IMPLEMENTATION OF ARTICLES 15 & 17 OF THE DCDSM

OVERVIEW OF MAIN COMPATIBILITY ISSUES BASED ON THE REPORT OF DR CHRISTINA ANGELOPOULOS

Listed countries are not exhaustive

additions
Adding elements that: (1) do not exist in the text of the Directive, or (2) are based on Recitals, but are contradicted by the operative text of the Directive

A15
A17

omissions
Omitting elements that are included in the text of the Directive

A15
A17

incompatible gold plating
Transposition exceeds the requirements of the Directive in a way that is incompatible with it

A15
A17

excessively minimalist transposition
Transposition does not meet the minimum requirements of the Directive

A15
A17

incorrect interpretations of autonomous concepts of EU law
Such interpretations can: (1) result from legacy law, or (2) be a new construct

A15
A17

variations in terminology
Use of divergent terminology that can have significant effects on the meaning of the text and leads to a lack of clarity on compatibility

A15
A17

'homing tendencies'
National attempts to fit the provisions of the Directive into the logic of national law

A15
A17

conclusion: compatibility issues & disharmonising result
Even in cases of compliant implementation, the diversity of the adopted approaches often undercuts the Directive’s ostensibly objective of creating a Digital Single Market and the ‘full harmonisation’ approach it takes to this end

Last update: December 2023
More at https://informationlabs.org/copyright/
IMPLEMENTATION OF ARTICLES 15 & 17 OF THE DCDSM
OVERVIEW OF COMPATIBILITY ISSUES & SPECIFICITIES
BASED ON THE REPORT OF DR CHRISTINA ANGELOPOULOS

MAIN A15 SPECIFICITIES

DEFINITION AND SCOPE

- **Incomplete transposition of “press publications” definition**: no mention of need to be published in any media under the initiative, editorial responsibility and control of a service provider

MAIN A17 SPECIFICITIES

DEFINITION AND SCOPE

- **Extension of the subject matter and beneficiaries of A17**: does not appear to be limited to owners of copyright and related rights listed in A3(2) of the InfoSoc Directive
- **Addition of element of competition to OCSSP definition**: provider must play “an important role in the market for online content by competing with online content services” (based on a Recital which is coherent with the operative part of the Directive)
- **Inaccurate rendition of best efforts**: wrongful translation of the autonomous notion of EU law as “every effort”
- **Piracy providers** excluded from scope

RIGHTS, PROTECTION AND ENFORCEMENT

- **Earmark**: rightholder can request the use of automated means for the detection of uses which the law views as minor and thus by default permissible
- **Complaint mechanism**: procedure must be completed within 2 weeks
- **Sanctions** for OCSSPs (fine of up to 1 million euro)
- **Ex ante safeguards in cases of pre-flagging and minor extracts**: OCSSPs must keep content accessible and inform the rightholder. Automated filtering may not be used to remove or block minor uses of works unless rightholder demonstrates irreparable harm (“balanced” implementation with ex ante user safeguards)
Belgium

Implementation of Articles 15 & 17 of the DCDSM

Overview of Compatibility Issues & Specificities Based on the Report of Dr Christina Angelopoulos

Main A15 Specificities

Definition and Scope

- No protection for the holders of related rights over subject matter incorporated in press publications
- No protection for “mere facts” as in Recital 57, potentially violating fundamental rights
- Introduces rebuttable presumption in favour of the person indicated as publisher in the press publication or in other specified ways

Licensing and Remuneration

- Mandatory collective management for the appropriate share: appropriate share to be determined by a collective agreement between press publishers and authors, to be negotiated in good faith, with intervention of a commission if no agreement is reached
- Dedicated provisions on licensing that allow for intervention by a public authority provided that the press publisher is willing to authorise use of its publications

Main A17 Specificities

Licensing and Remuneration

- Introduces unwaivable and collectively managed right to equitable remuneration for the exploitation of protected content by OCSSPs (currently challenged before the Belgian Constitutional Court)
CROATIA

IMPLEMENTATION OF ARTICLE 15 & 17 OF THE DCDSM

OVERVIEW OF COMPATIBILITY ISSUES & SPECIFICITIES
BASED ON THE REPORT OF DR CHRISTINA ANGELOPOULOS

MAIN A15 SPECIFICITIES

DEFINITION AND SCOPE

- **Rewording of “press publication” definition:** Limitation to newspaper publishers, media publishers or media service providers, potentially restricting the reach of the provision
- **Expansion the indicative list of authorial works** to include works made by the press
- **Expansion to “communication to the public”** instead of “making available” for online uses
- **Expansion to offline uses,** covering the rights of reproduction, distribution, renting and lending, communication to the public, including the making available, and adaptation. The term of protection is 10 years from the date of the first lawful publication
- **No protection for the holders of related rights** over subject matter incorporated in press publications
- **Problematic qualitative approach to “very short extracts”:** extract must not exempt the reader from the need to consult the entire article. Exclusion of photos and video content from the exception
- **No protection for “mere facts”** as in Recital 57, potentially violating fundamental rights
- **Public domain** content exclusion not transposed
- **Introduces rebuttable presumption** in favour of the person indicated as publisher in the press publication or in other specified ways
- **Introduction of a new moral right of attribution** to the first source of “news of the day”

