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The Ministry of Culture
The Ministry of Business and Competitiveness
The Cultural and Ecclestial Affairs Committee
The European Affairs Committee

DPCMO AND DANSKE MEDIER'S COMMENTS ON THE ADVOCATE GENERAL'S OPINION IN CASE NO. C-250/25 LIKE COMPANY V. GOOGLE

1. INTRODUCTION

Advocate General Maciej Szpunar ("**the Advocate General**") delivered his Opinion on 3 November 2026 in a reference for a preliminary ruling brought before the Court of Justice of the European Union ("**the Court**") by the Budapest Környéki Törvényszék (Budapest Regional Court, Hungary), in a dispute between, on the one hand, the Hungarian company Like Company Kft. ("**Like Company**"), which operates various web portals, including a portal with freely accessible news content relating to the Lake Balaton area in Hungary, and, on the other hand, Google Ireland Limited ("**Google**").

In the dispute, Like Company claims that Google, through its online chatbot Gemini ("**Gemini**") (formerly Bard) and the large language models ("**LLMs**") on which it is based ("**Gemini LLMs**"), infringed its rights as a press publisher under the Hungarian provisions transposing Article 15(1) of Directive 2019/790 ("**the CDSM Directive**") between 13 June 2023 and 31 May 2024. Like Company has specifically referred to infringements in the form of reproduction in connection with the use of press publications, mainly during the training of the Gemini LLMs and, subsidiarily, during the processes through which Gemini answers user queries, and in the form of reproduction and making available to the public through the answers generated.

The Danish Press Publications' Collective Management Organization ("**DPCMO**") is aware that the Advocate General's Opinion is not binding on the Court, and that the Advocate General's proposed answers to the questions referred for a preliminary ruling are tied to the facts of the specific case and the phrasing of the questions referred. Notably, the Advocate General proposes that the Court declare the questions on LLM training inadmissible, finding that nothing in the request for a preliminary ruling supports the assumption that Like Company's articles were used to train the Gemini LLMs, and that such use would in any event not constitute an online use of press publications (paras. 46-58). He addresses those questions only for the sake of completeness and expressly reserves the right to refine his provisional views in future cases (paras. 3 and 58).

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DPCMO nonetheless finds that the Advocate General's Opinion raises important questions of potential general consequence to press publishers. In this regard, DPCMO finds it important not to lose sight of the broader purpose of the publishers' right under Article 15 of the CDSM Directive. This right is more than simply an adjustment to copyright law. As the Advocate General recalls, it was introduced to enable press publishers to control and license the use of their publications by online services such as news aggregators and thereby recoup their investment (paras. 22 and 54, referring to recital 54 of the CDSM Directive). It is thus intended to provide legal certainty for press publishers by recognising and protecting their own rights in their publications in the context of online uses, and to create incentives for the licensing of large-scale uses of press publications, while safeguarding the interests of individual users.

Importantly, the CDSM Directive expressly underlines that *"a free and pluralistic press is essential to ensure quality journalism and citizens' access to information. It provides a fundamental contribution to public debate and the proper functioning of a democratic society [...]"* (recital 54) and thereby helps foster the availability of reliable information.

These statements are not incidental. They reflect the legislature's recognition that the publishers' right serves a broader democratic and societal purpose, extending beyond the traditional objectives of copyright protection. It is also an instrument intended to help secure a free and pluralistic press in the digital environment, support quality journalism and preserve citizens' access to reliable information.

In DPCMO's view, these broader objectives of the press publishers' right are not given full effect in certain aspects of the approach adopted by the Advocate General. In the following, DPCMO elaborates on this view.

2. THE DISTINCTION BETWEEN INPUT AND OUTPUT (TRAINING AND DEPLOYMENT OF AN LLM)

In the Opinion, the Advocate General clearly distinguishes between, on the one hand, the "upstream" training of LLMs and, on the other hand, the "downstream" use of the trained LLM in an online chatbot (paras. 23, 36 and 153). He considers the link between the use of a press publication at the training stage and the subsequent transmission of information by the chatbot to be too indirect and diffuse for training to qualify as an online use (para. 57). DPCMO considers this distinction to be inconsistent with the reality of the use of protected works and other subject matter in the development and use of online chatbots, and fears that it will put rightsholders at a significant disadvantage when they seek to enforce their rights against unlicensed use by developers of online chatbots.

Viewing training activities in isolation leaves rightsholders with limited means of opposing and addressing infringements. First, it is difficult for rightsholders to document that an LLM has been trained on protected material in breach of a valid reservation of rights for text and data mining ("**TDM**") or in a manner that is inconsistent with the three-step test. In addition, most of the copyright-relevant acts associated with such training will often have been carried out outside the EU. While the Advocate General does not exclude that EU law may apply to the scraping of content from servers located in the EU, he considers that the effects of a deployed model on the internal market alone would not justify extending EU law to training carried out in third countries (paras. 67-73). Finally, the Advocate General finds that reproductions in the training phase are not covered by the press publishers' right (para. 52 and footnotes 15 and 40), so that publishers can only act where they also hold, or are mandated to enforce, the copyright in the underlying articles.

As regards the functioning of the online chatbot itself, the Advocate General finds that relevant acts of reproduction occur only where the chatbot has accessed the publication unlawfully, in particular by circumventing effective technical measures, or where the form of expression of the publication is recognisable in the answer to such an extent that the

user can dispense with accessing the original publication entirely. An act of making available to the public requires that this be the case systematically (para. 229). The liability of the provider of the online chatbot is further limited to cases (i) where such acts are inherent to the provider's business model, or (ii) where the provider has failed to put in place the appropriate measures that can be expected from a reasonably diligent operator in order credibly and effectively to counter such acts (paras. 221-222 and 229).

