Plattform Privatheit

Research for a Self-Determined Life in the Digital World

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Press Release

A victory for news publishers: ECJ upholds national obligations to negotiate

For years, news publishers have been fighting to receive fair remuneration from major platform providers such as Meta and Google/Alphabet for the use of their content. Not only in the EU, but worldwide, the platforms have been obstructing negotiations and refusing to make payments. Now the ECJ has ruled: national authorities can compel the platforms to the negotiating table and set the remuneration (Case C-797/23). The platform privacy project GoPress explains the ruling.

The background to the case lies in the national rules in Italy concerning the European ancillary copyright for press publishers. The right, introduced by the European legislator in 2019, was intended to enable press publishers to license their press publications to information society services. However, these services often refuse to negotiate or obstruct negotiations by restricting the visibility of news content. For this reason, various countries have introduced regulations to support negotiations between platform providers and press publishers. Italian law, for example, lays down rules that oblige platforms to enter into negotiations and to disclose the information necessary to determine appropriate remuneration. The visibility of press content must not be restricted during the negotiations, and if no agreement is reached within 30 days, a decision on the amount of remuneration may be sought from the Italian telecommunications authority. Similar rules have also been introduced by the Belgian and Czech legislatures.

ECJ ruling improves the position of press publishers

The ECJ has now ruled that these rules are compatible with EU law, in particular with the underlying provision, Article 15 of the DSM Directive, even though this provision only provides for a right to protection and does not impose any obligation to negotiate or a right to fair remuneration. “Even though publishers are already facing new risks as a result of developments surrounding AI, the ECJ’s ruling represents an important step towards improving the position of press publishers,” says Prof. Dr Axel Metzger, LL.M. (Harvard) of Humboldt University of Berlin. “The German government should closely monitor the situation in Italy and consider introducing negotiation obligations as well, in order to strengthen the position of press publishers in this country,” adds Wilhelm Böttcher, a research assistant at Prof. Metzger’s chair at Humboldt University.

Algorithms have a significant influence on what content is displayed

However, it remains unclear whether social media platforms such as Instagram and Facebook fall under the scope of ancillary copyright for the press. Citing the fact that content is published by users and not by the platform operators themselves, Meta has consistently rejected any obligation to pay in the past. “The Advocate General had previously assumed that Meta was making use of the content, but the ECJ has now limited itself to the general statement that platforms

are only obliged to pay if they use press articles," explains Prof. Dr Ingrid Schneider of the University of Hamburg. This is supported by the fact that platforms are no longer merely passive venues for the exchange of content between users. Through their algorithms, they exert a significant influence on which content is displayed to users and thus make the content publicly accessible themselves. The fact that Meta itself makes content publicly accessible without relying on user behavior could have consequences beyond this ruling and herald a paradigm shift in platform liability. Another case from Belgium is currently pending on this issue, which concerns, amongst other things, the use of press articles by Google and Meta (Case C-663/24).

Please direct press enquiries to:

Head of Science Communications 'Platform Privacy'
Barbara Ferrarese, M.A.
Fraunhofer Institute for Systems and Innovation Research ISI
New Technologies Department
+49 151 724 25939
barbara.ferrarese@isi.fraunhofer.de

"Platform for Privacy and Self-Determined Living in the Digital World"
https://www.plattform-privatheit.de/
Bluesky: plattformprivat.bsky.social
Mastodon: @ForumPrivatheit@bawü.social
LinkedIn: linkedin.com/company/plattform-privatheit

GoPress *is a platform-privacy project funded by the Federal Ministry of Research, Technology and Space. It aims to develop regulatory and legal measures to address the use of journalistic content by major platforms. A key focus is the comprehensive analysis of such measures and strategies from other countries both within and outside the European Union.*

Within the 'Platform Privacy', funded by the Federal Ministry of Research, Technology and Space, experts conduct interdisciplinary, critical and independent research into issues relating to privacy and data protection in the digital world. The 'Platform Privacy' is coordinated by the Fraunhofer Institute for Systems and Innovation Research and the Scientific Centre for Information Technology Design at the University of Kassel

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