

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

Fields marked with * are mandatory.

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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:

Diana

*Please provide your last name:

Cocoru

*

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

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

OpenForum Europe

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

www.openforumeurope.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

*

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

OpenForum Europe (OFE) is an independent, not-for-profit organisation, supported by major IT suppliers, as well as SMEs, user and consumer organisations, and national partners across Europe. It focuses on delivering an open, competitive ICT market.

*

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.

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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

OpenForum Europe (OFE) is an independent, not-for-profit organisation focused on enabling an open, competitive ICT market. It achieves its mission, among others, by raising awareness about the issues of copyright.

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

While we do publish our own content (blog, videos, event reports etc), this question is not relevant to us.

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.

While we do publish our own content (blog, videos, event reports etc), this question is not relevant to us.

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.

OFE does not take action on the basis of rights transferred or licensed to us by authors.

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

Neighbouring rights are pre-internet copyright tools. Expanding them to publishers ignores the reality of the internet. For such a proposal to be even workable, it will be vital to apply a consistent and unambiguous definition for these purposes of the term “publisher”, as well as to eliminate the scope for entities wrongly to self-define themselves as publishers. In today’s world, millions of pieces of text are published every day on the internet. The meaning of “publisher” in that context definitely would need to be well defined before putting in place a right which would negatively impact all the ecosystem.

All publishers would face a decrease in traffic as a result of such a right. As studies show, using a sample of 66 newspaper publishers (from France, Germany, Spain, UK) that have both online and offline editions, referral traffic accounted for 66% of page views to these publishers on average, with direct traffic accounting only for the remaining 34% of page views. 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. This quantifies the negative impact on publishers.

While publishers with high turnover can afford to perhaps compensate this loss from referral traffic, the small publishers will be forced to close down and this will definitely impact the current large variety of sources of information.

In addition, this new right negatively impacts the forms of publishing available to publishers and creators: there are examples where neighbouring rights affect the ability to publish under open licenses, because the right is unwavable.

Publishers might not get significant income from such a new right in offline press. In countries like Spain, Ireland or the UK, news publishers did not get any of the photocopying income prior to the court rulings ordering that all of its goes to authors. And online publishers simply get zero share of this income because photocopying does not apply to online reading.

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

Adding a new neighbouring right for news publishers means adding an extra layer of rights requiring additional rights clearances, it impacts the level of private copy levies, and how such levies are allocated between journalists and publishers, and it creates fresh obstacles to text and data mining for researchers and companies.

A new such right could even change the way in which academic work is currently quoted and has been quoted since ever. This can indeed affect authors.

Whatever the duration of their contract / licence with a publisher, authors may no longer be free to use their works even after the contract expires.

Instead, publishers would have a parallel right of their own, which could definitely negatively impact the way in which the author decides to use his or her work (i.e. use the work for making a movie or record a song).

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

Much of the work of authors in the publishing sector depends on timely finding the right information. Such a new right would reduce the findability of information and impact the quality of the work of journalists, researchers etc. Moreover, works that have already used a lot of resources to be created would be less used and we can envision many cases where the wheel would be reinvented just because the information is no longer as available as it currently is.

Authors could undoubtedly expect that existing news products and services to be disrupted through increased prices for examples.

Taking the example of an author wanting to do a second edition of his or her book, the publisher of the first edition has a new right and can stop the author from doing so.

Another case is the open licenses: in many Member States, the implementation of the neighbouring right for performers as a remuneration right undermines their ability to share works under Creative Commons licenses.

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

Adding a neighbouring right for news publishers means adding an extra layer of rights requiring additional rights clearances: it impacts the level of private copy levies, and how such levies are allocated, it creates obstacles to text and data mining. It would also impact filmmakers, apps developers and big data analytics entities.

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

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

Researchers and educational or research institutions rely heavily on copyright exceptions as provided under Directive 2001/29, from using materials in the classroom to using them for research purposes or making copies of materials. An ancillary copyright is more likely to create barriers to the free flow of information than (regular) copyright.

Transactions costs will inevitably increase with the creation of a new parallel set of rights for publishers, which come on top of the rights of authors. It is hard to predict whether the costs of the licences will also increase as a result of the creation of a new right. However this increase is expected and this would definitely result in a barrier to the transfer of knowledge which ultimately benefits the society itself.

Snippets are typically important tool for research. Researchers share information online, create indexes for science repositories and use specialised aggregators (Divulgame, Barrapunto, Links.Historische etc) to enable further research to be built upon.

Knowing who owns what, and what is permitted, will become highly complex and this will discourage research by the creation of legal unclarity and reduced findability of information.

On text and data mining (TDM), a new neighbouring right will at the minimum give publishers more power to impose licensing conditions to TDM (including restriction on number of works, number of words, mining of images, use of the outcomes of the TDM based research). If the new right includes a "snippet" element, it effectively makes TDM activities unlawful.

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

In addition to the concerns expressed in the previous reply, we consider that a new right cannot be limited to “news” or “press publishers” or similarly subjective concepts. These concepts are difficult to be objectively defined and kept in boxes, without clear demarcation lines. Looking at how new technologies work today, everyday citizens have become crucial parts of the “press”, as made possible by platforms like Wordpress, Medium, Tumblr, Blogger, Twitter, and YouTube.

Taking the example of the provision of the Spanish Copyright Act, which says “periodic publications or [...] websites which are regularly updated, for the purposes of informing, shaping public opinion or entertaining” (new Article 32.2 of) we point out that by default all websites are “regularly updated” and all written publications are indeed informing, entertaining or shaping public opinion (this is their mission in the end). This means that the law covers everything, not just the (classic) press publications.

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

The creation of a new neighboring right in favor of a broad range of publishers would create a new layer of licensing obligations for these services, who now would potentially need to license materials not just from authors/owners, but now also license those same materials again from publishers. Both publisher and author will have to be identified separately, to conclude separate agreements, although this is for one single work. A third arrangement specific to “snippets” might also need to be envisaged. This would be a consequence of following e.g. the Spanish model (or indeed the case where the “snippet rights” are entrusted to a collecting society, which acts a separate licensor).

All this would increase transaction costs, the fragmentation of online offerings and slow the roll-out of online services across the EU, and may also increase territorial fragmentation.

New legal uncertainties act a strong deterrent to innovation and investment. The difficulty in identifying the person who owns the new right, the complexity of managing the revenues from this right, all this will negatively impact innovation, startups' development and social welfare.

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

Same as above

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

This new right would essentially make European consumers liable for sharing hyperlinks to unlawful content, as news publishers who argue for this new right state that “the making available of a hyperlink to an infringing copy is the single most egregious act enabling piracy on a large scale - and copyright law should thus be amended to treat as infringements only those acts of making available hyperlinks to copies which are clearly and obviously unlawfully-produced”. This objective is also pursued by publishers before the courts (e.g. GS Media v Sanoma).

A new neighbouring right would make links un-usable on the internet: links, without snippets that provide context, are practically useless to consumers and Internet or app users. The snippets help gain time when assessing whether a certain source of information is relevant.

Other negative consequences are the reduced availability of content and a foreseeable increase in the amount of the levies.

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

The limitation to press publishers seems artificial, noting how information is shared nowadays. The negative consequences from the previous reply are applicable.

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

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

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 \(/eusurvey/files/3abc4c0f-c0e6-4ece-99a3-2bebba8c65d3\)](/eusurvey/files/3abc4c0f-c0e6-4ece-99a3-2bebba8c65d3)

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

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