

The position of the Union of Entrepreneurs and Employers on the reform of copyright regulation

On the forum of the European Union, very advanced works are being carried out concerning the copyright reform (Directive on Copyright in the Digital Single Market). This Friday (27th April) a key vote in the EU Council is scheduled to take place. The Union of Entrepreneurs and Employers, in connection with the establishment of the Internet Publishers Forum, is following this process with growing interest and increasing anxiety.

In particular Art. 11 of the Directive raises our concerns which expands the rights of publishers (the so-called *neighbouring right*). If the proposed provisions come into force in their current wording, they will allow Polish websites and creators of online portals to block the possibility of sharing links and selected content if they do not get the consent of each publisher to have them published. In practice, this means that sharing of text fragments and even links will only be possible provided that the website owner, journalist, or individual blogger each time receives the appropriate permission from the publisher owning the rights to the content in question, rights transferred to the publisher by the author.

We believe that the adoption of such a proposal is technically and organisationally difficult to implement. In the era of rapid, almost instantaneous flow of information (conditioned also by the expectations of their recipients, and therefore all consumers of electronic media), we consider the proposal to necessarily obtain permission each and every time to share fragments of other texts or even links as completely not in touch with reality. We would like to point out that the adoption of this regulation will increase the asymmetry between small publishers and large media players. It is worth paying attention to foreign examples and to countries that decided to introduce analogous regulations. In Spain, it turned out that it was the smallest publishers who lost the most. The latest news will come from large publishers and companies, whose strong market position will allow them to negotiate a favourable “link tax”.

Moreover, the adoption of such a proposal will harm media availability, reduce the circulation of news and content on the Internet, and raise a serious risk of providing selective access to information only to chosen or even preferred entities. We reckon that this would be catastrophic from the point of view of the key principle of free access to reliable information. Furthermore, we have concerns that an

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aggregating website subject to the “link tax” may decide not to link to specific websites at all to avoid costs. This way, users will lose access to a lot of information, for example, via search engines.

Limiting access to information content will have a negative impact on Polish consumers. They will no longer have such easy, free, and open access to the diverse range of information and content published on the Internet as it happens today. The proposed provisions will create significant obstacles for Polish consumers looking for a variety of well-referenced articles from a wide range of media, such as representing different outlooks or specialist ones. After the adoption of these provisions, the freedom of easy access to various sources of news will be taken away, and this means not only less choice and diversity of accessible opinions, but also the risk of restricting access of Polish consumers almost exclusively to information distribution points controlled by several international publishers with a quasi-monopolistic position.

The amended directive is intended to solve problems well-known on the Internet publishing market: falling revenues of creators, piracy, or the general expectation that content should be free. However, in our view, the above proposals do not provide an adequate response to the new challenges that are too complex to try to meet them by forcing a simple transfer of revenues from one market segment to another. Policies addressing these challenges should not limit the right of access to information nor should they deepen the existing differences between publishers. The proposals currently being discussed may rather be counterproductive and cause massive damage to the Internet. The new law will strengthen the position of traditional publishers, thus leading to the strengthening of their oligopoly, and for ordinary Internet users will translate into censorship and difficulties linking. All the diversity and richness of the Internet are at stake – the new regulations will take us back by several decades, all the way back to the 90s, to the beginnings of the dynamic development of the Internet. Being aware of the fact that the Internet is an extremely difficult space for effective regulation, we call for non-implementation of provisions that are directly contrary to the basic principles of the Net from the very beginning of its creation, amongst which the free flow of information should particularly be highlighted. All new regulations should be of a proportional nature and should not restrict the rights of Internet users to access, various news sources. They serve the worldview diversity, and therefore also have a positive impact on the level of public debate, the participants of which as of now have access to different interpretations of individual information provided through the use of e.g web portals. The discussed proposals directly curb the aforementioned laws, thus potentially contributing to the deterioration of the quality of public debate, by hindering and sometimes even preventing access to diversified information.

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These proposals have already been repeatedly analysed by academic circles and business communities that in the vast majority of cases are highly critical of these proposals. In view of these facts, we are appealing to the Polish government to undertake all actions aimed at blocking these harmful postulates.

The Union of Entrepreneurs and Employers

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