

# Publishers in the Digital Age

*Adequate legal protection is needed to ensure the diversity of the press and the future of quality Journalism in Europe*

## Myths and Facts about the Publisher's Right

*Were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter.*

*Thomas Jefferson, 1787.*

### Introduction

On 14 September, the Commission published a copyright reform package containing draft legal texts and an overarching Communication including a **related right for press publishers**. This new right aims to provide legal protection by introducing rights at EU level to protect the unauthorised reproduction and making available of publishers' press publications, in the context of the digital world. Further information is available from the European Commission here: <https://ec.europa.eu/digital-single-market/en/copyright>

To remain competitive and independently financed in the EU, publishers need to be able to compete effectively and profitably on all platforms, which requires clear rights that are recognised in the market. The current lack of clarity benefits those third parties that want to freeride on the press publishers' investment. **The introduction of a publisher's right at such a critical time for the digital transformation of the press is therefore welcomed by the four European press publishers associations - EMMA, ENPA, EPC and NME – which represent the interests of thousands of newspaper and magazine publishers across the EU.**

The following is a description of what a "publisher's right" will protect, followed by our responses to some of the myths that have been put forward as part of a vigorous anti-copyright campaign that is being waged against any such proposal.

## A PUBLISHER'S RIGHT: IN SHORT

### What we mean by a "publisher's right"

Publishers do not currently have their own rights to protect their press publications under EU copyright law - i.e. the sum of the contributions from journalists, photographers, designers and editors, is not protected at the publisher level. A new "press publisher's right" will afford publishers the same related rights as already enjoyed by music, film and software program producers, whose finished works are copyrighted in their entirety giving them the legal right

to decide on how and where their content is made available. Now is the time to be added to the list of rightholders at EU level. Every publisher would have the right to waive this right or to manage it exclusively or collectively – but, importantly, it would be their choice.

A free and independent press can only exist if there is adequate revenue to pay journalists, photographers and freelancers and to finance their training and security. Today, this prospect is increasingly reduced, mainly due to loss of revenues: the majority of advertising revenues go to search and social media; unauthorised and unremunerated large-scale re-use of publishers' content and a lack of legal clarity to enable enforcement against large-scale infringements.

### **Why it is so important to introduce a publisher's right now?**

In this digital age, when large volumes of content can be easily scraped, copied and distributed in the blink of an eye (unlike in the analogue age), copyright for press publishers urgently needs updating. A press publisher's right, by providing protection for the '*press publication*', will allow for more flexibility in licensing and more legal clarity to enforce rights *in the digital world*. In short, it will allow press publishers to get a return on their investment and to be sustainable, so they can continue their fundamental contribution to public debate and their important role of providing information, entertainment and opinion in our democratic society, as well as holding those in power to account.

### **What the publisher's right is about and not about?**

- Practically speaking, the draft proposals require Member States to **provide press publishers with the rights of reproduction and making available** provided for in Articles 2 and 3(2) of the 2001/29/EC Directive<sup>1</sup> **for the digital use of their press publications for a period of 20 years.**
- **The publisher's right is not a "links tax", or a "Google tax".** The new right recognises press publishers as rightholders under EU-copyright law, giving publishers the legal right to decide on how and where their content is made available.
- Despite what anti-copyright campaigners are claiming, THE "LINK" IS NOT UNDER THREAT: publishers want and actively **encourage their readers to share links to articles.** What has been proposed would not affect the way that our readers access publishers' content, or share links on social media or via apps and email to friends and family.
- **The publisher's right is not going to change the contractual arrangements with our journalists, photographers and other contributors** as the Commission is proposing a related, known also as a neighbouring right, so called as it sits alongside the exclusive rights of the authors.

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<sup>1</sup> [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](http://www.publishersright.eu)  
[www.publishersright.eu](http://www.publishersright.eu)

## The myths

### *Myth 1: The publisher's right is a Google/links tax*

The publisher's right is not a "links tax", or a "Google tax". We are asking for publishers to be recognized as rightholders under EU-copyright law, which would give publishers the legal right to decide on how and where their content is made available. Every publisher would have the right to waive this right, or to manage it exclusively or collectively – but, importantly, it would be their choice. Furthermore as stated already above – the link is not under threat – as it is also not the case in the Spanish or German legislation.

### *Myth 2: Publishers will use this right to block access to their content*

Why would we do that? Popularity of our content has never been greater particularly with the growth of smartphone readership and multiple access points to our content.

### *Myth 3: The Publisher's Right is a new right and publishers are being given special treatment*

A publisher's right will be similar to the related rights already enjoyed by broadcasters, music and film producers, whose finished works are protected in their entirety. This is what press publishers are asking for too.

By the way, since 1991 computer programs have benefited from full copyright protection at EU level. Furthermore, it's the companies, whose employees create these programs, which own all the rights to the programs, and who have full exclusive control over how they are managed and enforced, just like film producers, or broadcasters.

### *Myth 4: This is just about Google*

No, it isn't. It is a sad fact of the internet that there are many companies, large and small, old and new that systematically scrape and re-publish press content for commercial purposes without permission or payment.

### *Myth 5: Small publishers will fail*

Currently, even large media corporations are not in a position to negotiate for a fair settlement with dominant players. The hope is that the publisher's right might begin to address this asymmetry of power and make it easier for all publishers – whatever their size - to monetise and share fairly in the value of the content in the future. However, publishers also have the possibility to waive their rights if they so choose.

