

Commitments by Google towards press publishers and agencies

Decision of 21st June 2022



Autorité
de la concurrence



French Bill on « Related rights »

Explanatory notes for the parliamentary discussion

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The **digital distribution of the press** has made it possible **to expand its readership** dramatically. It further increases the **accessibility of knowledge and information** to the greatest number of people. This technological development provides new means for all **to exercise their citizenship** as free and enlightened spirits.

But it can only constitute genuine and lasting democratic progress if it respects **the independence and pluralism of the press** and guarantees **quality journalism**.

However, absent the recognition of a principle of **ownership of the productions** resulting from their work, press publishers and agencies cannot today grant **licenses for the online use of their publications** and thus **pay off their digital investments**.



Understanding related rights

Legal framework



The **law of 24 July 2019** transposes into French law the **directive on copyright and related rights of 17 April 2019**.

It gives publishers and news agencies the right to allow or forbid the re-use of their content by digital platforms.

Concerned content



This includes:

- > **article extracts**
- > **photographs**
- > **infographics**
- > **videos**
- > **etc.**

displayed by digital platforms within their various services (i.e. Google Search, Google News and Discover).

Objectives



Setting the conditions for a **balanced negotiation** between publishers, news agencies and digital platforms, in order to **redefine the sharing of the value** and protect investments made.

Procedural steps

JULY 2019

Law of 24 July 2019 transposing into domestic law the Directive of 17 April 2019 on copyright and related rights in the Digital Single Market

NOVEMBER 2019

Claims against Google are brought before the *Autorité* by several plaintiffs representing a number of press publishers and news agencies

APRIL 2020

The *Autorité* issues **injunctions against Google** in the framework of interim measures

JULY 2021

The *Autorité* imposes on Google a **500 million € financial penalty** for failing to comply with interim measures, orders that Google comply with its injunctions subject to a periodic penalty payment, and continues to investigate the matter on the merits

DECEMBER 2021

Google offers a **first round of commitments**, submitted to a **market test**

APRIL 2022

Oral hearing before the *Autorité's* Board; discussion with Google to **improve the proposed commitments** (4 successive versions)

MAY 2022

Final offer of substantially improved commitments, accepted and made binding by the *Autorité*

Practices at stake •1

Interim measures

By way of a decision of 9 April 2020, the *Autorité* found that Google was likely to have **imposed unfair trading terms on press publishers and agencies for the display of their protected contents on its services.**

The practices at stake were likely to constitute an **abuse of dominance**, and to cause **serious and immediate harm to the press sector**, which is economically fragile, while on the contrary the law aimed to improve the conditions of remuneration.

→ **The *Autorité* issued interim measures ordering that Google negotiate in good faith with press publishers and agencies the remuneration of the use and display of their protected contents**

- Google had **to conduct negotiations within 3 months** from the request made by a press publisher or a news agency. The negotiations had to cover **protected content as from 24 October 2019.**
- The **indexing, classification and presentation** by Google of the protected contents concerned had to remain **unaffected** while the negotiations were ongoing.
- Google had to **report to the *Autorité* on a monthly basis** on how it is complying with the decision.
- The injunctions were to be in force until the *Autorité's* decision on the merits.

Practices at stake -2

Failure to comply with injunctions

By way of a decision of 12 July 2021, the *Autorité* found that Google:

- had been able to **stymie the negotiations** with press publishers and agencies, and
- had **failed to comply** with its interim measures of April 2020.

Therefore, the *Autorité* imposed upon Google a financial penalty in the amount of **500 million €**.

- **The negotiations were systematically directed towards the conclusion of a global licence agreement in relation mainly with Google's new "Showcase" service**
 - Press publishers and agencies were denied the ability to negotiate specific remuneration for the current use of their protected contents during almost the entire negotiation period.
- **The scope of application of the law on related rights was significantly and purposely narrowed**
 - Exclusion of any remuneration for the use of contents from publishers that did not have "General and Political Information" certification
 - Exclusion of any remuneration for the use of content from press agencies
- **An excessively narrow view was taken on the notion of advertising revenues derived from the display of press content**
 - Only advertising revenues of Google Search pages displaying protected content was taken into account.
 - So-called "indirect" revenues deriving from the enhanced attractiveness provided to Google services through the display of protected content were excluded.

