

Digital content and copyright: evaluating the proposed EU press publishers' right

**Peking-Stanford-Oxford Internet
Law and Policy Conference 2016**

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- About
- People
- Seminars and events
- Research
- Projects
- Publications
- Resources

Copyright and news project (2014-16)

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- > [Project introduction \(2014\)](#)
- > [Conference and workshop presentations](#)
- > [London workshop November 2015](#)
- > [US research trip November 2015](#)

Summary





These pages are an archive of the research project '*Appraising Potential Legal Responses to Threats to the Production of News in a Digital Environment*'. The project was funded by the [Arts and Humanities Research Council](#) under grant number H/L004704/1, and ran from 2014-16. The principal investigator was [Professor Lionel Bently](#) of CIPIL, collaborating with [Professor Ian Hargreaves](#) of Cardiff University. The research associate was [Dr Richard Danbury](#). The material on these pages is a permanent record of the public output of the research.

The original description of the project can be found [here](#).

How the project developed

The project started by reviewing what copyright-related laws had been developed or deployed in recent years with the intention of benefitting the commercial news industry. On this basis of this research, the [first paper](#) that was written, comparing developments in Germany, Denmark and Belgium.

It was presented, in various levels of development and detail:

- at the British Academy conference at Oxford University in September 2014: 
- as a poster at the [CREATE](#) All Hands conference in Glasgow, in September 2014: 
- at a workshop at the Universitat Pompeu Fabra, Barcelona, Spain, Nov 2014: 
- at the Peking- Stanford- Oxford Internet Law and Policy Conference in Beijing, China, in Nov 2014: 



[http://
www.cipil.law.cam.ac.uk/
projects/copyright-and-
news-project-2014-16](http://www.cipil.law.cam.ac.uk/projects/copyright-and-news-project-2014-16)



Arts & Humanities
Research Council



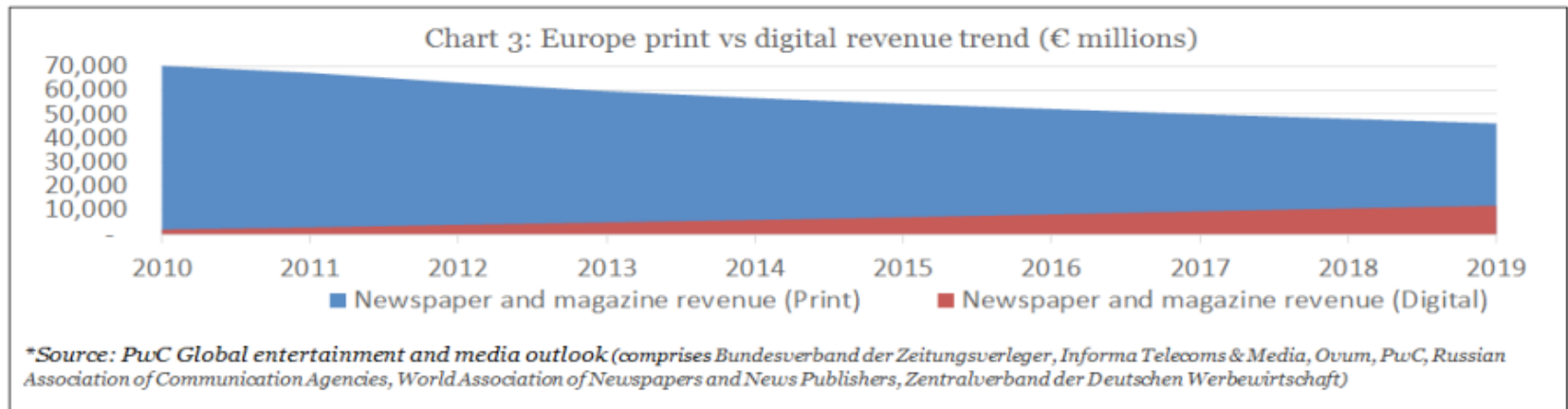
1) Summary

- The European Commission has proposed a new right, related to copyright. It would benefit press publishers. It applies to digital use of journalism.
- This is a bad idea.
 - It's badly conceived
 - It's badly drafted
 - It's likely not to work

2) Why has this been proposed?

