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EU Copyright reform: the truths and the myths

Myth: The Publisher's Right will destroy the internet.

No. The EU performance protection rights already awarded to the film, television and music industry haven't destroyed or negatively impacted the internet. The Publisher's Right is a slimmed-down version of these rights and will certainly not harm the internet. Even the existing German Publishers' Right has not had any harmful effects on the internet.

Myth: The Publisher's Right will restrict content sharing and harm consumers.

No. Nothing that newspapers and magazines are demanding would interfere with readers' access to our online offers, or prevent them from linking to social media, either via apps or via email to friends and family. It is in the press' interest for readers to recommend their content and share it with friends and acquaintances. That's why newspapers and magazines provide share and like buttons under their articles. The Publisher's Right is not going to change that.

The Publisher's Right will not affect internet freedom - or linking, in particular. This is stressed in the compromise recently adopted in the European Parliament's Legal Affairs Committee. In addition, all existing provisions regarding exceptions such as the citation right as well as the permission for illustration, research and private copies remain unchanged.

If companies continue to exploit the press without compensation, this will ultimately impact on publishers' ability to finance journalism. The consequence would be a decline in press titles to the detriment of consumers.

Myth: The Publisher's Right will limit the freedom of the internet.

No. The aim of the right is to ensure that publishers and their employees are rewarded for the value and content that they produce. This has nothing to do with the freedom of the internet and it will not be restricted by these rights.



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Myth: Small publishers will fail and are against the law.

No. That is not true. On the contrary, even large media companies are currently in no position to negotiate a fair settlement with the dominant players in the digital world. The hope is that the Publisher's Right will address this imbalance in power and make it easier for all publishers, regardless of their size, to be rewarded for their content in the future. This is especially important for small publishers. The Association of German Local Newspapers (VDL), has called emphatically for a Publisher's Right.

Myth: The Publisher's Right prevents innovation and harms start-ups.

No. A Publisher's Right will help pave the way for more innovation in the press. The legal certainty that will result from this right will encourage investment and increase opportunities for newspapers and magazines of all sizes to develop new innovative products for their readers.

Most journalism business models on the internet have been developed as start-ups, either by publishers or their affiliated investors. However, innovations within digital journalism can only happen if they are sufficiently protected against exploitation by third parties. Without the Publisher's Right, startups in journalism would be financially impacted.

The question also arises about the definition of startups: startups with only a few users would generally have to pay very low licence fees. The Publisher's Right would not be an obstacle to the development of startups. Startups with large numbers of users are usually backed by larger companies with significant economic interests.

Myth: The Publisher's Right is a Google or Link tax.

No. The Publisher's Right is not a Google or Link Tax. Free linking remains unchanged. This has been clarified in the compromise recently adopted by the European Parliament's Legal Affairs Committee. Newspapers and magazines only demand that they should be recognized as right holders under EU copyright law, with the right to decide for themselves if and how their content is used. All press publishers retain the right to allow other parties to use their content for free or via individual or collective licences. Importantly - and this is what it is all about - it would be for the publisher to decide.

Such rights protect intellectual property and investments as well as content and the value of that content. They create a fairer economic balance between those who create content and those who distribute it. The aim of the Publisher's Right is to enable fair competition for the press as well as for the user.



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Myth: Newspapers and magazines benefit from the exploitation of their products by news aggregators and search engines. There is no reason for publishers to be paid.

No. Right holders' ability to generate revenues from their services is a principle of copyright law. The fact that the right holders benefit from the exploitation is nothing unusual, but rather the rule. For example, music labels also benefit when their artists' music is played on the radio. But this does not release the radio stations from the obligation to pay for the use of the music itself. The same applies to the use of press products by search engines or news aggregators, which – very similar to the radio stations themselves – significantly benefit from the attractiveness of the content generated by press products.

Research by the European Commission has shown that almost 50% of all internet users only read the excerpts provided by the online services and do not click through to the publisher's site. That's why a "win-win situation", as some claim, does not exist. This was described in detail by the Commission in its comprehensive Impact Assessment. Instead, the current legal situation leads to a market failure to the detriment of the press.

Myth: The Publishers' Right proposed by the European Commission prejudices the rights of the author.

No. The European Commission's proposal explicitly states in Article 11 (2) that the Publisher's Right cannot be invoked against the authors or other rights holders and therefore does not affect the journalist's legal position. The Publisher's Right also safeguards the investments of publishers and thus strengthens the financial power of the press, which in turn would be beneficial for journalists. In addition, the text that has been adopted by the Legal Affairs Committee explicitly provides for the sharing of profits generated by the EU Publisher's Right. Consequently, journalists will directly benefit from the Publishers' Right.

Myth: The German Publishers' Right has already failed.

No. It is common for the effective enforcement of rights that they will first need to be tested by the courts. That was clear from the very beginning. For example, the dispute between YouTube (Google) and GEMA took seven years to reach an agreement.

The German Press Publishers' Right is currently in the middle of such a dispute. Following the creation and publication of the tariff in the Federal Gazette, VG Media, the collecting society for private television and radio stations in Germany, offered to negotiate remuneration-based licences with the search engines and news aggregators. Some large search engine operators such as Google, the market leader, refuse to accept the applicability of the law and the appropriateness of the tariff. Several legal proceedings are pending.



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Myth: Instead of the Publishers' Right, the so-called presumption rule would be the better way.

No. The opposite is the case. A mandatory legal presumption rule would only allow publishers to enforce the rights of the authors in their own name. The regulation would lead to complex legal proceedings and prevent contractual solutions, especially for new digital business models. Also, a mere presumption rule would not give newspapers and magazines the necessary protection in terms of the mass use of snippets from press publications by search engines and news aggregators. As a result, this would amount to legislative endorsement of the exploitation of press products by online services. The position of press publishers and journalists would be weakened further. The presumption is also opposed by journalists' unions and associations, as this would interfere with their own author's right.

Myth: Upload filters are a pre-censorship of the internet

No. A free and independent press needs copyright protection in order to remain financially independent. Press freedom would be jeopardised if the liability of the platforms goes too far. The rule does not apply to anyone who makes comments on their own website. Neither bloggers nor citizens nor media companies. This is essential. Discussion forums, etc. would not be covered from the outset, since it is not the main purpose of discussion forums, etc., to offer copyrighted works.

Myth: Without the votes of the far-right Front National, there would have been no political majority in the EP

No. The fact is that there are supporters and critics of the new regulations in all parties in the EP.

Myth: In Spain, Google shut down the service "Google News" in 2014 in dispute with the publishers of ancillary copyright. As a result, visitor numbers and advertising revenues fell by 15 percent.

No. After a brief slump, the numbers have climbed up to their previous level.

Myth: Memes are under threat

No. Article 13 only creates an obligation at the level of the services and not on the consumers. People will still be able to access and post their content freely on 9GAG, Facebook or other platforms. Article 13.2 gives express protection to "prevent misuses" and to "prevent limitations in the exercise of (copyright) exceptions" for users. It must be noted that in most cases memes and mash-up are and will continue to be covered by existing copyright exceptions (i.e. parody, criticism, citation, etc.). Therefore, they by definition can be created and posted by citizens on the basis of such exceptions.