



**Submission on the Australian
Competition and Consumer
Commission's
Mandatory News Media Bargaining Code
Concepts Paper**

June 2020



The Australian Digital Alliance (ADA) welcomes the opportunity to provide comment to the Australian Competition and Consumer Commission (ACCC) in relation to its *Mandatory news media bargaining code concepts paper*.

The ADA is a non-profit coalition of public and private sector groups formed to provide an effective voice for a public interest perspective in copyright policy. It was founded following a meeting of interested parties in Canberra in July 1998, with its first patron being retired Chief Justice Sir Anthony Mason AC KBE QC. Its members include universities, schools, disability groups, libraries, archives, galleries, museums, research organisations, technology companies and individuals. The ADA unites those who seek copyright laws that both provide reasonable incentives for creators and support the wider public interest in the advancement of learning, innovation and culture.

In this submission, the ADA does not intend to comment on issues of competition or revenue sharing between news publishers and digital platforms, or the best approach to support public interest journalism in Australia. Although we believe these are extremely important issues on which expert input should be sought, we believe that others are better placed than ourselves to provide that input.

Instead, we limit our comments to the potential impacts of the ACCC's proposals on copyright in Australia and on the rights of all Australians. We provide a number of general comments on these potential impacts, as well as responses to select questions posed by the ACCC, below.

Avoiding Copyright Impacts

The ADA appreciates the efforts that the ACCC and the Australian government have made to make it clear that the proposed mandatory code is, in the words of the Concept Paper, “not intended to replicate copyright-based policy approaches pursued in overseas jurisdictions... [and] would not involve changes to Australian copyright law.”

The ADA agrees that it is essential that the proposed mandatory code not have unintended impacts on Australian copyright law, and on the rights of all who seek to share and use news content in Australia.

There is a strong public interest in retaining the fundamental right of both individuals and entities (including businesses) to share news under Australian copyright law. Discussion of current events is essential to political engagement and our democratic processes. Any curtailment of these rights would affect all Australians, and in particular those with an interest in sharing of information, including researchers, educators, and nonprofits such as libraries and disability groups. They would also impact the creative rights of journalists, commentators and publishers, and the health of our news ecosystem itself.

Australian copyright law includes a number of elements designed to respect this fundamental right, elements which in many cases existed before the Copyright Act 1968's inception more than 50 years ago. In particular copyright in Australia:

- does not limit use of headlines as they are, to quote Justice Bennett "simply too insubstantial and too short to qualify for copyright protection;"¹
- does not limit hyperlinking, as linking to material is not “communicating to the public” within the meaning of the law;²
- provides a specific exception to allow fair dealings for reporting the news. This makes it legal to copy and communicate quotations, snippets and even whole articles, as long as it is for the purpose of reporting the news and is “fair” in all the circumstances. This exception is relied upon by Australian news services hundreds if not thousands of times a day.³
- also allows the sharing of news content where it falls within a number of other permitted uses, most notably the fair dealing exceptions for the purposes of research and study, criticism and review, parody and satire, or disability access.⁴

¹ *Fairfax Media Publications Pty Ltd v Reed International Books Australia Pty Ltd* [2010] FCA 984. See summary at *Is there copyright in this headline? Not according to the Federal Court* (10 September 2010, Clayton Utz) <https://www.claytonutz.com/knowledge/2010/september/is-there-copyright-in-this-headline-not-according-to-the-federal-court>

² Although there is not a direct Australian case on the issue, this basic principle is generally accepted and has been stated explicitly in international case law. Notice that the provision of a direct link to legitimate material should be distinguished from the provision of a link to infringing copies of material which can in some cases attract liability. See the law on this issue summarised at James Neil and Thomas Middleton, *To link, or not to link? The legal risks of linking* (1 April 2014, Clayton Utz) [https://www.claytonutz.com/knowledge/2014/april/to-link-or-not-to-link-the-legal-risks-of-linking#:~:text=Although%20providing%20a%20link%20to%20case\)%2C%20a%20material%20risk%20of](https://www.claytonutz.com/knowledge/2014/april/to-link-or-not-to-link-the-legal-risks-of-linking#:~:text=Although%20providing%20a%20link%20to%20case)%2C%20a%20material%20risk%20of)

³ The most prominent recent application of this exception can be found in *TCN Channel Nine Pty Limited v Network Ten Pty Limited (No 2)* [2005] FCAFC 53

⁴ See Copyright Act 1968 ss.40, 41, 42 and 113E

Based on these existing provisions, a number of the uses listed by the ACCC as potentially triggering obligations for remuneration under the proposed code would not require permission or attract remuneration under Australia's current copyright law.