LICENSED AND REMUNERATION

- **Mandatory collective management** imposed but only for professional journalists or photographers covered by employment or commission agreements

Last update: December 2023
More at https://informationlabs.org/copyright/
MAIN A17 SPECIFICITIES

DEFINITION AND SCOPE

- **Extension of the subject matter and beneficiaries of A17**: not limited to owners of copyright and related rights listed in A3(2) of the InfoSoc Directive. Explicit extension to press publications.
- **Carve-out from OCSSP definition** for online marketplaces limited to those whose main activity is retail and which do not provide access to copyright-protected work + profit making purposes may be direct or indirect + profit is replaced by "material or commercial benefit", which is wider.
- **Piracy providers** excluded from scope.

LICENSE AND REMUNERATION

- **Introduces mandatory collective management for uses by OCSSPs**: in relation to certain works this covers the adaptation and reproduction rights, i.e., rights not mentioned in A17.

EXCEPTIONS AND LIMITATIONS

- **Introduction of A17 exceptions of quotation and parody** limited to uses on OCSSPs + limitation of parody exception to works (rather than content).
- **Narrow quotation** exception, limited to literal quotations.
CYPRUS

IMPLEMENTATION OF ARTICLES 15 & 17 OF THE DCDSM

OVERVIEW OF COMPATIBILITY ISSUES & SPECIFICITIES
BASED ON THE REPORT OF DR CHRISTINA ANGELOPOULOS

MAIN A15 SPECIFICITIES

DEFINITION AND SCOPE

- No protection for “mere facts” as in Recital 57, potentially violating fundamental rights
- Exclusion of hyperlinks limited to “clickable” links: might not cover framing/embedding

MAIN A17 SPECIFICITIES

DEFINITION AND SCOPE

- Extension of the subject matter and beneficiaries of A17: not limited to owners of copyright and related rights listed in A3(2) of the InfoSoc Directive. Explicit extension to press publications, non-original photographs and publications of previously unpublished works
- Inaccurate rendition of best efforts: wrongful translation of the autonomous notion of EU law as “every possible effort”

RIGHTS, PROTECTION AND ENFORCEMENT

- Complaint mechanism: no ADR mechanism is foreseen

EXCEPTIONS AND LIMITATIONS

- General exceptions and limitations do not seem applicable to OCSSPs
- Information obligation of OCSSPs: obligation to inform users not only that they can use subject matters under exceptions and limitations, but what the conditions for such use are
- Narrow quotation exception

Last update: December 2023
More at https://informationlabs.org/copyright/
CZECHIA

IMPLEMENTATION OF ARTICLES 15 & 17 OF THE DCDSM
OVERVIEW OF COMPATIBILITY ISSUES & SPECIFICITIES
BASED ON THE REPORT OF DR CHRISTINA ANGELOPOULOS

MAIN A15 SPECIFICITIES

DEFINITION AND SCOPE

- No protection for “mere facts” as in Recital 57, potentially violating fundamental rights
- No exclusion for private or non-commercial uses by individual users
- No protection for the holders of rights in content incorporated in a press publication
- Public domain content exclusion not transposed

LICENSED AND REMUNERATION

- Licensing rules that allow the Ministry of Culture to determine remuneration where no agreement is reached, potentially transforming exclusive right into remuneration right, in violation of EU law
- Obligation to negotiate for certain ISSPs
- Language that could be interpreted as a must-carry obligation

ENTRY INTO EFFECT

- Retroactive application for press publications published before the national implementation date but after 6 June 2019

MAIN A17 SPECIFICITIES

DEFINITION AND SCOPE

- Extension of the subject matter and beneficiaries of A17: not limited to owners of copyright and related rights listed in A3(2) of the InfoSoc Directive. Explicit extension to databases
- Addition of element of competition to OCSSP definition: provider that (may) compete with other online services making works available to the same target audience (based on a Recital which is coherent with the operative part of the Directive)
- Exclusion of the application of the hosting safe harbour to OCSSPs in general or to OCSSPs when communicating to the public

Last update: December 2023
More at https://informationlabs.org/copyright/
MAIN A17 SPECIFICITIES (cont'd)

RIGHTS, PROTECTION AND ENFORCEMENT

- **Decreased protection of users** not acting on a commercial basis or whose activity does not generate significant revenues if OCSSPs have authorisation by rendering conditions cumulative rather than alternative
- **Use of automated filtering**: only where OCSSP assesses the uploaded content as identical or equivalent to the work identified by the author
- **Introduction of a third party right to demand the prohibition of an OCSSP**: if an OCSSP repeatedly and wrongfully prevents the upload of or removes works which do not infringe copyright, an organisation representing consumers or the platform’s competitors may file an action before court demanding the prohibition of the service

