

IN THE EUROPEAN COURT OF HUMAN RIGHTS

BETWEEN:

MAGYAR JETI ZRT

Applicant

- v -

HUNGARY

Respondent

MOZILLA

Third Party Intervener

WRITTEN COMMENTS OF THIRD PARTY INTERVENER MOZILLA

Preliminary

1. The Mozilla Foundation and Mozilla Corporation (collectively “Mozilla”)¹ submit these written comments following its Request for Leave filed with this Court on 18 August 2016. No decision on leave has yet been received by Mozilla from the Court. However, on 14 September 2016, Mozilla did receive from the Court copies of: (1) the statement of facts and Application; and (2) the Observations of the Respondent. These written comments are submitted in the event that leave to intervene: (i) has been granted by the Court (yet to be received by Mozilla); or (ii) is subsequently granted by the Court.

¹ The Mozilla Foundation is a non-profit organization based in the United States whose mission is to ensure, through educational and advocacy programs, that the Internet is a global public resource, open and accessible to all. The Mozilla Foundation wholly owns the subsidiary Mozilla Corporation, which serves to fulfill the Foundation’s mission through the development of open source products, like the free Firefox web browser. Firefox is openly developed with a global community of technologists, thinkers and builders who contribute to the Firefox code base and improve and adapt Firefox for their local communities.

Introduction

2. This application raises novel issues. Publisher liability for hyperlinks in a world in which millions of people everyday use hyperlinks to access information and exchange ideas is of plain and considerable public importance. People worldwide use hyperlinks at an enormous scale on a daily basis. For example, according to one estimate, Google processes over 2.3 million search queries **every minute**.² Most actions taken online—whether conducting a search query, watching a video, engaging on social media, reading email or news, or making a purchase—trigger the clicks of hyperlinks. This is why email, website, and word formatting documents make it so easy to use hyperlinks.
3. By this intervention, Mozilla draws on its technical expertise with a leading Web browser to make the following three observations to the Court:
 - (1) **Hyperlinks are essential components of web architecture;**
 - (2) **Hyperlinks are conduits to secondary content, not publications of secondary content; and**
 - (3) **Hyperlinks enable individuals to engage in the right to free expression.**

Hyperlinks are essential components of web architecture

4. In 1989, the English computer scientist Sir Tim Berners-Lee authored his vision of what would become the World Wide Web (“Web”). His proposal stated:

“The system must achieve a critical usefulness early on. . . . **We should work toward a universal linked information system**, in which generality and portability are more important than fancy graphics techniques and complex extra facilities. **The aim would be to allow a place to be found for any information or reference which one felt was important, and a way of finding it afterwards.**”

² Julian D’Onfro, Business Insider, (27 March 2016)

<http://www.businessinsider.com/google-search-engine-facts-2016-3/#first-a-trip-down-memory-lane-heres-what-googles-search-page-looked-like-back-in-1997-1>.

The result should be sufficiently attractive to use that . . . the information contained would grow past a critical threshold, so that the usefulness [of] the scheme would in turn encourage its increased use.”³

5. His vision evolved to become what we know today as the Web. It is the easy to use graphical interface to the Internet that enables information to be seamlessly and rapidly exchanged with the click of a button: the hyperlink.
6. In 1990, he wrote the first webpage and created the first web browser using three technologies that he invented in relation to the hyperlink concept. These continue to underpin the Web today: URLs, HTTP, and HTML.⁴
 - a) Each webpage has an address, called a Uniform Resource Locator (“URL”), which identifies its location on the Web.
 - b) Computers on the network communicate with one another and retrieve linked resources from across the Web using a shared language called Hypertext Transport Protocol (“HTTP”).
 - c) Information stored on computers connected to the network includes webpages, which are formatted in Hypertext Markup Language (“HTML”). This allows for the embedding of hyperlinks.⁵
7. Hyperlinks are the technical and automatic means for people to access information located elsewhere. When a hyperlink is clicked, a network protocol called HTTP is used to communicate across the network so that the target location is retrieved and displayed to the user in the web browser. Put another way, hyperlinks are the glue that holds the Web together.

