

Public consultation on the role of publishers in the copyright value chain and on the 'panorama exception'

Fields marked with * are mandatory.

General information about you

The views expressed in this public consultation document may not be interpreted as stating an official position of the European Commission. All definitions provided in this document are strictly for the purposes of this public consultation and are without prejudice to differing definitions the Commission may use under current or future EU law, including any revision of the definitions by the Commission concerning the same subject matters.

Fields marked with * are mandatory.

*

I'm responding as:

- An individual in my personal capacity
- A representative of an organisation/company/institution

*Please provide your first name:

Susan

*Please provide your last name:

Reilly

*

Please indicate your preference for the publication of your response on the Commission's website:

- Under the name given: I consent to publication of all information in my contribution and I declare that none of it is subject to copyright restrictions that prevent publication.
- Anonymously: I consent to publication of all information in my contribution and I declare that none of it is subject to copyright restrictions that prevent publication.
- Please keep my contribution confidential. (it will not be published, but will be used internally within the Commission)

(Please note that regardless the option chosen, your contribution may be subject to a request for access to documents under [Regulation 1049/2001 on public access to European Parliament, Council and Commission documents](#). In this case the request will be assessed against the conditions set out in the Regulation and in accordance with applicable [data protection rules](#).)

*Please enter the name of your institution/organisation/business.

LIBER, the Association of European Research Libraries

What is your institution/organisation/business website, etc.?

www.libereurope.eu

*What is the primary place of establishment of the entity you represent?

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Italy
- Ireland
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other

*

My institution/organisation/business operates in: *(Multiple selections possible)*

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Italy
- Ireland
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other

*

If other, please specify

Georgia, Armenia, Russia, Turkey

*

Is your organisation registered in the [Transparency Register](#) of the European Commission and the European Parliament?

- Yes
 No

*

Please indicate your organisation's registration number in the Transparency Register.

24973952940-04

The role of publishers in the copyright value chain

In its Communication Towards a modern, more European copyright framework of 9 December 2015, the Commission has set the objective of achieving a well-functioning market place for copyright, which implies, in particular, "the possibility for right holders to license and be paid for the use of their content, including content distributed online." [1]

Further to the Communication and the related stakeholders' reactions, the Commission wants to gather views as to whether publishers of newspapers, magazines, books and scientific journals are facing problems in the digital environment as a result of the current copyright legal framework with regard notably to their ability to licence and be paid for online uses of their content. This subject was not specifically covered by other public consultations on copyright issues the Commission has carried out over the last years. In particular the Commission wants to consult all stakeholders as regards the impact that a possible change in EU law to grant publishers a new neighbouring right would have on them, on the whole publishing value chain, on consumers/citizens and creative industries. The Commission invites all stakeholders to back up their replies, whenever possible, with market data and other economic evidence. It also wants to gather views as to whether the need (or not) for intervention is different in the press publishing sector as compared to the book/scientific publishing sectors. In doing so, the Commission will ensure the coherence of any possible intervention with other EU policies and in particular its policy on open access to scientific publications. [3]

*

Selection

Do you wish to respond to the questionnaire "The role of publishers in the copyright value chain"?

- Yes *(Please allow for a few moments while questions are loaded below)*
 No

[1] [COM\(2015\)626 final](#).

[2] Neighbouring rights are rights similar to copyright but do not reward an authors' original creation (a work). They reward either the performance of a work (e.g. by a musician, a singer, an actor) or an organisational or financial effort (for example by a producer) which may also include a participation in the creative process. EU law only grants neighbouring rights to performers, film producers, record producers and broadcasting organisations. Rights enjoyed by neighbouring rightholders under EU law generally include (except in specific cases) the rights of reproduction, distribution, and communication to the public/making available.

[3] See Communication [COM\(2012\) 401](#), Towards better access to scientific information: Boosting the benefits of public investments in research, and Recommendation [C\(2012\) 4890](#) on access to and preservation of scientific information.

Category of respondents

*Please choose the category that applies to your organisation and sector.

