

Directive Copyright in the Digital Single Market

The impact of Article 11 - publisher rights

ONLINE SERVICES FOSTER MEDIA PLURALISM AND CREATE VALUE FOR PUBLISHERS AND CITIZENS

➤ **Fostering media pluralism:**

- Users of mobile apps aggregating news, social media and search engines **read more and diverse news sources**. Services such as search engines are significant in allowing smaller, **alternative sources** to be discovered and **gain traffic (Italian Institute for Policy and Data Valorisation)**.
- Social media, email, news aggregators and other online services provide **diverse ways for consumers to access and discover news**.
- Consumers mainly access news sites and apps **directly and with no intermediary**.
- The [traffic breakdown](#) to the **Build.de** or **Spiegel.de** websites shows that **64% and 68% respectively is direct traffic**.

➤ **Creating value for news publishers:**

- Online services drive valuable traffic to news publishers websites, which creates opportunities for publishers to generate revenue through advertising or other means:
 - According to [Deloitte](#), the total value of **referral traffic** to news publishers in France, Germany, Spain and the UK was **€746 million** in 2014.
- Although the press sector faces challenges globally, European news publishers are growing successful digital businesses:
 - Axel Springer (Germany) reports an 8.5% increase in profits in 2015, with 62% of its revenues generated online. At the Guardian (UK), print revenues remained stable in 2014 but digital revenues increased 24%.

➤ **Creating value for citizens:**

- Online services such as news aggregators raise consumers' awareness of news, , and increase total media consumption.



PUBLISHERS RIGHT HAS A NEGATIVE IMPACT ON THE PRESS, THE DIGITAL ECONOMY AND CITIZENS

➤ Harm to the press:

- It adversely affects **publishers, particularly smaller ones**: The introduction of the law in Spain caused publishers -particularly small ones- to **lose** as much as **14% of their web traffic**. Financially, this is estimated to **cost** the Spanish news publishing industry **€10 million a year**. For this reason, a group of European news publishers (mediapublishers.eu) have already condemned the creation of similar ancillary rights.
- It creates rights which compete with the rights of **authors and journalists** -and may reduce their income: Journalists unions in France, Germany and Austria are increasingly opposed to the creation of a new right for publishers:
 - As the French [Syndicat National des Journalists](#) puts it *“contrary to the statements that have been made, a neighbouring right for publishers will be in competition with the rights of authors”*.

➤ Harm to the digital economy: The higher cost, the very broad scope of the right and its enforcement through collecting societies represent an insurmountable deterrent for European startups. These concerns were highlighted by a coalition of **over 60 European Startups**:

- In Spain, several **sites** large and small **shut down** in response to the adoption of the new publishers’ right. In addition to Google News, these included locally-based services such as Planeta Ludico, NiagaRank, InfoAliment, Multifriki and Meneame.
- [In Germany](#), a number of **innovative companies** significantly limited their activities or even **shut down**, such as the blog aggregator rivva, the news search engine nasuma.de, the news provider for historians res media or the search engine Unbubble.eu.

➤ Harm to citizens:

- According to BEUC *“the impact on consumers could be negative if such a right is introduced at EU level”*. New publishers rights **increase search costs for citizens**, as it makes it harder for them to access news from aggregators, apps, blogging services and social networks. Consequently, the choice and diversity of news sources available is reduced:
 - In Spain, the introduction of the publishers’ right resulted in a **loss of EUR 1.85 billion a year** for consumers in so-called consumer surplus. In Germany, [57% of the consumers](#) find text “snippets” helpful.

ACADEMIC CONSENSUS: INTRODUCING A NEW PUBLISHERS RIGHT IS UNJUSTIFIED AND DAMAGING

- **Close to 60 European academics have already gone on record to condemn the idea:**
 - Multiple territorial rights in news will considerably fragment the digital single market and the free flow of information
 - The creation of a new right inevitably has distributional effects on the **rights of authors and journalists**
 - As demonstrated by the German and Spanish laws, publishers rights **reduce pluralism and access to information**

CONTENT:

Digital services: creating value for consumers, news publishers and media pluralism	5
The academic consensus: an unjustified, ineffective and damaging proposal.....	7
Negative impact on innovation and startups.....	11
Negative impact on news publishers and pluralism.....	12
The negative impact on authors and journalists.....	14
Negative impact on consumers and citizens	15
Sources:	16

Policy briefing

The impact of ancillary rights in news products

On 14 September 2016, the European Commission released its proposal on Copyright in a Digital Single Market. Article 11 provides for an ancillary right for news publishers. Such ancillary rights have been discussed (and rejected) in Austria and France, and introduced in Germany and Spain. Because the Commission's proposal creates an "exclusive" right and not a compensation claim, it is closer to the German right than to the Spanish one. It is nevertheless broader in scope. It covers not just "news aggregators" but all "digital uses". It covers a broad diversity of publications, including blog posts, far beyond printed press publications. It lasts for a full 20 years and applies retroactively to past publications.

This briefing gathers the well-documented negative consequences of such new rights for media pluralism, consumers, innovation and even for news publishers. Based on academic literature and empirical evidence, it demonstrates how digital services are a net benefit for news publishers, consumers and media pluralism. We hope to contribute to an open and evidence-based policy making process. All research cited – economic, empirical and legal - is publically available.

