NEDERLAND ICT

EuroISPA/Nederland ICT position paper betreffende het voorstel voor de modernisering van het EU auteursrecht (Deel 1 Richtlijn auteursrechten in de DSM)

Nederland ICT is de branche organisatie voor de Digitale Economie. Voor Europesche thema's werken we nauw samen met EuroISPA. Het bijgesloten rapport is dan ook samen met EuroISPA geschreven, en geeft een goed beeld van de bezwaren tegen het voorstel.

In het kort:

- **De content-filtering verplichtingen:** in artikel 13 en recital 38 wordt een verplichting opgelegd om uploads te filteren om zo auteursrechtinbreuk tegen te gaan. Dit doet ernstig afbreuk aan de bescherming die de Ecommerce richtlijn tussenpersonen biedt. De ecommerce richtlijn biedt tussenpersonen de kans om binnen Europa bin het digitale domein actief te zijn. Indien het voorstel aangenomen wordt met dit artikel en recital, zal dit Europa en dan zeker Nederland als digitale koploper in en zeer nadelige positie brengen met bedrijven die vanuit de Verenigde Staten aktief zijn, die kunnen immers een beroep doen op het 'safe harbour' rpincipe van de Digital Millenium Copyright Act. Nieuwe concepten om user generated content in Europa te hosten zullen dan gedoemd zijn. Voor innovatie in Europa en Nederland is dat suboptimaal.

- **Ancillary auteursrecht**: in artikel 11 en 12 wordt een voor Nederland nieuwe soort recht geintroduceerd. De recente ervaringen in Spanje en Duitsland zijn zodanig dat de veronderstelling dat het ancillary auteursrecht een oplossing is zou moeten bijgesteld, het verergerd het probleem alleen maar.

Voor een bloeiende digitale economie is een gebalanceerd aansprakelijkheidsregime nodig voor tussenpersonen. Nederland is een koploper in deze digitale transitie, Nederland ICT is van mening dat binnen Europa de Nederlandse regering al het mogelijke moet doen om deze koplopers positie te behouden.

Voor een uitgebreide analyse verwijst Nederland ICT naar het bijgevoegde EuroISPA position paper.

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Position paper on the proposal for a directive on copyright in the Digital Single Market

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General considerations

EuroISPA is the voice of the European Internet industry, representing over 2500 Internet Services Providers from across Europe and all along the Internet value chain. As representative of the infrastructure behind Europe's digital economy, EuroISPA welcomes the EU Institutions' reflections on the evolving role of copyright in the digital single market. As the Parliament begins to scrutinise the proposed copyright directive, EuroISPA members wish to provide the European Internet industry's perspective, to help policymakers strike a balanced approach in the reflections.

EuroISPA members are particularly concerned with the aspects of the proposal that concern obligations for information society services to filter their users uploads, and the proposal to introduce a new intellectual property right for press publishers.

- **Remove proposed content-filtering obligations for information society service providers:** Article 13 and recital 38 of the proposed Directive seek to compel a broadly-defined class of online operators to monitor and filter the uploads of their users, in search of copyright infringement. This provision stands in direct contradiction to the EU E-Commerce Directive and a rich body of jurisprudence of the Court of Justice of the European Union. Indeed, it is an implicit curtailment of the principle of liability safe harbour for Internet intermediaries, the legislative engine of Europe's digital economy. But most importantly, this filtering obligation is a gross violation of the rights of European content creators and Internet users. Automated filtering necessitates the blanket monitoring of all platform users' activity, a disproportionate invasion of privacy. Moreover, automated filtering cannot account for legitimate uses of protected content under exceptions and limitations to copyright, thus wrongly filtering many perfectly legal and original creations. On this basis, we call for the removal of article 13 and recital 38 of the proposed directive.

- **Remove proposed ancillary copyright for press publishers:** The global press publishing industry is facing considerable structural challenges owing to changes in consumer consumption patterns and the retraction of the traditional advertising market that their business models were built upon. It is unclear how the introduction of a new intellectual property right for press publishers – on top of the considerable arsenal of IPRs that they currently possess – will compensate for this. On the contrary, there is clear evidence from the experiences in Germany and Spain that such a regulatory intervention will in fact exacerbate the press publishing sector's difficulties. The basic premise of ancillary copyright is flawed, meaning amendments to the German and Spanish models will not bring about a different result. As such, we call for the removal of articles 11 and 12.

