



U.S. DEPARTMENT OF JUSTICE

Antitrust Division

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March 31, 2010

William J. Baer, Esq.
Arnold & Porter LLP
555 Twelfth Street, N.W.
Washington, DC 20004

Dear Mr. Baer:

This letter responds to your request for the issuance of a business review letter pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6. You have requested a statement of the Antitrust Division's current enforcement intentions with respect to a proposal by your client, The Associated Press ("AP"), to develop and operate a voluntary news registry (the "Registry") to facilitate the licensing and Internet distribution of news content created by the AP, its members, and other news originators. For the reasons discussed below, the Division has no present intention to challenge the development or operation of the Registry.

Factual Background

You have made the following representations to the Division. The AP is a not-for-profit membership cooperative that has approximately 1,300 daily newspaper members. The AP both creates its own news content and distributes certain news content from its members pursuant to membership agreements. That content is published and republished by more than 1,700 newspapers in the United States and over 5,000 television and radio stations.

The AP proposes to create the Registry to facilitate the licencing of original news content on the Internet. The AP would own all of the equity interests in the Registry.

The Registry would be a centralized digital database that would contain individual items of news content from multiple content owners. The Registry would allow content owners to register and list individual items of news content, specify the uses others may make of that content, and detail the terms on which such content may be licensed. A content owner could use the Registry to offer licenses for individual items of its news content, or to offer blanket licenses for categories of its content or all of its content. The Registry would enable registered content users to determine quickly the licensing and use terms applicable to a specific content owner or to individual items of registered content. That, in turn, would allow content owners and content users to reach agreement on use and licensing terms for Internet content in an efficient manner.

Participation in the Registry would be voluntary and inclusive, rather than exclusive. The

Registry would be open, on a nondiscriminatory basis, to all owners of news content with respect to each item of news content that they own, including AP members and nonmembers. It also would be open, on a nondiscriminatory basis, to all content users. For content owners and content users, participation in the Registry would be nonexclusive and would involve no minimum commitment. Content owners would be allowed to decide which, if any, of their news content to list in the Registry; they would be allowed to offer registered news content outside of the Registry; and they would be allowed to participate in competing registries.

The AP plans to support the Registry's activities by assessing fees on each participant – content owners and content users – for the services that the participant elects to receive pertaining to the Registry. The fees may vary based on the nature and scale of the services delivered to a participant, but would be nondiscriminatory between similarly-situated content owners and similarly-situated content users.

The AP represents that it will forbid any content owner, including the AP, or any third party affiliated with a content owner, to set, formulate, benchmark or suggest licensing terms, including pricing, pricing formulas or algorithms, for any other content owner's content listed in the Registry. Each content owner participating in the Registry would set independently the terms for the licensing of its own individual items of registered content and the terms for the blanket licensing of its own content. All licensing terms contained in the Registry would be for immediate contract with content users. The Registry would not be used to communicate any tentative or future licensing terms. In addition, participation in the Registry would not restrict or restrain the licensing terms that participants offer for registered content outside of the Registry, including the licensing terms offered to or through competing registries or third parties.

To participate in the Registry, content owners would code their registered content in an open-source, standard format, the News Presentation Format. This format would include fields for standardized metadata that would provide specific information describing each individual news item's attributes, such as the source news organization, title, and author. It would include only information necessary to facilitate the use and licensing of registered content. The News Presentation Format would allow each participating content owner to communicate specific use and license terms applicable to each item of registered content, to categories of its content and to all of its content. It would alert content users to the existence of use and license terms applicable to individual items of news content or to a specific content owner's content. The standardized metadata would be available to Internet search engines to use in indexing and identifying news content. It also would be used to develop a searchable index of registered news content and content usage metrics that would allow content owners to track and measure the Internet use of their individual items of registered content.

The Registry would not be used to communicate or disseminate any revenue, traffic, use or transactional information among participating content owners or content users. The AP will institute and maintain firewalls that would prevent participating content owners and users from accessing that type of information about other participating content owners' and users' content. The AP would have access to confidential information from other content owners and users because the AP would administer the Registry. The AP, however, will not access, compile or use that information, except to provide that type of information to participating content owners or users with respect to their own registered content.

In addition, the Registry would not be used to compile or circulate to any content owner any reports that contain aggregated nonpublic information. Nor would the Registry be used to compile or circulate to any content user any reports that contain aggregated nonpublic information regarding multiple content owners or usage by multiple content users. The Registry could be used to compile or circulate reports to an individual content user that contain aggregated nonpublic information regarding the content used only by that content user that is sourced from multiple content owners. Finally, with respect to public licensing terms, the AP would require participants to register as content owners and/or content users and would allow only content users to access the Registry's licensing terms.

Analysis

Based upon the representations made in your request, the documents and information provided in support of your request, and the information obtained during our own review, the Department has no present intention to challenge the AP's Registry proposal. The proposal is not likely to result in anticompetitive harm and, as described below, it may provide procompetitive benefits to participating content owners and users.

The AP's proposed Registry is unlikely to have anticompetitive effects on price, output, or competition among participating content owners or users. Participation in the Registry will not be exclusionary or exclusive and it appears that participation is not critical to the commercial success of any content owners or users. Nor will the Registry constrain in any way a content owner's ability to offer its content competitively outside of the Registry. The Registry is not likely to facilitate coordination among content owners, in part because each content owner will set its license terms independently and unilaterally, and because the Registry will use firewalls to partition each content owner's confidential business information.

The AP's proposal also may provide procompetitive benefits to participating content owners and users. The Registry may provide a new, efficient mechanism through which content users can identify applicable terms of use and purchase licenses for news content they want to use. As such, it may reduce transaction costs associated with securing licenses for Internet content users. In addition, the Registry's ability to digitally track and measure Internet use may provide content owners with valuable information about their content that is not currently available.

In setting forth the Department's current enforcement intention, we note that this letter is issued in reliance on the information and representations provided by the AP, including the representation that the AP would own all of the equity interests in the Registry. This letter does not state an enforcement intention were the AP to propose that other content owners or users take an equity stake in the Registry. In addition, the AP did not propose offering blanket licenses of news content owned by multiple content owners, therefore this letter does not state an enforcement intention regarding that subject. In accordance with our normal practices, the Department reserves the right to bring any enforcement action in the future should any agreements or activities in which the AP may engage prove to be anticompetitive in purpose or effect in any market.

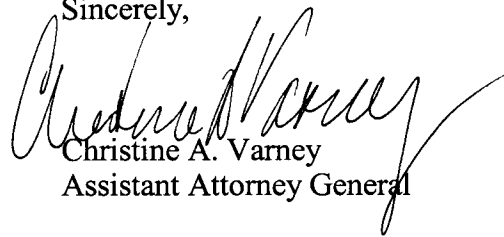
This statement is made in accordance with the Department's Business Review Procedure 28 C.F.R. § 50.6. Pursuant to this procedure, your business review request and this letter will be

William J. Baer, Esquire

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made publicly available immediately, and any supporting data will be made publicly available within 30 days of the date of this letter, except for any part of the materials for which you have requested and justified confidential treatment in accordance with Paragraph 10(c) of the Business Review Procedure.

Sincerely,

A handwritten signature in black ink, appearing to read "Christine A. Varney", with a long, sweeping flourish extending to the right.

Christine A. Varney
Assistant Attorney General