

Public consultation on the role of publishers in the copyright value chain and on the 'panorama exception'

Fields marked with * are mandatory.

General information about you

The views expressed in this public consultation document may not be interpreted as stating an official position of the European Commission. All definitions provided in this document are strictly for the purposes of this public consultation and are without prejudice to differing definitions the Commission may use under current or future EU law, including any revision of the definitions by the Commission concerning the same subject matters.

Fields marked with * are mandatory.

*

I'm responding as:

- An individual in my personal capacity
- A representative of an organisation/company/institution

*Please provide your first name:

Ruth

*Please provide your last name:

Coustick-Deal

*

Please indicate your preference for the publication of your response on the Commission's website:

- Under the name given: I consent to publication of all information in my contribution and I declare that none of it is subject to copyright restrictions that prevent publication.
- Anonymously: I consent to publication of all information in my contribution and I declare that none of it is subject to copyright restrictions that prevent publication.
- Please keep my contribution confidential. (it will not be published, but will be used internally within the Commission)

(Please note that regardless the option chosen, your contribution may be subject to a request for access to documents under [Regulation 1049/2001 on public access to European Parliament, Council and Commission documents](#). In this case the request will be assessed against the conditions set out in the Regulation and in accordance with applicable [data protection rules](#).)

*Please enter the name of your institution/organisation/business.

OpenMedia

What is your institution/organisation/business website, etc.?

www.openmedia.org

*What is the primary place of establishment of the entity you represent?

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Italy
- Ireland
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other

*If other please specify:

Canada

*

My institution/organisation/business operates in: *(Multiple selections possible)*

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Italy
- Ireland
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other

*

If other, please specify

OpenMedia is a global organization that has community members in many if not all of the EU countries. We have one full-time staff member residing in London, UK, who coordinates campaigns and outreach for the European Union.

*

Is your organisation registered in the [Transparency Register](#) of the European Commission and the European Parliament?

- Yes
 No

*

Please indicate your organisation's registration number in the Transparency Register.

232678519050-87

The role of publishers in the copyright value chain

In its Communication Towards a modern, more European copyright framework of 9 December 2015, the Commission has set the objective of achieving a well-functioning market place for copyright, which implies, in particular, "the possibility for right holders to license and be paid for the use of their content, including content distributed online." [1]

Further to the Communication and the related stakeholders' reactions, the Commission wants to gather views as to whether publishers of newspapers, magazines, books and scientific journals are facing problems in the digital environment as a result of the current copyright legal framework with regard notably to their ability to licence and be paid for online uses of their content. This subject was not specifically covered by other public consultations on copyright issues the Commission has carried out over the last years. In particular the Commission wants to consult all stakeholders as regards the impact that a possible change in EU law to grant publishers a new neighbouring right would have on them, on the whole publishing value chain, on consumers/citizens and creative industries. The Commission invites all stakeholders to back up their replies, whenever possible, with market data and other economic evidence. It also wants to gather views as to whether the need (or not) for intervention is different in the press publishing sector as compared to the book/scientific publishing sectors. In doing so, the Commission will ensure the coherence of any possible intervention with other EU policies and in particular its policy on open access to scientific publications. [3]

*

Selection

Do you wish to respond to the questionnaire "The role of publishers in the copyright value chain"?

- Yes *(Please allow for a few moments while questions are loaded below)*
 No

[1] [COM\(2015\)626 final](#).

[2] Neighbouring rights are rights similar to copyright but do not reward an authors' original creation (a work). They reward either the performance of a work (e.g. by a musician, a singer, an actor) or an organisational or financial effort (for example by a producer) which may also include a participation in the creative process. EU law only grants neighbouring rights to performers, film producers, record producers and broadcasting organisations. Rights enjoyed by neighbouring rightholders under EU law generally include (except in specific cases) the rights of reproduction, distribution, and communication to the public/making available.

[3] See Communication [COM\(2012\) 401](#), Towards better access to scientific information: Boosting the benefits of public investments in research, and Recommendation [C\(2012\) 4890](#) on access to and preservation of scientific information.