- Member State
- Public authority
- Library/Cultural heritage institution (or representative thereof)
- Educational or research institution (or representative thereof)
- End user/consumer/citizen (or representative thereof)
- Researcher (or representative thereof)
- Professional photographer (or representative thereof)
- Writer (or representative thereof)
- Journalist (or representative thereof)
- Other author (or representative thereof)
- Collective management organisation (or representative thereof)
- Press publisher (or representative thereof)
- Book publisher (or representative thereof)
- Scientific publisher (or representative thereof)
- Film/audiovisual producer (or representative thereof)
- Broadcaster (or representative thereof)
- Phonogram producer (or representative thereof)
- Performer (or representative thereof)
- Advertising service provider (or representative thereof)
- Content aggregator (e.g. news aggregators, images banks or representative thereof)
- Search engine (or representative thereof)
- Social network (or representative thereof)
- Hosting service provider (or representative thereof)
- Other service provider (or representative thereof)
- Other

Questions

1. On which grounds do you obtain rights for the purposes of publishing your press or other print content and licensing it? (*Multiple selections possible*)

- transfer of rights from authors
- licensing of rights from authors (exclusive or non-exclusive)
- self-standing right under national law (e.g. author of a collective work)
- rights over works created by an employee in the course of employment
- not relevant
- other

Please explain

2. Have you faced problems when licensing online uses of your press or other print content due to the fact that you were licensing or seeking to do so on the basis of rights transferred or licensed to you by authors?

- yes, often
- yes, occasionally
- hardly ever
- never
- no opinion
- not relevant

If so, please explain what problems and provide examples indicating in particular the Member State, the uses you were licensing, the type of work and licensee.

3. Have you faced problems enforcing rights related to press or other print content online due to the fact that you were taking action or seeking to do so on the basis of rights transferred or licenced to you by authors?

- yes, often
- yes, occasionally
- hardly ever
- never
- no opinion
- not relevant

If so, please explain what problems and provide examples indicating in particular the Member State, the type of use and the alleged infringement to your rights.

4. What would be the impact on publishers of the creation of a new neighbouring right in EU law (in particular on their ability to license and protect their content from infringements and to receive compensation for uses made under an exception)?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

This expansion of copyright would have a very negative impact on publishers, especially on smaller ones. Ability for aggregating websites to link and share content is important in generating traffic and also benefits publisher. Charging a fee for this sort of online sharing will not only harm existing publishers, it will stifle innovation in the publishing industry by creating a barrier for start-ups. The content of independent and new entrants to the market, will be exposed to less traffic, making it harder for smaller publishers to compete and further entrenching the existing large players.

There is already evidence of a strong negative impact on publishers in Belgium, Germany and Spain from ancillary copyright (these are the countries that introduced such a right). The damage is worst in Spain, due to the lack of flexibility in the law. The loss for the news publishing industry in Spain, suffered predominantly by smaller, free or online publishers, is estimated to reach EUR 10 million a year, as evidenced in the NERA report.

A basic principle in public legislation should be that the law is understandable, coherent, accessible and legitimate in the eyes of the public. Adding another layer to the already complex network that constitutes copyright and database rights in the European copyright acquis should be considered very carefully.

An expansion of the scope of copyright in the way proposed would have a strong impact on the creative and online industries who wish to be able to reuse small amounts of information such as an url. The dampening effect it will have on the internet economy, we believe, will far outweigh any benefit it will bring. In Germany, a country which experimented with ancillary copyright, we can already see a large loss in advertising revenue for newspaper companies, who then subsequently allowed all search engines to freely index their content.

At present, press publishers benefit from aggregating websites or individuals being able to freely link or share content without the concern they may be breaching a related right, This also drives revenue-generating traffic to

their websites. Introducing a fee on the grounds of a new legislative related right for online sharing will hit small publishers and non-for-profit university publishers particularly hard. These groups do not have the margin for licensing such fees, nor the legal advice required to address the potential related right, within their market models. Small companies are also more likely to suffer from the decline in traffic to their websites compared to bigger players. It would create an additional obstacle for new innovative potential start-up companies in the publishing sector. As a result the major publishers might gain something intangible but smaller players would face a much greater financial and administrative burden. In the long run, this would prevent new entrants to the market and dampen EU competition.