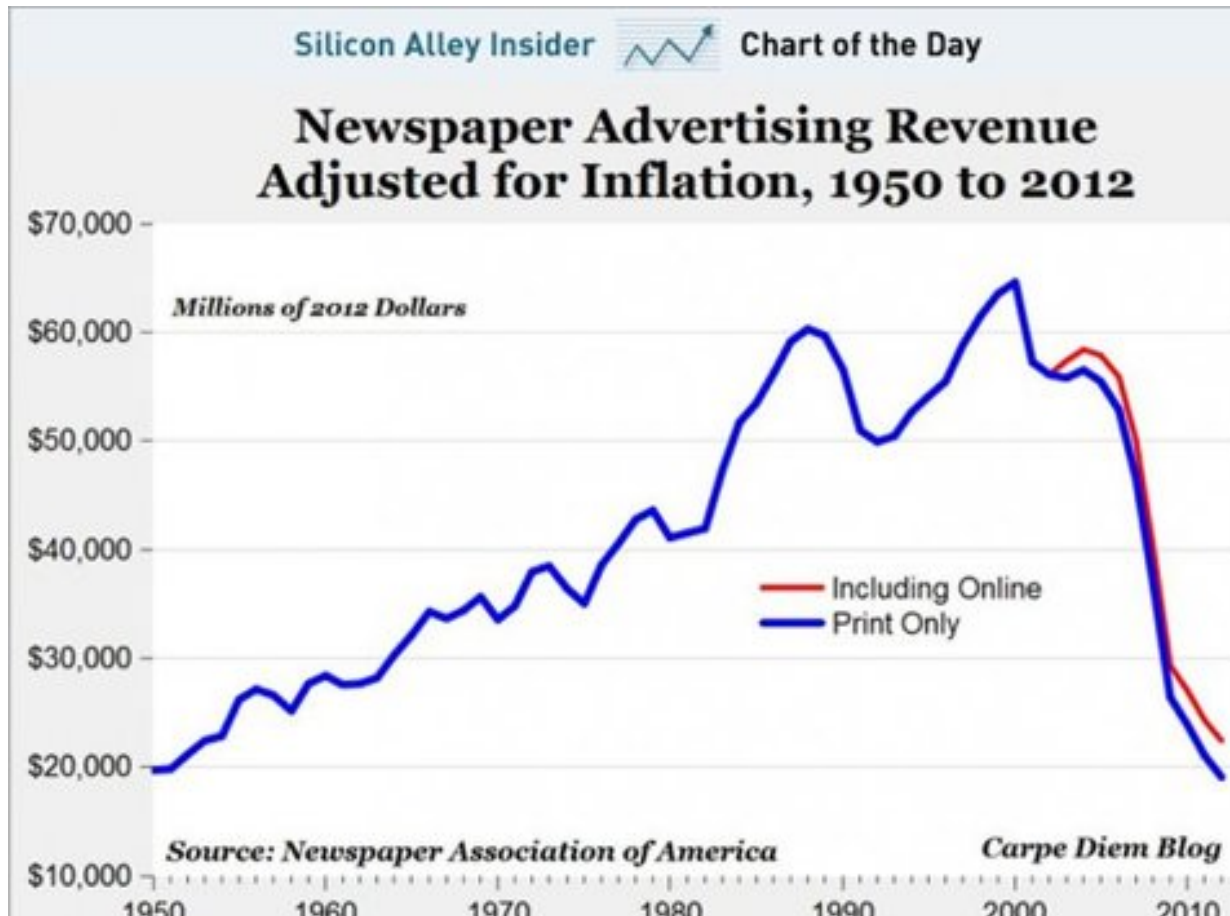
7. Aggregated data on print vs digital revenue trend of daily newspapers and magazines (Europe)

Source: PwC Entertainment and Media Outlook 2015 - 2019



Source: Impact Assessment, SWD(2016) 301 final, Vol 3, p 188

Crisis



Why has this happened?

