

SYNOPSIS REPORT ON THE RESULTS OF THE PUBLIC CONSULTATION ON THE ROLE OF PUBLISHERS IN THE COPYRIGHT VALUE CHAIN

1. INTRODUCTION

This report summarises the outcome of the public consultation on the role of publishers in the copyright value chain (hereinafter 'publishers') which was conducted by the Commission from 23 March until 15 June 2016¹ together with a consultation on the 'panorama exception'².

The objective of the 'publishers' section of the consultation was to gather views in particular on the impact that granting an EU neighbouring right³ to publishers could have on the publishing sector, on citizens, service providers and creative industries and as to whether the need (or not) for intervention was different in the press sector as compared to other publishing sectors.

The consultation was published in 3 languages (English, French and German) on the Commission's website. The section on publishers received 3957 replies⁴. 2389 of them (around 60%) were gathered by a third party website ("fixcopyright") run by a coalition of stakeholders and sent to the Commission in one go. These replies were not submitted via the EU survey tool; nevertheless they feed into the comprehensive assessment of this report.

This report aims at presenting a qualitative overview of the responses. In this context, it has to be noted that:

- The consultation sought the views of interested parties, as such the responses cannot be considered to be statistically representative.
- A number of respondents have provided very similar replies to the consultation. The analysis of open questions shows that in a relevant number of cases word-for-word or extremely similar textual answers are repeated in the submissions of different respondents.

2. OVERVIEW OF RESPONDENTS

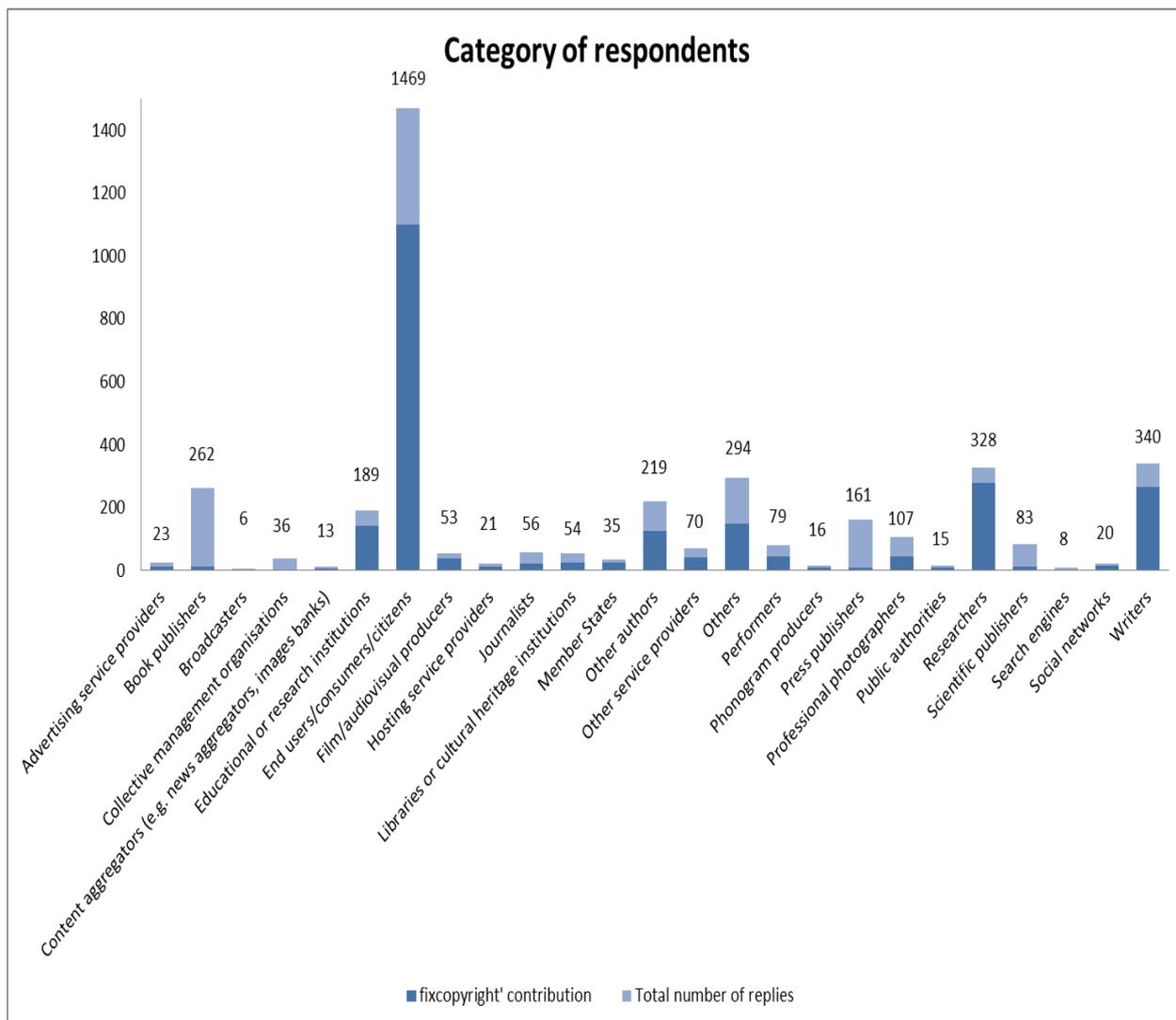
In total 80% of the respondents replied as individuals in their personal capacities, while around 20% replied as representatives of an organisation/company/institution. The breakdown of category of respondent (as indicated by the respondent) is as follows:

