

SYNOPSIS REPORT ON THE RESULTS OF THE PUBLIC CONSULTATION ON THE 'PANORAMA EXCEPTION'

1. INTRODUCTION

This report summarises the outcome of the public consultation on the use of images of works, such as works of architecture or sculpture, made to be located permanently in public places (the 'panorama exception' laid down in Article 5(3)(h) of Directive 2001/29¹) which was conducted by the Commission from 23 March until 15 June 2016² together with a consultation on the role of publishers in the copyright value chain³. In practice this exception may cover copyright relevant acts such as uploading or using photographs of monuments online (in social media, web encyclopaedias, etc.) or publishing such photographs in print publications, advertisements, leaflets, etc.

The objective of the 'panorama exception' section of the consultation was to collect input for the Commission's analysis of the current legislative framework applicable to this exception and to seek views as to whether the current rules give rise to specific problems in the context of the Digital Single Market.

The consultation was published in three languages (English, French and German) on the Commission's website. The section on the 'panorama exception' received 4876 replies⁴. 2216 (around 45%) of them were gathered by a third party website ('fixcopyright') run by a coalition of stakeholders and sent to the Commission in one go. These replies were not submitted via the EU survey tool; nevertheless they feed into the comprehensive assessment of this report.

The report aims at presenting a qualitative overview of the responses. In this context, it has to be noted that:

- The consultation sought the views of interested parties, as such the responses cannot be considered to be statistically representative.
- A number of respondents have provided very similar replies to the consultation. The analysis of open questions shows that in a relevant number of cases word-for-word or extremely similar textual answers are repeated in the submissions of different respondents.

2. OVERVIEW OF RESPONDENTS

In total, more than 92.8% of the respondents replied as individuals in their personal capacities, while around 7.8% replied as representatives of an organisation/company/institution.

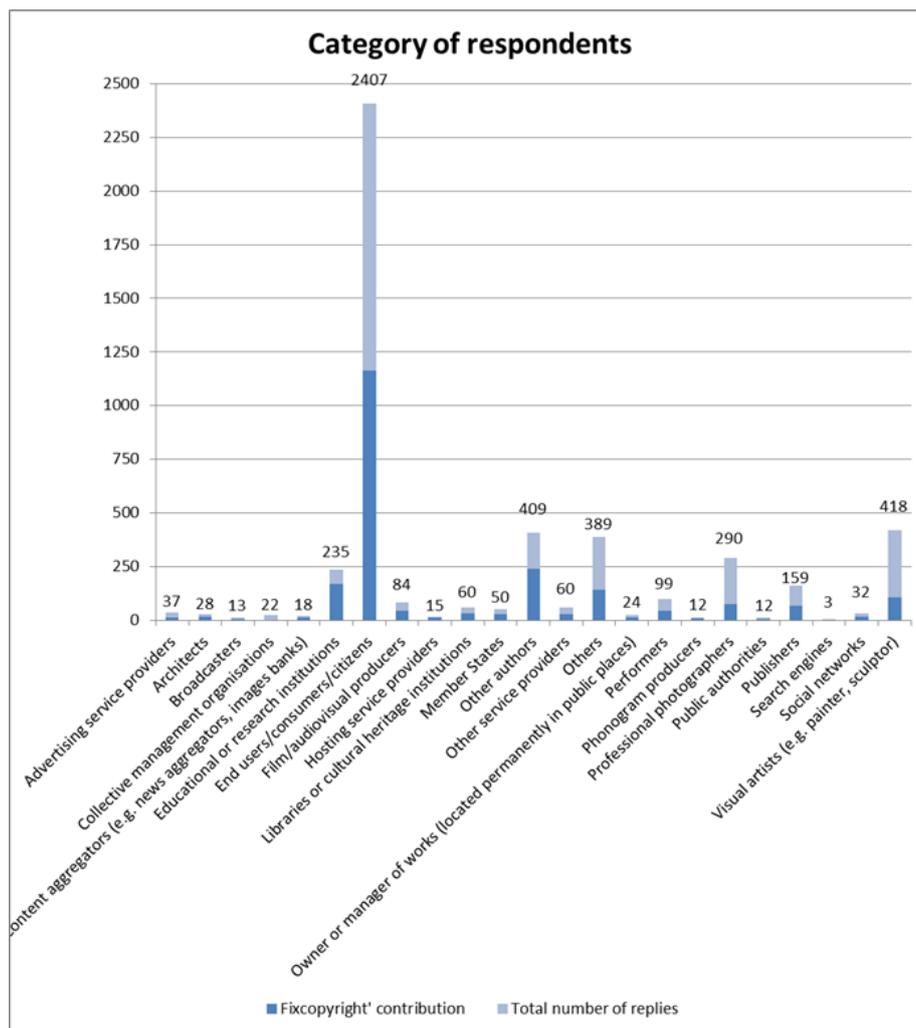
The breakdown of category of respondents (as indicated by the respondent) is as follows:

