



PDLN Newsletter June 2021

PDLN; promoting publisher interests in the media monitoring & evaluation industry.

We work to share best practice in licensing and supply and to create forums for content owners and users to come together to solve the challenges of improving these services.

The PDLN quarterly newsletter is free to members and friends. News and other information is always welcomed. To add or remove names from the mailing list please contact secretarygeneral@pdln.info

New President and board members at PDLN

PDLN has a new President, Ruediger Baumberger (APA), who steps up to replace Sandra Chastanet (CFC). Ruediger is director content at APA-Comm, the information service business at APA, the Austrian national news agency. He has served on the PDLN board for several years, most recently as Vice President. Javier Diaz de Olarte (CEDRO) becomes Vice President. The PDLN members also elected Neil O'Brien (NLA media access). Virginia Morrison (Copyright Agency, Australia), Jacek Wotjas (Repopol), and George Zannos (OSDEL) to the board.

PDLN looks forward to playing an ever more active role as governments across the world move to encouraging press – platform licensing solutions.

Major MMO Mergers Coming?

Business Insider reports that co-owners Bain and WPP are seeking a buyer for Kantar's media monitoring business, just a short time after VC Bain bought into the business. What happens next is conjecture, but Meltwater must be tempted to leverage their recent floatation. To an outside observer Cision look like they need time to digest a swathe of acquired businesses. Bain's motives are also a guess;- either get the heady US valuations that SPAC acquisition vehicles offer, or get out of a complex set of country businesses that aren't really joined up. Or both.

Stroom puts UK business on Ice

Australian MMO Stroom – has suspended its move into the UK market explaining that COVID has made business development too challenging in the short term. Stroom is one of many recent new entrants to the UK, including German MMO Unicepta. NLA media access report over 28 web only MMOs, 17 print and web, and 30 taking their International MMO licence.



Australian MMO iSentia bought by UK Vuelio



The boom and bust Australian MMO iSentia has been bought by UK's Access Intelligence group, which owns the no3 UK MMO Vuelio. The acquisition offer has been recommended by the iSentia board. iSentia's story of local and regional market dominance, a floatation and a mishandled acquisition of King Content is a rags to riches and rags again tale, showing that IPOs and public ownership is not a fast route to heaven.

Access have a UK reputation for steady and quiet accumulation of businesses, having built a strong market position through acquisition and careful management. The jump to Australia is a bold move. Watch this space.

Big down under;- Australia ACCC and Platforms

In an interview with FT Rod Simms, the head of the Australian copyright body ACCC, has declared himself happy with the local licensing outcome. The arbitration method, which requires both sides to make 'best and final' offers and the regulator to choose one, creates enough risk to ensure the platforms reach deals. NewsCorp, Nine and others have now done so and the value is believed to be around e130m annually. Other countries are looking to copy the negotiation framework, with Canada, USA considering it and the French Senate proposing a similar model.

PDLN and DSM

PDLN has been active in encouraging sharing of information and ideas through the EuroHub initiative. A group of interested parties, PDLN members and others, are meeting to discuss issues relevant to DSM implementation and licensing. Information is being shared through a LinkedIn group, Eurohub Licensing <https://www.linkedin.com/groups/8876900/>. This is open to all PDLN members and publishing groups seeking to track DSM developments.

CEDRO files Google complaint

CEDRO has filed a complaint with the Spanish National Commission on Markets and Competition (CNMC) against Google for abuse of dominant position in the news aggregation and online advertising market.

This complaint, in which the CNMC has been requested to initiate an investigation into several infringements, has been filed «to ensure that the intellectual property rights of news publishers and

authors are not prejudiced by what we consider are abuse of dominant position practices of Google, which undermine the independence, plurality and freedom of the press», Jorge Corrales, managing director of CEDRO, assured.

CEDRO, on behalf of the rightsholders it represents, claims that the abusive activity being carried on by the American tech company via Google Discover prevents the free market in the content aggregation sector.