Digital services: creating value for consumers, news publishers and media pluralism

Online services drive valuable traffic to news publishers' websites. A variety of services such as news aggregators, social media, search engines and micro-blogging websites direct consumers to the articles of news publishers, creating opportunities to generate revenue through advertising or other means. This "referral traffic" was worth an estimated €746 million to news publishers in the UK, Germany, France and Spain in 2014 (Deloitte, 2016). In Germany, the Regional Court of Berlin, discussing publisher rights, stated that Google "provides a combination of value and money flows as well as non-monetary benefits for all parties and this constitutes a win-win situation. This well-balanced system is disturbed by the neighbouring right [...]" (Berlin Court, 2016)

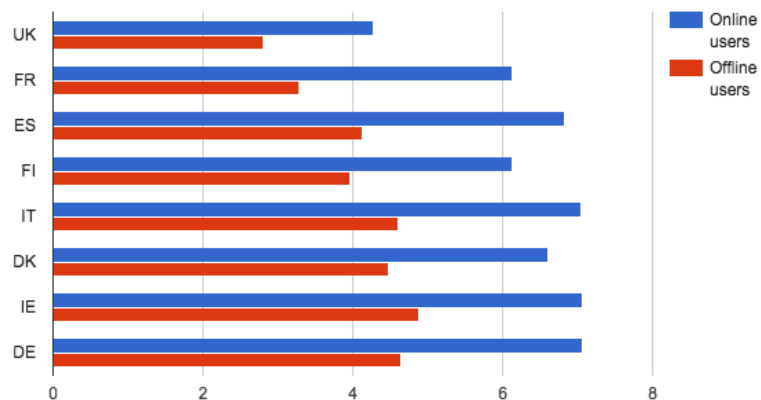
Online services expand the market for news. Rather than take away readers from news publishers, news aggregators increase traffic to news publishers websites (MPI, 2012; Spanish Competition Authority, 2014; Chiou and Tucker, 2015; AEEPP/NERA, 2015; Calzada & Gil, 2016; Roos *et al.*, 2015). News aggregators raise consumers' awareness of news and of other news outlets; they provide snippets, giving consumers a more effective way of consuming and choosing to read news articles - hence increasing total media consumption (Calzada & Gil, 2016; Roos *et al.*, 2015). Further, **links and snippets increase traffic to news websites** and consumer welfare (Roos, Mela *et al.*, 2015). Empirical evidence from experiences in Spain and Germany clearly demonstrates that news aggregators expand the market:



- News aggregators increase *direct* traffic to news websites as well as providing clicks to news websites: when Google News shut down, **direct traffic to news websites also decreased by 14%** (at a time when overall internet traffic was increasing), indicating a contraction of the demand for news - an overall market expansion effect of news aggregators (Calzada & Gil, 2015).
- Smaller news publishers rely news aggregators to reach new audiences: they were impacted significantly more (AEEPP, 2015; Calzada & Gil, 2016). Smaller news sites saw a drop of 13%, against a decline in traffic of only 8% for the most popular newsites.

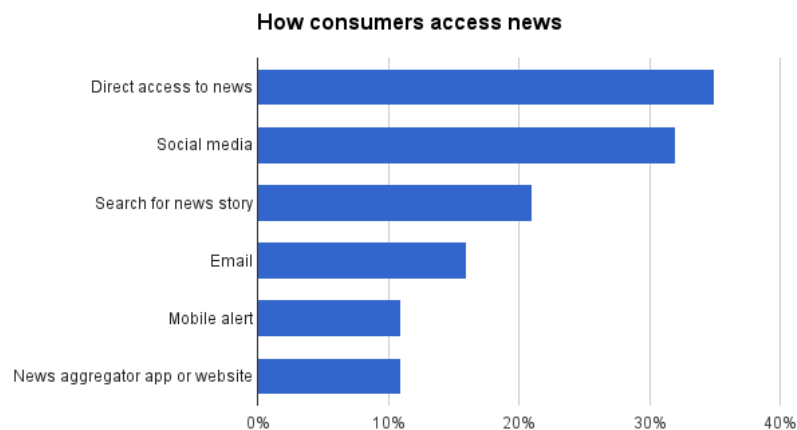
Online services drive media pluralism: readers using news aggregators consume more news overall (AEEPP, 2015) and consult more diverse news sources: European online news users access significantly more news brands than offline users; and users of social media, mobile apps aggregating news and search tools read more diverse news sources (Reuters Institute, 2015); Internet users in Germany and Italy visit new, smaller sites for their information, in addition to their usual sources. Services such as search engines are significant in allowing smaller, alternative sources to be discovered and gain traffic (Bolognini *et al.*, 2014)).

Number of news brands accessed, comparison between online and offline news users



Source: Reuters Digital News Report 2015.