³ Sir Tim Berners-Lee, *Information Management: A Proposal* (1989), <https://www.w3.org/History/1989/proposal.html> (emphasis added).

⁴ *History of the Web*, World Wide Web Foundation, <http://webfoundation.org/about/vision/history-of-the-web>.

⁵ *What are Hyperlinks*, MDN, https://developer.mozilla.org/en-US/Learn/Common_questions/What_are_hyperlinks.

8. There are three types of hyperlinks in relation to each website:
- a) An *internal link* will take the reader to another webpage on the same website. For example, the European Court of Human Rights (“ECHR Website”) Quick Links are internal hyperlinks:



- b) An *external link* connects a reader from one webpage to a third party webpage. Without external links, there would be no Web. An example of this is the “Vacancy notices” hyperlink on the ECHR Website. Clicking this will take the user to a Council of Europe webpage.



- c) An *incoming link* is an external link coming from another website. For example, the hyperlink that appears on a search result:



9. As demonstrated in the above examples of hyperlinks to and on this Court's website, the sole purpose of the hyperlink is to allow readers to navigate to and from information. Imagine if the search engine above removed all hyperlinks to this Court's website for fear that doing so might trigger defamation liability. Or if the administrator of this Court's website, for the same reason, could not hyperlink to third party webpages like the Council of Europe's webpage. This would undermine the very purpose of the Web to make information accessible by linking it to each other.
10. Although hyperlinks can appear to readers as anything that is clickable, to a web developer, a hyperlink is a string of software code. A web developer can design the link to apply to a line of text, an image, or other visible content on a web page. For example, the above hyperlink may be written as:

```
<a href="http://www.echr.coe.int/Pages/home.aspx?p=home">European Court of  
Human Rights</a>
```

Hyperlink code contains several functional "tags" which differ based on whether the target is text, image, or video. For example:

- a) The hyperlink above starts with an anchor opening tag `<a`, and includes a hyperlink reference `href="http://www.echr.coe.int/Pages/home.aspx?p=home"` to the **URL** for the page which is enclosed in quotation marks.
 - b) The URL is followed by `>`, marking the end of the anchor opening tag.
 - c) In our example, the words that follow are European Court of Human Rights. In HTML these are the words that are visible to a reader of the webpage.
 - d) The anchor closing tag (``) terminates the hyperlink code.
11. Hyperlinks solved the challenge of computer scientists in the 1960s and 1970s to find and share information on the Internet. As of the date of this submission, there are almost 4.7

billion indexed webpages⁶ and the estimated number of total webpages and the hyperlinks contained within them is well beyond the trillions.⁷ In this vast and growing information space, hyperlinks enable people to easily and quickly navigate to other webpages to retrieve, view, access and re-share information.

Hyperlinks are conduits to secondary content, not publications of secondary content

12. The implication of the Hungarian court’s decision to impute liability for the publication of a hyperlink conflates two different concepts of conduit and content. In its observations, the Respondent states:

“spreading information means transmitting or communicating a piece of information, as a thought-content, to other persons. . . . To make an unlawful content accessible in any manner amounts to spreading information and the spreader of the information shall be objectively liable for the transmission.”⁸

13. The Respondent’s position that communicating the location of secondary information is the same as the publication of that information is contrary to Web architecture. The Web is a series of interconnected hyperlinks that function to make it easy for people to navigate the world’s information. The architecture for navigation is intended to be content-neutral to allow for all types of facts and opinions to be communicated.

14. When discussing hyperlinks in *Crooks v. Newton*, the Canadian Supreme Court affirmed its belief that hyperlinks are content-neutral, stating:

“Hyperlinks may be inserted with or without the knowledge of the operator of the site containing the secondary article. Because the content of the secondary article is often produced by someone other

⁶ *The size of the World Wide Web*, (29 September 2016), <http://www.worldwidewebsize.com>.

⁷ Google, *We knew the Web was big*, (25 July 2008) <https://googleblog.blogspot.com/2008/07/we-knew-web-was-big.html>.