Last November, CEDRO filed a legal action against Google for non-payment of royalties for the news aggregation service offered via Google Discover.

“To date, the search engine has refused to remunerate newspaper and magazine publishers for the use of articles by its aggregator, infringing the provisions of Article 32(2) of the Spanish Intellectual Property Act”, Mr Corrales explained.

He also stressed that «this situation causes direct damage to other aggregators than if it complied with the law and remunerated newspaper publishers. Google's action would be clearly against free competition».

CEDRO has also informed the competition authority about the monopoly situation of this tech company in the online advertising business, and how this is affecting the advertising business of the media.

This situation, warns the general director of CEDRO, «has dramatic consequences for press diversity and the democratic values of a country, as this platform is replacing in the value chain of the journalism sector the role played by publishers, both in the advertising dimension, and now, in the dissemination of content and the corresponding revenues».

Opinion; - How to make Platform - Press Deals Work

Is the new press publishers right a solution to funding the press, and if not, how can we make it work?

How do we get from this



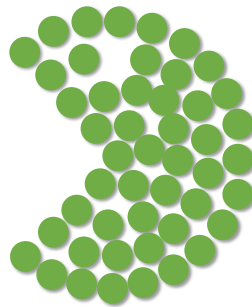
For many the Platforms are eating readers, advertising and the future

After a huge fight in the EU halls of power in June 2019 a new right for publishers was approved as part of the Digital Services Market act (DSM). The press publishers right (PPR) established by this is intended to provide journalism with a new source of funding to offset the loss of advertising and

subscription income to the major platforms like Google and Facebook that have hoovered up most online income.

But, as the second anniversary and implementation deadline approaches this summer, very little has happened to change the grim outlook for professional news journalism. Newspapers continue to close, shed staff and reduce investment. So why hasn't DSM worked? Is this a matter of timing, noting that the relevant right has only been enacted in national legislation in a few countries so far, or is there something more fundamentally flawed?

To This



Newspapers need to work together to deal with the threat

Is the Press Publishers Right a Solution?

The press has relied for many years on the twin pillars of advertising and subscription income to fund journalism. Online has changed the publishing scene, with many publishers hoping the potential online audience would open up new advertising opportunities, encouraging free, advertising only led strategies. In practice technology has fundamentally tilted the balance of power from publishers to news aggregators, and especially those aggregators that are supported by advertising. Users can find alternative source for news in a heartbeat. Search (Google) and share (Facebook) are natural monopolies, and natural gateways to online access to news for many consumers. These platforms are advertising supported, so competitors to newspapers. And they have become huge players with \$100bn plus turnover and fat profit margins.

Many newspapers find themselves in an unequal competition for advertising income with the aggregators that many now need to discover and carry their content to readers They now also face many new publisher competitors for the reader attention that their advertisers need. The competitors including anyone with a dubious story to share and access to the internet. The resulting race to the bottom on quality of news and integrity of journalism is an acute threat to wider societal values. Fake News is everywhere. The fact that Google and Facebook are in many countries taking 90% of new online advertising revenue as newspapers print revenue declines illustrates the seismic scale of the challenge to both publishers and normal values of accuracy and truth that underpin democracy.

DSM is a pop gun weapon to fight this massive shift. DSM is intended as a basis for making it easier for licensing the news content use by platforms. The underlying assumption is that larger players can be forced to pay enough for the content they take to fund the press. But as the value attached to

usage of journalism relative to all the other content carried has declined, any royalty rates won't ever be enough. Journalist output is read more than ever, but the value per click decline in a sea of trivia.

Unless and until newspapers can re-establish subscription income online – as the smarter ones are doing - the expectation that licensing can play more than a supporting role in addressing the issue is highly questionable. But in a world where the competition is a search and a click away, getting users to pay for news is a huge challenge that only the unique, and the smart have addressed.

There are seven interrelated challenges, in my view.

