



EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

Director-General

Brussels,
CONNECT/I2/CA/hz (2016) 7181753

***By registered letter with
acknowledgment of receipt***

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Subject: Your application for access to documents – Ref GestDem No 2016/5882

Dear Sir,

I refer to your e-mail dated 18/10/2016 in which you make a request for access to documents, registered on 20/10/2016 under the above mentioned reference number. We also refer to our holding reply of 10/11/2016 concerning the extension of the deadline.

Your application concerns "*all documents containing or concerning the term "linktax" including emails within the Commission*".

On a preliminary basis, I would like to inform you that a public consultation on the role of publishers in the copyright value chain and on the 'panorama exception' took place from 15/03/2016 to 15/06/2016. All the contributions to this consultation, which may be of interest with regard to your request, are now available in documents published on our website:

<https://ec.europa.eu/digital-single-market/en/news/public-consultation-role-publishers-copyright-value-chain-and-panorama-exception>.

You will also find that a further document, namely the report on the results of the public consultation on the Regulatory environment for Platforms, Online Intermediaries and the Collaborative Economy also addresses the question of "linktax".

<https://ec.europa.eu/digital-single-market/en/news/full-report-results-public-consultation-regulatory-environment-platforms-online-intermediaries>

In addition, I draw your attention to the Impact Assessment on the modernisation of EU copyright rules which has been published this 14/09/2016. The respective documents include information that may be of interest with regard to your request and are available on our website:

<https://ec.europa.eu/digital-single-market/en/news/impact-assessment-modernisation-eu-copyright-rules>

Furthermore, three parliamentary questions ([E-007431/2016](#), [E-005931/2016](#), [E-004050/2016](#)) contain or concern the term "linktax". Answers of the Commission to two of these three questions have been published on the European Parliament's website ([E-005931/2016](#), [E-004050/2016](#)).

I consider your request to cover all documents until the date of your application (i.e. 18/10/2016).

Documents contained in Annex I

Having examined this request under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that the documents included in Annex I may be fully disclosed.

Documents contained in Annex II

Annex II contains a series of documents and extracts which partly fall under the scope of your request. After examining them under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents I have come to the conclusion that they may be partially disclosed.

- *Parts of documents falling out of the scope of the request*

Large parts of the documents contained in Annex II fall out of the scope of your request as they are not related to the specific issue of "linktax". These parts have been therefore blanked out with a written indication [*out of scope*] at the beginning of the corresponding passage / paragraph or page.

- *Parts of the document containing personal data*

Certain parts of the documents in Annex II are expunged, since they contain personal data of Commission officials or third persons, whose disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Union legislation regarding the protection of personal data (Article 4(1)(b) of Regulation (EC) No 1049/2001). The applicable legislation in this field is Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable¹. According to Article 8(b) of that Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

I consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing the documents requested expunged from this personal data.

¹ Judgment of the Court of Justice of the EU of 29 June 2010 in case C-28/08 P, Commission/The Bavarian Lager Co. Ltd, ECR 2010 I-06055.

Documents listed in Annex III

Annex III is listing documents that originate from third parties. Therefore the originators of the documents have been consulted. They have motivated their position to object to a disclosure as they deem that these documents contain commercially sensitive business information whose disclosure would undermine the protection of their commercial interests.

Following an examination of the documents and taking into account the opinion of the related third parties, I regret to inform you that your application cannot be granted regarding these documents, as disclosure is indeed prevented by an exception to the right of access laid down in Article 4 of Regulation 1049/2001.

The documents listed in Annex III contain commercially sensitive business information, representing commercial interests, which are protected against disclosure under the first indent of Article 4(2) of Regulation 1049/2001.

I have considered whether partial access could be granted to the documents requested. Yet I have come to the conclusion that this is not possible, since the invoked above exception of the first indent of Article 4(2) covers the documents in their entirety.

The exception laid down in the first indent of Article 4(2) of Regulation 1049/2001 applies, unless there is an overriding public interest in disclosure of the documents. I have examined whether there could be an overriding public interest in disclosure, but I have not been able to identify such an interest.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review the above positions.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency unit SG-B-4
BERL 5/327
B-1049 Brussels

or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

Roberto Viola

Contact: CNECT-I2@ec.europa.eu