

## **OPEN LETTER TO THE COMMITTEE OF PERMANENT REPRESENTATIVES (COREPER)**

### **We need a workable Publisher's Neighbouring Right if we are to avoid seeing the world exclusively through the lens of Google**

Your Excellency,  
Dear Deputy Permanent Representative,

We, EMMA (European Magazine Media Association), ENPA (European Newspaper Publishers' Association), EPC (European Publishers Council) and NME (News Media Europe) – representing the interests of tens of thousands of news brands, newspapers and magazines, across the EU, are writing to you ahead of the Committee of Permanent Representatives' discussion tomorrow on 12 December 2018 on the Proposal for a Directive on Copyright in the Digital Single Market.

After more than two years of negotiations, the fifth and last political trilogue on 13 December presents a major opportunity for conclusion. Substantial progress was achieved so far. After intense and thorough debates in the Council of the European Union and the European Parliament, all outstanding issues have been thoroughly scrutinised and carefully examined.

However, as regards Article 11, only the European Parliament's text, which was adopted after a comprehensive democratic debate with an overwhelming majority, would provide enough legal certainty to guarantee the effectiveness and enforceability of the new neighbouring right against predatory commercial practices of online service providers.

We therefore urge all Member States to explicitly state flexibility towards the European Parliament's text on Article 11 in tomorrow's COREPER meeting, as it represents the only way forward.

An exception for the use of "insubstantial" parts of press publications by information society services—whether they are not the intellectual creation of their authors or individual words or very short excerpts – such as provided for in the Council's mandate, would empty the right of its purpose and would serve only those who have built their services on the abuse of copyright. Such a limitation of the publisher's neighbouring right would result in the legal entrenchment and thereby legitimisation of the very commercial activities we wish to license.

The Publishers' Right must provide for the protection of "snippets", regardless of whether they are individual words or very short excerpts and regardless of whether or not such excerpts are the expression of the intellectual creation of their authors.

We are also very concerned by the new exception for commercial Text and Data Mining in Article 3a, which includes a provision (recital 13a) which would restrict the reservation of rights for publicly available websites to "machine-readable metadata", which in practice cannot be applied by press publishers and would instead create a legal loophole that would circumvent a Publishers' Right. It is impossible for publishers to disallow or exclude the largest and most powerful offender, Google's text and data mining crawlers, as this impedes "normal" indexing functions. As a result, press publications are discriminated in search results. We therefore urge EU legislators to keep their previously agreed wording or to amend the proposed sentence in order to be considered appropriate to reserve the rights "including" by the use of machine readable metadata. Otherwise, a sectoral exemption of press content must be provided, regardless of whether the exception is mandatory or optional for Member States.

One should not be surprised that Google is ramping up its opposition to a Publisher's Right when their very business model is based on free and unfettered re-use of publishers' and others' valuable content without a negotiation on terms and conditions. They have made no secret of their opposition to this right, which simply provides publishers with their own legal standing through an exclusive right to negotiate individually, or collectively with those who wish to re-use their content.

Press publications in Europe are diverse in content, opinion, culture, language and interests; they provide a broad perspective of news, entertainment, comment and investigation. We value this incredible diversity and its role in our democracy and value our independent press - unless we only want to see the world through the Google lens.

To preserve the diversity and value of our free and independent press, the only way forward is a strong and enforceable right for all press publications – including those addressed to a specialized readership in order to give press publishers absolute legal certainty over the content they produce.

Yours sincerely,