

AOP briefing paper
19 April 2016

Re: DCMS Ministerial roundtable meeting held 20 April 2016, on EU Commission's Consultation on publishers' rights in the online environment and the 'panorama' exception.

Background:

As part of the Commission's Digital Single Market (DSM) strategy, it is seeking views through an open consultation on:

1. The role of publishers in the copyright value chain and on the possible extension of neighbouring rights to publishers, and
2. The 'panorama exception' to copyright, which concerns the use made of images that contain buildings, sculptures and monuments permanently located in public places.

Closing date of consultation: 15 June 2016.

Views sought from:

All those interested in the publishing sector, including authors, researchers, publishers - online and print, readers, Internet users and ALL others in the creative industries.

Why consult?:

Part of the Commission's remit under its Digital Single Market (DSM) strategy is to modernise/harmonise copyright legislation across the EU.

The DSM strategy is built on 4 main pillars;

- (a) widening access to content across the EU
- (b) exceptions to copyright to facilitate 'innovation' and 'inclusion' (their keywords), primarily in the areas of text & data-mining, education, people with disabilities (the Marrakesh Treaty aims to do this) and imagery containing permanently located copyrighted works (the 'panorama exception')
- (c) creating a fairer marketplace
- (d) fighting piracy

Ultimately, the EU would like to see a single, harmonised set of copyright rules and regulations across all member states.

Detail (including questions to raise):

1. Neighbouring rights – also known as 'droits voisins' (literally, 'cousin rights'), these are akin to copyright, but do not reward an author's original creation but either the *performance of a work* (singer, dancer, actor, musician) or an *organisational/financial effort* which may have involved participation in the creative process.

Current EU law grants neighbouring rights to performers, film and record producers, broadcasting organisations.

As photographers, we are concerned with any extension of neighbouring rights to publishers as this may impact upon the ability of the creator/rights-holder to protect their work and control any licencing of it appropriately. The implication is that the granting of neighbouring rights to publishers creates a new protected work of the page/blog-page/webpage where the original work is presented.

Q: How does this impact the ability of the creator/rights-holder to control licencing of their work?

There is a transformative element in a performer/musician interpreting a copyright work (script/screenplay/dance choreography) –

Q: How is a publisher creating a 'transformative' work?

It would seem that publishers are already remunerated through the means of publication...?

Q: What benefits are afforded to publishers through the granting of neighbouring rights that are denied to them currently?

Q: Would neighbouring rights only be granted to publishers where evidence of participation in the creative process was demonstrated?

2. Panorama exception – this is much more straightforward; the current situation allows EU member states to allow an exception or limitation of copyright to apply where a photograph depicts potentially copyrighted works such as architecture or sculpture, which is/are permanently located in a public place.

This is good.

The exception allows people to photograph skylines and views that contain potentially copyrighted works. It would severely compromise professional photographers in their ability to carry out their profession, were it removed. There is not much more to say about this but it would be interesting to see what comes up in discussion. No specific questions – just that we as photographers do not wish to see it removed as an exception/limitation to copyright.