1. Monopoly power must be broken

Google and Facebook are natural monopolies. They have enormous power and leverage. Google is a \$150bn gorilla, dealing with publishing companies it dwarfs in size. Further, Google controls the technology and operations of digital advertising. Fair dealing with newspapers is simply unlikely. This concentration of power is a monopoly issue, and the DSM copyright extension isn't a solution as the exercise of the new right takes place in an unbalanced market.

The French and Australian competition authorities have recognised the issue and intervened in the publisher – platform negotiation process, with a clear view that that market is flawed and a legal framework around the deal making process is needed. In both countries publishers cut deals. The ACCC (Australia) are satisfied that their arbitration framework allowed acceptable deals, but the French less happy. The UK government has linked regulation of platform press deals to the competition authorities. In the USA the anti-trust wheels are now grinding towards a structural, break up, solution, but these processes take years. Unless and until the power of the platforms is curtailed it seems unlikely that real progress can be made.

2. The Google and Facebook resistance must be faced down

When their lobbying against DSM failed the platforms switched to a containment strategy, seeking to buy off the publishers with paying trivial amounts for content, outside the DSM where possible. This is an extension of the earlier PR strategies of Google (GNI) and Facebook. The new Google service – News Showcase – was launched on a promise of \$100m dollars for the news industry. For all newspapers globally sounds good till you see its over three years, all countries. Divide it accordingly and see the value per title is peanuts, (and non transparent peanuts at that). But it is also based on publishers putting more content on Google's platform where usage, user data and ad revenue follows to Google's benefit. And the small print includes an obligation (probably illegal) not to pursue DSM rights. Facebook's approach is similar. The platforms are fighting a ruthless defence, typified by Facebook switching off their service in Australia to secure concessions from the local DSM equivalent law.

3. National Governments must be more supportive

In the passage of DSM and in related legislation elsewhere governments have been wary that regulation might stifle innovation, and disrupt services that consumers value. An unholy alliance of

well funded platforms, the free web gurus, and pirates meant DSM met objections from a number of national governments in the drafting stage and beyond. In the national processes by EU directives are translated into national law there is ample opportunity for opponents of DSM to water down its effectiveness. Across Europe the fight over drafting local laws has been stiff. Most governments are moving slowly (it looks likely that only France, Netherlands, Denmark will meet the June deadline), some governments are introducing changes that undermine the intent of PPR. There is confusion on whether the related article 17 provisions apply to press. A variety of approaches also reflects the fact copyright is national law. Google is lobbying on the grounds its News Showcase makes the law unnecessary.

4. Newspapers must build expertise in licensing

Licensing is at least historically small beer from the newspapers' perspective. Their business has always rested on the twin pillars of advertising and cover price, with other income seen as an ornamental cherry. While models are changing, the collective industry understanding and faith in licensing as a solution lags behind music. Licensing can be assumed to represent 3-5% of a newspaper's income (though that number will vary with more for some nationals and less for regionals). The value of PPR is not yet tested but might double that. Its useful, but not game changing.

Unless and until newspapers see that licensing – as in the music industry – represents a serious, long term growth opportunity and that it could be a major third strand to their income, it is difficult to see how they can take advantage of the new rights.

5. Newspapers must negotiate collective agreements

The best chance newspapers have is to balance the power of the platforms through collective agreements, using the collective management structures (CMOs) referenced in the DSM. In a number of EU countries CMOs have been successful in licensing press cuttings and other business use of news content. But using the existing (or creating new) CMOs is a challenge for publishers.

Newspapers' history is of fierce competition with their peers. Newspapers' DNA is independence and questioning of authority to a greater extent than most business. And committing a crucial resource (commercial rights to web content) to a collective approach does not sit easily with either the independent spirit or the commercial instinct.

Most CMO roots are in licensing copying in education and while they have deep specialist strengths in arcane but important areas like revenue sharing they sometimes have cultures that don't mix easily with entrepreneurial newspaper management approach.

