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**Date:** 14 June 2018 at 12:33:47 BST

**To:** DNI Workgroup <[dn](mailto:dn)>

**Cc:** "

**Subject:** Re: DNI WG Lisbon - Agenda

HI DNI WG friends,

Hope this email finds you well! One of the actions from our DNI WG meeting in Lisbon was about more information about the proposed Copyright Directive. Apologies for the delay on my side and the timing is urgent as there is a vote in [the Juri committee](#) of the European Parliament on June 20th on the Copyright directive.

If you feel strongly about this, then please consider contacting [the MEPs](#) on the Juri committee.

All the best - Madhav

#### Copyright Directive tl;dr

- We spoke about two different articles of the Copyright Directive -
  - **Article 11: Neighboring right aka Ancillary Copyright aka Link Tax.** The proposal in its current format limits sharing links to material published on open web, including aggregation of news. The experience from Spain shows that there are no winners, but the small --local-- news services suffer the most. The proposal is bad for the news ecosystem ([see here](#) for a statement of 169 academics in opposition to Art. 11) and check out the [#SavetheLink](#) hashtag
  - **Article 13: Content filtering aka Pre-censorship.** Here any online service where users upload content will become immediately liable for copyright infringing content. This would require filtering content before it goes live. Sites impacted include, but are not limited to, GitHub, Wikipedia, YouTube, Newspapers (comment sections), Flickr, etc. [See here](#) for an infographic showing all of the online services and companies that would be affected by Article 13. The proposal is bad for the internet ([see here](#) for an open letter signed by Tim Berners Lee, Vint Cerf, and other Internet luminaries coming out against Art. 13).
- Timeline
  - As a next step this directive will be voted on in the European Parliament legal affairs committee on **June 20th**.
  - If the directive passes in Parliament it will move forward to a triologue process where the Commission, Council, and Parliament negotiate a final text.
  - Most likely, the directive will be ready for member state implementation in early 2019. The implementation process may take up to two years.
- What would be a better option
  - The "presumption of transfer" of rights to publishers, which has been tabled in the Parliament and was considered in the Council (as one of the "options" for Article 11), was a better basis for discussion. Major news publishers themselves had requested such a measure from the Commission. It helps them enforce their rights (making proof of chain of title easier) without destabilising the entire digital ecosystem.

## More if you want it below:

### Article 11 in details

Article 11 would likely impede the free flow of information that is of vital importance to democracy. This is because it would create **very broad rights of ownership in news** and other information. These rights would be territorial – there would be one for each Member State. The rights would be owned by established institutional producers of news. And in each Member State, the new right would sit on top of all the other property rights that such publishers of news already enjoy: copyrights, database rights, broadcast rights and other related rights.

This proliferation of different rights for established players would make it more expensive for other people to use news content. **Transaction costs** would be greatly increased, as permissions would need to be sought for virtually any use. Even using the smallest part of a press publication (except perhaps for strictly private use) would mean payment would be due to an institutional news publisher.

That means, the proposal would be **likely to harm journalists**, photographers, citizen journalists and many other non-institutional creators and producers of news, especially the growing number of freelancers.

### Research on Article 11

These three public studies all demonstrate that a new neighboring right is not necessary and will in fact be detrimental to the news ecosystem. The first study is from the [European Commission](#) itself; the second is from the [European Parliament's Independent Research Center](#); and the third is from the [Spanish Publishers Association](#) (AEEPP).

#### European Commission report

- “While several factors have driven the decline in newspaper revenues and in the number of legacy newspapers, news aggregation has an opposite effect”
- “The risks that may be created by news aggregation platforms for media plurality in news consumption cannot be addressed through copyright”

#### The independent European Parliament study finds:

- Article 11 will dramatically increase transaction costs for businesses (page 21);
- It will *“decrease the economic value of each right covering essentially the same economic use.”*
- It is disproportionate, with the authors arguing that they are *“doubtful that the proposed right will do much to secure a sustainable press.”*
- The authors argue that the introduction of Article 11 *“poses a threat to the nature of news communication”*
- On hyperlinking, the implications of Article 11 *“for the re-use of snippets are, in our opinion, extremely serious”*
- They recommend adopting a presumption rather than a neighboring right, saying *“In the light of the criticisms and evidence, our recommendations would be for JURI to adopt the recommendations contained in the Draft JURI Report of March 10, 2017.”*

#### The AEEPP (small publishers) study of Spanish ancillary copyright law finds:

- A general reduction of news consumption *“With regard to the reduction of news consumption, Calzada and Gil (2016) have evaluated the impact of the closing down of Google News on news agencies in Spain. The authors rely on aggregated data of Spanish and French newspapers, using those from the latter*

*country as a reference group (control). Their results point to an 8% reduction in the number of pages viewed by consumers.*"

- Similarly, they found a disproportionate impact on smaller publishers who have less name or brand recognition, "*They found that the consumption of news by the treatment group (Google News visitors before its exit) fell by 20% from October 2014 to March 2015. Likewise, these authors point that visits to news publishers were in general reduced around 10%, with small publishers suffering the most.*"
- They also found significant harm to consumers, with the study estimating a total impact of 2.8b per year. "*Given that there are about 21.2 million online newspaper readers and the opportunity cost, expressed in terms of the average weighted salary in Spain is about € 7.65/hour, the change in consumer surplus monetary value for the total of Internet users in Spain reaches around €2,800 million per year.*"
- The report also highlighted a very damaging effect on publishers, with: "*Lower advertising income as a result of the lower traffic; Entry and expansion barriers, and higher concentration; Reduction in short-term producer surplus of approximately €10 million per year and between € 9 and € 18 million in advertising revenue per year; and Slowdown of innovation and entry and expansion of small publications.*"