

EU aggregation and related cases & Bird & Bird

Copyright control of technological processes

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Infopaq I – 11 word snippet of a newspaper article can infringe

Electronic storing and printing out an 11 word extract comes within the concept of reproduction in part if the elements thus reproduced are the expression of the intellectual creation of their author.

Last act (printing out) not within Article 5 Infosoc Directive exemption for temporary copies created as part of a technological process

Infopaq applied to headlines in *NLA v Meltwater*

Infopaq II – did the data capture process infringe copyright?

Infopaq remove the 11 words from the printout

Focus now on everything prior to the printing out

Temporary copies exemption under Article 5 Infosoc Directive

Article 5 Infosoc Directive

Cumulative conditions for exemption of an act of reproduction

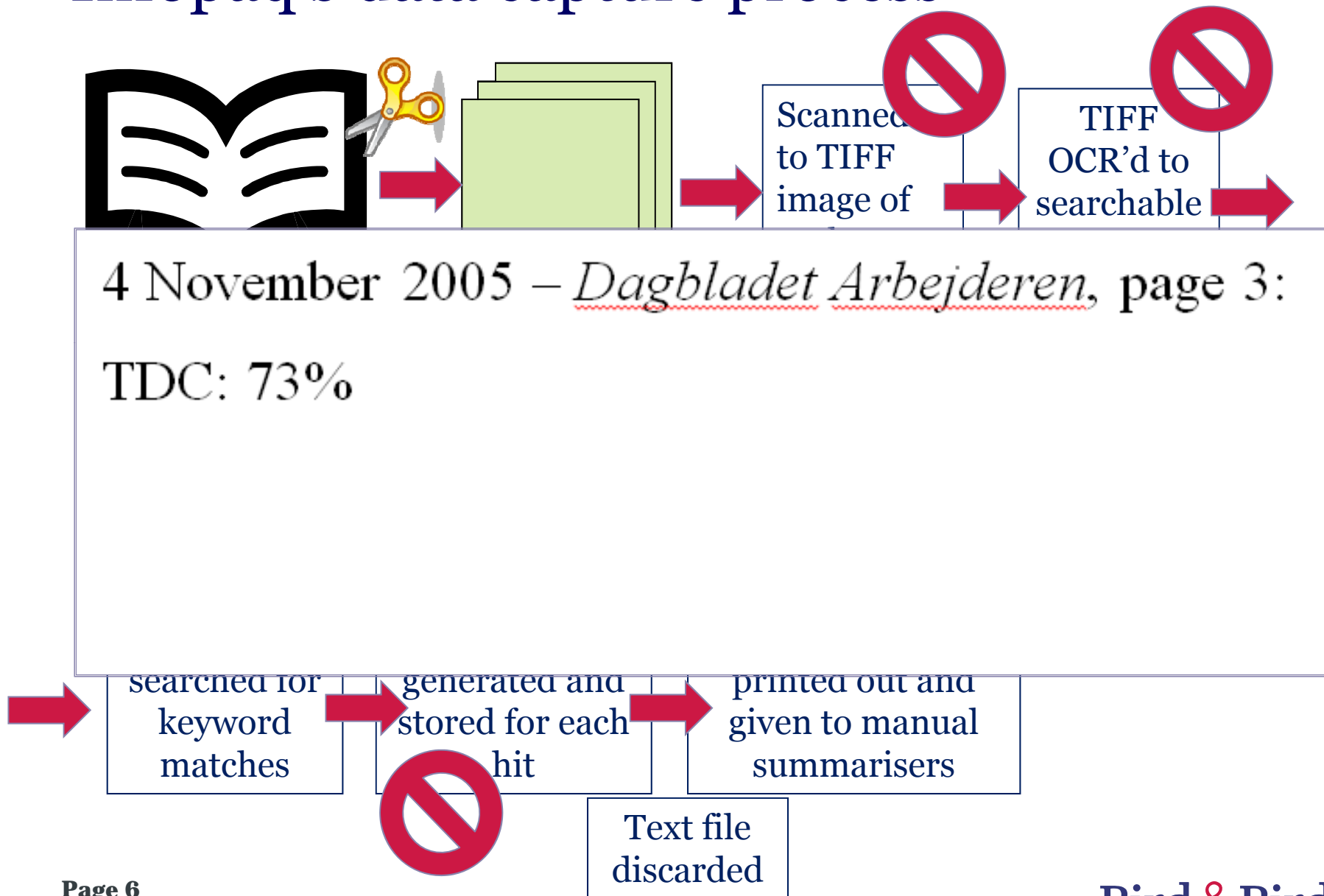
- it is temporary
- it is transient or incidental
- it is an integral and essential part of a technological process
- its sole purpose is to enable ... a lawful use, of a work or other subject matter
- it has no independent economic significance

Infopaq's activities

Media monitoring and analysis business

- Manually prepares summaries of selected articles from Danish daily newspapers and other periodicals
 - No issue
- Summaries sent to customers by e-mail
 - No issue
- Manual summary preparation supported by a **data capture process**
 - Articles selected on the basis of keywords chosen by customers
 - Identifies and locates articles to be summarised
- Danish newspaper association asserts data capture process infringes copyright

Infopaq's data capture process



Infopaq II

Key conclusions (1)

- The acts constitute an **integral and essential part of a technological process**, notwithstanding the fact that they **initiate and terminate that process** and **involve human intervention**
- Sole purpose to enable **lawful use: a more efficient drafting of summaries of newspaper articles** and, therefore, a use of those articles

Infopaq II

Key conclusions (2)

- **No independent economic significance**; must not:
 - be distinct or separable from the economic advantage derived from the lawful use of the work concerned
 - if the author of that act is likely to make a profit due to the economic exploitation of the temporary reproductions themselves
 - **if the acts of temporary reproduction lead to a change in the subject matter reproduced**, as it exists when the technological process concerned is initiated, **because those acts no longer aim to facilitate its use, but the use of a different subject matter**
 - generate an additional economic advantage going beyond that derived from that use of the protected work
- If the acts of reproduction fulfil all the conditions of Article 5(1) it must be held that they do not conflict with the normal exploitation of the work or unreasonably prejudice the legitimate interests of the rightholder

Controlling the technological process?

	FAPL v QC Leisure	ITV v TVCatchup	NLA v [Meltwater]/PR CA	Sirius/CSI v SOCAN (Canada)
<i>Reproduction</i>	TV satellite decoder (160 ms)	Video streaming (1 to 5 seconds)	Browsing websites	Satellite radio (4 to 10 seconds)
Film	Football match	TV programmes		
Broadcast		TV programmes		
Musical work	Anthem			Music
Sound recording	Anthem			Music
Artistic work	Graphics, devices, logos			
Literary work			Newspaper headlines and articles	
Article 5 exemption	Subject to private/public showing	Making available referred to CJEU	'Right to browse' on appeal to UK Supreme Court	

Controlling the technological process?

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<i>Reproduction</i>	TV satellite	Video	Browsing	Satellite radio
Film	<p><i>Reproduction by transient copies - cumulative or moment in time?</i></p> <p><i>“the unit composed of the fragments reproduced simultaneously must be examined in order to determine whether it contains ... elements [which are the expression of the authors’ own intellectual creation]”</i></p> <p><i>CJEU – FAPL v QC Leisure</i></p>			
Broadcast				
Musical				
Sound recording				
Artistic				
Literary				
			headlines and articles	
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Thank you **& Bird & Bird**

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