The examples of ancillary copyright laws already in existence in Europe such as in Belgium, Germany and particularly in Spain, provide examples of the negative impact of a related right of this sort on the publishing sector. A NERA report from 2015 estimated the losses for the news publishing industry in Spain alone at almost 10 million Euro per year, most of which suffered by smaller, free or online publishers.

It should also be pointed out that the disproportionately negative impact ancillary copyright would have on smaller publishers is highlighted by the fact that several publishing organisations across Europe have released statements against it.

What effect such a new right would have on other industries is also unclear. LIBER is concerned about the law of unintended consequences. The effect on the many different organisations that rely on urls to gather intelligence ranging from libraries to start-ups and SMEs needs to be carefully thought through.

5. Would the creation of a new neighbouring right covering publishers in all sectors have an impact on authors in the publishing sector such as journalists, writers, photographers, researchers (in particular on authors' contractual relationship with publishers, remuneration and the compensation they may be receiving for uses made under an exception)?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

The main concern when introducing a new neighbouring right for publishers should be the power balance between authors and publishers. The recording industry experience serve as a warning about the potential pitfalls of tilting this balance from authors' rights to intermediaries' rights. It should be obvious that if publishers rights over works created by others increase, then so does their influence over the authors. This legal construction could enable a publisher to refuse the request from an author to publish his or her work in a form other than the initial news article, potentially even overriding a contract between the author and the publisher. In the sector of academic publishing, ancillary copyright could be used to prevent the author from publishing in an open access format. Such consequences will have a dampening effect on the open access publishing of academic output which is fundamental to European Union policies on open science and a priority of the Dutch Presidency of the European Union. Chairing the Competitiveness Council, 26-27/05/2016, Sander Dekker, State Secretary of Education, Culture and Science of the Netherlands, made the following statement: "Open Science is a topic which is very dear to our hearts. During the Netherlands presidency, we have aimed at bringing Europe to the forefront of global change and at leading the transition to a new way of doing research and science based on openness, big data and cloud computing. Open Science breaks down the barriers around universities and ensures that society benefits as much as possible from all scientific insights. In that way we maximize the input of researchers, universities and knowledge institutions". In this context, the introduction of any new copyright restrictions would fly in the face of the Open Science agenda.

The dynamic is simple: if publishers get more rights over the work created by others (such as the articles written by journalists or the research published by a researcher), this will create a situation similar to what happened in the music industry where powers were increased for record labels. Publishers would get first right of refusal if a journalist wanted to sell an article outside of a newspaper (for example, in a book) even where the journalist is authorised to do this contractually. It also means that where an author wants to be able to promote his creations online, a publisher can actually stop this from happening. And finally, as has already been shown in Spain where everything must fall under ancillary copyright with a remuneration, authors would no longer be able to share open publications and creative commons content freely. The EU, as in Spain would be creating a situation where the collecting society could prioritise collecting levies for copyright over the will of the author to freely share content. Extending publishers rights in this way therefore runs contrary to the direction that libraries, who are operating in the public interest, believe that an accessible, innovative and modern EU digital single market should be heading in.

6. Would the creation of a neighbouring right limited to the press publishers have an impact on authors in the publishing sector (as above)?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

With this new right press publishers holding copyright from articles published in scientific journals could stop authors to publish that content elsewhere. Furthermore, if content is placed under a Creative Commons or Open Access License, a publisher may hinder the distribution of the work claiming that his neighbouring rights are infringed.

This new right could cause some problems in carrying out text and data mining for research and for data driven journalism. It could also have some negative impact to academic institutions if this new right requires an additional payment to access press publisher databases - as contracts would have to be re-negotiated to reflect the existence of those new rights.

Moreover, given the technical abilities of publishers to protect their content online (DRM-Systems, central web portals etc.) there is no need to introduce new ancillary rights restricting linking and search activities. Market forces are able to regulate the balance between publishers and users.