## *Myth 6: A Publisher's Right will stifle innovation*

No. A publisher's right will help open up the way for more innovation. Clarifying the law at EU level will improve press publishers' bargaining position when it comes to third parties' use of their works. Having more legal certainty over their rights at EU level will help encourage investment and increase possibilities for publishers of all sizes across Europe to develop new product offerings, to the benefit of their readers.

## *Myth 7: A Publisher's Right will break the internet and place more restrictions on online activities and criminalise users who post links*

Nothing we are asking for would affect the way that our readers access our content or share links on social media or via apps and email to friends and family. Nor will it change the contractual arrangements with our journalists, photographers and other contributors.

## *Myth 8: An independent, free press that supports diversity and upholds democracy can survive indefinitely without generating revenues*

Obviously not; a free and independent press can only exist if there is adequate revenue to pay journalists, photographers and freelancers and to finance their training and security. Today, this prospect is increasingly reduced, due to declining print revenues that have not been matched by digital despite increased levels of readership. The reasons are complex but in a nutshell large search engines and other distributors make publishers' content available for free to the user without re-investing in its production while making it difficult for publishers to charge users directly for that same content. The loss of advertising share is also significant as much of this now goes directly to search and social networks which attract large user groups which include users who are reading publishers' content on their platforms. Finally unauthorised large-scale re-use of publishers' content and a lack of legal clarity that would enable enforcement against large-scale infringements is a growing problem which needs reversing.

## *Myth 9: Consumers will suffer as they will no longer be able to find news and content on different platforms*

Publishers actively make their content available on all platforms, accessible on any device of choice. They recognise that consumers benefit from easy access to their content wherever they happen to be, whether this be through publishers' own websites, or on social media or search pages or where multiple sources of content are aggregated. Not only do consumers benefit, but so do the hosts of publishers' content who derive value and real benefits through increased traffic, advertising revenues or in some cases subscription fees.

Publishers recognise that search and social media platforms are important partners for news organisations and that their traffic brings benefits, although not on the exaggerated scale

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claimed by some. The current system does not recognise the value third parties get from publishers' content. It is unsustainable for publishers to continue funding high-quality professional journalism without a fair share of the value others derive from their content.

## *Myth 10: Publishers want the Publisher's Right to protect their 'old' business models*

Publishers have made an important transition from analogue to digital over the past decade with high degrees of innovation and enormous growth in audience and popularity. They have embraced the digital age and count as many technical staff as editorial. Publishers have adapted their business model of selling their publications to their readers and advertising space to advertisers to the new digital environment and developed new ways of doing so. However, the large scale exploitation of their content by third parties without prior authorisation and remuneration, makes it difficult for publishers to keep the financing of independent journalism sustainable. It is therefore vital that the EU's copyright regime now also catches up with today's realities and is adapted accordingly with the introduction of a publisher's right.

### **IN MORE DETAIL**

Did you know that publishers do not currently have their own copyright under EU law? Of course the articles, still images or literary works that publishers make available are protected individually, but in the digital age this raises problems of legal clarity, management and enforcement making the copyright regime for press publishers quite simply out of date if they are to manage their copyrights efficiently in future, and continue to invest in the production cycle of professionally produced editorial content. This is why publishers welcome the proposals from the European Commission to add publishers to the list of rightholders at EU level.

In this digital age large volumes of editorial content containing not only text but also images, and infographics are made available by via websites and apps on a 24/7 cycle and accessed by millions of consumers all over the world. This gives rise to huge opportunities for publishers to find new audiences and distribution partners. Indeed, publishers actively encourage their readers themselves to become distributors by offering simple means to link articles directly to social media, or to share with friends and family via apps or email.

Unfortunately though, publishers' content today is being scraped systematically, copied and distributed by commercial organisations, but without permission in the blink of an eye, who then profit from displaying publishers' content. It is clear that readers and advertisers value the editorial content from publishers that appears on third party websites, platforms and search engines. This brings enormous value to these third parties but not always to the publishers as increasingly we are seeing that they become a substitute for the press publication. Especially, when not only headlines but extracts of the articles often combined with images, graphics or video appear on these sites in sufficiently attractive and comprehensive ways, that readers do not go to publishers' own sites. This is the readers' choice, and publishers want their readers to continue to have such choices of where and

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how they consume their content and to share and comment freely wherever they find it. However, in order to continue to produce news, analysis, investigative reporting, features or eye-witness accounts from war zones or live events, there has to be a fair value exchange between those who produce and those who distribute for the cycle to continue profitably and fairly.

A publisher's right, will give copyright protection to publishers for their 'press publication' in their entirety. These 'press publications' might be updated many times during a 24-hour cycle of publication.

And what is more important, it is certainly not a 'links tax' as some would have you believe.

This new right will be a 'neighbouring' right, so called as it sits alongside the exclusive rights of the authors that would be unaffected by a publisher's right and subject to negotiation and contract just as they are today.

The publishers are asking for the same rights as already enjoyed by broadcasters, music and film producers whose finished works are copyrighted in their entirety.

[www.publishersright.eu](http://www.publishersright.eu)

*On behalf of:*



**EPC - European Publishers Council**

[www.epceurope.eu](http://www.epceurope.eu)



**ENPA – European Newspaper Publishers Association**

[www.enpa.eu](http://www.enpa.eu)



**EMMA – European Magazine Media Association**

[www.magazinemedi.eu](http://www.magazinemedi.eu)

**NEWS MEDIA EUROPE**

**NME – News Media Europe**

[www.newsmediaeurope.eu](http://www.newsmediaeurope.eu)