A copyright-based news remuneration scheme would be almost certain to curtail these fundamental rights, even if this were not intended. The European Union's Digital Single Market Directive Article 15 and the press publisher's right it introduces has been highly criticised on this basis by academics,⁵ digital rights advocates⁶ and even publishers and journalists themselves.⁷ In summary, the EU approach is criticised as stifling free speech, impeding the free flow of information, and harming both the operation of the internet and the nature of news communication. It is also criticised as entrenching the advantages of large, established platforms and news services against their independent and emerging competitors.⁸ For a full discussion of these criticisms, see the excerpt from our submission to the Department of Foreign Affairs and Trade regarding the Australia European Union Free Trade Agreement at **Attachment A**.

To avoid similar consequences in Australia, it is essential that any code provisions avoid language which invokes copyright or limits the circumstances in which it is legal to share news content. For example, the code should steer away from language such as "licence" or "royalty", as this implies that a use is remunerable under intellectual property law, which as we note above will often not be the case. Mechanisms should focus on competition limits and consequences when news content is shared on these platforms, rather than limiting or criminalising the act of sharing itself.

⁵ See, for example, an open letter by 169 academics *Academics Against Press Publishers' Right* (24 April 2018) <https://www.ivir.nl/academics-against-press-publishers-right/>. See similarly two open letters from European Research Centres to MEPs and members of the IP working party of the Council of the European Union, dated 26 April 2018 and 24 February 2017, available at <https://www.create.ac.uk/policy-responses/eu-copyright-reform/#openletters>. Also see similarly Position Statement of the Max Planck Institute for Innovation and Competition on the Proposed Modernisation of European Copyright Rules: Part E Protection of Press Publications Concerning Digital Uses (21 February 2017) https://www.ip.mpg.de/fileadmin/ipmpg/content/stellungnahmen/MPI_Position_Statement_PART_E_Publishers_2017_02_21_RMH_VM-def-1.pdf

⁶ See for example, the letter signed by 55 civil society organisations, associations of European public institutions, companies, startups, libraries, journalists and news publishers *Your proposal from March 28 2018 concerning the EU Commission's proposal for an Art. 11 in the Draft Directive on Copyright in the Digital Single Market* (24 April 2018) available at https://www.communia-association.org/wp-content/uploads/2018/04/OpenLetter_AxelVoss_DeleteArticle11_English.pdf. See similarly Laura Tribe, *Implementing the Link Tax in the worst way possible* (November 6 2018, Open Media) <https://openmedia.org/en/implementing-link-tax-worst-way-possible>

⁷ See *Open letter to the Austrian Presidency of the European Council and rapporteur Axel Voss MEP on Article 11 and Recital 32 of the proposed Copyright Directive* (29 October, European Innovative Media Publishers) <http://mediapublishers.eu/2018/10/29/open-letter-to-the-austrian-presidency-of-the-europeancouncil-and-rapporteur-axel-voss-mep-on-article-11-and-recital-32-of-the-proposed-copyright-directive/>. See similarly Lionel Bently et al, *Strengthening the Position of Press Publishers and Authors and Performers in the Copyright Directive* (September 2017, Policy Department for Citizens' Rights and Constitutional Affairs) p.34 [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596810/IPOL_STU\(2017\)596810_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596810/IPOL_STU(2017)596810_EN.pdf)

⁸ *Open letter to the Austrian Presidency of the European Council and rapporteur Axel Voss MEP on Article 11 and Recital 32 of the proposed Copyright Directive* (29 October, European Innovative Media Publishers) <http://mediapublishers.eu/2018/10/29/open-letter-to-the-austrian-presidency-of-the-europeancouncil-and-rapporteur-axel-voss-mep-on-article-11-and-recital-32-of-the-proposed-copyright-directive/>

To further avoid unintended impacts on the rights of Australians under copyright law we urge the ACCC to ensure that any code that is implemented:

- uses a narrow definition of news;
- is limited to specific services;
- does not involve a copyright collecting society;
- avoids adopting undesirable elements of our existing copyright collective licensing schemes;
- includes good faith negotiation requirements; and
- separates any remuneration from assertions of copyright.