In the coming pages, we provide a detailed technical analysis of the relevant articles and their impact on the Internet eco system.

Ultimately, a legislative text in which the abovementioned points are addressed will help ensure a flourishing European creative ecosystem in a manner that is both proportionate and protective of fundamental rights.

Remove proposed content-filtering obligations for information society service providers

The intermediary liability safe harbours of the E-Commerce Directive have been rightly characterised by the European Commission as underpinning the development of the Internet in Europe. As such, we note with dismay that article 13 and recital 38 of the proposed copyright directive seek to circumvent those safe harbours to such an extent that they are no longer relevant for a significant proportion of innovative web-based services in Europe.

In high-level terms, the Commission's intended increase in liability for intermediaries will have a crippling effect on Europe's nascent digital single market:

The innovation chill: The obligation on intermediaries hosting user-generated content to introduce automated technologies to identify and filter copyright-protected works seeks to enforce the voluntary actions of a handful of very large intermediaries as an industry standard. The overwhelming majority of intermediaries are not in the position to invest and absorb the operational and legal risk that follows such voluntary action. It is difficult to imagine European Web 2.0 success stories such as SoundCloud or Deezer ever coming to market in such a regulatory environment, where innovation in the hosting of user-generated content carries risk of severe penal damages.

Moreover, start-ups – who are amongst the most liability-sensitive of all economic operators – are likely to shirk from business models or service-offerings that verge on the hosting of user-generated content, for fear of the corresponding liability for not having the huge financial resources necessary to implement effective filtering technology. At a time when the EU Institutions are looking to start-up innovation as a means of revitalising the EU economy and creating a true digital single market, such a policy move is deeply counterproductive.

Ultimately, the obligation to introduce filtering technologies for user-generated content will serve only to consolidate the market for online services. Most existing European operators will be forced to pivot their business models to meet or retreat from the compliance obligations, and innovative start-ups will be disincentivised from pursuing service offerings that could legitimately compete with established players.

Free expression online: Europe's copyright framework contains a long list of exceptions and limitations to copyright. However, most of these exceptions and limitations are optional for Member States to introduce. The result is a mish-mash of complex and varied rules across Europe, where simple everyday reproductions of content in one country may be illegal copyright violations in another. But pursuant to the Commission's proposal, automated systems will make value judgements as to whether certain content violates copyright. This can be an extremely challenging task, especially with regard to the creative character of user-generated content and the reality of the fragmented system of exceptions and limitations. Inevitably, such automated systems will wrongly filter perfectly legal uses of content with little recourse for users. The free expression implications are palpable.

Relevant textual extracts

Recital 38

Where information society service providers store and provide access to the public to copyright protected works or other subject-matter uploaded by their users, thereby going beyond the mere provision of physical facilities and performing an act of communication to the public, they are obliged to conclude licensing agreements with rightholders, unless they are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC of the European Parliament and of the Council .

In respect of Article 14, it is necessary to verify whether the service provider plays an active role, including by optimising the presentation of the uploaded works or subjectmatter or promoting them, irrespective of the nature of the means used therefor.

In order to ensure the functioning of any licensing agreement, information society service providers storing and providing access to the public to large amounts of copyright protected works or other subject-matter uploaded by their users should take appropriate and proportionate measures to ensure protection of works or other subjectmatter, such as implementing effective technologies. This obligation should also apply when the information society service providers are eligible for the liability exemption provided in Article 14 of Directive 2000/31/EC.

Article 13

1. Information society service providers that store and provide to the public access to large amounts of works or other subject-matter uploaded by their users shall, in cooperation with rightholders, take measures to ensure the functioning of agreements concluded with rightholders for the use of their works or other subject-matter or to prevent the availability on their services of works or other subject-matter identified by rightholders through the cooperation with the service providers. Those measures, such as the use of effective content recognition technologies, shall be appropriate and proportionate. The service providers shall provide rightholders with adequate information on the functioning and the deployment of the measures, as well as, when relevant, adequate reporting on the recognition and use of the works and other subject-matter.

2. Member States shall ensure that the service providers referred to in paragraph 1 put in place complaints and redress mechanisms that are available to users in case of disputes over the application of the measures referred to in paragraph 1.

3. Member States shall facilitate, where appropriate, the cooperation between the information society service providers and rightholders through stakeholder dialogues to define best practices, such as appropriate and proportionate content recognition technologies, taking into account, among others, the nature of the services, the availability of the technologies and their effectiveness in light of technological developments.