¹ Article 5(3)(h) of Directive 2001/29/EC provides that Member States may lay down exceptions or limitations to the reproduction right, the right of communication to the public of works and the right of making available to the public other subject matter, concerning the use of works, such as works of architecture or sculpture, made to be located permanently in public places

² <https://ec.europa.eu/digital-single-market/en/news/public-consultation-role-publishers-copyright-value-chain-and-panorama-exception>

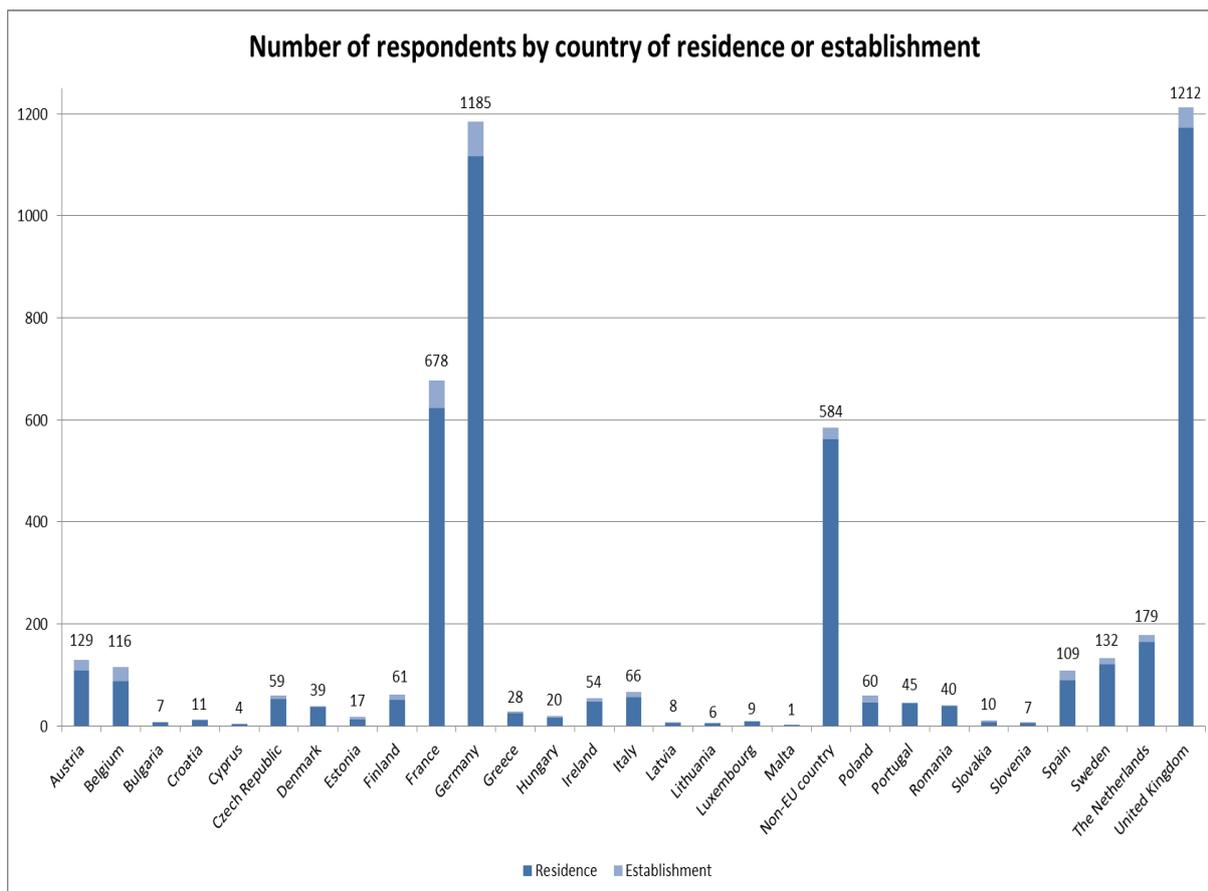
³ A synopsis report on the public consultation on the role of publishers in the copyright value chain is available on the Commission's public consultation [website](#).

