

# 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 hardly makes this clear, it is considering a legislative initiative that could have a far-reaching impact, not just on press publishers, but on the platforms, services and users that press publishers desperately need in order to make a living in the age of digital abundance.

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. Journalists are being fired as newspapers and magazines - both national and regional - are being downsized or closed. The journalists that remain are increasingly outnumbered by communications professionals spinning their public or private employers' preferred angle.

It is not obvious to me - nor, it seems, to many publishers - how the commercial viability of the press can be restored in the medium to long term. Its current challenges are related to secular trends, such as the abundant availability of low-

cost “basic” news; and changes in consumer preferences, such as unbundling of digital content and reluctance to 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 explain why it might be helpful in 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 remuneration right, is it individually or collectively exercised, is it waivable or transferable, etc.). Rather, it is asking what the impact of this undefined neighbouring right would be on publishers, authors, researchers, consumers and intermediaries.

In fact, there is precious little indication that the challenges currently being faced by press publishers are due to the lack of sufficiently broad intellectual property rights. And if insufficient IP rights are not a significant part of the problem, increasing IP rights is unlikely to be a significant part of the solution. At a recent conference in Amsterdam, speakers from publishers, academia, politics, civil society and the internet sector were in near-total agreement that a neighbouring right for publishers would solve nothing at best. It would seem more fruitful to investigate other ways in which the position and prospects of publishers of quality journalism can be increased, e.g. via subsidies, tax facilities, the partial repurposing of public broadcasting funds, or other measures that reflect the significant value to a democratic society of having a vigorous, 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 eclectic group of platforms, intermediaries and other service providers that play a role in facilitating the publication, discovery and consumption of press content. Larger, existing broad-based platforms will be incentivised to reduce or remove service 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, moreover, it could also negatively impact providers of social networks as well as providers of access, caching and hosting services. Increasing costs, complexity and uncertainty for such a broad category of service providers threatens the free flow of information and investment in – and availability of – innovative digital services, as well as the commercial prospects for publishers and authors.

The commercial viability of press publishers is a very important issue, that deserves serious attention and a willingness to investigate all possible solutions. However, by focusing the discussion, right at the outset, on a specific and probably irrelevant IP measure, the European Commission runs the risk of distracting minds from discovering and implementing new business models for the age of digital abundance, including accepting and embracing unbundling and new consumer preferences. 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.