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

LICENSEING 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