⁸ Observations of the Government of Hungary on the Admissibility and Merits of Application no. 11257/16, introduced by Magyar Magyar Jeti Zrt, at. [20], (hereinafter referred to as “Respondent’s Observations”).

than the person who inserted the hyperlink in the primary article, the content on the other end of the link can be changed at any time by whoever controls the secondary page. **Although the primary author controls whether there is a hyperlink and what article that word or phrase is linked to, inserting a hyperlink gives the primary author no control over the content in the secondary article to which he or she has linked.**

Hyperlinks thus share the same relationship with the content to which they refer as do references. Both communicate that something exists, but do not, by themselves, communicate its content. And they both require some act on the part of a third party before he or she gains access to the content. **The fact that access to that content is far easier with hyperlinks than with footnotes does not change the reality that a hyperlink, by itself, is content-neutral — it expresses no opinion, nor does it have any control over, the content to which it refers.”**⁹

15. The Canadian Supreme Court’s description is in line with the purpose of hyperlinks in Web architecture, to provide conduits to secondary content available at other locations on the Internet. The most practical way to point a reader to such information is to use a hyperlink. If the hyperlink is broken, the reader’s browser will not retrieve and display the information. If the hyperlink works, the reader’s device will rely on the HTTP protocol to communicate across the Internet and retrieve the designated webpage. The Web is not intended, as a technology, to function in the way the Respondent states, where “spreading information” via a hyperlink is itself always a “thought-content”. The role of the hyperlink is a technical means to an end, not the content itself.
16. Without hyperlinks, publishers would have to provide alternative instructions for readers to find more information. For most ordinary people, this would be difficult, if not impossible, to execute without a strong technology background.

⁹ *Crookes v Newton* 2011 SCC 47 (Canada, Supreme Court, 19 October 2011), at [27] [30], available at <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7963/index.do> (emphasis added).

Hyperlinks enable individuals to engage in the right to free expression

17. Two system design principles are fundamental to the Web's success, which enables the right to free expression:

“The primary principle underlying the Web’s usefulness and growth is universality. When you make a link, you can link to anything. That means people must be able to put anything on the Web, no matter what computer they have, software they use or human language they speak and regardless of whether they have a wired or wireless Internet connection. . . . Decentralisation is another important design feature. You do not have to get approval from any central authority to add a page or make a link. All you have to do is use three simple, standard protocols: write a page in the HTML format, name it with the URL naming convention, and serve it up on the Internet using HTTP. Decentralization has made widespread innovation possible and will continue to do so in the future.”¹⁰

18. These principles are especially important to the field of journalism and are bolstered by this Court’s view, expressed in *Shtekel v. Ukraine*, that domestic laws should allow “journalists to use information obtained from the Internet without fear of incurring sanctions.”¹¹

19. The Respondent has asserted that “the court findings against the applicant could have been avoided had the applicant acted with due care and had it not published the hyperlink leading to the video recording. . . publishers of recordings should foresee that if they publish information without any control they shall be liable for the published content.”¹² This approach begs the question of how people are to convey information across the estimated trillions of webpages in existence today (and countless future pages) if doing so can impute liability. It is burdensome, and in many cases impossible, for people to make a

¹⁰ Tim Berners-Lee, *Long Live the Web*, Scientific American (Dec. 2010) (emphasis added).

¹¹ *Editorial Board of Pravoye Delo and Shtekel v Ukraine* (2011), App No. 33014/05, Judgment of 5 May 2011, at [64].

¹² Respondent’s Observations at paras. 14 & 25 on pp. 7 & 11.

legal determination on whether the hyperlinked secondary content is defamatory. This can only be done by a court of law. In the absence of such knowledge, people must have the freedom to continue to exchange information and ideas by hyperlinking to content across the Web.

20. The Web is integral to modern life. Citizens use computers, mobile phones, tablets, and other smart devices on a daily basis to consume video, music, and news, and to communicate with others via social media, email, and chat. Hyperlinks, a central feature of the Web, make this rapid online information exchange possible.

Conclusion

21. For the Web to maintain its role as a neutral platform designed to facilitate the exchange of the world's information, a hyperlink should be distinguished from the content of the primary and secondary webpages that it bridges. Accordingly, the publisher of a hyperlink should not be assigned defamation liability for the mere use of the hyperlink as a reference point to information located elsewhere, as per this case.

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