Category of respondents

*Please choose the category that applies to your organisation and sector.

- Member State
- Public authority
- Library/Cultural heritage institution (or representative thereof)
- Educational or research institution (or representative thereof)
- End user/consumer/citizen (or representative thereof)
- Researcher (or representative thereof)
- Professional photographer (or representative thereof)
- Writer (or representative thereof)
- Journalist (or representative thereof)
- Other author (or representative thereof)
- Collective management organisation (or representative thereof)
- Press publisher (or representative thereof)
- Book publisher (or representative thereof)
- Scientific publisher (or representative thereof)
- Film/audiovisual producer (or representative thereof)
- Broadcaster (or representative thereof)
- Phonogram producer (or representative thereof)
- Performer (or representative thereof)
- Advertising service provider (or representative thereof)
- Content aggregator (e.g. news aggregators, images banks or representative thereof)
- Search engine (or representative thereof)
- Social network (or representative thereof)
- Hosting service provider (or representative thereof)
- Other service provider (or representative thereof)
- Other

If other, please specify

OpenMedia is a not-for-profit organization that works to engage Internet users in policymaking processes that affect their use of the Internet. We are also an aggregator, as our website pulls together articles from numerous publications on the topic of digital rights and Internet governance. OpenMedia is also a publisher as we create original content, written by staff, contributing authors, and volunteers and distribute these widely on our Web platform, on social media, and on various news and information platforms, both online and offline.

We find the distinctions between many of the categories listed above to be arbitrary and open to multiple interpretations, which can be problematic when drafting legislation. For example, there is no clear definition of which organisations count as press publishers, and which count as aggregators. For this purpose, we would look for decision-makers to make clear definitions and distinctions as to the activities and roles of each of the above categories such that any laws drafted with the feedback taken from this survey will be fit for purpose.

Questions

1. On which grounds do you obtain rights for the purposes of publishing your press or other print content and licensing it? (*Multiple selections possible*)

- transfer of rights from authors
- licensing of rights from authors (exclusive or non-exclusive)
- self-standing right under national law (e.g. author of a collective work)
- rights over works created by an employee in the course of employment
- not relevant
- other

Please explain

2. Have you faced problems when licensing online uses of your press or other print content due to the fact that you were licensing or seeking to do so on the basis of rights transferred or licensed to you by authors?

- yes, often
- yes, occasionally
- hardly ever
- never
- no opinion
- not relevant

If so, please explain what problems and provide examples indicating in particular the Member State, the uses you were licensing, the type of work and licensee.

3. Have you faced problems enforcing rights related to press or other print content online due to the fact that you were taking action or seeking to do so on the basis of rights transferred or licenced to you by authors?

- yes, often
- yes, occasionally
- hardly ever
- never
- no opinion
- not relevant

If so, please explain what problems and provide examples indicating in particular the Member State, the type of use and the alleged infringement to your rights.

4. What would be the impact on publishers of the creation of a new neighbouring right in EU law (in particular on their ability to license and protect their content from infringements and to receive compensation for uses made under an exception)?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

The ability of websites such as aggregators and search engines to freely link and share content strongly benefits press publishers. A new neighbouring right would force small publishers to close due to a loss in traffic and revenue. There is overwhelming evidence that this is the case.

The Commission stated in its recent 'Communication on online platforms' that "Right-holders from the images sector and press publishers mention the negative impact of search engines and news aggregators that take away some of the traffic on their websites."

However, this statement contradicts the reality of how publishers and aggregators work with one another. Direct links are the main way that most publishers receive their traffic, how they grow and engage their audience.

A Deloitte study on 'The impact of web traffic on revenues of traditional newspaper publishers' found that "referral traffic accounted for 66% of page views to these publishers on average, with direct traffic accounting for the remaining 34% of page views."

Furthermore, "The analysis estimates that on average, for the newspaper publishers in the sample, the total value of web traffic to news publishers in the four markets was €1,128m in 2014, whilst that from referral traffic was €746m."

When we look at these numbers it is clear that a reduction in traffic to news publishers will severely harm the publishing industry, because the industry is currently gaining significant revenue from these news sites.