DPCMO takes the view that the training of the LLM and its subsequent use in an online chatbot, which uses Retrieval-Augmented Generation ("**RAG**") technology to ground its responses to user queries by retrieving press publications in real time, are interlinked and must be viewed as such to ensure legal certainty and effective protection for rightsholders. In the case at hand, Gemini is an LLM-powered chatbot which, using Google Search, finds content on the internet, retrieves it and adds it to the prompt fed to the LLM, which then generates its answer in the light of that content (para. 13). As recognised by the Advocate General, RAG technology is what makes LLM-powered chatbots accurate and reliable (paras. 154-155). The LLM cannot provide the answer required by the user without the retrieved material, and the retrieved material can only be transformed into a useful answer by the underlying LLM. Together they form a single process with a single result. The answer blends the language capabilities the model acquired in training with the retrieved passages, and in the output there is no clear distinction between the two. Furthermore, as the Advocate General notes, Google is both the LLM developer and the chatbot provider (footnote 229). As such, the system acts as an integrated unit.

Viewing the LLM including its prior training in conjunction with the functioning of the online chatbot into which it is incorporated reduces the otherwise significant hurdles to holders of press publishers' rights when they seek to enforce their rights against LLM developers, especially those based outside the EU. Below, these views are elaborated in respect of select aspects of the Opinion.

2.1 The scope of Article 15 of the CDSM Directive

Article 15(1) of the CDSM Directive applies to "online use" of press publications by information society service providers. The Advocate General defines that concept as any use occurring as an integral part of the provision of an information society service via the internet, at the individual request of a recipient of that service (para. 55). On that basis, he finds that the acts of reproduction taking place in connection with the scraping of press publications, the assembly of training datasets and the training of an LLM do not constitute "online use" and thus fall outside the scope of the press publishers' right (paras. 51-57).

This means that holders of press publishers' rights have no means of addressing such reproduction, unless they have additionally been assigned the copyright in the press publications or a mandate to enforce copyright on behalf of the rightsholders, as the Advocate General also notes (footnotes 15 and 40). This is in spite of the fact that the reproduction of protected material, including press publications, during the development of the LLM is a prerequisite for the subsequent deployment of the online chatbot, as explained above.

The Advocate General however acknowledges that Article 15 of the CDSM Directive applies to the use by an online chatbot of press publications to provide responses to user queries through RAG technology, covering both the retrieval of the publication and the provision of the answer (paras. 167-169). This is consistent with the Danish government's observations in the case[1].

[1] Notat til Folketingets Europaudvalg og Folketingets Kulturudvalg om afgivelse af indlæg i EU-Domstolens sag C-250/25, 27. juni 2025

If the development of an LLM is viewed as an integral part of the deployment of the online chatbot of which it forms the basis, and to which Article 15 of the CDSM Directive thus applies, this could afford holders of press publishers' rights the means to address reproductions in the training phase under Article 15 of the CDSM Directive. DPCMO notes that the Advocate General considers that requalifying training as online use merely because the LLM is later integrated into a chatbot would be contrary to legal certainty, since an LLM may be integrated into various systems and the developer and chatbot provider are often different entities (footnote 46). In DPCMO's view, however, neither consideration applies where, as in the present case, the same undertaking develops the LLM for, and deploys it in, its own chatbot service.

2.2 Jurisdiction

A contentious point in relation to the development of LLMs is whether the protection of rightsholders under EU law applies to acts of reproduction carried out during LLM development outside the EU. On this subject, the Advocate General expresses the opinion - though he ultimately leaves this question to the legislature - that the crawling/scraping of protected works and other subject matter from servers located in the EU for the purpose of LLM training is subject to EU law, regardless of where the subsequent training takes place.

Limitation of EU jurisdiction to the scraping of content from domains within the EU, however, fails to offer protection to rightsholders in instances where the content has been reproduced by third parties on non-EU platforms from which it is subsequently scraped, or where the LLM developer uses datasets assembled by a third party, such as Common Crawl.

DPCMO takes the view, consistent with the majority of the governments which have submitted observations in the case (para. 66), that EU artistic and literary property law confers protection against acts of use of works and other subject matter carried out for the purposes of LLM training, as such use produces harmful effects on the interests of rightsholders in the European Union when the LLM is deployed as an online chatbot on the EU market.

The Advocate General acknowledges that, where an online chatbot is provided to users within the European Union, Article 15(1) of the CDSM Directive may, under the principle of territoriality, protect rightsholders against the use of press publications by an LLM-powered chatbot irrespective of where the provider is established or of the location of the servers from which it operates (para. 165).

As such, when training of the LLM is viewed in conjunction with its subsequent deployment, rightsholders are not faced with barriers that may effectively make enforcement of their rights in respect of reproduction in the training phase impossible.

2.3 Remarks on memorisation within the model

The relationship between the training of an LLM and the trained LLM that forms the basis of an online chatbot is also connected with the question of whether LLM training results in the trained model itself containing reproductions of the works and other subject matter on which it has been trained. The Advocate General is sceptical on this point (paras. 84-92). DPCMO respectfully takes a somewhat different view.

