

Legal analysis with focus on Article 11 of the proposed Directive on Copyright in the Digital Market

KEY FINDINGS

- **It is appropriate to create a related right (or neighboring right) for press publishers to protect their investments, specifically in the digital world.**
- **If the related right of press publishers is hierarchically inferior to copyright, it must benefit from equal treatment in respect of other related rights and be independent of any protection (or absence of protection) by another right.**
- **The definition of the press publication is suitable, provided there is no exclusion of scientific or academic journals. The definition of the rightholder is also satisfactory, provided it includes press agencies.**
- **The related right of press publishers must pertain to digital uses, but also the hard copy of the newspaper.**
- **The related right of press publishers must confer a real exclusive right, which is essential to enter into contracts and bring infringement actions. A presumption of representation founded on the copyright would be pointless and would even complicate the existing right.**
- **The monopoly attached to the related right, in addition to the reproduction right and the right of communication to the public already set out, must also confer on its holder the distribution right, the rental right and the lending right. The duration of this monopoly would benefit from being aligned with that of other neighbouring rights.**
- **The case of "snippets" and "hypertext links" must be treated differently. The directive must set out the broadest possible general principles to ensure its long-term survival.**
- **It is important that the rightholder benefits from the related right of protection against infringement specified in Directive 2004/48/EC.**
- **The proposals of the draft report of European Parliament Committee on Legal Affairs and option B of the compromise proposed by the Estonian presidency are not suitable. Option A of this compromise is satisfactory, subject to two amendments.**
- **Articles 14 and 16 of the proposed directive are suitable and do not call for any particular comment.**

1. LEGAL ANALYSIS OF ARTICLE 11

1.1. Brief introductory presentation of article 11

The proposal for a directive on copyright in the Digital Single Market dated 14 September 2016¹ (hereinafter referred to as the "proposed directive") envisages creating a **related right of press publishers**.

Article 2.4 of the proposal defines the concept of "press publication". Article 11 is dedicated to "protection of press publications concerning digital uses". Thus, the Member States must provide in their legislation a reproduction right and a right of communication to the public to press publishers for "the digital use of their press publications" (Art 11.1). It is also specified that this right shall not in any way affect the copyright, or indeed the other related rights that may protect subject-matter incorporated in a press publication (Art 11.2). Furthermore, the provisions on exceptions to the monopoly, the technical measures of protections, the measures of information and the sanctions against infringements to the rights set out in Articles 5 to 8 of Directive No. 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society shall apply *mutatis mutandis* to the related right of press publishers (Art 11.3). Lastly, it is specified that the duration of protection of this right is 20 years from the first day of January of the year following the date of publication (Art 11.4).

Recitals nos. 31 to 35 supplement this provision. It should be noted that recital no. 33 excludes from the protection periodical publications which are published for scientific or academic purposes. This same recital specifies that the "protection does not extend to acts of hyperlinking which do not constitute communication to the public".

1.2. Suitability of the creation of a neighbouring right of press publishers

It is **appropriate to create a related right for press publishers** for several reasons.

First, the main aim of related rights of cultural producers (phonogram producers, videogram producers and broadcasting organisations) is to **protect the investment made and making it profitable**. Yet it is indisputable that press publishers make substantial investments concerning all operations in the production of a newspaper in hard copy or on a digital file. Moreover, recital no. 10 of Directive No. 2001/29/EC of 22 May 2001 above applies fully to press publishers: "The investment required to produce products such as phonograms, films or multimedia products, and services such as "on-demand" services, is considerable. Adequate legal protection of intellectual property rights is necessary in order to guarantee the availability of such a reward and provide the opportunity for satisfactory returns on this investment". This is also specified in recital no. 31 of the proposed directive, which mentions the need to "recoup [their] investments". Thus, the recognition of a related right for press publishers will enable them to benefit from **equal treatment with other cultural producers** who already benefit from such protection.

Second, **freedom of the press** also justifies protecting those investing in this sector, namely press publishers. The benefit for the press of complete protection through the complementarity of the related right and copyright also enables it to better assure the long-term survival and development of the press in the digital age, which is essential to maintain pluralism of information and freedom of expression, without forgetting the exercise of its general interest mission.

