

# DCN webinar - update on European copyright proposals

---

18 September 2018

Angela Mills Wade

European Publishers Council

@epc\_angela

# The Rapporteur – after the vote!

*Axel Voss MEP  
when the result  
was declared*



report VOSS A8-0245/2018

## Commission proposal

👉 703

+ 438

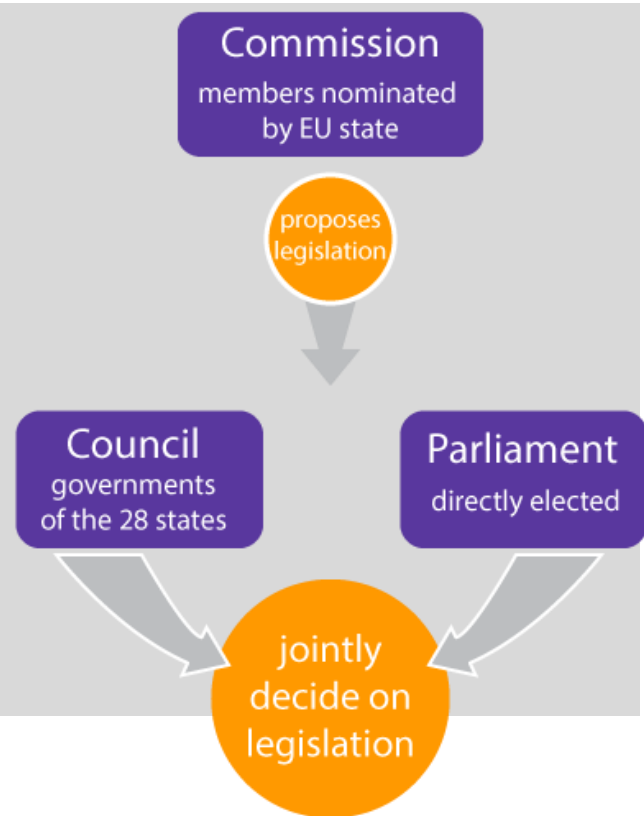
— 226

○ 039



# How the vote last week fits into the Institutional decision-making 'triangle'

1. *The Commission proposes*
2. *The Parliament and the Council work in parallel to Agree a 'mandate' .....for*
3. *Trilogue negotiations*



# The EU Copyright Directive

## Comprehensive Reform Package from the European Commission:



*Exceptions for  
users for the  
digital age*



*Balance of  
measures to  
empower  
rightholders*



- Press Publisher's neighbouring right: pro-innovation
- New TDM exception: pro-innovation – maybe?
- Update of teaching and library exceptions: pro-users
- Online Platforms: Closing the Value Gap: pro-innovation
- Enhanced negotiating rights for authors including journalists

## *What the Commission proposed?*

- New **exclusive neighbouring right** for press publishers
- Protects against **unauthorised copying and commercial re-use**
- **20 years** term of protection (Parliament voted for 5 years)
- Not expanding the rights that have already been harmonised by the EU
- Simply **adds press publishers as beneficiaries** of *some* of the harmonised rights
- Definitely **NOT a links tax!**
- Rights of journalists

# Controversial BUT Commission support at highest political level

"I want journalists, publishers and authors to be paid fairly for their work, whether it is made in studios or living rooms, *whether it is disseminated offline or online, whether it is published via a copying machine or commercially hyperlinked on the web.*"

*President Juncker,*

State of the Union 14 September 2016





# Commission defends their proposal for a publisher's right in EP and in the Council working group

“One of the reforms is to allow right holders to negotiate better the use of their content in online environment. In our view the amendments on the press publisher's rights and the value gap will not allow us to fully achieve these objectives. We hope these provisions will be reinforced and achieve the balance proposed by the Commission.”

*VP Andrus ANSIP, responsible for  
Digital Single Market*





# Game changer: placing Copyright at the heart of press freedom

“I strongly believe that **copyright is also of paramount importance** for the issues that we talked about today, namely how **to guarantee press freedom and how to encourage quality journalism, including online.**”