The Advocate General accepts that there are documented examples of LLMs "regurgitating" verbatim or near-verbatim parts of works on which they were trained, and that such an output may in itself constitute a reproduction (paras. 86 and

89). He nevertheless regards memorisation as a "glitch" resulting from "overfitting" rather than the normal functioning of an LLM (para. 88), and stresses that regurgitation is typically the result of targeted prompting, so that the model's parameters, seen in isolation, are "merely preparatory material" for the potential generation of reproductions (para. 91). He also warns that treating the model as containing reproductions could impose an excessive liability burden on developers (para. 92).

DPCMO respectfully submits that this question merits further consideration. The fact that memorisation is, as the Advocate General himself acknowledges, "incidental to the machine learning process, and not entirely avoidable" (para. 88) shows that LLMs are inherently capable of retaining and reproducing training data, and that it is primarily technical safeguards applied by developers that prevent this from happening on a more regular basis. That a work can only be made perceptible through a technical process does not, under the broad and technical concept of reproduction in Article 2 of Directive 2001/29/EC ("**the InfoSoc Directive**"), which the Advocate General himself applies (paras. 74 and 81), preclude a finding of reproduction.

The phenomena of memorisation and regurgitation are widely recognised as relevant aspects of LLMs in legal literature. They are described in detail by, among others, A. Feder Cooper and James Grimmelmann in the research article *"The Files Are In The Computer: On Copyright, Memorization, And Generative AI"* (2025)[2], which is also cited by the Advocate General (footnote 79). According to the authors, when a model has memorised data, that data is present in the model itself, and the copyright assessment of the memorisation must therefore be kept separate from the question of whether users of the model have deliberately prompted it to generate copies of protected works and other subject matter.

To illustrate memorisation and regurgitation, the authors refer to examples from ChatGPT (GPT-4) included in the pending case brought by the New York Times against OpenAI, in which the New York Times has identified examples of verbatim or near-verbatim reproduction of its content resulting from prompting GPT-4. The Advocate General recognises this, but considers that such verbatim replication rarely happens nowadays, as LLMs rephrase retrieved content and output filters are applied (para. 203 and footnote 205). However, as Feder Cooper and Grimmelmann argue, limitations on the user's ability to get AI services to reproduce protected material do not prove that no memorisation has taken place. The developer of the service is able to anticipate and prevent regurgitation of training data by implementing technical safeguards ("guardrails"), but such safeguards conceal rather than remove the reproductions contained in the model.

Daniel Gervais et al. reach the same conclusion in *"The Heart Of The Matter: Copyright, AI Training, And LLMs"* (2024), with reference to the broad definition of reproduction in EU law. Under Article 2 of the InfoSoc Directive, the reproduction right covers *"direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part"*,[3] and it follows from recital 21 of that Directive that a broad definition of the acts covered by the reproduction right is necessary to ensure legal certainty within the internal market.

The fact that regurgitation is often provoked by the user's prompts, as pointed out by the Advocate General, should not result in the Court disregarding this particular form of reproduction. It is an inherent risk of any online chatbot that it may be used in an unethical manner, and the fact that users regularly succeed in overriding the guardrails established by developers means that this form of use cannot be disregarded when assessing the impact of online chatbots on press publishers' rights.

[2] The Files are in the Computer: On Copyright, Memorization, and Generative AI

[3] 4963711.pdf

DPCMO recognises that, since the Advocate General considers training not to be an online use, reproductions within the model would, as regards press publishers, only be actionable under Article 15 of the CDSM Directive if the training and the deployment of the model are viewed as an integrated online use, as argued in section 2.1 above. The question is nonetheless of significant importance for the rightsholders whose copyright subsists in the underlying articles. DPCMO therefore respectfully submits that the Court, should it address the question, ought not to exclude that a trained LLM may contain reproductions of works and other subject matter even where memorisation of such material can only be demonstrated to a limited degree.

3. APPLICATION OF THE TDM EXCEPTION TO LLM TRAINING

Under Article 4 of the CDSM Directive, reproductions of works and other subject matter for the purposes of TDM are permitted, provided that the works are lawfully accessible and that their use for TDM has not been expressly reserved by the rightsholders in an appropriate manner. In his Opinion, the Advocate General considers that the TDM exception does, in principle, apply to the reproductions carried out for the purposes of LLM training (para. 99), whereas it does not cover the retrieval of content through RAG technology to generate an online chatbot's responses (para. 179). The latter conclusion is consistent with the views expressed by the Danish government that the TDM exception in Article 4 does not entail a right to make content available to the public[4].

DPCMO does not dispute that reproductions of protected subject matter, including press publications, occurring during the LLM training process may in principle be encompassed by the TDM exception, provided that the use meets the definition in Article 2(2) of the CDSM Directive and the conditions in Article 4. DPCMO notes, however, that the Danish and Spanish governments have argued that LLM training differs fundamentally from TDM in the usual sense of the term, and that the exception, as a derogation, must be interpreted strictly (para. 103). Those arguments retain considerable weight.

3.1 Application of the three-step test

In any event, as the Advocate General acknowledges, the application of the exception is subject to the use meeting the requirements of the three-step test, as reflected in Article 5(5) of the InfoSoc Directive (paras. 111-113 and 133). Under the three-step test, exceptions and limitations may only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject matter and do not unreasonably prejudice the legitimate interests of the rightsholder.

