

Press release

New Google attempt to conclude ENP contracts: Mass collection of rights at dumping prices

Google is trying to acquire the neighbouring rights from press publishers for abusively small sums of money. No one is supposed to notice that Google sets the prices itself. Through no or abusively low remuneration, journalists in particular also lose their legally stipulated, appropriate 1/3 participation.

Berlin, 11 May 2022 Google has launched another attempt to acquire press publishers' rights en masse from publishers in Germany and Europe for abusively low payments. To this end, publishers selected by Google are currently being written to and asked to conclude contracts in an online tool for the use of press publishers' rights by Google. These so-called "Extended News Previews Agreements" are priced at extremely low levels, but grant Google a comprehensive grant of rights that precludes further licensing of the neighbouring rights in favor of press publishers and their journalists. The calculation on which the remuneration for the ENP contracts is based is known to Corint Media. It is recognizably abusive and in no way reflects the rights holders' participation in the "pecuniary benefits" of the user Google, as required by the German Collecting Societies Act. Instead of taking these actual monetary benefits that Google receives from the use of press content as a basis, Google only wants to pass on a single-digit percentage to the publishers, based on artificially understated revenues that it earns from the direct display of press content. To be on the safe side, Google wants to "make the data used for this available itself". **As a dominant company, setting your own prices for the use of a key commodity – in this case, the usage rights of press publishers and journalists – seems far removed from the law that applies to everyone.**

At the end of last year, the German Federal Cartel Office classified Google and its parent company Alphabet as companies with "outstanding cross-market significance" and thus placed them under the supervision of the new Section 19a of the ARC, which is intended to ensure more effective intervention, particularly against behavior by large digital groups. In addition, the German Federal Cartel Office is currently conducting an investigation into Google's handling of German press publishers' rights, among other things due to allegations of self-preference.

The sum of payments to be distributed among several thousand German rights holders under ENP is estimated by Corint Media at around 10 million euros. By comparison, in the Australian market, which is about one-third the size of the German market, Google had paid up to 100 million euros to publishers due to stricter legal rules. The current push to offer publishers individual ENP contracts shows Google's abusiveness. In the past, the company had already offered a number of selected publishers higher-paying contracts for so-called "Google News Showcases" and additionally pushed the so-called "ENP" contracts. The joint conclusion of these contracts was supposedly attractive for some publishers, even though the payments for them are

significantly lower than the value of the press publishers' rights. Now Google seems to be interested in offering "ENP contracts" to the rest of all publishers, a subordinate group probably from the company's point of view, for safety's sake, the amount of which is supposed to be between 10 and 15 percent of the remuneration for Google News Showcase. Publishers who refuse to enter into ENP contracts as part of this approach will be displayed by Google unchanged, even without the conclusion of a license, albeit without any contractual basis, although Google will continue to use them illegally.

With this approach, Google is attempting on the one hand to keep the value of the press publishers' right to a minimum via ENP agreements to be concluded with as many publishers as possible in Europe and to achieve legal certainty. **At the same time, the legally anchored regulation that journalists are to participate with one third of the revenues from the press publishers' right runs into the void.**

Markus Runde and Christoph Schwennicke, Managing Directors Corint Media: *"The planned mass and rapid collection of licenses at dumping prices is a further escalation stage now ignited by Google in the dispute between the digital platforms and press publishers. Instead of negotiating appropriate remuneration for the use of press content with the collecting societies and individual publishers at uniform prices and conditions, Google is again trying to set a price for the publishers' rights that is fixed on its own and abuses the market. This is unprecedented in copyright law and in a market economy, in a state governed by the rule of law with its promise of equal treatment: a company with 93% market share decides single-handedly and unregulated whether and how much it will pay content providers. That's like a car manufacturer with a monopoly wanting to decide that it will only pay three euros for transmissions from now on. And if the supplier refuses, the transmissions will still be taken from the transmission manufacturer's yard every night without consent. The market failure that has long existed in the relationship between content providers and digital platforms will quickly become a state failure if the specially created copyright and antitrust laws are not applied. We can only warn press publishers against allowing rights to their content, the heart of their business, to be bought for glass beads."*

About Corint Media

Corint Media, based in Berlin, is a European company in the private media industry. It represents the copyrights and neighbouring rights of almost all German and several international private television and radio stations as well as numerous press publishers.

The media companies represented by Corint Media include TV stations such as Sat.1, ProSieben, RTL, WELT, SPORT1, CNBC, Eurosport, VOX and CNN, radio stations such as ANTENNE BAYERN, radio ffn, Klassik Radio, Radio Hamburg, Hit Radio-FFH, RADIO PSR, R.SH, RPR1 and RTL RADIO, as well as press publishers such as Axel Springer, Verlagsgesellschaft Madsack, Mediengruppe Pressedruck, Aschendorff Mediengruppe, Rheinische Post Mediengruppe, sh:z Schleswig-Holsteinischer Zeitungsverlag and Badischer Verlag.

Corint Media is one of 13 collecting societies authorised in Germany and is under the supervision of the German Patent and Trade Mark Office (DPMA).