Third, a related right of press publishers will protect these stakeholders in the digital context. Indeed, press publishers make considerable investments to offer a digital package. Yet they suffer real misappropriation of the value they create by heavily investing. Thus, "crawlers" index and analyse press content then exploit it for their own clients in the form of structured press panoramas. Similarly, other actors offer "snippets" of articles which can save the web

user from reading the article in question on the website of the media company, preventing it from receiving remuneration generally based on advertising. However, the **press publishers do not receive any fee from these actors, who draw substantial commercial profits from their activities founded on the reuse of their editorial production**. Furthermore, press publishers are also victims of the misappropriation of their content on infringing websites. To counter these threats, the related right of press publishers will make it possible to establish infringement actions, but also to enter into assignment or licence agreements, and therefore negotiate a fee, notably with those that unfairly misappropriate the value they create. In some cases, this related right will also enable the publisher to benefit from cumulative protection with copyright, if it holds copyright following assignment, without prejudicing the copyright protection (*See infra.*). Intellectual property law provides several examples of accumulations of rights (copyright and designs and models, copyright and trademark rights, etc.) which are particularly common when the copyright accumulates with the related right of the videogram or phonogram producer. In other cases, this related right will effectively make up for the absence of copyright.

1.3. Critical analysis of Article 11 of the proposed directive

- **Relationship of the related right with other rights (Art 11.2)**

Article 11.2 of the proposed directive is right to decide that the related right of press publishers “shall leave intact and shall in no way affect” copyright. Similarly, it is important to specify that these rights “may not be invoked against those authors”. Here the traditional principle according to which **the related right is hierarchically inferior to copyright**² is confirmed. It follows from this that **the related right does not in any case harm the authors, and therefore the journalists**. Copyright and the related right of press publishers have **different purposes**, but they are **complementary** and their association makes sense.

However, Article 11.2 leads to two criticisms. First, it could specify that **the existence of the related right is independent of the recognition of copyright over the content in question**, like what exists for phonogram and videogram producers, and for broadcasting organisations. Indeed, this would protect the elements of the newspaper through the related right, even though they are not protected by copyright. In this vein, Article 2.4 of the proposed directive indeed specifies that a press publication may also include “subject-matter” which is not protected by copyright.

Moreover, Article 11.2 surprisingly specifies that the related right of press publishers is also hierarchically inferior to the other related rights. **It is however illogical to establish a hierarchy within related rights, which all provide the protection of an investment and must therefore benefit from equal treatment**. While it is logical for the related right of press publishers not to benefit from better treatment than that reserved to other related rights, it must nevertheless not suffer from lesser protection.

- **Subject-matter of the related right**

The subject-matter of the related right relates to the “**press publication**,” which has a fuller definition in Article 2.4 of the proposed directive. Several aspects of the definition are worth emphasising.

First, the definition emphasises that the press publication includes literary works, but also other works (such as photographs and videos, mentioned in recital no. 25). It also specifies, which is essential, that the press publication also includes “items” which are not necessarily protected by copyright.

Second, the definition emphasises the concept of periodical publication, but also “regularly-updated,” which perfectly corresponds to a press website.

Third, the definition rightly stresses that the press publication may exist "in any media," which obviously targets both hard copy and the digital newspaper. (*See infra on this important matter, the section entitled "content of the related right".*) This definition is complete and does not give rise to any criticism.

However, in contradiction with Article 2.4, recital no. 33, which does not have the same legal value, indicates that "periodical publications which are published for scientific or academic purposes, such as scientific journals, should not be covered by the protection granted". **Such exclusion, even if it does not seem imperative, is not justified.** Indeed, no related right has ever been granted or denied according to the genre of the subject-matter concerned by the protection.

- **Proprietorship of the related right**

The proposed directive briefly defines the holder of the related right at the end of its Article 2.4. This provision indicates that "'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.**" This **definition is satisfactory** and stresses the fundamental elements which characterise holders of related rights.

Even though the concept of "service provider" is sufficiently broad, it is worth pointing out, at least in a recital, that **press agencies also benefit from the related right.** Indeed, like a newspaper publisher, they invest and they employ journalists. They also have a true journalistic production (RSS feeds, news articles, articles covered *in extenso*, photographs, radio and video reports or editorials). Similarly, they have digital activities for consumers, notably overseas.

- **Content of the related right: protection limited solely to digital uses**

It is essential to emphasise that the proposed directive envisages protection only for digital uses. Even though Article 2.4 uses the wording "any media" with regard to the press publication, the title of Article 11 expressly mentions the "Protection of press publications concerning digital uses". Article 11.1 grants rights, but only "for the digital use" of press publications.

