

Press Release

ECJ Advocate General: Federal Government failed to issue notification of ancillary right for press publishers in 2013 – legal consequences pending

Judges not bound to Advocate General – judgement in first half of 2019

Luxembourg/Berlin, 13 December 2018. In Luxembourg the Advocate General at the European Court of Justice (ECJ), Gerard Hogan, just presented his opinion in the proceedings between VG Media ./. Google Inc. concerning the Federal Government's notification obligation, based on the German ancillary right for press publishers. He has concluded that the §§ 87f et seqq. German Copyright Act would have to have been notified in 2013 by way of a formal information procedure by the Federal Government to the EU Commission. The Advocate General has left the legal consequences of the missing notification open.

Contrary to Google's argument, the Advocate General expressly emphasises the significance of the "free and living press as part of the lifeblood of democracy (...). It is entirely unrealistic to expect high-quality and diverse journalism that adheres to the highest standards of media ethics and respect for the truth when newspapers and other press outlets do not possess a sustainable flow of revenue", says Advocate General Gerard Hogan (margin no. 42).

The supervisory board members of VG Media, Christian DuMont Schütte, chairman of the supervisory board of DuMont Mediengruppe GmbH & Co. KG, and Dr. Eduard Hüffer, CEO of Aschendorff Medien GmbH & Co. KG, state:

"In 2013 Germany was the first country to introduce an ancillary right for press publishers. This landmark decision by the German Bundestag has become more provident than ever: today, around five years later, European institutions are advising the binding implementation of such a law in all member states. This illustrates the importance of a separate, strong legal position of press publishers against digital monopolies. Plurality of opinion is a necessary prerequisite for our democratic order. The ancillary right for press publishers ensures the economic foundation of a diverse press landscape. The Advocate General confirms this.

Up until now press publishes have jointly invested millions of euros in judicial and legal representation fees in a difficult economic environment in order to be able to implement the first law provided to them by the German legislator against digital monopolies. The Landgericht Berlin (regional court) recognised the merits of the claim in May 2017. The Advocate General is also not questioning this. It would be highly regrettable if a formal failure by the Federal Government would result in these great, and above all current, efforts to be in vain. The failure to send a simple informative letter would, in one stroke, nullify the years of work invested in making digital corporations comply with legal regulations. It is thus all the more critical that the Federal Government continues to support us."

The Managing Directors of VG Media, Markus Runde and Dr. Stefan Heck, commented on the decision as follows:

"In the hearing before the ECJ, the representative of the Federal Government explained why there was no obligation to notify the European Commission in accordance with German law. The Commission itself agreed with this assessment in the proceedings before the ECJ. We deeply regret that the Advocate General did not follow that reasoning.

The final decision regarding the continuation of the ancillary right for press publishers now lies with the ECJ. We are certain that the judges will thoroughly consider the arguments. The efforts for a copyright law by the EU Parliament, Council and Commission make one unusual scenario possible: the national press publisher's right could be declared inapplicable due to violation of formal EU law. Almost simultaneously, German lawmakers will in turn be obligated by EU law to introduce a nearly identical publisher's right."

Background:

In 2013 the German Bundestag passed an ancillary right for press publishers. Numerous publishers subsequently transferred their rights regarding their digital offerings to the collecting society VG Media in order to be able to jointly enforce their claims against search engines and news aggregators.

Since 2014 press publishers organised through VG Media have been involved in legal proceedings to assert their claim to information and payment against Google Inc.

In May 2017 the Landgericht Berlin ruled that the publishers' claims are at least partially justified, although the court suspended the proceedings at Google's request and presented the case to the ECJ. The ECJ (no. C-299/17) must now decide whether the German Federal Government would have had to notify the law to the European Commission at the time. If the Federal Government failed to issue this notification in violation of European law, this may invalidate the German law.

During the oral hearing before the ECJ on 24 October 2018, the Federal Government and the European Commission agreed in their reasoning as to why there was no notification obligation.

In proceedings before the ECJ the judges are assisted by so-called Advocates-General. With their opinions they prepare the Chamber's judgement. The judges are not bound to the opinions of the Advocates-General but do follow them in the majority of cases.

VG Media is the collecting society of private broadcasting companies and press publishers, based in Berlin. It represents the copyrights and ancillary rights of nearly all German and multiple international, private radio and television broadcasters, as well as about 200 digital press products of major publishers.

Further information: www.vgmedia.de / www.lsr-aktuell.de

Images: www.vgmedia.de

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