



June 15, 2016

European Commission
DG CONNECT/Copyright Unit
Avenue de Beaulieu 25
1160 Auderghem

**Re: Public consultation on the role of publishers in the copyright value chain
and on the 'panorama exception'**

Dear Copyright Consultation Team,

The Wikimedia Foundation respectfully submits these comments to support a broad freedom of panorama as well as raise concerns about the new proposed publishers' right. We are the nonprofit that hosts and supports [Wikipedia](https://www.wikipedia.org), the free online encyclopedia that anyone can edit, as well as other websites that allow people around the world to produce, share, and access free educational content. All of these sites are collaboratively created and updated by contributors from a global community of thousands of volunteers. Through this collaborative effort, Wikipedia has grown to include over 36 million articles in over 280 languages, and the Wikimedia sites draw over 430 million visitors each month. A significant portion of Wikimedia's contributors and readers are in Europe.

Summary

We urge the Commission to recommend a clear and broad freedom of panorama to allow people to share images of buildings, sculptures, and monuments that are permanently located in a public space. The freedom of panorama is particularly important for tourists and documentarians who regularly take photos of the world around them. The contributors around the world who collaborate to create Wikipedia closely follow copyright rules, and they need the freedom of panorama in order to have the rights necessary to share the world's knowledge. Not all countries in Europe have established the freedom of panorama, and the national laws differ among the ones who have adopted an exception. This lack of harmonization creates barriers for online projects that seek to enable collaboration around the world.

We also ask the Commission to ensure that publishers' rights do not interfere with the right to link. Hyperlinks are the fundamental building block of the World Wide Web.

Freedom of Panorama

Freedom of panorama is important for how people document the world on Wikipedia. They illustrate Wikipedia articles with images from [Wikimedia Commons](#), a repository of over 31 million free media files. Wikimedia Commons hosts many pictures of buildings and art in public spaces, including ones taken during [Wiki Loves Monuments](#), an annual worldwide competition for photographs of heritage sites. The Wiki Loves Monuments initiative has received support from and has cooperated with the Council of Europe, Europeana, the European Commission, Europa Nostra, and other organizations.¹

The collection of photos on Wikimedia Commons demonstrates how documenting public spaces through images is invaluable both as a contemporary educational resource and as a primary source for future generations of historians and sociologists. A student studying the Louvre will have a deficient understanding of the museum if they cannot see pictures of its iconic pyramid, built recently enough to still be eligible for copyright restriction. It would be shameful if, despite the ubiquity of cameras in our current age, scholars centuries from now had few pictures of modern-day Stockholm because copyright restrictions prevented their distribution. Sharing photographs of landscapes and architecture in public spaces via the internet has become a part of life and a cultural norm for many European citizens. Any changes to copyright law should take their cues from these norms rather than trying to oppose them.

The national copyright frameworks of Europe currently do not offer consistent rules on the freedom of panorama. While some countries have a copyright exception that allows people to share images of buildings and three-dimensional art in public spaces, the law in other countries restricts this exception to buildings, to non-commercial use, or to certain locations of the photographer.² This disharmony creates legal uncertainty for people who share their works across borders—i.e. anywhere on the Internet. It makes the sort of international collaboration necessary

¹ See *Make European Cultural Heritage Accessible to the World* (September 6, 2011) <<http://www.wikilovesmonuments.org/make-european-cultural-heritage-accessible-to-the-world/>>; *European Heritage Days: 50 countries open rarely seen monuments* (September 9, 2011) <http://europa.eu/rapid/press-release_IP-11-1012_en.htm>; *Blog Posts published by Europeana* <<http://blog.europeana.eu/tag/wiki-loves-monuments/>>; Europa Nostra's Secretary General was on WLM jury panel <<http://www.europanostra.org/news/198/>>

² J. Lobert et al., *Extending Freedom of Panorama in Europe* (April 2015) <https://upload.wikimedia.org/wikipedia/commons/7/71/HEC-NYU_Wikimedia_Freedom_of_Panorama_Report.pdf>

for the success of projects like Wikipedia more difficult. The European Wikimedia community has previously brought this issue to the attention of policymakers and the wider public in several EU member countries.³ We encourage the Commission to push for true legal harmonization by proposing a mandatory freedom of panorama that allows for broad use of images taken in public spaces.