Admittedly, we understand that a proposed directive which mentions "the digital single market" in its title is interested only in "digital uses". But while the appropriateness of creating a related right is particularly justified owing to the digital world, we must not forget, as Article 2.4 states implicitly and recital no. 33 states by using the wording "any media", that a newspaper is also very often published on a paper medium which also requires considerable investments. **It is therefore important to protect all versions of the press title, regardless of their media, methods of distribution and viewing.** Furthermore, no existing related right has a monopoly limited solely to digital uses. On the contrary, the content of the right granted by the different related rights does not distinguish according to whether it is an analogue material medium or a digital use. It must logically be the same for the related right of press publishers.

This is why the title of Article 11 should be "Protection of press publications" and the wording "for the digital use of their press publications" in Article 11.1 should be deleted. At the very least, a recital should expressly enable Member States to recognise a related right of press publishers which would also relate to the hard copy of the title.

- **Content of the related right: principle of the exclusive right**

It is pertinent that Article 11.1 of the proposed directive confers **exclusive rights** (which is the right to authorize or prohibit of the rightholder) on press publishers. Indeed, an exclusive right is essential to bring an infringement action and to enter into contracts. (*See supra, developments on the pertinence of the creation of a related right.*) The exclusive right enables its holder, and therefore the press publisher, to subject authorization to payment of a fee.

Any solution other than the exclusive right (presumption of copyright, payment right attached to an exception to the monopoly) does not present any interest for press publishers. (*See also infra.*)

- **Content of the related right: reproduction right and right of communication to the public**

Article 11.1 confers rights by reference to Articles 2 and 3 (2) of Directive No. 2001/29/EC of 22 May 2001, which is relevant since the other holders of related rights already hold these rights.

Thus, **the right of communication to the public**, which is essential specifically to control the digital uses of press publications, is thus entrenched.

The same applies to the **reproduction right** which notably makes it possible to receive the **remuneration attached to the private copying exception** which exists in the wake of this very right, separate from copyright. This therefore makes it possible to bypass the solution of the *Reprobel* judgment of the European Court of Justice which, notwithstanding an assignment of rights, reserves the benefit of the fee for private copying solely for the authors³. If, due to their reproduction right, the press publishers cannot benefit from the exception on private copying and the related fee, it is then not necessary for them to benefit from Article 12 of the proposed directive. Indeed, this article enables Member States to "provide that where an author has transferred or licensed a right to a publisher, such a transfer or a licence constitutes a sufficient legal basis for the publisher to claim a share of the compensation for the uses of the work made under an exception or limitation to the transferred or licensed right". In practical terms, this means that the press authors will benefit from the full fee for private copying founded on copyright, while press publishers will receive the fee attached to their related right.

Obviously, respect for the reproduction right and the right of communication to the public also falls within the general discussion initiated about Article 13 of the proposed directive. Indeed, this article aims to oblige some participants of Web 2.0 who specifically operate social networks, to respect them.

However, **Article 11.1 has a deficiency** in that it fails to allow press publishers to benefit from rights which are however recognised to other holders of related rights. It is therefore important to ensure equal treatment between holders of similar rights founded on the protection of the investment. This is why the following rights, enshrined in Directive 2006/115/EC of 12 December 2006 and which is specifically dedicated to related rights, must be added to the monopoly of press publishers: **distribution right** (Article 9 of this directive), **rental and lending right** (Article 3 of this directive). This latter must enable press publishers to receive the fee attached to the lending right when, for instance, copies of the newspapers in paper or digital format are loaned.

- **Content of the related right: case of "snippets"**

The matter of "**snippets**" attracts much comment as to whether they should be included in the monopoly of press publishers. This is a case of establishing whether a related right of press publishers encompasses "snippets". Admittedly, it is true that the reproduction of an article summary can often discharge the web user from visiting the press publisher's website, thus depriving it of the advertising revenue generated by such visits.

However, it is not necessary to expressly mention “snippets” in the proposed directive. By analogy with the rights recognised to other holders of related rights, it must be noted no such specification is made. Thus, it is not mentioned anywhere that the extract of a phonogram or videogram is or is not subject to the monopoly of the holders of the related right in question. Moreover, it is the law’s role to set main general principles notably in order that it is made permanent over time, without being rendered obsolete owing to evolutions, notably technological. In this way, it must provide as general as definition of the subject-matter of related right as possible. It will therefore be incumbent upon case law or the participants of contractual negotiations to decide whether “snippets” fall within the exclusive right. Thus, the question arises of the exception on quotation for purposes such as “criticism or review”⁴ and in respect of which recital no. 34 of the proposed directive expressly specifies that it limits the monopoly of the press publisher.