7. Would the creation of a new neighbouring right covering publishers in all sectors have an impact on rightsholders other than authors in the publishing sector?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

LIBER is concerned that every creator who wishes to create a derivative work, such as a vlog, blog or app would have to clear permission not only from the original rightsholder of the work but also from to publisher. The additional work and transaction costs, not to mention legal knowledge, that such a procedure would necessitate could constitute an effective barrier; damping creation, innovation and small and medium sized businesses (SME's).

8. Would the creation of a neighbouring right limited to the press publishers have an impact on rightholders other than authors in the publishing sector?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

In this context, LIBER would like to emphasise the difficulty in differentiating between press publishers and publishers generally, as shown in Germany where a related right for press publishers has been introduced. Many publishers publish both factual news and creative content. In the research sector works published by a press publisher could be used in crucial research, not least through the potential of new research techniques such as Text- and Data Mining (TDM). An additional layer of rights clearance would constitute an obstacle for scientists and researchers in using material originally published by a press publisher

9. Would the creation of a new neighbouring right covering publishers in all sectors have an impact on researchers and educational or research institutions?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

Such a development would be completely at odds with the way the research and education system works. Even where exceptions for research and education exist, the complexity of defining where and when neighbouring rights could apply in an age where research and education is conducted across borders, through MOOCs, and informally outside of institutions can only result in an extremely negative impact on the provision of education and the efficiency of research.

This could undermine the work of libraries and institutional repositories by creating a potential barrier to making the content produced by their researchers discoverable e.g. by creating openly available metadata records containing links to articles. The ability to quote from books and articles (display snippets) and to link directly to the original source is essential for text and data mining (TDM) and to ensure the transparency and reproducibility of research results. There are already too many legal hurdles in the way of TDM based research. There is a danger here that institutions will also have to seek permission to link to content that their researchers create and/or use, creating a huge cost burden in terms of administration and time at best and shutting down TDM-based research altogether at worst.

There is also the question of how this might affect researchers wishing to make their content open access? Many researchers now retain the copyright to the articles that they publish with journals either because they are publishing in an open access journal or in order to also make copies available in open access repositories. A new neighbouring right covering publishers in all sectors would undermine the rights of the author in this case and the authors intention to make her work available and accessible for all.

10. Would the creation of a neighbouring right limited to press publishers have an impact on researchers and educational or research institutions?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

LIBER, along with large portions of the library, research, university and cultural heritage sectors, are concerned that a neighbouring right might interfere both with new research techniques such as Text and Data (or content) mining (TDM) but also Massive Open Online Courses (MOOCs). In the process of carrying out TDM in research, as well as in providing distance courses with online teaching such as MOOCs, the process of linking to and using links to other sources such as snippets, tweets and blogs (all which could be considered covered by a new neighbouring right for press publishers) are crucial. Creating another layer of rights clearance for the research and higher education sectors would slow down the important development towards new scientific techniques and future models for teaching and academia. In the longer term, such a delay would also damage innovation, business and jobs.

Newspapers, blogs etc are an invaluable source for social science and humanities researchers. Neighbouring rights in this area would have a disproportionate impact on these disciplines and the teaching of related courses. It would add an extra rights clearance step for those compiling online course material. We have seen that the introduction of this right in Germany has resulted in huge complexity and it's extension to the rest of the EU would place EU researchers at even more of a disadvantage to colleagues in countries such as the US. Not only would they be able to conduct TDM lawfully (as is the situation now) but they would also be at advantage when it came to the discoverability of material also.

11. Would the creation of new neighbouring right covering publishers in all sectors have an impact on online service providers (in particular on their ability to use or to obtain a licence to use press or other print content)?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

In a world where content often is free and easily found and shared online, the relationship between online services such as apps, social media, search engines and other aggregators and the publishers is deeply intertwined and inter-dependent. Thus far, this relationship has resulted in many new innovative business and work models, both in the public sector (such as higher education, science, research and university press publishing) and in the private sector (such as job-generating small and media size companies, SMEs). Interfering in this symbiotic relationship with another neighbouring right might dampen this positive development.