Online services give consumers diverse pathways to news and the chance to engage with news. While social media clearly drive increasing access to news, *direct access* to a news site or app is the main way in which consumers access news. For instance, 64% of Build.de users access the website or app directly, and 68% for Spiegel.de (Similarweb). European services are also popular with consumers. In the Czech Republic, local search engine Seznam has links to news sources on its homepage with a reach of 74%. Ampparit in Finland reaches 11% of news users. In Norway, Sol reaches 4% and Startsiden 18% while Sweden’s Omni reaches 10%. Italy’s Giornali (17%) and Rassegna Stampa Quotidiani (11%) are also popular.



Source: Reuters Digital News Report 2016.

And many European publishers are flourishing in this environment as a result. Germany's Axel Springer reports an 8.5% increase in profits in 2015, with 62% of its revenues generated from digital activities (Axel Springer, 2016). Digital subscriptions sales of The Economist rose 47% in 2016, and circulation profits grew 30%. Nearly three-quarters of the FT's total paying readership is online (its digital circulation is growing 33% per year) and mobile is now generating 50% of total traffic (Financial Times, 2016). At the Guardian, print revenues remained stable in 2014 but digital revenues increased 24% (Sweney, 2014). In Italy, two of the larger national newspapers have successfully implemented paywall strategies. Italy's RCS Media Group, owner of the Corriere della Serra, reported that for the first nine months of 2012, some 20% of paid circulation came from digital subscribers and that digital revenues accounted for around 15% of group revenues. In the first nine months of 2016, Corriere.it reached 40.8 million unique users per month (RCS Media Group, 2016:11).

Meanwhile, new businesses are thriving in the digital news publishing world: Mediapart (France), El Confidential (Spain), El Diario (Spain), De Correspondent (Netherlands). In France alone, there are now (2015) five times more information sites than there were in 2010, 391 of which are "digital only" news organisations (Commission Paritaire des publications et agences de presse).

The academic consensus: an unjustified, ineffective and damaging proposal

There is now ample academic literature regarding the German, Spanish and EU proposals for ancillary rights for news publishers. These are universally condemned. On the issue of an EU publisher right, **close to 60 European academics have already condemned** the idea on the record.

Despite the considerable uncertainty on the subject matter, scope and effect of the right, **there is consensus on clear, immediate negative impacts of the new rights:**

- **Breaking up the Digital Single Market:** multiple territorial rights in news combined with optional national exceptions to each right will considerably fragment the free flow of information and cultural goods across the single market (CEIPI, 2016:1; European Copyright Society 2016:4)
- **Reduced income for authors:** the creation of a new rights inevitably has distributional effects on the rights of authors (CEIPI, 2016:1, European Copyright Society p. 4).



- **Reduced pluralism and access to information:** This was clearly established in Spain (e.g. AEEPP/NERA 2015) and Germany (MPI, 2012) but also holds true of the new proposal (CEIPI, 2016:15).
- **Transaction costs and complexities for rights-clearance (e.g. licensing):** the right targets *all* digital uses including i.e. news aggregators, digital newsstands or startups. Larger established online services will be able to cope, not the smaller ones, as barriers to entry are raised (European Copyright Society, p.4; Letter from 37 academics; MPI, 2012).
- **A diminished public domain and creative commons or open licensing models:** any public domain material can become subject to the new right. Retroactive protection means *all* press publications originally published in digital form will be granted neighbouring rights. Creative Commons models will have to adjust (Letter from 37 academics); CEIPI, 2016:17; European Copyright Society, 2016:7).
- **A restriction on freedom of expression:** an exclusive right to control information flows in itself constitutes an interference with freedom of expression (Van Eechoud, 2017). It is detrimental to a free and democratic and efficient Internet (Savin, 2016; Guadamuz 2016).

There is on the other hand a broad and clear consensus on the lack of justification and effectiveness of the right.

The publisher right does not support quality journalism: it protects just about anything. It is not limited to literary works or text, but can cover any subject matter including public domain material (CEIPI, 2016:16), it is not limited to news and it covers any digital publication. “According to the present proposal, making available on a “news website” trivial information would attract the same protection as the publication of an article resulting from months of investigative journalism” (CEIPI, 2016:16). In other terms, “it seems eminently arguable that the definition would include The Garden magazine (a monthly publication of the Royal Horticultural Society), a football fanzine (or match-day programme), an auction catalogue (e.g. from Sotheby’s), the IPKat blog, the Cambridge Law Journal, a multi-edition cases and materials book, a Research Centre website, Who’s Who, The Oxford Dictionary of National Biography, The Time Out Guide to London Restaurants or the Rough Guide to Peru” (Letter from 37 academics).

The new right is entirely without economic or legal justification: there is no evidence of a market failure the legislation would intend to solve. According to the Max Planck Institute, “It is most likely that there is no market failure in the digital world that would justify the introduction of a neighbouring right for publishers in whatever form. Digital publishers (like any other digital content provider) are sufficiently in the position of protecting their contents against unwanted use” (MPI, 2016, para 9, similarly MPI 2012; see also Spanish Competition Authority, 2014).