And of course, **the matter of “snippets” must be resolved independently of any protection by copyright** since the related right of press publishers, like all other related rights of cultural producers, must not be subject to the existence of copyright.

- **Content of the related right: case of hypertext links**

The question of hypertext links concerns the extent of the right of communication to the public rather than the subject-matter of the related right.

It is not relevant that recital no. 33 of the proposed directive specifies, with regard solely to the related right of press publishers, that the protection “does not extend to acts of hyperlinking which do not constitute communication to the public”. The question of communication to the public concerns all holders of copyright and related rights. It does not have the purpose of being recorded specifically with regard to press publishers alone because it is preferable that this matter is addressed comprehensively.

However, **it is regrettable that, as case law of the European Court of Justice currently stands⁵, the fact of a professional inserting a hypertext link, against payment, which makes it possible to access journalistic content online** (such as “crawlers” who index and analyse press content and then exploit it for their own clients in the form of structured press panoramas), **is not considered as an act of communication to the public.** Indeed, this is purely profitable misappropriation of the value of others without payment of a fee. Therefore, it would be wise for the legislation and/or case law to evolve to consider as communication to the public the fact, for a professional service provider, of enabling its customers to access protected contents for a fee, through hypertext links it selects manually or automatically. But this solution should be valid for all rightholders (copyright holders, etc.). It is therefore not intended to be enshrined in the proposed directive.

- **Content of the related right: duration of protection**

Article 11.4 provides a **duration of protection of 20 years** with its starting point the first day of January following the date of publication. However, it should be noted that this is less than the duration of protection commonly accepted for other related rights, which is generally 50 years, and sometimes even 70 years⁶. Yet an extension to the duration of protection, in compliance with that existing for other related rights, could enable the press publisher to control **the exploitation of its archives.**

- **Content of the related right: exceptions to the monopoly**

Article 11.3 of the proposed directive refers to the exceptions of Directive No. 2001/29/EC of 22 May 2001 in order that they can apply *mutatis mutandis* to the related right of press publishers. **This reference is appropriate considering the equal treatment between the different holders of related rights, since these exceptions already limit their monopolies.**

On the other hand, the application *mutatis mutandis* of Article 5 of Directive 2012/28/EU of 25 October 2012 on certain permitted uses of orphan works is certainly an **error**. Indeed, this article concerns the end of orphan work status, which has nothing to do with this subject. It is moreover the same for the application of Articles 6 ("Permitted uses of orphan works"), 7 ("Continued application of other legal provisions"), and 8 ("Application in time") of the same directive, which are entirely irrelevant.

- **Implementation of the related right**

The proposed directive does not include **any provision on contracts**. This absence is normal because firstly the law of contracts regarding related rights has not been harmonised, save on specific points, and secondly this contractual right mainly pertains to common law.

On the other hand, it is important to consider the defence of the rights. By referring to Articles 6 to 7 of Directive No. 2001/29/EC of 22 May 2001, Article 11.3 of the proposed directive enables press publishers to benefit from the protection granted to technical measures and information over the protected objects. Article 8 of Directive no. 2001/29/EC, also applicable *mutatis mutandis*, enables them to use injunctions against non-infringing third parties (for example an Internet access provider) to put a stop to an infringement of their rights. This Article 8 also mentions protection through "action for damages," and more generally the possibility of sanctioning infringements of rights.

However, this reference is insufficient. Indeed, subsequent to Directive no. 2001/29/EC, Directive 2004/48/EC of 29 April 2004 on the enforcement of intellectual property rights widely harmonised civil law on infringement (seizure of the infringing goods, provisional measures for the immediate termination of infringement and right of information etc.). A declaration of the Commission expressly indicated that this directive applied to related rights⁷. Consequently, **it is logical for the related right of press publishers to benefit from this infringement right which applies to all other holders of related rights**. This is why Article 11.3 should mention that Directive no. 2004/48/EC also applies *mutatis mutandis* to the related right of press publishers.

1.4. Analysis of the principal comments made about Article 11

- **Proposal to replace the related right with a presumption of representation founded on copyright (draft report of Ms Comodini Cachia dated 10 March 2017)**

It has been proposed to not create a related right of press publishers and to instead instrument a presumption of representation of copyright to the benefit of the press company. Thus, the draft report of European Parliament Committee on Legal Affairs⁸, which is strongly supported by a study hostile to the creation of a related right⁹, proposes establishing "presumption of representation of authors of literary works contained in those publications and the legal capacity to sue in their own name when defending the rights of such authors for the digital use of their press publications".

