

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

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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:

Isabelle

*Please provide your last name:

Doran

*

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

British Association of Picture Libraries and Agencies

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

Trade organisation representing commercial businesses licensing visual works
<http://www.bapla.org.uk>

*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

*

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.

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

If other, please specify

BAPLA is the UK trade association for picture libraries and agencies. Members include the major news, stock and production agencies as well as sole traders and cultural heritage institutions.

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

Images, which BAPLA members license, are embedded in published works across the EU

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

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

It is unclear how an introduction of a new neighbouring right for publishers would impact BAPLA members and contributors as rights holders without reference to any detail. See Q7. for our response in full.

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

It is unclear how an introduction of a new neighbouring right for publishers would impact BAPLA members and contributors as rights holders without reference to any detail. See Q7. for our response in full.

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

BAPLA members supply and license a substantial number of the images seen every day in print and digital media. Our members employ in the region of 2,500 people in the UK and generate revenue for, and manage the interests of over 120,000 creators and rights holders. The photographic sector is unique within the framework of the UK creative industry.

The images industry has faced unprecedented challenges in enforcing copyright in this new era of the dominant online technology powerhouses that include Google, Facebook and many visual social media platforms, and we are not alone, the music and publishing industry are experiencing the same. The challenge of protecting copyright works and those online permitted to use such works is made almost impossible by the interpretation of the exclusive “right of communication to the public”, InfoSoc Directive Article 3(1), from which the CJEU continues to attempt to define it for all online uses. Online, the value of content sits at centre of ‘communicating’ content to the public, as it is the right of the rights holder to be able to exploit their content as widely or narrowly as they want. It is confusing for rights holders throughout the

value chain who are experiencing a significant impact on the ability to generate an income and protect the use of copyright content for the originally intended uses.

What cannot be underestimated is the power of online platforms, such as search engines and social media, which have seen an exponential growth over the last 10 years with a significant impact on the professional market. BAPLA has conducted research last year that supports this view. The creative industry, in particular images, music and publishing, have reached a tipping point in which the control and consent of a copyright owner is irrelevant in the face of these enormous powerhouses and the onslaught of copyright infringements and reappropriation.

BAPLA sees that the most significant issue being grappled with at the heart of the proposed publishers right is the lack of control over copyright protected works and the harm being caused by the interpretation of the InfoSoc Directive, Article 3(1), by the aforementioned online platforms, as well as the outdated E-Commerce Directive, particularly Article 14 (Hosting) which compounds the growing 'transfer value' from rights holders to internet powerhouses, and prohibits the opportunity for rights holders to enforce permission and generate income in order to reinvest in new content.

The introduction of ancillary rights in Germany and Spain for press publishing, has done little to curb this interpretation of "communication to the public" by the likes of Google, Facebook, and other platforms, unaccounted for by rights holders when authorising the initial communication online. We do not believe the solution lies with either an ancillary right or introducing a neighbouring right in the online environment for publishers, but rather a much needed clarification of "communication to the public and "making available" right, Art 3(1) of the InfoSoc Directive. BAPLA strongly believes that bypassing in-line 'framing' loophole (whereby a website uses html-linking instructions to display content from a third party site without hosting it) in relation to Art 3 (1) of the InfoSoc Directive would mean that an introduction of a publisher's neighbouring right would still fall foul of evolving framing techniques. As a rule BAPLA members do not grant secondary rights to publishers, and unless agreed as part of a licence granting online uses, our members have the right to license directly to an online platform, and nothing should interfere with that right. The introduction of any mandatory or voluntary collective licensing scheme that overrides the rights holders ability to license their works online and assumes representativeness over the use of such works would deprive rights holders of their ability to directly exploit the content they have.

If rights owners of creative works (whether publishing, music or visual works) are to share in any of the economic value that such works contribute, then a review of both the InfoSoc and E-Commerce directives is urgently needed to address these issues for all three industries. As stated in BAPLA's previous responses to all the EU survey questions relating to copyright, the commercial activity undertaken by certain leviathan platforms are inherently anti-competitive in their current form for rights holders, transferring the "value" contribution away from permitted content providers and also almost

impossible to enforce. Supporting both direct and collective licensing for rights holders through legislative foundations must be the focus of any solution that harnesses advancing technology developments to ensure rightful remuneration is accurately and fairly allocated.

