

# 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

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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:

Vincent

\*Please provide your last name:

Bonnet

\*

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 (it will not be published, but will be used internally within the Commission)

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

EBLIDA - European Bureau of Library, Information and Documentation  
Associations

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

www.eblida.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

Bosnia and Herzegovina, Georgia, Moldova, Montenegro, Norway, Serbia, Switzerland, Turkey

\*

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

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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

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[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

## 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

Free hyperlinking by individuals or by aggregator services, whether commercial or non-commercial in their operation (non-commercial may include information services offered by non-profit libraries) and without having to seek permission or pay compensation, is crucial for news publishers and all publishers. News media and other publishers absolutely rely on the traffic that hyperlinking and quoting of snippets drives to their websites (see *The impact of web traffic on revenues of traditional newspaper publishers: a study for France, Germany, Spain and the UK*, Deloitte Insights 2016 <http://www2.deloitte.com/uk/en/pages/technology-media-and-telecommunications/articles/the-impact-of-web-traffic-on-revenues.html>).

Additionally, publishers already hold copyright in their content and in Europe they also enjoy sui generis rights in their original databases, so do not need any further rights to protect their investments and devise viable online business models. It is clear that the introduction of a sui generis right in hyperlinks for news publishers in Spain and Germany had backfired on those it was intended to benefit causing news publishers to wish to restore the situation to the pre-legislative status quo because the new right had caused them to lose so much business which in turn affects their advertising revenue. SME publishers suffered disproportionately in this regard (see *The impact of ancillary rights in news products* (EDiMA Briefing 2015) <https://tinyurl.com/hqfeun6> and for Spain see *Impacto del Nuevo Artículo 32.2 de la Ley de Propiedad Intelectual*, AEEPP/NERA 2015 <https://tinyurl.com/z8uej64>).

Such a proposal would undermine the use of hyperlinks in Europe, the very sinews of the Web, which technology was gifted by CERN to the public domain precisely so that their use should be free and untrammelled. Europe would become an internet island and its publishers less visible, losing business since both private users and other services (both commercial and non-commercial) that link to publisher content will simply go elsewhere to sites outside Europe. In order to stay visible against content available from publishers outside Europe, European publishers' content is likely to start appearing (legally or illegally) on mirror sites situated outside Europe where hyperlinking would continue to not be problematic.

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

If publishers gain a sui generis right in hyperlinks to content (and snippets therefrom describing said content) that had been assigned to them by authors, even upon expiry of the contract when the author's copyright reverts to him/her, the publisher's sui generis right would continue in hyperlinks to any of that content still on their website, compromising the author's potential to exploit his/her work in future. Publishers of any kind should only have the rights needed to conduct their businesses properly; the more additional rights they gain at the expense of researchers and other authors, the more they erode the author's right which is at the heart of copyright as defined by the Berne Convention 1886.

In Spain all online "news" publishing as defined by the Spanish copyright Act must now come within the ancillary right with remuneration, whether the publisher wants it or not. This works against Creative Commons and prevents independent Spanish news journalists or authors from freely sharing their work online under a CC Licence or otherwise, since, quite unfairly, the collecting society can override them by collecting levies for linking.

Publishers had reluctantly engaged with the Open Access movement because it is too big to ignore and because successive governments now require all publicly funded research to be available by Open Access, so they would very likely take any opportunity to curtail it and an ancillary right offers just such an opportunity. This would impact badly on researchers since publishers assigned copyright in research articles could use the ancillary right to prevent authors from Open Access publishing in repositories and elsewhere, which goes against EU research policies for Open Access. It also impacts adversely on authors' rights to publish versions of their articles or books online under Creative Commons Licences. Researchers' text and data mining (TDM) activities could also be adversely impacted just when an EU-wide exception for content mining - now an essential research tool.