The establishment of this presumption strictly has no point. And if it was decided not to create a related right, it would certainly be preferable not to change the existing right by such presumption, which could only entail complications.

First, this presumption will come up against the fact that press publishers are very often assignees of the copyright of journalists under various terms. It is therefore pointless to stipulate a presumption of representation having the purpose of rights which, in many cases, already belong to press publishers.

Second, this presumption only concerns copyright, which is wholly insufficient to combat the infringement of press publications when, on the contrary, the related right must be independent of copyright and therefore have a wider purpose.

Third, a presumption of representation provided by the law is akin to a legal mandate. However, the presumption is simple, meaning that it can be overturned, notably owing to the act of the author. And, in particular, this presumption of representation will be no use in negotiating contracts with third parties because they will want to verify that the representative (the press publisher) is not exceeding the scope of its mandate. In other words, the co-contractor of the press publisher will want to check that the author does not seek to overturn the presumption, which will be extremely complicated considering the high number of authors working in a newspaper. With regard to the contract, pursuant to the theory of representation, it shall be effective not in respect of the representative, but in respect of the principal, namely the author, who will be the only person contractually bound to the beneficiary of the authorization or assignment.

Fourth, and last, the creation of legal capacity of press publishers to bring action on behalf of others runs counter to the fundamental principle of civil procedure according to which "nobody can sue in the name of others". Either the authors are the holders of their rights and then they have capacity to bring an infringement action; or the press publishers, following an assignment, hold the copyright and they can then sue an infringer. In both cases, it is completely pointless to stipulate the legal capacity to bring action in the very name of the press publishers.

- **Proposal to replace the related right with a presumption of representation founded on copyright (Option B of the proposed compromise of the Estonian Presidency dated 30 October 2017)**

The proposed compromise of the Estonian Presidency dated 30 October 2017 provides two options¹⁰. One of these – option B – proposes stipulating a presumption which is not very different to that studied above. Indeed, it is not a presumption of assignment of rights, but a sort of presumption which makes it possible to negotiate licences and bring infringement actions. **The criticisms made above apply *mutatis mutandis* to this proposed presumption.** It should be added that the presumption is expressly described as simple and it is indicated that it cannot be enforced on authors. It nevertheless remains that the co-contractors of the press publisher will necessarily try to protect themselves against a potential wish of one or more authors to overturn the presumption, or against the risk of exceeding a mandate. In conclusion, **this presumption will no use at all and, were it created, would needlessly complicate the rules of copyright applicable to press publications.**

- **Proposal to keep the related right of press publishers (Option A of the proposed compromise of the Estonian Presidency dated 30 October 2017)**

Option A of the proposed compromise of the Estonian Presidency mainly provides **keeping the related right of press publishers, which is effectively relevant, subject to the suggested amendments** that should be made to Article 11 of the proposed directive. (See *supra*.)

However, two provisions have been added and are not relevant.

The first concerns a new paragraph added in Article 11.1. This paragraph provides that, "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". This is purely and simply the reiteration of the jurisprudential solution of an *Infopaq* judgment of the European Court of Justice handed down regarding copyright¹¹. It is true that, as specified in point no. 38 of this judgment, "As regards the parts of a work, it should be borne in mind that there is nothing in Directive No. 2001/29 or any other relevant directive indicating that those parts are to be treated any differently from the work as a whole. It follows that they are protected by copyright since, as such, they share the originality of the whole work". The principle according to which a part of a work or a subject-matter of related

right – and therefore, as applicable, a “snippet” – can be protected is confirmed here. (*See, on this point, supra.*) However, there is also reference, as in point 37 of this *Infopaq* judgment, to “its author’s own intellectual creation” to access the protection of copyright. This reference is inappropriate here because **it is essential that, like the other related rights of cultural producers, the related right of the press publisher is not subject to the prior existence of protection of its subject-matter by copyright.** (*See supra.*) Were this the case, to find out whether the related right exists, we would have to constantly question whether the subject-matter in question was also protected by copyright. This is why this paragraph added to Article 11.1 should be removed.

