

**BACKGROUND BRIEF – COMMISSIONER OETTINGER MEETING THE
COMMITTEE ON TRANSPORT AND DIGITAL INFRASTRUCTURE OF THE GERMAN
BUNDESTAG – BRUSSELS, 4/3/2015 AT 11H45**

OUT OF SCOPE

Copyright reform

German position

According to a letter dated 13/11/14 signed by four federal ministries (Ministries for Justice and Consumer Affairs, Home Affairs, Economy and Transports) 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".

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. A reform should not undermine the essential function of copyright to incentivise creation and investment into creation. 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).

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 m fund to support French press publishers). Two Member States (Germany and Spain) have adopted laws to address press publishers' concerns.

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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.

Author: , F5 – Tel: