



Public consultation on the role of publishers in the copyright value chain and on the 'panorama exception'

The role of publishers in the copyright value chain

In its Communication Towards a modern, more European copyright framework of 9 December 2015, the Commission has set the objective of achieving a well-functioning market place for copyright, which implies, in particular, "the possibility for right holders to license and be paid for the use of their content, including content distributed online."

Further to the Communication and the related stakeholders' reactions, the Commission wants to gather views as to whether publishers of newspapers, magazines, books and scientific journals are facing problems in the digital environment as a result of the current copyright legal framework with regard notably to their ability to licence and be paid for online uses of their content. This subject was not specifically covered by other public consultations on copyright issues the Commission has carried out over the last years. In particular the Commission wants to consult all stakeholders as regards the impact that a possible change in EU law to grant publishers a new neighbouring right would have on them, on the whole publishing value chain, on consumers/citizens and creative industries. The Commission invites all stakeholders to back up their replies, whenever possible, with market data and other economic evidence. It also wants to gather views as to whether the need (or not) for intervention is different in the press publishing sector as compared to the book/scientific publishing sectors. In doing so, the Commission will ensure the coherence of any possible intervention with other EU policies and in particular its policy on open access to scientific publications.

Questions

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4. What would be the impact on publishers of the creation of a new neighbouring right in EU law (in particular on their ability to license and protect their content from infringements and to receive compensation for uses made under an exception)?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- **strong negative impact**
- no opinion

Please explain

As a preliminary remark, we should mention a strong criticism against a question which asks to assess the impact of a hypothetical rule without detailing what are the essential components of the rule itself (see below in item 16).

The creation of a new neighbouring right in EU law for the benefit of publishers, on the basis of the (insufficient) information available for the consultation, would have a strong negative impact on publishers' ability to monetize the value of the content itself.

While this conclusion may appear paradoxical, as it implies that the beneficiary of a new right suffers new costs rather than obtaining new benefits by the introduction of an entitlement of the beneficiary itself, the same conclusion is supported by evidence which makes the hypothetical here analysed a classic case of "backfiring", i.e. of a rule the adoption of which leads to consequences which are the exact opposite of the stated goals in view of which the adoption took place.

It would seem that this a quite well documented example of backfiring on the basis of the following reasons.

1. An ancillary right was introduced in Spain. As documented by the study commissioned by the Spanish Publishers' Association (<http://www.aepp.com/pdf/InformeNera.pdf>), this led to a decrease, rather than to an increase, of income for publishers. Indeed, the major aggregator, Google news, altogether withdrew from the market.
2. A similar outcome resulted from the adoption of a similar law in Germany.
3. The results under 1. and 2. might easily have been anticipated before the adoption of the Spanish and German laws. Indeed:
 - a. Empirical evidence shows that aggregation of news results in an increase of visits to news publishers' websites rather than to a decrease;
 - b. While it is true that the monetisation obtained by press publishers through increased visits to their websites may fall short of the revenue appropriated by the aggregators themselves, e.g. via advertising income, this does not detract from the fact that aggregation may encourage click-through and is therefore likely to entail additional revenue directly obtained by press publishers thanks to aggregation; such additional revenue is lost by rules prohibiting or restricting aggregation;
 - c. This negative outcome is even more evident in connection with smaller press publishers. In connection with these, it has been noted that aggregation entails what economist designate as "learning effects": via aggregators end users come to know and experience websites of smaller publishers they would not have come across except through access. Rules prohibiting aggregation therefore have a disproportionate adverse impact on smaller publishers, which are much more affected than bigger publishers;
 - d. Rules prohibiting or restricting aggregation also entail a further disadvantage specifically for small press publishers. Even though these may be prepared to negotiate with aggregators to have their content showcased by aggregation, the latter may not be interested in doing so unless a certain critical mass is reached, which may be reached only including also larger press publishers. This leaves smaller press publishers at the mercy of larger ones;
 - e. An unwaivable right to compensation would also directly run contrary to the functioning of open access business models, based on open licenses, which is an area which has proved particularly innovative in the last few decades.