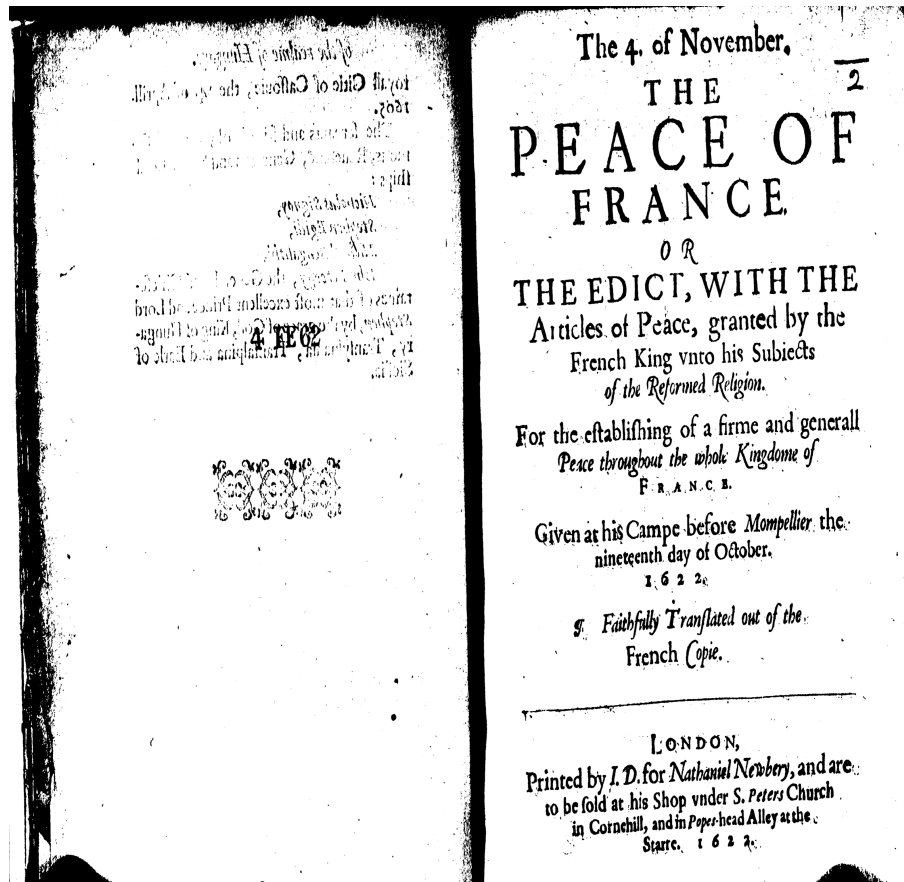
The advertising business model



The screenshot shows the Poynter.org website interface. At the top, there is a navigation menu with a hamburger icon and the word 'MENU', the Poynter logo, and a search bar. Below the navigation is a large image of Mark Zuckerberg smiling. A green 'BUSINESS' tag is overlaid on the bottom left of the image. Below the image is a short paragraph of text: 'Mark Zuckerberg, chairman and CEO of Facebook, speaks at the CEO summit during the annual Asia Pacific Economic Cooperation (APEC) forum in Lima, Peru, Saturday, Nov. 19, 2016. (AP Photo/Esteban Felix)'. The main headline is 'A look at Facebook's billion dollar 2016 hit on the news ecosystem'. Below the headline is the author information: 'By Rick Edmonds • November 30, 2016'. There are social media sharing icons for Twitter, Facebook, LinkedIn, and Google+. The article text begins with 'Credit CEO Mark Zuckerberg and his lieutenants for belatedly acknowledging the fake news problem and inching toward assuming other responsibilities that go along with publishing, even if it's algorithmic publishing.' and continues with 'Pardon a churlish thought, however — is that modest progress diverting attention from the company's bigger and devastating impact on the business of journalism?'. On the right side of the page, there are two promotional boxes. The top one is dark blue with white text: 'An award that will elevate your career. Entry deadline: February 1' and the 'LIVINGSTON AWARDS' logo. The bottom one is orange and blue with white text: 'The ROBIN TONER PROGRAM IN POLITICAL REPORTING' and 'TONER PRIZE for excellence in political reporting' with an 'ENTRY DEADLINE' button.

