EPP Alternative COMPROMISE AMENDMENT on Publisher’s Right

Draft opinion
Catherine Stihler
(PE599.682v01-00)

Copyright in the Digital Single Market

Proposal for a directive
Proposal for a directive
Recital 31

Text proposed by the Commission

RAPPOREUR
CA 24 (replacing AMs: 170, 171, 172)

EPP Alternative Comp AM
(covering AMs 174, 175, 176)

(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.

(31) Deleted

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 have invested heavily in digitalizing their content and yet are facing problems in licensing the online use of their publications and recouping their investments. Digital platforms such as new aggregators and search engines have developed their activities based on the investment by press publishers in the creation of content without contributing to its development. This poses a severe threat to the employment and fair remuneration of journalists and the future of media pluralism. In the absence of recognition of publishers of press publications as rightholders, licensing and enforcement in the digital environment is often complex and inefficient.

Or. en

Proposal for a directive
Recital 32

Text proposed by the Commission

RAPPOREUR
CA 25 (replacing AMs: 20, 177, 178, 179, 180, 181)

EPP Alternative Comp AM
(covering AMs 182, 183)

(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.

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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.

Proposal for a directive
Recital 33

Text proposed by the Commission

RAPPORTEUR
CA 26 (replacing AMs: 21, 184, 185, 186, 187, 188)

EPP Alternative Comp AM (covering AMs 189, 190, 191, 192, 193)

(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.

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Recital 34

Text proposed by the Commission

RAPPORTEUR

CA 27 (replacing AMs: 22, 194, 195, 196, 197, 198, 199, 200)

EPP Alternative Comp AM (covering AMs 201, 202, 203, 204)

(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, 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.

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(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, as the rental and lending right and the distribution right provided for in Directive 2006/115/EC. Short extracts of press publications may constitute a reproduction as they reflect an economic value and owe their fixation to the protected subject matter, i.e. the economic, organisational and editorial efforts of the press publisher necessary for such fixation and therefore interfere with the publisher’s entrepreneurial efforts. The rights 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. The protection granted to press publications under this Directive should also apply where the content is automatically generated by news aggregators or search engines.

Or. en
Proposal for a directive
Recital 35

The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the works and other subject-matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press publications should not be able to invoke the protection granted to them against authors and other rightholders. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side.

Proposal for a directive
Recital 36

Publishers, including those of press publications, books or scientific publications, often operate on the basis of the transfer of authors’ rights by means of contractual agreements or statutory provisions. In this context, publishers make an investment with a view to the exploitation of the works contained in their publications and may in some instances be deprived of revenues where such works are used under
exceptions or limitations such as the ones for private copying and reprography. In a number of Member States compensation for uses under those exceptions is shared between authors and publishers. In order to take account of this situation and improve legal certainty for all concerned parties, Member States should be allowed to determine that, when an author has transferred or licensed his rights to a publisher or otherwise contributes with his works to a publication and there are systems in place to compensate for the harm caused by an exception or limitation, publishers are entitled to claim a share of such compensation, whereas the burden on the publisher to substantiate his claim should not exceed what is required under the system in place.

Proposal for a directive
Article 11

Text proposed by the Commission RAPPORTEUR EPP Alternative Comp AM

Protection of press publications concerning digital uses

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

Protection of press publications concerning digital uses

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 as well as Articles 3 and 9 of Directive 2006/115/EG for the digital use of their press publications.

1a. The protection afforded to publishers of press publications by the rights referred to in paragraph 1 shall not cover individual words or hyperlinks to works available on another website, where such links only contain information necessary to find and, or request the source’s contents.

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.


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.

4a. The authors and other rightholders of the works and other protected subject matter contained in a press publication shall be have an appropriate share of the remuneration for the exploitation of the press publication.
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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.

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Recital 33

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(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.

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(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 and as the rental and lending right and the distribution right provided for in Directive 2006/115/EC. Short extracts of press publications may constitute a reproduction as they reflect an economic value and owe their fixation to the protected subject matter, i.e. the economic, organisational and editorial efforts of the press publisher necessary for such fixation and therefore interfere with the publisher's entrepreneurial efforts. The rights 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. The protection granted to press publications under this Directive should also apply where the content is automatically generated by news aggregators or search engines.
Proposal for a directive
Recital 35

Text proposed by the Commission

RAPPORTEUR CA

EPP Alternative Comp AM (covering AM 209)

(35) The protection granted to publishers of press publications under this Directive should not affect the rights of the authors and other rightholders in the works and other subject-matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press publications should not be able to invoke the protection granted to them against authors and other rightholders. This is without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side.

No proposal

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Proposal for a directive
Recital 36

Text proposed by the Commission

RAPPORTEUR CA

EPP Alternative Comp AM (covering AM 212)

(36) Publishers, including those of press publications, books or scientific publications, often operate on the basis of the transfer of authors' rights by means of contractual agreements or statutory provisions. In this context, publishers make an investment with a view to the exploitation of the works contained in their publications and may in some instances be deprived of revenues where such works are used under

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exceptions or limitations such as the ones for private copying and reprography. In a number of Member States compensation for uses under those exceptions is shared between authors and publishers. In order to take account of this situation and improve legal certainty for all concerned parties, Member States should be allowed to determine that, when an author has transferred or licensed his rights to a publisher or otherwise contributes with his works to a publication and there are systems in place to compensate for the harm caused by an exception or limitation, publishers are entitled to claim a share of such compensation, whereas the burden on the publisher to substantiate his claim should not exceed what is required under the system in place.

Proposal for a directive
Article 11

Text proposed by the Commission

RAPPORTEUR CA 39 (replacing AMs: 61, 419, 420, 421, 422, 423, 424, 425)

EPP Alternative Comp AM (covering AMs 427, 428, 431, 432, 433, 434, 435, 442, 443, 444, 445, 506?)

Protection of press publications concerning digital uses

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