The Advocate General considers that the three-step test does not prevent the TDM exception in Article 4 of the CDSM Directive from covering LLM training in principle (para. 113). On the first step, he finds that LLM training represents a "special case", since the narrow, well-defined contours of the use, rather than the number of works affected, are decisive (paras. 115-116). On the second step, he accepts that application of the TDM exception may reduce licensing revenue. However, the conditions of lawful access and the opt-out under Article 4(3) preserve rightsholders' ability to license (paras. 122-124). On the third step, he weighs the loss of control and revenue for rightsholders, and the wider risks to creators and to information quality, against innovation, the freedom to conduct a business and the public interest in well-trained models. He gives the legislature broad discretion to favour innovation in that balance (paras. 134-139).

[4] Notat til Folketingets Europaudvalg og Folketingets Kulturudvalg om afgivelse af indlæg i EU-Domstolens sag C-250/25, 27. juni 2025

While the Advocate General generally considers that an LLM's general ability to produce content competing with human works is too diffuse a consequence to amount to a conflict with normal exploitation (paras. 128-130), he places emphasis on the functioning of the particular model, stating that, if it could routinely produce outputs in which specific training works are recognisable, the exception should not apply unless the developer shows that it has taken mitigation measures such as deduplication and output filters (paras. 132-133). Accordingly, compliance with the three-step test must be ascertained when the TDM exception is applied in a given case, and there may be exceptional situations which must be determined on a case-by-case basis (paras. 133 and 152).

DPCMO notes that, under this approach, the technical safeguards implemented by LLM developers become decisive for whether the use of the TDM exception for LLM training passes the three-step test (paras. 132-133). The very need for such safeguards is, however, an indication that the trained LLM has the capacity to conflict with the normal exploitation of the works on which it was trained. It also means that compliance with the three-step test can, in practice, only be ascertained once the model has been deployed and its outputs can be observed, at which point the reproductions at the training stage have already taken place.

Furthermore, DPCMO finds that this approach places an undue burden on rightsholders to assess whether or not an LLM developer has met the conditions of the three-step test. From a rule of law perspective this is problematic, as it undermines the *effet utile* doctrine under which EU rules must be interpreted and applied in a way that gives them full force and practical effect, ensuring that their purposes are genuinely achieved rather than rendered meaningless. An approach that leaves the lawfulness of LLM training to be determined on a case-by-case basis, potentially through litigation, risks making the effective protection of rights dependent on the financial resources of individual rightsholders, and the protection becomes largely theoretical, particularly for small and independent publishers.

Unlike global technology companies, small publishers do not have the financial resources to engage in lengthy and costly court proceedings, potentially across several jurisdictions, simply to establish whether their content has been lawfully used. Even where a publisher has a strong legal case, the cost, duration and uncertainty of litigation may make enforcement economically unrealistic.

Moreover, this approach creates an imbalance in incentives. AI developers can commercially exploit protected content at scale, while the burden of identifying potentially unlawful uses, assessing compliance with copyright exceptions and pursuing remedies falls on individual publishers. For smaller publishers, the rational economic choice may simply be not to enforce their rights. DPCMO finds that the EU framework should not produce a situation in which the protection afforded by Articles 4 and 15 of the CDSM Directive becomes dependent on the willingness and financial capacity of publishers to take on major technology companies in court. Legal certainty, effective protection and access to justice require a framework in which rights can be exercised in practice.

3.2 The relationship between TDM reservations and transparency obligations

DPCMO welcomes the Advocate General's emphasis on the transparency obligations of providers of general-purpose AI models under Regulation (EU) 2024/1689 ("**the AI Act**") as a means for rightsholders to verify that their reservations are respected (para. 150). However, DPCMO notes that those obligations have so far not been fulfilled by developers. The information supplied by Google and other developers concerning training data is provided only in the broadest of terms, e.g.: *"The model trains on datasets containing information that can be represented as written language, including software code and publicly available web documents across educational, government, legal, and research sectors."*[5] This makes it

[5] Public Summary of Training Content for General-Purpose AI Models - Gemini 4 model family

difficult for rightsholders to prove whether LLMs have been trained on their content. This issue is widely recognised. According to the researchers Harshvardhan Pandit and Dick Blankvoort, *"most providers are currently not publishing their summaries with the necessary transparency and usefulness"*.[6] As stressed by the researchers: *"missing or deficient information on data sources, technical measures, and rights-respecting procedures directly affect rightsholders' ability to determine whether their copyright and IP rights have been affected and critically to prevent further exploitation. In absence of an alternative legal mechanism that can provide the needed transparency, the current state of low quality summaries have a high impact on these rights and warrant urgent corrective actions."*[7]

This is problematic as only the developers possess precise information on training data. The Advocate General accepts, in respect of RAG, that courts should be lenient with respect to the burden of proof borne by claimants, and that prima facie evidence of use should shift the burden on to the AI provider to prove the contrary (para. 163 and footnote 174). DPCMO submits that the same reasoning applies with equal force to the use of protected content for LLM training, where the information asymmetry is even greater.

While the infringement period claimed by Like Company makes it implausible that Like Company's articles were used to train the Gemini LLMs during that specific period, since training generally takes months and the final dataset is collected well before deployment (para. 49), DPCMO notes that it is a well-established fact that training datasets generally contain a vast amount of protected works and other subject matter, including press publications. The training time frame raises a separate issue regarding the possibilities available to rightsholders of effectively reserving their rights. Gemini 1.0 was released in December 2023, while Google Extended, Google's tool allowing publishers to object to the use of their content for training and grounding, was only released on 28 September 2023 (footnote 154). Publishers thus had no specific means of reserving their rights vis-à-vis Google during the period in which the training data was collected.

