

## Copyright

### Roundtable Commissioner Oettinger with Press Publishers

**Monday 25 January 2016 (BERL, 7/S1, 17:00-18:30)**

#### I. Scene setter

*List of participants /CVs and company descriptions (see attachments for more details). The participants have been invited following suggestions from the four main press/news media publishers associations: EPC (European Publishers Council), ENPA (European Newspaper Publishers), EMMA (European Magazine Publishers), NME (News Media Europe):*

[REDACTED], Roularta Media Group (Belgium)

[REDACTED], De Persgroep Nederland B.V. (The Netherlands)

[REDACTED], Guardian Media Group (UK)

[REDACTED], Burda (Germany)

[REDACTED], Schibsted Media Group (Norway/Sweden)

[REDACTED], Financial Times (UK)

[REDACTED], Axel Springer AG (Germany)

[REDACTED], Reutlinger General Anzeiger (Germany)

[REDACTED], News Corp (US/UK)

[REDACTED], Società Edizioni e Pubblicazioni (SEP) (Il Secolo XIX) (Italy)

[REDACTED], Grupo Heraldo (Spain)

*Personal  
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Article  
4(1)(b)*

*For DG CONNECT: Gerard de Graaf, [REDACTED], [REDACTED], [REDACTED]*

*For the Cabinet: Michael Hager, Anna Herold*

*Estimated duration: 1.5 h*

#### Agenda (see attachments):

1. Opening remarks setting out objective of the meeting and policy question to be discussed-  
Commissioner OETTINGER

2. Exchange of views with the stakeholders: brief statements by each stakeholder followed by a discussion (*NB. the agenda shared with the meeting participants proposes three broad questions to focus the discussion: see below*)

3. Closing of the meeting - Commissioner OETTINGER

## **Objectives:**

The objective of this roundtable is to clearly identify the positions of the different European newspaper publishers in relation to the problems they face as regards the online exploitation of their products (particularly but not exclusively on aggregation platforms such as Google News) and the related possible solutions.

As a background, over the last few years many newspapers publishers have been vocally asking the Commission to propose modifications to EU copyright law with the objective to grant publishers new harmonised rights at EU level. Publishers are currently not identified as rightholders by EU copyright rules: they licence/enforce rights either on the basis of the rights authors (eg. journalists) transfer to them contractually and/or (in some Member States) as authors of "collective works". Publishers justify their request with the difficulties they face when seeking to monetise online uses of their content, in particular by online platforms (such as news aggregators) that link to press articles freely available online and/or use excerpts ("snippets") of articles without acquiring licences from the right owners. At the same time, due to the dominant positions of these platforms, many publishers depend on the web traffic generated by the platforms.

Solutions to these problems have been attempted at national level, in particular in Germany and Spain. The adoption of a German law granting press publishers an "ancillary right" in 2013 and of a Spanish law introducing a "compensation right" for press publishers in 2014 (see details in the background) have not yielded the expected results but have contributed to spark the debate about possible solutions at EU level.

The whole discussion about possible new rights at EU level for publishers is highly controversial. The European Parliament debated about new rights for publishers in the context of the "Reda-Report" (July 2015). Proposals from the EPP to request or examine new publishers' rights did not gain a majority and were voted down in that context. The Commission has taken up the debate in the 9 December 2016 Communication "Towards a modern, more European copyright". The recent Communication indicates that the Commission will look at the issue of "news aggregators" including as regards a possible intervention "on rights in general", in the chapter covering the objective of a "well-functioning market place for copyright". Partly as a reaction to the Communication, in a letter of December 2014, 80 MEPs from the main political groups (except EPP) rejected the idea of new rights for press publishers.

## **Their Position:**

Generally, news publishers are under pressure from content aggregators such as Google (Google News) and other platforms (for example Facebook) which build (part of their) services on the reuse of newspapers content freely available online (for example on newspapers webpages). This is part of a more general situation where news publishers are struggling to find new business models adapted to new consumption habits. Increasingly, consumers expect that they can access/use content on various devices and platforms.

Newspapers publishers often point to the paradox that while their content has never been so successful with the public licencing/monetising its use online is today more difficult than ever.

While most of the mainstream European newspaper publishers consider that a solution strengthening their bargain power vis à vis platform is needed at EU level, there is no homogenous position of press publishers on how to respond to these challenges.