Our reasoning for each of the above is provided in our responses to specific questions posed by the Concept Paper below.

Answers to select questions

1. How should 'news' be defined for the purpose of determining the type of content that will be subject to the bargaining code?

Any code should use a narrow definition of news

As the ACCC notes, many media organisations provide news content alongside a wide range of other content, including entertainment, sport and artistic works. It is important that such organisations do not receive an advantage over their competitors in the market for non-news content, including small publishers and independent artists.

We therefore support the ACCC's proposal that any code adopt a narrow definition of "news" which focuses specifically on the importance of the content to informed decision making in the democratic process. We agree that the definition of "public interest journalism" used in the ACCC's Digital Platform Inquiry is a good starting point.

We also suggest that the ACCC include in its contemplation the need to differentiate the act of reporting the news from the use of news content in research, documentaries, criticism and review, parody and other creative outputs that do not fall within the category of journalism. This has been a key point of consideration with respect to the use of "news" under Australian copyright law,⁹ and is essential to ensure that materials and activities that make incidental use of news content are not impacted by the scheme.

4. Would a principles-based, or list-based approach be preferable in determining which digital platform services are captured by the bargaining code?

Any code should be limited to specific services

We support the ACCC's proposal to limit any code to only a few listed services. Services should only be included in the list where a clear competition justification exists and an imbalance in bargaining power has been demonstrated by evidence.

This will help to avoid unintended impacts on the ability of public interest groups like libraries, educators and disability groups to continue to utilise news content in their services; or on the ability of individuals such as researchers, journalists and the general public to make use of news content.

⁹ For a summary, see Australian Copyright Council, *Fair Dealing: What Can I Use Without Permission? Information Sheet G079v09* (January 2020) available at https://www.copyright.org.au/ACC_Prod/ACC/Information_Sheets/Fair_Dealing_What_Can_I_Use_Without_Permission.aspx. For more detail, see discussion in Handler, Michael; Rolph, David --- "A Real Pea Souper": The Panel Case and the Development of the Fair Dealing Defences to Copyright Infringement in Australia" [2003] *MelbULawRw* 15; (2003) 27(2) *Melbourne University Law Review* 381

Such a limit will also hopefully reduce the potential for the scheme to advantage established players over small startups, who as a result may not have the resources to compete. This bias towards established players is one of the key criticisms made of the EU DSM model.¹⁰ Any system which mandates licences for all players seeking to share news content risks favouring those aggregators with the resources to negotiate and execute licences with large media players, increasing the dominance of the major global online platforms and reducing the ability for competitors to emerge.

7. What are the necessary elements for a bargaining framework to effectively address the bargaining power imbalance between news media businesses and each of Google and Facebook?

Any code should not involve a copyright collecting society

As an extension of our concerns regarding unintended impacts on copyright law already discussed above, we submit that it is essential that any scheme the ACCC puts in place should not rely on a copyright collecting society to negotiate fees or collect money for the sharing of news content.

Making use of a collecting society would create a very high risk of confusion as to the scope of the scheme and increase the likelihood of unintended impacts on Australian copyright law. The ACCC amply demonstrates this during its own discussion of the possibility of relying on a collecting society in the Concepts Paper, where it includes the clarifying statement that the proposal “would **not** involve changes to Australian copyright law” (emphasis ACCC’s).

The risk of confusion would be particularly strong if the scheme were to rely on an existing collecting society which already operates in the copyright space. In such a case, it is almost certain that assumptions would be made that would result in the limiting of news sharing under Australian copyright law. The skills and experience of Australia’s copyright collecting societies are not in this area, and any fees or processes they put in place would inevitably replicate and influence our copyright system.