DPCMO therefore finds that, where an LLM developer has not fulfilled its transparency obligations in a manner allowing rightsholders to establish whether their works and other subject matter have been used as training data, there should be a presumption that the model has been trained on protected subject matter, including press publications, and it should be for the developer to rebut that presumption.

3.3 The effectiveness of the TDM exception should not be the responsibility of publishers

DPCMO welcomes the Advocate General's view that a reservation of rights under Article 4(3) of the CDSM Directive should not be excessively complicated for rightsholders, that any appropriate means may be used, and that reservations made in natural language in the terms and conditions of a website may be regarded as appropriate where they are "machine understandable" (paras. 148-149).

The Advocate General however also takes the view that the EU legislature may require rightsholders to show a certain degree of diligence in the management of their online content (para. 146). While this is perhaps not in itself an unjust expectation, DPCMO is concerned that the overall allocation of responsibility weighs heavily on publishers.

The purpose of publishers is to make content available to the public. They should not have to organise their publishing activities around preventing unauthorised commercial exploitation by technology companies, which generally have far greater financial and technical resources. In most commercial contexts, a party seeking to use another's protected assets

[6] https://zenodo.org/records/24080031

[7] https://zenodo.org/records/24080031

cannot expect the owner to bear the burden of preventing unauthorised use, and the scale of AI training should not reverse that relationship.

The more publishers fulfil their public mission by offering news freely rather than behind paywalls, the more exposed their content becomes. DPCMO welcomes the Advocate General's recognition that the absence of a paywall or bot-blocking measures cannot be construed as implied consent, and that such measures may affect a website's visibility in search engines (paras. 227-228). However, as the Advocate General also acknowledges, the Robot Exclusion Protocol does not technically prevent scraping and is not respected by all bots (footnote 153). While he expects standardisation processes to succeed (para. 149), DPCMO's experience is that reservations of rights are at present frequently not respected in practice.

4. ON THE DEPLOYMENT OF THE TRAINED LLM IN AN ONLINE CHATBOT

The questions posed by the referring court concerning the deployment of an LLM in an online chatbot, which uses RAG technology to retrieve press publications in real time and ground its responses to user queries, are the questions that the Advocate General finds to be central to the case and thus admissible (paras. 160-162). As previously outlined, the Advocate General finds that these questions fall within the scope of Article 15 of the CDSM Directive and do not raise the same jurisdictional issues as the questions concerning LLM training.

4.1 Observations on the application of Article 5(1) of the InfoSoc Directive to RAG processing

The Advocate General finds that the technical reproductions taking place during the process of retrieval and analysis of a press publication by an LLM-powered online chatbot may, depending on the circumstances, be covered by the exception in Article 5(1) of the InfoSoc Directive for temporary acts of reproduction which are transient or incidental, an integral and essential part of a technological process, and whose sole purpose is to enable a) a transmission in a network between third parties by an intermediary, or b) a lawful use of a work or other subject matter, and which have no independent economic significance (paras. 180-189). According to the Advocate General, this depends on the chatbot having accessed the publication lawfully and on the answer not reproducing it in a recognisable manner (paras. 187-189).

In doing so, the Advocate General declines to follow the Court's reasoning in paragraph 53 of the order in Case C-302/10 *Infopaq International* (footnote 188 of the Opinion), which followed the judgment in C-5/08 *Infopaq International*. Those cases arose from a dispute between Infopaq, a Danish media-monitoring company, and the Danish newspaper publishers' association. Infopaq scanned newspaper articles and captured 11-word extracts around search words in order to write summaries for its customers. Under paragraph 53 of the order, the Court stated that temporary reproductions have independent economic significance where they lead to a change in the subject matter reproduced. DPCMO respectfully submits that the reasoning of the order should not be disregarded.

First, paragraph 53 is not a passing remark. It is reflected in the operative part of the order, which makes the exception conditional on the acts not leading *"to a modification of that work"*. The Court also gave that ruling by reasoned order, as an answer that could be clearly deduced from existing case law. Secondly, there is no inconsistency with paragraph 51 of the order. In that case, the summaries were written after and outside the technological process, which merely made the use of the articles more efficient. In RAG, by contrast, the modification occurs within the process itself: the LLM generates a new text from the reproduced publication. The reproductions therefore serve "the use of a different subject matter" and generate an economic advantage going beyond the use of the publication.

Thirdly, the conditions of Article 5(1) must be interpreted strictly. The Advocate General acknowledges that RAG falls outside the TDM exception (para. 179). Exempting the same reproductions under Article 5(1) would bypass the opt-out mechanism in Article 4(3) of the CDSM Directive. Nor does this offend technological neutrality: in case C-5/08 *Infopaq International*, the Court accepted that a lawful end use, such as summary writing, does not free the underlying digital reproductions.

The situation in *Infopaq International* shares many defining characteristics with case C-250/25 (Like Company), as it also concerned the mass exploitation of press publications, albeit at a different stage of technological development. The case therefore serves as an important contribution to the interpretation of copyright law in the context of online chatbots.

