

Meeting with Federal Minister of Justice Heiko Maas

Scene setter

Copyright reform

The Barroso II Commission developed policy and legislation on a number of specific copyright aspects, including the proposal and adoption of the directives on Orphan Works and on Collective Management of Rights, a Memorandum of Understanding on Out-of-commerce Works and a stakeholder dialogue to foster licencing solutions (Licences for Europe).

There is however a wide expectation, strengthened by the announcements and political guidelines of President Juncker, that the new Commission will introduce further reform proposals covering certain 'core' aspects that have not been revisited since the adoption of the InfoSoc Directive in 2001. The modernisation of copyright has been formally included in the Commission work plan for 2015.

Germany's position on the copyright reform

According to a letter signed by four federal ministries, a "copyright reform should take into consideration a fair balance between users' interests and an appropriate remuneration for creators; it should be ensured that dominant search engines do not use "unauthorised original content of third parties' websites" (see Background: Summary of the letter to the European Commission of 13 November 2014, signed by the Ministries for Justice and Consumer Affairs, Home Affairs, Economy and Transports).

The issue of Google using newspaper articles has been highly debated in Germany. Germany has introduced a neighbouring right for press publishers, in force since August 2013. The law grants newspaper publishers an exclusive right to allow or prohibit the making available of press products or parts of press products online. The making available is lawful unless carried out by commercial news aggregators such as search engines or social networks.

In March 2014, Germany sent a submission in response to the copyright consultation of the European Commission. Germany stressed that a reform should be balanced and protect the legitimate interests of right holders. Germany indicated that portability of content should be facilitated in order to make possible the use of legally acquired content when abroad. According to the submission, the private copying exception needed to be mandatory and should be harmonised. The relationship between exceptions and contracts should be revised particularly in order to facilitate the use of scientific online publications, teaching, public libraries and uses by disabled people (see Article 6(4)(4) Copyright Directive).

Objective

- Engaging with the German Minister of Justice and Consumer Affairs about the copyright reform. Re-assure the Minister that the reform should not favour big internet platforms to the detriment of right owners and consumers.

Line to take

- One of the immediate priorities of the new Commission is to modernise copyright rules in the light of the digital revolution, new consumer behaviour and Europe's cultural diversity. This has been confirmed in the 2015 Commission work programme.
- We need to modernise copyright to make it fit for the Digital Single Market. We want citizens to access online services across borders and give businesses the incentives to develop cross-border platforms. At the same time, we want to make sure that copyright remains a driver for creativity and investment.
- The interests of right owners and users can be reconciled. The creation of a Digital Single Market can contribute to aligning them. Therefore, our ultimate objective is to release the full potential of the European Digital Single Market.
- The outgoing Commission carried out important work for the review of copyright: a broad public consultation closed in March 2014 and a number of legal and economic studies were undertaken.
- We have a good basis for the reform. Now, we are looking forward to working, in partnership with Member States and the Parliament, on a balanced copyright modernisation initiative.

Defensives

End of October, Commissioner Oettinger was quoted in the German newspaper Handelsblatt that he wanted to reform copyright in order to make it possible to collect a levy on Google and other commercial users of copyright protected works.

- The new Commission is planning a copyright reform. Our goal is to modernise copyright rules in the light of the digital revolution and changed consumer behaviour. For the moment, we are examining possible options. In any event, we want to make sure that creators and those that invest in creative content receive a fair remuneration from the online use of their works.

What is the opinion of the Commission with regard to the press publishers' ancillary right in Germany?

- European copyright rules have achieved a high degree of harmonisation. However, Member States also keep a certain margin of discretion to lay down rules in their national legislation, so long as they are in compliance with the EU acquis and do not hamper the development of the digital single market.
- The Commission will monitor the practical implementation of this provision, particularly after Google's agreements with some press publishers to keep on aggregating their content in Google News.

Background notes

German neighbouring right for press publishers ("Google Tax")

Google News offers internet users access to news published in the press by providing the headlines and the first lines of press articles along with the links to the original pages. This has resulted into litigation in a number of Member States (notably in Belgium and France). In France Google reached an agreement with press publishers in 2013 (by establishing a €60 million fund to support French press publishers). Two Member States (Germany and Spain) have adopted laws to address press publishers' concerns.

