Court of Justice of the European Union: German rules protecting press publishers overturned following procedural irregularities

IRIS 2019-9:1/4

Christina Etteldorf

In a judgment of 12 September 2019 in Case C-299/17 (VG Media Gesellschaft zur Verwertung der Urheber- und Leistungsschutzrechte von Medienunternehmen mbH v Google LLC), the Court of Justice of the European Union decided that the German regulation that prohibits search engines from using short texts or text excerpts ('snippets') without the publisher's prior permission was inapplicable because it had not been notified to the Commission before it was adopted. It should have been notified because the corresponding provisions of Articles 87f and 87g of the German Gesetz über Urheberrecht und verwandte Schutzrechte (Copyright Act - UrhG) were technical regulations within the meaning of Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services.

The decision follows a lengthy dispute between VG Media – Germany's main collective management organisation that defends the copyright and related rights of private broadcasters and publishers of newspapers and magazines – and Google LLC, an American technology firm that, in particular, operates the search engine of the same name. On 1 August 2013, when Articles 87f and 87g UrhG entered into force, the right to protection of publishers of newspapers and magazines took effect. This prohibits only commercial operators of search engines and commercial service providers that edit content from making press products or parts thereof available to the public. The rules also require search engines and news aggregators to pay a fee to the press publisher to use digital press products. Individual words and very short text excerpts (known as 'snippets') are excluded. Since Google refused to pay these fees to VG Media, claiming that it was only publishing 'snippets' (the definition of which was disputed by the parties because of its broad legal definition), VG Media brought an action for damages before the Landgericht Berlin (Berlin Regional Court). Although the Landgericht thought that VG Media's action could be at least partially well-founded, it harboured doubts about the applicability of the 2013 provisions on the protection of publishers of newspapers and magazines. In a decision of 9 May 2017 (Case no. 16 O 546/15), the Landgericht therefore referred the case to the CJEU, asking whether the provisions constituted technical regulations within the meaning of Directive 98/34/EC and whether Germany should therefore have notified them to the European Union.

© European Audiovisual Observatory (Council of Europe) 2026

In its judgment, the CJEU ruled that the provisions did constitute technical regulations in the sense of the 'rule on services' subcategory described in Article 1(5) of Directive 98/34, since they were 'specifically' aimed at information society services. It was clear from the wording of and reasons given for the German provisions that they were specifically aimed at information society services. Firstly, Article 87g(4) UrhG expressly referred, *inter alia*, to the commercial providers of search engines for which it was common ground that they provided services falling within the scope of Article 1(2) of Directive 98/34. Secondly, the observations submitted by the German Government, the parties and the European Commission at the hearing before the CJEU showed that the purpose of the regulations was clearly to protect the interests of German publishers of newspapers and magazines from copyright infringements by online search engines. In that context, the CJEU thought that protection appeared to have been considered necessary only for systematic infringements of the works of online publishers by information society service providers. The rules should therefore have been notified under Article 5(1), which was not the case here.

The judgment means that the provisions on the protection of publishers are inapplicable. The legal basis for VG Media's past activities linked to the protection of publishers of newspapers and magazines, such as the collection of fees, is therefore retrospectively removed. However, the judgment does not concern the implementation of the right of protection for publishers of press publications, provided for under Article 15 of Directive (EU) 2019/790 of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, which must be transposed into member states' national law by 7 June 2021. Germany will therefore have to consider the matter again as part of this process.

Judgment of the CJEU, Fourth Chamber, of 12 September 2019 in Case C-299/17, VG Media Gesellschaft zur Verwertung der Urheber- und Leistungsschutzrechte von Medienunternehmen mbH v Google LLC, successor in law to Google Inc.

http://curia.europa.eu/juris/document/document.jsf?text=&docid=217670&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026