If this copyright is introduced it may be that some of the larger news sites would be able to get enough traffic through people typing their name into a browser, but for most small publishers it is the sharing of links on aggregator sites and the results on search engines that drives traffic to them.

Furthermore it cannot be assumed that, if this neighbouring right was introduced, the aggregators and search engines would choose to pay the fees and continue to pass this traffic on: look at existing evidence of how this has played out in Spain.

In Spain, where these proposals have already been introduced, not only did Google News shut down, which has been well publicised, but also these additional services: Planeta Ludico, NiagaRank, InfoAliment, Multifriki, Newsletter Breeze, and Meneame have also closed.

As the NERA economic consulting report 'Impacto del Nuevo Artículo 32.2 de la Ley de Propiedad Intelectual' shows, the decline in web traffic to news sites after the law was implemented was about 6% on average. But the smaller publishers, with smaller brands, suffered much more from reduced traffic--as much as 14%. The overall loss for the Spanish news publishing industry is estimated to reach 10 million EUR a year.

If this right is introduced, news aggregators will either not want to, or not be able to afford, the additional fees as operating costs, especially when it comes to small publishers who will not be seen as a priority to support. The economic impacts for the publishing industry seen in Spain will be repeated across the EU.

5. Would the creation of a new neighbouring right covering publishers in all sectors have an impact on authors in the publishing sector such as journalists, writers, photographers, researchers (in particular on authors' contractual relationship with publishers, remuneration and the compensation they may be receiving for uses made under an exception)?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

This new right would allow publishers to have additional controls over the works created by authors, but would not provide additional benefit to those authors.

There are many different types of writers who would lose out from this in a number of ways. For example the publisher can stop an individual author from choosing to re-publish a work elsewhere, such as in a book or open publication, their blog, or a film adaptation. It reduces the creator's ability to share and promote their work.

A researcher or writer who works for universities, libraries, or research institutions may have to pay more to access publishers' databases - as contracts have to be re-negotiated to reflect the existence of those new rights.

Anyone who wants to do something new with a piece of work, whether they are startups, users, museums, or researchers will have clearing the various new copyrights and gaining permissions as an additional burden, hindering creativity and innovation.

Someone who publishes online under a Creative Commons licence will no longer have this option. Where this law already exists in Spain, a collecting society will charge Internet services who link to a work, regardless of the author's preference. In addition the publisher may get new rights that that contradict the Creative Commons licence used by the author. This places the control over a work in the hands of the publisher, not the creator - the opposite of what copyright intends.

There is also no guarantee that any remaining remuneration would be passed on to the authors after being gathered by collecting societies and a section passed on to publishers. Where these proposals already exist there is no evidence of improved remuneration for authors.

6. Would the creation of a neighbouring right limited to the press publishers have an impact on authors in the publishing sector (as above)?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

These impacts would be the same as outlined above.

As neighbouring rights will have a strong negative impact, we would argue that their implementation for any publishers, including the subset of 'press publishers', would be hugely problematic, and we would advise against this. Limiting this exclusive right to press publishers only would not be adequate limitations on the listed harms of this ancillary copyright.

Additionally, we are concerned by the lack of definitions in these proposals. What specifically comprises the publishing sector? What is publishing? On the Internet we are almost all publishers: of blogs, websites, art, videos, vines, and photographs. The concept of a publishing sector is lost when we examine the diversity of the publications and content creation on the Internet, and the very structure of the Internet primarily as a publishing platform. Furthermore, the difference between 'news' publishers and other publishers is not defined. There is often a very subjective line between entertainment and news or between new information and news.

7. Would the creation of a new neighbouring right covering publishers in all sectors have an impact on rightsholders other than authors in the publishing sector?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

Given the issues outlined above in response to the other questions, a neighbouring right in all sectors could only have a strongly negative impact, going further than the previous suggestions for anyone who wishes to explore creativity.

