

Günther H. Oettinger at the conference "Tag des Geistigen Eigentums"

24 April 2015

I. Scene setter

Objective: Engaging with industry stakeholders about the copyright reform

Their Position:

The present German stakeholders represent industries whose business models are based particularly on intellectual property (German industry federation, trademark industry association, German chamber of commerce, German alliance against counterfeiting). They advocate a high level of IP protection and are concerned about possible shifts in the industry value chains to powerful online platforms.

Our Position:

The Commission is aware of the importance of IP in general and copyright in particular for the creation of growth and jobs. The creation of a Digital Single Market will be an opportunity in this respect as long as incentives for creativity and investment are preserved.

II. Speaking points

- Our aim is to create a fully-functioning digital single market whereby companies from all over Europe are able to trade digital content online and to gain leadership in the digital competition in comparison to the USA and Asia.
- If we succeed – and we are determined to do everything needed – we will create one of the most open and dynamic market-places in the world.
- In this context, there is the need to discuss the issue of the power of Internet platforms. Everyone recognises that they bring significant benefits, but certain stakeholders are more and more vocal in expressing important policy concerns, notably in respect of customer/user lock-in and the use of their market strengths.

- The evidence is not yet clear on these issues, and some say that current competition rules are enough. Any action on this should therefore be preceded by a wide-ranging consultation with interested parties. We should make clear that this is not about protecting European companies against American ones, but ensuring that there is a level playing field between platforms, the content providers, and customers.
- I believe that as a first step we need to urgently work towards defining the concept of intermediaries/platforms and their responsibility.
- Furthermore, 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.

III. Defensives

What are the plans for the Digital Single Market? Are there already concrete plans for the copyright proposal?

The Commission is planning to issue a communication on the Digital Single Market beginning of May. This communication will outline the different initiatives of the Commission, such as telecommunication, data protection and also copyright. The proposal on copyright will be tabled in October/November.

Is the current legislative framework for copyright suited to the digital age? Which are the challenges for copyright?

Copyright has an essential role for the creation of value in our economy. It gives incentives for creativity and also for the investment into this creativity. We need to modernise copyright in order to ensure that this essential function works also in the internet age.

OUT OF SCOPE

2. 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.

3. 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.

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