

# *The Making Available Right: A Framework for Analysis*

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The right of copyright owners to make their content available to the public is crucial in an environment driven by access. This presentation analyses the scope of the making available right as introduced by the WIPO Internet Treaties, and provides insights that can guide the interpretation of the right going forward. It does so by critically analyzing judicial decisions involving linking or streaming of content from the “cloud”, and focusing on the key elements of the making available right — an “act” of making available that is to “the public”. In evaluating current judicial approaches to the right in Australia, the US and EU, it uncovers the underlying theories and justifications driving these disparate decisions.

The primary justification in these instances tends to be the advancement of copyright’s authorship incentivizing function. Unfortunately, these decisions do not adequately address copyright’s dissemination function, i.e. to encourage public access to knowledge. This research expands on copyright’s dissemination function and seeks to advance our understanding of this important objective. It presents a framework for the interpretation and development of the making available right that furthers copyright’s dissemination function, as well as its authorship function, in the internet era.