

# 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:

Matei-Eugen

\*Please provide your last name:

Vasile

\*

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 (it will not be published, but will be used internally within the Commission)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

Asociatia pentru Tehnologie si Internet

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

NGO

\*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

\*

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

- Yes
- No

If you are an entity not registered in the Transparency Register, please [register](#) before answering this questionnaire. If your entity responds without being registered, the Commission will consider its input as that of an individual and as such, will publish it separately.

## 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

The question misrepresents the facts by implying that the creation of a new neighboring right in the EU would enhance the publishers' "ability to license and protect their content from infringements". This is patently untrue because the uses of content that would be covered by the new rights are currently protected as exceptions to existing copyright laws. More precisely, the right of quotation is a widely recognized exception to copyright laws, as specified by the Berne Convention (Art. 10).

Moreover, whatever uses of content that can not be framed under an existing exception can already be dealt with using the existing copyright legislation. Thus, the creation of new neighboring rights would only have the effect of removing an exception to the current copyright legislation. The current copyright legislation is anachronistic, severely out of tune with the current technological landscape and in dire need of reforms which would make content easier to be communicated in order to take advantage of modern technology. Removing one of the few existing exceptions would go in the opposite direction to what a meaningful copyright reform should entail.

The introduction of a new neighboring right such as ancillary copyright in EU law would hurt the vast majority of publishers. This is because the most precious resource of publishers is public reach. Anything that makes it more difficult for the public to reach a publisher's content will have a strong negative impact on the publisher and all their associates. A new neighboring right such as the one proposed by the Commission would make anybody referring content liable for paying fees to newly constituted collection agencies, so people will stop linking to said content for fear that they will be charged for it. The two existing examples of such legislation have been resounding failures. In Germany, the publishers ended up waiving their newly granted rights because they were losing readers. However, it was worse than that because they waived their rights in their relationship with the big players on the market, like Google, but the small companies were not that lucky, thus the effect of the legislation was to give large companies a competitive advantage. In Spain, the outcome has been even more devastating because the Spanish legislation does not afford the publishers the ability to waive their rights. As a result, the legislation wreaked havoc among content aggregators, by putting them out of business and publishers, by making them lose readers as a result of the content aggregators getting shuttered. Finally, the Spanish collection agencies do not take into account the license that content is being published under. For example, they collect fees for linking and quoting content published under the ever more popular Creative Commons licenses, willingly disregarding that the authors and publishers of said content explicitly want their content to be available for free. This is deliberately hurting the ability of these authors and publishers to reach their public.

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

Again, the question implies that authors should be paid for something that is and has been an exception to copyright laws as if they are losing money because of it. The fact of the matter is that they never have been paid for uses covered by the right of quotation. The new legislation is not a guarantee that they would be paid even now because the proposed rights are rights for the publishers, not the authors, and, as history has shown us, the publishers do not always let profits trickle down to the authors. Even worse, the addition of a new set of rights overlapping with the existing copyrights would complicate things even further, increasing the chances of authors not receiving royalties for their content or their content becoming more difficult to reach and, as a result, the authors earning less.

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

The problems with creating a narrower right just for press publishers would be just as severe as in the case of creating said right for all publishers. Such an approach would just make it much more transparent how much the introduction of such a right is just an effort driven by an industry unwilling to come to terms with today's technological realities and unable to modernize their business models in order to stay alive.

7. Would the creation of a new neighbouring right covering publishers in all sectors 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

The difficulties created for rightholders others than authors, such as heirs of authors, publishers or employers, to name just a few, by the implementation of neighboring rights such as ancillary copyrights would be as big as those of the authors.

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

As in the case of the previous couple of questions, the problems with creating a narrower right just for press publishers would be just as severe as in the case of creating said right for all publishers.

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

Copyright legislation has an exception for educational use. The proposed neighboring rights would abolish one existing exception: the right of quotation, but would change nothing about the exception for educational use. As a result, in the first phase, depending on how one reads the law, educational use could be considered to fall under the standing exception for educational use or could be considered to be covered by the new ancillary copyrights, all of which would result in confusion and uncertainty and, as a result, severely disrupt educational use of content. In the second phase, when the confusion is cleared at some unknown point in the future, and it ends up that education use falls under the new ancillary copyright regime, educational use of content will suffer tremendously in its own right.

Furthermore, teachers will encounter great difficulties in using works created by third parties because, instead of needing to get permission to reuse a work just from the work's author, now he would need to get permission to reuse that work both from the author and from the publisher.