No harm to copyright holders

A broad freedom of panorama exception will provide tremendous benefit to the public without causing real harm to copyright holders. Photographs of buildings and three-dimensional art already on public display do not diminish the value of these objects or harm creators' ability to profit from their work. When buildings and sculptures are placed in a public space, they become unavoidable parts of our cities and landscapes. Without the freedom to share photos that depict these facets of the spaces they inhabit, people cannot share their experiences or teach others what they learn from the world around them. European countries that have a broad freedom of panorama are not devoid of architects and sculptors willing to make works for public display.⁴ The rights that creators retain in countries that do not have the freedom of panorama largely go unused, without creators profiting from them. Allowing photographers to sell postcards of a city's skyline composed of facades of buildings protected by copyright or a public square that contains recent artwork does not decrease the incentives for architects to design new buildings or artists to create new public art.

No Commercial Use Distinction

We do not recommend adopting a distinction between commercial and non-commercial use. The line between commercial and non-commercial use is increasingly hard to discern. Most of the websites and apps that function as public spaces on the Internet are privately owned or funded through commercial advertisement. In such a context, the question of whether activity is "commercial" or not is at best complex and at worst impossible to answer. The decision by European citizens to use those platforms should not impede their ability to share photographs.

³ See *Pour la liberté de panorama* <<http://libertedepanorama.fr>>; see the documents on freedom of panorama produced by Wikimedia Belgium <https://commons.wikimedia.org/wiki/Category:Freedom_of_Panorama_Communication_Belgium>; see also the campaign site by Wikimedia Estonia <<https://ee.wikimedia.org/wiki/Panoraamivabadus>>.

⁴ Statistics compiled by the Architects' Council of Europe on the number of architects in each European country indicate that broad freedom of panorama laws do not correlate with a smaller proportion of the population becoming architects—if anything, there is correlation between a broad freedom of panorama and a greater number of architects. Compare, e.g., France <<http://www.ace-cae.eu/51/>> and Greece <<http://www.ace-cae.eu/53/>> with Germany <<http://www.ace-cae.eu/52/>> and the UK <<http://www.ace-cae.eu/72/>>.

Freedom of Panorama on the EU level

European citizens should be able to collaborate online without worrying about diverging specifics of copyright in each country in the EU. Almost a year ago, the European Parliament voted not to recommend narrowing the freedom of panorama in the EU. More recently, France has moved toward the creation of a panorama exception for non-commercial use. Belgian lawmakers are currently discussing including a similar clause in national copyright law. These and other restrictions on the freedom of panorama appear in different combinations in the national copyright laws of the EU members that already have the exception. This diversity of laws throughout the EU puts political borders on knowledge, preventing EU citizens in different nations from easily sharing their works and collaborating. We ask the Commission to introduce a clear and precise freedom of panorama exception that allows for broad use of images and removes those borders on knowledge.

Neighboring Rights for Publishing

The introduction of a new neighboring right for publishers has the potential to interfere with hyperlinking and harm the interconnectedness of the open Internet. The ability of websites to link to other websites is the core functionality on which the World Wide Web is built. It allows a site's visitors to find and access more information.

Currently, everyone benefits from the freedom to link between published material online. Wikipedia includes well [over 28.2 million hyperlinks](#) to other websites around the Web, and all of these hyperlinks are added by people around the world who contribute content to the encyclopedia. Wikipedia articles are supported by references to reliable sources, often including hyperlinks to other published material where readers can learn more about a topic. These references are crucial to how Wikipedia articles work. Adding a new neighboring right for publishers, instead of giving the media industry more control over the reproduction and distribution of its content, could – if not harmonized well and without broad exceptions for educational and scientific uses as well for archiving purposes – create additional legal uncertainty for Internet users who share and find information online. New publisher's rights should not create unnecessary burdens for intermediary platforms that help users create and share knowledge. The result would be detrimental not only to the intermediaries but also to the publishers. Publishers benefit from the services intermediaries provide, as they refer users to the publishers' articles and other works.

As we stated in our [comments to the European Commission on the Enforcement of Intellectual Property Rights](#), we strongly recommend that the Commission not

propose a new neighboring right for publishers. The Commission has already taken steps toward copyright modernization by recognizing that intermediaries should not be burdened with additional requirements to enforce intellectual property rights. Creating a new secondary copyright for publishers would be a step backwards. It would undermine the Commission's efforts to update copyright law for the sake of serving a digital single market.

Conclusion

The Commission is asking questions about changes to copyright law that would have significant implications for free knowledge. The Commission can help modernize copyright by introducing a broad exception for the private and commercial use of images of the buildings and sculptures that are part of European citizens' lives. However, the Commission would obstruct that modernization if it were to grant publishers a new right that would harm the functionality of the Web, weaken the digital economy in Europe, and thereby thwart the purposes of the digital single market. New neighboring rights for publishers should not be damaging for collaborative platforms like Wikipedia and other sites that allows users to share hyperlinks to other websites.

Thank you again for this opportunity to submit our thoughts in the context of this consultation.

Sincerely,
Wikimedia Foundation