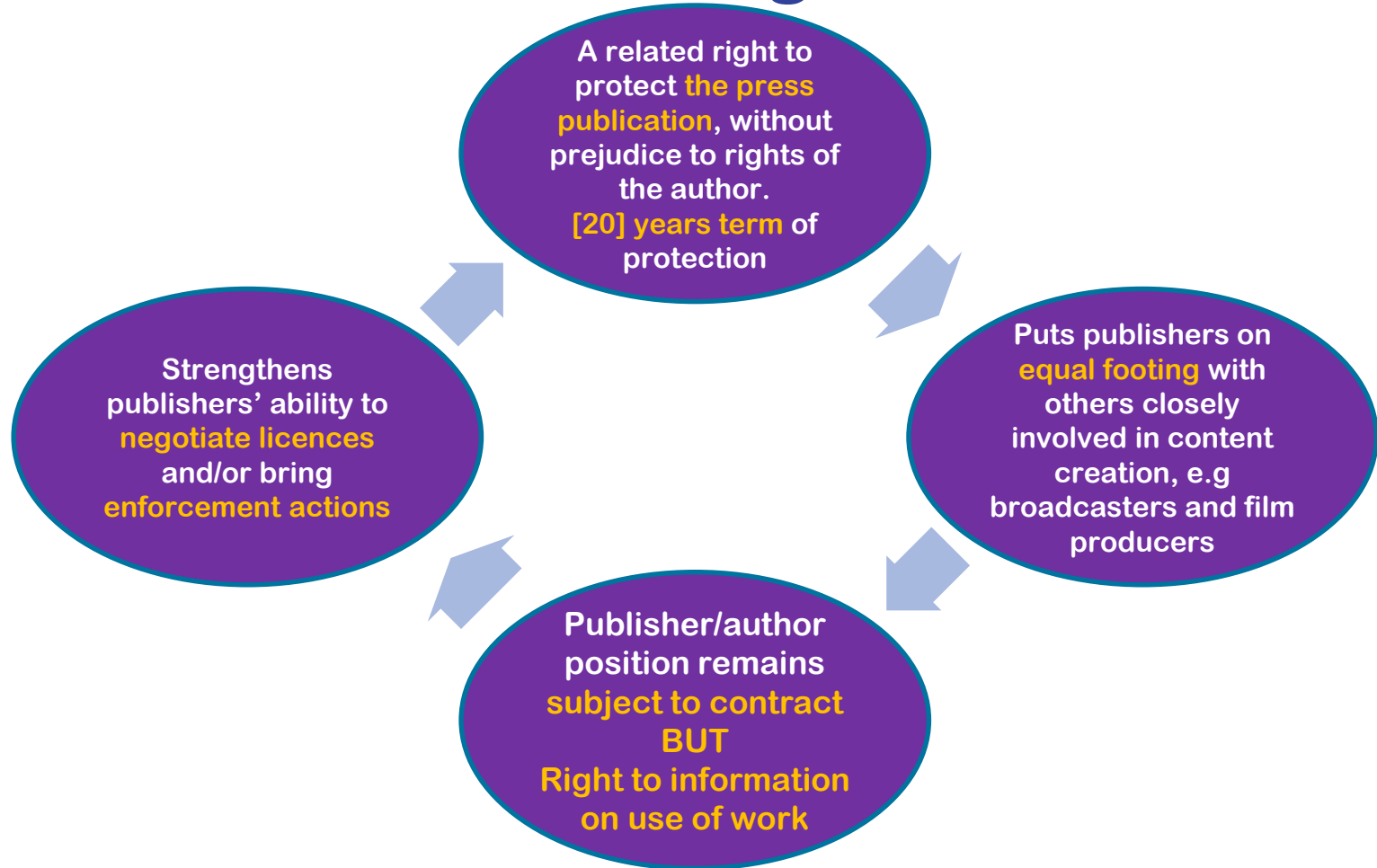
*“An independent and pluralistic publishing sector is of particular importance for the creation of high-quality journalism in the digital age. Equally, it is indispensable for our society, cultural diversity and democratic participation.”*

*“Journalists and those that invest in their work – publishers – must be able to keep on playing their fundamental role to ensure high quality news reporting in our societies.”*