¹ <https://ec.europa.eu/digital-single-market/en/news/public-consultation-role-publishers-copyright-value-chain-and-panorama-exception>.

² A synopsis report on the results of the public consultation on the 'panorama exception' is available on the public consultation [website www.europa.eu](http://www.europa.eu).

³ In EU legislation often referred to as "related right".

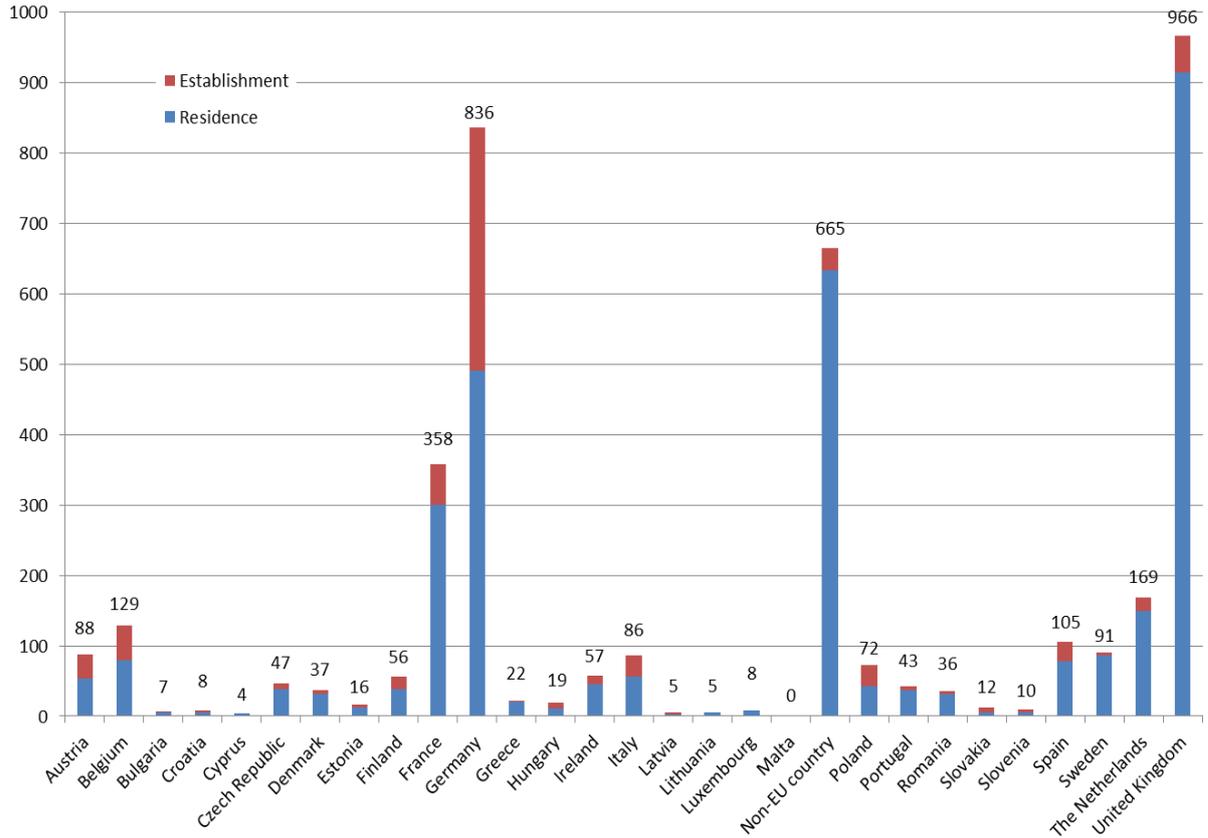
⁴ In total, 6203 replies have been received, counting both the publishers and freedom of panorama sections of the consultation.



Replies came from almost all Member States. The geographical distribution of responses is below⁵:

⁵ Place of residence and primary place of establishment were counted together.