4.2 Concerns regarding the application of the recognisability test to AI output

The Advocate General stresses that the Court's usual infringement test should be followed when assessing whether output from an online chatbot reproduces a press publication, since an AI-specific approach would be contrary to the principle of technological neutrality (para. 193). Under that test, which the Court has applied, inter alia, in Joined Cases C-580/23 and C-795/23 *Mio and Others*, concerning copyright infringement, two cumulative conditions must be met: the protected subject matter must have been copied, and at least some of its protected elements must be recognisable in the end result (para. 194). The Advocate General finds that the first condition is met where a press publication is retrieved and reused through RAG, even if it is not copy-pasted into the answer (para. 195). As regards the second condition, he finds that the press publishers' right protects the form of expression of an article, not the facts reported in it, and that the decisive factor is whether the answer constitutes a direct substitute for the publication, because a user, by reading it, can dispense with accessing the original article entirely (paras. 199 and 202).

Accordingly, under the Advocate General's proposed answer, relevant acts of reproduction occur in two situations (para. 229):

1. where the chatbot has accessed the publication unlawfully, in particular by circumventing effective technical measures such as a paywall or measures designed to restrict scraping; or
2. where the form of expression of the publication is recognisable in the answer to such an extent that the user, by reading it, can dispense with accessing the original publication entirely.

An act of making available to the public occurs only if the form of expression of the publication is systematically recognisable, to the same extent, in the chatbot's answers to related user queries (paras. 213 and 229).

DPCMO welcomes the Advocate General's view that use by an online chatbot is not free merely because the chatbot uses different wording, since the press publishers' right would otherwise be too easy to circumvent in an age where LLMs may easily paraphrase (para. 205). DPCMO equally welcomes the findings that the answer provided by an online chatbot may constitute both an act of reproduction and an act of making available to the public, and that the chatbot makes use of specific technical means different from those used by the publisher (para. 216).

However, DPCMO respectfully considers that the threshold proposed by the Advocate General may prove difficult to meet in practice. Article 2 of the InfoSoc Directive covers reproduction *"in whole or in part"*, and the Advocate General himself accepts that the press publishers' right subsists in an excerpt of an article, subject only to the exclusion of

individual words and very short extracts (paras. 176 and 201). Requiring that the user can *"dispense with accessing the original publication entirely"* introduces a substitution criterion in addition to the Court's recognisability test, which would in practice only be met where the substantial whole of an article is reproduced. In DPCMO's view, partial reproduction consistent with the low threshold for reproduction in part established in Case C-5/08 *Infopaq International*. In that case, an extract of 11 words was held capable of constituting a partial reproduction subject to copyright protection. The case is referenced in the preparatory works for the Danish implementation of Article 15, with the Ministry of Culture stating that the exception for very short extracts under Article 15 should as a consequence only be applicable to extracts shorter than 11 words.[8] Even shorter extracts could arguably be subject to protection under the press publishers' right in article 15 since it is a related right, which is not subject to the same originality threshold as works protected by copyright. In addition, DPCMO does not find support in Article 3(2) of the InfoSoc Directive for the requirement that the form of expression be "systematically" recognisable before an act of making available is found.

The proposed test also places a heavy burden of proof on rightsholders, who must document a sufficient number of non-deterministic answers recognisably reproducing their articles, obtained through normal prompts (para. 214 and footnote 221). Moreover, since purely informative news reports are in the Advocate General's view virtually indistinguishable from one another (para. 206), the journalism he considers most exposed to substitution by AI (para. 136) would receive the least protection, which is difficult to reconcile with the investment-protection purpose of Article 15.

4.3 Observations on the distinction between facts and expression

The Advocate General considers that the press publishers' right protects the form of expression of an article, not the facts reported in it. His reason is that facts *"existed before they were published"* and so do not reflect any investment by the publisher (paras. 199-200).

DPCMO respectfully submits that this underestimates the nature of journalistic investment. An event may predate its reporting, but reliable information about it does not. Journalists and publishers invest in discovering events, checking sources, verifying accuracy and providing context. That work is all the more valuable at a time of widespread mis- and disinformation and deepfakes. The Advocate General himself describes the investment protected by the right as one in the "collection, verification, analysis and, ultimately, presentation of facts" (para. 200).

In DPCMO's view, the Opinion does not engage with what journalism actually is. It treats the content of a press publication as "facts" that are reported, but journalism is much more than mere facts. Investing in journalism means investing in the ongoing investigation and scrutiny of public and private power, of authorities and of organisations. It is human-driven work carried out in war zones, city halls, courtrooms, sports fields, parliaments and archives in order to find the facts and to report them. It is true that the events reported existed before they were published, but that observation misses the point of the protection under Article 15 of the CDSM Directive. What the press publisher invests in, and what the press publishers' right is intended to protect, is this journalistic work and the editorial process through which reliable information is produced and made available to the public, not the underlying events as such.

DPCMO fully accepts that publishers should not have a monopoly over facts, and that freedom of information must be safeguarded (paras. 200-201). However, under the Advocate General's approach, an online chatbot's answer that reports the same facts in different wording would fall outside the right, even though it may "divert some users away" from the article (para. 208).

[8] 20201_l205_som_fremsat.pdf, p. 37

That approach does not fully capture the economic reality. Online chatbots increasingly act as substitutes for consulting the original publication. As a result, publishers lose not only licensing revenue but also traffic, advertising, subscriptions and direct relationships with readers. The Advocate General himself recognises that this calls into question the traditional quid pro quo between search services and publishers (para. 159).

