

European Parliament, 28 February 2017

An EU related right for press publishers concerning digital uses. A legal analysis

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- <u>Full study</u> (with executive summary) is available on the Social Science Research Network (ssrn.com)
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Press publishers online





Jotet locon F.A.Z.-Woche







Tauchfahrt zu den



Bannon gibt den Revolutionsführer

Früher ausgebuht, heute gefeiert. Donald Trump und seine Leute sind die Stars des CPAC-Treffens vor den Toren der amerikanischen Hauptstadt. Der Chefstrateoe des Präsidenten kündigt einen langen Kampf an - pegen "oppositionalla" Journalistan, Nehr) Von STHON RIESCHE, WASHINGTON 19 24

- · Trump kündigt Ausbau des Atomarsenals an
- · Trump-Berater Bannon hält EU für fehlerhafte Institution >

Trump: "Ich bin komplett für die EU" Bialong hat der neue amerikanische Präsident Offentlich eher schlecht über die Europäische Unior geredet. Nun Bußert er sich ganz anders - auch ande als einer seiner wichtigsten Mitarbeiter. 🖷 4



- · Trump kündist Ausbau des Atomarsenals an »
- John Kelly schlieft Massenabschiebungen in Mexiko aus

Umfragehoch und Mitgliederplus SPD zieht an Union vorbei

Bine Mehrheit der Deutschen findet gut, dass Martin Schulz Pehler bei der "Agenda 2010" korrigioren will. Desa eine rotrrot grüne Koalition eine Mehrheit. trotadem knapp verfehlt, liegt nicht en den Sozieldemokreten Mehr > iil 3



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einem riesigen Berg fauler Kredite. Deawegen broughen ale neues Kapital. Einem großen Goldhaus ist das nun gelungen Matrix 952



Erlebnis Vergewaltigung?

Binc Kulturwissenschaftlerin schlägt vor, die Opfer einer Gewalttat als "Erlebende" zu bezeichnen. Dagegen wehren sich viele Frauen, denn so werden Taten durch Sprache unsightbar gemecht. Mehr > Von URSULA SCHEER 19 85

- · Öffentliche Sicherheit: Für Frauen sieht die Bedrohungslage
- · Trumps Rhetorik: Er steht für Politik in einfacher Sprache

Sind Daten die neue Währung? 🌃

Umgang mit einem neuen Tauschmittel -ein Gestbeitrag, Mahry Von HEIKE





4 1 Kommentar 0

Die entfesselte SPD

Die SPD ist im Umfragehoch - und Spitzenkandidaten, Martin Schulz hat as gaschafft, soine Partei in rirken zu lessen. Hehr v. 16 22

Oscars: «Moonlight» sacré meilleur film, après un incroyable couac

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Trump: Mohamed Ali Jr. retenu à son

UNE MÊME FAMILLE SE VOUE UN

retour aux États-Unis



Coup de théâtre aux Oscars: «La La Land» recoit par erreur le prix du meilleur

film

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Il y a dix ans dans Le Soir : «La Serbie déchargée du génocide de Srebrenica»

Avec Publifin, certains partis craignent de peiner

Trump critiqué ouvertement

cinéma Le prix a d'abord été attribué par erreur à «La La Land».

· «La La Land»: le coup de génie de Damien Chazelle

Mis en ligne II y a 32 minutes 📮 1 réaction



- Art. 11 CDSM proposal: Member States shall provide
 - publishers
 - of press publications (collections of journalistic content)
- with exclusive rights for the digital reproduction and making available of these publications
- and parts thereof (Art. 2 InfoSocDir).



 The proposed PPR covers purely private, noncommercial acts of sharing press articles on social

media, e.g. Facebook

- "Share" a link
- "Like" a post
- "Like" a comment to a post



News-related general search results





Martin Schulz English Anmelden 8

Videos

929.000 ERGEBNISSE

Martin Schulz - Wikipedia

https://de.wikipedia.org/wiki/Martin_Schulz *

Martin Schulz (* 20. Dezember 1955 in Hehlrath, heute Eschweiler) ist ein deutscher Politiker . Von 1987 bis 1998 war Schulz Bürgermeister von Würselen ..

Herkunft und ... · Berufliche ... · SPD-Politiker (seit 1974) · Kontroversen

Martin Schulz, MdEP - Home

www.martin-schulz.eu *

Der VDZ zeichnete Martin Schulz, Präsident des Europäischen Parlamentes, mit der "Goldenen Victoria" für die Kategorie "Europäer des Jahres" aus.