Number of respondents by residence/establishment



3. SUMMARY OF THE REPLIES

The public consultation contained a first group of questions (Questions 1 to 3) related to the current situation and asking respondents to identify existing problems, if any and a second group of questions (Questions 4 to 13) asking to identify the possible impact on different categories of stakeholders of the possible introduction of a neighbouring right for publishers at EU level (limited to press publishers or covering all publishing sectors), including in the light of the experiences with the recent Spanish and German laws in the areas of publishers' rights. The summary below presents respondent's views on all the questions organised by specific category of respondents.

Publishers

Newspapers/magazine (press) publishers. The vast majority of press publishers indicated that they are currently facing problems when licensing online uses of their press or other print content due to the fact that they are doing so on the basis of rights transferred or licensed to them by authors. Similarly, the vast majority of these respondents stated that they encounter problems when enforcing their rights for the same reasons.

Press publishers generally indicated that a new neighbouring right would help them when facing these problems by creating legal certainty, strengthening their bargaining power, fostering more licensing opportunities in the digital environment and empower them to better fight against online piracy. They considered that a new right would create room for investments in digital skills and in the creation of new jobs which would in turn benefit

authors and service providers and, on a larger scale, help sustaining media diversity and media pluralism. They also took the view that such a right would recognise the added value they provide regarding the production of press content, also in terms of investments, and that it would put them on an equal footing with other holders of neighbouring rights such as film producers.

A minority of press publishers, in particular from Spain, took a different view. They referred to the Spanish and German "ancillary rights" laws and expressed a concern that the introduction of a neighbouring right at EU level would make it more difficult for service providers to drive audiences to newspapers and magazines' websites and as a consequence would reduce traffic and advertising revenues for publishers. These respondents were doubtful that a neighbouring right would improve licensing and enforcement. They considered that legislative intervention at EU level could have a negative impact on the cooperation between online service providers and publishers and ultimately affect smaller publishers negatively.

Book publishers. The majority of book publishers stated that they generally do not face specific problems in licensing or enforcing rights to their content linked to the fact that they do this on the basis of the rights transferred or licensed to them by authors. At the same time, these publishers generally focus their replies on a different problem, i.e. the situation following the "Reprobel" decision of the CJEU as regards publishers' ability to receive compensation for uses under exceptions⁶. These respondents called for legislative intervention at EU level to solve this problem as a priority but they were generally open as to how to do so (by means of a neighbouring right or by means of a more targeted solution). Some individual book publishers raised doubts as regards possible unintended effects of a neighbouring right in their sector, in particular as regards limits that this could impose on their freedom to make available some content for free online under "freemium" business models.

Scientific publishers. Similar to book publishers, the vast majority of scientific publishers indicated that they do not face specific problems due to the fact that they license or enforce rights in their works on the basis of the transferred right of the authors but raised issues related to the "Reprobel" decision. Some of these respondents considered that a neighbouring right covering scientific publishers would be an appropriate way to solve this specific problem and also strengthen their position as regards licensing and enforcement. Others in this category were open to different solutions to solve the "Reprobel" situation. These publishers generally considered that a neighbouring right would have a positive effect on authors of scientific publications and would not interfere with the open access model for scientific publications. However, some individual scientific publishers expressed doubts as to the need for legislative intervention at EU level (as they considered that this would not change their position as regards licensing and enforcement).

⁶ In this decision (Case C-572/13, Hewlett-Packard - Reprobel) the CJEU ruled that publishers are not entitled to fair compensation for uses under exceptions or limitations in the EU copyright framework, notably the reprography and private copying exception, since they are not rightholders under EU law. In the wake of this decision the legality of distribution schemes in a number of Member States has been called into question in which publishers receive a share of the fair compensation that according to the jurisprudence of the CJEU is due exclusively to the authors, in particular in cases where the author's reproduction right has been transferred to publishers.

Music publishers also pointed to problems following to the "Reprobel" decision and called for EU intervention to solve them. In that context, they called for a neighbouring right for published editions of sheet music / notations.

Authors

Journalists' representatives shared the publishers' concerns that the publishing industry should be strengthened in their bargaining position with online service providers. They were open to the introduction of a new neighbouring right for publishers and suggested that this new right should be subject to collective management. At the same time they highlighted that this intervention should not affect authors' rights. Certain individual journalists responding to the public consultation expressed concerns that a neighbouring right for publishers could have an impact on their own authors' right, weaken their bargaining position in relation to publishers and make it more difficult to exploit their rights independently from them. Journalists were also generally supportive of /open to a legislative intervention addressing the "Reprobel" situation.

Professional photographers were also generally cautious as they worried that the introduction of a publishers' right could weaken their position vis-à-vis publishers.