<http://www.poynter.org/2016/a-look-at-facebooks-billion-dollar-2016-hit-on-the-news-ecosystem/440471/>

Digital copying of news



JEE Boys, London's News Press and the Thirty Year War (Studies in Early Modern Cultural, Political and Social History, Boydell Press, Woodbridge 2011) 90. fn 69, 70

Surely it doesn't matter?

- Citizen journalism and the internet will fill the gap?
 - Disruption
 - Schumpeter's creative destruction

1	2	3	4	5	6	7	8	9	10	11	12	13
14	15	16	17	18	19	20	21	22	23	24	25	26
27	28	29	30	31	32	33	34	35	36	37	38	39
40	41	42	43	44	45	46	47	48	49	50	51	52
53	54	55	56	57	58	59	60	61	62	63	64	65
66	67	68	69	70	71	72	73	74	75	76	77	78
79	80	81	82	83	84	85	86	87	88	89	90	91

3) What has been proposed?

EU Copyright reform

- *Press Release*
 - http://europa.eu/rapid/press-release_IP-16-3010_en.htm
- *Q&A*
 - http://europa.eu/rapid/press-release_MEMO-16-3011_en.htm
- *COM (2016) 592 final, 14.9.2016*
 - http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=17218
- *Impact assessment, SWD(2016) 301 final 1, 2, 3 and summary*
 - <https://ec.europa.eu/digital-single-market/en/news/proposal-regulation-laying-down-rules-exercise-copyright-and-related-rights-applicable-certain>
- *COM (2016) 593 final, 14.9.2016*
 - <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-593-EN-F1-1.PDF>

The proposed new right

- Recitals 31 – 35 explain the rationale for the new right
- Article 2 (4) – defines to what the right applies
- Article 11 (1) – delimits the nature of the right
- Article 11 (4) – sets the duration of the right

4) What do other people think of the proposals?

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Publishers' Right in a Digital Age

Were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter.

Thomas Jefferson, 1787



<http://www.publishersright.eu/>

European copyright: there's a better way

Caroline Atkinson
HEAD OF GLOBAL PUBLIC POLICY

For hundreds of years copyright has promoted creativity and progress. It's a principle that holds true today and one we support through leading-edge efforts to combat copyright-infringing activity.

Today the European Commission announced its proposal to [update copyright rules](#) for the digital age. There's an important balance to be struck—one that enables rightsholders to manage and profit from their work while also allowing the creativity and innovation of the web to flourish.

<https://blog.google/topics/public-policy/european-copyright-theres-better-way/>



JULIA REDA

search ...

- Me for You in Europe
- EU copyright evaluation
- Dieselgate investigation
- Lobby meetings
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Commissioner Oettinger is about to turn EU copyright reform into another ACTA

The EU is finally preparing its new copyright law. It's a historic chance to update outdated laws to the new realities and opportunities of the digital revolution. But a [leaked draft](#) reveals nothing of the sort.

Instead, Commissioner Oettinger has let the publishing, film and music industries hijack the reform in an attempt to protect old business models from progress – at a tragic cost to freedom of creativity and expression on the internet, startups' right to innovate and the cause of a Europe without digital borders.

THE PUBLISHING, FILM AND MUSIC INDUSTRIES HAVE HIJACKED EU COPYRIGHT REFORM
[TWEET THIS!](#)

Date: 26.08.16
 Category: General
 Comments: 10
 Author: [Julia Reda](#)



<https://juliareda.eu/2016/08/copyright-reform-another-acta/>

5) What do I think about the proposals?