Different solutions are advocated:

Whereas certain publishers ask for a mere **compensation or remuneration right** (the publisher cannot prevent the online use and only has the right to claim compensation, subject to collective management, the "Spanish" approach": see the background), others take the view that publishers need exclusive rights in order to licence their rights to users and favour other solutions.

Amongst those asking for an exclusive right, some seem to prefer (or at least indicated in the past to prefer) a so-called **ancillary right** (exclusive economic right only related to online exploitation – mainly the use of snippets- with a very short term of protection (possibly one year - the "German" approach). The request for an ancillary right has often been coupled with the request to introduce a compulsory collective management of this right by publishers' collecting societies.

Finally, others (apparently the majority in the industry) would prefer a fully-fledged **neighbouring right** (exclusive economic right related to copyright for all kinds of uses, offline and online, protected for 50 years after publication). In essence a neighbouring right would grant press publishers an equal status as the one enjoyed by the other neighbouring rightholders in the EU copyright acquis, notably films and music producers and broadcasters

It seems increasingly clear (see the EPC position's below) that the request for a neighbouring right is gaining pace as a common denominator among publishers' requests. It has to be noted that so far the discussion has concerned almost exclusively press/news publishers and that other print publishers (such as scientific publishers or book publishers) have been rather silent on this issue. It is possible that in future these other categories of publishers may join the press industry in asking for the introduction of a neighbouring right.

In a meeting with the Cabinet in December 2015, the European Publishers' Council (EPC) took finally the position that publishers needed a fully-fledged neighbouring right. EPC indicated that there was no agreement amongst its members to back the requests previously formulated by some individual publishers to introduce at EU level an ancillary right or a compensation/remuneration right. In this respect, it appears that most EPC members would have concerns if an ancillary right was introduced particularly because of the compulsory collective management feature normally associated to this concept. They seem to consider that an ancillary right with compulsory collective management would weaken their licencing bargaining power notably in cases where today they succeed in licencing their product (for example for big companies/organisations press reviews). More in general, EPC seems to consider that Google News is a very specific problem likely to disappear and that other business models building on the online use of their content are likely to emerge (for example social media are increasingly "using" news articles), as well as new type of problems. In this context, an EU-harmonised fully-fledged neighbouring right for press publishers is considered to be much more future-proof than an ancillary right or similar solutions.

Further discussions with the publishing industry have revealed that the main associations (EPC EMMA, ENPA, NME) are now supportive of the neighbouring right- solution. Finally, calls for a neighbouring right for publishers have also become stronger after a recent CJEU ruling in which the Court clarified that publishers are not considered right owners under the EU Copyright Directive (2001/29/EC) in the context of the distribution of private copying levies ("Reprobel"-case").

### **Our Position:**

**We agree that the Digital Single Market needs to ensure a fair sharing of the benefits generated from online uses of copyright protected content.** This is the objective that we have formulated under the section on "a well-functioning value chain for copyright" in the December Communication and that we will be pursuing notably through the intervention on intermediaries in the 2016 legislative package (the "value gap" issue). To be noted that the planned intervention in the area of the "value gap" while not fully addressing the request of to introduce new rights, will go some way in improving the situation of publishers vis à vis internet platforms and is as such supported by the EPC.

**However we believe that we should be careful not to rush to legislate by adding new rights** (because of the risk of further fragmenting the digital single market and making the licencing processes and the whole copyright regime more complex) in the EU acquis. Any initiative in this area will have to be backed by sound analysis and evidence, which is not clear yet at this stage.

We also need to be aware that the creation of an ancillary right for press publishers has not proven efficient at national level, notably in Germany and Spain and does not seem to be politically feasible (see the strong opposition of many in the EU Parliament). **At the moment an ancillary right does not seem to be backed by the industry, nor justified by enough evidence (besides being extremely controversial politically).**

The possibility to introduce **a neighbouring right for publishers seems to be the solution favoured by the industry, but this would be a long term project which would have a massive impact on the EU copyright system, still to be properly assessed.** The introduction of a new category of rightholders in the EU copyright framework would be a massive endeavour both in political terms (this would be opposed by many that would see it as the addition of a further level of complexity/protection in the EU copyright system) and as regards the economic impact (other rightholders may see this as resulting in a reduction of "the slice of the cake"; service providers will consider this a source of fragmentation and transaction costs; journalists may see it as a reduction of the "economic weight" of their own rights, etc).