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

see answer to Q5 above

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

A sui generis right in hyperlinks to publisher's content (and snippets therefrom), serves no-one but makes the internet incredibly convoluted and difficult for everybody so will negatively affect rightholders of all kinds who use content created by others within their own works (as nearly everybody does) or who seek to machine read (mine) online content to which they have legal access (as European researchers wish to do).

8. Would the creation of a neighbouring right limited to the press publishers have an impact on rightholders 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

see answer to Q7 above

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

Libraries in educational and research institutions provide not-for-profit information services of various kinds (including blogs and tweets) to their patrons who are researchers, students or the general public. These services are tailored to the needs of different groups of users for the purpose of assisting users' enquiry, research or study, and necessarily include hyperlinks to materials published online, including licensed materials to which the library users have legal access. An "ancillary right" for "scientific" and "news" publishers also would impact badly on text and data mining of legally accessed online content - contradicting EU attempts to introduce a new TDM exception and driving research funding and research partnerships to institutions outside Europe. Likewise, online study and course materials offered through public libraries and educational and research institution libraries will include brief descriptions or extracts or full texts with hyperlinks for the purposes of research or study. Such materials may be offered not just within institutional closed access virtual learning environment (VLE) platforms but may be offered as open support materials for Massive Open Online Courses (MOOCs).

Full-text online material may be public domain, offered under Creative Commons Licences, Open Access, or other free licensing, or may be paywalled and access is only available via paid for licensing. It would be unfair if licensees to commercial services would have to pay twice to exploit the materials for which they are already paying to access (or pay at all where materials are offered free of charge), because they quote and provide hyperlinks to that material in the information services they provide to their patrons who already have legal access to the materials as authorised users under the licence. These services are of critical importance to users, helping to point them towards relevant materials and would be of little help to them without containing hyperlinks (the bedrock of the Web) together with a short description and title indicating what the material linked to is about.

There is no explanation in the Consultation as to who or what is a 'publisher in all sectors' other than mention of publishers in the "book/scientific publishing sectors". Unless carefully and clearly defined, anyone who puts something online for the first time is in fact a 'publisher'. Some of this kind of material is available freely on the web and some will be public domain material. Introducing an ancillary copyright for publishers in the "book/scientific publishing sectors" or 'publishers in all sectors' could adversely impact on organisations and people's ability to freely use hyperlinks, thus undermining the very bedrock of the Web and their right to freedom of expression by generating their own content referring to the works of others and may conflict with the Berne Convention's Article 10 exception for Quotation implemented by Information Society Directive 2001/29/EC.

The Consultation does not mention exceptions and limitations, but if ancillary rights for 'publishers in all sectors' were to be introduced, not-for-profit information services and other self-generated content must be exempted. Otherwise, faced with new licensing costs, many not-for-profit information services would cease, resulting in greater restrictions on access to information with substantial negative impact on libraries and other not-for-profits and on the public's and researchers' knowledge on what information exists in their field of enquiry and where to find it. Additionally any public interest public domain access to knowledge project from the library and archive sector, such as the Internet Archive and the Gutenberg project, would be compromised in Europe.

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

Libraries in educational and research institutions, as well as other non profit bodies, often provide not-for-profit current awareness services (including self-compiled news aggregation services, blogs and tweets) to their patrons who are researchers, students or the general public. These services are tailored to the needs of different groups of users for purposes ranging from general current awareness to assisting users' research and study, and necessarily include hyperlinks to news articles and snippets therefrom to describe their content. In Spain, news publishers are obliged to charge for this whether they want to or not (increasingly not as they regret having such rights). Likewise, online study and course materials will include such hyperlinks for the purposes of research or study. Library current awareness and information services are important to users and would be of little help without containing hyperlinks together with news snippets or headlines indicating what the article is about. This information and the hyperlinks help drive readers to news media websites and increase news providers' readership, hence increasing advertising, or subscriptions to news services where paywalled.

