

## EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

Director-General

Brussels,

**Ms Julia Reda**

Parlement européen

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1047 Bruxelles

Copy sent in advance to:

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### BY REGISTERED LETTER WITH ACKNOWLEDGMENT OF RECEIPT

**Subject: Your application for access to documents – Ref GestDem No 2018/0793**

Dear Madam,

I refer to your e-mail dated 06/02/2018 in which you make a request for access to documents, registered on 08/02/2018 under the above mentioned reference number. I also refer to our holding reply of 26/02/2017 concerning the extension of the deadline (our ref. Ares (2018)1071834).

#### 1. SCOPE OF YOUR APPLICATION

*You request access to “documents which contain the following information: All information concerning content ID technology, especially the kind of content ID technology (also referred to as “content recognition” or similar) that is referenced in article 13 of the proposed directive on Copyright in the Digital Single Market”.*

*You specified: “This request should include information such as correspondence, meeting protocols, briefings, notes, drafts, emails and recordings about meetings with, on behalf or about the companies Google, Alphabet or Youtube. The wording “on behalf of” should include companies that consult for any of these companies or associations in which any of these companies are a member. Do not discard from this request information that is currently not registered, filed or archived or information that is currently not considered “important” for registration, filing and archiving. I want intra-Commission information to be included in this request”.*

## **2. DOCUMENT FALLING WITHIN THE SCOPE OF THE REQUEST**

Your application concerns the following documents:

1. Powerpoint Presentation by Audible Magic dated 11 July 2016 (Ref. Ares(2017)4595074)
2. Presentation by Audible Magic: Content Recognition Technology (Ref. Ares(2017)312988)
3. Document - Audible Magic Services Description (Ref. Ares(2017)4595115)
4. Email from Mike Edwards to DG CNECT dated 7 April 2016 and attachment (PowerPoint Presentation) (Ref. Ares(2017)4053880)
5. Email from Mike Edwards to DG CNECT dated 7 April 2016 and attachment (Reply to the Copyright office) (Ref. Ares(2017)4053919)
6. Email from Mike Edwards to DG CNECT dated 12 January 2017 (Ref. Ares(2017)4054021)
7. Email from Mike Edwards to CAB Ansip dated 29 June 2017 and attachments (Presentation on Content Recognition Technology; Audible Magic-content recognition technology.pdf) (Ref. Ares(2017)3257224)
8. Document provided by Google – Comments on the development of the joint strategic plan on intellectual property enforcement (Ref. Ares(2018)1381117)
9. Document provided by Google – How Google fights piracy 2016 (Ref. Ares(2018)1381255)
10. Document provided by Google during presentation held in 2015 (Ref. Ares(2018)1381336)
11. Presentation of Blue Efficiency at the European Parliament on 29 November 2016 (Ref. Ref. Ares(2018)1373424)
12. Mission report, Mission Silicon Valley USA 19-23 June 2017 (Ref. Ares(2017)4594818)
13. Email sent by INA to DG CNECT dated 29 June 2016 and attachments (Ref. Ares(2018)1363857)
14. BTO – Meeting with Soundcloud on 8 February 2017 (Ref. Ares(2018)1363792)
15. BTO – Meeting with Youtube on 22 September 2015 (Ref. Ares(2018)1363810)
16. BTO – Meeting with Google - Cabinet Gabriel on 24 November 2017 (Ref. Ares(2018)1363816)
17. BTO – Meeting with Facebook on 27 September 2017 (Ref. Ares(2018)1363826)
18. BTO – Meeting with Facebook on 12 May 2016
19. Email from Mike Edwards to DG CNECT dated 18 July 2016 and attachment (Audible Magic follow-up notes on meeting with Cabinet Ansip) (Ref. Ares(2017)4053973)

## **3. ASSESSMENT UNDER REGULATION 1049/2001**

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents (hereinafter "Regulation 1049/2001"), I have come to the conclusion that they may be partially disclosed. Some parts of the documents have been blanked out as their disclosure is prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001. A comment has been added beside the expunged paragraphs to indicate the applicable exception.

Since some of these documents originate from third parties, the latter have been consulted pursuant to article 4(4) of Regulation 1049/2001.

**a) Documents n° 1 to 11: Partial disclosure of documents only expunged of personal data (Annex I)**

Following an examination of the documents n° 1 to 11 and taking into account the consultation of third parties according to which they did not object to their disclosure, I have come to the conclusion that all these documents may be partially disclosed, only expunged from personal data. I enclose a copy of them in Annex I.

