

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

- **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

LICENSING 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

LICENSING 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