



“Once more unto the breach, dear friends, once more...” – A Review of the Relationship between Hyperlinks and Copyright with a Focus on CJEU and German Case Law
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The sometimes troublesome relationship between hyperlinks and the law has been the subject of many Court proceedings and might almost be considered as old as the World Wide Web itself: one of the first cases in Germany regarding the issue of hyperlinks (in that case, the issue of liability for the linked content) dates from 1998.¹ At least as regards German Courts, the relationship between hyperlinks and the law is also living testament to the old joke “two lawyers, three opinions” as the legal evaluation of similar (or even identical) scenarios by the Courts has differed over the years.

Focusing on the issue of the relationship between hyperlinks and copyright, the paper analyses the legal status of hyperlinks from the perspective of copyright. It examines the way in which different ‘linking’ scenarios have been evaluated by the CJEU and also the German Courts, e.g. hyperlinks to lawfully published and freely accessible information (as in *Svensson*, case C-466/12), hyperlinks to lawfully published but not freely accessible information (as in *BestWater*, case C-348/13 – in this context, see also the related BGH decision ‘Die Realität II’, 09 July 2015, file number ZR I 46/12) or hyperlinks to unlawfully published but freely accessible content (as in *GS Media*, case C-160/15 – CJEU hearing scheduled for 03 February 2016; *Stichting BREIN*, case C-527/15 – no hearing scheduled at the time of writing).

In addressing the overarching question of when a hyperlink can be considered legally ‘unproblematic’ in terms of copyright, the paper discusses whether the legal evaluation of different types of hyperlinks (‘simple’ hyperlinks, deep links, framing and embedded links) differs and, if so, whether such difference in treatment is (or can be) objectively justified. In addition, the proposed paper also examines the way in which different Courts have approached the question of “what constitutes communication to the public?” for the purposes of copyright law. Ultimately, by considering recent EU and German case law in this area, the paper seeks to critically analyse the current legal treatment of the relationship between hyperlinks and copyright with a view of enabling compliance in practice.