12. Would the creation of such a neighbouring right limited to press publishers have an impact on online service providers (in particular on their ability to use or to obtain a licence to use press content)?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

A neighbouring right for press publishers has already had a negative impact in countries where it has been introduced, such as Spain and Germany where it has led to financial and administrative burdens for small and medium enterprises (SME's).

Moreover it led to the closure of services like Google News that helped to bring users to those small online publishers. The inclusion of this new right was only supported by an association of press publishers that includes the large media. Other associations were against it because of the fear of losing visibility, as has happened.

13. Would the creation of new neighbouring right covering publishers in all sectors have an impact on consumers/end-users/EU citizens?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

LIBER's main concern with increasing related rights, such as a publishers right is the impact on public access to knowledge. Today, knowledge is easily spread and linked to throughout the Internet. A related right for publishers risks to decrease the sharing of knowledge and information. LIBER is also concerned that a related right might benefit big publishing players since small innovative players, along with university press publishers, will have limited financial means to manage an additional layer of right clearance procedures. There is therefore a risk that consumers risk a narrower choice in number of publishers and potential new services. This is the experience from the related right for publishers regimes of Spain and Germany where small publishing houses already have suffered from cost increases which also effect consumers. LIBER is also concerned that end users and consumers of information might suffer an increased risk of legal liability when sharing and linking content.

14. Would the creation of new neighbouring right limited to press publishers have an impact on consumers/end-users/EU citizens?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

Apart from the concerns LIBER raised in response to the previous question 13, the net result is that researchers and library users will be forced to use a limited range of commercial sources (either those that own the content platform or can afford to pay a link tax) in order to access content (e.g. Google). They will have access to less content and knowledge and limited opportunity to use this content for innovative research and knowledge discovery.

15. In those cases where publishers have been granted rights over or compensation for specific types of online uses of their content (often referred to as "ancillary rights") under Member States' law, has there been any impact on you/your activity, and if so, what?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain, indicating in particular the Member State.

Ancillary rights, financial compensation or copyright levies for certain rightholder groups has already been introduced yet not fully developed in Spain and Germany. The experience so far has been negative in terms of diversity of the media, innovation and jobs, competition and consumer choice.

In the case of Spain, a 2015 Study by NERA (Impacto del Nuevo Artículo 32.2 de la Ley de Propiedad Intelectual, June 9th 2015) has shown that the ancillary rights has costed the publishing industry 10 million euros a years since introduced.

As evidenced by statements from many organisations, the existing ancillary copyright regimes has this far benefited mainly big players and law firms.

16. Is there any other issue that should be considered as regards the role of publishers in the copyright value chain and the need for and/or the impact of the possible creation of a neighbouring right for publishers in EU copyright law?

- Yes
- No

If so, please explain and whenever possible, please back up your replies with market data and other economic evidence.

The existing copyright rules are sufficient and new rights would be damaging to a vast array of stakeholders.

Content providers (such as publishers) and search engine providers complement each other, with the latter driving traffic to content providers. Publishers, who do not want to be indexed by aggregators or search engines can opt-out of the ecosystem any time using simple technical means (robot.txt).

The ironic effect of such a new right for publishers is that the market dominance of the big players would be reinforced to the disadvantage of new and smaller market players.

This proposed new right has detrimental effects on the free flow of information on the Internet. When key search and aggregation technologies are restricted in their indexing of content and presentation of search results, finding the information will be aggravated or sometimes be made impossible. A new right for press publishers or publishers in general would also be a big threat to principles such as freedom and information, public access to knowledge. It would also have a detrimental impact on public access to cultural heritage. The proposal to introduce a neighbouring right for publishers in EU copyright law flies in the face of the direction of travel with regard to the Open Access movement and the emerging Open Science agenda. In the sector of academic publishing, ancillary copyright could be used to prevent the author from publishing in an open access format. At the Competitiveness Council, 26-27/05/2016, Henk Kamp, Minister for Economic Affairs of the Netherlands, said: "Today we established important milestones for creating a truly digital single market in the EU to facilitate innovation and growth. I strongly encourage all those involved to act quickly and take full advantage of the digital revolution." The revision of EU copyright frameworks should be supportive of such aims, not imperil them.

