

Future Media Lounge – February 2017 session

“The Link is Safe: Publishers’ Rights in the Digital Age”

Wednesday, 08 February 2017, European Parliament, Brussels

Event Summary:

This Future Media Lounge session explored the European Commission’s proposal for a directive on Copyright in the Digital Single Market, which was published on 14 September 2016 and includes a related right for press publishers. The “publisher’s right” will grant publishers the legal protection and clarity needed for the sustainability of a free and pluralistic press sector.

While press publishers argue that the publisher’s right is urgently needed to remain competitive and independently financed and to protect their investment in the original, professional content that underpins the freedom of the press and democracy, some stakeholders see risks for the open internet. During this Future Media Lab. session we brought together media, legal and academic experts as well as MEPs to discuss the proposal in the European Parliament.

Giuseppe Abbamonte, Director of the Media and Data Directorate, DG Connect, at the European Commission opened the debate with a presentation of the Commission proposal. According to him, the proposal has three objectives: 1) the facilitation of the circulation of content; 2) the modernisation of exceptions for research and education, amongst others; and 3) the achievement of a fairer marketplace based on a more equitable distribution of the worth generated by copyright-protected material. Abbamonte acknowledged the legal hurdles that publishers face if they want to enforce their rights online and said that the publishers’ right aims to level the playing field by giving publishers a seat at the negotiating table. He also countered the myth that the right would result in a “links tax”, saying that it will not undermine the ability of individuals to link and share articles.

The next speaker, **Jens Henneberg**, Executive Vice President & Editorial Director, Bonnier Publications, discussed the market reality for today’s publishers. The current situation, he said, is a market failure. While there have been online successes, it’s very hard to monetize content online and the revenues coming from the digital sphere do not compensate investments made. Not only is it currently exceedingly difficult for publishers to enforce copyright protection online – since they would have to prove article-by-article that they have the secondary rights to the content – but it is also time-intensive and expensive to do. The publishers’ right will provide the legal clarity necessary to operate in the digital sphere, which will lead to publishers investing more in creating quality, professional content. Henneberg also discussed the important role publishers and journalists play, particularly in today’s media environment where consumers are inundated with information and news, much of it from questionable sources. The role of professional journalists to fact-check and provide context is increasingly important.

Therese Comodini Cachia (EPP, MT), who is the Parliament’s rapporteur on the proposal for a directive on copyright in the Digital Single Market, was unable to join the event in person, but she appeared via a video message to share information about the discussions currently happening in the European Parliament on the file. In her message, she said that the digital transformation changing consumer behaviours that result from it has had an impact on existing business models. In this sense, MEP Comodini Cachia said that she is working together with other rapporteurs and shadow rapporteurs to find a balanced approach, “with a determination to

see a regulatory framework that provides legal certainty - and clarity - and a level playing field for stakeholders without stifling new business models.”

The discussion continued with **Prof. Dr. Thomas Höppner**, Professor of Civil Law and Intellectual Property, TH Wildau, who said that the incentive to invest in high quality journalism is under threat today since it will always be more cost-efficient to copy publications than to produce them. This creates a disbalance between those who produce content at a high cost and those who copy content at a negligible cost, with the latter always coming out ahead. He added that the proposal is fully aligned with the existing framework, and therefore is should be welcomed.

Following the presentations of the speakers and commentators, the session was opened to questions from the audience. One audience member asked whether the publishers’ right is coming too late; that publishers – unlike others – haven’t adapted to the digital age and the result is that they are trying to use the right to protect outdated business models. Henneberg responded, saying that publishers are continuously investing in new technology in order to address the needs of consumers to be present on all platforms. However, such innovation comes with legal barriers, since in order to develop new business models publishers need control of their content. Without legal clarity, experimentation is limited.

Additional questions targeted the impact such a right would have on journalists and on consumers, as there were accusations that the publishers’ right would have a negative effect on these groups. In regard to the former, Abbamonte said that the publishers’ right will have no effect on the rights of authors and will not infringe on primary rightsholders. Henneberg also responded, saying that more legal clarity will allow publishers to invest more into newsrooms and therefore provide more job security for journalists. He also said that there would be no impact on consumers’ ability to share content, saying that the purpose of mass media is to create an audience and that sharing content is a crucial element.

Throughout the Q&A period, both pro and counter arguments on the publisher’s right were raised. The speakers stressed that the right is very similar to rights already enjoyed by broadcasters, film and music producers. While expressing his confusion as to why the publishers’ right has been so controversial, Abbamonte asked, “why is a right for phonogram and film producers a ‘yes’, but for publishers it’s a ‘no’?”

Speakers:

- **Giuseppe Abbamonte**, Director of the Media and Data Directorate, DG Connect, European Commission
- **MEP Therese Comodini Cachia**, EPP, Malta (via video address)
- **Jens Henneberg**, Executive Vice President & Editorial Director, Bonnier Publications (DK)

Expert Commentators:

- **Prof. Dr. Thomas Höppner**, Professor of Civil Law and Intellectual Property, TH Wildau (DE)
- **MEP Andrew Lewer**, ECR, United Kingdom

The session was moderated by **Karen Massin**, CEO of Burson-Marsteller Brussels. **MEP Andrew Lewer**, UK/ECR, hosted the event.

Co-organisers of the event were: the **European Magazine Media Association**, the **European Newspaper Publishers’ Association**, the **European Publishers Council**, and **News Media Europe**.