The new rights are useless - publishers already have rights: The proposed publisher rights “adds nothing of substance new to the armoury of the press publishers” (Letter from 37 academics)). Publishers already enjoy directly three sets of harmonised rights as well as some national rights (in photographs, typographical arrangements etc.). They use tools to control crawling / indexing (CEIPI, 2016:7; MPI, 2016:9). They already obtain author's rights through contracts or presumptions (CEIPI, 2016:7). They are also protected through the database right under Directive 96/9/EC. Thus “the Commission in its Impact Assessment is wrong to assume that European press publisher have no right ‘of their own’” (Letter from 37 academics).

The analogy with record labels is wrong. Publishers already have a copyright from their journalists, labels do not: composers keep their copyright and licence it on a non-exclusive basis. More importantly, investment alone is not a justification for creating new rights. As the European Copyright Society puts it, “It is a slippery slope from press publishers and scientific publishers to music publishers, to museums, festival organisers and so on. And why not search engines and online platforms and aggregators? They all invest and create value. There is a potentially endless list of value generating activity in the copyright sphere” (European Copyright Society, 2016:6,).

The publisher rights infringe the right to quote. The 1886 Berne Convention protects the right to quote from newspaper articles, the only mandatory exception under international law. Incorporated under EU law via the TRIPs agreement, restrictions against quotations rights infringe EU and international law (Xalabarder, 2014). Restricting the ability to link meaningfully with accompanying words of context infringes the right to freedom of information and the right to link (MPI, 2012).



In quotes

Max Planck Institute for Intellectual Property and Competition Law: “When considered overall, the [bill does] not appear to have been well thought-through. Furthermore, it is not possible to justify the draft with any objective argument. Even the publishers are not fully supportive of the measure”(Bundestag hearing, 2014).

Prof. Raquel Xalabarder, Universitat Oberta de Catalunya:” The proposal amounts to an attempt to subsidise an industry at the expense of another and it does so by distorting copyright law rules and infringing EU law and international obligations”, (Xalabarder, 2014).

Prof. Dr. Gerald Spindler, University of Göttingen: “The [law] is a strange entity in copyright law and is posing several problems which can’t be overcome effectively.” “[It] needs to be abrogated as press products cannot be differentiated from other parts of texts. Even the weather forecast is covered by the AC” (Bundestag hearing, 2014).

Prof. Dr. Axel Metzger, Humboldt University Berlin: “The [legislation] is a lobby-driven law” and “created a massive bone of contention in the information society. Legislation in this field seems half baked and lobby-driven”, (Bundestag hearing, 2014).

Prof. Dr. Thomas Hoeren, University of Münster, “The introduction of [the legislation] has been a disaster. One needs to have the courage to abolish it again. [...] Actions taken by the [German publisher association] have been a confession of failure and the explanation for this behavior are embarrassing” (Bundestag hearing, 2014).

Dr. Malek Wessing, Leibniz University of Hannover & Jörg Wimmers: “...consumers would be affected as well. First, it is likely that an ancillary copyright would lead to higher prices for publishers’ products, as any costs incurred by distributors and the like would be passed on to the consumer. Furthermore, if the publishers exercised far-reaching exploitation rights, there would be a real risk of restricting access to information and thus limiting the free flow of information.” (Bundestag hearing, 2014).

Prof Montagnani, University of Bocconi: “The adoption of a neighboring right is doomed to introduce a certain degree of legal uncertainty. [...] A further right for the publisher would double the layers of rights and result in higher transaction costs when right clearance is sought; create co-ordination issues for the exceptions and limitations regime; and, possibly, decrease the share reserved to authors.” (Montagnani 2016).

Prof. Andrej Savin, Copenhagen Business School: “This is hugely detrimental to the development of a free, democratic and efficient Internet. In addition to that, disastrous experience from Spain and Germany, prove without doubt, that such ideas are counterproductive” (Savin, 2016).

Prof. Andres Guadamuz, University of Sussex: “If this sounds bad, it is because it really is. What this means in reality is that linking to press publications could infringe copyright. Moreover, snippets and other small metadata could also be infringing copyright. The idea of this right is to make intermediaries pay to press publications for the use of snippets of their articles, something that was already tried in Spain, and it was a complete failure. (...) The proposal is backwards looking, it is a step back towards



useless copyright maximalism, it is trying to stop a fire with a children’s water gun. It is now up to us to try to fight this proposal by presenting evidence that it won’t work, the Commission seems to have completely ignored the many arguments against ancillary copyright up to now,” (Guadamuz, 2016)

Negative impact on innovation and startups

Punishing startups: A coalition of over 60 European Startups highlighted their concerns in response to the European Commission’s consultation for a new publisher right (see their letter [here](#)). Their concerns are informed by the experiences in Spain and Germany as well as by the impact of a “neighbouring right” for news publishers. They find that the proposed Directive would bring a new wave of legal uncertainty, complexity and red-tape for all businesses, large and small, that thrive to harness the power of digital for social and economic betterment.

The scope of publishers rights is very broad, affecting many online activities, including linking and quoting, and many services, from websites to apps. Moreover, they touch upon a vast array of content, as “news” is a malleable concept encompassing a broad variety of content. Academics have noted for instance that publications such as blogs, Wikipedia, auction catalogues, The Oxford Dictionary of National Biography or the Rough Guide to Peru would be covered by the new right; and that any subject matter - not just literary works - could benefit from the new right (Letter from 37 academics).

