

## New copyright rules risk freedom of speech

Written by Dan Dalton on 20 June 2018 in Opinion  
Opinion

Proposed copyright law changes show that the European Commission has misunderstood the impact of the digital revolution, warns Dan Dalton.



Dan Dalton | *Photo credit: European Parliament audiovisual*

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At this proposal's heart are two radical changes that fundamentally change copyright practice in most of Europe. First, it creates a new ancillary right for news publishers often dubbed 'the link tax', and second, it places a new general obligation on internet platforms and websites to pre-monitor user content on their website for copyright infringements.

Both of these changes misunderstand the impact of the digital revolution, they will hit consumers and small businesses in Europe very hard.

The publisher's right is based on the misguided assumption that by making it harder for people to see

the news online, people will somehow start buying more newspapers. It will potentially stop someone posting a link to an article or even a snippet of the article on social media if the platform has not previously negotiated a license with that platform.

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This approach has been tried, and failed spectacularly, in both Spain and Germany. The result in Spain was particularly disastrous with small publishers and small Spanish news aggregators going bust and consumers being left unable to find news online.

It also risks making the problem of fake news worse. The distribution of links to real news events will be blocked by publishers while fake news will be able to circulate freely.

Given that an entire generation of young people have grown up consuming news in one way - online via multiple website and new aggregators - this proposed change will greatly reduce the ability of this generation to inform themselves on world events. This will be to society's cost.

However the main problem with this proposal is that it tries to address a non-existent problem. The linking of articles online actually drives more traffic to the publisher's website and acts as free advertising for the article. The publisher is already free to block access to the article through a paywall or to monetise the visit through advertising.

The other key departure is the Commission's proposal obliging platforms and websites obligated to pre-monitor all content posted by users for copyright infringements, regardless of whether the rights holder has communicated a desire to stop the use of their work.

This is a fundamental shift in the principle of copyright law, which has always been based on the principle that it is the responsibility of the copyright holder to enforce their own copyright.

This proposal, however, would make third parties responsible for enforcing someone else's copyright, moving away from the current situation where copyright holders notify websites of serious infringements they wish removed from the internet.

This would make platforms take a safety-first approach, which would mean content that potentially doesn't infringe copyright being taken down by a website that themselves would act as both judge and jury.

Users would only have the opportunity to appeal after their content has been removed, a significant challenge to freedom of expression and having a chilling effect on online creativity.

These are two huge changes, but they are not the only controversial elements to this file - there are equally problematic provisions on text and data mining.

The Commission has wrongly attempted to fit the internet inside a legislative framework that is totally unsuited to mass user generated content.

If the Parliament continues to stick closely to the proposal I would urge MEPs to reject this false solution to copyright challenges, which will do far more harm than good to both users and rights holders.

### **About the author**

Dan Dalton (ECR, UK) is a member of Parliament's internal market and consumer protection committee

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