***Commissioner Oettinger, World Press Freedom Day, 3 May 2016***



# The Publisher's Right: Overview





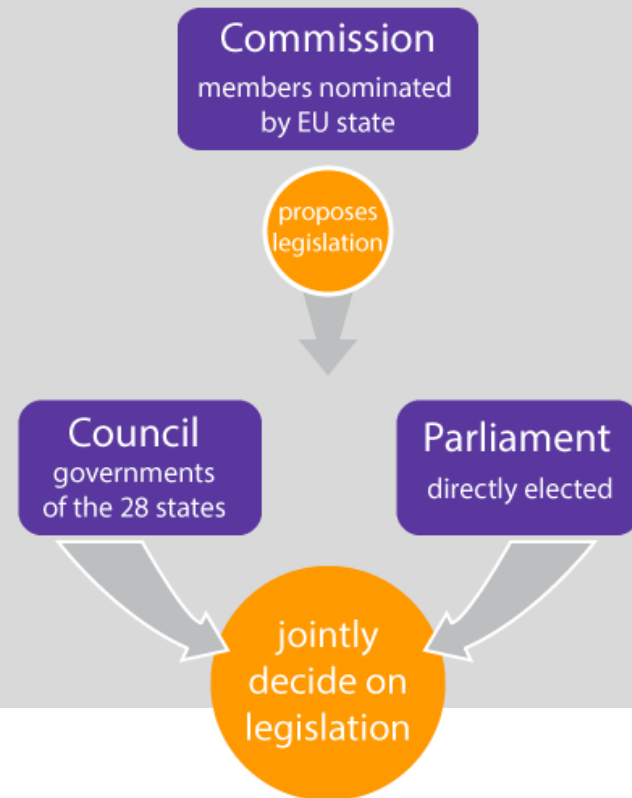
# Astroturfing and Scaremongering

## *Scare tactics of the platforms:*

- #linktax
- #savethelink #howtofixcopyright #snippettax #GoogleTax  
#ancillarycopyright
  - #uploadfilters #censorshipmachines

# How the vote last week fits into the Institutional decision-making 'triangle'

1. *The Commission proposes*
2. *The Parliament and the Council work in parallel to Agree a 'mandate' .....for*
3. *Trilogue negotiations*



## *What the Commission proposed - Publishers Right (Art 11)*

1. Member States shall provide publishers of press publications with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC **for the digital use of their press publications**.
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.
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.

### *What the Council agreed*

- a neighbouring right for press publishers.
- **1 year** term of protection
- However, the **use of "in-substantial parts"** of newspaper articles does not fall under the neighbouring right;
- It is up to the Member States to determine what can be described as **in-substantial** by:
  - taking into account whether these parts are the expression of the intellectual creation of their authors, or whether these parts are individual words or very short excerpts, or a combination of both criteria.



# *What the Parliament agreed*

- **A neighbouring right for press publishers**
- It does **not apply to hyperlinks accompanied by individual words**, and will not have an impact on individual users who are legitimately using content.
- The duration of this new right would be **5 years** which shall be calculated from the first day of January of the year following the date of publication.
- **Transparency and reporting of exploitation** and a **fair and proportionate remuneration principle** (article 14a) – translates into article 11 as journalists will be entitled to **a share of the additional revenues** (not retroactively)

## Text and Data Mining / Content Mining : promoting innovation



### Proposal for a **New TDM** exception:

*For researchers to be able to use "text and data mining" technologies to analyse large sets of text and data for non-commercial purposes*

## *What the EC proposed*

An exception for **reproductions and extractions** for the purposes of **scientific research**.

Benefits **research organisations** if they have lawful access to the content

Rightholders can take measures to **ensure the security** and integrity of the networks and databases

Opportunities for **public-private partnerships**

## *What the Council agreed*

The Council introduces **two exceptions** for text and data mining purposes: **one mandatory** and **one optional**

### Mandatory exception

- Benefits **research organisations** and **cultural heritage institutions** *if* they have lawful access to the content (based on open access policy or through contractual arrangements, such as subscriptions, or through other lawful means)
- Rightholders can take measures to **ensure the security** and integrity of the networks and databases

### Optional exception

- Benefits anyone if the work is accessed lawfully, **including when it has been made available to the public online**, and the rightholders have not reserved the right to make reproductions and extractions for text and data mining, for example by **agreement**, **unilateral declaration**, including through the use of machine readable metadata or by the use of technical means.

## *What the Parliament agreed*

The Parliament introduces two exceptions for text and data mining purposes: **one mandatory** and **one optional**

### Mandatory exception

- Benefits **research organisations** and **cultural heritage institutions** if they have lawful access to the content
- Rightholders can take measures to ensure the security and integrity of the networks and databases
- Opportunities for public-private partnerships

### Optional exception

- Member States would be free to implement also an exception for temporary reproductions and extractions of works (Art 3a) of **lawfully accessible works**.
- This is subject to reservation of rights by rightholders including by machine readable means.

## *What is the EC proposing?*

Liability: obligation to licence for platforms hosting large amounts of works and use of measures

- Article 13 contains an **obligation** for information society service providers which store and give access to significant amounts of copyright protected content uploaded **to licence** with rightholders.
- **Use of measures**, such as the use of effective content recognition technologies to ensure the functioning of agreements or to prevent the availability on their services infringing works identified by rightholders through the cooperation with the service providers.

## *What the Council agreed*

Liability: to licence and apply measures when platforms are 'active' giving access to the public

- Article 13 sets **obligations on online content sharing service provider to licence** if there is a communication to the public or making available to the public and to apply measures to prevent infringing content if there is no license.

- **Exceptions**: non-for-profit online encyclopaedias, non-for-profit educational and scientific repositories, non-for-profit open source software developing platforms, internet access providers, cloud providers or online marketplaces.