EXCEPTIONS AND LIMITATIONS

- **Pastiche** exception not included
DENMARK

IMPLEMENTATION OF ARTICLES 15 & 17 OF THE DCDSM

OVERVIEW OF COMPATIBILITY ISSUES & SPECIFICITIES
BASED ON THE REPORT OF DR CHRISTINA ANGELOPOULOS

MAIN A15 SPECIFICITIES

DEFINITION AND SCOPE

- No definition of “press publications”
- Replaces “individual words” with “very few words”: potentially implies that “very short extracts” may consist of more than a few words, thus raising the standard set slightly
- No protection for “mere facts” as in Recital 57, potentially violating fundamental rights
- Public domain content exclusion not transposed
- Exclusion of hyperlinks potentially limited to “clickable” links: might not cover framing/embedding
- No geographic limitations to the A15 right

LICENSING AND REMUNERATION

- Collective licensing with extended effect allowed

MAIN A17 SPECIFICITIES

DEFINITION AND SCOPE

- Extension of the subject matter and beneficiaries of A17: not limited to owners of copyright and related rights listed in A3(2) of the InfoSoc Directive. Explicit extension to producers of photographic pictures and producers of catalogues
- No carve-outs from OCSSP scope

RIGHTS, PROTECTION AND ENFORCEMENT

- No prohibition on general monitoring: excessively minimalist transposition

EXCEPTIONS AND LIMITATIONS

- No parody exception, rejected by court (still in process before Supreme Court)

Last update: December 2023
More at https://informationlabs.org/copyright/
IMPLEMENTATION OF ARTICLES 15 & 17 OF THE DCDSM
OVERVIEW OF COMPATIBILITY ISSUES & SPECIFICITIES
BASED ON THE REPORT OF DR CHRISTINA ANGELOPOULOS

MAIN A15 SPECIFICITIES

DEFINITION AND SCOPE

- **Rewording of “press publication” definition:** requires “control by an editor’s office” instead of “editorial responsibility”
- **Minimalist transposition of targeted users:** may result in insufficient protection for the holders of rights over subject matter incorporated in press publications
- **No protection for “mere facts”** as in Recital 57, potentially violating fundamental rights
- **Public domain** content exclusion not transposed

LICENSEING AND REMUNERATION

- **Collective licensing** with extended effect allowed
- **Unwaivable protections:** related rights holders always have the right to renegotiate a relevant and fair remuneration under certain conditions

MAIN A17 SPECIFICITIES

DEFINITION AND SCOPE

- **Extension of the subject matter and beneficiaries of A17:** not limited to owners of copyright and related rights listed in A3(2) of the InfoSoc Directive. Explicit extension to publications of previously unpublished works and publication of literary critical or scholarly editions of non-copyright works
- **Inclusion of carve-outs** from OCSSP scope, but unclear if open or closed list

RIGHTS, PROTECTION AND ENFORCEMENT

- **Sanctions** for OCSSPs (compliance notice and non-compliance levy)

Last update: December 2023
More at https://informationlabs.org/copyright/
FINLAND

IMPLEMENTATION OF ARTICLES 15 & 17 OF THE DCDSM

OVERVIEW OF COMPATIBILITY ISSUES & SPECIFICITIES
BASED ON THE REPORT OF DR CHRISTINA ANGELOPOULOS

MAIN A15 SPECIFICITIES

DEFINITION AND SCOPE

- Restriction to online uses not explicit
- Addition of a condition of “a purpose of gain”
- Absence of a restriction of targeted users to ISSPs
- No protection for “mere facts” as in Recital 57, potentially violating fundamental rights
- Not clear if the holders of related rights over subject matter incorporated in press publications are protected
- Minimalist protection for the holders of rights over subject matter incorporated in press publications

LICENSEING AND REMUNERATION

- Collective licensing with extended effect allowed

ENTRY INTO EFFECT

- Retroactive application for press publications published before the national implementation date but after 6 June 2019 in certain cases

MAIN A17 SPECIFICITIES

DEFINITION AND SCOPE

- Extension of the subject matter and beneficiaries of A17: not limited to owners of copyright and related rights listed in A3(2) of the InfoSoc Directive. Explicit extension to databases and non-original photographs
- No carve-outs from OCSSP scope
- Piracy providers excluded from scope
MAIN A17 SPECIFICITIES (cont'd)

RIGHTS, PROTECTION AND ENFORCEMENT

- **Extension of scope of infringing acts and liability of OCSSPs by substitution upload with saving**: infringing act even when only “saving works to the service”, which could cover private uploads. Obligation for OCSSPs to prevent future “saving” of the content to the service, which broadens the liability regime and creates a disconnect between the two immunity prongs.

- **Obligation for rightholder to justify removal request**: if not justified, access to the content must be restored.

- **Court proceeding possible against rightholders** for damages resulting from an unjustified request to disable access to or remove a protected work.