He also recognises that purely informative news reporting is particularly exposed to replacement by AI (para. 136). Assessed cumulatively and at scale, such use may shift audiences and value away from the press. Finally, the Advocate General acknowledges a "grey area" to be assessed case by case (para. 209), which leaves publishers with considerable uncertainty.

DPCMO therefore submits that the distinction between facts and expression should not be applied in a manner that overlooks the journalistic investment that Article 15 of the CDSM Directive was designed to protect. The infringement assessment should also take into account whether the use of journalistic content substitutes for the original publication and undermines the economic foundations of professional journalism.

5. LIABILITY OF PROVIDERS OF ONLINE CHATBOTS FOR INFRINGEMENTS

According to the Advocate General, the acts of reproduction or making available carried out by way of an online chatbot may be regarded as carried out by the provider in two cases: (i) where such acts are inherent to the provider's business model, or (ii) where the provider has failed to put in place the appropriate measures that can be expected from a reasonably diligent operator in order credibly and effectively to counter such acts (paras. 221 and 229).

DPCMO welcomes the Advocate General's recognition that the provider of an online chatbot may be liable for infringements of the exclusive rights of rightsholders, and that a press publisher cannot be considered to have implicitly consented to the use of its publications by online chatbots merely by having made them freely available online (paras. 225-228). DPCMO particularly welcomes the acknowledgement that measures to block bots may affect the publisher's visibility in search engines (para. 228).

Nonetheless, DPCMO considers that the circumstances under which an online chatbot provider can be held liable for infringing output could be defined more broadly.

The Advocate General agrees with Google that, where a user directs the chatbot to carry out a copyright-relevant act, primary liability should generally lie with the user (para. 219). DPCMO notes that the provider designs, controls and commercially benefits from the chatbot, while the user merely initiates an interaction. This is of particular significance under Article 15, since private or non-commercial uses by individual users fall outside the press publishers' right altogether (para. 218). Thus acts attributed to the user are not shifted to another defendant but fall outside the right entirely.

The Advocate General further suggests that, where the provider has put appropriate measures in place, it would be reasonable to absolve it of liability for occasional acts of reproduction or making available (para. 222). This leaves open what constitutes an "occasional" infringement and how effective the measures must be in practice, and risks placing a disproportionate burden on rightsholders, who would have to establish the circumstances of particular chatbot interactions and demonstrate that the provider's safeguards were inadequate, while the provider continues to benefit commercially from the service.

The approach also invites comparison with Article 17 of the CDSM Directive, under which the EU legislature has recognised that platforms cannot avoid responsibility for the use of protected content simply because an individual user initiated the relevant act. The platform's own role in designing, organising and commercially exploiting the service is central to the allocation of responsibility. DPCMO acknowledges that the Advocate General draws on the Court's case law on deliberate intervention (para. 221), but submits that an online chatbot provider plays an even more active role than a platform hosting user uploads, since it is the provider's own system that retrieves the content and generates the answer.

The approach may thus leave publishers with rights that are difficult to enforce in practice. DPCMO's experience from its pending litigation against OpenAI and LinkedIn is that such proceedings are cumbersome, protracted and costly.

6. EFFECTIVE COMPENSATION OF RIGHTSHOLDERS

DPCMO notes the Advocate General's view that the significant effects of generative AI on the demand for human creations could justify a form of statutory remuneration, and that nothing prevents the Member States from providing for a system of compensation for uses falling within the scope of the TDM exception under Article 4(1) of the CDSM Directive, notwithstanding recital 17 of that Directive (para. 151 and footnote 162).

The Advocate General argues that requiring individual authorisation for every piece of content would result in considerable transactional costs and justify relieving developers of most of the burden of clearing rights (paras. 137 and 139).

DPCMO respectfully questions whether the costs of obtaining permission can justify uncompensated commercial exploitation. Transactional costs are not unique to the AI industry; every industry relying on the protected assets of others must bear the cost of obtaining the necessary rights. The AI and technology industry is itself no exception: in developing its products and services, it relies extensively on third-party intellectual property rights, such as software, patented technologies and databases, and it is accustomed to licensing those rights as a normal part of its business. There is no apparent reason why protected press content should be treated differently.

Moreover, practical solutions have already been developed to address precisely these concerns. In Denmark, as in several other countries, collective management mechanisms have been established to facilitate licensing of large volumes of protected content. DPCMO acts as a one-stop shop, enabling AI developers to negotiate access to large repertoires of content without having to approach individual rightsholders one by one. This is precisely the kind of licensing infrastructure that reduces transaction costs while ensuring that creators and publishers are remunerated for the use of their work. Where needed, extended collective licensing, which is widely used in the Nordic countries and is recognised in Article 12 of the CDSM Directive, offers a further well-established and available solution for clearing rights in large volumes of content, including content of rightsholders who are not members of the collective management organisation.

Despite the availability of such mechanisms, AI developers have so far largely declined to enter into licensing negotiations. Where workable licensing solutions exist, the transactional burden cannot, in DPCMO's view, carry the weight attributed to it in the Opinion, and uncompensated use should not become the default business model simply because it is commercially more attractive.

The availability of licensing models, both individual and collective, is also relevant to the application of the three-step test. Where workable licensing solutions are available, uses of press publications for AI purposes form part of the normal

exploitation of that content, and unlicensed use under an exception is more likely to conflict with that normal exploitation and to unreasonably prejudice the legitimate interests of rightsholders. The existence of a functioning licensing market thus limits the scope for relying on exceptions and limitations to justify such uses and strengthens the protection of press publishers in the light of the three-step test.

