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EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

Media Policy
Director

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[redacted]
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By email: aeepp@aeepp.com

Subject: Your complaint CHAP(2016)01816 of 26 May 2016 against Spain

Dear [redacted],

I refer to your complaint of 26 May 2016 registered under CHAP(2016)01816 and our previous correspondence in this matter.

Your complaints concern the compliance of Article 32.2 of the Spanish Copyright Act¹ (hereinafter LPI), that was adopted on 4 November 2014 and came into force on 1 January 2015. This provision on certain uses of press publications lays down a new exception to copyright in Spanish law. Because of Article 32.2 LPI, news aggregators under Spanish Law do not need an authorisation from the relevant right holders to make news snippets available to the public. The exception obliges news aggregators to pay equitable compensation to publishers of press articles and other copyright holders. This compensation is unwaivable and subject to mandatory collective management.

In our letter dated 14 July 2017, we informed you that in accordance with the criteria set out in the Communication "EU law: Better results through better application" and accompanying internal guidelines, it was not appropriate for the European Commission to pursue your complaint. The reason for this was the approach taken in the Commission's

¹ Texto refundido de la Ley de Propiedad Intelectual, aprobado por Real Decreto Legislativo 1/1996, de 12 de abril, as amended by Ley 21/2014, de 4 de noviembre.

proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market², notably its Article 11.

In the meantime, the Directive on Copyright in the Digital Single Market has been adopted and published in the Official Journal of the European Union.³ It foresees in its Article 15 a new right for press publishers:

“Article 15

Protection of press publications concerning online uses

- 1. Member States shall provide publishers of press publications established in a Member State with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the online use of their press publications by information society service providers.*

The rights provided for in the first subparagraph shall not apply to private or non-commercial uses of press publications by individual users.

The protection granted under the first subparagraph shall not apply to acts of hyperlinking

The rights provided for in the first subparagraph shall not apply in respect of the use of individual words or very short extracts of a press publication.

- 2. The rights provided for in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject matter incorporated in a press publication. The rights provided for in paragraph 1 shall not be invoked against those authors and other rightholders and, in particular, shall not deprive them of their right to exploit their works and other subject matter independently from the press publication in which they are incorporated.*

When a work or other subject matter is incorporated in a press publication on the basis of a non-exclusive licence, the rights provided for in paragraph 1 shall not be invoked to prohibit the use by other authorised users. The rights provided for in paragraph 1 shall not be invoked to prohibit the use of works or other subject matter for which protection has expired.

- 3. Articles 5 to 8 of Directive 2001/29/EC, Directive 2012/28/EU and Directive (EU) 2017/1564 of the European Parliament of the Council shall apply mutatis mutandis in respect of the rights provided for in paragraph 1 of this Article.*
- 4. The rights provided for in paragraph 1 shall expire two years after the press publication is published. That term shall be calculated from 1 January of the year following the date on which that press publication is published.*

² COM(2016)593.

³ Official Journal of the European Union of 17.5.2019, L 130/92

Paragraph 1 shall not apply to press publications first published before 6 June 2019.

5. Member States shall provide that authors of works incorporated in a press publication receive an appropriate share of the revenues that press publishers receive for the use of their press publications by information society service providers.”

Member States must take legislative action to transpose the provisions of the Directive, including adjustments to their laws where necessary by 7 June 2021.

The European Commission will closely monitor the amendments to the LPI introduced by Spain to implement the Directive, in particular Article 15 thereof.

It is against this backdrop that I wish to inform you that we intend to close this case. However, should you have any new information that might be relevant for the re-assessment of your case, I invite you to contact us within four weeks from the date of this letter, after which date the case might be closed.

I would also like to highlight that the closing of this complaint does not prejudice your ability to file a new complaint in the future, for example should you consider the implementation of Article 15 of the Directive in Spanish law to be inadequate.

Yours sincerely,

‘e-Signed’
Giuseppe ABBAMONTE

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