Technical analysis

Status of Internet access providers: The meaning of 'public access' is unclear and likely to be subject to diverging interpretation by national-level courts. In particular, the reference to service providers that "store and provide access to the public" implies that mere conduits – as defined in Article 12 of the E-Commerce Directive – will be within the scope. Mere conduits (e.g. Internet access providers) facilitate transmissions in a network in a passive and neutral manner, and have no direct relation to the information that network users transmit or engage with. The wording of this article should thus be tightened to exclude the providers of Internet access. Moreover, it is not clear from the text as to the constitution of 'public' access. Many platforms e.g. Dropbox, Google Drive, allow registered users to share public links to specified files. Indeed, a great many number of platforms offer a combination of private, semi-private, and public access to works. Their obligations – or lack thereof – need to be clarified in each regard.

Meaning of "large amounts" of works: The term "large amounts" is extremely vague and thus bound to be subject to diverging interpretation by national-level legislators (in transposing the Directive) and national-level courts (in deciding on litigation). Indeed, the qualifier 'large' could be applied to numerous metrics in assessing whether a provider falls under the scope, such as the *number* of works within a platform's catalogue; the *total data size* of the platform's catalogue of protected works, the number of protected works *per platform user*, etc. The wording of this article should thus be carefully clarified to ensure that only *very large platforms* providing access *to very large amounts* of data are covered.

Status of SMEs: Precise legal wording cannot fully protect against the interpretive challenges thrown up by emerging technologies and advancing business models. For instance, YouTube did not exist when the EU legislator last revised the EU copyright framework. In that context, the Directive must contain a clear exclusion of small and medium-sized enterprises from its scope. This is the most effective means of ensuring that the Directive is limited to the very largest of players and allows SMEs – the backbone of Europe's digital economy – to drive investments and jobs.

Active/passive hosting distinction: The obligation for service providers to secure licenses to host third-party content rests on flawed interpretation of the E-Commerce Directive (2000/31/EC) – namely the demarcation of so-called 'passive' and 'active' hosting providers.

That distinction is based on a reading of Recital 42 of the E-Commerce Directive – a non-operative part of the legislative text – to define requirements for the application of the liability limitation of Article 14. Recital 42 asserts that services providers can only benefit from the liability safe harbour in so far as their actions are of a '*mere technical, automatic and passive nature*'. Unfortunately, the active/passive distinction emerges from a flawed reading that assumes that Recital 42 applies also to hosting services. It is clear from the text of Recital 42 that it is concerned *exclusively* with mere conduit and caching services (Articles 12 and 13).

Indeed, the only conditions relevant for determining liability of a hosting service provider are that: (i) the service provider has actual knowledge of the illegal activity or information and (ii) the service recipient is acting under the authority or control of the service provider. If these conditions do not exist, the service provider cannot be held liable for the data stored at the request of a client, unless, having obtained knowledge of the illegal nature of these data or of that client's illegal activities, it failed to act expeditiously to remove or to disable access to the data concerned. If Recital 42 would cover hosting, it would constrain and limit the liability exemption laid down in Article 14.

As such, the Commission's demand that service providers secure licenses for the hosting of user-generated content collapses under a false premise of active/passive hosting.

Incompatibility of filtering obligations with EU legal acquis: Article 15 of the E-Commerce Directive (2000/31/EC) precludes Member States from obliging information society services from undertaking a general monitoring of their users' activities in search of illegal activity. The ex-ante obligation for intermediaries to introduce filtering technologies to identify and filter the circulation of copyright-protected content on their networks amounts to an indiscriminate monitoring. Moreover, for platforms such as

YouTube and Facebook – that are used by hundreds of millions of citizens each day – this monitoring is clearly of a general nature. The no-general-monitoring obligation has been consistently defended by the Court of Justice of the European Union, particularly in SABAM vs Netlog case. This is a rich jurisprudence that the EU legislator cannot afford to contradict.

Moreover, in at least one Member State, namely Italy, the proposed filtering obligations are incompatible with the national legislation on copyright. In Italy, the legal nature of copyright-related criminal offenses means that the public prosecutor is obliged to launch a criminal investigation upon receipt of notification of a copyright infringement. As such, it is impossible for Italian information society services to operate the proposed filtering mechanism, or indeed any alternative solution to copyright infringement under the current national legal framework. We would thus encourage the EU legislator to first reflect on the problems inherent in Member State copyright enforcement practices, before defining new obligations that in certain cases contradict with local legal obligations.