Germany has introduced a neighbouring right for press publishers, in force since August 2013. The law grants newspaper publishers an exclusive right to allow or prohibit the making available of press products or parts of press products online. The making available is lawful unless carried out by commercial news aggregators such as search engines or social networks. Authors and journalists have a right to participate in a possible remuneration.

The effectiveness of the law remains unclear. Initially, certain big publishers (Springer, Burda etc.) gave their approval to have their publications included in Google News. In February 2014, 12 publishers, including Springer, Burda and Dumont Schauberg joined the collecting society VG Media. In June 2014, VG Media published their tariff (up to 11% of the turnover generated from the making available of the snippets). After Google's refusal to pay licence fees based on this tariff, VG Media filed a complaint against Google with the Federal Competition Authority. In August 2014, the complaint was dismissed on grounds of inadmissibility. Also in August 2014, Yahoo News filed a constitutional complaint against the law with the Federal Constitutional Court. In October 2014, Google announced that it would display only the titles of publications and their links (which are not covered by the exclusive right). As a consequence, the publishers represented in VG Media agreed again with the display of snippets. In parallel to the complaint with the Federal Competition Authority, the publishers have filed a complaint against Google with the arbitration body of the Patent and Trademark Office, the competent supervisory authority for collecting societies.

Comparison with the Spanish Law on News Aggregators

According to the Spanish law of 4 November 2014, a new exception has been added to the list of exceptions and limitations to copyright and related rights. News aggregators do not need an authorisation from the relevant right holders to make news snippets available to the public.

The new exception is included in the law under the existing 'quotation exception'. It is subject to the payment of an equitable compensation to the publishers or authors of the original press articles. This compensation cannot be waived and is subject to mandatory collective management. The exception will not be applicable to images or photographs. For the latter, the exclusive right of the relevant right owners remains.

The provision exempts search engines from the obligation to pay compensation if the use of the snippets does not have a commercial purpose and if they link to the website from which the content originated.

The new law in Spain came into force on 1 January 2015. Google decided to stop the provision of the Google News services in Spain, as from 16 December 2014. Stakeholders (i.e. collecting societies and news aggregators) will be given the possibility to reach an agreement regarding the tariffs and their calculation. Lacking such an agreement, an administrative body would determine the tariffs.

Both the Spanish and the German law aim at the same result (i.e. payment to press publishers for the use of their works by news aggregators), but chose different approaches:

- The German law creates a new exclusive right concerning the use of snippets, while the Spanish law provides publishers and authors with a compensation which stems from a new exception to the existing exclusive rights.
- The German law requires that news aggregators seek the authorisation of the press publishers to use snippets (i.e. negotiate the licence). This may result in no payment if the bargaining position of press publishers is weak (e.g. compared to Google) as a licence can always be given "for free". The compensation for the quotation exception under the Spanish law cannot be waived and is subject to compulsory collective management.

Summary: Letter of 4 German Ministries (Justice and Consumer Affairs, Home Affairs, Economy and Transports) on the Digital Economy, 13 November 2014

Copyright

Copyright should strike a fair balance between the interests of users and right owners, creators. We should examine the need to reform Directive 2001/29/EC. Contractual solutions remain important but will not solve all problems.

Market regulation

Competition law: it should be ensured that dominant search engines do not favour own services, do not use "unauthorised original content of third parties' websites", do not force websites to acquire advertising to a large extent, do not limit the transferability of content on competing platforms.

It should be examined whether there is the need for a self-standing regulation on internet platforms to prevent abuses of dominant positions.

We should try agreeing on common principles regarding net neutrality. The Commission could for example start working on a Green Paper.

It should be examined whether the merger regulation should be reformed in order to address cases such as the acquisition of WhatsApp by Facebook (USD19 billion acquisition, but turn over below the regulation's threshold).

We support a strict application of state aid rules and a minimum harmonisation of corporate tax rates.

Trust and security/consumer protection

The negotiations on the proposed data protection regulation should continue. We should however make sure that it better addresses the challenges of Big data services.

In principle, we support the "right to be forgotten" and the "right of data portability" included in the proposal.

Infrastructure and funding

Infrastructure: we support the €300 billion programme of the Juncker Commission. An important part should be spent on digital infrastructure.

We should do more for risk financing (€500 million facility to be created at the EIB); promote "Industry 4.0" (= linking of manufacturing and IT); promote funding for cloud computing, smart home, smart services, IT and data security, big data.

We call on the Commission to take measures promoting good working conditions in the digital age.

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