8. Would the creation of a neighbouring right limited to the press publishers have an impact on rights holders 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

It is unclear how an introduction of a new neighbouring right for publishers would impact BAPLA members and contributors as rights holders without reference to any detail. See Q7. for our response in full.

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

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

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

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

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

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

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.

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.

As stated in Q7. BAPLA does not believe the solution lies with introducing a neighbouring right (which does not reward an author's original creation) in the online environment for publishers, but rather a much needed review of the InfoSoc Directive in particular a clarification of "communication to the public and "making available" right, Art 3(1). BAPLA strongly believes that bypassing in-line 'framing' loophole (whereby a website uses html-linking instructions to display content from a third party site without hosting it) in relation to Art 3 (1) of the InfoSoc Directive would mean that an introduction of a publisher's neighbouring right would still fall foul of evolving framing techniques.

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

If other, please specify

BAPLA is the UK trade association for picture libraries and agencies. Members include the major news, stock and production agencies as well as sole traders and cultural heritage institutions.

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.

See responses to Q5, Q6 & Q7

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

See responses to Q5, Q6 & Q7

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.

See responses to Q5, Q6 & Q7

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.).

See responses to Q5, Q6 & Q7

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

BAPLA members and contributors operate out of the UK and therefore have made full use, over the last 28 years, of the UK copyright exception Section 62 of the CDPA 1988, which allows for commercial use of permitted acts in relation to certain works located in public places. Any EU-wide harmonising exception limited to only non-commercial uses of works would in BAPLA's view be a reversion for the image industry compared to the position member states, such as the UK, current have where the exception has certain permitted acts for commercial uses. The financial impact for the images industry, already hampered by the performances of certain online platforms, aforementioned in the first part of the survey, would only serve to compound the issue.

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

BAPLA members and contributors operate out of the UK and therefore have made full use, over the last 28 years, of the UK copyright exception Section 62 (CDPA 1988), which allows for commercial use of permitted acts in relation to certain works located in public places. Our members sole business is to lawfully license images for the UK and Europe as a whole. It is a positive business model that has remunerated image makers for several decades, as well as providing assurances for customers licensing works for their products.

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.

BAPLA, founded in 1975, is the UK trade association for picture libraries and agencies. Members include the major news, stock and production agencies as well as sole traders and cultural heritage institutions. BAPLA members supply a substantial number of the images seen every day in print and digital media. Our members employ in the region of 2,500 people in the UK and generate revenue for, and manage the interests of over 120,000 creators and rights holders. The photographic sector is unique within the framework of the UK creative industry.

Any revision which would mean the removal of the UK copyright exception Section 62 (s.62) of the Copyright, Designs and Patents Act 1988 (CDPA), would be unwelcome by the UK photography community, and sister communities in Europe which also benefit from a similar exception. BAPLA would therefore advocate the status quo welcomed by its members and contributors. However, to the extent that the “panorama exception” grants broader rights than the current exception available under s.62, we would welcome harmonising the scope of s.62 so that it covers the broadest scope of copyright works appearing in public.

The removal of s.62, or the “freedom of panorama” rights across all EU member states, would have a significant adverse economic impact on a creative community such as photographers. Fewer photographers would be prepared to license their images due to additional responsibility for carrying out a complex assessment, on a country-by-country basis, of what rights would have to be cleared. This would, in turn, impact the volume of images available to customers via lawful licensing avenues, and, by necessity, further strengthen the position of search engines which do not discriminate between lawful and infringing content.

The extent of the harm to picture agencies and photographers of all kinds will further depend on an analysis of potential uses of the image, i.e. whether the use is commercial or non-commercial (to the extent those can be easily distinguished). With a mixture of professional photography and amateur photography used by entrepreneurs and SMEs to European and global corporate companies, we would support at the very least maintaining the current status quo enjoyed by many EU country states that possess an exception, or better still, broadening the scope of the exception to include other copyright works available in public (e.g. murals, graffiti). We would also welcome the use of such a copyright exception to assist the harmonisation of copyright law across all EU member states.

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

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