Competition concerns

1

Unfair trading conditions

By **refusing to negotiate** and pay for the display of protected press content on its existing services under the applicable legislation on related rights, Google is likely to have imposed **unfair trading conditions** on press agencies and publishers, constituting an abuse of dominance.

2

Discriminatory treatment

By **imposing zero remuneration** for all press agencies and publishers when the law on related rights entered into force, **regardless of the particulars of their individual situations**, Google is likely to have treated identically stakeholders placed in different situations, without any objective justification, which may amount to a **discriminatory treatment** constituting an abuse of dominance.

3

Circumvention of the law

By **misusing the legal possibility for news agencies and publishers to grant free licences**, in order to impose a systematic, non-negotiable zero remuneration for the display of their protected contents, and by **refusing to communicate the information** necessary for determining the remuneration, Google is likely to have circumvented the law on related rights and to have abused its dominance.

Commitments by Google •1

Extended scope of application

- The commitments **apply to all publishers** covered by the relevant provisions of the French Intellectual Property Code, regardless of their certification as “*General and Political Information*” providers
- The commitments also **apply to press agencies** whose contents are included into **third-party publications**.
- The commitments **apply to press publishers and agencies having already entered into negotiations or concluded a contract with Google** for related rights, either directly or through a professional association. They can amend or terminate these existing agreements at no cost.

Negotiation in good faith

- Google commits to “negotiating in good faith” with press publishers and news agencies, upon their request, the remuneration of the use on its services of their protected contents, in accordance with applicable provisions of intellectual property laws and along **transparent, objective and non-discriminatory criteria**.
- Google expressly commits to **holding the negotiations** on the existing use of protected content **separate and independent from any other negotiation** regarding its Showcase service or whatever new Google service.

Commitments by Google -2

Transmission of the necessary information for the transparent evaluation of the proposed remuneration

In order to enable press publishers and agencies to assess the proposed remuneration, Google commits to providing them with every necessary information to estimate its **direct and indirect revenues deriving from the use of their protected contents**.

This includes:

- A **base of minimum information** to be shared systematically with each negotiating party within 10/15 days (to be updated annually)
- **Additional relevant information to be shared with press publishers and agencies upon their request** within 15 days, under supervision by an independent trustee, who may issue an opinion **binding on Google** on the technical feasibility or relevance of said request.



*This **base** includes, inter alia, the number of printings and click-through rates of protected content on Google Search, Google News and Google Discover, as well as data in connection with Google's revenues in France – whether direct, indirect or as an intermediary in online advertising*

*The most **sensitive data** (e.g., Google Search ads' and Display ads' revenues in France) will be **disclosed to the trustee only** (and experts appointed by the trustee, as the case may be)*

Commitments by Google -3

Neutrality of negotiations

Google undertakes to take the necessary steps to ensure that the negotiations:

- do not affect the crawling, ranking or presentation of the protected contents, and
- do not affect any other economic interaction that may exist between Google and the news agencies and press publishers.

Arbitration procedure in the event of difficulties

Google undertakes to make a proposal for remuneration within three months of the start of negotiations.

Should the parties be unable to reach an agreement, they will have the option of **referring the matter to an arbitration tribunal** to determine the amount of remuneration.

Press agencies and publishers, whose financial resources are scarce, may ask Google to pay the arbitrators' fees in full, including any appeal proceedings.

Monitoring of commitments by an independent trustee

An **independent trustee**, paid by Google and approved by the *Autorité*, will:

- ensure the **implementation** of the commitments
- **oversee** the negotiations
- play an active role in **resolving** any points of disagreement that may arise
- **report** to the *Autorité* on the implementation of the commitments

The trustee will, if necessary, **call on** the services of technical, financial or IP experts.

Google commits to complying with the trustee's opinions and proposals.

Google also commits to **withdrawing its appeal** against the *Autorité's* decision on non-compliance with the interim measures. The 500 million € financial penalty is therefore **final**.