COURT OF JUSTICE
OF THE EUROPEAN UNION

Opinion of the Advocate General at the Court Maciej Szpunar in Case C-250/25 | Like Company

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Advocate General Szpunar: The Court should find that the retrieval and reuse, in real time, of online press publications by AI chatbots in order to generate answers to user queries may, in certain circumstances, infringe the rights of press publishers

In the first generative AI case to reach the Court of Justice, the Advocate General clarifies under what circumstances such a process constitutes an infringement of the rights of press publishers

The Alphabet Group, of which Google Ireland Ltd. ('Google') is a member, provides a service known as **Google Gemini**. Google Gemini is a generative artificial intelligence chatbot ('**AI chatbot**') designed to converse with users through text or speech. It derives that capacity from **Large Language Models ('LLMs')**. These are complex neural networks capable of 'understanding' and generating natural language, which have been **'trained'** to do so through the automated processing of very large bodies of text. The Gemini LLMs use a technology called '**Retrieval-Augmented Generation**' (RAG or 'grounding'), allowing them to collect information in real-time from the World Wide Web in order to improve the accuracy and reliability of the chatbot's answers. Thanks to that technology, such a chatbot may be used to **obtain information about the news**. To provide answers in that regard, the chatbot often **retrieves (or 'scrapes') press articles available online**.

Like Company, a Hungarian operator of various web portals, brought proceedings against Google before the Budapest Regional Court (Hungary). Like Company claims protection over the articles published on those portals under the **copyright-related right granted by EU law to 'press publishers'** over the 'online use' of their 'press publications'. [1] It argues that Google used those articles to 'train' the Gemini LLMs and repeatedly reproduced and made them available to the public through the Gemini chatbot between 13 June 2023 and 31 May 2024. The Hungarian court decided to stay proceedings and to address four preliminary questions to the Court of Justice. Two questions concern whether the use of press publications to **train an LLM** falls under the exclusive right of reproduction granted to the publisher, or whether that use is freely permitted under the text and data mining exception provided by EU law. [2] The remaining two concern whether **the answers provided by the chatbot to its users** may fall under the reproduction right and/or the right of making available to the public granted to the publisher.

In today's opinion, Advocate General Szpunar advises the Court, on the one hand, to declare inadmissible the two questions concerning LLM training. In its view, since there is **no evidence that Like Company's articles have been used** to train the Gemini LLMs, and since the training of an LLM **is not a form of 'online use' of press publications**, these questions are hypothetical. However, for the sake of completeness, he suggests to the Court that the use of works and other subject matter protected under copyright and the related right to train an LLM **is, as a rule, freely permitted under the text and data mining exception**.

On the other hand, Advocate General Szpunar advises the Court to **focus on the questions concerning the answers provided by the chatbot**, as these are relevant in the main proceedings. In that respect, he suggests that, **when an LLM-driven chatbot retrieves a publication from a press publisher's website, reuses that publication to generate an**

answer, and provides that answer to the user, the press publisher's right may be infringed in certain circumstances.

On this point, the Advocate General stresses that the press publisher's right **does not protect the mere facts reported in press publications**, but only the **specific form of expression of those publications**. Indeed, its aim is to protect the investment that goes into making such a publication, **not to give publishers a monopoly over the news** itself.

Accordingly, in his view, whether such use of press publications by an LLM-driven chatbot falls under the publisher's right of reproduction depends on two factors: first, whether that chatbot **accessed the press publication at issue unlawfully**, in particular by **circumventing effective technical measures (such as a paywall) designed to restrict access to, or web-scraping of, that publication**; and, secondly, whether the answer provided to the user **merely reports facts** contained in the original publication or, on the contrary, **reuses the form of expression of that publication in a recognisable manner**, to such an extent that the user, by reading that answer, is entirely dispensed from accessing the original publication. The right of making available to the public of the press publisher is, as a rule, infringed where the form of expression of the press publication at issue is **systematically recognisable**, to the extent described above, in the answers provided by the chatbot to related user queries.

Finally, **the provider of the online chatbot is liable for such potential acts of use** of press publications where they are **inherent to the business model of that provider** or the latter has **failed to put in place appropriate measures in order to counter those acts credibly and effectively**.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice of the European Union about the interpretation of EU law or the validity of an EU act.

The General Court has jurisdiction to deal with requests for a preliminary ruling coming exclusively within the following areas (1) the common system of value added tax (VAT), (2) excise duties, (3) the Customs Code, (4) the tariff classification of goods under the Combined Nomenclature, (5) compensation and assistance to passengers in the event of denied boarding or delay or cancellation of transport services, or (6) the system for greenhouse gas emission allowance trading. The Court of Justice has jurisdiction to deal with all other requests for a preliminary ruling.

Neither the Court of Justice nor the General Court decides the national dispute itself. It is for the national court or tribunal to resolve the case in accordance with the ruling by the Court of Justice or by the General Court, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The full text of the Opinion is published on the CURIA website on the day of delivery.

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[1] Article 15(1) of Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market ('the CDSM Directive').

[2] Article 4 of the CDSM Directive.