

BRE-JBZ

From: Kaai, Geran
Sent: vrijdag 3 april 2015 15:56
To: Verweij, Ellen
Subject: FW: DAPIX meeting on RTBF concerns of press publishers
Attachments: Joint publishers and journalists' statement - EU draft Regulation on Data Protection.pdf

Follow Up Flag: Follow up
Flag Status: Completed

From: BRE-JUS
Sent: donderdag 11 september 2014 07:37
To: Grave, Martijn-de; Ruiters, Mienke-de; Dam, Caroline-ten; Alink, Marnix; Kaai, Geran; Sorel, Alexander; Luijsterburg, Sander; Zwart, Jan; Kroner, Laetitia; Leenders, Sophie; Rip, Jet
Subject: FW: DAPIX meeting on RTBF concerns of press publishers

Van: BRE
Verzonden: donderdag 11 september 2014 7:37:19 (UTC+01:00) Brussels, Copenhagen, Madrid, Paris
Aan: BRE-JUS
Onderwerp: FW: DAPIX meeting on RTBF concerns of press publishers

[Redacted line]

From: [Redacted] [mailto:[Redacted]]
Sent: woensdag 10 september 2014 18:28
Cc: [Redacted]; [Redacted]
Subject: DAPIX meeting on RTBF concerns of press publishers

Dear Member of the DAPIX Group,

In view of the upcoming discussions about the right to be forgotten (Article 17 of the Proposal for a General Data Protection Regulation), we are contacting you on behalf of press publishers from across Europe.

ENPA and EMMA are very concerned that a discussion about a right to be forgotten will take place even though a clear and robust exemption for data processing for journalistic purposes is not assured in the current Council version of the Regulation. This poses a severe threat to press freedom in Europe. As long as there is no binding and directly applicable exemption, a right to be forgotten would apply to journalistic processes such as investigating, reporting, publishing and archiving editorial content.

It is therefore crucial that **any discussion about a right to be forgotten in the digital and media sector – whatever it might comprise after all – cannot take place before a clear and directly applicable exemption guarantees that data processing for journalistic purposes will not be subject to data protection rules such as a right to be forgotten.**

An encompassing exemption does not leave the data subject unprotected. National media laws, defamation and libel law, criminal law, etc. – in place for hundreds of years – have always been the appropriate means to take action against unlawful press coverage infringing third parties' rights.

The need for a directly binding exemption for journalistic data processing in the Regulation is explained in more detail in the attached statement by the European Federation of Journalists, the European Magazine Media Association, the European Newspaper Publishers' Association and the European Publishers Council.

As regards the right to be forgotten, particularly in view of the CJEU decision of 13 May 2014 (C-131/12), ENPA and EMMA would like to stress the importance of press freedom as indispensable factor within the balancing of interests. Any balancing needs to take into account all the circumstances surrounding the particular situation. In the mentioned judgment, the CJEU has only balanced the data subject's privacy interest and the search engine's mere business interest. It did not take into account issues of press and media freedom that are of essential meaning and function in a democratic society. Even if in an individual case the non-journalistic processing of journalistic content by the operator of a press distribution platform (e.g. e-paper kiosks, app stores, search engines, etc.) might not be covered by the exemption (Article 9 DPD or prospective Article 80 GDPR), it is still beyond doubt that the distribution conducted by such operators is protected by press freedom just as much as the making available of journalistic content on the publisher's website itself. **Therefore press freedom needs to be duly considered when applying data protection rules to data processing relevant for distribution of editorial content.**

As a matter of principle, press freedom requires as a rule that editorial content is lawful unless it infringes third parties' rights. Any prohibition prior to publication is censorship. The CJEU turns this crucial principle of media freedom upside down by applying the principle that the data subject's interest in erasure – as a rule – overrides other interests.

EMMA and ENPA therefore ask upon the members of the DAPIX working group

- 1. Before discussing Article 17: to include a robust and directly applicable exemption for journalistic data processing in the Council text**
- 2. When discussing Article 17: to duly consider press freedom when applying data protection rules to data processing relevant for distribution of editorial content.**

Please do not hesitate to contact me or my colleagues, [REDACTED] ENPA or [REDACTED], EMMA, for any further information you might need.