4. It is therefore suggested that the adoption of an ancillary right for publishers may contribute to a consolidation of the market structure in press publishing, which is not in the interest of the general public; is not welcome by smaller press operators and may turn out to be of detriment to publishers of any size.

A similar outcome has been witnessed also in connection with another market, the one in which aggregators themselves operate. The German experience would seem to suggest that only the biggest aggregator, Google news, was able to negotiate with press publishers to include links to their content. The smaller operators were unable to do so. Therefore it is suggested that the adoption of an ancillary right for publishers may lead to a bilateral, anticompetitive consolidation both in press publishers' and in aggregators' industries.

5. Would the creation of a new neighbouring right covering publishers in all sectors have an impact on authors in the publishing sector such as journalists, writers, photographers, researchers (in particular on authors' contractual relationship with publishers, remuneration and the compensation they may be receiving for uses made under an exception)?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- **strong negative impact**
- no opinion

Please explain

The introduction of a new neighbouring right covering publishers in all sectors would have a very negative impact on authors in the publishing sector, such as journalists and researchers.

The negative impact would be felt in two separate, albeit complementary, perspectives.

In a first perspective, it should be noted that content aggregation lowers search costs for content users. Journalists and researchers incorporate published content in their activities. Their initial research may benefit from aggregation, which facilitates location, access and re-use; and this benefit would be lost by rules prohibiting or restricting aggregation.

In a second perspective, journalist as well as other content creators are entitled to compensation for uses permitted under copyright exceptions (see Art. 5(2) Infosoc). While creators may have transferred some of their copyrights to publishers, the recent EU and German case law (Reprobel and Wort, 2016, respectively) indicates that creators remain entitled to receive at least a share of such compensation. It is suggested that the grant of an ancillary right to publishers would adversely affect the amount of compensation flowing to creators under current rules. The total price which re-users are willing to pay for re-use of content remains the same, even though a new layer of entitlement is superimposed to the old one. Therefore the adoption of an ancillary right is likely to operate to the disadvantage of creators, taking away from them a part of the compensation they would obtain under current rules. If the ancillary right takes the form of an exclusive right, the share appropriated by publishers will depend on the relative bargaining clout of the respective shareholders and may turn out to be very substantial. It may therefore well be suggested that its ultimate impact will be to discourage, rather than encourage, creative activity. As such, the adoption of the ancillary right is in possible breach of Art. 17(2) of the European Charter of Fundamental rights.

6. Would the creation of a neighbouring right limited to the press publishers have an impact on authors in the publishing sector (as above)?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- **strong negative impact**
- no opinion

Please explain

[The analysis under 5 applies a fortiori.](#)

7. Would the creation of a new neighbouring right covering publishers in all sectors have an impact on rightholders other than authors in the publishing sector?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- **no opinion**

Please explain

8. Would the creation of a neighbouring right limited to the press publishers have an impact on rightholders other than authors in the publishing sector?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- **no opinion**

Please explain

[See answer 16](#)

9. Would the creation of a new neighbouring right covering publishers in all sectors have an impact on researchers and educational or research institutions?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- **strong negative impact**
- no opinion

Please explain

The answer to this question seems obvious. We cannot even imagine a scenario in which the introduction of a new ancillary right may be considered an advantage for researchers or educational or research institutions. As widely known from past experiences, the introduction of new rights in the matter we are dealing with (authors' and publishers' rights) does certainly not facilitate the activity of those who actually use creative content and the publications on which it is contained.

In the present case, we still do not know the actual formulation of the new ancillary right. In any case, we can imagine that the final formulation would not eliminate possible uncertainty on the application of the exceptions and limitations provided for uses for educational and scientific purposes. This could lead to the result, which is also quite obvious, that the areas of uncertainty would increase and, consequently, educational and research institutions could choose the "least risky solution" and just do not give way to the research activities in the usual means or anyway limit it to the "surely safe" activities.