For small and medium sized innovative companies ancillary rights of publishers represent a strong deterrent because of the legal uncertainty and threats of enforcement including through collecting societies. Few startups have the resources to employ lawyers to comb through the fine details of copyright laws. Legal uncertainty also makes it harder for startups to secure funding. These concerns were already raised before the adoption of the law in Germany, and in Spain where e.g. Planeta Ludico, NiagaRank, InfoAliment and Multifriki have already closed down, in addition to Google News (AEEPP/NERA, 2015).

Punishing smaller services: Ancillary rights would also create a competitive advantage for already established, successful online services, making it harder for new European companies to compete and develop new services. There is a wealth of scientific opinions supporting this view, from the Max Planck Institute which notes the publishers’ right “produc[es] the result of punishing smaller services” to the report of the Spanish Competition authority.

Punishing open access and creative commons: Services and publications that rely on disseminating content under creative commons type licenses cannot escape the law. Similarly, scientific publications that rely on open access, e.g. Public Library of Science, would see a fee collected for the circulation of their information (Xalabader, 2014; Van Eechoud, 2017). The implementation of open data and public sector information policies would also be impacted at national and European level (Van Eechoud, 2017).



This was clearly the case under the Spanish model and remains so under the Commission’s proposal as explained by many academics (European Copyright Society Opinion¹, CEIPI; Letter from 37 academics). This affects not only regular creative commons users, bloggers etc but also news publishers that rely on open access models. Further and fundamentally, open access research and scientific publications (which are encouraged by the EU’s Horizon 2020) are also impacted as recital 33 fails to exclude them from the proposal as noted by academic experts (Letter from 37 academics).

In their own words

“The development of mobile apps sorting information and data, an area with an interesting future, will remain curtailed in Spain” Niagarank, a now closed product of Spanish start up CodeSyntax, employing 15

“A legal dispute with [the German publisher association] would have dragged on for years, finally leading to bankruptcy of tersee.de - regardless of the outcome. Four years of intensive research and development would have been for vain. We thought about removing German media from our search index and to relocate our headquarters abroad”, Mikael Voss, from tersee.de, a German start-up

“The German “Google tax” turned out to be a tax and financial burden for startups and internet based media aggregators only”. Patrick Bunk CEO Ubermetrics-Technologies, Berlin

“We lost 3/4 ths 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. From one day to the next, our promising future, turned really dark”. Javier Sardá, Founder of NewsletterBreeze

“The law [in Spain] codifies an extractive cartel, penalises innovation, the roll out of new digital products, harms the smaller media that depend mainly on social networks for their dissemination and their growth, and puts companies like Meneame in a situation of economic uncertainty”. Ricardo Galli, co-founder of Spanish startup Meneame

Negative impact on news publishers and pluralism

The introduction of publisher’s neighbouring rights creates significant problems for news publishers in Europe, with a number of news publishers already condemning the creation of those rights. A group of European media publishers (including from Slovakia, Czech Republic, Spain, Italy, Germany, Poland and France) have expressed their rejection of new publisher rights which would make it harder for them to grow, reach new audiences and innovate (Media Publishers, 2016).

¹ “The only open access road that would remain untouched by a new right of publisher would be the so-called gold road of open access, where an article is immediately published in open access mode in dedicated journals”, page 5 of the opinion.

A barrier to competition and pluralism: publisher rights making it harder for publishers to reach their readers online. Smaller publishers, regional publishers or new online news publishers are disproportionately affected, suffering a competitive disadvantage. In Spain, the decline in traffic following the adoption of the law saw smaller publishers losing twice as much traffic as large publishers. The decrease in traffic was more than 6% on average and 14% for small publications (AEEPP/NERA, 2015).

A barrier to European digital news innovators: across Europe, new online publications are emerging. They are generally launched by (senior) journalists and focused on producing quality journalism or having social impact (Nicholls, Shabbir, & Nielsen, 2016). In the Netherlands, De Correspondent focuses on investigative reporting and raised around \$1.7m in voluntary contributions for a site focusing on in-depth news. The site has over 40,000 subscribers. In France, Mediapart is an online investigative journal created in 2008 by a former editor of Le Monde. It has 118,000 paying subscribers, employs over 60 staff with a turnover of around €10m. In Spain, El Confidencial is the fifth most popular news site in Spain, employing over 100 staff and making a profit profitable, with most income from advertising (Reuters Institute, 2016)

Reducing interest in news, internet traffic and revenues: online services expand the market for news and hence the readership on online news sites. Making it harder to disseminate news content online mess fewer online readers and thus less advertising revenue and fewer opportunities to gain new subscribers. In Spain, the loss for the news publishing industry, suffered predominantly by smaller, free or online publishers, is estimated to reach EUR 10 million a year. The reduction in traffic threatens their advertising revenues (AEEPP/NERA, 2015).

The property rights and freedom to conduct a business of publishers may be negatively impacted by the creation of these rights. This is the case in Spain where publishers are forced to charge a fee, through the intermediary of a collecting society, for the dissemination of their news products online.

