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 case, it is considered by 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 survive in the age of digital abundance.

It is not always the case – nor, it seems, in many publishers – that the commercial viability of the press can be restored in the medium to long term. It’s current challenges are related to structural forces, such as the abundance of so-called “free” news, and changes in consumer preferences, such as an abandonment of digital content and readership in favor of paper. But what is clear is 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 collecting 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 or detracting the sector’s problems, or even the basis of what such a right might entail, e.g. who gets a right, what does it protect against, is it a prohibition or an authorization, etc. (and how the right can be exercised, individually or collectively, are waivable or transferable, etc.). Rather, it is asking what the impact of this particular 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 state of sufficiently broad intellectual property rights. It is a difficult IP rights are not a significant part of the problem. Acquiring IP rights is virtually to be a significant part of the solution. At a recent conference in Amsterdam, a panel of publishers, academics, politicians, civil society and the interest sector (even in such an agreement that a neighbouring right for publishers would close selling of books, it would mean more fruitful to investigate other, in which the positive position 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 entire 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, it might also require implementation of social networks as well as providers of services that host aggregations and summaries of press content. Finally, the introduction of a neighbouring right would introduce the new free flow of information and innovation is - and availability of innovative digital services, as well as the commercial and business opportunities for publishers and authors.

The commercial viability of press publishers is a very important issue, that deserves serious attention and a willingness to investigate possible solutions. However, by focusing the discussion right at the outset, on a specific and probably irrelevant of measures, the European Commission has closed the door of deploying tools from the intellectual property system, to solve the real problems that arise from the challenges that press publishers are facing, including declining advertising and new consumer preferences. Moreover, if a neighbouring right is implemented, it is likely to form an actual impediment to innovation on the part of both publishers and aggregation platforms, thereby actually harming publishers’ ability to find and monetise audiences for their products.