

NEWS MEDIA EUROPE

February 2025

Response to the Polish Presidency's questionnaire on "the challenges facing collective management organisations in the EU Member States"

News Media Europe (NME) is the voice of the progressive news media industry in Europe, representing over 2,700 news brands in print, online, radio and TV, through national associations from sixteen countries. Together, we defend key principles which are vital to us: protecting the freedom of the press, championing the digital future of our industry, and ensuring that the value of content is properly protected.

News Media Europe would like to react to the [policy questionnaire](#) circulated by the EU Polish Presidency. The questionnaire addresses many relevant questions for European press publishers who increasingly make use of collective management to enforce their rights vis-a-vis online platforms (Article 15 of the Copyright (DSM) Directive) and now artificial intelligence companies (AI Act).

Conditions for the creation and operation of CMOs

Collective management has become an important tool to increase the bargaining power of press publishers, especially in their negotiations with tech giants. Over the past five years, many collective management organisations (CMOs) have been created across Europe to implement the press publisher right, such as [BPCMO](#) (Baltics), [SLPV](#) (CZ), [DPCMO](#) (DK), [DVP](#) (FR), [Repropress](#) (HU), [OPR](#) (NL), [AGDE](#) (RO), [SPCMO](#) (SE). Alternatively, existing CMOs had their mandates extended to represent press publishers in the conclusion of remuneration agreements based on their members' press publisher right, e.g. [License2Publish](#) (BE), [Kopioisto](#) (FI), [Corint Media](#) (DE).

However, establishing a CMO has proved particularly difficult in many countries.

While this process generally takes time, it has proved highly complicated in markets where press publishers do not have the resources to set up such complex and innovative structures or where administrative red tape hampered any progress. Collective management should be accessible for press publishers who need it. Therefore, the creation of CMOs should be facilitated by the regulators, while the administrative and accounting obligations should remain reasonable.

NEWS MEDIA EUROPE

In Hungary, the validation of Repropress' tariff, in relation to the press publisher right, by the IP Office and the Ministry, required a significant amount of evidence and documentation, wasting considerable time and limited resources for press publishers in administrative procedures, meanwhile delaying any negotiation and remuneration opportunities from online platforms.

In Belgium, License2Publish is confronted with increasingly complex and time-consuming reporting obligations that add to the already stringent financial reporting. In addition, the Credidam case [C-179/23](#) before the European Court of Justice has severely increased complexity in the VAT treatment of CMOs. If CMOs are to remain a viable option for press publishers, administrative hurdles should be limited to the reasonable and necessary. In our view, this objective goes hand in hand with the competitiveness objectives of the European Commission.

Therefore, we call for the facilitation of the creation and operation of CMOs to improve copyright management and boost innovation in Europe.

Enforcement of the press publisher right and relations with online platforms

As mentioned, CMOs are becoming increasingly important to support press publishers' negotiations with online platforms that reuse press content (search engines, news aggregators, social networks) on the basis of Article 15 of the DSM Directive. Two issues have arisen in the context of these negotiations.

First, tariffication is requested by IP Offices or Culture Ministries in several countries (e.g. HU, CZ, BE) as a pre-condition for CMOs to operate. Transparency over the tariffication before entering the market is originally a requirement to protect vulnerable end users. Yet, in this case, tariffication is difficult to calculate and subject to different methodologies across member states, due to uneven access to reliable information. Moreover, in this case, end users are powerful companies qualified as "very large online platforms" or "internet gatekeepers" under EU law, that do not need the same level of protection as individual users. Should the licensing fee be a mandatory requirement for a CMO to kick off its mandate, then administrations should make the requirement flexible, taking into account the uneven bargaining powers between CMOs and very large platforms.

Second, experience shows that agreement on the remuneration is proving extremely difficult due to unequal negotiating positions between the CMO and very large platforms. In fact, platforms largely contest the remuneration proposed by CMOs. On the other hand, the data shared by large platforms in terms of usage and revenues derived from press content is in our view unreliable

NEWS MEDIA EUROPE

and unverifiable – yet this should not exempt the very large platforms to provide CMOs with all the relevant information via binding and harmonised data-sharing obligations. As a result, CMOs are at a disadvantage and large platforms engage in delay tactics to avoid paying.

