

Jason Whitney in Computer & Internet Lawyer: Two Cases Raise New Copyright Infringement Concerns for Internet Linking

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PRACTICES Intellectual Property, Copyright

Modern communications platforms are often designed to maximize sharing of information, but this can produce vexing questions under copyright law, much of which remains rooted in traditional concepts of distribution and publication. An example is in-line linking, also called framing or embedding – code on one page that links to content (often images or videos) hosted elsewhere to produce an embedded view.

Although U.S. law grants copyright owners exclusive display rights under 17 U.S.C. § 106(5), in-line linking was generally considered not to directly infringe these rights because embedded links merely provided instructions on how and where to access content, as opposed to providing the content itself for display. But two recent district court cases found that in-line linking or embedding can constitute direct infringement of display rights, creating new uncertainty over the ubiquitous practice.

Prior Analyses Found Display Rights Not Infringed by In-Line Linking The programming language that underlies much of the Internet and social media systems, Hypertext Markup Language (“HTML”), allows linking so that users can easily and seamlessly embed instructions to display content from a variety of different sources on a single webpage. Examples of these instructions include the short URLs generated by Twitter or Facebook for embedding tweets or posts into other webpages or posts.

Excerpted from *The Computer & Internet Lawyer*. To read the full article, click on the PDF below.

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