

Günther H. Oettinger meeting (Google Germany),

8 May 2015

I. Scene setter

Participants

For DG CONNECT: -

For the Cabinet: Anna Herold

Objective: Engaging with Google about the copyright reform.

Their Position:

Copyright (Google submission to the 2014 copyright consultation):

"Barriers to cross border services result particularly from inefficient licensing practices which need to adapt to the digital age. This is more a question of the capacities of licensors themselves than it is of EU policy."

"To surmount the problem of lacking portability, one could think of having a right to continue serving content inside the European Union for users who have paid for that content then travel to jurisdictions where those rights are not yet cleared. This "right to a continued access" would not necessarily need a new provision in copyright law; the solution may be found in other areas (e.g. consumer protection) that can help increase the crossborder availability of content services in the Single Market."

Google seems to favour an open norm over further harmonisation of copyright exceptions: "Because law cannot predict technological change, it adapts to them. It should easily extend to the constant dynamic of new technologies such as 3D printing, virtual worlds, MOOCs, connected TVs,³⁷ multiscreen television consumption, wearable devices, networked houses, the internet of things, etc."

Our Position:

Copyright: A copyright reform is essential for an efficient digital single market (DSM). The Commission believes that the DSM will benefit eventually all stakeholders. As set out in the DSM Communication of 6 May, the Commission will make proposals to facilitate portability of legally acquired content. Further analysis is needed regarding specific provisions on press publishers.

II. Speaking points

Copyright:

- As you will have seen in our DSM-Strategy published on Wednesday, we aim at modernising 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 rightholders' 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.
- We are working to adopt a copyright legislative proposal before the end of 2015, as indicated in the DSM communication.

Google-Publishers Alliance / Copyright protection of press publishers

- We have learned with great interest about the Google Digital News Initiative. In principle, we welcome any attempt to boost a sustainable model for publishers online.
- In this context, I believe it is important to create a regulatory framework which gives incentives to press publishers for investing into new products and content. We are therefore closely observing the discussions and legislative interventions in the Member States, notably in Germany and Spain.

OUT OF SCOPE

IV. Background

Google News and related initiatives in the Member States

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 m fund to support French press publishers).

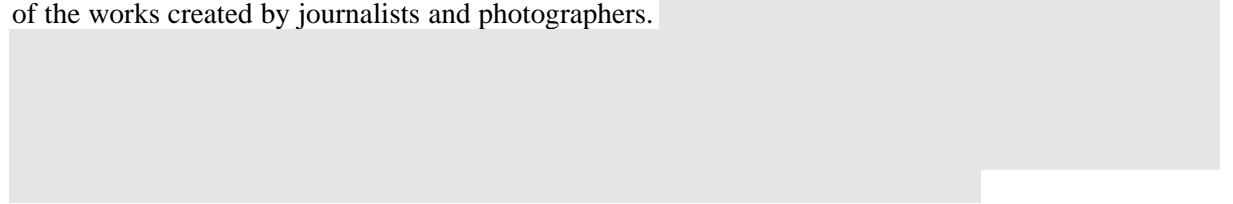
Two Member States (Germany and Spain) have adopted laws to address press publishers' concerns. Both aim at the same result (i.e. payment to press publishers for the use of their works by news aggregators), but follow different approaches:

- Under the Spanish law, news aggregators do not need an authorisation from the relevant right holders to make news snippets available to the public. However, the use 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.
- 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.

German neighbouring right for press publishers

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.

It should be noted that press publishers already enjoy the right to authorise the use of their publications, either as authors (through a legal fiction in place in some Member States) or as licensees of the works created by journalists and photographers.



Google Digital News Initiative

Source: BBC Article of 27 April 2015 (<http://www.bbc.com/news/technology-32486019>)

"Google has pledged to give €150m (\$163m; £107m) to European news publishers and journalism-focused start-ups over the next three years. The funds - which are part of a wider package - will be used to support the organisations' efforts to earn money from their own online coverage. The Financial Times, the Guardian, Spain's El Pais and Germany's Die Zeit are among those backing the initiative.

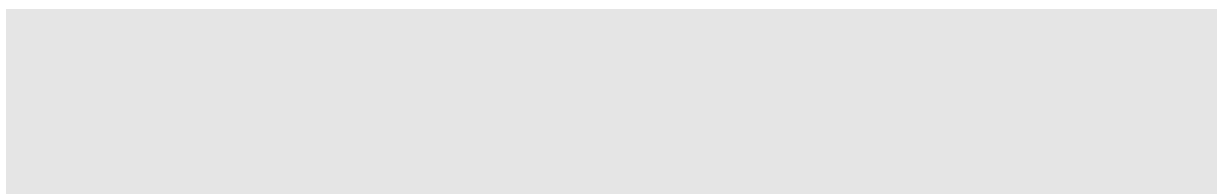
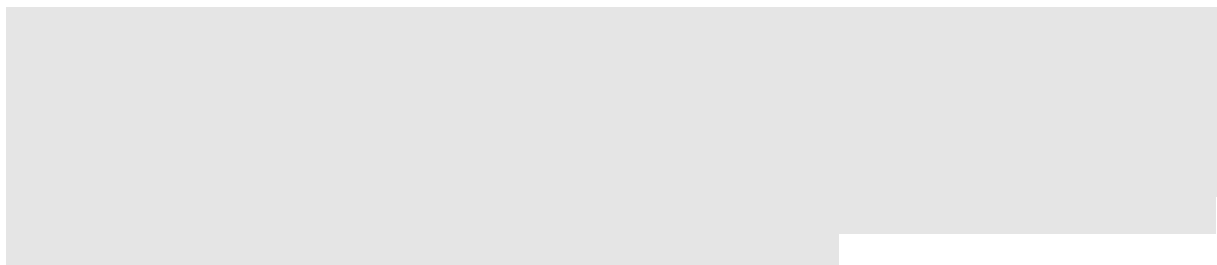
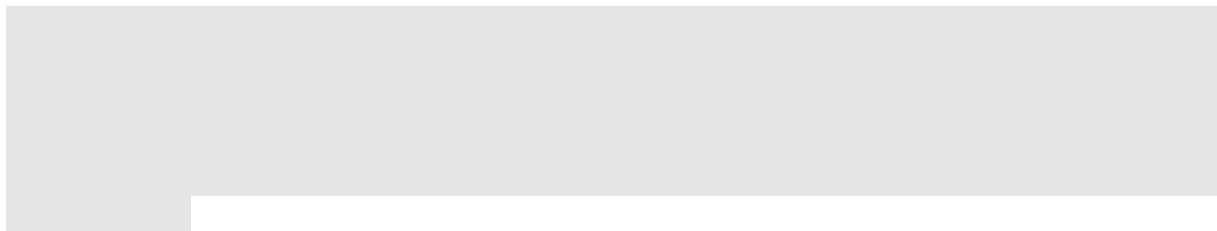
But several media groups that have been critical of Google are not involved. Publications belonging to Rupert Murdoch's News Corp and the Berlin-based Axel Springer group are among those absent from a list of "founding partners", although Google has said they are welcome to join.

The US company previously agreed to set up a similar fund to support French media organisations in 2013 in order to settle a dispute about its right to show headlines and text culled from their sites on its Google News facility.

In addition to its innovation fund, Google has also pledged to:

- work with European publishers to discuss ways to boost revenues via the use of ads, apps, paywalls and analytics data
- pay for three of its own workers - based in Paris, Hamburg and London - to provide digital skills training to journalists
- fund research to investigate how people consume news and find new techniques to crowdsource information."

Position of publishers



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Contacts:

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