Given that the news media in every member state of the Berne Convention and subsequent treaties benefit from the Convention's Article 2 exception for news reporting (supporting a fundamental pillar of democracy), it is only fair that not-for-profit news aggregation services are not themselves affected by any ancillary rights that might be introduced for news publishers. Exceptions and limitations are not mentioned in this Consultation, but if any ancillary rights for news publishers were to be introduced, not-for-profit current awareness services and self-generated content must be exempted. Otherwise they could adversely impact on organisations and people's ability to freely use hyperlinks, thus undermining the very bedrock of the Web, and their right to freedom of expression by generating their own content referring to the works of others and they may conflict with the Berne Convention's Article 10 exception for Quotation implemented by Information Society Directive 2001/29/EC.

Additionally, faced with new licensing costs draining the public purse, many not-for-profit current awareness and information services would cease, resulting in greater restrictions on access to news, both of which will have a heavy negative impact on the mission of libraries and other not-for-profits and on their patrons access to news - affecting the operation of democracy itself.

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

If a library is regarded as an “online service provider” it would be badly affected. While licenses would be obtainable from well organised mainstream publishers, a great deal of content that library information services need to link to is much more ephemeral and often non-commercial in nature. With regard to mainstream publishers such as scientific, technical and medical (STM) publishers, trade publishers and university, research institution or learned society publishers, libraries already pay for licences to access and use content and should not have to pay again because they link to content and quote snippets to promote such publishers’ content to their readers.

Online content often changes frequently and even migrates to other sites. More ephemeral material may be very important but it is not always well managed and can be abandoned and left online until the domain licence expires. It would be much more difficult, even impossible, to obtain the relevant licensing from such sources, and even could be impossible to locate the rightholder and make contact - creating another nightmare of orphan works. Major issues may also arise with regard to national libraries’ web harvesting efforts to preserve the Web for future researchers and international projects like the Wayback Machine may find they must stop including European content. Additionally, as non-profit libraries are public institutions or are within other public institutions such as educational and research establishments, or within charities funded by public donation, it is public money that would be diverted to pay for such additional licensing.

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

see answer to Q11 above.

Additionally, the German copyright Act (Art. 87f para 2) defines “news” as “articles and illustrations which serve to provide information, form opinions or entertain” and the Spanish copyright Act (Art.32.2) concerns “periodic publications or [...] websites which are regularly updated, for the purposes of informing, shaping public opinion or entertaining”. Both such definitions are very broad and cover a myriad of activities done by every web user in the online world, including users of social media, so in reality can “news” and “news publisher” now be accurately defined?

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 far as individuals are concerned, links alone are not enough - they need links which are set in context, e.g. a short description of or snippet from the content linked to (sometimes the title if it is informative - often they are not). These are de minimis uses that largely benefit rightholders in the underlying content and should not be subject to copyright as doing so undermines how people use the Web. With regard to linking to unlawful content, the individual consumer cannot reasonably always be expected to recognise if the content they are linking to is unlawful. Libraries do a lot to teach information literacy so that their users learn to distinguish which are authoritative information sources online, but even then innocent mistakes will be made, particularly as many websites can be deceptive.

Libraries and other non-profit organisations such as charities provide information services to their users who are researchers, students or the general public (i.e. the consumers/end-users/EU citizens described referenced in this question). These are services of various kinds (including blogs and tweets) tailored to the needs of different groups of users for the purpose of assisting users' enquiries, research or study, and necessarily include hyperlinks to materials published online, including licensed materials to which the library users have legal access. Likewise, online study and course materials offered through public libraries and educational and research

institution libraries will include brief descriptions or extracts or full texts with hyperlinks for the purposes of research or study as may their online catalogues of works held in their collections. Such materials may be offered not just within institutional closed access virtual learning environment (VLE) platforms but may be offered through Massive Open Online Courses (MOOCs) or, in the case of library catalogues will be freely available on the Web. These services are of critical importance to users and would be of little help to them without containing hyperlinks (the bedrock of the Web) together with a short description and title indicating what the material linked to is about.