8. Are there major practical issues involved in the implementation of any of the bargaining frameworks listed in Question 8 above? If so, how might such practical issues be overcome?

Any code should not adopt undesirable elements of our existing copyright collective licensing schemes

Similarly, we recommend against adopting elements of our existing copyright collective licences for the ACCC’s scheme. In particular, the ACCC should not replicate the accountability and review mechanisms used for our existing copyright collecting societies.

Collective licensing bodies under Australian copyright law are regulated almost entirely by a voluntary code which, in the words of the UK Intellectual Property Office’s 2012 report on international models for

¹⁰ See, for example, Lionel Bently et al, *Strengthening the Position of Press Publishers and Authors and Performers in the Copyright Directive* (September 2017, Policy Department for Citizens' Rights and Constitutional Affairs) p.35 [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596810/IPOL_STU\(2017\)596810_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596810/IPOL_STU(2017)596810_EN.pdf)

Collecting Societies Code of Conduct, struggles to meet the minimum criteria of being “unambiguous, independent and enforceable.”¹¹ It also fails to meet the ACCC’s own guidelines for voluntary codes; for example by lacking commercially significant sanctions for noncompliance.¹²

The current voluntary regime has been examined in a number of reviews and as far back as 2000 has been criticised for providing inadequate powers for the government to direct and oversee the behaviour of individual societies.¹³ In summary, the principle criticisms of the scheme are that it:

- does not impose appropriate obligations of transparency or accountability;
- grants an inappropriate degree of discretion to collecting societies; and
- does not incorporate sufficient measures for effective oversight, including sanctions for noncompliance and independent mechanisms for external review and amendment.

The voluntary and ambiguous nature of the current system results in inconsistent obligations and behaviours across Australia’s collecting societies¹⁴ and does not provide an effective mechanism to respond to criticisms from either members or licensees.¹⁵

For more details on the problems with the current regulation of collecting societies in Australia, we recommend submissions to previous reviews of the voluntary Code of Conduct for Australian Copyright Collecting Societies.¹⁶

¹¹ Intellectual Property Office, *Collecting Societies Codes of Conduct*, BOP Consulting in collaboration with Benedict Atkinson and Brian Fitzgerald (December 2012)
<https://www.gov.uk/government/publications/collecting-societies-codes-of-conduct> p.52.

¹² See recommendation at p.11 of the ACCC’s *Guidelines for developing effective voluntary industry codes of conduct*,
<https://www.accc.gov.au/system/files/Guidelines%20for%20developing%20effective%20voluntary%20industry%20codes%20of%20conduct.pdf>

¹³ Intellectual Property and Competition Review Committee, *Review of intellectual property legislation under the Competition Principles Agreement* (September 2000), p. 127,
https://www.ipaustralia.gov.au/sites/g/files/net856/f/ergas_report_september_2000.pdf. See similarly Bureau of Communications and Arts Research, *Review of the Code of Conduct for Copyright Collecting Societies* (1 April 2019)

<https://www.communications.gov.au/departmental-news/review-code-conduct-copyright-collecting-societies-0>. The code is also reviewed triennially - see reports available at
<https://www.copyrightcodeofconduct.org.au/triennial-reviews>

¹⁴ Compare, for example, the extreme variation in information on moneys collected and distributed provided in the Annual Reports of Australia’s different collecting societies

¹⁵ See for example past legal actions by the Australian Writers Guild against Screenrights and the 2014 petitions to the Code Reviewer by user groups CAG and the New South Wales Government Department of Justice. These activities saw both members and licensees request greater transparency regarding distributed funds, including a breakdown of money going to publishers versus authors. Despite recent amendments, this information is still not being provided by collecting societies - see, for example, the 2018-2019 Annual General Report of the Copyright Agency, available at

<https://www.copyright.com.au/about-us/governance/annual-reports/copyright-agency-annual-report-2019/>

