

Brussels, 6 February 2019

Your Excellency,

Dear Deputy Permanent Representative,

We, EMMA (European Magazine Media Association), ENPA (European Newspaper Publishers' Association), EPC (European Publishers Council) and NME (News Media Europe) – representing the interests of tens of thousands of news brands, newspapers and magazines, across the EU, have been following closely the discussions on the proposal for a Directive on Copyright in the Digital Single Market, in particular with regards to the press publisher's right in Article 11. Ahead of the COREPER meeting on 8 February we would like to stress the urgency to find an agreement between the institutions within the coming days. With time fast running out for the directive to get through the final legislative stages before the current European Parliament ends its mandate, we believe it is of utmost importance that Member States adopt the mandate in order for the final negotiations to take place next week.

The European Parliament voted for a strong Publisher's Right in September last year, guaranteeing protection of publishers' valuable content, including very short excerpts giving a strong democratic signal to Member States that the reform needs to move forward.

We welcome, that the proposal of the Romanian presidency for the new Coreper mandate does not any longer include the so-called **originality threshold**, which would render the right unenforceable and ineffective and is therefore unacceptable.

Press content, especially short excerpts, are being scraped and reused on a grand scale by platforms and news aggregators. There is currently no legal certainty under the existing copyright framework on whether or not these short excerpts or "snippets" are protected. Press publishers are faced with unprecedented difficulties in monetising their content in the digital environment and enforcing the current legislative regime which is the main reason why clear legal protection of the investment of press content (as already enjoyed by producers of film, music and broadcasters), regardless of the size of the extracts reused, is fundamental in order to continue the costly investment that fact-checked news requires.

Therefore a **quantitative limitation** is definitely preferable to the originality threshold. However we would like to reiterate that the exclusion of “individual words or very short excerpts” from the scope of the publishers’ right, even though it provides a chance to include aggregator snippets, **would definitely lead to substantial legal uncertainty for press publishers.**

The clarification of the notion of “very short excerpts” by the Court of Justice of the European Union (CJEU) can certainly take years, risking an outcome that the use of press publications by search engines and aggregators fall out of the scope of application. The lack of a clear legal provision in the EU legislation would only benefit those actors that have taken advantage of the current lack of legal clarity and that have been free-riding on press content for the last decade, at the expense of professional journalism and the European media.

Ultimately, **the European Parliament’s text on Article 11**, excluding only “individual words” from the scope of application, – despite its already limited scope – **proposes an appropriate and enforceable solution to protect press publishers against the exploitation of their press publications by online services in the digital environment** and would provide for the necessary legal certainty. The Parliament’s version alone makes it clear that press publishers have a right vis-à-vis Google & Co. since it is the only one to clearly cover aggregator snippets.

**We therefore ask Member States to support the mandate on Friday and to give the Romanian presidency the flexibility towards the Parliament’s approach.**

We respectfully invite you to consider these comments in your discussions in the COREPER meeting on Friday and in anticipation of the trilogues and to strengthen the European press by supporting or at least showing flexibility to the Parliament’s text which is the only enforceable version of the right that can redress the existing imbalance in the digital environment.

We cordially invite you to contact us with any further inquiries.

Yours sincerely,



**NEWS MEDIA EUROPE**

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***EMMA**, the European Magazine Media Association, is the unique and complete representation of Europe's magazine media, which is today enjoyed by millions of consumers on various platforms. EMMA represents 15,000 publishing houses, publishing 50,000 magazine titles across Europe in print and digital. See: [www.magazinemedia.eu/](http://www.magazinemedia.eu/)*

***ENPA**, the European Newspaper Publishers' Association (ENPA) is the largest representative body of newspaper publishers across Europe. ENPA advocates for 16 national associations across 13 European countries, and is a principal interlocutor to the EU institutions and a key driver of media policy debates in the European Union. See: [www.enpa.eu/](http://www.enpa.eu/)*

***EPC**, the European Publishers Council is a high level group of Chairmen and CEOs of leading European media corporations actively involved in multimedia markets spanning newspaper, magazine, book, journal, internet and online database publishers, and radio and TV broadcasting. See: <http://epceurope.eu/>*

***NME**, News Media Europe (NME) represents the progressive news media industry in Europe – over 2200 European titles of newspapers, radio, TV and internet. NME is committed to maintaining and promoting the freedom of the press, to upholding and enhancing the freedom to publish, and to championing the newsbrands which are one of the most vital parts of Europe's creative industries. See: [www.newsmediaeurope.eu/](http://www.newsmediaeurope.eu/)*