

**From:** CNECT F  
**Sent:** 22 May 2015 17:21  
**To:** [REDACTED] (CNECT); CNECT CAD  
**Cc:** CNECT F5; CNECT F1  
**Subject:** RE: [REDACTED] - 24/04/2015 - Press publishers key concerns on the Digital Single Market Strategy

Dear [REDACTED],

Yes, this should be for Dir F (F1 Cdf with F5 for input on copyright and G on AVMS).

Dear colleagues in CAD,

Thanks for re-attributing to us.

Kind regards

[REDACTED]

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**From:** [REDACTED] (CNECT)  
**Sent:** Friday, May 22, 2015 4:37 PM  
**To:** CNECT F  
**Subject:** FW: [REDACTED] - 24/04/2015 - Press publishers key concerns on the Digital Single Market Strategy

Hello,

Are you agree to take the lead?

Thank you!

Best regards,

[REDACTED]

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**From:** SCHMITT Diane (CAB-AVRAMOPOULOS)  
**Sent:** Friday, April 24, 2015 1:43 PM  
**To:** CAB AVRAMOPOULOS ARCHIVES  
**Cc:** PAPASTAMATIOU Ilias (CAB-AVRAMOPOULOS)  
**Subject:** [REDACTED] - 24/04/2015 - Press publishers key concerns on the Digital Single Market Strategy

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**From:** [REDACTED] [[mailto:\[REDACTED\]@magazinmedia.eu](mailto:[REDACTED]@magazinmedia.eu)]  
**Sent:** Friday, April 24, 2015 1:02 PM  
**To:** SCHMITT Diane (CAB-AVRAMOPOULOS); PAPASTAMATIOU Ilias (CAB-AVRAMOPOULOS)

**Cc:** [REDACTED]

**Subject:** Press publishers key concerns on the Digital Single Market Strategy

Dear Ms. Schmitt, dear Mr. Papastamatiou

Further to our previous ENPA-EMMA letter to all European Commissioners setting out press publishers' key concerns regarding the DSM strategy (attached), we would like to follow up with some additional points in light of new information regarding the draft DSM strategy currently under discussion.

With the following suggestions, we would like to ensure that the Digital Single Market Strategy aims at enhancing a vibrant press publishing sector in Europe that can reach out to more customers with diverse offerings on all platforms, rather than creating additional obstacles, burdens and restrictions which could directly impede press revenues, business models and jobs in Europe.

**Proposed modernisation of the copyright framework:**

- Digitisation has not reduced but increased the need for copyright protection, together with better enforcement. For newspaper and magazine publishers to be able to provide consumers with innovative, professional content in a sustainable way, they need to be able to continue monetising content. They also need to have the **ability to decide on the terms and conditions** for managing, distributing and making available their content. This protection is of fundamental importance for **newspapers** and **consumer magazines**, as well as high value specialised **B2B magazines**, which are all costly to produce.
- The ability of publishers to license their content for press review and other services has long provided a legitimate and essential revenue stream which could be **devastated by a new exception for text and data mining**. We are therefore concerned about what we understand to be a move towards an exception for text and data mining. There is no evidence that the current framework hampers innovation in research for non-commercial and commercial purposes based on the use of TDM or that there is any market failure that would justify an exception.

- One of the key challenges facing press publishers in the digital environment is how to ensure that third parties, including technology companies and news aggregators, **do not extract the value of their content, without the possibility of remuneration.** We would object to any moves which would not allow for this possibility, since this would do immeasurable damage to press publishers who have heavily invested in bringing innovative digital content to consumers and businesses, and expect to be able to rely on copyright protection to get a return on such investments.

#### **Reducing VAT related burdens:**

- **The draft Digital Single Market strategy refers to the need to reduce VAT related costs and administrative burdens and obstacles**, in particular for SMEs. This action point must also include the question of differentiated VAT tax treatment for similar products and services, which prevents the growth and development of the digital business models of many European media companies, in particular in the press publishing sector.
- The Digital Single Market should ensure appropriate conditions for the development of sustainable paid-for-offers for providing digital press content, whilst ensuring stable revenue streams from the printed version. In this context, the EU legislation on VAT should allow Member States to lower VAT rate for digital press and apply the same rate (whether zero, super reduced rate or reduced) currently applicable to printed press. Such a change would enable publishers to respond competitively to the consumer demand to access innovative digital press offers on all platforms, at all times and at the lowest possible price.
- The Digital Single Market strategy should therefore highlight the need to address the impact of the recent CJEU ruling on the

book and press publishing sectors in Europe, in particular as regards the principle of fiscal neutrality on VAT applicable to books and press publishing products, in the print and digital environment. This is particularly important, in view of the growing consumer demand to receive digital press offers without obstacles and independently of their formats, platforms or means of distribution. **These recent developments underline the urgent need for the VAT Directive to be adapted in order to give Member States the option of adapting their national law to the realities of the digital press sector.**