Yours sincerely,

[REDACTED]
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Legal Adviser

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European
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EUROPEAN
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ASSOCIATION

ENPA
EUROPEAN NEWSPAPER PUBLISHERS' ASSOCIATION



EPC
European
Publishers
Council

EFJ, EMMA, ENPA and EPC statement on the need to preserve press freedom and journalism in the EU draft General Data Protection Regulation

Call by journalists and publishers across Europe to safeguard press freedom and journalism under Article 80

3 December 2013

EFJ, the European Federation of Journalists, ENPA, the European Newspaper Publishers' Association, EMMA, the European Magazine Media Association, and EPC, the European Publishers' Council, are extremely concerned that the approach taken by the European Parliament's LIBE Committee and taken in the latest Council text on Article 80 of the draft General Data Protection Regulation seriously undermines press freedom and journalism.

A directly binding exemption in the draft Regulation for journalistic data processing is essential to ensure that journalists and publishers can continue fulfilling their democratic mission as regards investigating, reporting, writing and publishing editorial content without any obstacle, and to guarantee that sources are adequately protected. It has to be ensured that with the change to a Regulation, the current level of protection will not be lowered in each Member State.

The approach on Article 80 taken by the **European Parliament's Civil Liberties (LIBE) Committee in its orientation vote on 21 October 2013 on the draft Data Protection Regulation is not acceptable**. The existing exemption as well as the Commission proposal have been significantly weakened in the "compromise" amendment adopted. All references to press and journalistic activities have been removed and the application of the exemption for journalistic data processing has been made optional at national level by using the wording "whenever this is necessary" and "to reconcile" data protection with freedom of expression.

A clear reference to "journalistic purposes" needs to be upheld as it is the only way to maintain proper protection of journalism (for example, storing of personal data in national archives, protection of personal data of sources, digital transmission of personal data by publishing articles and maintaining online archives). The LIBE Committee compromise **ignores amendments which support a strong, clear and directly binding exemption for journalistic data processing previously adopted in Parliamentary** providing committees with broad support of MEPs from several parties. The LIBE amendment weakens rather than maintaining the current exemptions from data protection restrictions and from control by data protection authorities, and therefore poses a severe threat to press and media freedom in many parts of Europe.

Also in the Council, the **latest text discussed on Article 80 in the Data Protection Working Group (DAPIX) under the Irish Presidency poses a severe risk to press freedom and journalism**. The text only indicates that "Member States shall reconcile the right to the protection of personal data with the right to freedom of expression, including the processing of personal data for journalistic purposes". All references to the chapters to which

the exemption should apply have been removed. The Council's approach considerably weakens the original Commission's proposal and does not even consider or improve the existing legislation based on Article 9 of Directive 1995/46/EC.

The suggested wording in the **latest Council text removes any obligation for Member States to specifically foresee an exemption for data processing for journalistic purposes**, and therefore does not provide a guarantee that journalists would still be allowed to process personal data for fulfilling their democratic mission. It also gives a significant margin of interpretation on whether the exemption should even exist at national level and to what extent it should apply.

A directly binding exemption for journalistic data procession is urgently needed as all restrictions set out in the new regulation, including the control of editorial content by Data Protection Authorities, will be directly applicable. The compromise adopted in the LIBE Committee and the latest Council text instead leave the question of protection to national implementation and thereby open up the way for difficult discussions in Member States and opportunities for governments to curtail press and media freedom. In several countries it is even not clear whether the current level of protection for media freedom will be upheld.

Following this analysis, journalists and publishers in Europe, represented by ENPA, EMMA, EPC and EFJ would like to reiterate their **call towards governments and MEPs to support an appropriate approach for the respect of press freedom** and the need for journalists to process personal data without restrictions in order to achieve their democratic mission.

The **amendments to Article 80 adopted in the JURI and ITRE Committee opinions** and tabled (but sadly not adopted) by several MEPs from different political groups in LIBE Committee **provide, in our view, an appropriate response** for the exercise of professional journalism and the protection of press freedom.

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