Also, both teachers and researchers will suffer because it will become much more difficult to find content and even information and data under an ancillary copyright regime because content aggregators and search engines will not be able to link to sources anymore without having to pay. So, in the best case scenario, the amount of content that they would provide links to would be severely diminished. In the worst case scenario, they could be driven out of business altogether, devastating the whole way the World Wide Web works: by creating links between resources.

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

As in the case of the previous couple of questions, the problems with creating a narrower right just for press publishers would be just as severe as in the case of creating said right for all publishers.

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

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

Please explain

As stated before, in the answer to question 9, the World Wide Web, and the Internet in general for that matter, functions based on the ability to freely create links between resources. It was never even conceivable that someone would consider having to ask for permission to create a link to an online resource. This ancillary copyright concept is trying to turn back the clock to a time before the Internet. It is self-evident that any and all online service providers will be devastated by the introduction of ancillary copyright. Unless they are an online giant such as Google or Facebook, few if any smaller online service providers will afford to function under an ancillary copyright regime. The only possible result will be a severely reduced ability to discover online resources and, as an immediate consequence, a severe reduction in the amount of content posted online in the first place. Because if your users can not find your content, you will not be able to stay afloat and you will have to close shop. Publishers will certainly not be able to survive this, but that will not matter because, even if they were the driver behind this initiative, the legislation will stay with us even after they go bankrupt due to their own shortsightedness.

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

As in the case of the previous couple of questions, the problems with creating a narrower right just for press publishers would be just as severe as in the case of creating said right for all publishers.

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

Consumers, end-users and citizens will be the most hard-hit by the introduction of such neighboring rights. The legislation will affect them in the same manner it will affect teachers and researchers, only worse. Teachers and researchers, on average, have more experience searching for information online, so they will find refuge in working with resources hosted outside of the European Union. However, the consumers, end-users and citizens are, on average, less experienced in searching for online resources and less inclined to spend time searching for online resources than teachers and researchers. As a result, the less experienced ones will lose their sources of information and become less informed in general, while the more experienced ones will head towards sources of information hosted outside of the European Union and become more and more disconnected from the European Union as a result of this.

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

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

Please explain

As in the case of the previous couple of questions, the problems with creating a narrower right just for press publishers would be just as severe as in the case of creating said right for all publishers.

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

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

Please explain, indicating in particular the Member State.

As stated previously, in the answer to question 4, the introduction of ancillary copyright in Germany created massive disruption among all content aggregators and publishers. Publishers began losing readers because large amounts of their readers were reaching their content via content aggregators. In the end, they relented and waived their newly granted rights in their relation with Google, which is the largest content aggregator on the market. Fortunately for Google and unfortunately for the local small content aggregators, that deal only covered Google. As a result Google received an unexpected boon by having their competitors seriously weakened. In Spain, the situation is even more dramatic because the Spanish law does not afford the publishers the ability to waive their rights. As a result, content aggregators have been shuttered left and right and even Google itself retreated from Spain.

The result of all of this was that competition in online services was severely affected in both markets. In Germany competition was seriously diminished in favor of Google while in Spain it was wrecked altogether. As a consequence, all categories of public have been negatively impacted by being denied their means of reaching online resources.

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.

The introduction of neighboring rights such as ancillary copyright is a serious threat to the World Wide Web, the Internet in general, innovation and the Digital Single Market. Instead of reforming copyright to fit the Internet, this initiative is trying to destroy the Internet in order to preserve dying business models and an anachronistic copyright regime. The adoption by the European Parliament of the Reda Report ( <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2015-0209+0+DOC+XML+V0//EN&language=en> ) was a promising first step down the road to meaningful copyright reform in the EU. The introduction of neighboring rights would be a huge step in the opposite direction.

## 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.

People usually do not have problems with copyright because they violate it unknowingly all the time, probably multiple times each day. However, because they are not sued or charged with anything they do not realize they are doing it. This just goes to show how out of tune copyright is with modern technology. Nevertheless, having a bad law and not enforcing it is not conducive towards the rule of law because it diminishes respect for the law in general among the people. And trying to enforce a bad law, as it stands, is going to be even more damaging. So the only way forward is to reform the law in such a way that it will be able to be followed.

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

The same answer from question 1

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.

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

The term "non-commercial" needs to be clarified. Many people use images thinking that they are doing it for "non-commercial" purposes while, in reality, their use could be construed as being of "commercial scope".

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

It would create cross-border legal certainty and help innovation and online freedom of expression.

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.

## 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)

### Background Documents

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

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

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

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

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