A neighbouring right for press publishers - the wrong solution to a serious problem

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There are just three days to go until the European Commission’s public consultation on “the role of publishers in the copyright value chain” closes and those who have not yet responded to the consultation should consider doing so. Although the Commission’s explanatory statement clearly states this, it is something that is not covered in the consultation and therefore actively harms publishers’ ability to find and monetise audiences for their products.

It is likely to form an actual impediment to innovation on the part of both publishers and aggregation platforms, therefore actively harming publishers’ ability to find and monetise audiences for their products. Moreover, if a neighbouring right is ever implemented, it is likely to form an actual impediment to innovation on the part of both publishers and aggregation platforms, therefore actively harming publishers’ ability to find and monetise audiences for their products.

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It is not always the case, however, that the commercial viability of the press can be restored at the medium to long term; it’s current challenges are related to secular trends, such as the abundant availability of very low “basic” news, and changes in consumer preferences, such as unbundling of digital content and reliance on pay for “premium” content such as quality journalism. Given that the survival of independent, quality journalism and public scrutiny of government and business are at stake, and that the issues facing the press transcend national borders, it makes sense to investigate whether anything useful can be done at the EU level.

Mysteriously, however, the European Commission is not soliciting input on what is happening in the press sector; what might be causing it, what is at stake and what kinds of measures might be feasible. Rather, it is consulting on a very specific measure, the introduction of a neighbouring right for press publishers. The consultation does not answer why or might be justified or alleviating the sector’s problems, nor even the basics of what such a right might entail (e.g. who gets a right, what does it protect against, is it a prohibition or fund, or other measures that reflect the significant value to a democratic society of having a vibrant, free and independent press.

Implementation of a neighbouring right would bring significant uncertainty, costs and risks, not just to authors and publishers, but also to the entire group of platforms, intermediaries and other service providers that play a role in facilitating the production, discovery, and consumption of press content. Larger, existing broad-based platforms will be incentivised to reduce or remove services features that might trigger the new neighbouring right. New entrants are likely to be discouraged, particularly new entrants who want specifically to serve the market for finding and consuming press content. Depending on the scope of any neighbouring right, it could also result in the removal of local services, as well as providers of services that play a role in facilitating the production, discovery, and consumption of press content. The implementation of a neighbouring right could also have a negative impact on the competitiveness of press services providers (limiting the free flow of information and investment in - and availability of - innovative digital services, as well as the extent to which open platforms are public or private employers’ preferred angle.

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There is no doubt that press publishers are facing an enormous, if not existential threat; print advertising is unlikely to be a significant part of the solution. Moreover, printing is the single most important area of the copyright value chain” closes and those who have not yet responded to the consultation should consider doing so. Although the Commission’s explanatory statement hardly covers this fact, it is something that is not covered in the consultation and therefore actively harms publishers’ ability to find and monetise audiences for their products.

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There is no doubt that press publishers are facing an enormous, if not existential threat: print advertising and subscription revenues are drying up much more quickly than digital revenues are replacing them, journals are being closed or closed. The journalists that remain are increasingly outnumbered by communications professionals spinning their public or private employers’ preferred angle.

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