

TO: H.E. Ambassador Cosmin Boiangiu, Vice-President of the European Commission Andrus Ansip,  
Commissioner Mariya Gabriel and MEP Axel Voss

CC: European Parliament negotiating team, European Commission copyright Unit

Monday, 11 February 2019

**RE: Waivability of Article 11 of the proposed Copyright Directive**

Dear Vice-President Andrus Ansip,  
Dear Commissioner Mariya Gabriel,  
Dear Ambassador Cosmin Boiangiu,  
Dear MEP Axel Voss,

We, the undersigned represent associations of small and medium sized publishers, media companies and digital native outlets, committed to producing high quality news and relying on online channels to reach and grow our audiences and daily provide more than 1.37 million stories to 140 million readers.

Although a substantial number of big press publishers are in favour of the introduction of a publishers' right, we are deeply concerned with the **detrimental effects that it will have for local, regional and innovative media publishers and media pluralism in Europe.**

In order to introduce the appropriate safeguards to ensure that all-sized media publishers can continue to coexist in the EU, we call on policy-makers to consider the following recommendations:

**I. Waivability**

**Small and local publishers are concerned** with the latest wording endorsed by the EU Ambassadors Friday in **Recital 43b** of the 4-column text (line 90).

Specifically, the additions and deletions to the previous version of the text (i.e. "*...including through **non-exclusive free licenses for the benefit of any users, when they consider it appropriate***") introduce a level of uncertainty which is not sustainable for us.

More importantly, it opens the door to Member States putting limits on the free licenses that rightsholders can grant. In other terms, as long as Member States permit "open licenses" they can argue that they are in compliance with the Copyright Directive, **while preventing publishers from granting free licenses to news aggregators, search engines and apps that bring valuable web traffic to our websites.**

While we understand that Recital 43b is a horizontal provision, **we would prefer an explicit reference to the exclusive nature of the publisher's right and to the ability of press publishers to license their content for free.**

We believe it is important to see reflected in a recital, that the detrimental consequences of the Spanish model should not be repeated at EU level. We recall that the “AEDE fee” in Spain caused small publishers to lose as much as 15% of their web traffic and lose advertising revenues estimated at around € 9-18 million annually.<sup>1</sup> **We are concerned that the current wording of Recital 43b may lead to the introduction of an unwaivable publisher’s right in some member states or even at the EU level.**

We therefore urge the EU co-legislators to opt for one of the following options:

- Introduce a new paragraph on Recital 34 (in line with the proposed text of the Austrian Presidency). Specifically:
  - ***“The rights granted to the publishers of press publications under this Directive are exclusive in nature and allow publishers of press publications to authorise or prohibit the uses of their press publications against the payment of remuneration or for free, for instance through free licences. The parties should remain free to negotiate the terms of use of the press publications”.***
- Revert back to the previous wording of Recital 43b:
  - (43b) Nothing in this Directive should be interpreted as preventing holders of exclusive rights under Union copyright law from authorising the use of their works or other subject-matter for free, including through ~~non-exclusive~~ free licences ~~for the benefit of any users~~ , ***when they consider it appropriate.***

## II. “Insubstantial parts” of a press publication to be excluded

Data shows that when a hyperlink is accompanied by enough context (image, headline etc.), users are more inclined to click and visit a specific webpage. An overwhelming majority of readers of well-known media outlets such as Der Spiegel or Bildt visit directly the webpages of these newspapers (between 70 and 80%). This is not the case for less well known or local press publishers who rely on the web traffic of online services. News aggregators, search engines and apps make our stories heard by the public. They are our allies in generating more revenues through ads or subscriptions.

We therefore urge the EU Institutions to:

- Maintain the exclusion of “mere facts” from the scope of the Directive, as currently proposed in recital 34;

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<sup>1</sup> “Impact on competition and on Fee Market of the Google Tax or AEDE fee” 2017, Nera Consulting [https://www.aepp.com/pdf/Informe\\_NERA\\_para\\_AEPP\\_\(INGLES\).pdf](https://www.aepp.com/pdf/Informe_NERA_para_AEPP_(INGLES).pdf)

- Exclude headlines and short previews from the scope of the new publisher’s right in order to preserve our business model. Specifically:
  - **Recital 34a:** (...) “Therefore, it is appropriate to provide that the use of individual words, very short extracts, **headlines or very short previews** of press publications should not fall within the scope of the rights provided for in this Directive”.
  - **Article 11 (1):** “The rights referred to in the first subparagraph shall not apply in respect of uses of individual words, very short extracts, **headlines or very short previews** of a press publication”.

For these reasons, small and local publishers are calling on the European institutions to strike a fair balance that will satisfy all stakeholders and ensure media pluralism in Europe.

Yours sincerely,

Carlos Astiz, Chairman and Spokesperson of the European Innovative Media Publishers



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[European Innovative Media Publishers](#) – European

[Association of Publishers of Periodical Publications \(AEEPP\)](#) – Spain

[Associazione Nazionale Stampa Online \(ANSO\)](#) – Italy

[300polityka](#) – Poland

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