

# Meeting between EMMA members (including [REDACTED], tbc) and GH0

29 September 2015

## I. Scene setter

EMMA (European Magazine Media Association) is a non-profit organisation based in Brussels. It is the main European magazine association and represents 15,000 publishing houses, publishing 50,000 magazine titles across Europe in both print and digital format. EMMA members comprise 24 national associations, 5 international associations and 23 corporate members.

*Estimated duration: 18:00 – 18:45*

*For DG CONNECT:*

*For the Cabinet: tbd*

*DG attendance: [REDACTED] (Copyright Unit)*

*Personal  
Data -  
Article  
4(1)(b)*

## II. Objectives:

### Their Position:

#### On copyright:

- EMMA's main concern is the use of press publishers' creative content for free, without the authorisation of and remuneration to the publisher, by third parties such as news aggregators and online platforms. Publishers are losing shares of the advertising market and stress that certain intermediaries are in fact distributors of content. These market players use publishers' content to generate revenues related to advertising and data but they do not share them with copyright owners.
- Therefore, they stress that there is a need for strong copyright protection and a liability regime for online platforms infringing copyright. EMMA calls for the introduction of a new exclusive right for publishers.

- [REDACTED]

*Out of  
scope*

[REDACTED]

- [REDACTED]

- [REDACTED] In the case of copyright infringements of newspaper or magazine publishers' content, EMMA's concerns focus on the adequate enforcement and respect of judicial decisions.

**On AVMS Directive:**

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[REDACTED]

[REDACTED]

[REDACTED]

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**Our Position:**

**On Copyright and data protection:** See Line to Take

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© 2005 Blackwell Publishing Ltd, *Journal of Internal Medicine* 258: 103–110

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### III. Line to Take:

#### On copyright

- A copyright reform is essential for an efficient digital single market (DSM). The Commission understands the role of copyright in the cultural sector and believes that the DSM will bring benefits for all stakeholders.
- It is important to create a regulatory framework which gives incentives to press publishers for investing into new products and content.
- Different solutions related to news aggregators, both legislative and market-led, are being tested at national level<sup>2</sup>. The Commission is closely looking into them. Further analysis is needed regarding specific provisions on press publishers.
- At this stage we have not yet a final position as to whether legislative intervention at EU level is needed. Our proposal will be published end of this year.
- We also need to examine carefully which issues are related to copyright (i.e. an insufficient level of protection) and which are rather a competition law matter (such as abuse of a dominant position).
- The Commission will also consider further measures on enforcement and clarifying the rules on the activities of intermediaries in relation to copyright-protected content.
- I am open to continue discussing these issues with you. I am also in touch with my fellow Commissioners, who look at these issues notably from a competition angle.



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**IV. Defensives**

**Copyright**

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Government	Percentage
Current government	85%
Previous government	15%

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Contacts:

Copyright: [REDACTED] (*DG CONNECT F.5*) tel.: [REDACTED]

AVMSD: [REDACTED] (*DG CONNECT G.1*), tel.: [REDACTED]

R&D: [REDACTED] (*DG CONNECT G.1*), tel.: [REDACTED]

Data protection: [REDACTED] (DG CONNECT H.4)

## Background

### A. Copyright

#### 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.

#### 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. 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), unless it obtained a free licence. The publishers represented agreed again with the display of snippets, but sued Google before the Regional Court of Berlin in December 2014, alleging abuse of a dominant position. Finally, 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. A decision is awaited for September 2015. In addition to these proceedings, in August 2014, Yahoo News filed a constitutional complaint against the law with the Federal Constitutional Court.

*Protection of  
the  
decision-making  
process  
Article 4(3)  
second  
subparagraph*



## **Latest developments: agreements between internet platforms and press publishers**

The market of services providing access to news content is evolving very rapidly.

On the one hand, Google launched in April the "Digital News Initiative", a partnership with eight European newspapers: Les Echos, FAZ, The Financial Times, The Guardian, NRC Media, El País, La Stampa and Die Zeit.

This agreement included the following elements:

- Establishment of a working group to focus on product development in the sector of online press publishers;
- Google has also agreed to set a 150 million euro innovation fund over three years, for the benefit of online press publishers.
- Other initiatives on training and research.

Furthermore, other initiatives are thriving in the context of online news aggregators:

- Facebook has created the service Instant Articles, which enables access to content directly from the Facebook users.
- Apple has created an app called Apple News, which will include content from different press publishers (and other media, including broadcasters). The user will be able to access content from different sources in the same app, instead of resorting to several apps.

According to information published on the media, Apple and Facebook would not pay for the content. Moreover, the traffic would not be directed to the websites of the different publishers, since it would be consulted directly on Facebook or Apple News. However, press publishers could receive a share of up to 70% of the turnover on advertisements generated by the platforms in relation to these services.

These initiatives seem to count on the support of lots of publishers worldwide, even though others have also raised some concerns about them (for instance, on their impact on paid subscription models).

## **Discussions in the EP in the context of the Reda report**

The issue of publishers' ancillary rights or similar arrangement was also discussed in the EP in the context of the preparation of the Reda report. Proposals suggesting the Commission to look at /intervene in legislation were tabled in JURI and in plenary and were rejected. As a result, the Reda report as adopted on 9 July 2015 does not contain any paragraph on this issue.

## **B. AVMS Directive**

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scope*

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