Videos von martin schulz

bing.com/videos



Er war Alkoholiker: SCHULZ: Der Martin Schulz

ARD Mediathek

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Martin Schulz, der Scheinheilige: Die Vergangenheit des ...

www.focus.de > Politik > Deutschland

Martin Schulz hat der SPD einen fast übermütigen Kampfeswillen eingeflößt. Doch sein Verhalten als Europapolitiker wirft Fragen auf, die den ...

Martin Schulz: aktuelle News & Infos - t-online.de

www.t-online.de/themen/martin-schulz *

Alle aktuellen News zum Thema Martin Schulz sowie Bilder, Videos und Infos zu Martin Schulz bei t-online.de.

News über Martin Schulz

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Martin Schulz: SPD verbucht über 6500 Online-Eintritte

Wirtschaftswoche · Vor einer Stunde

SPD: Martin Schulz beschert SPD Umfragehoch und Mitgliederboom

Manager Magazin Online · Vor 54 Minuten

Bilder von Martin Schulz









Martin Schulz



Martin Schulz ist ein deutscher Politiker. Von 1987 bis 1998 war Schulz Bürgermeister von Würselen. Er war von 1994 bis 2017 Mitglied des Europäischen Parlaments und von 2012 bis 2017 dessen Präsident. 2017 kandidiert Schulz ers... +





Offizielle

Geboren: 20. Dez 1955 (Alter 61) · Eschweiler, Deutschland

Ehepartner: Inge Schulz

Partei: Sozialdemokratische Partei Deutschlands

Vorherige Ämter: Präsident des Europäischen Parlaments (2012 -2017) · Mitglied des Europäischen Parlaments (1994 - 2017)

Eltern: Clara Schulz (Mutter) · Albert Schulz (Vater)

Benutzer suchen auch nach





Merkel







Jean-Claude Sahra Wagenknec Obama

Daten von: Wikinedia

Feedback

Martin Schulz Biographie

Anzeige · bundeskanzler-schulz.de

Biographie, Fremdsprachen, aktuelle Pressemeldungen auf einen Blick

Biographie Martin Schulz

Anzeige · Amazon.de/buecher

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Martin Schulz im Porträt: Plötzlich ... Translate this page

https://www.tagesschau.de/inland/martin-schulz-115.html ▼

Martin Schulz - seine Karriere in Bildern. Vom Buchhändler zum Kanzlerkandidaten - gerade diese unüblichen Politikerkarriere macht Martin Schulz beliebt.

The front page of news aggregators





Q



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Tories in historic by-election Copeland win as Labour holds Stoke

BBC News - 1 hour ago 6 mm 1 mm

The Conservatives have won the Copeland by-election, beating Labour in an area it represented for more than 80 years. Trudy Harrison won with 13,748 votes to Labour's Gillian Troughton's 11,601.

Ukip's Paul Nuttall 'not going anywhere' despite Stoke byelection failure The Guardian

The morning news headlines: Conservatives snatch Copeland from Labour in humiliating by-election blow Liverpool Echo

In-depth: Stoke and Copeland by-election results recap: Labour LOSE to Tories but keep Ukip at bay in dramatic night Mirror.co.uk















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Claudio Ranieri's sacking is sad, but modern football means Leicester could not afford to be romantic

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Royal Bank of Scotland has reported a £7bn annual loss as past problems continue to dog its performance. The deficit is more than treble 2015's loss of £2bn.



Storm Doris: 1500 homes and businesses still without power

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Trump repeats call for US nuclear supremacy

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President Donald Trump has said he wants the United States to expand its nuclear arsenal, in his first comments on the issue since taking office

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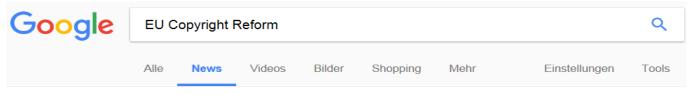
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The result list of news aggregators





Ungefähr 197.000 Ergebnisse (0,62 Sekunden)



Copyright power matrix

POLITICO.eu - 15.02.2017

Copyright reform is the largest, loudest and most divisive battle in **EU** policy ... It pits the full might of Paris and Berlin with **Europe's** deep-rooted ...



Europe's last internet pirate

POLITICO.eu - 18.02.2017

But as a **European** Commission proposal moves through the by Parliament to write a report proposing a **reform** of **Europe's copyright** laws, ...



