

Member of the European Parliament
Axel Voss
European Parliament
Rue Wiertz Altiero Spinelli 14E116
B-1047 Brussels

Your proposal from March 28 2018 concerning the EU Commission's proposal for an Art. 11 in the Draft Directive on Copyright in the Digital Single Market

Dear Mr. Voss,

We, the signatories, are associations of European public institutions, companies and start-ups, journalists and libraries, news publishers and civil society organisations. Moreover we represent the interests of millions of European residents.

Because we agree that, "a free and pluralist press is essential to ensure quality journalism and citizens' access to information"¹, we are deeply concerned by **Article 11** of the Commission's proposal. A neighbouring right for press publishers and news agencies will neither support quality journalism, nor foster the free press. Rather it will lead to massive collateral damage and a lose-lose-situation for everybody involved.

This was proven by the empirical evidence with such approaches in Spain and Germany. Many studies some of which commissioned by the EU institutions themselves, show that these rules have had a disproportionate negative impact on the news industries, and information access.² The leading European copyright scholars and research institutions are in almost complete agreement.³ In a nutshell the research shows the following facts:

- Such neighbouring rights are a hazard to innovation, fundamental freedoms, free communication, and to Europe as a location for business and investment.
- They jeopardise competition on both news, and the market for online services.
- They reinforce the market power of established and large players to the disadvantage of startups and SMEs (such as small publishers). Therefore they will not support plurality in the media, but diminish it.

1 Recital 31 of Proposal for a Directive Of The European Parliament And Of The Council on copyright in the Digital Single Market. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52016PC0593>.

2 EU Copyright Reform Proposals Unfit for the Digital Age. Open Letter from European Research Centres. Pg. 4. http://www.create.ac.uk/wp-content/uploads/2017/02/OpenLetter_EU_Copyright_Reform_22_02_2017.pdf.

3 EU Copyright Reform Proposals Unfit for the Digital Age. Open Letter from European Research Centres. Pg.4 www.create.ac.uk/wp-content/uploads/2017/02/OpenLetter_EU_Copyright_Reform_22_02_2017.pdf.

- They drag usual forms of communication which are fundamental to a functioning Internet, like linking and sharing, into a legal grey area.
- They do not lead to new revenue streams for publishers or news agencies, let alone for journalists.
- They provide the publishers of misinformation with their own exclusive rights, rather than preventing them from spreading inaccurate news.⁴

The draft compromise amendments proposed by you do not cure these problems. To the contrary they would make many of them worse:

- Extending the rights ownership to news agencies can lead to monopolies on facts and information.
- Adding rental and lending rights will drag libraries and other public institutions into the scope, resulting in higher licensing and transaction costs, more administrative overhead, and in turn less service and public value for Europeans.
- The paternalistic introduction of an inalienable remuneration right robs the publishers of their free decision (and fundamental right) to conduct business.

Your proposal for changes would only benefit the interests of a handful of very large media outlets. Your ostensible attempts to balance them with opposing interests are unsuccessful.

- The exemption for “legitimate private ... use of press publications by individual users” adds little to the private copying exception in Art. 5(2b) of the InfoSoc Directive. Making protected material online available is never “private” under copyright law, except when the access is strictly limited to close friends and family.
- Exempting acts of hyperlinking if they are not a communication, does not safeguard the right to link. On the one hand many links are communications to the public according to the CJEU. On the other hand meaningful links always provide additional context in the form of a preview, like a text snippet.
- The addition of a journalist’s right to a fair share will not make this proposal acceptable or functional. The publishers will not “receive additional revenues”, therefore journalists will not receive an “appropriate share”. The German and Spanish examples have proven this already.
- The obligatory right to remuneration will come to nothing because the services will either be no longer available in Europe (see Spanish example), or the publications which fall into the scope of the neighbouring right will be delisted from the relevant services (see German example).

⁴ A recently published study showed that publications like Bild.de and Welt.de (both Axel Springer) as well as news agencies like the DPA do particularly often publish wrong information. <https://www.golem.de/news/studie-veroeffentlicht-wie-aus-falschnachrichten-fake-news-werden-1803-133533.html>

Given the empirical evidence, and the academic and civil society consensus on the detrimental effects of the introduction of a new neighbouring right for press publishers, Art. 11 must be deleted. Instead, you should consider and examine a legal presumption, as was proposed by many commentators, inter alia the leading European Copyright scholars. This approach would also respect the principle of proportionality.

24th April 2018

On behalf of the signatories,

Dr. Till Kreutzer

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