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Related rights and press publishers: Google fined €250 million

Alphabet Inc, Google LLC, Google Ireland Ltd and Google France (collectively “Google”) have agreed to pay a substantial new fine of €250 million to the French Competition Authority for failing to comply with their commitments regarding related rights (also known as neighboring rights) [1].

Law No. 2019-775 of July 24, 2019 “*on the creation of related rights for the benefit of news agencies and press publishers*” [2], that transposed Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market [3], aims at ensuring fair compensation for news agencies and press publishers when their contents are published on online platforms.

In practice, Law No. 2019-775 of July 24, 2019 “*on the creation of related rights for the benefit of news agencies and press publishers*” (the “2019 Law”) gives publishers the right to demand compensation when excerpts of articles, images, or videos from their own publications are used by search engines or content aggregators.

Right after this Law was passed, a clash started between Google and press publishers who accused Google of abusing its dominant position and reusing their content without any type of financial compensation in return.

The French Competition Authority (the “FCA”) received a request for interim measures in November 2019 and issued an [historic decision on April 9, 2020](#) [4], imposing interim measures that required Google to negotiate in good faith with press publishers and present remuneration offers for the reuse of their content. The FCA

emphasized that Google's practices constituted an abuse of dominant position as they were designed to circumvent legal obligations imposed by the 2019 Law. Google had, therefore, accepted to make commitments towards press publishers and news agencies.

Google's non-compliance with its commitments

Despite this decision, Google was accused of not fully complying with its commitments. In September 2020, several organizations representing press publishers lodged a complaint with the FCA Authority, arguing that Google continued to impose unilateral conditions and to delay negotiations.

The FCA held in its [decision of July 12, 2021\[5\]](#) that Google had disregarded several injunctions. Indeed, Google was obstructing negotiations with press publishers and news agencies by proposing the conclusion of a comprehensive license agreement that required press publishers to grant Google full access to their articles, by excluding press publishers that did not have a so-called "Political and General Information" ("PGI") certification from the scope of application of the 2019 Law, and by denying news agencies any sort of compensation for their contents reused by press publishers.

The FCA imposed a fine of €500 million on Google. It also demanded that Google submit a remuneration offer in line with press publishers' expectations within two months, failing which it would face further sanctions/penalties.

Google's new commitments

Following this decision, Google presented a series of new commitments, including:

- Extending the scope of application of its commitments to all press publishers, whether or not they have PGI certification;
- Negotiating agreements in good faith based on transparent, objective and non-discriminatory criteria;
- If negotiations fail, the possibility of referring the matter to an arbitration tribunal to determine the amount of compensation, with the arbitrators' fees being paid in full by Google;
- Appointing a monitoring trustee to supervise the progress of negotiations.

These commitments, applicable for a period of five years, [were accepted by the FCA on June 21, 2022\[6\]](#).

New fine imposed by the FCA on Google

On March 15, 2024, the FCA once again fined Google, this time for €250 million.

According to the FCA, Google had failed to comply with several commitments made in 2022, including:

- Providing news agencies and publishers with the information necessary for a transparent evaluation of

the remuneration proposed by Google;

- Negotiating agreements in good faith, based on transparent, objective and non-discriminatory criteria;
- Taking the necessary measures to ensure that negotiations do not affect other economic relationships between Google and press agencies and publishers.

The FCA also justified its fine by the fact that journalistic content was used in Google's conversational AI tool, Bard, now Gemini, without informing the publishers.

In this respect, the use of copyright-infringing content by artificial intelligence systems is likely to be a source of litigation in the years to come, as US newspaper publishers have already sued Microsoft and OpenAI for copyright infringement^{[7][8]}.

As Google undertook not to contest the facts, it was able to benefit from the settlement procedure and accepted to pay the fine imposed by the FCA.

Towards a strengthening of the 2019 Law?

[A Bill](#) aimed at strengthening the effectiveness of related rights for press publishers and news agencies was submitted to the Presidency of the National Assembly on February 13, 2024^[9].

Article 1 of the Bill seeks to strengthen the negotiation procedure for related rights by calling for the publication of a decree listing the elements that platforms must mandatorily provide to the various stakeholders of the press industry. It also requires that a maximum deadline for transmitting these negotiation elements be included in French law. Failure to meet this deadline could result in a fine of up to 2% of the non-compliant company's total worldwide turnover.

The Bill also calls for the creation of a mediation procedure under the auspices of the FCA if no agreement is reached within one year from the start of negotiations. If amicable solution is found, the FCA should be authorized to determine the terms and conditions of compensation.

The Bill has been referred to the Committee for Cultural Affairs and Education for consideration.

^[1] Decision 24 - D- 03 of March 15, 2024

^[2] [Law No. 2019-775 of July 24, 2019 "on the creation of related rights for the benefit of press agencies and publishers"](#) (in French only)

^[3] [Directive \(EU\) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC](#)

^[4] Decision 20-MC-01 of April 9, 2020

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[5] Decision 21-D-17 of July 12, 2021

[6] Decision 22-D-13 of June 21, 2022

[7]

https://www.lemonde.fr/pixels/article/2023/12/27/le-new-york-times-poursuit-en-justice-microsoft-et-openai-createur-de-chatgpt-pour-violation-de-droits-d-auteur_6207946_4408996.html

[8] <https://www.nytimes.com/2023/12/27/business/media/new-york-times-open-ai-microsoft-lawsuit.html>

[9] National Assembly, Bill No. 2169 aimed at strengthening the effectiveness of related rights for press publishers and news agencies

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