¹⁶ See, for example Universities Australia’s submission to *Review of the Code of Conduct for Copyright Collecting Societies* (2017) available at
<https://www.universitiesaustralia.edu.au/wp-content/uploads/2019/05/Review-of-the-Code-of-Conduct-Collecting-Societies-Submission-290917.pdf>. See similarly Copyright Advisory Group to the Standing Council for Education, *Submission to the Draft Report Review of Code of Conduct for Australian Collecting Societies* (14 March 2018)
https://www.communications.gov.au/sites/default/files/submissions/copyright_advisory_group.pdf and Universities Australia, *Response to the draft report of the Review of Code of Conduct for Australian Copyright Collecting Societies* (14 March 2018)

https://www.communications.gov.au/sites/default/files/submissions/universities_australia_0.pdf

11. Would it be useful for the bargaining code to include a requirement for parties to negotiate 'in good faith'?

Any code should include good faith negotiation requirements

The ADA agrees that it would be useful for any code to include a good faith bargaining requirement.

Once again, this is a matter on which the ACCC can learn from the experience of regulating Australian collecting societies. The lack of requirement for good faith negotiations has long been a criticism of Australia's voluntary collecting society Code of Conduct. For example, in its submission to the 2017 Review of the Code of Conduct for Copyright Collecting Societies, Universities Australia points out that staff members of Australia's largest declared collecting society, the Copyright Agency, have in the past received (and possibly still do) bonuses for maximising license fees - a clear commercial incentive to negotiate without good faith.¹⁷

We note that good faith requirements are often applied to copyright collecting societies in other jurisdictions. For example, the European Commission requires its members to ensure collecting societies "conduct licensing negotiations in good faith and apply tariffs which should be determined on the basis of objective and non-discriminatory criteria."¹⁸ The United Kingdom implements this by requiring its collecting societies code to include obligations to:

- take the interests of licensees into account when negotiating with licensees;
- ensure that dealings with licensees or potential licensees are transparent;
- consult and negotiate fairly, reasonably and proportionately in relation to the terms and conditions of a new or significantly amended licensing scheme; and
- provide to licensees, and to any potential licensees who have requested it, information about licensing schemes, their terms and conditions, and how royalties are collected.¹⁹

In its 2019 Review of the Code of Conduct for Australian Copyright Collecting Societies, the Bureau of Communications and Arts Research recognised the benefits of such provisions and recommended that the objectives of the current voluntary Code of Conduct be amended to better reflect the importance of achieving efficient and fair outcomes.²⁰ This recommendation has since been implemented with the addition of language to the Code of Conduct emphasising fairness to licensees; however arguably requirements on Australian collecting societies still fall short of those in Europe.²¹

¹⁷ Universities Australia submission to Review of the Code of Conduct for Copyright Collecting Societies (2017) available at <https://www.universitiesaustralia.edu.au/wp-content/uploads/2019/05/Review-of-the-Code-of-Conduct-Collecting-Societies-Submission-290917.pdf> pp.12-13.

¹⁸ European Commission Directive on collective management of copyright and related rights and multiterritorial licensing of rights in musical works for online use in the internal market (26 February 2014, Brussels) Article 31 available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0026&from=EN>

¹⁹ See Copyright (Regulation of Relevant Licensing Bodies) Regulations 2014

²⁰ The Bureau of Communications and Arts Research, Review of the Code of Conduct for Copyright Collecting Societies (1 April 2019) <https://www.communications.gov.au/departmental-news/review-code-conduct-copyright-collecting-societies-0>.

²¹ See <https://www.copyrightcodeofconduct.org.au/code>

16. What other factors may be relevant to determining appropriate remuneration for news media businesses?

Any code should separate any remuneration from assertions of copyright

Whilst in general we do not intend to comment on remuneration considerations, we do submit that it is important that any consideration of appropriate remuneration under the code is determined separately from, and unrelated to, any assertion of copyright. That is, remuneration under the scheme should not be seen as a replacement for copyright royalties.

This is once again intended to ensure that the scheme does not have unintended impacts on Australian copyright law. There is a tendency in some quarters to assume that all use of copyright material requires remuneration. However, as has already been detailed above, copyright law allows for unremunerated use of content in many circumstances - including for the purpose of reporting the news. In fact, as a result of the limits built into our copyright law, many of the services listed in the Concept Paper as potentially remunerable would not require licensing under Australian or international law.