The answer to the challenges of scale should therefore be efficient licensing, individual or collective, rather than transferring the costs of AI development onto publishers and creators. DPCMO does not share the Advocate General's suggestion that statutory remuneration schemes are an appropriate response. Such schemes would deprive rightsholders of their exclusive right to authorise or prohibit the use of their content and to negotiate its terms. Statutory licensing or remuneration solutions should therefore only be considered as an ultima ratio, where voluntary licensing has demonstrably failed.

7. SOME OBSERVATIONS ON THE WIDER IMPLICATIONS OF THE OPINION

The Advocate General addresses the questions posed by the referring court through the fairly narrow lens of copyright law. While this approach may be warranted by the questions posed, DPCMO considers that the broader legislative context also deserves attention.

The Opinion places considerable emphasis on legal certainty for AI developers. DPCMO respectfully submits that legal certainty must apply equally to rightsholders. The need to obtain permission or agree on compensation for the commercial use of protected works is not a source of legal uncertainty but a basic feature of a framework built on exclusive rights, and publishers are equally entitled to know whether, and how, they can exercise their rights.

There is also a question of long-term sustainability. AI innovation depends on high-quality, reliable and diverse content, which is the result of continued investment by publishers, journalists and other creators. If such content can be exploited on an industrial scale without consent or compensation, the incentives to produce it will be weakened. A sustainable framework therefore requires a functioning licensing market and a fair relationship between those who create content and those who use it to develop commercial AI systems.

Article 15 of the CDSM Directive was designed to strengthen the position of press publishers in the digital environment, support the economic foundations of quality journalism and safeguard a free and pluralistic press. DPCMO respectfully invites the Court to adopt an interpretation of the provision that gives full effect to those objectives.

7.1 Impact on freedom of information

The Advocate General considers that allowing LLM training under the TDM exception supports innovation and serves the public interest in well-trained AI models, which may contribute to users' freedom of information (para. 137). At the same time, he recognises that generative AI may affect the demand for human creations and the quality of informational production (para. 136). DPCMO submits that the latter concerns should carry greater weight. If publishers and journalists lose the economic incentive to invest in reliable content, the result may be a less diverse media landscape and reduced availability of independent, high-quality information.

Moreover, receiving information through an online chatbot is not equivalent to access to a free, pluralistic and independent press. When users rely on AI systems as intermediaries, the provider exercises considerable influence over what information users encounter and how it is selected, summarised and presented. Freedom of information presupposes access

to a plurality of independent sources and the ability to form one's own judgment, and a media ecosystem dependent on AI-generated answers based on unremunerated content risks concentrating that influence in a small number of technology companies.

The public interest in AI innovation must therefore be assessed alongside the public interest in a free and pluralistic press. That public interest is not served by the availability of facts alone, but by journalism: the continuous, human-driven work of investigating, verifying, contextualising and reporting, which press publishers finance and which Article 15 of the CDSM Directive protects. These interests are not mutually exclusive: sustainable AI innovation requires a sustainable supply of quality journalism.

7.2 Balancing of fundamental rights

The Advocate General refers to the freedom to conduct a business under Article 16 of the Charter as an important consideration for AI developers, while also recognising that the use at issue may significantly restrict rightsholders' fundamental right to intellectual property under Article 17(2) (paras. 135 and 137).

DPCMO submits that, in balancing the freedom to conduct a business against the interests of rightsholders, significant weight must be attributed to the public interest, recognised in the recitals to the CDSM Directive, in a free and pluralistic press ensuring quality journalism, citizens' access to information and the proper functioning of a democratic society. What is at stake on the rightsholders' side is not the protection of facts that existed before they were published, but the investment in journalism that brings reliable information to citizens in the first place.

The question is not whether AI innovation should be facilitated, but whether that objective justifies an interpretation that transfers its costs to publishers and creators. A proper balancing exercise must give meaningful weight to both fundamental rights and to the democratic values that the publishers' right was intended to support.

The idea that chatbots providing hyperlinks and urging users to consult the sources may foster a relationship of synergy, rather than substitution, between press publishers and AI providers (para. 234), and that licensing could offer a positive outcome for all stakeholders (para. 236) represents an ideal. DPCMO's current experience is that traffic referred from online chatbots is negligible. Online chatbots increasingly provide direct answers in a manner which does not encourage users to visit the publisher's website, and publishers may receive neither referral traffic nor licensing revenue.

A genuine synergy therefore requires legal and economic conditions under which publishers are fairly remunerated and retain the ability to reach their audiences. Without effective licensing arrangements and fair remuneration, the envisaged synergy risks remaining an aspiration.

8. FINAL REMARKS

The Opinion raises a fundamental question: should the principles of intellectual property law be adapted because AI developers need access to quality content? Copyright and related rights do not protect rightsholders against competition. Equally, however, exceptions should not enable protected content to be used to build competing services and capture its value without permission or remuneration.

What has changed is not journalism, but the technology that seeks to use it. Press publishers invest in journalism, and it is that investment which covers the whole chain of activities and infrastructure that makes independent journalistic

content available to citizens, whether freely or behind paywalls that Article 15 of the CDSM Directive protects. DPCMO respectfully submits that the applicable principles should remain clear and technology-neutral: those who invest in creating press publications and other protected subject matter should retain meaningful control over their use, and the risks associated with new technology should not be borne primarily by publishers. DPCMO hopes that the Court will take these considerations into account in its forthcoming judgment.

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