Limited effectiveness of filtering technologies: Filtering technologies are notoriously expensive to develop, implement, maintain and scale. As a case-in-point, Google's Content ID system – widely reputed to be one of only a handful of reasonably effective filtering systems – cost a reported €50 million to research and develop, before accounting for the significant ongoing operational costs. The irony of the Commission's proposal is that only those few existing platforms that have developed content identification and filtering systems would actually have sufficient revenues to implement them. Smaller European competitors simply would not have the resources to meet this obligation.

Moreover, as has recently been highlighted in high-profile cases concerning the removals by a social media platform of a photo of the napalm burning of a young girl during the Vietnam War and the artistic work *L'origine du Monde*, automated content algorithms can make wholly inaccurate assessments, as in the overwhelming majority of cases there is no black-or-white decision procedure. In copyright, this problematic character is exacerbated, as technical filtering measures must not content with illegal content, but rather *unauthorised* uses of *legal* content. Add to the mix a European regime where Member States can theoretically introduce over two million unique exceptions and limitations frameworks, and we quickly see a fatal weakness in the filtering solution.

Finally, the obligation on service providers to provide rightholders with "adequate information on the functioning and the deployment" of content identification and filtering technologies risks forcing such providers to compromise trade secrets and commercially-sensitive information. Furthermore, the obligation for service providers to provide data to rightholders on the "use of the works and other subject-matter" appears incompatible with the Directive's material aims. Such information is only relevant in a commercial sense (e.g. by providing rightsholders with better data about user interests and market trends) and is in no way relevant for the protection of intellectual property rights.

Clarity on redress: The proposal rightly clarifies that redress against illegitimate content filtering is necessary, but limits this redress to users rather than including the service providers whose legitimate business interests also suffer from 'false-positives'. Moreover, as currently worded, the Directive implies that user redress should

be borne by service providers, and not by the rightholders for whose interests filtering measures are implemented. In that context, the Directive should be reworded to ensure that redress is facilitated by rightsholders and is open to both service providers and users whose legitimate interests suffer as a result of content filtering.

Remove proposed ancillary copyright for press publishers

The global press publishing industry is facing considerable structural challenges owing to changes in consumer consumption patterns and the retraction of the traditional advertising market that their business models were built upon. It is unclear how the introduction of a new intellectual property right for press publishers – on top of the considerable arsenal of IPRs that they currently possess – will compensate for this. A modernising copyright reform should instead support the development of innovative business models as well as encourage the take-off of paid-subscriptions services, in order to provide publishers with substantial and sustainable revenue streams. By contrast, the ancillary copyright remedy has already proved to be catastrophic and ineffective in the countries (such as Germany and Spain) where it was introduced. Thus, we do not see rational evidence-based policy justification for the introduction of new neighbouring rights for press publishers.

An attack on the free and open Internet: The Information Society has brought enormous economic, social and cultural enhancement to the lives and relations of European citizens. That phenomenon is underpinned by a free and open Internet, one where citizens can access, impart and receive information without barriers. The introduction of a neighbouring right for press publishers will severely destabilise this underpinning, by calling into question the means by which European citizens find, read, and share published content on the Internet.

As currently drafted, the proposed new copyright directive makes no exception for the usage of graphical 'snippet' links (including thumbnail photos, headlines, bylines, etc) when posted by non-commercial actors – e.g. ordinary citizens on social media platforms. The Court of Justice of the European Union has repeatedly characterised hyperlinking as integral to the creation and functioning of the World Wide Web. A browsing experience devoid of graphic links would fundamentally erode the power of hyperlinks to drive information across the web. Moreover, requiring Internet users to clear copyrights and/or secure licences before the sharing of snippets online would constitute an assault of the fundamental right to receive and impart information.

We note the official statements by European Commission executives stating that the new copyright directive will not affect the usage of snippets and hyperlinks. However these statements must be clearly reflected in the legislative text in order to be effective and avoid ambiguous interpretations.

Curbing innovation and media pluralism: The relationship between publishers and online services (content aggregators, social media, search engines, apps, etc.) is symbiotic. New rights covering publishers would negatively impact content access and sharing by users, and the development of innovative business models necessary to advance the publishing industry. This impact would be especially detrimental for start-ups and small companies, struggling with an added layer of licensing complexity.

