

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

LICENSING 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