- Introduces a **new 'safe harbour'** for the services involved by conditioning copyright liability upon implementation of certain measures by services. Therefore in the absence of a licence, online content sharing service providers are not liable for communicating to the public when:

  - It demonstrates that it has made **best efforts to prevent the availability** of infringing works

  - Upon notification by rightholders, it has **removed or disabled access** to these works and has made its **best efforts** to prevent their future availability



## *What the Parliament agreed*

### Full liability – Communicating to the Public (but no measures – cooperate instead).

Article 13 contains a clear obligation for online content sharing service providers which store and give access to significant amounts of copyright protected content uploaded to licence with rightholders.

- **Exceptions**: microenterprises and small sized enterprises, non-for-profit online encyclopaedias, non-for-profit educational and scientific repositories, non-for-profit open source software developing platforms, internet access providers, cloud providers or online marketplaces.
- If the rightholders do not wish to conclude such agreements then the parties shall cooperate in good faith to prevent the availability of infringing works on the platforms.
- While before the text was mentioning that to prevent the availability of infringing works platforms shall put in place measures, in the text adopted on 12 September such measures (so called upload filters) were removed.
- Lastly, the platforms need to put in place effective and expeditious complaints and redress mechanisms for users.

# Timeline and Next Steps

European Commission presented proposal to the Parliament and the Council  
**September 2016**

The Parliament adopted its position = Lobby  
MEPs: 12 September 2018

The Council forms its own position = Lobby  
Perm Reps/Member States: 25 May 2018



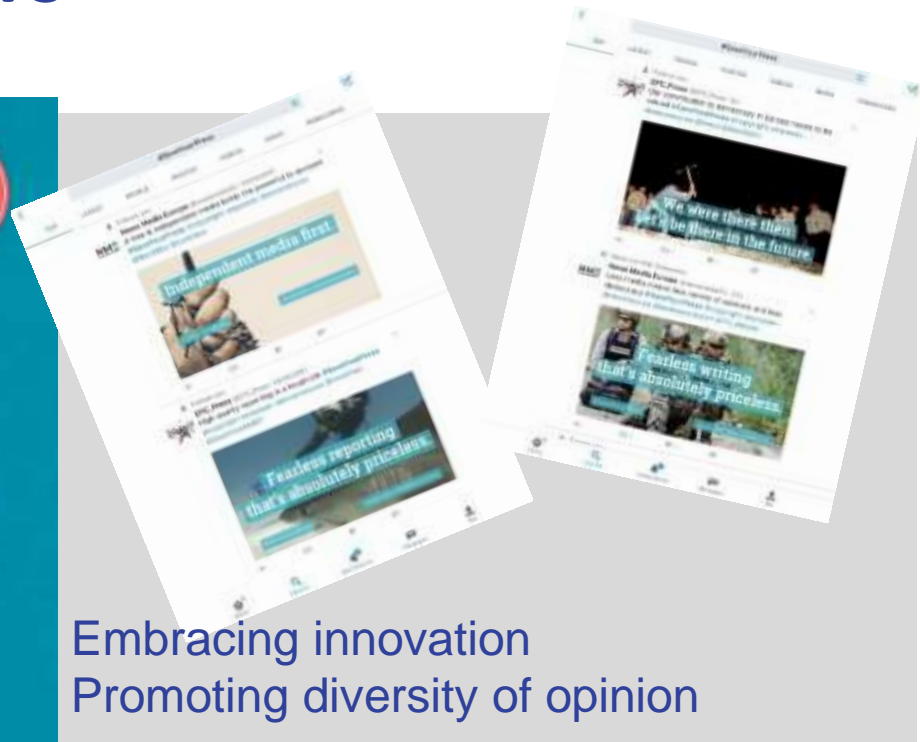
Commission, EP and Council: **Triologue Negotiations**  
to speed up process of adoption = lobby EC/EP/Council: October 2018



Council and Parliament vote to agree to final text based on outcome of trialogues:  
Spring 2019

Implementation at national level – Law comes into force: 2021

# Communicating with politicians, national experts and stakeholders



Embracing innovation  
Promoting diversity of opinion

# Communicating with politicians, national experts and stakeholders



READ MORE

**EMPOWER NOW**

We're not faking it. We love real news

2017-02-07 - This is the second in our series of letters from the initiative "Empower Democracy" on the realities of today's newspaper and magazine publishing industry. In this letter, we focus on the issue of Fake News. We hope you will find it of interest.

READ MORE

SEE ALL POSTS

[www.empower-democracy.eu](http://www.empower-democracy.eu)

**2,500 Daily Newspapers in print and digital**

**Over 300m people read magazines regularly**



# Communicating with politicians, national experts and stakeholders



[www.publishersright.eu](http://www.publishersright.eu)

# Thank you for your attention

*Any questions?*

Angela Mills Wade

European Publishers Council

@epc\_angela