⁴ In total, 6203 replies have been received, counting both the publishers and freedom of 'panorama' sections of the consultation.



Replies came from all Member States. The geographical distribution of responses is below⁵:

⁵ Place of residence and primary place of establishment were counted together.



3. SUMMARY OF THE REPLIES

The current situation as regards the use of images of works, such as works of architecture or sculpture, made to be located permanently in public places

A first group of questions (1 to 4) related to the current situation. Questions 1 and 2 asked respondents to indicate whether they had been facing problems related to copyright when uploading online images of works made to be located permanently in public places or when providing online access to such images. Question 3 asked respondents to explain on what basis (e.g. a licence or exception) they had been using such images in the context of their activities such as publications, advertising. Question 4 asked respondents (this was notably relevant for rightholders) whether they had been offering licences for the use of images of their works and, if so, to provide relevant information.

The vast majority of respondents reported that they had been using images of relevant works on the basis of the national implementation of the 'panorama exception' or of a licence in the context of their business activity. **Professional photographers, and other authors⁶/rightholders⁷, consumers, institutional users⁸ and service providers⁹**

⁶ The category of the 'other authors' refers to the authors that are not visual artists, architects or professional photographers.

⁷ The category of 'other right holders' covers performers, publishers, film/audiovisual producers and phonogram producers.

⁸ The category of 'institutional users' includes educational or research institutions, libraries, and owners or managers of public places.

predominantly indicated that they were using images of works on the basis of a national 'panorama exception' and many of them specified the different applicable rules in their respective Member State. As regards the exploitation of images of works, many **visual artists** and **architects** (in particular in Member States where the exception was not implemented or only covered non-commercial uses) reported that they were exploiting the images of their works through licences they granted to professional/commercial users.

As regards potential problems with the current situation, the **Member States** and **public authorities**¹⁰ that replied to the public consultation generally indicated that they were not aware of any concrete problem for users arising in relation to the uploading or the online access of images of these works.

Consumers, institutional users and **service providers** who replied to the public consultation generally put forward the differences between national legislations implementing the 'panorama exception', considering that these differences could lead to legal uncertainty when using images of the relevant works online across borders. This group of respondents also highlighted the lack of clarity of the national laws implementing this exception, the risk that this could lead to unintended infringements and the potential costs of obtaining prior authorisation to use images of relevant works. Some advertising service providers pointed out that the current fragmentation of rules across Member States represented a cost for their cross-border activities.