The global competitiveness and diversity of domestic European publications suffers. European publications such as the Daily Mail and The Guardian – respectively the 4th and 5th largest global audiences for news in 2014, Comscore – would find it harder to use online channels to reach their audiences. According to the Max Planck Institute, the availability of local domestic content will be reduced and non-domestic content will be more visible (MPI, 2012).



Publisher views on ancillary rights

“There is a formidable consensus that no-one likes the law”; “as long as I am president of Prisa, no part of the media group will collect the [Ancillary Copyright] fee”, Juan Luis Cebrián, CEO of Prisa (owner of leading Spanish publication such as El País, Diario AS and Cinco Días).

Rainer Esser, CEO of German weekly “Die Zeit”, refers to the German law as a *“hazardous construction”*.

“This legislation is a step away from a competitive and diverse press. It will only make it harder for us to compete with other news outlets”, Arsenio Escolar, Spanish Association of Periodical Publications, Benedetto Liberati, President of the Italian Online Publishers Association, Alexandre Malsch, Co-founder and CEO of meltygroup, Tomasz Machała, CEO and Editor-in Chief, naTemat, Łukasz Mężyk, Founder & Editor-in Chief, 300polityka.

“The very few large and international publishing houses [...] want to prove that despite their dwindling journalistic influence, they are still in a position to instrumentalise parliaments in Europe for their purposes and to create obstacles for unwelcome competition. In my opinion, those few large companies have never been after the ancillary copyright per se, but after strengthening their future bargaining position [...]”, Wolfgang Blau, The Guardian, Director of Digital Strategy.

Hanspeter Lebrument, President of the Swiss media Association: the adoption of the Spanish law is *“shooting yourself in the foot”*.

Jochen Werner, editor of Zeit Online: the German copyright law is *“totally broken”* and a way to *“extort money out of Google”* (Stupp, 2016).

“These rights in Germany and Spain make it harder for us to grow online, reach new audiences, develop new markets. They create new barriers for entry for publishers to develop online. In Spain, we are even deprived of control over our own content, and obliged to charge via a collecting society, whether we like it or not.” Mediapublishers.eu

The negative impact on authors and journalists

A neighbouring right for publishers will also have negative consequences for authors and journalists. The new right overlaps with the rights of authors and journalists and so competes with their own copyright, diminishes their bargaining power and inescapably their freedom to exploit their works themselves. Academics points out the “distributional” consequences of creating a new publisher rights (European Copyright Society). Others note that “while the Impact Assessment states that the introduction of neighbouring rights for publishers will be without prejudice to the rights of authors, it turns a blind eye to any impact of the reform on authors’ revenues. [...] the authors’ share will inevitably decrease” (CEIPI, 2016:11).



Journalists unions themselves are increasingly opposed to the creation of a new right for publishers. In its response to the European Commission’s consultation on neighbouring right, the European Federation of Journalists highlights that journalists received nothing from the ancillary right revenues in either Germany or Spain. Journalist associations in Austria (Österreichischer Journalisten Club, 2016), German (Niggemeier, 2016) and France (Syndicat National des Journalistes, 2016) have raised concerns with the introduction of such a right.

Journalists themselves expressed criticism towards ancillary rights for publishers arguing that it would make it difficult for their content to reach Internet users. News aggregators play a vital role in this process. Meanwhile, publishers would receive remuneration without creating any content and journalists would remain empty-handed (European Commission, 2016).

A recognition of a neighbouring right could also be problematic for journalists and authors wishing to publish open access; for journalists who use news aggregators and social media to gather information (Vollmer, 2016); for journalists wishing to engage with their readers online and with social media.

Negative impact on consumers and citizens

Harder to find news, less time spent reading: Ancillary right type laws create increased search costs for consumers, as it makes it harder for them to access news from aggregators, apps, blogging services, social networks etc. According to BEUC *“the impact on consumers could be negative if such a right is introduced at EU level”*. In Germany, 57% of the consumers find text “snippets” helpful (Bitkom, 2015). This impedes consumers from the saving time and effort in finding and discovering news. (Calzada & Gil, 2016)

Concretely, in Spain alone, this mean a loss of EUR 1.85 billion a year for consumers – in so-called “consumer surplus” (AEEPP, 2015) i.e. the additional costs to consumers of findings news.

This is because links, without context, are practically useless to consumers and Internet or app users. Without small extracts of text, links in apps and on the Internet would be reduced to “blue URLs”. URLs themselves often include text for instance using the title of an article. This is why the Max Planck Institute clearly states that “copyright law cannot be applicable in such cases, as otherwise the use of links which contain minimum indications of the content to be found would often be blocked”.

Reduced choice, reduced diversity of news sources, fewer online services: Use and availability of online services such as news aggregators in practice increase the amount and diversity of news that consumers read. For instance, research shows that including snippets with a link to a news article boosts news consumption, leading readers to browse more frequently and visit a greater variety of sites (Roos *et al.*, 2015). Reduced access to online news aggregation services results in users being less likely to investigate additional, related content in depth (Chiou & Tucker, 2015).