#### **Review of Audiovisual Media Services Directive:**

- In the context of the review of the Audiovisual Media Service Directive and an expected legislative proposal in 2016, the draft Digital Single Market strategy refers to a possible broadening of its scope to encompass services outside the definition provided in the Directive. The existing AVMS Directive explicitly excludes electronic versions of newspapers and magazines from its scope because the press cannot be regulated in the same way as the audiovisual sector, in respect of press freedom and editorial independence. **The Digital Single Market strategy should clearly mention the need to respect this exclusion for editorial press content, including audiovisual content, in the forthcoming review of the AVMS Directive.**
- The press sector falls under the principle of Article 4§1 of the E-commerce Directive, according to which the provision of information society services may not be made subject to prior authorisation or any other requirement having equivalent effect. This principle is a cornerstone of press freedom in the digital environment and needs to remain untouched.
- Furthermore, the reference in the draft Digital Single Market strategy to the discoverability/findability of public interest

content is not acceptable in so far as it allows for preferential treatment to specific media content (e.g. public service broadcasters) over others' editorial content, including the press. Such a differentiation would lead to discrimination, unfair competition and censorship. **An appropriate wording such as "journalistic editorial content" could be considered to encompass on an equal basis all media content, independently of their sources (be it private or public media).**

- It would also be important to ensure that quantitative advertising rules of the AVMS Directive are not challenged in the review, since they provide certain guarantees not only for consumers but also for media pluralism and help to ensure a fair balance between the various media on the advertising market.

#### **E-commerce Directive/Combating illegal content on the Internet:**

- The Digital Single Market strategy addresses the question of removing illegal content (e.g. based on terrorism, child pornography, copyright infringement, etc) and the role and liability of intermediaries under the E-commerce Directive. The press publishing sector understands the public policy objectives to protect society against any threat to security or individual freedoms. It is therefore crucial to ensure that any measures taken on this basis do not impede other fundamental rights and freedoms, including freedom of expression. We therefore welcome the reference that has been included in this respect under this section.
- If it is essential to preserve the E-Commerce Directive and avoid any reopening of this legislation, which is a cornerstone of the digital economy in Europe. Any legislative proposal to tackle illegal content on the Internet should not lead to an obligation for publishers to monitor constantly blogs, forums,

comments, etc. which to some extent are already covered by press self-regulatory rules by each press publishing house. **Such an obligation would also go against press freedom, as it would lead to a systematic prior content control and censorship.** The respective rules on liabilities in Articles 12–15 of the E-Commerce Directive have enabled the balancing of the different interests.

### **Proposed EU legislation on consumer contracts and banning “geo-blocking”**

- It is vital for press publishers, which are mostly SMEs, to avoid the introduction of any legislation that could hinder distribution and easy access by consumers to European magazines and newspapers. Any potential new legislative measures would make the process of agreeing and managing contracts more complicated, in particular subscription contracts which are becoming an increasingly important source of revenue for publishers. We are therefore extremely concerned about the reference in the draft DSM strategy to proposals for legislation for harmonised mandatory EU contractual rights applicable to domestic and cross-border sales of tangible goods, and for online purchases of digital content.
- While a non-legislative, non-mandatory “tool box” may well be useful for some business models, it would be **inappropriate to launch into legislation in this area** and we are not aware of any solid evidence demonstrating the need to do so. There is already comprehensive legislation, including the Consumer Rights Directive. When discussing this Directive, the EU institutions notably rejected various ideas which would have made it even more complicated to agree and manage subscriptions, and which would have obliged press publishers to deliver subscriptions to all Member States.
- Linked to this latter point, we were also **concerned to see that the draft DSM strategy suggests that “unjustified” commercial decisions to not supply a**

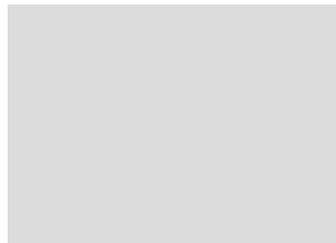


## **Press publishers key concerns ahead of discussion in the College of Commissioners on the Digital Single Market Strategy**

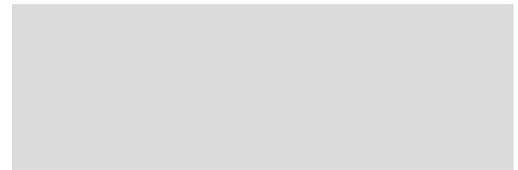
ENPA, the European Newspaper Publishers' Association, and EMMA, the European Magazine Media Association, would like to actively contribute to the debate on the future Digital Single Market (DSM) Strategy, due to be presented by the Commission in May 2015. Ahead of the forthcoming discussion in the College of Commissioners on the DSM, please find attached a letter highlighting the main strategic priorities and challenges of the press publishing sector in Europe, which proposes ways in which these priorities could be addressed in the future DSM Strategy. In brief:

- **Digitisation has not reduced but increased the need for copyright protection.**
- **It is vital for Member States to be able to apply lower VAT rates for digital press and for this issue to be addressed in the forthcoming DSM Strategy.**
- **Fair competition and transparency in the digital world is essential: principles such as fair search, net neutrality and platform neutrality are key and have to be upheld.**
- **Data protection rules should not hamper a free and independent press.**
- **It is vital to maintain the exception for the press in the AVMS Directive, as well as a sufficient advertising share for the press sector.**

We hope that you will take these high priorities for the press publishing sector into consideration in the Digital Single Market Strategy. Please do not hesitate to contact us with any questions you may have.



Auke Visser  
EMMA President



Ivar Rusdal  
ENPA President

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