In addition, other critical elements could be found in the following issues. The introduction of a new right would certainly result in higher transaction costs under several respects: (i) even if the limitations and exceptions would be applicable, it would probably be necessary to pay a fair compensation to the rights holders (or collecting societies); (ii) the possible negotiation of bilateral agreements aimed to establish greater certainty as far as the limits of reciprocal rights are concerned would also cause increasing costs. This not mentioning that it would be necessary anyway to adapt the system of public and private education to the new scenario, by creating new practices and procedures to fulfill the new requirements.

It is also worth pointing out that the bilateral negotiations of special agreements between public and private research and educational institutions on the one side and rights holders on the other side, may cause different contractual equilibriums depending on the political and economic weight of each institution within the framework of the European Union. This can lead to the creation of different categories of institutions or even variations in the treatment within the Member States, with clear prejudice to the actual harmonization.

Lastly, as already mentioned (see *supra*, no. 4, and *infra*, no. 16), a new ancillary right protecting publishers of all kinds, including academic publishers, might have a negative impact on the open access movement and, ultimately, on access to knowledge. A large part of works made available online according to the open access principles consist of scientific works re-published by the authors themselves using the online repositories of Universities and other research institutions. A publishers' ancillary right will prevent the authors from re-publishing the "post-print" version of their works through such repositories and make them liable for infringement if they do it without the consent of the publisher. This, in turn, might result in a "chilling effect" running against the EU policy favouring open access to scientific works resulting from publicly funded research

10. Would the creation of a neighbouring right limited to press publishers have an impact on researchers and educational or research institutions?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact

- **strong negative impact**
- no opinion

Please explain

We do not see any possible difference as far as the prejudice to researchers is concerned in case the new ancillary right would regard only press publishers, except the obvious consideration that being the new right more limited, also the prejudice could be more limited. On the merit of the arguments against the introduction of the new ancillary right under the perspective of researchers and educational and research institutions are concerned, we refer to what has been argued in relation to question 9.

11. Would the creation of new neighbouring right covering publishers in all sectors have an impact on online service providers (in particular on their ability to use or to obtain a licence to use press or other print content)?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- **strong negative impact**
- no opinion

Please explain

Whatever could be the new ancillary right, the impact on all online services provided will be strongly negative.

The creation of a new neighboring right in favor of a broad range of publishers would create a new layer of licensing obligations for services that license books, research papers, news, for the thousand of online sellers of new and used book, and for aggregator and intermediaries in general.

A new copyright for all literary works requires new agreements for distribution of books, magazines, newspapers, and there will be additional complexity in managing those rights.

Identifying owners may be challenging:

i) who is the publisher who receives the new neighboring right? The vast majority of works created and published today are on the internet, in particular for news. What happens to the one billion websites, and billion more webpages where new works are published every day? Who owns those rights? Consumers who post content online will find that a “publisher” now owns a new copyright in their creations: would the owner of a news website own a new right in the comments posted on his website? We can't imagine how services like Disqus.com, who organize and share comments on different platforms can be in compliance with the new right;

ii) The rights of the author/ creator could no longer be owned by the publisher, but the publisher will still own the publisher right;

iii) those rights would be territorial.

All this would increase transaction costs, the fragmentation of online offerings and slow the rollout.

Small innovative companies are impacted as a result. For smaller European companies ancillary right provisions represent a strong deterrent because of the legal uncertainty and the enforcement through collecting societies. Ancillary rights would create a competitive advantage for already established, successful online services, making it harder for new European companies to compete and develop new services.

A fair compensation to the publisher and to other holders of rights would cause discriminatory detriment to the entry of new operators into the market. A new compensation would construct a barrier to access that current, incumbent aggregators that are already consolidated have not had to face (cfr Spain's National Authority for Markets and Competition –CNMC- in PRO/CNMC/0002/14, Study on article 32.2, May 2014).

12. Would the creation of such a neighbouring right limited to press publishers have an impact on online service providers (in particular on their ability to use or to obtain a licence to use press content)?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- **strong negative impact**
- no opinion

Please explain

Behind a new neighbouring right limited to press publishers there is the desire to monetize revenue and web traffic generated by third parties on the basis of publishers' press content: this kind of requests (see ENPA Recommendations For Copyright in the EU Digital Single Market, 2015) implies that the new right covers short extracts of text ("snippets") and linking. But as we said (see Replies 4 and 16) the experiences in Spain and Germany, for different reasons, have demonstrated the negative effects, that lead to consequences which are the exact opposite of the stated goals in view of which the adoption took place.

