



THE SLOVAK ALLIANCE  
FOR INNOVATION ECONOMY

**Brussels, 20 November 2018**

Your Excellency Ambassador, MEP Axel Voss, Commissioner Gabriel

cc. Deputy Ambassador

We, the undersigned, are writing to you ahead of the next technical meeting and the next triologue meeting on the proposed Directive on copyright in the Digital Single Market.

Our associations represent the broad range of stakeholders which will ultimately be responsible for implementing this Directive. Together with a wide range of academics, educators and NGOs representing human rights and media freedom, we have repeatedly expressed concerns about the unintended consequences of the proposed Directive on innovation, both new and existing business models and fundamental rights.

We acknowledge however that both the European Parliament and the Council are moving forward with the creation of a news publishers' right (Article 11) and a new liability regime for online platforms (Article 13).

In the spirit of a constructive approach, we would like to submit the following comments for your consideration, to highlight some key nuances which we believe should be taken into account for any final compromise text to be at all workable in practice.

#### Article 11

The rationale of the news publishers' right is to support media diversity and "*the sustainability of a pluralistic press sector in Europe*"<sup>1</sup>. The underlying idea is to help an independent and free press which "*supports diversity and upholds democracy*"<sup>2</sup> to generate revenues.

---

<sup>1</sup> <https://www.publishersright.eu/mythbuster>

<sup>2</sup> <https://www.publishersright.eu/mythbuster>

The new publisher's right should provide publishers with the ability to choose whether or not they allow the indexing of their content online without remuneration. This issue has been repeatedly highlighted by numerous small publishers around Europe who rely on online services to provide them with valuable web traffic that they can monetise in different ways (subscriptions, ads etc.)<sup>3</sup>.

An un-waivable publishers right will only lead to the same unintended consequences as the Spanish experience where news publishers lost a sizeable part of their annual revenues.

Furthermore, in order to preserve an open and free Internet, the news publishers' right should not cover hyperlinks and their "snippets" (usually small extracts of text or thumbnail images).

### Article 13

While it is evident that the final version of Article 13 will create a new parallel liability regime to that of the e-Commerce Directive, the scope of this new regime ought to be confined to those services which were the intended targets of this Directive and which can feasibly – either now or in the future – go about implementing some of the new asks in this copyright framework. To do otherwise would be to set insurmountable obstacles for an innovating sector, which will only stifle the sharing and enjoyment of Europe's cultural content for future audiences. For this reason, we propose to limit the definition of online content sharing service providers to active platforms which give access to phonograms, broadcasts, films or musical works.

We seek an exception for electronic communication services, including internet access service providers, and for those platforms that provide application, infrastructure or platform capabilities and therefore have no general control of and access to the copyrighted content made available by those online content sharing providers.

More importantly, the final text should provide service providers in the scope with the possibility to mitigate primary liability. If the service providers captured by Article 13 take specific measures or carry out specific good-faith actions to reduce the likelihood of copyright infringements on their services, they should be exempted from any liability regarding copyrighted content. Without mitigation measures, open online services cannot operate in Europe – the risk of liability will be too great.

We strongly encourage you to take these comments into consideration during the trilogue negotiations, to ensure that the final text of the copyright Directive ultimately adds value to the creative online ecosystem and does not make impossible for users, small publishers and innovators to thrive in the European Digital Single Market.

---

<sup>3</sup> [http://mediapublishers.eu/wp-content/uploads/2018/10/Media-Publishers\\_Open-letter-on-Article-11-and-Recital-32.docx-1.pdf](http://mediapublishers.eu/wp-content/uploads/2018/10/Media-Publishers_Open-letter-on-Article-11-and-Recital-32.docx-1.pdf)

The following associations have signed the letter:

- [CCIA](#) (Computer & Communications Industry Association)
- [CZ.NIC](#)
- [eco](#) (Association of the Internet Industry)
- [EDiMA](#)
- [EuroISPA](#) (European Internet Services Providers Association)
- [FiCom](#) (Finnish Federation for Communications and Teleinformatics)
- [INFOBALT](#)
- [SAPIE](#) (Slovak Alliance for Innovation Economy)