There would be real harms for rightsholders created through the legal uncertainty of such laws. In Germany, similar proposals have resulted in many costly and lengthy lawsuits. The ambiguity around the language of the law in Germany raised many questions, including "how long is a snippet?" The lack of clarity with regards to the implementation of a law which has undefined terms (such as 'press publisher' and 'aggregator') serves to place the very act of linking under huge legal uncertainty, and does more to curtail innovation and diversity of European information sources than it does to encourage them. Anyone who wants to do something new with a piece of work, whether they are startups, users, museums, or researchers will find clearing the various new copyrights and gaining permissions an additional burden, hindering creativity and innovation.

As we previously stated, we find the lack of definitions, and the difficulty of distinguishing between scenarios in these questions highly problematic. What specifically comprises the publishing sector? What is publishing? On the Internet we are almost all publishers, of blogs, websites, art, videos, vines and photographs. The concept of a publishing sector is lost when we examine the diversity of the publications and content creation on the Internet, and the very structure of the Internet, primarily as a publishing platform. Furthermore the difference between 'news' publishers and other publishers is also not defined. There is often a very subjective line, between entertainment and news or between new information and news. Given the clear negative effects of ancillary copyright we do not understand why the Commission is proposing extending it to publishers in all sectors, in any scenario.

8. Would the creation of a neighbouring right limited to the press publishers have an impact on rightsholders other than authors in the publishing sector?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

Given the issues outlined above in response to the other questions, a neighbouring right limited to to press publishers would have a strongly negative impact.

There would be real harms for rightsholders created through the legal uncertainty of such laws. In Germany, similar proposals have resulted in many costly and lengthy lawsuits. The ambiguity around the language of the law in Germany raised many questions, including "how long is a snippet?" The lack of clarity with regards to the implementation of a law which has undefined terms (such as 'press publisher' and 'aggregator') serves to place the very act of linking under huge legal uncertainty, and does more to curtail innovation and diversity of European information sources than it does to encourage them. Anyone who wants to do something new with a piece of work, whether they are startups, users, museums, or researchers will find clearing the various new copyrights and gaining permissions an additional burden, hindering creativity and innovation.

As we previously stated we find the lack of definitions, and the difficulty of distinguishing between scenarios in these questions highly problematic.

At this point in the consultation we are confused as to why the European Commission is duplicating these questions, making them challenging to keep track of and confusing for individuals and organisations to meaningfully respond to. It is impossible to differentiate between 'press' and other publishers, and to clearly define 'publisher'; or to distinguish between the different effects on rights-holders. These proposals for different groups of publishers and press publishers, authors, rights-holders and the connections between them are very difficult to answer due to the nature of the contemporary Internet and the blurred lines of user and creator, author and publisher.

9. Would the creation of a new neighbouring right covering publishers in all sectors have an impact on researchers and educational or research institutions?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

Linking to sources in blogs and tweets, quoting snippets of the material used to do research including when using new technologies such as text and data mining (TDM), including references in materials for Massive Open Online Courses (MOOCs) shared with students across the globe: all of this is natural in the research and education arena. Additionally, researchers rely on aggregators and news alerts, of many specialised types, to find the latest journals and stories related to their topic of study. For example, online dictionaries and encyclopedias rely on links to outside sources to provide further information.

Yet all of this could be threatened by this new right as the publisher could refuse you permission to refer to it, or could make you pay for it, even if it means paying twice.

Negative impacts would fall heavily on library services, universities, museums, and research facilities that exist to disseminate information to the public, to students and researchers.

Education institutions would struggle to withstand the financial burden of paying additional costs for these new neighbouring rights. These services may have to be reduced or shut down in the face of covering licensing fees, legal costs and administration costs. It would ultimately increase the cost of education and have severe wide reaching harms for access to knowledge for the general public.

If there is no exception for libraries, they would be facing new and incredibly costly barriers to their core function of providing access to information free of charge. Considering article 19 of the UN Human Rights Declaration stating that access to information is a basic human right, the expansion of copyright to a new neighbouring right could potentially place this fundamental right at risk.

The new neighbouring rights proposals do not empower researchers and authors who wish to share using an open licensing model without remuneration. In the Spanish ancillary copyright law there was no option for creators who wished to opt out of this model of licensing.

