

European Union

“Live Streaming”

Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society, Art. 3(1) – *ITV Broadcasting Ltd et al. v. TVCatchup Ltd*

**Decision of the European Court of Justice (Fourth Chamber)
7 March 2013 – Case No. C-607/11**

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1. The retransmission of a terrestrial television broadcast over the Internet uses a specific technical means different from that of the original communication and must be, as such, considered a “communication” in light of Article 3(1) of Directive 2001/29.
2. Differently, a technical means limited to maintaining or improving the quality of the reception of a pre-existing transmission in its catchment area does not constitute such a “communication”.
3. In order to assess whether a communication is made to a “public”, it is irrelevant whether the potential recipients access the communicated works through a one-to-one connection, as such a technique does not prevent the access of a large number of persons to the work.
4. Albeit the fact that a profit-making nature of a retransmission is not irrelevant for determining whether a retransmission is a “communication”, it is not an essential element for the existence of a communication to the public.
5. Moreover, a competitive relationship between the organisations making real-time broadcasts of works or subsequent retransmissions of those works is not relevant for categorising a transmission as a “communication to the public”.