

Case C-5/08

Infopaq International A/S

v

Danske Dagblades Forening

(Reference for a preliminary ruling
from the Højesteret)

(Copyright — Information society — Directive 2001/29/EC — Articles 2 and 5 —
Literary and artistic works — Concept of ‘reproduction’ — Reproduction ‘in part’ —
Reproduction of short extracts of literary works — Newspaper articles — Temporary
and transient reproductions — Technological process consisting in scanning of articles
followed by conversion into text file, electronic processing of the reproduction, storage
of part of that reproduction and printing out)

Opinion of Advocate General Trstenjak delivered on 12 February 2009. . . . I - 6572

Judgment of the Court (Fourth Chamber), 16 July 2009 I - 6624

Summary of the Judgment

1. *Approximation of laws — Copyright and related rights — Directive 2001/29 —
Harmonisation of certain aspects of copyright and related rights in the information
society — Right of reproduction — Reproduction in part — Concept
(European Parliament and Council Directive 2001/29, Art. 2(a))*

2. *Approximation of laws — Copyright and related rights — Directive 2001/29 — Harmonisation of certain aspects of copyright and related rights in the information society — Right of reproduction — Exceptions and limitations — Conditions — Transient nature of the act of reproduction*

(European Parliament and Council Directive 2001/29, Art. 5(1))

1. An act occurring during a data capture process, which consists of storing an extract of a protected work comprising 11 words and printing out that extract, is such as to come within the concept of reproduction in part within the meaning of Article 2 of Directive 2001/29 on the harmonisation of certain aspects of copyright and related rights in the information society, if the elements thus reproduced are the expression of the intellectual creation of their author; it is for the national court to make this determination.

the possibility may not be ruled out that certain isolated sentences, or even certain parts of sentences in the text in question, may be suitable for conveying to the reader the originality of a publication such as a newspaper article, by communicating to that reader an element which is, in itself, the expression of the intellectual creation of the author of that article. Such sentences or parts of sentences are, therefore, liable to come within the scope of the protection provided for in Article 2(a) of that directive.

(see paras 37-39, 47, 48, 51, operative part 1)

Copyright within the meaning of Article 2(a) of Directive 2001/29 is liable to apply only in relation to a subject-matter which is original in the sense that it is its author's own intellectual creation. As regards the parts of a work, they are protected by copyright since, as such, they share the originality of the whole work. The various parts of a work thus enjoy protection under that provision, provided that they contain elements which are the expression of the intellectual creation of the author of the work. Given the requirement of a broad interpretation of the scope of the protection conferred by Article 2 of that directive,

2. The act of printing out an extract of 11 words, during a data capture process consisting in scanning of newspaper articles followed by conversion into text file, electronic processing of the reproduction, storage of part of that reproduction and printing out, does not fulfil the condition of being transient in nature as required by Article 5(1) of Directive 2001/29 on the

harmonisation of certain aspects of copyright and related rights in the information society and, therefore, that process cannot be carried out without the consent of the relevant rightholders.

An act can be held to be 'transient' within the meaning of the second condition laid down in that provision 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. However, by the last act of reproduction in the data capture process, a reproduction is made outside the sphere of computer technology by printing out files containing

the extracts of 11 words and thus reproduces those extracts on a paper medium. Once the reproduction has been affixed onto such a medium, it disappears only when the paper itself is destroyed. Moreover, since the data capture process is apparently not likely itself to destroy that medium, the deletion of that reproduction is entirely dependent on the will of the user of that process. It is not at all certain that he will want to dispose of the reproduction, which means that there is a risk that the reproduction will remain in existence for a longer period, according to the user's needs. In those circumstances, the last act in the data capture process, during which the extracts of 11 words are printed out, is not a transient act within the meaning of Article 5(1) of Directive 2001/29.

(see paras 64, 67-70, 74, operative part 2)