From news aggregators to social networks, all the online services that rely on short extracts of text ("snippets") for the provision of links will be negatively affected.

Links without snippets that provide context are practically useless to consumers and Internet or app users. Without small extracts of text, links in apps and on the Internet would be practically unusable. This means that, despite the correct interpretation of the making available right (see *Svensson*: CJEU ruling stating that linking does not require copyright permission) a new copyright on snippets will cover automatically all forms of hyperlink.

As noted by Max Planck Institute "copyright law cannot be applicable in such cases, as otherwise the use of links which contain minimum indications of the content to be found would often be blocked" (2012) All service providers, not only aggregators, will face unclear restrictions or in some cases plain requests to pay despite the consent of publishers.

They may have to change their services in Europe or close them as it happened in Spain, or deal mainly with non-European content.

Non-European publishers have not asked for similar rights, nor do they claim to enforce new copyrights in links. As a result, non-European content will be "safer" to use, share online etc. This risk of seeing less local content online was highlighted by the Max Plank Institute in relation to the German law.

As we said, ancillary rights would also create a competitive advantage for already established, successful online services, making it harder for new European companies to compete and develop new services. There is a wealth of scientific opinions supporting this view, from the Max Plank Institute to the report of the Spanish Competition authority.

13. Would the creation of new neighbouring right covering publishers in all sectors have an impact on consumers/end-users/EU citizens?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- **no opinion**

Please explain

It's a question impossible to reply without knowing the details of the new neighbouring right to be implemented.

It will be an exclusive right or a right subject to equitable remuneration?

Who will be due to pay for such neighbouring right?

The new neighbouring right will be due just in case of the provision of commercial services to users or also in case of making use of the contents by the users for non-commercial purpose?

To which services (search engines? aggregators? what else?) will apply the new neighbouring right?

The new neighbouring right will apply also to services based on distributed architectures?

Depending on its design, the new neighbouring right will strongly disadvantage consumers/end users/EU citizens or will advantage them.

For example, the new neighbouring right will advantage consumers/end users/EU citizens if it will be due only by platform commercial service providers and not by users making use of the contents for non-commercial purpose, including the case where users adopt P2P and distributed service architectures: if so, the new neighbouring right will discriminate in favor of (and then it will foster) the design and the adoption of P2P and distributed services, empowering users.

14. Would the creation of new neighbouring right limited to press publishers have an impact on consumers/end-users/EU citizens?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- modest negative impact
- strong negative impact
- **no opinion**

Please explain

Same reply as to the previous question 13.

15. In those cases where publishers have been granted rights over or compensation for specific types of online uses of their content (often referred to as "ancillary rights") under Member States' law, has there been any impact on you/your activity, and if so, what?

- strong positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- **no opinion**

16. Is there any other issue that should be considered as regards the role of publishers in the copyright value chain and the need for and/or the impact of the possible creation of a neighbouring right for publishers in EU copyright law?

- **Yes**
- No

If so, please explain and whenever possible, please back up your replies with market data and other economic evidence.

The consultation is structured in way which is unworkable and ultimately self-defeating. It requires comments on a legal mechanism which is not even roughly outlined. Indeed, uncertainty concerns:

1. Scope of the right. There is no way to establish what is the perimeter of the envisaged right, e.g. whether the neighboring right would entail exclusive rights or a statutory right to obtain a nonwaivable equitable compensation; whether it would cover reproduction, communication to the public or other exploitation modes; how long it would last;
2. The beneficiaries of the (inchoate) right; how can we imagine the equivalent of the “first fixation” in digital media?
3. The persons and entities which are subject to the obligation under the same inchoate right; would these be limited to news aggregators or also include RSS feeds, social media, blogs; would also intermediaries have a direct or indirect liability? How about apps? Which online services would be covered?
4. The activities which are subject to the same. In particular it is unclear whether:
 - a. The right is triggered by search and aggregation;
 - b. the same applies to links resulting from a search and aggregation, independently by accessibility of portions of the content (“quotation”; “press summary”) searched and aggregated;
 - c. blogging is at the same time both a beneficiary of the inchoate right and subject to it;
 - d. the triggering of the right presupposes a direct or indirect commercial interest of the entity engaged in the corresponding activity or encompasses also pro-bono activities and scientific publications that rely on open access;
5. Also the negative contours of the right are totally uncertain.