If these uses are treated as remunerable under the new Code, and the remuneration is framed as representative of or replacing copyright royalties, there is a strong risk that this would create an implication that these uses are in fact controlled by copyright law. In the long term, this could lead to a reduction in the scope of the free exceptions in our Act, undermining the careful balance between the rights of creators and those wishing to make use of copyright content.

Excerpt from Supplementary Submission on the Australia-European Union Free Trade Agreement Australian Digital Alliance July 2019

This is an excerpt from a longer submission on the Australia-European Free Trade Agreement (AEUFTA). The full submission is available at <https://digital.org.au/resources/aeufta-supplementary-submission/>

Press Publisher's right

As you are aware, the DSM directive Article 15 creates an obligation for EU countries to grant news publishers rights to control the use of their publications by online service providers. The intention of this provision, as stated by its advocates, is to provide an additional revenue stream to support news media in the digital era by requiring aggregators to pay fees for the inclusion of content in services such as Google News.²² However, the measure has been widely criticised by academics, technical and digital rights advocates as both unlikely to meet this goal and likely to have a stifling effect on the sharing of information and public discourse.

The independent academic community in particular is almost unanimous in its criticism of the right.²³ Some of the most prominent criticisms are:

- By limiting linking, quotation and use of snippets it will stifle free speech and impede the free flow of information, which is vital to democracy.²⁴ It will also harm the operation of the internet and the very nature of news communication. German publishers interviewed in a report on the initiative for the European Parliament criticised it on the basis that “the architecture of the Internet assumes that links indicate what is behind a link. It is inconceivable that requiring a licence can be a good

²² See, for example, Lionel Bently et al, *Strengthening the Position of Press Publishers and Authors and Performers in the Copyright Directive* (September 2017, Policy Department for Citizens' Rights and Constitutional Affairs) p.33 [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596810/IPOL_STU\(2017\)596810_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596810/IPOL_STU(2017)596810_EN.pdf)

²³ See, for example, an open letter by 169 academics *Academics Against Press Publishers' Right* (24 April 2018) <https://www.ivir.nl/academics-against-press-publishers-right/>; see similarly *Position Statement of the Max Planck Institute for Innovation and Competition on the Proposed Modernisation of European Copyright Rules: Part E Protection of Press Publications Concerning Digital Uses* (21 February 2017) https://www.ip.mpg.de/fileadmin/ipmpg/content/stellungnahmen/MPI_Position_Statement_PART_E_Publishers_2017_02_21_RMh_VM-def-1.pdf

²⁴ See, for example, Laura Tribe, *Implementing the Link Tax in the worst way possible* (November 6 2018, Open Media) <https://openmedia.org/en/implementing-link-tax-worst-way-possible>.

idea” and that the initiative risks “far reaching changes for the whole Internet ... to the benefit of a relatively small group of market participants.”²⁵

- The increase in transaction costs and decrease in discoverability will drive people to known services and force platforms to select material only from easily licensed source. This will further cement the dominance of the major media conglomerates and exacerbate existing media market concentration.²⁶
- Similarly, the system will favour those aggregators with the resources to negotiate and execute licences with the large media players, increasing the dominance of the major global online platforms and reducing the ability for competitors to emerge.²⁷
- It will harm players in the news market other than the major publishers, including journalists, photographers, citizen journalists, and the growing number of freelancers, who rely on references from aggregators and who would see their bargaining position weakened with respect to large publishers and platforms.²⁸ A coalition of small publishers from across Europe has written an open letter criticising the proposal for limiting their ability to negotiate with search engines;²⁹
- It could exacerbate the problem of “fake news” by creating barriers to the sharing of verified news sources, pushing readers towards less reliable sources;³⁰
- Past experience suggests it will not provide the promised benefits for news publishers - it does not alter the fundamental market problems faced by news institutions of increased competition for consumer attention and advertising revenue. The Spanish and German systems on which it is based failed to provide any notable increase in revenue for local publishers. Indeed a study commissioned by the Spanish Association of Publishers of Periodical Publications found that the initiative cost its industry Euro10 Million in revenue.³¹ One lead Spanish newspaper, El Pais, has