Increased transaction costs for all digital uses increased the complexity of licensing (CEIPI, 2016; Letter from 37 academics). Transaction costs make it slower and harder for new services to reach across European consumers (as is the case e.g. for music services, see KEA & VUB, 2012). As a result, some services may not launch in Europe; they may launch after a significant delay; or they may launch without European news content (MPI, 2012) thus reducing the availability of European news.

Effects on freedom of expression and information: There would be a clear impact on the ability of Europeans to exercise their right to information (accessing information online), a chilling effect on freedom of expression. An exclusive right to control information flows in itself constitutes an interference with freedom of expression (Van Eechoud, 2017) and impacts the free flow of information on the internet.

The tools that EU citizens use to share, comment and discuss news online would also be affected. As an indication of the scale of those activities, in 2013, over 20% of EU news users engaged in some form of news commentary every week. Close to 8% commented on news stories online, over 2% wrote blogs on news or political issues, over 3% sent news videos or pictures to a news website (Reuters Institute, 2014).

The fragmentation of the DSM with new territorial rights overlapping with existing rights will further restrict the free flow of information across borders.

Sources:

Athey, Mobius (2012), "The Impact of News Aggregators on Internet News Consumption: The Case of Localisation", Preliminary research presented at seminars at Microsoft Research and Toulouse Network for Information Technology.

(AEPP/NERA), Pedro Posada de la Concha, Alberto Gutiérrez García and Hugo Hernández Cobos (2015), "Impact of the New Article 32.2 of the Spanish Intellectual Property Act", Conducted by NERA Consulting, Commissioned by AEEEP. Available at:

<http://www.aepp.com/pdf/InformeNera.pdf>

Axel Springer (2016). Axel Springer strengthens position as leading digital publisher in the 2015 financial year. Available at: http://www.axel-springer.de/en/presse/Axel-Springer-strengthens-position-as-leading-digital-publisher-in-the-2015-financial-year_26333671.html

Berlin Court (2016) Urteil im Kartellrechtsstreit von Presseverlagen gegen Google (PM 14/2016). Available at: <https://www.berlin.de/gerichte/presse/pressemitteilungen-der-ordentlichen-gerichtsbarkeit/2016/pressemitteilung.447189.php>

Bitkom (2015). Ancillary Copyright for Publishers – Taking Stock in Germany. *Bitkom*. Available at: <https://www.bitkom.org/Bitkom/Publikationen/Ancillary-Copyright-for-Publishers-Taking-Stock-in-Germany.html>

Bolognini, L. *et al.* (2014). The Effects of Search Engines on the Pluralism of Information, Italian Institute for Policy and Data Valorisation.

Calzada, J. & Gil, R. (2016). What Do News Aggregators Do? Evidence from Google News in Spain and Germany. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2837553

Chiou, L. & Tucker, C. (2015). Content Aggregation by Platforms: The Case of the News Media. *National Bureau Of Economic Research*. Retrieved from <https://ideas.repec.org/p/nbr/nberwo/21404.html>

Spanish Competition Authority (2014), “Proposal on the Amendment of Article 32.2 of the Bill to amend the recasted Intellectual Property Act”, PRO/CNMC/0002/14. Available at:

https://www.cnmec.es/Portals/0/Ficheros/Promocion/Informes_sobre_normativa/2014/140516_PRO_CNMC_0002_14_tasa_google-EN.pdf

Deloitte. (2016). The impact of web traffic on revenues of traditional newspaper publishers: A study for France, Germany, Spain and the UK. Retrieved from <http://goo.gl/XcnLG4>

Kretschmer, Dusollier, Geiger, Hugenholtz *et al.*, (2016), “A response from the European Copyright Society: the Role of Publishers in the Copyright Value Chain”, available at:

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2801595

Financial Times (2016) Financial Times – 2015 results. Available at:

<http://aboutus.ft.com/2016/03/30/financial-times-2015-results/#axzz4PzHWxrnX>

Geiger, C., Bulayenko, O., & Frosio, G. (2016). Opinion of the CEIPI on the European Commission’s copyright reform proposal, with a focus on the introduction of neighbouring rights for press publishers in EU law. *CEIPI*. Retrieved from

http://www.ceipi.edu/fileadmin/upload/DUN/CEIPI/Documents/CEIPI_Opinion_on_the_introduction_of_neighbouring_rights_for_press_publishers_in_EU_final.pdf

Guadamuz, A. (2016). EU Commission proposes new right for press publications. TechnoLlama. Available at: <http://www.technollama.co.uk/eu-commission-proposes-new-right-for-press-publications>

Bunderstag Hearing (2014), “Experten für den Wegfall des Leistungsschutzrechts“. Available at: http://www.bundestag.de/dokumente/textarchiv/2014/kw49_pa_digitale_agenda/342306

KEA, & VUB,. (2012). "Licensing music works and transaction costs in Europe". Available at: <http://www.keanet.eu/docs/music%20licensing%20and%20transaction%20costs%20-%20full.pdf>

La Libre,. (2016). Médias: les "pure players" de l'info se multiplient. Lalibre.be. Retrieved 18 January 2017, from <http://www.lalibre.be/dernieres-depeches/afp/medias-les-pure-players-de-l-info-se-multiplient-58636db0cd70138bd42581e7>

Letter from 37 professors and leading scholars of Intellectual Property (2016). Call for views: modernising the European Copyright Framework. Available at: <http://www.iposgoode.ca/wp-content/uploads/2016/12/IPOModernisingIPProfResponsePressPublishers.pdf>

Max Planck Institute (2012). Statement on the draft law for an amendment of the German Copyright Act (Urheberrechtsgesetz) to include ancillary copyright for publishers.