- a. How about contents which are inaccessible to search and aggregation, because they are ring-fenced by robot.txt protocols? Do their rightholders still have the right?
 - b. Do limitations and exceptions apply *pari passu* as in copyright?
 - c. If so, how is equitable remuneration (e.g. under Art. 5(1)(b)) to be apportioned between the creators contemplated by this provision and the additional category of rightholders?
6. The territorial reach of the provision is also unclear. Should EU aggregators be liable to pay to non-EU rightholders (e.g. the Wall Street Journal)? If so, how should collection, allocation and distribution take place?
7. There is a number of questions which have to be addressed and which concern the compatibility of the new inchoate right with overarching provisions. These include:
- a. At the EU level,
 - i. Primary provisions concerning freedom to provide cross-border services;
 - ii. Secondary provisions concerning safe harbours;
 - b. Art. 10 of Berne Convention; and TRIPs which incorporates it by reference;
 - c. Freedom of expression provisions of the ECHR and of the EU Charter of Fundamental rights.

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Use of works, such as works of architecture or sculpture, made to be located permanently in public places (the 'panorama exception')

EU copyright law provides that Member States may lay down exceptions or limitations to copyright concerning the use of works, such as works of architecture or sculpture, made to be located permanently in public places (the 'panorama exception'). This exception has been implemented in most Member States within the margin of manoeuvre left to them by EU law.

In its Communication Towards a modern, more European copyright framework, the Commission has indicated that it is assessing options and will consider legislative proposals on EU copyright exceptions, among others in order to "clarify the current EU exception permitting the use of works that were made to be permanently located in the public space (the 'panorama exception'), to take into account new dissemination channels."

This subject was not specifically covered by other public consultations on copyright issues the Commission has carried out over the last years. Further to the Communication and the related stakeholder reactions, the Commission wants to seek views as to whether the current legislative framework on the "panorama" exception gives rise to specific problems in the context of the Digital Single Market. The Commission invites all stakeholders to back up their replies, whenever possible, with market data and other economic evidence.

Questions

1. When uploading your images of works, such as works of architecture or sculpture, made to be located permanently in public places on the internet, have you faced problems related to the fact that such works were protected by copyright?

- **Yes, often ***
- Yes, occasionally
- Hardly ever
- Never
- No opinion
- Not relevant

If so, please explain what problems and provide examples indicating in particular the Member State and the type of work concerned.

In Italy, you can face problems with copyright law uploading an image, made to be located permanently in a public place on the internet, of a work of architecture or sculpture - but also another kind of visual art work (as painting and photograph).

If the above mentioned image is at a low resolution or degraded for teaching or scientific purposes, free of charge, the publication through the Internet, it is allowed if such use it is not for profit (as by article 70, 1bis, Law 633/1941).

The Italian Minister for Heritage and Cultural Activities did not define yet the use of the educational or scientific limits, as it is requested by the same article, therefore there still is a big confusion on the interpretation of the law and there is no clear understanding whether or not your actions are legal when you upload an image, locating it permanently in a public place on the internet. This uncertainty of the law faces the problem.

The free dissemination of the cultural knowledge should not be limited to a low resolution standard or to degraded images for teaching or scientific purposes.

Moreover, even if such work is in public domain or covered by the above mentioned exception, uploading an image of a work of architecture or sculpture, could face problems with the infringement of the Italian Code of cultural heritage.