### **Line to Take:**

- The objective of this roundtable is to clearly identify the positions of the different European newspaper publishers in relation to the problems they face as regards the online exploitation of their products.
- As indicated in the recent Copyright Communication (9 December 2015), the Commission's objective is to ensure a well-functioning value chain for copyright in the Digital Single Market, to rewards investments in creation and ensure that rightholders are paid when their content is used online.

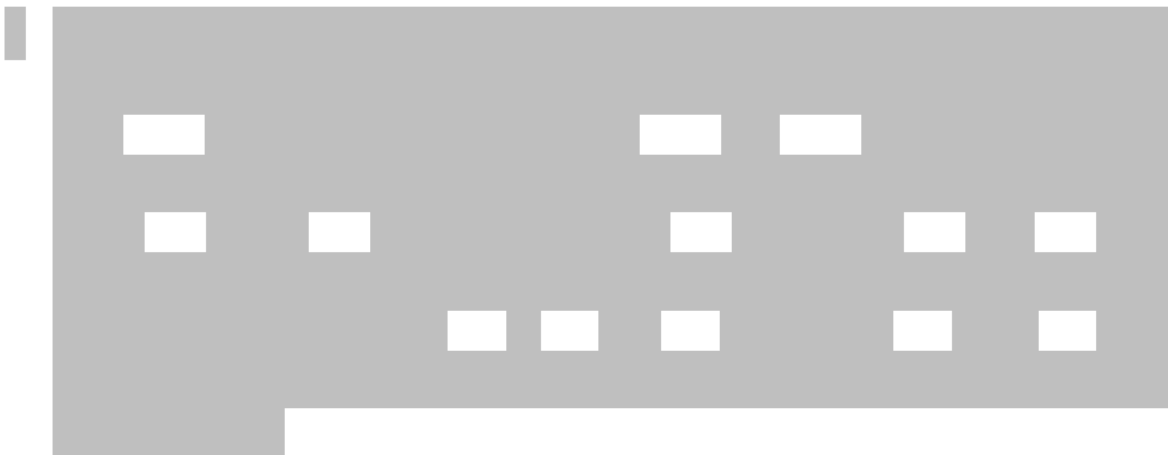
- In the December Communication we have also said that we intend to analyse the situation as regards publishers and news aggregators. We have not taken any decision yet as to whether intervention is needed in this respect and if so what.
- We understand that different ideas have been put forward by publishers. In particular, the request to introduce in EU copyright law a new "neighbouring right" which will identify publishers as rightholders (as for example music producers, film producers, broadcasters).
- A new neighbouring right would be a long term project which would require proper evidence and consultation. This would be a major change to the EU copyright. It is clear that this would not be for the June package. We would need in particular to assess the impact on other rightholders, on journalists, on service providers.
- However, I am open to hear your views on how a neighbouring right could help contributing to a flourishing Digital Single Market. The discussion today is therefore very important to better understand the problems faced by publishers and how the EU could address them.
- *[As a background, participants have received an annotated agenda beforehand with three main questions. We suggest that participants focus on these questions during the discussion (although – in the interest of time and to stimulate contributions from different angles– not all participants will necessary have to cover the three questions in their interventions). See the questions below*
  - 1. What are the main copyright-related challenges faced by press publishers in the online environment? In particular, what are the concrete problems you face when seeking to licence your products for online uses and/or enforce the rights to stop unauthorised uses? How do you expect these challenges to evolve in the medium term?
  - 2. Do you face problems due to the fact that you rely on the rights of authors (journalists, photographers, writers, etc.) to licence online uses of your publications and/or to enforce rights online? If so, which ones? To what extent the situation is different, in practice, when the publisher is identified as author of a collective work on the basis of national law?
  - 3. What solution, if any, should in your view be proposed at the EU level to address the problems identified above? Should new rights be granted to publishers at the EU level, what should be the subject of the protection and

*the beneficiaries of this potential new right (i.e. publishers of written content, publishers of all (including audiovisual) media, all the publishers?) And why/how would this make a difference?]*

## II. Speaking points

### Einleitung:



- Für mehr Wachstum brauchen wir einen vernetzten, digitalen Binnenmarkt.
- Der digitale Binnenmarkt sollte auch ein fairer Markt sein. Dies ist nicht nur wichtig für die Wettbewerbsfähigkeit Europas, sondern geht in Bezug auf Ihre Branche weit über rein wirtschaftliche Erwägungen hinaus. Die Inhalte, die Sie herstellen, sind für unsere Demokratien von besonderer Bedeutung. Presseerzeugnisse tragen dazu bei, dass sich unsere Bürger eine Meinung über öffentliche Angelegenheiten bilden und auf dieser Grundlage Entscheidungen treffen können.
- In der kürzlich erschienen Mitteilung zum Urheberrecht hat die Kommission darauf hingewiesen, dass ein fairer Markt in Bezug auf Urheberrecht insbesondere bedeutet, dass Anreize für Investitionen in Kreativität gesetzt werden und sichergestellt wird, dass Rechteinhaber für die Online-Nutzung ihrer Werke angemessen bezahlt werden.