EU-Kommission: Plädoyer für Leistungsschutzrecht und Upload ...

Heise Newsticker - 25.08.2016

EU-Kommission: Plädoyer für Leistungsschutzrecht und Upload- ... zu den Plänen der EU-Kommission zur Copyright-Reform ist vorab ins ...

Modernisation of the EU copyright rules

EU News - 16.09.2016

The **EU** needs modern **copyright** rules fit for the digital age. The **European** Commission has presented legislative proposals to make sure that consumers and ...

Research Groups Seek Stronger Protections In **EU Copyright** ...

Intellectual Property Watch - 10.01.2017

... Groups Seek Stronger Protections In **EU Copyright Reform** Proposal ... The statement by the Association of European Research Libraries

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Note the URL: https://www.theguardian.com/politics/2017/feb/24/ukip-paul-nuttall-not-going-anywhere-stoke-byelection-failure



- The importance of social media platforms to receive and impart information (ECtHR)
- The lack of a justification for covering private news sharing
- Violation of the fundamental right to freedom of expression and to receive and impart information and ideas (art. 11(1) CFREU/10 ECHR)



- Way out 1: Tailor the right to commercial OSPs that provide hyperlinks to press publications
 - No right to (digital/online) reproduction, but only making available by certain commercial actors
 - -German publishers' right only applies to "commercial providers of search engines or commercial providers of services which process the content accordingly" (news aggregators, potentially social media providers)
 - Spanish unwaivable remuneration right is limited to news aggregators



 Direct liability of OSPs is inconsistent with the restrictions on liability that host providers (as well as search engines and news aggregators) enjoy under the E-Commerce-Directive 2000/31.

Further problem no 3: Violation of fundamental rights



- In order to cover the current practice of OSPs, minimal fragments (single words, thumbnails, video stills) have to be considered protected "parts" of a press publication.
- Serious interference with fundamental rights
 - (1) Of OSPs
 - Protected as a <u>media</u> business under Art. 16 and 11(2) CFREU
 - PPR effectively works as a prohibition of today's services (GER/ESP)
 - (2) Of the freedom of communication of internet users
 - Less news consumption, less diversity
- Cf. Art. 2(8), 10(1) Berne Convention: no © for news of the day/press information and mandatory exception for commercial (!) press summaries



- Interference is not justified
 - In and of itself, an exclusive right does not create demand
 - A PPR will not create additional revenue for press publishers (GER/ESP)
 - The larger size of the EU market will not make a difference.
 - A PPR does not foster quality journalism.
 - Press publishers can rely on existing rights and TPMs to control the use of their content.
 - Their fair share in the value of news publications is the massive referral traffic that OSPs channel to them free of charge.



- Regulatory options to avoid fundamental rights conflicts
 - GER PPR does not cover "individual words or the smallest of text excerpts"
 - Bundesverfassungsgericht <u>Yahoo!</u> 10.10.2016: Interpretation of this provision has to consider "the interest of search engine operators to be allowed to use text excerpts to an extent that is adequate for the purpose of search engines to make information on the internet, including online press publications, findable."
 - The PPR only applies to cases in which the economic interests of publishers are "substantially prejudiced" (cf. Bundesverfassungsgericht Metall auf Metall 31.5.2016 concerning sampling)



- If these limits are observed, the publishers' right will be ineffective
 - News-related services do not substantially prejudice the economic interests of press publishers.
 - -The current practice of search engines and news aggregators does not go beyond what is necessary and proper in order to communicate news/facts as such:
 - That an article exists.
 - And what it is (probably) about.



- Dilemma:
 - A publishers' right is either ineffective or invalid
- Results:
 - Legal uncertainty
 - Less competition and innovation (GER)



- Prohibited discrimination against new, e-only news/content providers
 - Current level playing field for all news/content providers on search engines, news aggregators, social media
 - EU has to maintain a level playing field in the news publication market, and it has to allow effective market access for all kinds of journalistic content under Art. 11(2) CFREU.
 - But the PPR only benefits well-established publishers (print-digital-revenue gap), whereas many e-only news providers are opposed to the PPR
 - If OSPs close down or limit their news-related services, smaller publishers suffer, whereas well-known publishers attract more users to their front pages.



Conclusion:

"Article 11 is fundamentally misconceived, and should be removed from the Proposed Directive."

(Open letter of nine European IP research centres to MEPs and the European Council)