There is no explanation in the Consultation as to who or what is a 'publisher in all sectors' other than mention of publishers in the "book/scientific publishing sectors". Unless carefully and clearly defined, anyone who puts something online for the first time is in fact a 'publisher'. Some of this kind of material is available freely on the web and some will be public domain material. Introducing an ancillary copyright for publishers in the "book/scientific publishing sectors" or 'publishers in all sectors' could adversely impact on the general public's ability to freely use hyperlinks, thus undermining the very bedrock of the Web, and their human right to freedom of expression by generating their own content referring to the works of others and may conflict with the Berne Convention's Article 10 exception for Quotation implemented by Information Soc Directive 2001/29/EC.

Exceptions and limitations to an ancillary right, if introduced, are not mentioned in this Consultation, but if any ancillary rights for 'publishers in all sectors' were to be introduced, not-for-profit information services and self-generated content must be exempted. Otherwise, faced with new licensing costs, many not-for-profit information services would cease, resulting in greater restrictions on access to information with substantial negative impact on libraries and other not-for-profits and on the public's and researchers' knowledge on what information exists in their field of enquiry and where to find it.

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

Access to news is a fundamental democratic right: it is not for nothing that the news media is called the 'Fourth Estate'. The introduction of an ancillary

remuneration right for press publishers in Spain and an ancillary aggregation right in Germany in respect of commercial news aggregation services was aimed at enabling news publishers in those countries to gain a share of the commercial news aggregators revenue, but the measures failed to achieve their objectives

(<http://www.communia-association.org/2015/10/19/more-evidence-from-germany-ancillary-copyright-still-not-working/>). The Spanish legislation led to Google withdrawing its news service from Spain, denying their services to Spanish citizens and causing Spanish news media sites to lose significant traffic and audiences. In the three years since enactment the German right has not so far resulted in the sale of a single paid licence

(<http://plus.faz.net/evr-editions/2016-03-30/35187/223883.html>). Some news publishers actually do not want such proposed ancillary rights to be imposed upon them EU-wide since they have observed from the national experiments that it could result in the undermining of their visibility in a crowded online environment and their ability to reach new audiences and attract new readers, making it harder for people to find them online, access their reporting and share links to their site with others

([http://www.aepp.com/pdf/151204\\_Statement\\_on\\_Digital\\_Single\\_Market\\_FINAL.pdf](http://www.aepp.com/pdf/151204_Statement_on_Digital_Single_Market_FINAL.pdf))

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Libraries, as well as other non profit bodies and individuals such as bloggers and tweeters, often provide not-for-profit current awareness services (including news aggregation services) to their patrons who are researchers, students or the general public (i.e. the consumers/end-users/EU citizens described referenced in this question). These services are tailored to the needs of different groups of users for purposes ranging from general current awareness to assisting users' research and study, and necessarily include hyperlinks to news articles Likewise, online study and course materials will include such hyperlinks for the purposes of research or study. Library current awareness and information services are important to users and would be of little help without containing hyperlinks together with news snippets or headlines indicating what the article is about. This information and the hyperlinks help drive readers to news media websites and increase news providers' readership, hence increasing advertising, or subscriptions to news services where paywalled.

Given that the news media in every member state of the Berne Convention benefit from the Convention's Article 2 exception for news reporting (itself a fundamental pillar of democracy), it is only fair that not-for-profit news aggregation services are not themselves affected by any ancillary rights that might be introduced for news publishers. Exceptions and limitations are not mentioned in this Consultation, but if any ancillary rights for news publishers were to be introduced, not-for-profit current awareness services and self-generated content must be exempted. Otherwise they could adversely impact on organisations and people's ability to freely use hyperlinks, thus undermining the very bedrock of the Web, and their right to freedom of expression by generating their own content referring to the works of others and may conflict with the Berne Convention's Article 10 exception for Quotation implemented by Information Society Directive 2001/29/EC.