Writers were generally more negative than journalists as regards the possible introduction of a right for book publishers. They stressed the need to protect authors more than the other players in the value chain due to their weak bargaining position and were concerned that a publishers' right in the book sector would go against this objective. At the same time, as journalists, writers were supportive of solutions (other than a neighbouring right) allowing publishers to receive compensation for uses under exceptions. Translators took a position similar to that of writers.

Researchers pointed out that although the role of the scientific authors in the publication process is undeniably the most significant one, they barely ever get compensated for their work. Allocating more rights to publishers would exacerbate this perceived problem. These respondents were also worried that this measure – notably if also aimed at scientific publishers – could make it more difficult for researchers to publish under open access licences and more generally to spread and share the results of their research widely.

Collective Management Organisations (CMOs)

CMOs representing authors and publishers for the management of their reproductions rights (so called RROs – Reproduction Rights Organisations) generally asked for EU intervention to solve the situation created by the "Reprobel" decision as regards publishers' ability to receive compensation for uses under exceptions. This view was also supported by other CMOs representing authors.

CMOs representing press publishers (in particular in Germany) supported the introduction of a neighbouring right at EU level, which was considered to represent an added value as compared to national solutions such as the German ancillary right for press publishers.

Other Rightholders

Commercial broadcasters were open to the introduction of a neighbouring right for publishers.

Record (music) producers (including independent labels) were generally open or clearly supportive to the introduction of a new neighbouring right for publishers.

Individual film producers and performers generally opposed the introduction of a publishers' right as they worried that an additional layer of right means additional requirements for right clearance and higher costs for them.

Service providers

The majority of **online service providers** (advertising, hosting and other service providers such as search engines and social networks) were generally opposed to the introduction of a neighbouring right (whether this right covered only press publishers or all publishers). Some considered that this would have a negative effect on their activities as well as on other stakeholders (such as authors, consumers). In their view there is no market failure that needs to be addressed since online services drive traffic to publishers' sites and increase the visibility of their brands, while publishers can control the use of their publications by relying on authors' rights transferred to them. Some feared that a new neighbouring right would risk imposing the negotiation of additional licences on them and lead to an increase in transaction costs related to the identification of the relevant rightholders.

These respondents also considered that there could be potential difficulties when defining the protected subject-matter and the rightholders. In their view, legal uncertainty could arise that would be mainly affecting uses as indexing or providing snippets of or hyperlinks to published content. As a result, they consider that a new right would create barriers to the entry into the market of online distribution of press content. The experience of legislation adopted in Germany and Spain regarding press publishers ("ancillary rights") is suggested by this category of rightholders to be a negative precedent, including in terms of negative impacts on publishers, which would also appear if a new right is granted at EU level (e.g. legal uncertainty; decline of traffic, especially for small publishers; lack of visibility online, for the benefit of large and non-EU publishers).

Some considered that if the main policy objective is to make publishers eligible for compensation for uses under exceptions, this goal may be achieved without granting rights to all publishers. Therefore, they are open to targeted solutions to allow the sharing of compensation stemming from exceptions among publishers and authors.

Institutional users

Institutional users of copyright protected content (such as research institutions, libraries and universities organisations) were concerned that a new neighbouring right for publishers would create additional complexity and legal uncertainty for them. They fear that such a right would make it more difficult to carry out text and data mining or to use content under existing exceptions to copyright. They considered that a neighbouring right extending to all publishers, including scientific publishers, would put at risk the open access publication model.

More generally, these respondents were also concerned that a neighbouring right for publishers would create obstacles for smaller or new players to enter the market and reduce

the possibilities to access existing content online.

End users/ consumers/citizens

The majority of **consumer, users and their organisations** expressed reservations as regards the possible introduction of a neighbouring right. They were concerned that a new publishers' right at EU level could have a negative impact on consumers' activities online (notably their ability to link to and share content) and more generally reduce the options for accessing existing content, notably press content, freely available online. The German and Spanish "ancillary rights" laws were often quoted as negative examples (in particular the Spanish law which resulted in a main news aggregator shutting down its services in that country). Some consumers also expressed the expectation that prices for cultural products could increase.

At the same time, some consumer organisations recognised that a neighbouring right could have a positive impact on the quality of press content and in terms of media pluralism.

Member States and public authorities

Only few **Member States** and **public authorities** replied to the public consultation. Those who did so generally recognised that the publishing industry, notably press publishers, are facing problems in exploiting their content online but some of them expressed doubts as to whether the introduction of a neighbouring right at EU level would be needed at this stage. Other Member States called for legislative intervention at EU level to address problems faced by press publishers online as well as the problems faced by publishers across all sectors as regards their ability to claim compensation for uses under exceptions (the situation following the "Reprobel" decision).