- **Decreased protection of users** where OCSSPs have authorisation by rendering conditions of not acting on a commercial basis or not generating significant revenues cumulative rather than alternative.
FRANCE

IMPLEMENTATION OF ARTICLES 15 & 17 OF THE DCDSM

OVERVIEW OF COMPATIBILITY ISSUES & SPECIFICITIES
BASED ON THE REPORT OF DR CHRISTINA ANGELOPOULOS

MAIN A15 SPECIFICITIES

DEFINITION AND SCOPE

- Inaccurate transposition of “online uses”: replaced with uses “in digital format”
- Problematic qualitative approach to “very short extracts”: extract must not be capable of replacing the press publication itself or exempting the reader from referring to it
- No protection for “mere facts” as in Recital 57, potentially violating fundamental rights
- Extension of beneficiaries of A15: covers also news agencies
- Broad definition of reproduction right in French law: also covers distribution and adaptation, which is broader than EU copyright law concept
- Replaces “information society service providers” with “online public communications services”: omits the reference to services normally provided for remuneration but adds a requirement of reciprocal information exchange
- Public domain content exclusion not transposed
- No exclusion for private or non-commercial uses: excessively minimalist transposition based on inaccurate assumption that this is covered by private copy levy, even though the latter only applies to reproduction rights and requires fair compensation

REVENUE SHARING

- Dedicated provisions on licensing: specific criteria to fix remuneration of press publishers
- Detailed provisions on revenue sharing: process to determine appropriate share via negotiations or, failing that, a designated committee

Last update: December 2023
More at https://informationlabs.org/copyright/
MAIN A17 SPECIFICITIES

DEFINITION AND SCOPE

- **Extension of the subject matter and beneficiaries of A17**: not limited to owners of copyright and related rights listed in A3(2) of the InfoSoc Directive
- **Extension of exclusive rights** protected to “representation” and “reproduction” with regard to copyright and the rights of communication and broadcasting with regard to related rights
- **Inclusion of carve-outs** from OCSSP scope, but unclear if open or closed list + profit making purposes may be direct or indirect
- **“Large amounts” concept replaced with “significant quantities”** defined in decree of the Council of State as exceeding certain thresholds, defined by order of the Ministry of Culture
- **Piracy providers** excluded from scope

RIGHTS, PROTECTION AND ENFORCEMENT

- **Business secrets** limit information obligation of OCSSPs + possible intervention of Minister of Culture in certain specific cases

LICENSED AND REMUNERATION

- **No licensing reciprocity principle**: authorisations granted to users don’t eliminate the obligation of the OCSSP to obtain an authorisation

EXCEPTIONS AND LIMITATIONS

- **Narrow quotation** exception
GERMANY

IMPLEMENTATION OF ARTICLES 15 & 17 OF THE DCDSM

OVERVIEW OF COMPATIBILITY ISSUES & SPECIFICITIES
BASED ON THE REPORT OF DR CHRISTINA ANGELOPOULOS

MAIN A15 SPECIFICITIES

DEFINITION AND SCOPE

- Qualitative approach to “very short extracts”: may include various types of content (e.g. text, photographs, graphics, audio and video). This specificity is compatible
- Explicit mention of “mere facts” exclusion from scope A15: in line with Recital 57 but not the operative part of the Directive
- Quantitative definition of “fair compensation” to authors in revenue sharing: at least 30% of “fair compensation” generated by A15 with specific derogations

LICENSES AND REMUNERATION

- Extension of beneficiaries revenue-sharing: beyond authors to other holders of related rights in content included in a press publication

MAIN A17 SPECIFICITIES

DEFINITION AND SCOPE

- Extension of the subject matter and beneficiaries of A17: not limited to owners of copyright and related rights listed in A3(2) of the InfoSoc Directive
- Addition of element of competition to OCSSP definition: provider must “compete with online content services in the same target groups” (based on a Recital which is coherent with the operative part of the Directive)
- Definition of licensing best efforts: OCSSP must only take licences where these are offered and are available through representative rightholders known to them or can be acquired through collecting societies or dependent rights management entities established in Germany + licence must cover a considerable repertoire of works + rightholders must offer reasonable T&Cs + content must have been manifestly communicated to the public in more than minor quantities
- Start-ups: no stay down obligation if turnover of no more than 1 million euro
- Piracy providers excluded from scope
MAIN A17 SPECIFICITIES (cont'd)

RIGHTS, PROTECTION AND ENFORCEMENT

- **Ex ante safeguards with pre-flagging and minor extracts concepts**: “uses presumably authorised by law” not subject to take-down until a complaint procedure is completed, if automated procedures used + similar procedure for 48 hours for content that was not identified for blocking upon upload. Rightholders informed and retain the right to request take-down and stay-down if they provide a duly substantiated notice. Exception for time-sensitive content where immediate blocking is permitted (“balanced” implementation)

- **Information obligation of OCSSPs**: users must be informed if their content is removed or access to it disabled. Authorised persons also granted access to data on the detection and blocking of content for the purposes of scientific research

- **Earmarking** by trusted rightholders: limited to complaint mechanism

- **Complaint mechanism**: procedure must be completed within 1 week

- **Sanctions** for OCSSPs, users and rightholders

**EXCEPTIONS AND LIMITATIONS**

- **Parody exception** subject to the payment of “appropriate remuneration”
GREECE

