictated by the limited forms of
human intervention that occur in browsing or viewing cached copies.

44. Indeed, if one deconstructs the acts of active human intervention to which the
Respondents could possibly object, these would amount cumulatively to the acts of
switching on a computer, moving a mouse or cursor and moving from webpage to
webpage. They could also include failing to log off and shut down, leaving the
computer on all night. Such human intervention only achieves "manual activation"
but does not dictate what occurs in the technological process.

45. Therefore, the Commission would conclude that the first three conditions in Article
5(1) apply.

Lawful use

46. The question of viewing a website to which one has access, though, should not be
confused with the issue that is under discussion namely whether the further
condition of lawful use is satisfied in the present case. The Referring Court
considers this to be the case. According to Recital 33 of the Directive, a use should
be considered lawful where it is authorised by the right holder or not restricted by
law. In the present case, there is lawful access as Meltwater is licensed to display
the material on its website, so there is consent by the rightholder to the display.

47. As to the more general issue of ordinary internet users, who may not have an
individual authorisation from rightsholders, it is therefore necessary to verify
whether the use in question could be considered as not restricted by law. The
Commission considers that the viewing of websites by acts of browsing or surfing is
not an act restricted by copyright in any work of an author to which the viewer may
have access.

48. In Premier League, paragraphs 169-172, the Court had the opportunity to address
this point, in the context of television images to which viewers had access. The
"use" of copyright protected works was very similar to the one in the present case at stake as it concerned acts of reproduction occurring in the satellite decoder's memory and finally appearing on television screen for viewers to enjoy. The Court concluded in that context that those acts of reproduction were necessary to enable the satellite decoder and the television to function correctly. Furthermore, the Court went on to hold that from "the television viewers' standpoints [the temporary copies] enable the broadcasts containing protected works to be received" *Premier League*, paragraph 170.

49. The Court stressed in *Premier League*, paragraph 171 that mere reception i.e. picking up of the broadcast and its visual display) in private circles "does not reveal an act restricted by European Union legislation "could neither be considered as restricted act by EU law nor by national legislation". There is no reason not to apply this reasoning to the present case i.e. visual display of webpages via internet browsing including of cached copies. Such a visual display or viewing of this material should, therefore, not be treated as a restricted act according to EU law. In the present case, the temporary reproductions occurring in computer's cache memory and on the computer's screen are also necessary to enable Internet browsing to function correctly. Without those acts, internet browsing would either be very difficult in the absence of a caching function in the computer. There seems to be no reason why such reasoning should not be extended to the present case of internet browsing, which would indeed not be possible without user having the possibility of viewing the browsed content on the screens of their computers and without some temporary copies being created in the memories of the computers.

50. By the purposive interpretation of the Directive, the Court acknowledged in its judgment in *Premier League* that had the acts of reproduction in question not been compliant with the requirements of Article 5(1) all television viewers would have been simply prevented from receiving broadcasts containing protected works.

51. On that basis the Commission is of the view that the Referring Court's assessment is correct and it is not necessary for the Court to address the fourth condition (lawful use) of Article 5(1) of the Directive.

52. As regards the last condition of independent economic significance, once again, the Court's reasoning in *Premier League*, paragraphs 175-179, can also apply to the
present case. Any economic significance should also be independent in the sense that it goes beyond the economic advantage derived from the viewing or visual display involved in mere acts of browsing including of cached copies.

53. This approach was confirmed in *Infopaq II* where the Court clarified that the requirement of "independent economic significance" would not be met only if the "distinct or separable" advantage derived from an act of temporary reproduction would allow the author of that act to make a profit due to the economic exploitation of the temporary act of reproduction in question.

54. This reasoning could be easily applied to general internet browsing. First of all, acts of reproduction in question are inherent to browsing insofar as they are inseparable and non-autonomous parts of that process; and without them taking place, the use of copyright protected works would be far less efficient in the case of acts of reproduction occurring in the course of caching; or would not be possible at all in the case of acts of reproductions on the user's computer screen. As far as the dispute before the Referring Court is concerned, the only economic advantage that end-users can derive from browsing content on Meltwater's website at the moment of reading/viewing of the copyright protected content in question and no distinct or separable economic advantage can be derived.

55. In addition, as the Court also held at *Premier League*, paragraph 179, a finding to the contrary in relation to this last condition of "independent economic significance" would impede or even paralyse the actual spread and contribution of new technologies. If acts of temporary reproductions such as those in the case at stake were not to be considered as falling within the ambit of Article 5(1) of the Directive and the licensing agreements were required from end users for all acts of reproduction of that nature, the use of Internet would be completely paralysed. Furthermore, a requirement that authorisation is required from rightholders, might be disproportionate when applied to the internet as a general rule. It cannot be excluded that any particular website contains together with copyright protected works, material that is not protected by copyright or material that is in the public domain. It is not possible by viewing to distinguish properly between the different types of material and to ascertain whether what is being viewed is protected by copyright or not.
56. In addition, of direct relevance to the facts of the present case, viewing can occur when access is free or otherwise unhindered to the original website and the website has been made available online with the consent of the authors concerned. Any use of copyright works in such circumstances should be assumed to be done or be done with the implied permission (and thereby licence) of the author or copyright owner.

57. On that basis, the Commission concludes that the Referring Court’s assessment is correct and it is therefore not necessary for the Court to address the fifth condition (independent economic significance) of Article 5(1) of the Directive.

5. CONCLUSION

58. As the Court stressed in Premier League, paragraph 164 in relation to Article 5(1) of the Directive and in the light of its objectives "that exception must allow and ensure the development and operation of new technologies and safeguard a fair balance between the rights and interests of right holders, on the one hand, and of users of protected works who wish to avail themselves of those new technologies, on the other."

59. Accordingly, the Commission proposes that the Court should reply to the Question posed by the Referring Court as follows:

"Where the circumstances set out at (i)-(vi) of the Question apply, the copies that arise are temporary acts of reproduction which are temporary, transient or incidental and an integral and essential part of the technological process within the meaning of Article 5(1) of Directive 2001/29."

60. Therefore, the Commission submits that the Court should answer the questions of the Referring Court as follows:

**Question**: Where the circumstances set out at (i)-(vi) of the Question apply, the copies that arise are temporary acts of reproduction which are temporary, transient or incidental and an integral and essential part of the technological process within the meaning of Article 5(1) of Directive 2001/29.
Julie SAMNADDA

Agent for the Commission
Brussels, 16 December 2013
sj.a(2013)4004064

The Registry
Court of Justice
of the European Union

L – 2925 Luxembourg

Subject: C-360/13 – Public Relations Ltd V Newspaper Licensing Agency Limited

CORRIGENDUM

Dear Sir,

In the original English version, there appear the following errors or omissions of syntax which have been corrected in the French translation. The Commission would be grateful if this Note can be placed on the file for those reading the original English version.

Paragraph 29 - line 8: the phrase “meets those conditions” is inserted before the full stop after the word “the intermediary”;

Paragraph 49 - line 3: the word “and” is inserted after the word “legislation”; and at line 10 the word “either” should be deleted; and at line 13, the word “a” should be inserted before the word “user”.

Julie SAMNADDA