- 1) Badly conceived
- 2) Badly drafted
- 3) Likely not to work

1) Badly conceived: the Press and democracy

Is this the problem? Impact Assessment

Problem: The shift from print to digital has enlarged the audience of press publications but made the exploitation and enforcement of the rights in publications increasingly difficult. In addition, **publishers face difficulties as regards compensation** for uses under exceptions.

– *Impact Assessment, SWD(2016) 301 final, part 1*

Or is this the problem? Recital 31

- (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 ...**

These are related, but they are not the same...

- Supporting the businesses of press publishers is not necessarily the same as encouraging contribution to public debate and the proper functioning of democratic society.

... as Thomas Jefferson pointed out in 1814

- I deplore... the putrid state into which our newspapers have passed, and the malignity, the vulgarity and the mendacious spirit of those who write for them...As vehicles of information, and a curb on our functionaries, they have rendered themselves useless, by forfeiting all title to belief.
 - Thomas Jefferson to Walter Jones, 1814, LW Levy (ed), *Freedom of the Press from Zenger to Jefferson* (Bobbs-Merrill Company, Inc, 1966) 373

Why does that matter?

- Because of the risk of over-protection.
- A publishers' right is content neutral.
- This means it will incentivize content that does not make a fundamental contribution to public debate and the proper functioning of a democratic society, as well as other content.

2) Badly drafted: overbroad

- Article 2 (4) – defines to what the right applies
- Article 11 (1) – delimits the nature of the right
- Article 11 (4) – sets the duration of the right

Art 2(4)

(4) 'press publication' means a fixation of a collection of literary works of a journalistic nature, which may also comprise other works or subject-matter and constitutes an individual item within a periodical or regularly-updated publication under a single title, such as a newspaper or a general or special interest magazine, having the purpose of providing information related to news or other topics and published in any media under the initiative, editorial responsibility and control of a service provider.

What publications might it encompass?

- *Rough Guide to China*
- *Time Out San Francisco City Guide*
- *Who's Who*
- *The Oxford Dictionary of National Biography*

Article 11 (1)

Member States shall provide publishers of press publications with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the digital use of their press publications.

Unnecessary?

- What does this add in substance that isn't already available in the Database Directive (*Directive 96/9/EC, 11 March 1996*)?
- It's a signal not a content 'copyright'. Will anything be *de minimis*?

Article 11 (4)

The rights referred to in paragraph 1 shall expire 20 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.

Too long?

- ‘Today’s news wraps tomorrow’s fish’.
- ‘News is a perishable commodity’ Lord Nicholls, *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127

Hours, not years?

- S 72 Danish Copyright Act – 12 hours
- S 101 Italian Copyright Act – 16 hours

Is this proportional?

- [20 years] allows addressing in a targeted way and in their own merits the specific problems faced by different categories of publishers, without going beyond what is needed to achieve this objective.
 - *Impact Assessment, SWD(2016) 301 final*, part 1, 173

3) Likely not to work

Germany

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[English Site](#) > [Germany](#) > [Google](#) > [Germany Waters Down Google Search Engine Legislation](#)

Lex Google: **Germany Waters Down Search Engine Legislation**



Last-minute changes to a planned German law on search engines mean that Google will not be subjected to fees from newspaper publishers for its current indexing practices. dapp

Spain

Google

Spain moves to protect domestic media with new 'Google tax'

Newspapers in Spain will now be able to demand a monthly fee from the search engine before it can list them on Google News

Alex Hern

[@alexhern](#)

Friday 31 October 2014
15.21 GMT



Share [Comments](#)



Why will it be any different this time?

- However, problems experienced by consumers in ES – which are often quoted as a source of concern in relation to a possible intervention on publishers at EU level (given that a major news aggregators decided to discontinue its service in ES) – are not expected to arise under this option since the related right proposed is different from the unwaivable compensation measure under the ES ‘ancillary rights’ law (see above: impact on publishers).
 - *Impact Assessment, SWD(2016) 301 final*, part 1, 169-70

Oh, and social media sharing...

