

Press release

# Bundeskartellamt: Participation in "Google News Showcase" must not hinder collective rights management

First assessment of the Bundeskartellamt on Google News Showcase published. Arbitration Board at the DPMA determines appropriate remuneration. Bundeskartellamt examines participation in these proceedings.

Bundeskartellamt states that "Google News Showcase" may not be linked to Google search – contrary to Google's original intention. Furthermore, the licensing obligation of "Showcase" is emphasised. Participation of press publishers in "Showcase" must be possible independently of the collective management of their rights.

**Berlin/Bonn, 21 December 2022** The German Federal Cartel Office (Bundeskartellamt) has communicated its first assessment of the "Google News Showcase" interface. According to the Office, Google has to give in on crucial points. Thus the company has to amend several clauses in contracts that would have made it impossible for publishers to participate in Showcase and at the same time collectively enforce press publishers' rights. In addition, Google must prove that embedding Google News Showcase in Google Search will no longer be pursued. The Office will monitor the implementation of these measures in follow-up proceedings.

The Bundeskartellamt has not examined the question of an appropriate remuneration of the use of protected press content and refers to the Arbitration Board at the German Patent and Trade Mark Office (DPMA) as the primarily competent body in copyright remuneration matters. The BKartA announces that it will participate in the proceedings before the Arbitration Board if necessary. This makes it clear that the office will continue to monitor Google's dominant position as an important factor influencing the remuneration level to be determined at the expense of press publishers.

In addition, the Office clarified that "Google News Showcase" is subject to licensing on the basis of press ancillary copyright and that the participation of press publishers in "Showcase" should not hinder the collective enforcement of press ancillary copyright. Andreas Mundt, President of the Bundeskartellamt, said: *"Google has changed its contractual practice in such a way that it does not make it more difficult for publishers to enforce their general press ancillary copyright."*

According to the Bundeskartellamt, Google must provide even clearer information on the essential framework conditions, including the mode of operation and the actual participation requirements of "Showcase", in order to ensure non-discriminatory access.

**Corint Media managing directors Markus Runde and Christoph Schwennicke comment:** *"Google News Showcase' was and is an attempt by Google to circumvent the legal rights of press publishers. After the first assessment of the German Federal Cartel Office this will now become more difficult, even though the decision of the Cartel Office neither takes into account the new link with 'Discover' in particular nor makes use of the possibilities of the new competition law according to Section 19a GWB. We will have to see whether Google complies with the orders and is prepared to actually behave in a law-abiding manner, or continues to try to undermine press publishers' law."*

Last year, the French antitrust authority took a more decisive action against Google than the German Federal Cartel Office on the basis of the EU-wide press publishers' right. The competition authorities in France had described "Google News Showcase" as a means of undermining press ancillary copyright and imposed a competition fine of 500 million euros on Google. Under pressure from the competition authorities, French daily newspapers and magazines were then able to reach an agreement with Google on licence payments in the high double-digit millions. In the larger German market, on the other hand, Google is only offering payments of between 10 and 15 million euros for the corresponding press ancillary copyright.

According to the decision of the Federal Cartel Office, the Arbitration Board of the German Patent and Trade Mark Office (DPMA) must now decide on the amount of an appropriate remuneration by Google. In the proceedings against Microsoft, the Arbitration Board had recently proposed an interim remuneration of 1.2 million euros for the period from 7 June 2021 until the end of 2022 and further 800,000 euros annually for the Corint Media publishers. Microsoft has accepted this proposal. The Microsoft-operated search engine Bing holds around four to five per cent market share in Germany. Google, with a market share of more than 90 per cent, had offered in spring 2022 a remuneration of only 3.2 million euros per year (see [Press release Corint Media of 3 March 2022](#)).

According to the Europe-wide unified copyright law, companies like Facebook and Google are supposed to compensate press publishers for using their content to enhance their own offerings. After years of refusing to pay for the use of other people's content, the search engine provider now offers selected press publishers seemingly lucrative remuneration via "Google News Showcase", while a large part of the press - especially small and regional publishers - are fobbed off with minimal payments or not paid at all. In Corint Media's view, Google's attempt to divide the industry in this way constitutes anti-competitive behaviour by a market dominator. According to Corint Media, the conditions and the very low remuneration by Google can only be achieved because Google, with its market power, is an indispensable distribution channel for online media. In the past, Google had threatened several times to show publishers who want to exercise their rights less favourably in Google Search, and also carried out this threat.

During the antitrust investigation, Cartel Office head Andres Mundt had stated: "The conditions for participation in Google News Showcase are not intended to hinder the assertion of the general ancillary copyright of press publishers" and "In parallel to the Google News Showcase proceedings, we are keeping a close eye on the negotiations on the remuneration of the ancillary copyright."

Recently, criticism of Google's behaviour has also been voiced by authors. In a press release, DJV Federal Chairman Frank Überall demanded that the search engine giant Google should not just pay lip service to the importance of journalism, but should finally pay for it. In the current situation of individual contracts between Google and the publishers, the legally stipulated participation of authors comes to nothing, since the majority

of payments are not declared for press rights, but compensate other services that are not subject to participation.

### **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).

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