IMPLEMENTATION OF ARTICLES 15 & 17 OF THE DCDSM
OVERVIEW OF COMPATIBILITY ISSUES & SPECIFICITIES
BASED ON THE REPORT OF DR CHRISTINA ANGELOPOULOS

MAIN A15 SPECIFICITIES

DEFINITION AND SCOPE

- Problematic qualitative approach to “very short extracts”: extract must not exempt the reader from the need to consult the entire article
- Quantitative definition of “fair compensation” to authors in revenue sharing: specific percentages set in law
- No protection for “mere facts” as in Recital 57, potentially violating fundamental rights

LICENSESING AND REMUNERATION

- Dedicated provisions on licensing that allow for intervention by a public authority, but do not imply a duty to engage in negotiations or to conclude a contract
- Inalienable right: the A15 right is inalienable, and contractual clauses to the contrary are void

ENTRY INTO EFFECT

- Retroactive application: implementation of the law is in November 2022 but the protection granted under A15 commences on 7 June 2021

MAIN A17 SPECIFICITIES

DEFINITION AND SCOPE

- Extension of the subject matter and beneficiaries of A17: not limited to owners of copyright and related rights listed in A3(2) of the InfoSoc Directive. Explicit extension to press publications
- Narrowing of OCSSP scope: “organises” replaced by “optimises”
- “Large amounts” concept replaced with “significant quantities” with no further explanation
- Inaccurate rendition of best efforts: wrongful translation of the autonomous notion of EU law as “every possible effort”
- Piracy providers excluded from scope

Last update: December 2023
More at https://informationlabs.org/copyright/
## MAIN A17 SPECIFICITIES (cont'd)

### EXCEPTIONS AND LIMITATIONS

- **Narrow quotation** exception

### ENTRY INTO EFFECT

- **Retroactive application**: implementation of the law is in November 2022 but the protection granted under A17 commences on 7 June 2021
IMPLEMENTATION OF ARTICLES 15 & 17 OF THE DCDSM

OVERVIEW OF COMPATIBILITY ISSUES & SPECIFICITIES
BASED ON THE REPORT OF DR CHRISTINA ANGELOPOULOS

MAIN A15 SPECIFICITIES

DEFINITION AND SCOPE
- No protection for the holders of related rights over subject matter incorporated in press publications
- No protection for “mere facts” as in Recital 57, potentially violating fundamental rights
- No geographic limitations to the A15 right
- Public domain content exclusion not transposed

LICENSING AND REMUNERATION
- Collective licensing allowed
- Unwaivable right: the A15 right is unwaivable, although rightholders may refrain from requiring remuneration

MAIN A17 SPECIFICITIES

DEFINITION AND SCOPE
- Extension of the subject matter and beneficiaries of A17: not limited to owners of copyright and related rights listed in A3(2) of the InfoSoc Directive
- No carve-outs from OCSSP scope
- Replacement of “high industry standards” with just “industry standards”
# Overview of Compatibility Issues & Specificities

Based on the report of Dr Christina Angelopoulos

## Main A15 Specificities

### Definition and Scope

- Geographical limitation of beneficiaries A15: only if established in Ireland
- Expansion to “reproduction” and “adaptation” instead of just “making available” + making available defined overly broadly in Irish law (includes acts of distribution and broadcasting)
- No protection for “mere facts” as in Recital 57, potentially violating fundamental rights

## Main A17 Specificities

### Definition and Scope

- Lack of clarity regarding scope of beneficiaries of A17: unclear whether performers are granted protection in relation to their performances
- Extension of exclusive rights covered to “reproduction” and “adaptation” through references to national law (“homing”), with additional lack of clarity regarding OCSSPs’ possible continued liability for reproduction even if they abide by the conditions of the special liability regime

### Rights, Protection and Enforcement

- No distinction between “sufficiently substantiated notices” (take-down) and “relevant and necessary information” (stay-down): requires stay down on the basis only of a “sufficiently substantiated notice”
- Business secrets limit information obligation of OCSSPs

### Exceptions and Limitations

- Quotation exception and new parody exception subject to the rules on fair dealing

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Last update: December 2023
More at [https://informationlabs.org/copyright/](https://informationlabs.org/copyright/)
ITALY

IMPLEMENTATION OF ARTICLES 15 & 17 OF THE DCDSM
OVERVIEW OF COMPATIBILITY ISSUES & SPECIFICITIES
BASED ON THE REPORT OF DR CHRISTINA ANGELOPOULOS

MAIN A15 SPECIFICITIES

DEFINITION AND SCOPE

- Problematic qualitative approach to “very short extracts”: extract must not exempt the reader from the need to consult the entire article
- Expansion to “communication to the public” instead of “making available”
- Quantitative definition of “fair compensation” to authors in revenue sharing: between 2% and 5% of “fair compensation” generated by A15
- No protection for “mere facts” as in Recital 57, potentially violating fundamental rights

