



NEWS MEDIA
ALLIANCE

January 16, 2019

Ms. Irina Lucan Arjoca
Second Director General and President of the Working Party on Intellectual Property
Council of the European Union
B-1048 Bruxelles/Brussels
Belgium

Dear Ms. Arjoca,

I am writing on behalf of the News Media Alliance, which represents 2,000 news organizations across the United States and globally, to express news publishers' strong support for the European Parliament's version of Article 11 of the proposed Directive on Copyright in the Digital Single Market (2016/0280 (COD)) that would create a Publishers' Right in the European Union. We are particularly concerned about the damaging requests and claims made by some stakeholders in recent weeks regarding Article 11 and the Directive in general.

The Copyright Directive builds upon the already highly developed intellectual property protections in the European Union. Article 11 of the Directive would give European news publishers for the first time an independent right to control and enforce the use of their content online, providing an important safeguard for the sustainability of high-quality journalism in the European Union. In the United States, this fundamental principle is reflected in our Constitution and the Copyright Act. Guaranteeing these rights in a digital economy should be straightforward and uncontroversial. After all, other creative industries, including film and music, already have such rights. However, online platforms and other businesses use online news content every day for free to make money for themselves, whereas news publishers – many of whom are already struggling with increased online audience and decreased revenues – are left with nothing.

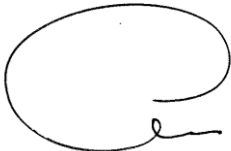
The European Parliament's version of Article 11, which is opposed by various technology companies and other special interest groups, would provide a clear and governable standard to protect news content from online abuse. Contrary to these groups' argument, the proposed Directive would already allow publishers to decide how they want to make their content available online. Article 11 is meant to empower news publishers and nothing in the proposal requires tech platforms to publish or pay for content or for publishers to demand payments. There is therefore no need to provide further assurances to the tech companies in order to further entrench their dominant position in the online ecosystem at the expense of content creators.

The Parliament’s draft clearly defines the scope of the protection, providing invaluable legal certainty to both news publishers and tech companies alike, while the Council’s proposal would exclude “insubstantial parts” from the scope of the protection – using either an originality or a length criterion. Adopting such an ambiguous standard, supported by businesses that wish to use online content without compensation for commercial purposes, would preserve the status quo and render the Publishers’ Right hollow, legitimizing exactly the kind of commercial uses of news content that the right aims to protect. Further, failing to set a clear standard at Union-level would risk undermining the attempt to harmonize copyright laws across the EU.

In addition to protecting the future of high-quality journalism in Europe, the European Union should resist attempts to undermine these protections in trade negotiations with the United States. The two regions rely on strong transatlantic trade in intellectual property, and Article 11 and the Copyright Directive would promote innovation and the economic sustainability of the creative industries on both sides of the Atlantic. And while both the United States and the EU offer support to content creators, the legal regimes are not the same. The European intellectual property regime may not be able to fully reflect the complexities of the U.S. legal framework, and vice versa. While efforts to restate and strengthen our common commitment to strong intellectual property protections should be encouraged, attempts to transfer incompatible legal doctrines and policies would be ill-advised.

As the Publishers’ Right only applies to unauthorized commercial users, adopting a strong Publishers’ Right would not decrease information diversity online nor prevent ordinary internet users from sharing, reading, and accessing stories. Smaller publishers and startups would only be harmed if large tech companies want to harm them. After all, Publishers’ Right is not about large news publishers nor the big tech. It is about ensuring the future of high-quality journalism and securing a healthy online ecosystem that provides access to accurate and reliable information. Lack of fair compensation for the commercial use of news content threatens the financial future of free and independent news organizations and journalists. Adopting a strong Article 11 would level the playing field and provide news publishers a better chance of survival.

Sincerely,

A handwritten signature in black ink, appearing to read "David Chavern". The signature is fluid and cursive, with a large loop at the beginning and a smaller loop at the end.

David Chavern
President & CEO
News Media Alliance