Max Planck Institute. (2016). Position Statement on the “Public consultation on the role of publishers in the copyright value chain”. Available at: http://www.ip.mpg.de/fileadmin/ipmpg/content/aktuelles/MPI_Position_statement_15_6_2016_def.pdf

Media Publishers (2016). Media Publishers Action. Available at: <http://mediapublishers.eu/>

Montagnani, L, “The EU Consultation on ancillary rights for publishers and the panorama exception: Modernising Copyright through a ‘one step forward and two steps back’ approach” (2016), Kluwer Copyright Blog, available at: <http://kluwercopyrightblog.com/2016/09/20/the-eu-consultation-on-ancillary-rights-for-publishers-and-the-panorama-exception-modernising-copyright-through-a-one-step-forward-and-two-steps-back-approach/>

Nicholls, T., Shabbir, N., & Nielsen, R. (2016). Digital-born news media in Europe. *Reuters Institute*. Retrieved from <http://reutersinstitute.politics.ox.ac.uk/sites/default/files/Digital-Born%20News%20Media%20in%20Europe.pdf>

Niggemeier, S. (2016). *Die 12 besten Lügen der Verleger-broschüre zum Leistungsschutzrecht | Übermedien*. *Übermedien*. Available at: <http://uebermedien.de/5127/die-12-besten-luegen-der-verlegerbroschuere-zum-leistungsschutzrecht/>

Österreichischer Journalisten Club. (2016). Autoren und Journalisten lehnen Entwurf des EU-Leistungsschutzrechts ab. *ots.at*. Available at: http://www.ots.at/presseaussendung/OTS_20160922_OT50126/autoren-und-journalisten-lehnen-entwurf-des-eu-leistungsschutzrechts-ab

RCS Media Group,. (2016). Interim Management Statement. Available at: <http://www.rcsmediagroup.it/en/wp-content/uploads/sites/2/doc/2016-11/Interim-Management-Statement-at-September-30-2016.pdf>

Reuters,. (2014). Reuters Digital News Report 2014. Available at: <http://reutersinstitute.politics.ox.ac.uk/sites/default/files/Reuters%20Institute%20Digital%20News%20Report%202014.pdf>

Reuters,. (2015). Reuters Digital News Report 2015. Available at: <http://www.lisboncouncil.net/component/downloads/?id=1208>

Reuters,. (2016). Reuters Digital News Report 2016. Available at: <https://reutersinstitute.politics.ox.ac.uk/sites/default/files/Digital-News-Report-2016.pdf>

Roos, J., Mela, C. & Sacher, R. (2015). The Effect of Links and Excerpts on Internet News Consumption”. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2678938

Savin, A. (2017). *The 2016 EU Copyright Reform – A Summary*. *EU Internet Law & Policy Blog*. Available at: <https://euinternetpolicy.wordpress.com/2016/09/14/the-2016-eu-copyright-reform-a-summary/>

Stupp, C. (2016). *Fight over ‘Google tax’ brews ahead of autumn copyright proposal*. *EurActiv.com*. Retrieved 17 January 2017, from <http://www.euractiv.com/section/digital/news/fight-over-google-tax-brews-ahead-of-autumn-copyright-proposal/>

Sweney, M. (2014). *Guardian and Observer narrow losses*. *the Guardian*. Available at: <https://www.theguardian.com/media/2014/jul/08/guardian-observer-narrow-losses>

SNJ. (2016). *Droits d'auteur : une directive européenne à surveiller*. *Snj.fr*. Retrieved 18 January 2017, from <http://www.snj.fr/article/projet-de-r%C3%A9solution-droits-voisins-2046968047>

The Economist. (2016). The Economist reveals continued climb in digital sales in latest ABC January-June 2016 circulation report. Available at: <http://press.economist.com/stories/10352-the-economist-reveals-continued-climb-in-digital-sales-in-latest-abc-january-june-2016-circulation-report>

Van Echoud, M. (2017). A publisher’s intellectual property right: Implications for freedom of expression, authors and open content policies. *Openforum Europe*. Available at: http://www.openforumeurope.org/wp-content/uploads/2017/01/OFE-Academic-Paper-Implications-of-publishers-right_FINAL.pdf

Vollmer, T. (2016). COMMUNIA response to Commission's consultation on ancillary copyright and freedom of panorama - International Communia Association. International Communia Association. Available at: <http://www.communia-association.org/2016/05/30/communia-response-ec-consultation-ancillary-copyright-freedom-panorama/>

Xalabarder, R. (2014). The Remunerated Statutory Limitation for News Aggregation and Search Engines Proposed by the Spanish Government - Its Compliance with International and EU Law. *SSRN Electronic Journal*. Available at: <http://journals.uoc.edu/index.php/in3-working-paper-series/article/view/2379>