10. Would the creation of a neighbouring right limited to press publishers have an impact on researchers and educational or research institutions?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

Please note our previous remarks on the impossibility to differentiate between 'press' and other publishers.

As outlined above, linking and sharing of online content is vital to the success of research and education. Restrictions to this ability would have serious negative consequences.

11. Would the creation of new neighbouring right covering publishers in all sectors have an impact on online service providers (in particular on their ability to use or to obtain a licence to use press or other print content)?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

As raised in previous responses, the presumption of illegality and legal uncertainty that would result from an exclusive right may lead to more content takedowns and small websites being uncertain as to what they are and are not allowed to post.

The creation of a new neighbouring right would like to increased complexity in licensing agreements and a costly burden on online businesses. This could also prove challenging to disruptive or innovative businesses and online services, which the Commission is ostensibly trying to strengthen through the Digital Single Market plan.

This proposed right would also have a strongly negative impact on those who build services and tools using open licensed and Creative Commons content. A compulsory requirement for remuneration would completely destroy that business model.

Additional negative impacts would fall heavily on library services, universities, museums, and research facilities that exist to disseminate information to the public, to students and researchers. These facilities use a variety of specific online services to provide access to that information. For example, they may currently offer access to news sources, magazine subscriptions or journals.

Education institutions would struggle to withstand the financial burden of paying additional costs for these new neighbouring rights. These services may have to be reduced or shut down in the face of covering licensing fees, legal costs and administration costs. It would ultimately increase the cost of education and have severe wide reaching harms for access to knowledge for the general public.

12. Would the creation of such a neighbouring right limited to press publishers have an impact on online service providers (in particular on their ability to use or to obtain a licence to use press content)?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

We are confident a neighbouring right for press publishers would have a serious negative impact on online services, whether they are aggregators, apps, social media sites or search engines.

We do not believe that limiting such a right to press publishers would prevent the harms outlined for the creation of a neighbouring right.

Legal uncertainty heaped on startups and innovative services would serve to put a chill on the creation and financing of these services. They may go on to incur expensive and lengthy legal battles, or simply close down in order to avoid such an outcome.

Depending on their implementation, ancillary copyright would stop people using Creative Commons, open publishing or other open licensing models: all ways of freely accessing knowledge that are not accounted for in these proposals. A compulsory requirement for remuneration would completely destroy that business model.

Additional negative impacts would fall heavily on library services, universities, museums, and research facilities that exist to disseminate information to the public, to students and researchers. These facilities use a variety of specific online services to provide access to that information. For example, they may currently offer access to news sources, magazine subscriptions or journals.

Education institutions would struggle to withstand the financial burden of paying additional costs for these new neighbouring rights. These services may have to be reduced or shut down in the face of covering licensing fees, legal costs and administration costs. It would ultimately increase the cost of education and have severe wide-reaching harms for access to knowledge for the general public.

13. Would the creation of new neighbouring right covering publishers in all sectors have an impact on consumers/end-users/EU citizens?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

As this question specifically directs itself at consumers, end-users and EU

citizens we asked the public to sign their support of our open letter in response to this question, so that they could respond to this issue alone.

In total 37,597 people from across the world agree with the below statement. The numbers of people who signed our statement are as follows.

Demographic Breakdown:

Responses from within the EU. Total: 9937

Responses from outside of the EU. Total: 27660

Number of different countries represented: 22

Numbers per country:

Great Britain GB 4207

Netherlands NL 794

Denmark DE 701

Sweden SE 497

Ireland IE 351

France FR 322

Spain ES 314

Italy IT 243

Belgium BE 238

Denmark DK 184

Finland FI 182

Romania RO 172

Portugal PT 164

Austria AT127

Greece GR 108

Switzerland 105

Norway NO 208

Australia AU 1314

New Zealand NZ 330

United States US 16544

Canada CA 9264

OpenMedia is happy to supply the Commission with a list of signatories so they can confirm the participation of the aforementioned concerned community members and a full breakdown of the statistics.

Supported statement:

Dear Commissioners Oettinger and Ansip,

The creation of a new 'neighbouring right' limited to publishers and the creation of a new neighbouring right covering publishers in all sectors, will each have a strong negative impact on consumers, end-users, and EU citizens.

