

ARTICLE 11 (plus relevant recitals)

OPTION A (new neighbouring right)

- (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 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. 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 in respect of digital uses.
- (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 [...] in any media, **including on paper, in the context of an economic activity which constitutes a provision of services under EU law. The press publications to be covered are those whose purpose is to inform the general public and which are periodically or regularly updated.** Such publications would include, for instance, daily newspapers, weekly or monthly magazines of general or special interest and news websites. **Press publications contain mostly literary works but increasingly include other types of works and subject-matter, notably photographs and videos.** Periodical publications [...] 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 **when they** do not constitute communication to the public.

- (34) The 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 digital uses are concerned. 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.
- (35) The protection granted to publishers of press publications under this Directive should not 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 **or against other authorised users of the same works and other subject-matter.** This is 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.

Article 11

Protection of press publications concerning digital uses

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.

The rights referred to in the first subparagraph shall also apply in respect of extracts of a press publication provided that the extracts are the expression of the intellectual creation of their authors.

2. The rights referred to in paragraph 1 shall leave intact and shall in no way 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 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.

When an author or a rightholder has concluded licences with different persons in respect of a work or other subject-matter incorporated in a press publication, the rights referred to in paragraph 1 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 may not be invoked to prohibit the use of works or other subject-matter that are in the public domain.

3. Articles 5 to 8 of Directive 2001/29/EC and Directive 2012/28/EU shall apply *mutatis mutandis* in respect of the rights referred to in paragraph 1.
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.

OPTION B (Presumption for publishers of press publications)

(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. [...] **The sustainability of the press publishing industry should therefore be ensured.**

(31a) In the transition from print to digital, publishers of press publications are **increasingly** facing problems in licensing the online use of their publications and recouping their investments. **Press publications contain mostly literary works but increasingly include other types of works and subject-matter, notably photographs and videos. Due to the large number of authors and rightholders involved in the creation of a press publication, licensing and enforcement of the rights in press publications are often complex and inefficient in the digital environment. Publishers may notably face difficulties when proving that they have been transferred or licensed the rights in such works and other subject-matter for the purposes of concluding licences or enforcing the rights in respect of their press publications.**

(31b) **Publishers of press publications need to acquire all the relevant economic rights from the authors and rightholders to incorporate their works or other subject-matter in a press publication. This principle should continue to apply. However, without prejudice to contractual arrangements concluded between the publishers of press publications, on the one side, and the authors and other rightholders, on the other side, the licensing and enforcement of the rights acquired vis-à-vis third parties should be facilitated. It is therefore necessary to provide at Union level 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 works and other subject-matter contained in the press publication provided that the name of the publisher appears on the publication.**

(32) **Deleted.**

- (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 [...] in any media, **including on paper, in the context of an economic activity which constitutes a provision of services under EU law. The press publications to be covered are those whose purpose is to inform the general public and which are periodically or regularly updated.** Such publications would include, for instance, daily newspapers, weekly or monthly magazines of general or special interest and news websites. Periodical publications [...] published for scientific or academic purposes, such as scientific journals, should not be covered by the **presumption of rights granted to publishers for** press publications laid down in this Directive. [...]
- (34) *Deleted.*
- (35) The **presumption for publishers of press publications laid down in** this Directive should not 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 **presumption laid down in this Directive** against authors and other rightholders **or against other authorised users of the same works and other subject-matter.**

Article 11

Licensing and enforcement of rights in press publications concerning digital uses

1. Member States shall provide that, **in the absence of proof to the contrary,** the publisher of a press publication **shall be regarded as the person 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 rights provided for in Article 2 and 3(2) of Directive 2001/29/EC concerning the digital use of the works and other subject-matter incorporated in such a press publication, provided that the name of the publisher appears on the publication.**

2. The presumption provided for in paragraph 1 shall not 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 presumption may not be invoked against the 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.