Section 1: 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."

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.

1. On which grounds do you obtain rights for the purposes of publishing your press or other print content and licensing it?

N/A
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?

N/A

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?

N/A

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)?

Answer: Strong negative impact – A new neighbouring right would likely damage the role of publishers, damaging business and reducing impact, as products become less affordable and more restricted. Publishers’ interests are already protected by robust copyright laws.

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)?

Answer: Strong negative impact – A new neighbouring right would not benefit authors. Authors, and particularly researchers, are already bound to publishers by contractual agreements. For any functioning culture, and in accordance with the Berne Convention, balances in society between protective interests of rights holders and public interest copying activities (the exceptions to copyright), need to be safeguarded. For example, overwhelming evidence to demonstrate that balanced copyright laws, which are fit for the digital age, support innovation and growth, was collected following the Hargreaves Review of Intellectual Property in the UK and supported the argument for reforms to UK copyright law in 2014. A proposed new neighbouring right – the detail of which is worryingly absent, will likely undermine this balance in the UK and across Europe, and depending upon how it is manifested, will increase costs and disincentives for research. For example, how would this new proposal work for text and data mining? How would the proposal impact on exceptions to copyright which are protected from being undermined by a non-contractual term provision (such as we have in the UK)? Without an EU impact assessment, this proposal could mean there is a strong likelihood that the UK and EU will be out of synch with our research colleagues across the world, resulting in a Digital Single Market failure as the block of EU countries will be on the back foot in terms of research and subsequent innovation.

6. Would the creation of a neighbouring right limited to the press publishers have an impact on authors in the publishing sector (as above)?
Answer: Strong negative impact – This would introduce worrying and counter-productive fragmentation, which is anti Digital Single Market.

7. Would the creation of a new neighbouring right covering publishers in all sectors have an impact on rightholders other than authors in the publishing sector?

Answer: Strong negative impact – The increased complexity that this proposal will likely bring will be bad for consumers, researchers and others in the Creative Industries, including filmmakers, games creators and publishers themselves.

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?

Answer: Strong negative impact - as above

9. Would the creation of a new neighbouring right covering publishers in all sectors have an impact on researchers and educational or research institutions?

Answer: Strong negative impact – Academic institutions, as well as library and information services, already spend hundreds of millions of pounds every year on access to licensed content (for example, in 2014, IFLA reported that US library spending on purchasing content was projected as $25.4 billion). Much of this spend is on licensed digital content, as well as paying in advance to publishers for the ability to publish research immediately under Open Access principles. Further costs covering publishers cannot be absorbed by the sector and will invariably mean that cost savings will need to be made, which may include reductions in the amount of licensed content which is currently bought. This will mean that, in effect, publishers will not get any extra money, and the quality of research that is carried out across Europe will be reduced. Any proposed changes will therefore have an immensely negative impact for all stakeholders and render useless any exceptions to copyright. Moreover, it is extremely unclear how the proposed “snippet tax” will work with Open Access. In Spain, where the right has been created, a payment for use of the work is required, regardless of whether the work is licensed under an open licence, such as a Creative Commons licence, or not. Brought in across Europe, this provision would undermine the principle of Open Access and render EU research organisations impotent..

10. Would the creation of a neighbouring right limited to press publishers have an impact on researchers and educational or research institutions?

Answer: Strong negative impact – as above

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)?
Answer: Strong negative impact – This proposed provision will undoubtedly be detrimental to a long tail of stakeholders, which flies in the face of the very principles and purpose of the internet. Creating new business models out of links (which may or may not be to content that has already been paid for) will undermine access to information and mean that stakeholders along the chain (including SME’s, start ups, developers etc) will need to absorb the extra costs. The only immediate beneficiaries of such a levy will be publishers. However, even this benefit is likely to be extremely minimal and, over the longer term the negative impacts of reduced engagement and content access will undermine publishers’ existing revenue streams. The proposed levy, even for publishers, is not sustainable.

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)?

Answer: Strong negative impact – We query how this new provision will work if it is restricted to press publishers? As an alternative to this proposal, LACA would like to see press publishers reconsidering and evolving their business models.

13. Would the creation of new neighbouring right covering publishers in all sectors have an impact on consumers/end-users/EU citizens?

Answer: Strong negative impact – It is unclear how such a proposal will work in practice. It can only be assumed that such a proposed change will alienate consumers further and render the very concept of copyright anachronistic to today’s digital natives. Furthermore, the fragile balance between copyright exceptions and rights holders’ protective interests will be juggernauted into oblivion by such a proposal, reinforcing the message that those with money and influence can shape copyright laws into absolute monopoly rights, with knock-on detrimental effects for well-functioning and vital structures, such as the internet, which relies on freely-available links between content.

14. Would the creation of new neighbouring right limited to press publishers have an impact on consumers/end-users/EU citizens?

Answer: Strong negative impact – see above

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?

Answer: See our response to question 9.

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?
Answer: Yes. German and Spanish copyright laws should be repealed to remove such a provision from their legislative frameworks. LACA has made a 10 point case for changes to copyright laws in its London Manifesto (www.cilip.org.uk/londonmanifesto), which includes calls for an Open Norm Exception.

Section 2: 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'). 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.”

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.

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?

N/A

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?

N/A

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?

N/A
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?

N/A

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?

Answer: Strong negative impact. Public art should remain public. The UK’s exception should be harmonised across Europe to ensure that work meant for public engagement remains so.

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?

Answer: Strong positive impact

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?

Answer: No