If publishers gain a neighbouring right over the links to their content it will harm many forms of information sharing. It would create an advantage for entrenched news organisations and narrowing the range of news sources available to Internet users. When the link tax passed in Spain, the loss for the news publishing industry was estimated to be €10 million a year.

A neighbouring right will make it harder for libraries to curate content. It

will interfere with open access and creative commons: movements that have enabled Internet users across the world to access new knowledge.

At its heart, ancillary copyright fundamentally misunderstands the relationship between aggregators and news outlets, seeing them as parasitic. But linking is mutually beneficial to both parties, and their symbiosis ensures access to knowledge for all. We would urge the Commission to reject any proposals for inclusion of these ancillary copyright charges in the draft copyright legislation.

14. Would the creation of new neighbouring right limited to press publishers have an impact on consumers/end-users/EU citizens?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

As this question specifically directs itself at consumers, end-users and EU citizens we asked the public to sign their support of our open letter in response to this question, so that they could respond to this issue alone.

In total 37,597 people from across the world agree with the below statement. The numbers of people who signed our statement are as follows.

Demographic Breakdown:

Responses from within the EU. Total: 9937

Responses from outside of the EU. Total: 27660

Number of different countries represented: 22

Responses per country:

Great Britain GB 4207

Netherlands NL 794

Denmark DE 701

Sweden SE 497

Ireland IE 351

France FR 322

Spain ES 314

Italy IT 243

Belgium BE 238

Denmark DK 184

Finland FI 182

Romania RO 172

Portugal PT 164

Austria AT127

Greece GR 108
Switzerland 105
Norway NO 208
Australia AU 1314
New Zealand NZ 330
United States US 16544
Canada CA 9264

OpenMedia is happy to supply the Commission with a list of signatories so they can confirm the participation of the aforementioned concerned community members and a full breakdown of the statistics.

Supported statement:

Dear Commissioners Oettinger and Ansip,

The creation of a new 'neighbouring right' limited to publishers and the creation of a new neighbouring right covering publishers in all sectors, will each have a strong negative impact on consumers, end-users, and EU citizens.

If publishers gain a neighbouring right over the links to their content it will harm many forms of information sharing. It would create an advantage for entrenched news organisations and narrowing the range of news sources available to Internet users. When the link tax passed in Spain, the loss for the news publishing industry was estimated to be €10 million a year.

A neighbouring right will make it harder for libraries to curate content. It will interfere with open access and creative commons: movements that have enabled Internet users across the world to access new knowledge.

At its heart, ancillary copyright fundamentally misunderstands the relationship between aggregators and news outlets, seeing them as parasitic. But linking is mutually beneficial to both parties, and their symbiosis ensures access to knowledge for all. We would urge the Commission to reject any proposals for inclusion of these ancillary copyright charges in the draft copyright legislation.

15. In those cases where publishers have been granted rights over or compensation for specific types of online uses of their content (often referred to as "ancillary rights") under Member States' law, has there been any impact on you/your activity, and if so, what?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain, indicating in particular the Member State.

As a campaign network against threats to hyperlinking, many organisations, including aggregators, innovators and publishers have reached out to us about the negative effects that ancillary rights have had on them. Where it was introduced in Spain, Javier Sarda wrote a blog about how it impacted his business, a specialised aggregator gathering niche news content: “The moment this law was approved, we lost 3/4ths of the customers we had gained during the preceding few months. None of the customers who were testing the service became customers. They were afraid of being charged a tax of an unknown quantity.”

Our members and supporters in Spain and Germany where these ancillary rights have been granted to press publishers have also told us about the challenge to innovation and the loss of media diversity. In Germany most publishers chose to waive the fees, when given the ability to do so.

“Ancillary rights” have been granted to press publishers in Germany and in Spain, and this has created a mess in both countries by:

Undermining innovation, media diversity, consumer choice, and competition; and,

Harming journalists, publishers, consumers, and Internet users, while benefiting mainly lawyers.