²⁵ See, for example, Lionel Bently et al, *Strengthening the Position of Press Publishers and Authors and Performers in the Copyright Directive* (September 2017, Policy Department for Citizens' Rights and Constitutional Affairs) p.34 [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596810/IPOL_STU\(2017\)596810_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596810/IPOL_STU(2017)596810_EN.pdf)

²⁶ See, for example, Lionel Bently et al, *Strengthening the Position of Press Publishers and Authors and Performers in the Copyright Directive* (September 2017, Policy Department for Citizens' Rights and Constitutional Affairs) p.35 [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596810/IPOL_STU\(2017\)596810_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596810/IPOL_STU(2017)596810_EN.pdf). See similar in an open letter by 169 academics *Academics Against Press Publishers' Right* (24 April 2018) <https://www.ivir.nl/academics-against-press-publishers-right/>

²⁷ See, for example, Lionel Bently et al, *Strengthening the Position of Press Publishers and Authors and Performers in the Copyright Directive* (September 2017, Policy Department for Citizens' Rights and Constitutional Affairs) p.35 [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596810/IPOL_STU\(2017\)596810_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596810/IPOL_STU(2017)596810_EN.pdf) See similar in an open letter by 169 academics *Academics Against Press Publishers' Right* (24 April 2018) <https://www.ivir.nl/academics-against-press-publishers-right/>

²⁸ See, for example, Lionel Bently et al, *Strengthening the Position of Press Publishers and Authors and Performers in the Copyright Directive* (September 2017, Policy Department for Citizens' Rights and Constitutional Affairs) p.35 [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596810/IPOL_STU\(2017\)596810_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596810/IPOL_STU(2017)596810_EN.pdf). See similar in an open letter by 169 academics *Academics Against Press Publishers' Right* (24 April 2018) <https://www.ivir.nl/academics-against-press-publishers-right/>

²⁹ Open letter to the Austrian Presidency of the European Council and rapporteur Axel Voss MEP on Article 11 and Recital 32 of the proposed Copyright Directive (29 October, European Innovative Media Publishers) <http://mediapublishers.eu/2018/10/29/open-letter-to-the-austrian-presidency-of-the-europeancouncil-and-rapporteur-axel-voss-mep-on-article-11-and-recital-32-of-the-proposed-copyright-directive/>

³⁰ See discussed in Julia Reda, “Fake news” is the newest, fakest justification for the EU link tax (26 April 2018, Julia Reda) <https://juliareda.eu/2018/04/fake-news-link-tax/>. See similarly open letter by 169 academics *Academics Against Press Publishers' Right* (24 April 2018) p.3 <https://www.ivir.nl/academicsagainst-press-publishers-right/publishers>.

³¹ See NERA Economic Consulting, *Impacto del Nuevo Artículo 32.2 de la Ley de Propiedad Intelectual Informe para la Asociación Española de Editoriales de Publicaciones Periódicas (AEEPP)* (9 July 2015) [https://www.nera.com/content/dam/nera/publications/2015/090715%20Informe%20de%20NERA%20para%20AEEPP%20\(VERSION%20FINAL\).pdf](https://www.nera.com/content/dam/nera/publications/2015/090715%20Informe%20de%20NERA%20para%20AEEPP%20(VERSION%20FINAL).pdf). The original version is in Spanish, but includes an Executive Summary in English.

openly advocated against the adoption of the measure because of the negative impact of the Spanish law on its services.³²

News publishers in both the EU and Australia already have extensive rights to control the use of their material, and to seek remuneration where it is reused commercially and in unfair ways. However, it is important that consumers, independent creators and those wishing to innovate online media services also retain their rights to share, quote and link to news as part of the public conversation which is so central to democratic principles. Australia should resist any language in the AEUFTA that seeks to limit this ability, particularly where there is no evidence of actual benefit for local news publishers.

³² El Pais, Op Ed: A Digital Agreement (24 March 2017, El Pais), https://elpais.com/elpais/2017/03/24/inenglish/1490355715_551697.html. Original Spanish version available at https://elpais.com/elpais/2017/03/23/opinion/1490295040_130405.html