*Out of  
scope*

- Ich bin der Überzeugung, dass diese Maßnahmen dazu beitragen werden, die Content-Branche insgesamt zu stärken, auch im Hinblick auf die Verhandlungsstärke der Verleger gegenüber den Plattformen.



- Gleichzeitig haben wir in der Mitteilung deutlich gemacht, dass wir die spezifischen Problemstellungen im Verhältnis von Verlegern und News-Aggregatoren analysieren wollen.
- 
- Ich habe insoweit noch keine Entscheidung getroffen.
- 
- Ich würde heute gerne Ihre Sicht der Dinge hören, welches die Herausforderungen auf dem Online-Markt sind und inwieweit ein vollumfängliches Leistungsschutzrecht – oder eine andere Lösung – zu einem florierenden, digitalen Binnenmarkt beitragen könnte.
- In der Tagesordnung haben wir zu diesem Zweck drei Fragen formuliert, die als Orientierung für Ihre Beiträge dienen sollen. Ich lade Sie ein, insbesondere auf diese Fragen zu antworten.

Schluss:

- Ich danke Ihnen, dass Sie mit uns diskutiert haben.
- Wir werden über unser heutiges Gespräch weiter reflektieren, gerade auch im Zusammenhang mit der Konsultation zu Plattformen.
- Lassen Sie mich nochmals betonen, dass für mich die Verlagsbranche eine besondere Rolle in unserer Gesellschaft spielt. Wir brauchen Presseverlage, um den



öffentlichen Diskurs mitzugestalten. Eine lebendige Debatte über gesellschaftliche und politische Themen ist das Fundament für unsere Demokratie.

- Meine Kollegen in DG CONNECT sowie ich selbst stehen Ihnen gern für weitere Gespräche zur Verfügung.

## Defensives

### What is the view of the European Commission on the German and Spanish laws granting specific rights to press publishers?

- It is important to create a regulatory framework which gives incentives to press publishers for investing into new products and content.
- We are closely observing the discussions and legislative interventions in the Member States, notably in Germany and Spain.
- The laws in Germany and Spain seem - at least for the moment - not to have achieved their intended goal. One particular reason for this might be the strong market position of Google. In this context, further analysis is needed.

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Author: [REDACTED] (CONNECT F.5 – Copyright), [REDACTED]

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## **IV. Background**

### **Google News and legislative 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 an ancillary 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 ancillary right for press publishers**

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 (The Federal Competition Authority confirmed on 9 September 2015 that Google did not behave unlawfully). 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, several publishers represented by VG Media have started a proceeding against Google at the Regional Court Berlin. In their view, Google abuses its dominant position by announcing that it would display only the titles of publications and their links unless it received a free of charge licence.

### **Recent developments**

Furthermore, VG Media has filed a complaint against Google with the arbitration body of the Patent and Trademark Office (DPMA), the competent supervisory authority for collecting societies. The DPMA issued its decision on 24 September 2015:

- DPMA takes the view that Google is in principle obliged to pay the tariff set by VG Media, but that the concrete rate is too high (VG Media had asked for about 6% of the turnover Google made of exploiting German press products).

- DPMA makes a suggestion for concretising the requirements set out in the law. Accordingly, a snippet of only 7 words (excluding the search terms) should not trigger the remuneration obligation.

- In addition, DMPA takes position regarding issues raised by German constitutional and EU law (the DPMA press release says not more than that. In contrast, VG Media states that according to the DPMA, the law is compliant with German constitutional and EU law). The DPMA advises the parties to find a compromise.

According to media coverage from end of October 2015, both parties have filed an appeal with the Higher Regional Court Munich ("Oberlandesgericht München"). The litigation could go up to the Federal Supreme Court.

In addition, in August 2014, Yahoo News filed a constitutional complaint against the law with the Federal Constitutional Court ("Bundesverfassungsgericht").