LICENSED AND REMUNERATION

- Licensing rules: dedicated provisions on licensing that transform an exclusive right into a remuneration right, potentially in violation of EU law. AGCOM intervention in case of unsuccessful negotiations on fair compensation; court as last resort

MAIN A17 SPECIFICITIES

DEFINITION AND SCOPE

- Extension of the subject matter and beneficiaries of A17: not limited to owners of copyright and related rights listed in A3(2) of the InfoSoc Directive
- Inclusion of carve-outs from OCSSP scope, but unclear if open or closed list
- No carve-out for cloud service providers and online marketplaces OCSSPs that allow the sharing of protected works between multiple users (compatibility with the Directive unclear)
- Inaccurate rendition of best efforts: wrongful translation of the autonomous notion of EU law as “greatest or maximum efforts”
## IMPLEMENTATION OF ARTICLES 15 & 17 OF THE DCDSM

**OVERVIEW OF COMPATIBILITY ISSUES & SPECIFICITIES**

**BASED ON THE REPORT OF DR CHRISTINA ANGELOPOULOS**

### MAIN A15 SPECIFICITIES

**DEFINITION AND SCOPE**

- No protection for “mere facts” as in Recital 57, potentially violating fundamental rights
- No geographic limitations to the A15 right

### MAIN A17 SPECIFICITIES

**DEFINITION AND SCOPE**

- Inaccurate rendition of best efforts: wrongful translation of the autonomous notion of EU law as “greatest efforts”
- No transposition of “high industry standards of professional diligence”

**RIGHTS, PROTECTION AND ENFORCEMENT**

- Disabling of access to or removal of content be “immediate” rather than “expeditious”

**EXCEPTIONS AND LIMITATIONS**

- Pastiche exception not included

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Last update: December 2023
More at [https://informationlabs.org/copyright/](https://informationlabs.org/copyright/)
IMPLEMENTATION OF ARTICLES 15 & 17 OF THE DCDSM

OVERVIEW OF COMPATIBILITY ISSUES & SPECIFICITIES
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MAIN A15 SPECIFICITIES

**DEFINITION AND SCOPE**

- **Rewording of “press publication” definition**: restriction of the new right only to “electronic press publications”
- **Restriction to online uses** not explicit
- **Quantitative approach to “very short extracts”**: 125 characters or fewer, excluding the headline of the text and spaces
- **Extension of beneficiaries of A15**: covers also news agencies when they “publish” press publications
- **No protection for “mere facts”** as in Recital 57, potentially violating fundamental rights

MAIN A17 SPECIFICITIES

**DEFINITION AND SCOPE**

- **Extension of the subject matter and beneficiaries of A17**: not limited to owners of copyright and related rights listed in A3(2) of the InfoSoc Directive. Exclusion of computer programs from protection
- **Carve-out from OCSSP definition**: profit-making purposes may be direct or indirect

**RIGHTS, PROTECTION AND ENFORCEMENT**

- **Sanctions possible against rightholders** who use automatic content recognition technologies or submit frivolous or unfounded claims to OCSSPs

Last update: December 2023
More at [https://informationlabs.org/copyright/](https://informationlabs.org/copyright/)
MAIN A15 SPECIFICITIES

DEFINITION AND SCOPE

- *No protection for “mere facts”* as in Recital 57, potentially violating fundamental rights
IMPLEMENTATION OF ARTICLES 15 & 17 OF THE DCDSM

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MAIN A15 SPECIFICITIES

**Definition and Scope**

- Explicit mention of “mere facts” exclusion from scope A15: in line with Recital 57 but not the operative part of the Directive
- No geographic limitations to the A15 right

**Licensing and Remuneration**

- Specific provisions on revenue sharing: delegates the determination of the amount of remuneration to a designated Board

MAIN A17 SPECIFICITIES

**Definition and Scope**

- Piracy providers excluded from scope

**Licensing and Remuneration**

- Requirement of appropriate and proportionate remuneration for authors and performers with intervention by a relevant Board that determines the amount of such a remuneration in the absence of an agreement
NETHERLANDS

IMPLEMENTATION OF ARTICLES 15 & 17 OF THE DCDSM

OVERVIEW OF COMPATIBILITY ISSUES & SPECIFICITIES
BASED ON THE REPORT OF DR CHRISTINA ANGELOPOULOS

MAIN A15 SPECIFICITIES

DEFINITION AND SCOPE

- Replaces “individual words” with “a few words”: potentially implies that “very short extracts” may consist of more than a few words, thus raising the standard set slightly
- No protection for “mere facts” as in Recital 57, potentially violating fundamental rights

LICENSEING AND REMUNERATION

- Collective licensing allowed

MAIN A17 SPECIFICITIES

DEFINITION AND SCOPE

- Incorporates “communication to the public” despite no general right existing in the Dutch copyright law, although “openbaarmaking” (disclosure to the public) concept covers both the right of communication to the public and the right of making available to the public

RIGHTS, PROTECTION AND ENFORCEMENT

- Decreased protection of users where OCSSPs have authorisation by rendering conditions of not acting on a commercial basis or not generating significant revenues cumulative rather than alternative