The experience with ancillary copyright in Germany and Spain has shown that small companies, including numerous start-ups, have been forced to cease their business or fundamentally alter their business models when being faced with this new right. For consumers, this means a more concentrated publishing landscape, as only the larger, legacy publishers will benefit from the new regulatory environment. Moreover, ancillary copyright serves to punish smaller innovative publishers of online press content, those who have successfully embraced the potential of digital technologies and changing consumer trends to drive their business. They will be sacrificed to save legacy publishers who are unwilling to adapt to a changing world.

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

Relevant textual extracts

Recital 31

A free and pluralist press is essential to ensure quality journalism and citizens' access to information. It provides a fundamental contribution to public debate and the proper functioning of a democratic society. In the transition from print to digital, publishers of press publications are facing problems in licensing the online use of their publications and recouping their investments. In the absence of recognition of publishers of press publications as rightholders, licensing and enforcement in the digital environment is often complex and inefficient.

Recital 32

The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry. It is therefore necessary to provide at Union level a harmonised legal protection for press publications in respect of digital uses. Such protection should be effectively guaranteed through the introduction, in Union law, of rights related to copyright for the reproduction and making available to the public of press publications in respect of digital uses.

Recital 33

For the purposes of this Directive, it is necessary to define the concept of press publication in a way that embraces only journalistic publications, published by a service provider, periodically or regularly updated in any media, for the purpose of informing or entertaining. Such publications would include, for instance, daily newspapers, weekly or monthly magazines of general or special interest and news websites. Periodical publications which are published for scientific or academic purposes, such as scientific journals, should not be covered by the protection granted to press publications under this Directive. This protection does not extend to acts of hyperlinking which do not constitute communication to the public.

Recital 34

The rights granted to the publishers of press publications under this Directive should have the same scope as the rights of reproduction and making available to the public provided for in Directive 2001/29/EC, insofar as digital uses are concerned. They should also be subject to the same provisions on exceptions and limitations as those applicable to the rights provided for in Directive 2001/29/EC including the exception on quotation for purposes such as criticism or review laid down in Article 5(3)(d) of that Directive.

Article 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.

3. 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.
4. 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.
5. 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.

Article 12

Claims to fair compensation Member States may provide that where an author has transferred or licensed a right to a publisher, such a transfer or a licence constitutes a sufficient legal basis for the publisher to claim a share of the compensation for the uses of the work made under an exception or limitation to the transferred or licensed right.

Technical analysis

Nothing to suggest positive relation between IPRs and media pluralism: There exists no evidence-based economic analysis that signifies a positive correlation between the expansion of intellectual property rights for press publishers on one hand and media pluralism on the other. Indeed, where introduced – namely Germany and Spain – ancillary copyright has had a wholly constricting effect on the local media landscape, as will be explicated below. Any attempt to introduce a new intellectual property right should be rigorously assessed on its own merits and in relation to its impact on other stakeholders and the social good. That the European Commission can produce no meaningful data to support its claims concerning the contribution of this proposed IPR to media pluralism, and that the empirical evidence from Member States points to a starkly different reality, paints a damning picture of the flawed political logic behind this proposal.

Innovative publishers lose most from ancillary copyright: The Information Society revolution has provided the basis for new innovations in publishing. While many new online publishing services have been made possible by advancements in digital technology, a considerable number of traditional publishing houses have also embraced digital and advanced their reach and user-experience accordingly. Unlike the traditional publishers who have established brands and print circulation, smaller online innovators in the publishing sector will suffer enormously from the introduction of ancillary copyright. Indeed, a regulatory intervention of that nature would curtail the innovation-friendly landscape that has allowed them to develop 21st century approaches to delivering news and analysis. This is one of the most painful truths from Germany and Spain's experiment with ancillary copyright. For instance, Spanish publishers such as Planeta Ludico, NiagaRank, InfoAliment, and Multifriki were forced to close their services completely, and dozens more changed business models and service offerings to comply with ancillary copyright provisions. [1] [2]

[1] NERA Economic Consulting, 2014, *Impacto del Nuevo Artículo 32.2 de la Leyde Propiedad Intelectual,* Page 42, Available at: http://bit.ly/2eKjZjo [Accessed 24.10.2016]

[2] EDiMA, The impact of ancillary rights in news products, page 02, Available at http://bit.ly/2eKk2vq [Accessed 24.10.2016]

Moreover, the overwhelming majority of publishers in Europe – both legacy and innovative – depend on news aggregators to drive traffic to their content, as was shown in all national cases of ancillary copyright up to now: in Germany Google simply stopped indexing news articles from publications that demand royalties, thus crippling the user traffic that such sites enjoy, while in Spain – because of the law's prevention on opt-outs of royalty payments for publishers, the same Google fully stopped offering its news aggregation service. Thus, should this ancillary copyright be activated at the EU level, not only big consolidated operators such as Google but also any other operator offering news aggregation, but with less scale, will likely have to stop this service to the country's citizens – a lose-lose outcome wholly attributable to ancillary copyright.