Use of works, such as works of architecture or sculpture, made to be located permanently in public places (the 'panorama exception')

EU copyright law provides that Member States may lay down exceptions or limitations to copyright concerning the use of works, such as works of architecture or sculpture, made to be located permanently in public places (the 'panorama exception') [1] . This exception has been implemented in most Member States within the margin of manoeuvre left to them by EU law.

In its Communication Towards a modern, more European copyright framework, the Commission has indicated that it is assessing options and will consider legislative proposals on EU copyright exceptions, among others in order to "clarify the current EU exception permitting the use of works that were made to be permanently located in the public space (the 'panorama exception'), to take into account new dissemination channels." [2]

This subject was not specifically covered by other public consultations on copyright issues the Commission has carried out over the last years. Further to the Communication and the related stakeholder reactions, the Commission wants to seek views as to whether the current legislative framework on the "panorama" exception gives rise to specific problems in the context of the Digital Single Market. The Commission invites all stakeholders to back up their replies, whenever possible, with market data and other economic evidence.

*

Selection

Do you wish to respond to this questionnaire "Use of works, such as works of architecture or sculpture, made to be located permanently in public places (the 'panorama exception')?"

- Yes *(Please allow for a few moments while questions are loaded below)*
 No

[1] Article 5(3)(h) of [Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.](#)

[2] [COM\(2015\) 626 final.](#)

Category of respondents

*

Please choose the category that applies to your organisation and sector.

- Member State
- Public authority
- Owner or manager of works made to be located permanently in public places (or representative thereof)
- Library or Cultural heritage institution (or representative thereof)
- Educational or research institution (or representative thereof)
- End user/consumer/citizen (or representative thereof)
- Visual artist (e.g. painter, sculptor or representative thereof)
- Architect (or representative thereof)
- Professional photographer (or representative thereof)
- Other authors (or representative thereof)
- Collective management organisation (or representative thereof)
- Publisher (or representative thereof)
- Film/audiovisual producer (or representative thereof)
- Broadcaster (or representative thereof)
- Phonogram producer (or representative thereof)
- Performer (or representative thereof)
- Advertising service provider (or representative thereof)
- Content aggregator (e.g. news aggregators, images banks or representative thereof)
- Search engine (or representative thereof)
- Social network (or representative thereof)
- Hosting service provider (or representative thereof)
- Other service provider (or representative thereof)
- Other

Questions

1. When uploading your images of works, such as works of architecture or sculpture, made to be located permanently in public places on the internet, have you faced problems related to the fact that such works were protected by copyright?

- Yes, often
- Yes, occasionally
- Hardly ever
- Never
- No opinion
- Not relevant

If so, please explain what problems and provide examples indicating in particular the Member State and the type of work concerned.

Having public works such as architecture and sculptures subject to copyright will likely result in EU citizens becoming involuntary copyright infringers. They may be taking and uploading photographic images of works for a variety of purposes, often where the work protected by copyright is not the main subject of the photograph. A good principle in legislative practice is for the law to make common sense to the public. For copyright law to cover photographs of works in the public sphere used in this context does not make sense. Though copyright law is not enforced in the case of private use here, making common practice illegal does not make a sound basis for reasonable legislation.

2. When providing online access to images of works, such as works of architecture or sculpture, made to be located permanently in public places, have you faced problems related to the fact that such works were protected by copyright?

- Yes, often
- Yes, occasionally
- Hardly ever
- Never
- No opinion
- Not relevant

If so, please explain what problems and provide examples indicating in particular the Member State and the type of work concerned

Furthermore, the public sphere should belong to the public and that includes photographic panorama views of public spaces, even though artworks, often funded for by the public, happen to be placed there.