Last update: December 2023
More at https://informationlabs.org/copyright/
PORTUGAL

IMPLEMENTATION OF ARTICLES 15 & 17 OF THE DCDSM

OVERVIEW OF COMPATIBILITY ISSUES & SPECIFICITIES
BASED ON THE REPORT OF DR CHRISTINA ANGELOPOULOS

MAIN A15 SPECIFICITIES

DEFINITION AND SCOPE

- **Extension of beneficiaries of A15**: covers also news agencies when they “publish” press publications
- **Creation of additional right for press publishers**: exclusive right over the acts of online reproduction, communication to the public and making available to the public of their press publications
- **No protection for “mere facts”**: as in Recital 57, potentially violating fundamental rights
- **Inaccurate transposition of exclusion for private or non-commercial uses**: addition of novel conditions to benefit from exclusion (exercise of right to be informed and lawful access)

LICENSEING AND REMUNERATION

- **Licensing rules**: dedicated provisions on licensing whereby the remuneration for press publishers depends on the economic value of the online use of press publications by ISSPs + information obligations for ISSPs + transitional extended collective licensing scheme for regional press publications until the end of 2028, followed by voluntary collective management regime
- **Collective licensing** allowed

MAIN A17 SPECIFICITIES

DEFINITION AND SCOPE

- **Extension of the subject matter and beneficiaries of A17**: not limited to owners of copyright and related rights listed in A3(2) of the InfoSoc Directive. Explicit extension to press publications
- **Carve-out from OCSSP definition**: closed list

EXCEPTIONS AND LIMITATIONS

- **Narrow quotation** exception

Last update: December 2023
More at https://informationlabs.org/copyright/
MAIN A15 SPECIFICITIES

**DEFINITION AND SCOPE**

- Problematic qualitative approach to “very short extracts”: extract must not exempt the reader from the need to consult the entire article
- Quantitative approach to “very short extracts”: less than 120 characters
- Explicit mention of “mere facts” exclusion from scope A15: in line with Recital 57 but not the operative part of the Directive
- No geographic limitations to the A15 right, hence an unclear geographic reach

**LICENSING AND REMUNERATION**

- Parties may agree not to apply the protection for the holders of rights over subject matter incorporated in press publications
- “Appropriate share” of PPR revenue may be paid through lump sum payments (meaning that it can be designated as covered by a stated percentage of royalties in contracts between authors and publishers)
- “Appropriate share” scope limited: does not apply where rights have been acquired by press publishers in the context of employment relationships or as a result of a license or assignment of rights
- Collective licensing with extended effect allowed

MAIN A17 SPECIFICITIES

**DEFINITION AND SCOPE**

- Extension of the subject matter and beneficiaries of A17: not limited to owners of copyright and related rights listed in A3(2) of the InfoSoc Directive. Explicit extension to press publications
- Carve-out from OCSSSP definition: profit-making purposes may be direct or indirect
- Piracy providers excluded from scope

**RIGHTS, PROTECTION AND ENFORCEMENT**

- Business secrets limit information obligation of OCSSPs
SLOVAKIA

IMPLEMENTATION OF ARTICLES 15 & 17 OF THE DCDSM

OVERVIEW OF COMPATIBILITY ISSUES & SPECIFICITIES
BASED ON THE REPORT OF DR CHRISTINA ANGELOPOULOS

MAIN A15 SPECIFICITIES

DEFINITION AND SCOPE

- Inaccurate transposition of exclusion for private or non-commercial uses: uses the word “and” instead of “or”
- Problematic qualitative approach to “very short extracts”: extract must not exempt the reader from the need to consult the entire article
- No protection for “mere facts” as in Recital 57, potentially violating fundamental rights
- Extension of revenue-sharing beneficiaries to other holders of related rights in content included in a press publication

MAIN A17 SPECIFICITIES

DEFINITION AND SCOPE

- Extension of the subject matter and beneficiaries of A17: not limited to owners of copyright and related rights listed in A3(2) of the InfoSoc Directive. Explicit extension to press publications and databases
- Carve-out from OCSSP definition: closed list
- Exclusion of the application of the hosting safe harbour to OCSSPs in general or to OCSSPs when communicating to the public
- Piracy providers excluded from scope

RIGHTS, PROTECTION AND ENFORCEMENT

- No prohibition on general monitoring: excessively minimalist transposition
- Decreased protection of users where OCSSPs have authorisation by rendering conditions of not acting on a commercial basis or not generating significant revenues cumulative rather than alternative

EXCEPTIONS AND LIMITATIONS

- Limitation of exception for parodies, caricatures and pastiches to those that do not give rise to a likelihood of confusion with the original work
- No reference to OCSSP obligation to inform users of their right to use works under exceptions and limitations

copyright lab.