The second provision added enhances Article 11.2 of the proposed directive. The first phrase of this addition is completely pointless because it repeats what the previous paragraph specifies, i.e. that the related right of press publishers cannot be invoked against an author or another rightholder (this last precision being open to dispute; *see infra*). But **the second phrase is dangerous as it considerably restricts the subject-matter of the related right of press publishers.** Indeed, it indicates what has never been mentioned for any other related right, namely that the rights conferred cannot be invoked to prohibit the use of elements which are in the public domain. Once again, the existence of the related right of press publishers is linked and subject to the prior existence that its subject-matter is also already protected by copyright, even by another related right. Yet **one of the interests of this related right – moreover like all other related rights– is precisely to be able to benefit from a monopoly over certain elements which, while being the fruit of an investment and therefore worthy of protection, are not covered by another intellectual property right.** The issue is particularly relevant for editorial contents: some articles may not be originals, just like some newspaper titles or certain presentations or mock-ups. This is why the protection granted must be not only independent of the other intellectual property rights, but also have no connection with the public domain. In other words, **it matters little whether or not what is protected by the related right of press publishers is also the subject of another protection, or even belongs to the public domain.**

2. ARTICLES 14 and 16

Brief introductory presentation of articles 14 and 16

Article 14 of the proposed directive, clarified by recitals nos. 40 to 41, aims to **promote transparency in the contracts entered into between authors and performers with operators.** This transparency obligation relates to the modes of exploitation, but also and particularly to the revenue generated and therefore the remuneration due.

However, while this transparency obligation must be **effective**, it must also be **proportionate**. It follows from this that it need not be respected if it entails an administrative burden disproportionate to the revenue generated. The same applies when the contribution of the author or performer is not significant within the work or the performance. Recital no. 41 indeed specifies that the transparency obligation must take into account the specificities of different content sectors. It may also be the subject of collective bargaining.

Article 16 of the proposed directive, clarified by recital no. 43, proposes using a **voluntary alternative dispute resolution procedure** to settle disputes concerning the transparency obligation.

Commentary on Articles 14 and 16 of the proposed directive

Articles 14 and 16 call only for a **brief approval comment.** Indeed, the transparency obligation in the contracts is already well known in contract law. In fact, contract law attaches a great deal of importance to good faith in the execution of contracts, to the duty to inform (notably in respect of the party presumed weak, such as the author) and to the duty to

cooperate. National legislations, like French law moreover, provide rules specific to copyright to promote information of the author (rendering of accounts etc.). It is also commendable that Article 14 adopts a reasonable approach to transparency so that it is never excessive.

Article 16 reaffirms what is often specified, notably in civil procedure law, namely the use of alternative methods of conflict. In this respect, **mediation** is often used in copyright, with good results.

¹ COM (2016) 593 final JO L 167 du 22.6.2001, p. 10–19.

² See Art. 12 of Directive 2006/115/EC of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property JO L 372 du 27.12.2006, p. 12–18: "Protection of copyright-related rights under this Directive shall leave intact and shall in no way affect the protection of copyright". See also Art. 1 of the Rome Convention of 26 Oct 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations: "Protection granted under this Convention shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Convention may be interpreted as prejudicing such protection".

³ ECJ, 12 November 2015, case C-572/13, Hewlett-Packard Belgium SPRL v. Reprobel SCRL.

⁴ Art. 5.3, d) of Directive No. 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

⁵ ECJ, 4th ch., 13 Feb 2014, case C-466/12, Nils Svensson and Others. v. Retriever Sverige AB.

⁶ Art. 3 of Directive 2006/116/EC of 12 December 2006 on the term of protection of copyright and certain related rights, JO L 372 du 27.12.2006, p. 12–18.

⁷ Declaration of the Commission on Article 2 of Directive 2004/48/EC of 29 April 2004: OJEU, 13 Apr 2005.

⁸ Draft report on the Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market dated 10 March 2017 (2016/0280(COD)): PE601.094v01-00.

⁹ L. Bently, M. Kretschmer, Strengthening the Position of Press Publishers and Authors and Performers in the Copyright Directive, September 2017: PE 596.810.

¹⁰ Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market – Consolidated Presidency compromise proposal, 30 Oct 2017: 2016/0280 (COD).

¹¹ ECJ, 16 July 2009, case C-5/08, Infopaq International.

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Manuscript completed in November, 2017

© European Union, 2017



ISBN: 978-92-846-2342-6 (paper)

ISBN: 978-92-846-2343-3 (pdf)

CATALOGUE: QA-06-17-382-EN C+N

doi: 10.2861/787829 (paper)

doi: 10.2861/132663 (pdf)