

# Michael Hager meeting the European Publishers' Council

10 February 2015

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## I. Scene setter

**Objective:** Engaging with EPC about the copyright reform

### **Their Position:**

The European Publishers Council is a high level group of Chairmen and CEOs of leading European media corporations. The members are the most senior representatives of European newspaper and magazine publishers (e.g. Springer, Burda and Gruner und Jahr). These publishers are involved in multimedia markets spanning newspaper, magazine, book, journal, internet, online database publishers, radio and TV broadcasting. Christian Van Thillo, Chief Executive Officer of De Persgroep, is the Chair of EPC since 21 November 2014.

Typically, publishers oppose a legislative copyright reform and take the view that market solutions can remedy to the challenges of the digital age. Publishers are under pressure from news and content aggregators such as Google (Google News, Google Books) and are losing shares of the advertising market. Therefore, they stress that there is a need for strong copyright protection and a liability of online platforms for infringing content: "*Our industries need to rely on a fair and responsible framework for the Internet in order to remain sustainable. Publishers and producers have always and will continue to carry editorial responsibility, enabled by effective protection of intellectual property. All actors benefitting from the opportunities offered by the Internet should also take their responsibilities and respect rules of fair competition.*" (Creative Media Business Alliance position paper co-signed by the European Publishers Council of 26 September 2014).

In addition, EPC is the leading stakeholder within the Linked Content Coalition (LCC) and the Rights Data Integration Project (RDI) (see background).

For the EPC, RDI is notably an instrument to push their copyright agenda (market driven approaches, no reforms besides stronger copyright protection), please see their copyright position paper at <http://epceurope.eu/issues/our-copyright-vision/> (summary in the background).

**Our Position:** To reassure EPC that the European Commission is aware of the role of copyright for cultural creation/content, and that we intend to come up with a copyright modernisation proposal which is balanced and maintaining the right incentives for creation in the Digital Single Market

## II. Speaking points

- 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.

### **III. Defensive Points**

***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 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.

***Is copyright reform necessary? Won't it favour big internet companies at the expense of European creators?***

In the digital environment, copyright rules should continue to reward and provide incentives for creation while allowing access to a wider variety of works, including across borders. The EU copyright framework needs to take into account new technologies, new uses and new market conditions.

This does not mean favouring big players or damaging creators. It simply means that – as with other areas of law – copyright rules need to be reviewed in light of the realities of a market that is increasingly digital and fundamentally cross-border in nature.

We need more clarity in our rules, we need to act when we have the required evidence and we need to inject the dynamics of the single market into our copyright framework.

## **IV. BACKGROUND**

### **A. GERMAN NEIGHBOURING RIGHT FOR PRESS PUBLISHERS**

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 EUR 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.

### **B. 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.

## **C. EPC INITIATIVES**

### **1. The Linked Content Coalition / RDI Project**

The Linked Content Coalition (LCC) is an industry alliance led by EPC advocating the establishment of a common infrastructure for the communication of rights information (e.g. on the identity of the right owner or the scope of the licence). The Linked Content Coalition has applied under the Competitiveness and Innovation Programme (CIP) for the funding of the project RDI (Rights Data Integration). The objective of the project is to develop technology demonstrating how to efficiently manage and trade intellectual property rights online for any and all types of usage, across any and all types of content, in any and all media. The project started in October 2013 and is scheduled to last 27 months.

*Project description:* "A significant constraint in the growth of the online content sector is the need for better solutions for discovering, licensing and delegating intellectual property rights, allowing potential users better information and access, and enabling creators and rights holders to be properly rewarded.

Currently it is difficult to identify who owns what rights to what content in what country. Where there are solutions they tend to focus on one media type even though digital content is increasingly multi-media.

This can make rights trading:

- Expensive and difficult to use
- Insufficiently transparent
- Siloed within individual media types (when online content is increasingly mixed media)
- Insufficiently international in focus relative to distribution channels.

RDI will show how these hurdles can be overcome by adopting an open, standards-based communication layer between the different technology elements in the rights supply chain. RDI will use a "hub and spoke" architecture to allow rights users to discover and access information from rightsholders via a central transformation hub.

The content being used in RDI will come from a wide range of different media sectors (text publishing, musical works, sound recordings, news, still images and audiovisual)."

<http://www.rdi-project.org/>

## 2. Summary: EPC copyright position paper

(<http://epceurope.eu/issues/our-copyright-vision/>)

EPC argues that developing a technical infrastructure using metadata and registries is the basis for a more transparent market place for copyright based services. In this context, EPC speaks of developing a "partnership between copyright and technology". In EPC's view, licensing is an essential element in such a partnership:

- Recommendation 2 ("Legal clarification between hyperlinks and licensing terms"): Based on the recent Svensson-Case of the CJEU, EPC holds that hyperlinks should be subject to the communication to the public right. Right owners should be able to restrict access to websites based on licence terms to a specific public, whether or not accompanied by technical measures. [REDACTED]
- Recommendation 4 ("Fair framework for unlicensed use of snippets"): EPC advocates for a new exclusive right for press publishers based on the German "Leistungsschutzrecht".
- Recommendation 7 ("Monitoring deep framing practices"): EPC questions whether deep framing should be treated as a hyperlink and argues that an authorisation would be necessary. [REDACTED]
- Recommendation 8 ("Fair browsing"): EPC acknowledges that internet browsing should not be subject to exclusive rights. Still, EPC makes the reservation that an "overbroad interpretation could mean that activities which ought properly to be licensable (e.g. the consumption of press cuttings) might cease to be so."

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