

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

LICENSING AND REMUNERATION

- **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

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

LICENSING 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