

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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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:

Owen

*Please provide your last name:

Bennett

*

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

European Internet Services Providers Association (EuroISPA)

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

www.euroispa.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

*

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

- Yes
- No

*

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

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The role of publishers in the copyright value chain

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

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

*

Selection

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

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

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

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

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

Category of respondents

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

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

If other, please specify

EuroISPA is the world's largest Internet Services Providers (ISP) association, representing more than 2500 ISPs across Europe.

EuroISPA is the voice of the European Internet industry on Internet-related policy issues, including data protection, cybercrime and cybersecurity, e-commerce, and telecommunications law. EuroISPA represents national ISP associations in Austria, Belgium, Czech Republic, Finland, France, Germany, Ireland, Italy, Netherlands, Romania and the United Kingdom.

EuroISPA members include Internet access providers, hosting providers, Internet exchange points, telecom operators, domain name registries, and Internet Hotlines.

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

While it is clear that the digitalisation process is having a destabilising effect on traditional and long-established business models - particularly in the case of traditional publishers - the instances where neighbouring rights for publishers have been introduced (Germany and Spain) have had disastrous outcomes. In both countries Google, i.e. the main political target of the legislation, has simply curtailed its service offering in those jurisdictions. In Spain, in particular, a recent study has shown that the impact of the introduction of neighbouring rights for publishers has been particularly detrimental for SMEs and small publishers. In that context we can conclude that the introduction of neighbouring rights for publishers has not succeeded in achieving its objectives.

Moreover, in December 2015 a grouping of twelve alternative European publishers (many of which have links to the Spanish market) wrote an open letter to the European Commission highlighting the severely negative effects of ancillary copyright on their business models.

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

http://www.aepp.com/pdf/151204_Statement_on_Digital_Single_Market_FINAL.pdf

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

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

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

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

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

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

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

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

Please explain

The introduction of neighbouring rights for publishers would have a severely detrimental impact on the operations of Internet Services Providers for several reasons. Today there are approximately one billion pages on the world wide web. Intermediaries (covering also ISPs, according to articles 12-14 of the E-Commerce Directive) already process huge volumes of notices of allegedly copyright-infringing content. By extending a copyright obligation to a whole new (unclear) ambit encompassing various classes of online actors, online intermediaries will operate under vastly-increased compliance costs and legal uncertainty with respect to their obligations as to the enforcement of copyrights online.

Moreover, today freely sharable content is a cornerstone of the information society. The relationship between publishers and online services (content aggregators, social media, search engines, apps, etc.) is symbiotic. New rights covering publishers would negatively impact content access and sharing by users, and the development of innovative business models necessary to advance the publishing industry. This impact would be especially detrimental for start-ups and small companies, struggling with an added layer of licensing complexity.

Ultimately, public policy should avoid seeking to compensate those sectors where systemic structural issues have led to declining revenues by imposing vertical taxes and obligations on other sectors. The imposition of vertical taxation to compensate a structurally-challenged sector would have the effect of disincentivising market actors in those structurally-challenged sectors to develop urgently-needed market-driven revenue streams.

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

Online service providers are threatened by this new right at various levels: the content they provide could be subject to this new right, meaning they would need to pay licensing fees in order for their content to be made available to their users. Additionally, they could be threatened for content put online by their users, for example if users can themselves generate content or post comments, or public messages, etc. through their platform.

This is not a theoretical threat: the introduction of new neighbouring rights in Spain and Germany has already led to damages to companies and the market because of the liability risks and compliance costs. In Germany, a legal battle that will take years to settle is underway. In Spain, media pluralism has been undermined as small online publishers and news aggregators have been forced to cease operations.

More fundamentally, by creating this new right, the concept of the Internet as a revolutionary medium for the exchange of information and knowledge would be under threat. Every link could generate a discussion about the application of this new right, with the ultimate chilling consequences on the development of the information society.

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

• Less access to content and knowledge: Today, content is easily found and shared on the Internet. If this new right is introduced, pointing users to content will no longer happen as it does today as it will come at a cost to anyone doing it. At the same time, small innovative publishers become less easy to find.

• Reduced Choice: Experience in Germany and Spain has shown that small companies, including numerous start-ups, might be forced to cease their business when being faced with this new right, meaning less choice of providers for users, with only the big providers staying in business. As experience has shown, it can be significantly more difficult for smaller publishers and publishers who are not part of collecting societies to reach licencing agreements for their content.

• Increased liability: Internet users are sensitive to the consequences that can arise from copyright infringement, which are often disproportionate and unnecessary. Such risks will reduce Internet users' desire to share and promote published content online. Such a state of affairs will be highly damaging to the information society in Europe.

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

- Less access to content and knowledge: Today, content is easily found and shared on the Internet. If this new right is introduced, pointing users to content will no longer happen as it does today as it will come at a cost to anyone doing it. At the same time, small innovative publishers become less easy to find.
- Reduced Choice: Experience in Germany and Spain has shown that small companies, including numerous start-ups, might be forced to cease their business when being faced with this new right, meaning less choice of providers for users, with only the big providers staying in business. As experience has shown, it can be significantly more difficult for smaller publishers and publishers who are not part of collecting societies to reach licencing agreements for their content.
- Increased liability: Internet users are sensitive to the consequences that can arise from copyright infringement, which are often disproportionate and unnecessary. Such risks will reduce Internet users' desire to share and promote published content online. Such a state of affairs will be highly damaging to the information society in Europe.

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.

Please see examples cited above concerning the impact of ancillary copyright laws in Germany and Spain.

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

A new copyright for publishers is neither justified nor necessary.

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

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

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

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

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

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

*

Selection

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

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

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

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

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

If other, please specify

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EuroISPA is the voice of the European Internet industry on Internet-related policy issues, including data protection, cybercrime and cybersecurity, e-commerce, and telecommunications law. EuroISPA represents national ISP associations in Austria, Belgium, Czech Republic, Finland, France, Germany, Ireland, Italy, Netherlands, Romania and the United Kingdom.

EuroISPA members include Internet access providers, hosting providers, Internet exchange points, telecom operators, domain name registries, and Internet Hotlines.

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.

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

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 harmonisation of the panorama exception with respect to the 'non-commercial' uses of works is not feasible. With the advancement of user-generated-content and Internet services generally, the distinction between commercial and non-commercial uses of works has become blurred beyond recognition.

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

The harmonisation of the panorama exception covering both commercial and non-commercial uses of works would add significant value to the Information Society in Europe. The fragmented implementation of the panorama exemption is one of the symbolic frustrations of the fragmented EU framework for exceptions and limitations to copyright. In the absence of a harmonised framework, there is significant confusion for Internet users, and stifles the exchange of information across borders in the EU.

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 non-uniform application of the panorama exemption provides considerable burdens for consumers, businesses, researchers, and Internet Services Providers.

While noting that the current enforcement framework for copyright as defined in the IPR Enforcement Directive is well-balanced, EuroISPA members wish to highlight the legal uncertainty for ISPs that arises from a fragmented regulatory approach to copyright exceptions. The Internet is global in nature, and attempts to enforce copyrights on a territorial scale by blocking access to content from particular copyright jurisdictions is both unfeasible and contrary to the aims of the Digital Single Market.

Submission of questionnaire

End of survey. Please submit your contribution below.

Useful links

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

Background Documents

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

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

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

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

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

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