The Code of cultural heritage in the version of 2012 stated that:

- 1) the reproduction of a cultural heritage work has to be authorized by the local government office;
- 2) a monetary compensation has to be paid to the local government office, even if no fee is due for reproductions made by individuals for personal use or for study, or by public entities for enhancement purposes (art. 108, 3, Code of cultural heritage).

In 2012, Nexa advocated the case of Wikimedia, which organizes Wiki Loves Monuments (WLM) - the international photo contest around cultural heritage launched the first time in Holland in 2012.

Wikimedia claimed to face problems on organizing WLM in Italy, that couldn't join the contest because of the above described limitations stated by law for the reproduction of art works.

Thanks to the signature of a framework agreement, signed by the Minister of Cultural Heritage and Wikimedia, in 2012, for the first time Italian photographers could take part of the contest. The contractual solution was to foresee an exception to the reproductions of works made by photographers participating to WLM Italy 2012 only (as better described below on answering question 2). The framework agreement has not been renewed.

Afterwards, the legal approach slightly changed with the amendment of the Code of Cultural Heritage, introduced on 2014 by art. 12 Legislative Decree 31 maggio 2014, n. 83 (c.d. *Art Bonus*), that introduced art. 108, 3 bis Code of Cultural Heritage. The article states that the following activities are free, if they are for no-profit, and for the purposes of study, research, freedom of expression or creative expression, or for promoting awareness of cultural heritage:

- 1) the reproduction of cultural heritage, except bibliographic and archival works, made in ways that do not involve any physical contact with the good, or the exposure of the same in light sources, or, into the cultural institutions with the use of stands or tripods;
- 2) the disclosure by any means of images of works of art, legitimately acquired, so it can not be further reproduced for profit, even indirectly.

It is clear that those exceptions still face problems for the reproduction of the images of cultural heritage works through the social media platform as Facebook and Instagram.

In conclusion, in order to balance the public interest in accessing and using works of art and for exercising the freedom of expression, the panorama exception (as regulated by art. 5.3 (h) Infosoc Directive), should be made mandatory for all member States, since the lack of uniformity is problematic.

2. When providing online access to images of works, such as works of architecture or sculpture, made to be located permanently in public places, have you faced problems related to the fact that such works were protected by copyright?

- **Yes, often ***
- Yes, occasionally
- Hardly ever
- Never
- No opinion
- Not relevant

If so, please explain what problems and provide examples indicating in particular the Member State and the type of work concerned.

A service that provides on line access of an in image, made to be located permanently in a public place on the internet, of a work of architecture or sculpture, but also another kind of visual art work (as painting and photograph), can face problems with the Italian copyright law and the Code of Cultural Heritage. In the view of identifying a secondary liability, it should be necessary to indicate the type of the access on line service, according to the safe harbour clauses stated in E- Commerce Directive (30/2001/CE), implemented in Italy with the Legislative Decree n. 70/2003.

Wikimedia, as anticipated on answer 1), have faced problems organizing in Italy Wiki Loves Monuments (WLM), which is the annually photo contest that aims people to collect images of world cultural heritage to be uploaded to Wikipedia with a free license, namely the CC Attribution - Share Alike, that authorizes you to edit the original work and to use it for commercial purposes also, provided that the derivative work is licensed under the same license terms of the original work.

Italy could join WLM only from 2012, after the signature of the already mentioned framework agreement between the Italian Minister of Heritage and Cultural Activities and Wikimedia, regarding the reproduction and the access on line of images of the Italian landscapes and monuments located in a public place being part of the national cultural heritage.

The problem of the interaction between the rules on the protection of cultural heritage and licenses with some rights reserved, such as Creative Commons, it has been addressed in the negotiation of the framework agreement between the Ministry of Cultural Heritage and the Wikimedia Italy.

In particular, it was recognized that Creative Commons licenses govern copyright and do not, however, affect on other persons rights who may they have either in the work itself or in how the work is used, such as the image right or the right of personal data protection.

In this scenario, the Ministry of Cultural Heritage has granted the reproduction right and the right to use those images to the photographer participants to "Wiki Loves Monuments 2012" and to Wikimedia, without the duty of a payment.