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.

Given the commercial targets of Spanish and German legislation so far, there has been little or no impact on libraries in Spain and Germany. If this were to change in future legislation, however, there could be strong negative impact for libraries. The implementation of the Spanish and German ancillary rights for news publishers legislation is still ongoing but it is clear that the impact is not what had been intended. The news publishers who were supposed to benefit are losing some 10m Euro p.a. (NERO 2015) particularly affecting smaller publishers who quickly lose traffic to their sites since they are less well known; journalists, consumers and all internet users have been adversely affected and no one has benefited. A number of European news publishers have issued statements condemning ancillary copyright which brings to mind the maxim of "Be careful what you wish for."

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.

In summary, existing copyright provisions do more than enough to protect publishers/news publishers. An “ancillary right” in hyperlinks and snippets is simply not needed. On the contrary, as has been clearly shown with regard to the Spanish ancillary right for news publishers, publishers need the services of search engines, news aggregators and library information services to their users, using both hyperlinks and snippets to point to third party online content and drive customers to their websites. The online world is a Hydra; an EU-wide ancillary right would chill European search and other aggregation services, so they would offer less EU content and more non-EU content (to the benefit of international and non-EU publishers), or, as the Google News service did in Spain, will simply leave the scene to the detriment of Spanish citizens access to the full range of online news.

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

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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

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[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](#).

## Category of respondents

\*

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

- Member State
- Public authority
- Owner or manager of works made to be located permanently in public places (or representative thereof)
- Library or Cultural heritage institution (or representative thereof)
- Educational or research institution (or representative thereof)
- End user/consumer/citizen (or representative thereof)
- Visual artist (e.g. painter, sculptor or representative thereof)
- Architect (or representative thereof)
- Professional photographer (or representative thereof)
- Other authors (or representative thereof)
- Collective management organisation (or representative thereof)
- 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

## Questions

1. When uploading your images of works, such as works of architecture or sculpture, made to be located permanently in public places on the internet, have you faced problems related to the fact that such works were protected by copyright?

- 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 and the type of work concerned.

Libraries constantly upload images of artistic and architectural works located in public spaces to their websites or internal Virtual Learning Environments (VLEs) or Massive Open Online Course (MOOC) resource materials. Since libraries are law-abiding risk averse institutions, they must and do consider copyright law when doing so.

2. When providing online access to images of works, such as works of architecture or sculpture, made to be located permanently in public places, have you faced problems related to the fact that such works were protected by copyright?

- 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 and the type of work concerned

15 countries have Freedom of Panorama (FOP) exceptions permitting both artistic and architectural works in a public place to be used for commercial and non-commercial purposes so libraries there do not encounter any problems. Problems certainly arise, requiring searches and maybe also remuneration (out of public funds) for rights clearances (and potentially also Orphan Works situations) for libraries in the 5 countries that do not have any FOP provisions at all, or in any countries that do not even have an exception for incidental inclusion. 2 further countries only have FOP for architectural works for both commercial and non-commercial uses and 6 more only permit FOP for non-commercial uses so in some cases libraries in those countries will encounter problems.

3. Have you been using images of works, such as works of architecture or sculpture, made to be located permanently in public places, in the context of your business/activity, such as publications, audiovisual works or advertising?

- Yes, on the basis of a licence
- Yes, on the basis of an exception
- Never
- Not relevant

If so, please explain, indicating in particular the Member State and what business/activity, and provide examples.

Images of publicly located artistic works or works of architecture are used for illustration for teaching and for inclusion in learning resources such as Virtual Learning Environments (VLEs) and in resources for Massive Open Online Courses (MOOCs), in library online catalogues, or simply on library websites. Libraries engage in these activities, for both non-commercial and commercial purposes (the latter with regard to the library's own publications available for sale). Harmonisation of the Freedom of Panorama exception, to include commercial as well as non-commercial uses, benefits all online and offline learning as well as the wider economy.

