



EUROPEAN COMMISSION

DG for Internal Market, Industry, Entrepreneurship and SMEs

Service Industries

Key Enabling Technologies and Digital Economy

Brussels, 22.1.2015

ENTR.H.3/

NOTE TO THE FILE

Subject: Basis (GROW 2087) - Meeting CAB BIENKOWSKA – DG GROW – C4C
Coalition: Review of Copyright Law within Digital Single Market (21.1.2015)

Participants:

Commission: MM. Fabrice COMPTOUR (CAB);
GROW.B.2); Ms. (B.2); Mr. (H.3);

Copyright for Creativity Coalition: Ms. , C4C; Mr. ,
C4C; Ms. , Internet user's association; Mr. ,
(Computer industry association CCIA); Mr. , Centrum Cyfrowe; Mr.
(Librarie's association EBLIDA); Mr. (Research
Libraries association ENCES); Mr. (German initiative against a new
neighbouring right for publishers); Ms (Liber); Mr. (Online
Rights NGO ORG).

Mr. COMPTOUR welcomed C4C and invited them to comment and give examples.

C4C informed

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

C4C added that

[REDACTED]

No specific follow-up was foreseen by DG GROW.

Contact: [REDACTED], ENTR.E.4, Tel. [REDACTED]

Copies:

A. PELTOMÄKI; S. [REDACTED]; D. HERBERT (A); P. ORTÚN (H); C. BURY (D.);
[REDACTED] (A.4); [REDACTED] (B.2); [REDACTED] (D.1); [REDACTED] (H.3);
[REDACTED] (J.2); [REDACTED] (B.1); [REDACTED] (D.1);
(D.3); [REDACTED] (H.3); [REDACTED] (A.4); [REDACTED] (B.2);
(B.5); [REDACTED] (D.2); [REDACTED] (H.3); [REDACTED] (J.2).

Annex:

Google vs. European Press Editors

Google has [REDACTED] % of the EU online advertising market, with multi-million sales (making [REDACTED] % of Google's income). Advertising traffic is driven by Google's provision of cross-subsidized services, including online search (also with over [REDACTED] % market share), and online information including newspaper quotes ("Google News").

The lack of EU harmonization of the quotation exception and of the remuneration of newspapers by news aggregators for the use of long quotations not covered by the exception, prompted various conflicts and solutions at national levels between the press editors and Google, yielding an unsatisfactory patchwork of outcomes driven by Google's dominant or very large market share in the online markets.

Belgium:

In 2011, a Brussels court prohibited Google to publish texts and pictures of Belgian newspapers (Le Soir, La Libre Belgique, etc.), without prior consent. At the end of 2012, after 6 years of conflict, Google was allowed to publish quotes and links in "Google News" in exchange of helping the Belgian press better use Google's services.

France:

In 2013, after a conflict, Google (selling thousands of millions of € of online advertising in France), accepted to pay 60 million € to finance web development projects to help French media to innovate and make digital transition. Thus Google avoided a law which would have imposed a tax to link with the French press.

Germany:

On 7.3.2013, German Law³ gave the press and other media a right to remuneration against search engines re-publishing content beyond short excerpts. The law excluded private persons, bloggers and NGOs, which could link or to show contents gratis. Google News, an important source of traffic for German webs (about [REDACTED] million clicks on news in the newspapers webs, via its aggregator), was authorised by the majority of press editors to continue using their contents without payment. However, in October 2014, about 200 German editors and media including the very large Axel Springer, abandoned "Google News" to oblige Google to pay a tax to appear in the news aggregator. Google refused to pay. The revolt failed in 3 weeks and editors had to allow Google to copy free of charge, because, as the editor of Bild (the largest German newspaper), admitted on 5.11.2014, they lost about 40% web traffic and 80% of visitors from Google News.

Spain.

A new law adopted an unwavable right to remuneration. Google refused to pay and stopped indexing Spanish media in Google News, claiming that Google only published the links and attracted more traffic to the webs of newspapers and did not get advertising fees from Google News. However, Spanish newspaper editors (AEDE), claim that Google and other news aggregators get the navigation data of users and their interests, allowing them to better target the rest of their services, in particular advertising, thus increasing their revenues. The [REDACTED] of the European Newspaper Publishers Association (ENPA), the [REDACTED], [REDACTED] of Reutlinger, requested to the German Government to reinforce Copyright Law to protect content producers against Google following the model of the new Spanish Law.

ENPA position on search engines and news aggregators

³ Achte Gesetz zur Änderung des Urheberrechtsgesetzes vom 7.3.2013:
http://www.bundesgerichtshof.de/SharedDocs/Downloads/DE/Bibliothek/Gesetzesmaterialien/17_wp/Urheber_Presseverlage_Leistungsschutzrecht/bgbl.pdf;jsessionid=B5DFA30C69BC2C43793B23A4E8AD244D.2_cid354?__blob=publicationFile

Adopted on 30.9.2014, it includes among 10-action points⁴ the respect of copyright in the digital environment by all market players, including search engines and news aggregators, to ensure a sustainable press sector in Europe. "Effective IPR enforcement mechanisms and procedures are essential to combat both piracy and parasitism, as well as to ensure that society at large can fully enjoy the benefits of the IP system."

EP draft report on the implementation of Directive 2001/29/EC⁵

Published on 15.1.2014, by Julia REDA, MEP, Greens, DE, JURI. It notably:

11. Calls on the Commission to make mandatory all the exceptions and limitations of Directive 2001/29/EC, to allow equal access to cultural diversity across borders in the internal market and improve legal certainty;
12. Notes (...) the development of new forms of use of works on digital networks, in particular transformative uses;
13. Calls for the adoption of an open norm [similar to fair use] introducing flexibility in the interpretation of exceptions and limitations in certain special cases that do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author or rightholder [i.e. within the limits of the 3-step test of Art. 9 (2) of the Berne Convention].
15. (...) calls on the EU legislator to make it clear that reference to works by means of a hyperlink is not subject to exclusive rights, as it does not consist in a communication to a new public;
18. Stresses the need to enable automated analytical techniques for text and data (e.g. 'text and data mining') for all purposes [including commercial research], provided that permission to read the work has been acquired;
19. Calls for a broad exception for research and education purposes, which should cover not only educational establishments but any kind of educational or research activity, including non-formal education;
20. Calls for the adoption of a mandatory exception allowing libraries to lend books to the public in digital formats, irrespective of the place of access;
21. Calls on the EU legislator to preclude Member States from introducing statutory licences for the compensation of rightholders for the harm caused by acts made permissible by an exception;
22. Calls for the adoption of harmonised criteria for defining the harm caused to rightholders in respect of reproductions made by a natural person for private use, and for harmonised transparency measures as regards the private copying levies put in place in some Member States;
23. Stresses that the effective exercise of exceptions or limitations, and access to content that is not subject to copyright or related rights protection, should not be hindered by technological measures;"

⁴ http://www.enpa.be/uploads/Communications/enpa_10_action_points.pdf

⁵ http://www.europarl.europa.eu/meetdocs/2014_2019/documents/juri/pr/1046/1046248/1046248en.pdf