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NOTE

From: Netherlands delegation
To: Delegations

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Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL on copyright in the Digital Single Market
- NL proposal on Article 11 and relevant recitals

Delegations will find in the Annex a proposal drawn up by the Netherlands delegation on Article 11 and relevant recitals.

Changes in relation to the previous version (5902/18) are highlighted.

- (31) A free and pluralist press is essential to ensure quality journalism and citizens' access to information. It provides a fundamental contribution to public debate and the proper functioning of a democratic society. In the transition from print to digital, publishers of press publications are facing problems in licensing the online use of their publications ~~to service providers~~ and recouping their investments. In the absence of recognition of publishers of press publications as rightholders, licensing and enforcement in the digital environment are often complex and inefficient.
- (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 digital uses ~~by service providers~~. Such protection should be effectively guaranteed through the introduction, in Union law, of **either** rights related to copyright for the reproduction and making available to the public of press publications in respect of **commercial** digital uses ~~by service providers~~ **or a rebuttable presumption to allow the publisher to be regarded as the person entitled to conclude licences on and enforce the rights of reproduction and making available to the public concerning the digital use of the works or other subject matter contained in the press publication provided the name of the publisher appears in the publication.**
- (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 which do not constitute communication to the public.~~

(34) The **related** rights granted to the publishers of press publications under this Directive should have the same scope as the rights of reproduction and making available to the public provided for in Directive 2001/29/EC, insofar as **commercial** digital uses are concerned. This protection does not extend to acts of hyperlinking which do not constitute communication to the public. They should also be subject to the same provisions on exceptions and limitations as those applicable to the rights provided for in Directive 2001/29/EC including the exception on quotation for purposes such as criticism or review laid down in Article 5(3)(d) of that Directive.

(34a) Deleted.

(35) The protection granted to publishers of press publications under this Directive should not **go beyond and** affect the rights of the authors and other rightholders in the works and other subject-matter incorporated therein, including as regards the extent to which authors and other rightholders can exploit their works or other subject-matter independently from the press publication in which they are incorporated. Therefore, publishers of press publications should not be able to invoke the protection granted to them against authors and other rightholders. ~~This is~~ **The related rights are** without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and authors and other rightholders, on the other side. **The presumption should leave intact and should in no way affect existing rules laid down in the national laws of the Member States currently in force with regard to the employers' copyright.**

Article 11

Protection of press publications concerning digital uses

1. **Member States shall protect publishers of press publications against the commercial digital use of their press publications by either:**
 - (a) **granting the publisher of a press publication the rights provided for in Articles 2 and 3(2) of Directive 2001/29/EC; or**
 - (b) **in the absence of proof to the contrary regarding the publisher of a press publication to be entitled to conclude licences and to seek application of the measures, procedures and remedies referred to in Directive 2004/48/EC and Article 8 of Directive 2001/29/EC in respect of the reproduction right and making available to the public right provided for in Articles 2 and 3 of Directive 2001/29/EC concerning the works and other subject-matter incorporated in such a press publication, provided that the name of the publishers appears on the publication.**
2. The ~~rights~~**protection** referred to in paragraph 1 shall leave intact and shall in no way **go beyond and** affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject-matter incorporated in a press publication. The ~~rights~~**protection** referred to in paragraph 1 may not be invoked against those authors and other rightholders and, in particular, may not deprive them of their right to exploit their works and other subject-matter independently from the press publication in which they are incorporated.
- 2a.** When **an author or a rightholder has concluded licences with different persons in respect of** a work or other subject-matter ~~is incorporated in a press publication on the basis of a non-exclusive licence,~~ the rights referred to in paragraph 1 **(a)** may not be invoked to prohibit the use by other authorised users **of such a work or other subject-matter**. The rights referred to in paragraph 1 **(a)** may not be invoked to prohibit the use of works or other subject-matter whose protection has expired.

3. Articles 5 to 8 of Directive 2001/29/EC, ~~and Directive 2012/28/EU~~ **and Directive [...]** shall apply *mutatis mutandis* in respect of the rights referred to in paragraph 1(a).
 4. The ~~rights~~ **protection** referred to in paragraph 1 shall expire [20]1 years after the publication of the press publication. This term shall be calculated from the first day of January of the year following the date of publication.
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