Ultimately, innovative online publishers lose most from ancillary copyright *for the very reason* that they have embraced the commercial possibilities of the online sphere.[3] Any interference in the delicate online ecosystem is an interference with their business model. On the contrary, traditional legacy publishers who have not embraced new innovations in publishing will sustain themselves through existing market powers and print circulations, leading to a rapid market consolidation in the publishing sector. This is the very opposite of the Commission's stated aim in the Directive, namely to enhance 'media pluralism.'

Uncertainty about the real scope and effects of the new ancillary copyright provision: it is currently unclear whether art. 14 of the proposed directive will affect hyperlinks, snippets or similar digital tools. Despite the fact that various EU executives have repeatedly excluded such wide application of ancillary copyright, the generic and vague drafting of the new neighbouring rights cannot prevent their inclusion in the scope.

A tax on snippets endangers the basic principle of the Internet: A hyperlink is a pathway that leads an Internet user to already-existing content on the Internet; as such hyperlinks are core to the functioning of the World Wide Web. But hyperlinks are severely limited without the so-called 'snippets' that normally accompany them in web browsers. These snippets – that encompass headlines, bylines, and thumbnail photos – provide meaning and context to the hyperlink and help web users understand how to navigate on the web to find desired content. But by not including explicit language in the operative articles of the proposed directive that limits the ancillary copyright to *for-profit* reproductions of press material, ordinary web users risk being within the scope of the rules. As such, they will live in fear of legal consequences for merely posting press article snippets on social networks. Clearly this would result in a chilling effect on the availability of content online and an impairment of social exchange in general. As the backbone of the European Internet infrastructure, EuroISPA is deeply concerned about the impact this change to the Internet architecture would have on the many hyperlinking-dependent web services that avail of our infrastructure offerings.

Furthermore, it should be noted that there already exist simple technical measures that allow content providers and website operators to control the availability of their content on search engines and news aggregators e.g. through the use of meta-tags or the robots exclusion protocol (robots.txt). So far, most news publishers have not made use of this option, as they profit from the wider dissemination and visibility for their content offered by news aggregation.

[3] AEEPP et al, 2015, *Statement on Digital Single Market*, Available at: http://bit.ly/1QjYdAk [Accessed 24.10.2016]

Commercially-weaponising copyright law sets a dangerous precedent: Copyright law seeks to strike a balance between the private rights of authors and the public interest of society at whole. Moreover, the Court of Justice of the European Union has repeatedly asserted that copyright is just one of the many rights of EU citizens, one that can only be framed and enforced as part of a balanced approach that reflects the importance of competing fundamental rights. Ancillary copyright runs contrary to the spirit of copyright law,

in making copyright protection an end in itself rather than a means to further creation. By weaponising copyright to appease the commercial grievances of traditional publishers, the Commission will trample on the fundamental rights of numerous stakeholders who benefit from the creativity that copyright law is designed to promote. To illustrate just a few:

- Restricting the ability to link meaningfully with accompanying words of context (snippets) infringes on the right to receive and impart information.
- Any obligation to charge a fee administered by a collecting society infringes on the right of rightsholders to conduct a business and their right to have (and dispose of) property according to their own wishes.

Ancillary copyrights hamper the introduction of paid-content models: By putting an artificial chill on innovative digital publishing services, the introduction of ancillary rights takes away the incentives for legacy publishers to finally adapt to the digital economy. Even worse, the new IPR will be doomed to fail in the long-run, as the traditional publishing sector's woes are the product of broader market structural changes, not an imbalance of rights. Indeed, forcing one sector of the economy to financially compensate another will not counteract the changes in consumer behavior and the changes in advertising models that have caused the traditional publishing sector's woes. The only means by which traditional legacy publishers will be able to return to prosperity will be to embrace the opportunities of the digital environment – as many in the sector have already done.