



## Reports of Cases

**Case C-607/11**

**ITV Broadcasting Ltd and Others  
v  
TVCatchUp Ltd**

(Request for a preliminary ruling from the High Court of Justice (England and Wales) (Chancery Division))

(Directive 2001/29/EC — Article 3(1) — Broadcasting by a third party over the internet of signals of commercial television broadcasters — ‘Live streaming’ — Communication to the public)

Summary — Judgment of the Court (Fourth Chamber), 7 March 2013

*Approximation of laws — Copyright and related rights — Directive 2001/29 — Harmonisation of certain aspects of copyright and related rights in the information society — Communication to the public — Meaning — Broadcasting by a third party over the internet of signals of commercial television broadcasters — Included — Retransmission having a profit-making nature and made by an organisation in competition with the original broadcaster — No effect*

(Directive 2001/29, Art. 3(1))

The concept of ‘communication to the public’, within the meaning of Article 3(1) of Directive 2001/29 on the harmonisation of certain aspects of copyright and related rights in the information society, must be interpreted as meaning that it covers a retransmission of the works included in a terrestrial television broadcast:

- where the retransmission is made by an organisation other than the original broadcaster,
- by means of an internet stream made available to the subscribers of that other organisation who may receive that retransmission by logging on to its server,
- even though those subscribers are within the area of reception of that terrestrial television broadcast and may lawfully receive the broadcast on a television receiver.

The making of works available through the retransmission of a terrestrial television broadcast over the internet uses a specific technical means different from that of the original communication. That retransmission must therefore be considered to be a ‘communication’ within the meaning of Article 3(1) of Directive 2001/29. Such a retransmission cannot be regarded merely as a technical means to ensure or improve reception of the terrestrial television broadcast in its catchment area. Consequently, it cannot be exempt from authorisation by the authors of the retransmitted works when these are communicated to the public.

In that connection, the term ‘public’ in Article 3(1) of Directive 2001/29 refers to an indeterminate number of potential recipients and implies, moreover, a fairly large number of persons. As regards that last criterion specifically, the cumulative effect of making the works available to potential recipients should be taken into account. In that context, it is irrelevant whether the potential recipients access the communicated works through a one-to-one connection. That technique does not prevent a large number of persons having access to the same work at the same time.

In addition, the requirement that there must be a ‘new public’ is not relevant where works included in a terrestrial television broadcast are made available at the same time on the Internet. In that case, each of those two transmissions must be authorised individually and separately by the authors concerned given that each is made under specific technical conditions, using a different means of transmission for the protected works, and each is intended for a public.

That interpretation of Article 3(1) of Directive 2001/29 is not influenced by the fact that such a retransmission is funded by advertising and is therefore of a profit-making nature, or by the fact that it is made by an organisation which is acting in direct competition with the original broadcaster.

A profit-making nature does not determine conclusively whether such a retransmission is to be categorised as a ‘communication’ within the meaning of Article 3(1) of Directive 2001/29.

(see paras 26, 27, 30, 32-34, 39, 40, 43, 44, 47, operative part)