≡ MENU Poynter.



BUSINESS

Mark Zuckerberg, chairman and CEO of Facebook, speaks at the CEO summit during the annual Asia Pacific Economic Cooperation (APEC) forum in Lima, Peru, Saturday, Nov. 19, 2016. (AP Photo/Esteban Felix)

A look at Facebook's billion dollar 2016 hit on the news ecosystem

By [Rick Edmonds](#) • November 30, 2016

[Twitter](#) [Facebook](#) [LinkedIn](#) [Google+](#) [Print](#)

Credit CEO Mark Zuckerberg and his lieutenants for [belatedly acknowledging the fake news problem](#) and inching toward assuming other responsibilities that go along with publishing, even if it's algorithmic publishing.

Pardon a churlish thought, however — is that modest progress diverting attention from the company's bigger and devastating impact on the business of journalism?

An award that will elevate your career.

Entry deadline: February 1

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UNIVERSITY OF MICHIGAN
Recognizing Young Journalists

The ROBIN TONER PROGRAM IN POLITICAL REPORTING



TONER PRIZE
for excellence in political reporting

ENTRY DEADLINE

...and what about small publishers?

- Evidence suggests that small publishers have different interests to big publishers.
 - Nera Economic Consulting, '*Impact of the New Article 32.2 of the Spanish Intellectual Property Act*' (Nera, 2015)

6) Conclusion

- Innovation?
- China?

A drag on innovation?

- Consumer organisations have raised concerns that granting additional protection to publishers could negatively affect consumers as a result of the consequences that they believe this intervention could have on online services providing access to press content online ...
 - *Impact Assessment, SWD(2016) 301 final*, part 1, 169

China

China Copyright and Media

The law and policy of media in China – edited by Rogier Creemers

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Notice concerning the Standardization of the Online Reprinting Copyright Order

POSTED ON [APRIL 17, 2015](#) UPDATED ON [APRIL 27, 2015](#)

In order to implement the CCP Central Committee General Office and State Council General Office "Guiding Opinions concerning Promoting the Converged Development of Traditional Media and New Media", encourage lawful and sincere business between newspaper and periodical work units and Internet media, promote the establishment and completion of copyright cooperation mechanisms, and standardize the online reprint copyright order, on the basis of the relevant regulations of the "Copyright Law of the People's Republic of China", the "Copyright Law Implementation Regulations of the People's Republic of China", and the "Regulations to Protect the Right of Distribution Through Information Networks", matters concerning standardizing the online reprint copyright order are hereby notified as follows:

Affiliated with



Search

Recommendation regarding the revision of China's Copyright Law

- ?

Other legal responses?

Media
Greenslade

Make Google and Facebook pay for public service reporting


Politicians urged to amend digital economy bill to ensure digital giants pay a 1% levy in order to fund investigative public interest journalism

Roy Greenslade
@GreensladeR

Tuesday 8 November
2016 10.03 GMT

82 Shares 0 Comments

Save for later



Two profitable digital giants. Composite: Google/Facebook

The [Media Reform Coalition](#) and [National Union of Journalists](#) are hoping to make Google and Facebook fund public service reporting in Britain.

They are seeking to persuade politicians to include a new amendment to the [digital economy bill](#), which is currently going through parliament.

It will propose a 1% levy on the operations of the digital giants in order to pay for independent and non-profit journalism.

A statement issued by the Media Reform Coalition (MRC) argues that “digital intermediaries” such as Google and Facebook “are not only amassing eye-watering profits and paying minimal tax in the UK, they are also bleeding the newspaper industry dry by sucking up advertising revenue”. It continues:

“As national and local newspapers try to cut their way out of trouble by slashing editorial budgets and shedding staff, journalistic quality is becoming a casualty.”

https://www.theguardian.com/media/greenslade/2016/nov/08/make-google-and-facebook-pay-for-public-service-reporting?CMP=share_btn_fb

Thank you

Dr Richard Danbury

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