### **Spanish compensation right**

Under Spanish law (adopted in November 2014), 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 by news aggregators of compensation to the publishers and authors of the original press articles. This compensation cannot be waived and is subject to mandatory collective management. In reaction to the law, Google has stopped Google News in Spain in December 2014.

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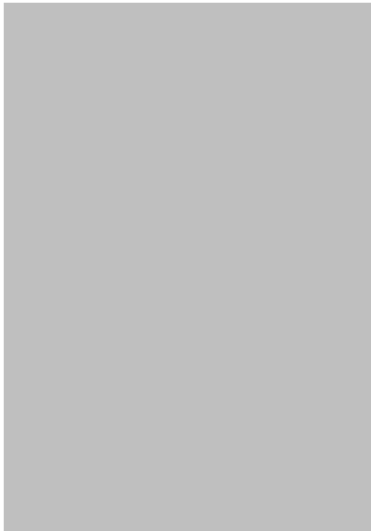
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## V. Attachments

### 1. CVs

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[REDACTED], Roularta Media Group



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[REDACTED], De Persgroep Nederland B.V.



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[REDACTED] Guardian Media Group



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[Redacted text], **Hubert Burda Media**



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[REDACTED], **Schibsted Media Group**

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[REDACTED], **Financial Times**

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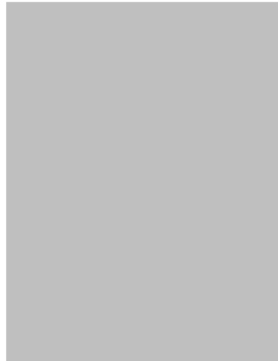
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[REDACTED], Società Edizioni e Pubblicazioni (SEP) (II Secolo XIX)

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## 2. Companies

### Axel Springer

Axel Springer SE is a of the leading digital publisher in Europe. The digital media channels already contribute nearly three quarters of total pro-forma revenues today. The company is consistently pursuing the objective of building up a fast-growing and profitable digital portfolio, and for this reason is networking today more than ever before with the current generation of founders: digital start-ups.

Company Data (2014)

Employees      13,917

Total revenues €3,037.9 million

Operating profit (EBITDA) €507,1 million

Headquarters Berlin

## **Burda**

At total consolidated sales of €2.46 billion and over 10,000 employees in 18 countries, Hubert Burda Media is Germany's leading magazine publishing house and one of Europe's largest consumer internet companies. Burda's digital activities have been the main driver of the company's growth. Hubert Burda Media reaches over 160 million users online; 40 million consumers enter into paying relationships with one of Burda's 400 brands. The company offers about 80 magazines in Germany and another 240 magazines all over the world.

## **Financial Times**

The Financial Times is one of the world's leading business news organisations, It is part of the Nikkei group, a global news and business information organisation based in Japan with annual revenues of over €2bn.

The FT has a global headcount of 2,200 people, including 600 journalists in more than 40 countries, and is recognised internationally for its authority, integrity and accuracy. FT's combined paid print and digital circulation exceeds 750,000. Over 50% of FT's revenue comes from content rather than advertising, and mobile drives almost 50% of total traffic. Key current areas of growth include digital content, digital advertising and live events.

## **Grupo Heraldo**

Grupo Heraldo is a communication group mostly active in Aragón. The origin of the group is the regional newspaper Heraldo de Aragón. From this, a group was born integrating or creating different companies linked in one way or another to communication. Today the Grupo Heraldo has its own companies for printing the press (their own or others' papers), distributing them, IT, audiovisual, radio, and so on. They also have investments in other communication companies in Spain (including Vocento and Grupo Prisa). Their annual turnover is around 100 m EUR.

## **Guardian Media Group**

Guardian Media Group is the owner of Guardian News & Media Ltd one of the UK's leading media organisations, publisher of The Guardian, The Observer and theguardian.com and global online presence with dedicated sites in the US and Australia.

## **News Corp**

News Corp is a global diversified media and information services company focused on creating and distributing authoritative and engaging content to consumers and businesses throughout the world. The company comprises businesses across a range of media, including: news and information services,

book publishing, digital real estate services, and cable network programming and pay-TV distribution in Australia, that are distributed under some of the world's most recognizable and respected brands.

