

## Proposed AMENDMENTS for Article 11, 28 August 2018

The following representatives of the library and research communities support these amendments: COAR, EBLIDA, EIFL, EUA, IFLA, LIBER, and SPARC Europe and urge for literal inclusion.

### I) Amendment 52, Article 11, paragraph 1, 2016/0280(COD)

#### *Text proposed by the Commission*

(1) Member States shall provide publishers of press publications with *the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC* for the digital use of their press publications.

#### *Amendment*

(1) Member States shall provide publishers of press publications with *a presumption of representation of authors of literary works contained in those publications and the legal capacity to sue in their own name when defending the rights of such authors* for the digital use of their press publications.

### II) Furthermore, we request that the following wording be used as **specified in the Consolidated Presidency compromise proposal, 13842/17, 30 Oct 2017**

*“1. Member States shall provide that, in the absence of proof to the contrary, the publisher of a press publication shall be regarded as the person entitled to conclude licences and to seek application of the measures, procedures and remedies referred to in Directive 2004/48/EC and Article 8 of Directive 2001/29/EC in respect of the rights provided for in Article 2 and 3(2) of Directive 2001/29/EC concerning the digital use of the works and other subject-matter incorporated in such a press publication, provided that the name of the publisher appears on the publication.”*

*2. The presumption provided for in paragraph 1 shall not affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject-matter incorporated in a press publication. The presumption may not be invoked against the authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently from the press publication in which they are incorporated.”*

## JUSTIFICATIONS

The coalition does not support the introduction of a new neighbouring right for press publishers in Art 11 as it poses a threat to an informed and literate society by limiting access to our shared record and memory of past events. However, we see a compromise in the Comodini proposal where a new presumption of representation is suggested. This would help press publishers enforce rights on their own terms, giving them greater bargaining power. This compromise would offer a better solution to a new blanket neighbouring right for press publishers in all Member States, which many find unfounded, too restrictive and unworkable.

It should be noted that it is essential to continue to protect the rights of authors and rightholders in this presumption right. Furthermore, it is essential for authors and other rightholders to be protected when seeking to further utilise their work independently of the press publication where their work is published; in academia in particular, this is critical to the

wide dissemination of research.

**III) Amendment 59, Article 2, paragraph 1, point 4,  
Report A8-0245/2018, (4)(COM(2016)0593 – C8-0383/2016 – 2016/0280(COD))**

*Text proposed by the Commission*

(4) ‘press publication’ means a fixation of a collection of literary works of a journalistic nature, which may also comprise other works or subject-matter and constitutes an individual item within a periodical or regularly-updated publication under a single title, such as a newspaper or a general or special interest magazine, having the purpose of providing information related to news or other topics and published in any media under the initiative, editorial responsibility and control of a service provider.

*Amendment*

(4) ‘press publication’ means a fixation *by publishers or news agencies* of a collection of literary works of a journalistic nature, which may also comprise other works or subject-matter and constitutes an individual item within a periodical or regularly-updated publication under a single title, such as a newspaper or a general or special interest magazine, having the purpose of providing information related to news or other topics and published in any media under the initiative, editorial responsibility and control of a service provider. ***Periodicals which are published for scientific or academic purposes, such as scientific journals, shall not be covered by this definition;***

## JUSTIFICATIONS

With the current definition of Art 2(4) there is too much room for interpretation on what a press publisher is and we therefore urge you to make sure that the text explicitly excludes academic and scientific publishing from the scope. This is important for two key reasons:

1. Article 11 helps enable press publishers to monetize. The **financial incentives and models** behind academic publications differ from those of newspapers. Academic publications are more often than not the **results of publicly funded research**. The reputation of scientific publications rests largely on their being accessible and citable; the greater the number of citations - the greater the impact and thus the reputation of the journal.  
Furthermore, unlike newspapers, academic publications do not rely on advertisements for their revenue, their business model is rather based on **subscriptions**.
2. **Open Science** is increasingly accepted by governments and industry as a means not only to accelerate innovation, but also to **ensure faster access to information for researchers, industry and citizens alike**. Europe has been instrumental in providing increased open access to research through policy development at the EC as part of FP7 and Horizon 2020. The EC’s policy on open access to scientific information includes aiming to “optimise the impact of publicly-funded scientific research” and facilitates “access to results (and) encourages the re-use of research outputs and supports Open Science”. Moreover in 2016 at the Competitiveness Council, all of Europe’s ministers of science, innovation, trade and industry committed to open access to scientific publications as the default option for publicly funded research results by 2020.

To support these goals and objectives, explicitly excluding academic and scientific publications from the definition of press publication would be consistent with established policies of the European Union on academic and scientific publishing and help implement European Union goals more rapidly.

**In conclusion**

We support the presumption of representation since it provides us with more legal certainty while providing appropriate protection for publishers. No new rules aimed at strengthening press publishers should inhibit access to scientific publications. Thus it is vital to explicitly exclude academic publications from the definition of press publications -- to guarantee that access to European research won't be compromised. This will ensure the continuity of EU policies already in place and will establish legal certainties for open access publishers and platforms that distribute and contribute to the discovery of European research.

Undersigned by

COAR, EBLIDA, EIFL, EUA, IFLA, LIBER, and SPARC Europe