They have been condemned by publishers themselves, as well as by academics, competition authorities, journalists, and courts.

At its heart, ancillary copyright fundamentally misunderstands the relationship between aggregators and news outlets, seeing it as parasitic. But linking is mutually beneficial to both parties, and more broadly to members of the public as their symbiosis ensures access to knowledge for all. We would urge the Commission to reject any proposals for inclusion of these ancillary copyright charges in the draft copyright legislation.

16. Is there any other issue that should be considered as regards the role of publishers in the copyright value chain and the need for and/or the impact of the possible creation of a neighbouring right for publishers in EU copyright law?

- Yes
- No

If so, please explain and whenever possible, please back up your replies with market data and other economic evidence.

Massive collateral damage to access to information, freedom of expression, and business innovation.

The EU should encourage Spain and Germany to remove their national ancillary copyrights.

A new copyright for publishers is neither justified nor necessary.

This new right for publishers is a threat to innovation and competition in the Internet economy and the press. The ironic effect of such a new right for publishers is that the market dominance of the big players is reinforced to the disadvantage of new and smaller market players.

This new right for publishers is a threat to the freedom of information. This new right has detrimental effects on the free flow of information on the Internet. When key search and aggregation technologies are restricted in their indexing of content and presentation of search results, finding information will be made more difficult or even impossible.

Use of works, such as works of architecture or sculpture, made to be located permanently in public places (the 'panorama exception')

EU copyright law provides that Member States may lay down exceptions or limitations to copyright concerning the use of works, such as works of architecture or sculpture, made to be located permanently in public places (the 'panorama exception') [1] . This exception has been implemented in most Member States within the margin of manoeuvre left to them by EU law.

In its Communication Towards a modern, more European copyright framework, the Commission has indicated that it is assessing options and will consider legislative proposals on EU copyright exceptions, among others in order to "clarify the current EU exception permitting the use of works that were made to be permanently located in the public space (the 'panorama exception'), to take into account new dissemination channels." [2]

This subject was not specifically covered by other public consultations on copyright issues the Commission has carried out over the last years. Further to the Communication and the related stakeholder reactions, the Commission wants to seek views as to whether the current legislative framework on the "panorama" exception gives rise to specific problems in the context of the Digital Single Market. The Commission invites all stakeholders to back up their replies, whenever possible, with market data and other economic evidence.

*

Selection

Do you wish to respond to this questionnaire "Use of works, such as works of architecture or sculpture, made to be located permanently in public places (the 'panorama exception')?"

- Yes *(Please allow for a few moments while questions are loaded below)*
- No

[1] Article 5(3)(h) of [Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society](#).

[2] [COM\(2015\) 626 final](#).

Submission of questionnaire

End of survey. Please submit your contribution below.

Useful links

[Webtext EN \(https://ec.europa.eu/digital-agenda/news-redirect/29674\)](https://ec.europa.eu/digital-agenda/news-redirect/29674)

Background Documents

[Privacy Statement DE \(/eusurvey/files/08c163a2-8983-4d3b-ae3e-21f69b5957cd\)](/eusurvey/files/08c163a2-8983-4d3b-ae3e-21f69b5957cd)

[Privacy Statement EN \(/eusurvey/files/217d6300-2bbe-4a51-aba4-0371c246dc9d\)](/eusurvey/files/217d6300-2bbe-4a51-aba4-0371c246dc9d)

[Privacy Statement FR \(/eusurvey/files/43cedbae-8123-4596-94ce-b526019329e5\)](/eusurvey/files/43cedbae-8123-4596-94ce-b526019329e5)

[Webtext DE \(/eusurvey/files/3abc4c0f-c0e6-4ece-99a3-2bebbba8c65d3\)](/eusurvey/files/3abc4c0f-c0e6-4ece-99a3-2bebbba8c65d3)

[Webtext FR \(/eusurvey/files/df02a573-838f-45e7-912d-8231ee8cdbcd\)](/eusurvey/files/df02a573-838f-45e7-912d-8231ee8cdbcd)

Contact

CNECT-CONSULTATION-COPYRIGHT@ec.europa.eu