This is why we think that an arbitration system should be introduced at EU level. In order to make negotiations more efficient and the remuneration of press publishers more equitable and accurate, an independent arbitrator should be able to step in, in case of unsuccessful negotiations. In Denmark, DPCMO made use of a mediation mechanism to force a dialogue with Tik Tok and Meta, unsuccessfully. Hence the procedure should be binding and more tightly framed.

For instance, in France, an arbitration mechanism specific to negotiations between press publishers and Google already exists and could serve as a model. The competition authority sanctioned Google for failure to pay under Article 15 ([recap](#) of the procedure). In turn, Google agreed to a [set of commitments](#), including a negotiation framework with an obligation to propose a remuneration amount within 3 months, and an arbitration procedure in case no agreement is found (Commitment 4). The arbitration tribunal has the right to set the final amount. **We think that this final offer arbitration system should be codified in EU law,** including:

1. An obligation binding on platforms to share relevant data to assess the value of press content, within a certain timeline (e.g. 3 months);
2. The introduction of an arbitration mechanism involving an independent third party;
3. With powers to fix remuneration in case of persisting disagreements.

New licensing practices and relations with AI companies

We would like to draw member states' attention to the voluntary expansion of the mandates of press publishers' CMOs to conclude licenses for AI uses. While this is not yet the case in every member state, it is worth noting that collective management is a tool to increase press publishers' chances of concluding licenses with generative AI providers. In the Netherlands for instance, OPR's mandate includes generative AI licensing and for this purpose, content is bundled into an OPR repertoire. The same goes for DPCMO in Denmark¹.

¹ It is worth noting that a publisher can only mandate the rights it already owns, e.g. copyrights transferred by journalists to publishers through the employee or free-lancer agreements. In Denmark, cooperation agreements took place between journalists and press publishers by using a joint CMO.

NEWS MEDIA EUROPE

We want to highlight the high quality of the data provided by news publishers' works in the form of press articles, videos, photographs, infographics and more formats, which is crucial for the reliability and accuracy of AI models, both in terms of training and output. It is therefore highly important that press publishers receive **fair remuneration** for the reuse of their works by generative AI models. We fully agree with the Presidency's observation that providing high quality data in exchange for appropriate remuneration is "a win-win approach" that could "serve as a foundation for the development of a healthy and fair licensing market".

Some CMOs are in a process with their members to prepare themselves for licensing related to AI uses. As far as our sector is concerned, mandates by the press publishers to the CMOs will be given on voluntary basis.

All in all, press publishers' CMOs are expected to increasingly play an important role in the AI value chain that news media publishers hope to create at European level.

With the advancement of AI products, press publishers, through their CMOs, will need to develop increasingly complex and technical expertise to conduct negotiations with genAI firms. For news media companies, it is important that the reuse of press content for different usages (text and data mining, AI training, generative AI training, etc) translates into the conclusion of specific licenses. **Therefore, CMOs should be encouraged and supported from a national policy perspective in developing innovative business models and expertise required for the AI market.**

From a technical point of view, CMOs encounter difficulty having press publishers' rights reservations against text and data mining (TDM) recognised. This is due to several factors:

1. The multiplicity of opt-out standards available on the market that press publishers need to apply (specific to OpenAI, Google, Meta, Microsoft etc);
2. The lack of recognition of press publishers' rights reservation in natural language (terms and conditions) or technical means (lines of code)
3. The impossible task for rightsholders to monitor and identify all the crawlers that access news websites and content, often without permission.

As a result, several CMOs announced that the catalogue of their members is not accessible to AI companies, unless they ask for permission to the CMO. For instance, *La Société des Droits Voisins des Editeurs de Presse* (DVP) in France is [exercising](#) its right to opt out under copyright law for the full repertoire, similar to SCFP (for cinema studios), SACD (for AV) and SACEM (for music). This practice should be supported and enhanced as it seems to be the only way to make the

4

NEWS MEDIA EUROPE

rightsholders' reservation of rights clear, with a request to conclude licenses with the respective CMOs.

This is why NME called in its policy recommendations for a review of the copyright framework to include:

1. A **presumption** that copyrighted content has been used by generative AI providers, to shift the burden of proof (e.g. in the Intellectual Property Rights Enforcement Directive);
2. And a **TDM opt-in** to express that such uses are prohibited unless press publishers explicitly authorise (Article 4.3 of the Copyright DSM Directive).

We thank the Polish Presidency for the opportunity to comment on this very important topic. We remain at the disposal of IP attachés for complementary information.

Reference documents:

- Copyright policy [recommendations](#) 2024-2029

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