

## PROPOSAL FOR A DIRECTIVE ON COPYRIGHT IN THE DIGITAL SINGLE MARKET

### Draft compromise amendments on Article 11 and corresponding recitals

#### ARTICLE 11

##### Article 11

##### Protection of press publications concerning digital uses

1. Member States shall provide publishers of press publications *and news agencies* with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC *as well as in Articles 3, 9 of Directive 2006/115/EC* for the digital use of their press publications *and an inalienable right to obtain an fair and proportionate remuneration for such uses.*

*1a. The rights referred to in paragraph 1 shall not prevent legitimate private and non-commercial use of press publications by individual users.*

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 which they are incorporated.

*2a. The rights referred to in paragraph 1 shall not extend to acts of hyperlinking which do not constitute acts of communication to the public.*

3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply mutatis mutandis in respect of the rights referred to in paragraph 1.

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.

*4a. Member States shall ensure that authors, in respect of the works incorporated in a press publication, receive an appropriate share of the additional revenues press publishers receive for the secondary use of a press publication by information society service providers in respect to the rights provided for in paragraph 1.*

## **RECITALS**

- (31) A free and pluralist press is essential to ensure quality journalism and citizens' access to information. It provides a fundamental contribution to public debate and the proper functioning of a democratic society. ***In addition, Europe is threatened by the rise of misinformation which is spread in the digital world. As this misinformation appears to be structured and is in general initiated on purpose, this endangers the democratic and political system of the Member States. The increasing imbalance between the powerful platforms and the press publishers or news agencies has already led to a remarkable regression of the media landscape on regional level. In the transition from print to digital, publishers and news agencies*** of press publications are facing problems in licensing the online use of their publications and recouping their investments. In the absence of recognition of publishers ***and news agencies*** of press publications as rightholders, licensing and enforcement in the digital environment is often complex and inefficient.
- (32) The organisational and financial contribution of publishers ***and news agencies*** in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry ***and thereby to guarantee the availability of liable information***. It is therefore necessary to provide at Union level a harmonised legal protection for press publications in respect of digital uses. Such protection should be effectively guaranteed through the introduction, in Union law, of rights related to copyright for the reproduction and making available to the public of press publications in respect of digital uses. ***The digital use of press publications should be obligatory remunerated. Private uses should be excluded from this reference.***
- (33) For the purposes of this Directive, it is necessary to define the concept of press publication in a way that embraces only journalistic publications, published by a service provider, periodically or regularly updated in any media, for the purpose of informing or entertaining. Such publications would include, for instance, daily newspapers, weekly or monthly magazines of general or special interest and news websites. Periodical publications which are published for scientific or academic purposes, such as scientific journals, should not be covered by the protection granted to press publications under this Directive. This protection does not extend to acts of hyperlinking which do not constitute communication to the public ***according to the judgements of the Court of Justice of the European Union (CJEU), notably hyperlinking to content which is available in the internet to the public with the consent of the rightholder, and hyperlinking to content which is available on another website without the consent of the rightholder for non commercial purposes by a person who did not know or could not reasonably have known the illegal nature of the publication of those works on that other website (CJEU Judgement of September 8, 2016 in Case C-160/15).***
- (34) The rights granted to the publishers ***and news agencies*** of press publications under this Directive should have the same scope as the rights of reproduction and making

available to the public provided for in Directive 2001/29/EC, insofar as digital uses are concerned. They should also be subject to the same provisions on exceptions and limitations as those applicable to the rights provided for in Directive 2001/29/EC including the exception on quotation for purposes such as criticism or review laid down in Article 5(3)(d) of that Directive.

- (35) The protection granted to publishers **and news agencies** of press publications under this Directive should not affect the rights of the authors and other rightholders in the works and other subject-matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers **and news agencies** of press publications should not be able to invoke the protection granted to them against authors and other rightholders. This is without prejudice to contractual arrangements concluded between the publishers **and news agencies** of press publications, on the one side, and authors and other rightholders, on the other side. ***Notwithstanding the fact that authors of the works incorporated in a press publication receive an appropriate reward for the use of their works on the basis of the terms for license of their work to the press publisher and news agencies, authors whose work is incorporated in a press publication shall be entitled to an appropriate share of the new additional revenues press publishers and news agencies receive for certain types of secondary use of their press publications by information society service providers in respect to the rights provided for in Article 11 paragraph 1. The amount of the compensation attributed to the authors shall take into account the specific industry licensing standards regarding works incorporated in a press publication which are accepted as appropriate in the respective member State; and the compensation attributed to authors shall not affect the license terms agreed between the author and the press publisher or news agencies for the use of the author's article by the press publisher or news agencies.***