Last update: December 2023
More at https://informationlabs.org/copyright/
SLOVENIA

IMPLEMENTATION OF ARTICLES 15 & 17 OF THE DCDSM

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MAIN A15 SPECIFICITIES

DEFINITION AND SCOPE

- Restriction to online uses not explicit
- No protection for “mere facts” as in Recital 57, potentially violating fundamental rights

LICENSING AND REMUNERATION

- Unwaivable right: the A15 right is unwaivable

MAIN A17 SPECIFICITIES

DEFINITION AND SCOPE

- Extension of the subject matter and beneficiaries of A17: not limited to owners of copyright and related rights listed in A3(2) of the InfoSoc Directive. Explicit extension to press publications
- Misaligned definition of information society services as “economic activities conducted over the internet that are continuously accessible”
- Replacement of “high industry standards” with “diligence of a good professional”
- Exclusion of the application of the hosting safe harbour to OCSSPs in general or to OCSSPs when communicating to the public

RIGHTS, PROTECTION AND ENFORCEMENT

- Information obligation of OCSSPs: users must be informed if their content is removed or access to it disabled

EXCEPTIONS AND LIMITATIONS

- Pastiche exception not included
IMPLEMENTATION OF ARTICLES 15 & 17 OF THE DCDSM

OVERVIEW OF COMPATIBILITY ISSUES & SPECIFICITIES
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MAIN A15 SPECIFICITIES

DEFINITION AND SCOPE

- Unclear drafting of “press publication” definition: language seems to imply that text-only publications are excluded, as other subject matter in addition to literary works of a journalistic nature is required
- Qualitative approach to “very short extracts”: must be either very short or of little significance qualitatively and quantitatively
- Extension of beneficiaries of A15: covers also news agencies when they “publish” press publications
- No protection for “mere facts” as in Recital 57, potentially violating fundamental rights
- Geographical limitation of beneficiaries A15: only if established in Spain

LICENSED AND REMUNERATION

- Collective licensing allowed
- Dedicated provisions on licensing: editorial independence, provision of detailed information by ISSPs on the classification of content, and no link with other contracts or obligations
- Revenue sharing: authors may resort to collective management organisations

MAIN A17 SPECIFICITIES

DEFINITION AND SCOPE

- Extension of the subject matter and beneficiaries of A17: not limited to owners of copyright and related rights listed in A3(2) of the InfoSoc Directive
- Carve-out from OCSSP definition for online encyclopaedias and educational and scientific repositories only if they have neither direct nor indirect intent to profit
- Broadening of scope of OCSSP definition: excessively maximalist transposition as provider is OCSSP if stores and gives access to protected content either in large amounts or if it has a large audience in Spain
- Inaccurate rendition of best efforts: wrongful translation of the autonomous notion of EU law as “biggest efforts”
MAIN A17 SPECIFICITIES (cont'd)

RIGHTS, PROTECTION AND ENFORCEMENT

- **Obligation to remove or disable access** to transmissions of live events in real time
- **Undermining of special limited liability regime**: even if “biggest efforts” made, OCSSP can be sued by rightholders if unauthorized content that harms them remains available, e.g. for unjust enrichment
- **Complaint mechanism**: procedure must be completed within 10 business days

LICENSEING AND REMUNERATION

- **Basic principles to be respected in negotiations**: contractual bona fide, due diligence, transparency and respect for free competition

EXCEPTIONS AND LIMITATIONS

- **Narrow quotation** exception
- **Pastiche** exception not included
SWEDEN

IMPLEMENTATION OF ARTICLES 15 & 17 OF THE DCDSM

OVERVIEW OF COMPATIBILITY ISSUES & SPECIFICITIES
BASED ON THE REPORT OF DR CHRISTINA ANGELOPOULOS

MAIN A15 SPECIFICITIES

DEFINITION AND SCOPE

- Qualitative approach to “very short extracts”: may include various types of content (e.g. text, photographs, graphics, audio and video). This specificity is compatible
- No protection for the holders of rights in content incorporated in a press publication
- No protection for “mere facts” as in Recital 57, potentially violating fundamental rights

LICENSED AND REMUNERATION

- Collective licensing allowed

MAIN A17 SPECIFICITIES

DEFINITION AND SCOPE

- Extension of the subject matter and beneficiaries of A17: not limited to owners of copyright and related rights listed in A3(2) of the InfoSoc Directive. Explicit extension to non-original photographs
- Addition of element of competition to OCSSP definition: provider must play “an important role on the content market by competing with other types of existing or potential online content services” (based on a Recital which is coherent with the operative part of the Directive)
- No carve-outs from OCSSP scope
- Inaccurate rendition of best efforts: replaced by requirement for OCSSPs to take “such measures they can reasonably be required to take”
MAIN A17 SPECIFICITIES (cont'd)

**RIGHTS, PROTECTION AND ENFORCEMENT**

- **No prohibition on general monitoring:** excessively minimalist transposition
- **Information obligation of OCSSPs:** users must be informed if their content is removed or access to it disabled
- **Obligation for rightholder to justify removal request:** if not justified, access to the content must be restored
- **Use of automated filtering:** only for content which “may be assumed, with a high degree of certainty, to infringe copyright”
- **Introduction of a third party right to initiate proceedings** against OCSSPs for failure to meet their obligations