



Article 11 – Press Publishers’ Rights

23 October 2018

Headline

The Directive should at a minimum clarify that cultural heritage, research and education institutions can use snippets of news articles for non-commercial purposes without additional payments. Our ideal outcome remains avoiding the creation of new rights, which create complexity, when a presumption of representation would do the job.

Detail

Newspapers and other press publications are an essential resource for education and research, both contemporary and historical. Snippets, notably titles, can support work to develop media and information literacy (a vital measure to counter fake news), are commonly used in text and data mining activities, and of course are the basis of quotation and critique.

Moreover, they are necessary for core library activities such as indexing, referencing and the creation of bibliographies. These are all activities which support public interest objectives, without causing any unjustifiable prejudice to the interests of press publishers.

The final version of the Directive should therefore make it clear that the non-commercial activities of cultural heritage, education and research institutions are not covered by this Directive. In line with the clearly-stated position of the Commission, Council and Parliament, we urge the exclusion of scientific publications from the scope of this right, given the highly different market model at work and the damage this would do to European research.

Legend:

Parliament Amendment

Council Amendment

Parliament and Council Amendment

New Text

COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION	COMMENTS
Article 2(4)				
<p>'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.</p>	<p>'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;</p>	<p>'press publication' means a fixation of a collection composed mainly of literary works of a journalistic nature, which:</p> <p><i>[remaining part of this paragraph was split up in points (a) to (d) - see following rows 118-121]</i></p>	<p>(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;</p>	<p>We encourage the adoption of this Parliament amendment since the definition of press publication explicitly excludes academic periodicals. This will help prevent limitations on access to and visibility of research across Europe. It is also in line with thereby supporting Open Access and Open Science policy such as Horizon 2020, Horizon Europe, the 2016 open access to public research commitments made by all nations at the Competitiveness Council.</p>

COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION	COMMENTS
Article 11(1)				
<p>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.</p>	<p>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 so that they may obtain fair and proportionate remuneration for the digital use of their press publications by information society service providers.</p>	<p>Member States shall provide publishers of press publications established in a Member State with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the digital online use of their press publications by information society service providers.</p> <p><u>The rights referred to in the first subparagraph shall not apply in respect of uses of insubstantial parts of a press publication. Member States shall be free to determine the insubstantial nature of parts of press publications taking into account whether these parts are the expression of the intellectual creation of their authors, or whether these parts are individual words or very short excerpts, or both criteria.</u></p>	<p>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 online use of their press publications by search engines and news aggregators.</p> <p><u>The rights referred to in the first subparagraph shall not apply in respect of uses of insubstantial parts of a press publication. Member States shall be free to determine the insubstantial nature of parts of press publications taking into account whether these parts are the expression of the intellectual creation of their authors, or whether these parts are individual words or very short excerpts, or both criteria.</u></p>	<p>We support the Council's text, which both excludes offline digital uses, and ensures that rights will not apply in the case of insubstantial parts of publications, which would not be, in any case, subject to copyright. However, we request the replacement of the term "<i>information society service providers</i>" with "search engines and news aggregators" to avoid ambiguity and to limit the scope of the article to those for whom the provision is intended.</p>

COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	SUGGESTIONS	COMMISSION
Article 11(1a)				Comment
	<i>1a. The rights referred to in paragraph 1 shall not prevent legitimate private and non-commercial use of press publications by individual users.</i>		1a. The rights referred to in paragraph 1 shall not prevent legitimate private and non-commercial use of press publications by individual users, or by cultural heritage, education or research institutions.	We support the Parliament's clarification that private and non-commercial uses by individuals are not covered by this provision, and suggest offering further clarification by exempting cultural heritage, education and research bodies, given their use of news content to achieve public interest missions.
Article 11(2)				
2. The rights referred to in paragraph 1 shall leave intact and shall in no way 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. Such rights may not be invoked against those 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	2. The rights referred to in paragraph 1 shall leave intact and shall in no way 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. Such rights may not be invoked against those 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	2. The rights referred to in paragraph 1 shall leave intact and shall in no way 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. Such The rights referred to in paragraph 1 may not be invoked against those authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently	2. The rights referred to in paragraph 1 shall leave intact and shall in no way 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 rights referred to in paragraph 1 may not be invoked against those 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	We believe that the Parliament's amendment offers further safeguards that ensure the respect of the wishes of original creators of works, as well as of the public domain.

which they are incorporated.	which they are incorporated.	from the press publication in which they are incorporated.	press publication in which they are incorporated. When a work or other subject-matter is incorporated in a press publication on the basis of a non-exclusive licence, the rights referred to in paragraph 1 may not be invoked to prohibit the use by other authorised users. The rights referred to in paragraph 1 may not be invoked to prohibit the use of works or other subject-matter whose protection has expired.	
COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION	COMMENTS
Article 11(2a)				
	<i>2a. The rights referred to in paragraph 1 shall not extend to mere hyperlinks which are accompanied by individual words.</i>		2a. The rights referred to in paragraph 1 shall not extend to mere hyperlinks which are accompanied by insubstantial parts of press publications, as defined in paragraph 1.	We welcome the clear exclusion of hyperlinking but urge reference back to the Council's text on insubstantial parts in paragraph 1 (referring to the exclusion of such parts, as defined by Member States).

COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION	COMMENTS
Article 11(3)				
3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply <i>mutatis mutandis</i> in respect of the rights referred to in paragraph 1.	3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply <i>mutatis mutandis</i> in respect of the rights referred to in paragraph 1.	3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply <i>mutatis mutandis</i> in respect of the rights referred to in paragraph 1.	3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply <i>mutatis mutandis</i> in respect of the rights referred to in paragraph 1.	
Article 11(4)				
4. The rights referred to in paragraph 1 shall expire 20 years after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date of publication.	4. The rights referred to in paragraph 1 shall expire 20 5 years after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date of publication. <i>The right referred to in paragraph 1 shall not apply with retroactive effect.</i>	4. The rights referred to in paragraph 1 shall expire 20 years 1 year after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date o publication.	4. The rights referred to in paragraph 1 shall expire 1 year after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date of publication. The right referred to in paragraph 1 shall not apply with retroactive effect.	We believe that, in the general interest of teaching and access to information, and given the focus on news aggregators making use of contemporary news, a term of protection of 1 year is enough. We welcome the clarification that the new right shall not have retroactive effect.

COMMISSION PROPOSAL COM(2016)593	EP TEXT P8_TA-PROV(2018)0337 A8-0245/2018	COUNCIL TEXT 9134/18	POSSIBLE COMPROMISE SOLUTION	COMMENTS
Article 11(4a)				
	<i>4a. Member States shall ensure that authors receive an appropriate share of the additional revenues press publishers receive for the use of a press publication by information society service providers</i>		4 a. Member States shall ensure that authors receive an appropriate share of the additional revenues press publishers receive for the use of a press publication by information society service providers search engines and news aggregators.	We welcome measures that ensure that the original creators of works are properly remunerated. The replacement at the end is a consequence of our suggested change from “information society service providers” to “ search engines and news aggregators ” for the reasons indicated above.
Article 11(25)				
		5. Paragraph 1 shall not apply to press publications first published before [entry into force of the Directive].	5. Paragraph 1 shall not apply to press publications first published before [entry into force of the Directive].	We support this, as well as the Parliament amendment to Article 11(4), as it would not be considered fair practice to cover materials retroactively, and of course it is no longer possible to incentivise creativity that has already happened.