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An event-full photo

A court's interpretation of the current events exception in Radosavljević is creative, write Bogdan Ivanišević and Marko Popović of BDK Advokati



A top Serbian court recently added the weight of its authority to an expansive interpretation of the right to republish photographs of current events without seeking permission from the copyright owner.

The Appellate Court in Belgrade overturned the first instance judgement of the Belgrade High Court, ruling that the defendant did not infringe the plaintiff's copyright by republishing online a photo pertaining to a car accident.

The photo showed the scene of the accident and was taken a few minutes after the event.

The judgement of the Appellate Court in Belgrade, dated 11 May 2016, might effectively become a precedent at least from the perspective of the judges of the High Court in Belgrade, the court which hears most copyright cases in Serbia. But the course taken by the Appellate Court is not an obvious one to follow, as the statutory text and past case law may be reasonably interpreted as recommending a more restrictive interpretation of the current events exception.

The relevant statutory provision—Article 43 of the Copyright Act (2009)—reads in the relevant part: “In the scope of informing the public with the means of the press, radio, television, and other media, it shall be permissible, without the author's permission and without paying remuneration ... to make copies of published works which appear as an integral part of a current event about which the public is being informed”.

The provision seems to posit in rather unequivocal terms that, if a copy of a published work is to be lawfully made, the work itself—as opposed to the work's theme—needs to appear as an integral part of the event about which the maker of the copy informs the public. If so, a photo showing the site of the car incident (the current event) could not be lawfully reproduced in an article about the incident,

because, under common interpretation, the photo is not an integral part of the incident. In contrast, the same photo could be lawfully reproduced to illustrate a journalistic report about a photo exhibition of which the photo makes part.

Article 43 of the Copyright Act was present in the same form in the two previous copyright acts, from 1998 and 2005. The lawmaker has likely introduced the provision in the Serbian legislation in order to transpose Article 10bis(2) of the Berne Convention into the national law. Under Article 10bis(2), member countries shall “determine the conditions under which, for the purpose of reporting current events by means of photography, cinematography, broadcasting or communication to the public by wire, literary or artistic works seen or heard in the course of the event may, to the extent justified by the informatory purpose, be reproduced and made available to the public”.

The World IP Organization Guide to the Berne Convention explains that “examples of works seen in the course of an event are a statue unveiled or pictures shown at the opening of an exhibition” (while “music performed during a ceremony would be an example of a work heard”).

Along these lines, the Belgrade High Court and the Appellate Court in Belgrade have usually rejected the arguments by the defendants that their use of photos, without the authorisation of the copyright owners, was lawful because the photos were used within the context of reporting about current events. In one such case, Marija Cvetković v Novosti AD, the Appellate Court said in a judgement of 21 August 2013 that reproduction of a photo of a well-known violin player surrounded by children was unlawful, because the article published on the defendant's website neither related to a photo exhibition, nor it had in some other way the photo as the subject matter. The ‘current events’ exception was therefore inapplicable.

If a copy of a published work is to be lawfully made, the work itself needs to appear as an integral part of the event



Bogdan Ivanišević, Partner, BDK Advokati



The same court, however, hinted even before its most recent exploration of the boundaries of the current events exception that it might expand those boundaries significantly. In a judgement from May 2013, in the case *Slavoljub Radojević v Novosti AD*, the Appellate Court confirmed the judgement of the High Court in Belgrade to the effect that the plaintiff's photo—showing a panoramic view of the city of Kragujevac—did not constitute an integral part of the current event about which the public was being informed. The current event was a violent crime committed in Kragujevac. The court explained that the photo was not an integral part of the current event because it “neither shows the site of the event, nor is in any other way related to the case at issue, apart from showing the city of Kragujevac, in which the case at issue occurred”.

It followed from that wording that, had the photo shown the actual site of the event, or—particularly—had the photo captured the criminal event itself, the defendant using the photo could successfully invoke the current event exception to copyright infringement. The defendant newspaper lost because the link between the republished photo (city panorama) and the crime reported about was not strong enough.

Three years later, in a case in which *Radiodifuzno preduzeće 021* was sued for republishing on its internet site *021.rs* a photo authored by *Nebojša Radosavljević*, the Appellate Court fully developed what it had hinted at in *Slavoljub Radojević v Novosti AD*.

In *Radosavljević*, the more recent of the two cases, the plaintiff snapped the photo *Plavi BMW* on the spot where the traffic accident had occurred a few minutes earlier. The Appellate Court concluded that *Plavi BMW* photo was an integral part of the event about which the defendant informed the public. A key factor in the analysis was the fact that the photo was shot on the very spot of the car accident, only several minutes after the accident. There was a strong link between the photo published by the defendant and the event the defendant reported about.

As a result of its analysis, the court determined that the defendant had the right to make copies of the photo and to make such copy available to the public, by wire or wireless means, in such a way that individuals may access the work from a place and at a time they chose, without the author's permission and without paying remuneration.

Courts in Serbia almost never explicitly refer to other judgements of relevance to the issue, so the Appellate Court did not compare the facts and legal reasoning in *Radosavljević* against those in *Radojević* three years earlier. Had the court done so, it could have pointed to the fundamental difference between the two cases: in *Radojević*, the plaintiff's photo did not show the specific location of the event (the violent crime) and was taken at the moment of time that was not related to the timing of the event.

The Appellate Court's interpretation of the current events exception in *Radosavljević* is creative and adds a dash of freshness to the otherwise unexciting case law in Serbia on copyright in photographs.

At the same time, one wonders whether the court's interpretation can be reconciled with the wording of the Copyright Act (Article 43). That provision says that, for copies of a published work to be lawfully made, the work itself needs to appear as an integral part of the event reported about. It is not obvious that the photo taken during the event or in its immediate aftermath is an integral part of the event itself.

On the other hand, the expansive interpretation advanced by the Appellate Court in *Radosavljević* is in line with the thrust of the provision in the EU Copyright Directive 2001/29/EC, which allows member states to provide for exception to infringement of exclusive economic rights in the case of use of a work by the media, as long as “the use of works or other subject matter [is] in connection with the reporting of current events, to the extent justified by the informatory purpose” (Article 5.3(c)). [IPPro](#)

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