3. Have you been using images of works, such as works of architecture or sculpture, made to be located permanently in public places, in the context of your business/activity, such as publications, audiovisual works or advertising?

- Yes, on the basis of a licence
- Yes, on the basis of an exception
- Never
- Not relevant

If so, please explain, indicating in particular the Member State and what business/activity, and provide examples.

Example from the Netherlands:

Under Dutch copyright law creating and sharing images and photographs of works of architecture or sculpture, made to be located permanently at a public place, is permitted. Leiden University uses images of works of architects and sculptures in web lectures and PowerPoint lectures on Blackboard (digital learning environment). In this case the territoriality of copyright is unduly restricting access to education and freedom of expression, because the University should pay for the use or distribution of the copyrighted content of countries such as Belgium, France and Italy, that do not have the freedom of panorama in their legislation. Therefore, the freedom of panorama should be mandatory. It would ensure the completion of the single internal market and benefit the freedom of expression.

4. Do you license/offer licences for the use of works, such as works of architecture or sculpture, made to be located permanently in public places?

- Yes
- No
- Not relevant

If so, please provide information about your licensing agreements (Member State, licensees, type of uses covered, revenues generated, etc.).

5. What would be the impact on you/your activity of introducing an exception at the EU level covering non-commercial uses of works, such as works of architecture or sculpture, made to be located permanently in public places?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

Considering the nature of the internet such an exception would have to include a clear definition of the terms commercial and non-commercial. Since internet activity can generate profit without including transactions, such a distinction would be problematic.

6. What would be the impact on you/your activity introducing an exception at the EU level covering both commercial and non-commercial uses of works, such as works of architecture or sculpture, made to be located permanently in public places?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

Considering the difficulty in differentiating between commercial and non-commercial activity on the internet, recently pointed out in the Swedish Supreme Court of Justice case between the rightsholder organisations of Sweden and Wikimedia, and considering the EU wide reach of the internet where most of the photographs would be uploaded, an EU wide exception covering both commercial and non-commercial uses is the only approach that would have an impact compared to the current situation.

7. Is there any other issue that should be considered as regards the 'panorama exception' and the copyright framework applicable to the use of works, such as works of architecture or sculpture, made to be permanently located in public places?

- Yes
- No

If so, please explain and whenever possible, please back up your replies with market data and other economic evidence.

Harmonizing the freedom of panorama for commercial and non-commercial uses can be important for MOOC's. MOOC's are free online courses made by educational institutions such as universities. They are often hosted on commercial platforms. The future of MOOC's may be at risk without the ability to make images of works of architecture or sculpture that are permanently situated in a public place, in all Member States available.

Submission of questionnaire

End of survey. Please submit your contribution below.

Useful links

[Webtext EN \(https://ec.europa.eu/digital-agenda/news-redirect/29674\)](https://ec.europa.eu/digital-agenda/news-redirect/29674)

Background Documents

[Privacy Statement DE \(/eusurvey/files/08c163a2-8983-4d3b-ae3e-21f69b5957cd\)](/eusurvey/files/08c163a2-8983-4d3b-ae3e-21f69b5957cd)

[Privacy Statement EN \(/eusurvey/files/217d6300-2bbe-4a51-aba4-0371c246dc9d\)](/eusurvey/files/217d6300-2bbe-4a51-aba4-0371c246dc9d)

[Privacy Statement FR \(/eusurvey/files/43cedbae-8123-4596-94ce-b526019329e5\)](/eusurvey/files/43cedbae-8123-4596-94ce-b526019329e5)

[Webtext DE \(/eusurvey/files/3abc4c0f-c0e6-4ece-99a3-2bebbba8c65d3\)](/eusurvey/files/3abc4c0f-c0e6-4ece-99a3-2bebbba8c65d3)

[Webtext FR \(/eusurvey/files/df02a573-838f-45e7-912d-8231ee8cdbcd\)](/eusurvey/files/df02a573-838f-45e7-912d-8231ee8cdbcd)

Contact

CNECT-CONSULTATION-COPYRIGHT@ec.europa.eu
