

Hyperlinking

Hyperlinking or framing content on your website? Read this first!

Have you ever provided a hyperlink on your website to another website which displays a video? Or embedded a picture from another website with banners from your website surrounding the picture?

If so, you may have infringed someone else's copyright, even if you managed to obtain the material on the Internet for free.

A copyright owner has the exclusive right to communicate his/her content to the public. The content you have found on the Internet may have been uploaded onto the Internet without the consent of the copyright owner.

Not all is lost, however. There are legitimate ways of connecting your readers to external content. The Court of Justice of the European Union in **GS Media v Sanoma and Others** (Case C-160/15) recently held that the following criteria would be relevant in deciding whether hyperlinks provided on a website would be copyright-infringing:

1. Whether providing the link was crucial in allowing access to the content, and whether the user had done this deliberately;
2. Whether providing the link was a communication using specific technical means different from those previously used, or if not, if it was disclosed to a new public;
3. Whether the copyright owner had given consent to the hyperlinking of the material to the new public;
4. Whether providing the link was of a profit-making nature;
5. Whether the provider of the link could have been reasonably aware that the material was posted without the consent of the copyright owner.

In that case, the operators of a website (GS Media) were held to have infringed the copyright of the publisher of Playboy magazine (Sanoma) by providing hyperlinks to third party websites which hosted nude photographs of a model, for profit. Although the photographs were published in a previous edition of Playboy magazine, Sanoma did not give consent to these third party websites to host their photographs on the Internet, a fact that GS Media was aware of.

A practical approach to follow would be to conduct your own independent checks on the material to ascertain if it is likely that they were published with the consent of the copyright owner. It would also be useful to keep screenshots of your checks as proof that you were not reasonably aware that material was not posted without the consent of the copyright owner. This is particularly important if you are posting the hyperlinks for business purposes on your website.

At the same time, do examine the content to see if it was provided for a closed audience, e.g. is a subscription or payment required to access the content? If so, it would seem that the copyright owner did not consent for the material to be available to anyone on the Internet.

In addition, if the content is provided for free by getting around a technical measure the copyright owner put in place to restrict access to his/her content, this can amount to a separate offence under the Copyright Act (besides the copyright infringement offence).

As for other methods of linking such as “framing”, i.e. dividing a webpage into multiple sections that use HTML code to pull content from different sources, the above considerations may apply. Further, do note the following trade mark issues:

1. The manner in which you frame content within your website may have the effect of leading consumers to believe that you are the origin of the goods/services which in actual fact belong to another trader. If so, there is a risk that the trader might sue for “passing off” his goods/services as your own.
2. If the video clip contains registered trade marks within it, you may also be liable for trade mark infringement. This is because the trade mark owner has the exclusive right to use his trade mark in the course of trade.

In a nutshell, what it ultimately boils down to is that you should exercise a little care and restraint in using content on the Internet that does not belong to you, especially if you are doing it with a view to profit. Perhaps another way to think about it is to simply put yourself in the shoes of the copyright owner and ask yourself if this is something you would mind others linking to. If in doubt, do attempt to obtain the consent of the copyright owner for the use of his/her content.

Diyanah Baharudin
Senior Legal Counsel
Intellectual Property Office of Singapore