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From:
Federal Ministry of Justice
(Dept. III B 3, case handler: [REDACTED])

To:
[REDACTED]
European Commission
DG Enterprise and Industry
Unit C3 – Prevention of technical barriers
B-1049 Brussels/Belgium

Communication
from the Government of the Federal Republic of Germany
to the Commission of the European Communities
8 April 2013

Subject: Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations, re-enacted as Directive 98/48/EC and last amended by Regulation (EU) No 1025/2012

here: Legislative procedure in Germany to introduce ancillary copyright for press publishers

Ref.: E-mail from the European Commission dated 27 February 2013 (DG Enterprise and Industry -Unit C3 – Prevention of technical barriers) to the Federal Ministry of Economic Affairs

In its e-mail, the European Commission asked the German Government to explain the legislative procedure for including ancillary copyright for press publishers in the German Copyright Act. The Commission referred to the provisions of Articles 1(11) and 8(1) of Directive 98/34/EC, which may entail an obligation on the German Government to communicate draft legislation to the Commission. The German Government is pleased to provide the Commission with the following information:

In the German Government's opinion, the draft legislation in the version adopted by the *Bundestag* (document 17/12534) does not give rise to a communication obligation under Directive 98/34/EC.

Article 8 of the Directive requires draft technical regulations to be communicated. According to Article 1(11) of the Directive, technical regulations are 'technical specifications and other requirements or rules on services', the observance of which is compulsory in the case of marketing, provision of a service or establishment of a service operator. A definition of 'rules on services' is found in Article 1(5) of the Directive, according to which a rule concerns services when it is a requirement of a general nature relating to the taking-up and pursuit of

service activities, excluding any rules which are not specifically aimed at the services defined. They include in particular provisions concerning service providers, services themselves and service recipients.

The planned legislation introducing ancillary copyright for press publishers is not specifically aimed at information society services within the meaning of Directive 98/34/EC. A new Section 87f in the German Copyright Act is intended to establish a new exclusive right for press publishers, in order to ensure that online press publishers are not placed in a less favourable position compared with other intermediaries. An exclusive right established as an absolute right is enforceable against all parties and is therefore not a specific rule within the meaning of the Directive. The new exclusive right in the version adopted by the German *Bundestag* is granted within a very limited framework: originators of press products have the exclusive right to make the product or part thereof available to the public for commercial purposes, with the exception of individual words or very short snippets. The version adopted by the German *Bundestag*, which establishes for individual words or very short snippets a general exclusion from protection under the new ancillary copyright for press publishers, is intended to ensure that search engines and aggregators can continue to list their search results without infringing the new exclusive right of press publishers (cf. *Bundestag* document 17/12534, p. 6, left-hand column). Nor do the further restrictions placed on this right in the new Section 87f(4) regulate either the operation of search engines or access as such.

The amendment to the legislation was adopted by the *Bundestag* on 1 March 2013. It has not yet been considered by the *Bundesrat*.