Documents n° 1 to 3 are presentations from Audible Magic. Documents n° 4 to 7 are emails sent by a third party. Documents n° 8 to 10 are documents provided by Google. Document n° 11 is a presentation from Blue Efficiency.

Please note that the documents received by the Commission from third parties are disclosed for information only. They do not reflect the position of the Commission and cannot be quoted as such.

Certain parts of these documents containing personal data of Commission officials or third persons have been expunged. Their disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Union legislation regarding the protection of personal data (Article 4(1)(b) of Regulation 1049/2001). The applicable legislation in this field is Regulation 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (hereinafter "Regulation 45/2001")<sup>1</sup>.

When access is requested to documents containing personal data, Regulation 45/2001 becomes fully applicable<sup>2</sup>. According to Article 8(b) of Regulation 45/2001, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

I consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing a version of the above mentioned documents in which these personal data have been redacted.

In case you would disagree with the assessment that the expunged data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to make a confirmatory application (following the procedure specified at the bottom of this letter) requesting the Commission to review this position.

**b) Documents n°12 to 18: Partial disclosure (Annex II)**

Having examined the documents n°12 to 18 under the provisions of Regulation 1049/2001 regarding public access to documents, I have arrived at the conclusion that they may be partially disclosed. Some parts of the documents have been blanked out as their disclosure is

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<sup>1</sup> Official Journal L 8 of 12.1.2001, p. 1

<sup>2</sup> Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

prevented by exceptions to the right of access laid down in Article 4(1)(b) and Article 4(2) of Regulation 1049/2001. Other parts are out of scope of this request for access to documents.

Document n°12 is a mission report of a mission in the USA which occurred on 19-23 June 2017. Documents n°13 is an email sent by a third party. Documents n°14 to 18 are minutes of meetings with stakeholders.

- Parts covered by the exception to the right of access laid down in Article 4(1)(b)

Some of the deleted parts of the documents contain personal data which have been redacted according to the above mentioned legislation regarding the protection of personal data (Article 4(1)(b) of the Regulation 1049/2001).

In case you would disagree with the assessment that the expunged data are personal data which can only be disclosed if such disclosure is legitimate under the rules of personal data protection, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to make a confirmatory application (following the procedure specified at the bottom of this letter) requesting the Commission to review this position.

- Parts covered by the exception to the right of access laid down in Article 4(2)

Some parts of the documents n°12 and 13 have been redacted to protect commercial interests, in accordance with the Articles 4(2), first indent, of the Regulation 1049/2001. Actually, the redacted parts of document n°12 contain commercially sensitive business information of the company Audible Magic submitted during the mission of the Commission, whose disclosure would undermine the protection of Audible Magic's commercial interests. Likewise, the redacted parts of document n°13 contain commercially sensitive business information which were included in the documents provided by the organisation INA.

The exception laid down in Articles 4(2) of Regulation 1049/2001 applies, unless there is an overriding public interest in disclosure of the documents. I have examined whether there could be an overriding public interest in disclosure, but I have not been able to identify such an interest.

#### **c) Document n° 19: Non-disclosure (Annex III)**

Document n° 19 originates from the company Audible Magic which has objected to its disclosure. The company deems its disclosure would undermine the protection of their commercial interests.

Following an examination of the document and taking into account the consultation of Audible Magic, I regret to inform you that your application cannot be granted, as disclosure is indeed prevented by an exception to the right of access laid down in Article 4 of Regulation 1049/2001.

#### **4. PARTIAL ACCESS**

I have considered whether partial access could be granted to the document n° 19 and I have arrived at the conclusion that this is not possible, since the invoked above exception covers the document in its entirety.

## 5. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

The exceptions laid down in Articles 4(2) of Regulation 1049/2001 applies, unless there is an overriding public interest in disclosure of the documents. I have examined whether there could be an overriding public interest in disclosure, but I have not been able to identify such an interest.

## 6. CONFIRMATORY APPLICATION

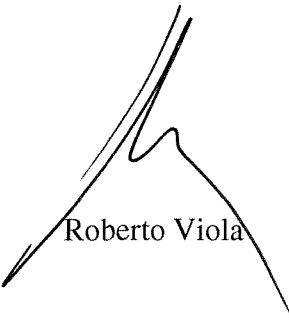
In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review the above positions.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission  
Secretary-General  
Transparency unit SG-B-4  
BERL 5/327  
B-1049 Brussels

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours faithfully,



Roberto Viola

Contact: [CNECT-I2@ec.europa.eu](mailto:CNECT-I2@ec.europa.eu)