The photographers have been granted the reproduction right and the right to upload the images on Wikipedia and Wikimedia Commons at commons.wikimedia.org by loading them on the platform. Wikimedia have been granted the right to publish the images on its website wikipedia.org, exclusively in the section dedicated to the contest, in all the languages and the publication of the images on Wikimedia Commons, at commons.wikimedia.org. Last but not least, in favor of any users, the right to reproduce the image, only for personal use or for studying and no-profit purposes, even indirectly. Mandatory for Wikimedia to publish a flag, connected to the image, expliciting that for commercial use, the users have to ask permission to the Ministry of Cultural Heritage.

The framework agreement has been a pilot for the 2014 amendments of the Code of Cultural Heritage but - as it has been said - is still not enough to guarantee the free access to works of art that are in the public domain and share these on social network via Internet as it is happening every day.

3. Have you been using images of works, such as works of architecture or sculpture, made to be located permanently in public places, in the context of your business/activity, such as publications, audiovisual works or advertising?

- Yes, on the basis of a licence
- **Yes, on the basis of an exception ***
- Never
- Not relevant

If so, please explain, indicating in particular the Member State and what business/activity, and provide examples.

In the contest of NEXA's activity, an image of a work of art can be often reproduced in a lecture or in a scientific publication. In these cases, it should be done on the basis of a harmonized exception. This exception should be not limited to these particular uses, but it has to be extended to all kinds of personal uses.

4. Do you license/offer licences for the use of works, such as works of architecture or sculpture, made to be located permanently in public places?

- Yes
- **No** *
- Not relevant

If so, please provide information about your licensing agreements (Member State, licensees, type of uses covered, revenues generated, etc.).

5. What would be the impact on you/your activity of introducing an exception at the EU level covering non-commercial uses of works, such as works of architecture or sculpture, made to be located permanently in public places?

- **strong positive impact** *
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

As said, a strong positive impact. The use of photos of buildings and sculptures is needed for educational purposes. Not only that, but as specified in answer n. 7, freedom of panorama exception is a great opportunity to promote and valorize the cultural heritage of our country.

6. What would be the impact on you/your activity introducing an exception at the EU level covering both commercial and non-commercial uses of works, such as works of architecture or sculpture, made to be located permanently in public places?

- **strong positive impact** *
- modest positive impact
- modest positive impact
- no impact
- modest negative impact
- strong negative impact
- no opinion

Please explain

A strong positive impact. A harmonized exception at the EU level covering non-commercial and minimal commercial uses of works of art will legalize social activities already widespread in Internet. Photographers or journalists will not face any problems on sharing their portfolio on the net and people will be free to make “selfies” with works of art as background and then share them on Instagram or Facebook, which both - as we all know - are already commercially using photographs uploaded by the users. On the other side, the economic value of the panorama exception for the rightholders is very small, therefore it will be not a considerable loss for them.

7. Is there any other issue that should be considered as regards the 'panorama exception' and the copyright framework applicable to the use of works, such as works of architecture or sculpture, made to be permanently located in public places?

- Yes *
- No

If so, please explain and whenever possible, please back up your replies with market data and other economic evidence.

The panorama exception is one of the exceptions that should be harmonized at the EU level as mandatory in order to allow the cross-border uses. The lack of harmonization is a barrier to end-users and all intermediaries' on the daily activities on the Internet.

It is also highly recommended to take this occasion to balance the rights of creators with the public interest in accessing and use works of art, as a way of accessing culture and promoting education and as a major form of the freedom of expression.

We are not aware about market data but it is evident that the law cannot stop the habit of million of people all around the web.

As said above, the panorama exception should not be limited to works of architecture or sculpture only, but it should be extended to all the works of art that are made to be located permanently or temporarily in a public space, including other visual art (e.g., murals, photograph). The panorama exception should allow the reproduction and communication to the public, as well as the making the image available to the public. The exception should not be restricted to the incidental use only. Not market data are available, but it is remarkable the fact that during the WLM it has been possible to know the existence of wonderful and unknown places and monuments that abound in our land, thus receiving the deserved promotion.