The majority of **visual artists, architects, CMOs**¹¹ as well as some **broadcasters** and **other rightholders** reported that they had generally never faced issues when using images of these works, nor they were aware of concrete problems for other users. Some respondents in this group underlined, in particular, that many consumers were currently using photographs of public places on social networks without ever encountering any concrete problem. They added that no concrete obstacle to the Internal Market caused by the differences between national legislations was demonstrated. They also considered positive the fact that the current 'panorama exception' provided for in Directive 2001/29/EC offered ample flexibility to Member States, which allowed reflecting national specificities. Some **professional photographers** indicated that their creativity and their ability to exploit their photographs would be limited if they had to seek authorisation when uploading images of these works online or providing online access to these images. However, the majority of these respondents explained that they had never faced any specific issues when uploading or providing access to these images.

Potential impacts of the introduction of a mandatory 'panorama exception' at EU level

Questions 5 and 6 asked respondents what would be the impact on their activity of a mandatory 'panorama exception' at EU level covering only non-commercial uses (question 5) or covering both commercial and non-commercial uses (question 6).

Of the few **Member States** and **public authorities** that replied to the consultation, some were open to the introduction of a mandatory 'panorama exception' but considered that this should only cover non-commercial uses or stressed the need to respect the limits imposed by

⁹ The category of 'service providers' covers content aggregators, advertising service providers, social networks, search engines, hosting service providers and other service providers.

¹⁰ The category of 'Member States' covers Member States and public authorities. Only very few Member States and a limited number of public authorities have replied to the public consultation.

¹¹ Most CMOs which responded to the public consultation were CMOs representing visual artists and photographers.

international copyright obligations, notably the so called "three-step-test"¹². Other Member States clearly said that legislative intervention at EU level would not be appropriate as they feared this would oblige them to change the scope of current exceptions in their national laws.

Consumers, institutional users and service providers who replied to the public consultation generally considered that the introduction of a mandatory 'panorama exception' covering both non-commercial and commercial uses would be a positive development. They generally indicated that a broad mandatory exception would be the most effective way to provide full legal certainty, notably in view of the fact that the distinction between commercial and non-commercial uses may not always be fully clear in the digital environment (for example as regards the upload of images in social media). Others in these categories expressed the concern that a mandatory exception narrowly defined would force Member States that have broad 'panorama exceptions' in their laws to narrow down their scope. Others yet claimed that in their opinion the introduction of a mandatory EU exception covering commercial uses would contribute to promote EU cultural heritage, enhance cultural diffusion and foster creativity.

Some **professional photographers and architects** also considered that the introduction of a mandatory exception would have a positive impact on their activities. Yet, a majority of them were against the introduction of such a mandatory exception since they believed it would hamper the exercise of their rights. Some **broadcasters, publishers, and authors other than visual artists** were in favour of the introduction of a mandatory exception; others in this group feared that a mandatory EU 'panorama exception' would lead to a stricter interpretation of the exception in some Member States which would be prejudicial to their activities.

Visual artists and CMOs were clearly opposed to a mandatory exception extending to commercial uses and considered, more generally, that the introduction of an exception of a mandatory nature at EU level was not necessary. They referred to the fact that most Member States had already adopted 'panorama exceptions' within the margin of manoeuvre of the current EU rules. They also highlighted that an exception extending to commercial uses would cover in practice all possible uses of the works of certain artists/creators such as street artists, thus resulting in practice, in their view, in an expropriation of their rights that would be contrary to the above mentioned "three-steps-test". These respondents also indicated that an exception covering commercial uses would deprive them of substantial revenues (at least in the Member States where no exception exists or where exceptions only cover non-commercial uses) that are currently generated by the licenses granted for advertising and tourism campaigns as well as merchandising products (e.g. bags, mugs, clothes). Visual artists explained that they contributed to a lively culture and to the embellishment of the European cities and that, such as films authors or song composers, who received revenues derived from the public performance of their works, they should also have the opportunity to be remunerated for the public display of their works.

¹² Article 9(2) of the Berne Convention provides that "*It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author*".