News Corp's commitment to premium content makes its properties a trusted source of news and information and a premier destination for consumers across various media. In Europe, News Corp has significant press interests primarily through its News UK and Dow Jones businesses. These interests include:

News UK

The Times ([TheTimes.co.uk](http://TheTimes.co.uk), [TheTimes.ie](http://TheTimes.ie))

The Sunday Times ([TheSundayTimes.co.uk](http://TheSundayTimes.co.uk), [TheSundayTimes.ie](http://TheSundayTimes.ie))

The Sun ([TheSun.co.uk](http://TheSun.co.uk), [TheSun.ie](http://TheSun.ie), [TheScottishSun.co.uk](http://TheScottishSun.co.uk))

The Sun on Sunday ([TheSun.co.uk](http://TheSun.co.uk))

Dow Jones

The Wall Street Journal ([WSJ.com](http://WSJ.com) and [WSJ.com/Europe](http://WSJ.com/Europe))

Barron's ([Barrons.com](http://Barrons.com))

MarketWatch ([MarketWatch.com](http://MarketWatch.com))

## **De Persgroep**

De Persgroep is a leading provider of information and entertainment in Belgium, The Netherlands and Denmark. De Persgroep brings market leading brands to an audience of millions. De Persgroep's portfolio includes newspapers, magazines, radio stations, TV stations and online operations in the segments of news, recruitment, automotive, and technology with various websites.

Its brands include De Morgen, Het Laatste Nieuws, HUMO, De Volkskrant, Trouw, AD, De Tijd, L'Echo, HLN.be, NationaleVacaturebank.nl, Tweakers.net, Q-Music, VTM, Dag Allemaal, Het Parool, Brabants Dagblad, De Gelderlander, Eindhovens Dagblad, Berlingske, BT, Weekendavisen. De Persgroep is headquartered in Kobbegem, Belgium. For further details please refer to our website at [www.persgroep.be](http://www.persgroep.be).

## **Reutlinger Generalanzeiger**

The Reutlinger General-Anzeiger (GEA) is the only independent daily newspaper in the Neckar-Alb region with its own editorial board. The circulation of the GEA is of 37,909 copies per day and each edition of the Newspaper has an average of 2.8 readers. The newspaper covers the regional news of Reutlingen and the Neckar-Alb region (where it is printed) and has existed since 1888.

## **Roularta**

Roularta Media Group (RMG was founded in 1954) is a Belgian multimedia group quoted on the stock exchange with over 2,000 employees and a total turnover of 500 million euro.

Over the past few decades, RMG introduced the biggest newspapers of the country on the market (De Streekkrant – 50 regional weeklies with over 2.5 million copies – and De Zondag – 16 regional weeklies with a circulation of 600,000 copies) and the biggest magazines of the country (Steps – 16 regional monthlies with a circulation of 700,000 copies).

Roularta created the six Belgian news magazines (Knack - Le Vif/L'Express, Trends N/F and Sportmagazine N/F) as well as a series of specific niche magazines (such as Nest N/F and Plus Magazine in Belgium, the Netherlands and Germany).

By way of takeovers, Roularta acquired market leadership in the field of medical editions, IT publications and specialized magazines for the Graphic industry. Roularta joined the initiative to launch Flemish television and radio stations and holds 50% of the shares in Mediaaan.

Roularta is launching online and other digital initiatives: Knack.be/LeVif.be is the biggest news site in the country when it comes to quality news with 1.8 million “real users”.

Digilocal is the complete services pack for local advertisers: thanks to Google Adwords, Facebook advertisements, Proxistore (local advertising on important news sites) and Proxymail (local advertising via electronic newsletters of the group), websites, e-shops and the e-commerce platform Storesquare.

In the future, RMG aims to innovate through well-thought, targeted cross-media solutions based on its strong brands.

## **Schibsted**

Schibsted Media Group is a Norwegian media group with operations in 29 countries, the most important being Norway and Sweden. The company has its headquarters in Oslo, Norway, and is listed on Oslo Stock Exchange. Schibsted is widely considered a digital pioneer in news media publishing in Europe.

## **Società Edizioni e Pubblicazioni (SEP) (II Secolo XIX)**

Italiana Editrice S.p.A. (ITEDI) is an Italian multimedia publishing group, formed in 2015 from the merger of the newspapers La Stampa and Il Secolo XIX. The new group is controlled by Fiat Chrysler Automobile (77%) and Mercurio S.p.A./Perrone (23%). Mr John Elkann is Chairman of the Board and Mr Carlo Perrone Vice-Chairman. The new group has over 240 journalists and a circulation of 250.000 daily copies with a dominant position in North West of Italy.