Where exceptions exist for non-commercial purposes, libraries will rely on these; otherwise they will clear the rights or, if it's worth it, follow the Orphan Works Directive where applicable but if all this fails the public works cannot be used by libraries unless there is a full freedom of panorama exception for both non-commercial and commercial uses.

4. Do you license/offer licences for the use of works, such as works of architecture or sculpture, made to be located permanently in public places?

- Yes
- No
- Not relevant

If so, please provide information about your licensing agreements (Member State, licensees, type of uses covered, revenues generated, etc.).

5. What would be the impact on you/your activity of introducing an exception at the EU level covering non-commercial uses of works, such as works of architecture or sculpture, made to be located permanently in public places?

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

Please explain

15 EU Member States already have an exception for “freedom of panorama” that makes no distinction between commercial and non-commercial. No one suffers as a result. However, an EU-wide harmonisation of an FOP exception restricted to non-commercial uses could possibly remove the wider exception that successfully exists in the relevant Member States, to nobody’s benefit. Furthermore, it would be difficult to enforce such a distinction – artistic works and architectural works located in a public place are in a visual sense ‘given to’ and thus ‘belong’ to the public as far as visual perception is concerned and the public (including organisations of any kind) should be able to make images of these works for any general legal purpose, including publication or online communication of them to the public. The principles of access and re-use found in the Public Sector Information (PSI) Directive should apply here.

6. What would be the impact on you/your activity introducing an exception at the EU level covering both commercial and non-commercial uses of works, such as works of architecture or sculpture, made to be located permanently in public places?

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

Please explain

An EU-wide exception for Freedom of Panorama would create an even playing field to everyone’s benefit as artistic and architectural works located in public places are by nature for the public, insofar as creating and using images of them are concerned (including publication or online communication of such images to the public). As stated in Q5 above, the principles of access and re-use found in the PSI Directive should apply here.

7. Is there any other issue that should be considered as regards the 'panorama exception' and the copyright framework applicable to the use of works, such as works of architecture or sculpture, made to be permanently located in public places?

- Yes
- No

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

The Commission also should examine inclusion of certain types of two-dimensional works located in exterior public places, not only works of artistic craftsmanship on buildings (in this case decorative arts) but also murals and graffiti. For example, the UK's FOP exception for both commercial and non-commercial purposes is with regard to "the representation of buildings, and sculptures, models for buildings and works of artistic craftsmanship permanently situated in a public place or in premises open to the public" (CDPA 1988 s.62

<http://www.legislation.gov.uk/ukpga/1988/48/section/62>). This exception includes the above types of works permanently situated inside "premises open to the public" as well as in exterior public places.

However, other than by virtue of their "incidental inclusion" in an artistic work (including a photograph), sound recording, film or broadcast (CDPA 1988 s.31 <http://www.legislation.gov.uk/ukpga/1988/48/section/31>) the UK's legislation does not include (as the subject of a graphic work, sound recording, film or broadcast) paintings and murals located indoors (because many displayed in museum and gallery collections may be copyright to the artist and were not created for specific permanent public display).

It also omits two-dimensional public art, which are not "works of artistic craftsmanship" but artistic works, located in permanent positions outdoors on the exteriors of buildings, walls or pavements such as, for example, graffiti preserved for posterity (as is the case in Germany on remnants of the Berlin Wall), Banksy's murals, or commissioned murals created to be visible in or from public places. UK FOP legislation also does not take account of sounds made by some kinetic sculptures with regard to use as subjects of audiovisual media or sound recordings, other than by way of incidental inclusion.

Any EU-wide Freedom of Panorama exception needs to address these issues with regard to all types of works in located in interior and exterior public locations, embracing, not removing, any wider exceptions already existing in Member States.

## Submission of questionnaire

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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)

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## **Background Documents**

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

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[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)

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## **Contact**

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