

## Article 11 and Corresponding Recitals

CDT Amendments based on EP Plenary text (adopted 12/09/2018)	CDT Amendments based on Council's Negotiation Mandate (doc. 9134/18 – 25/5/2018)	Justification
	<p>Recital (32): The organisational and financial contribution of publishers in producing press publications needs to be recognised and further encouraged to ensure the sustainability of the publishing industry. It is therefore necessary to provide at Union level a harmonised legal protection for press publications in respect of online uses by information society service providers, leaving unaffected current copyright rules in Union law applicable to uses of press publications by other users, including individual users. Such protection should be effectively guaranteed through the introduction, in Union law, of rights related to copyright for the reproduction and making available to the public of press publications published by publishers established in a Member State in respect of online uses by information society service providers within the meaning of Directive (EU) 2015/1535 of the European Parliament and of the Council. The legal protection for press publications provided for by this directive should only benefit publishers established in a Member State in the meaning of the Treaty of the functioning of the European Union, i.e. when they have their registered office, central administration or</p>	<p><u>Recommendation</u>: We strongly suggest keeping the text for Recital (32) as proposed by <b>Council</b>, with no suggested amendments. This text refers to 'online uses', rather than Parliament's 'digital uses' which might include uses of protected works outside of the internet, such as snippets used in archive copies for libraries or in newsletters. The Council's text also excludes 'individual users' from the scope.</p>

	principal place of business within the Union.	
<p><b>AM139</b>  Recital (33): For the purposes of this Directive, it is necessary to define the concept of press publication in a way that embraces only journalistic publications, published by a service provider, periodically or regularly updated in any media, for the purpose of informing or entertaining. Such publications would include, for instance, daily newspapers, weekly or monthly magazines of general or special interest and news websites. Periodical publications which are published for scientific or academic purposes, such as scientific journals, should not be covered by the protection granted to press publications under this Directive. This protection does not extend to acts of hyperlinking. The protection shall also not extend to factual information which is reported in journalistic articles from a press publication and will therefore not prevent anyone from reporting such factual information.</p>		<p><u>Recommendation</u>: We strongly suggest keeping the text for recital (33) as proposed by the <b>European Parliament</b>, with no suggested amendments. The text from the European Parliament clearly excludes hyperlinking from the scope of protection of the neighbouring right, while the Council’s text on hyperlinking is more limited on scope (only excludes hyperlinks which do not constitute a communication to the public). It also excludes periodicals published for scientific or academic purposes, such as scientific journals. Moreover, the European Parliament’s text explicitly excludes facts (‘factual information’) from the protection of Article 11. This would safeguard users’ right to freedom of information.</p>
	<p>Article 2(4): ‘press publication’ means a <b><i>fixation by a publisher established in a Member State of</i></b> collection composed mainly of literary works of a journalistic nature which:  (a) may also include other works or subject-matter;  (b) constitutes an individual item within a periodical or regularly-updated publication</p>	<p><u>Recommendation</u>: We strongly suggest keeping the text for Article 2(4) as proposed by <b>Council</b>, with some suggested amendments (see bold/italics text). We favour Council’s text in particular since it does not include ‘news agencies’ within the scope. Press publishers often directly publish articles from news agencies’ wire. If</p>

	<p>under a single title, such as a newspaper or a general or special interest magazine;</p> <p>(c) has the purpose of providing the general public with information related to news or other topics; and</p> <p>(d) is published in any media under the initiative, editorial responsibility and control of a service provider;</p> <p><b><i>Periodicals which are published for scientific or academic purposes, such as scientific journals, shall not be covered by this definition;</i></b></p>	<p>news agencies were to be covered by Article 11, it would therefore mean that the same piece of news could require one license from the press publisher and one from the news agency. This could particularly discourage news-related startups and new publications, ultimately affecting innovation in this area.</p> <p><u>Suggested amendments to Council's text:</u></p> <ul style="list-style-type: none"> <li>- Incorporate criterion of fixation; an established copyright principle. It is also important to limit the scope to publishers established in a Member State.</li> <li>- incorporate language of recital 33 of Parliament's text regarding the exclusion of periodicals from the scope.</li> </ul>
	<p>Article 11(1): Member States shall provide publishers of press publications established in a Member State with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the online use of their press publications by information society service providers.</p> <p>The rights referred to in the first subparagraph shall not apply in respect of uses of insubstantial parts of a press publication <b><i>which are not the intellectual creation of their authors.</i></b></p> <p><del>Member States shall be free to determine the insubstantial</del></p>	<p><u>Recommendations:</u> We strongly suggest keeping the text for Article 11(1) as proposed by <b>Council</b>, with some suggested amendments (see bold/italics text). We particularly favour Council's text since it makes reference to online uses (rather than the broader term of 'digital uses').</p> <p><u>Suggested amendments to Council's text:</u></p> <ul style="list-style-type: none"> <li>- Incorporate language excluding 'factual information' from the protection of Article 11 (see recommendations on Recital 33).</li> </ul>

	<p><del>nature of parts of press publications taking into account whether these parts are the expression of the intellectual creation of their authors, or whether these parts are individual words or very short excerpts, or both criteria.</del> <b><i>The rights referred to in paragraph 1 shall not prevent legitimate private and non-commercial use of press publications by individual users.</i></b></p> <p><b><i>The rights referred to in paragraph 1 shall not extend to acts of hyperlinking.</i></b></p>	<ul style="list-style-type: none"><li>- Delete language regarding Member States' determination if a part of press publication is of an unsubstantial nature. This would mean that Member States would be able to choose to apply one or both criteria. Thus, some Member States may decide to protect snippets only on the basis of length, rather than on the originality. We would like to highlight once again that facts ('factual information') should not be covered by the scope of Article 11 to safeguard the right to freedom of information. <b>The deletion of this reference should also be made to corresponding Council recital 34a.</b></li><li>- Incorporate language of Parliament text (AMs151-155) regarding exclusion from scope of 'legitimate private and non-commercial use of press publications by individual users'.</li><li>- Incorporate language of Parliament text in recital 33 (AM139) which states that the protection provided by the press publishers' right does not extend to acts of hyperlinking.</li></ul>
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