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

LICENSE 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”