CMOs are tricky to build and run, and it is understandable that the attempts to create or use CMOs at national or European level have struggled so far. The further divide on whether such initiatives should be mandatory (with or without opt outs), or voluntary also complicates. The incentive opt outs give to publishers to 'free ride' collective efforts is real (as, arguably, the French publisher licensing progress has demonstrated).

6. Publishers, agencies and journalists have to unite

Although they share a common concern and a common analysis of the platform – press challenge, there is a huge disconnect between publishers and journalist on PPR that can fatally undermine using the new right. Journalists lobbying helped secure the new rights, and they naturally see that journalist should benefit directly, primarily through the CMOs that represent them. The loose words in the directive provide some support. But publishers (quite rightly) point out that it is a press publishers right, and to precedent that any income from a right accrues directly to their staff and suppliers is unacceptable, as no business can operate profitably with a large slice (the Austrian draft suggests 50%) going to journalists, who are also paid salaries. And journalists must recognise that without an incentive for newspapers to invest in exploiting the right (which will almost certainly require a long and expensive legal battle – absent statutory implementation) there will be deadlock. Publishers will not spend money to chase a precedent that could affect other licensing income.

A publisher view – what would you do?

Newspapers are under huge pressure and many – especially regional titles – are closing. They face a series of hurdles to use the PPR as and when it becomes law. They would need to;

- Believe there is enough licensing income to justify the effort
- Feel that the opportunity cost in taking that fight is justified against other priorities
- Work to ensure the PPR is implemented effectively in their national law, supported by competition authority oversight of any negotiation
- Create, adapt or use a (largely) unfamiliar and untested CMO structure to negotiate a deal
- Be prepared if necessary to resource a long legal battle with the platforms, who will throw money at blocking payment
- Find a way to deal with journalist share challenges

The level of uncertainty is significant. For many some cash now beats a long legal fight. Many have signed up to platform offers (most recently Axel Springer to Facebook).

Seven Challenges -and Actions

1. See the opportunity - its big	Research the potential scale of a good agreement
2. Platform monopoly power	Engage anti trust / competition law. And use collective action
3. Platform resistance	Take care on News Showcase and Facebook offers
4. National government inaction	Lobby for effective transposition of EU law
5. Limited newspaper belief in licensing	Look at music, invest and build skills
6. Collective licensing is necessary	Use or form collective licensing bodies (eg FIEG,ReproPol, NLA)
7. Author share claims	Negotiate solutions

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How this might change – ‘What is to be done’

My manifesto is simple – build a credible business case that publishers can put in the context of their own strategies. And their own publishing plans – especially the adoption of paywalls – must come first.

The starting point for DSM is to establish the potential worth of a licence for the platforms, now and into the future. This needs proper econometric work. It is likely to show the ‘size of the prize’ is significant, and growing. Such a study would also show the gross under valuation of current Google and Facebook offers.

Unless and until publishers work together they don’t have the clout to get a fair deal. A significant effort is needed to explain the basis of CMOs to publishers, and to create or adapt existing CMO models to address legitimate concerns. And existing CMOs need to engage and listen and demonstrate a better understanding of the unique nature of the press. A realistic approach to journalist rights, is needed, taking into account national differences in how this is approached.

Based on this and publisher input model licences for platforms need to be drafted that licence PPR narrowly, affording maximum publisher rights to develop extensions for existing or new CMOs to take into discussions. And publishers should then see the control benefits that a licence can create;- control of arbitrary changes to algorithm and presentation of their content by platforms.

The current DSA efforts could help by tightening the regulatory pressure on platforms and clarifying aspects of DSM.

If national governments then saw a united creative industry seeking a fair and realistic settlement from the major platforms, the chance of an effective implementation increase.

Competition authorities and state weight also need to bear down on the platforms to ensure a deal.

In the long term, the platforms need to be tightly regulated or even broken up.

Andrew Hughes, writing in a personal capacity. June 2021

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