

**CIRIO**

# Let's Rewrite Copyright

Press Publisher Right in Article 15 DSM Directive

Liability of User-Upload Platforms in Article 17 DSM Directive

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# New EU Copyright Legislation

## **Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (DSM Directive)**

- Directive was approved by the Council on 15 April 2019
- MS have two years to pass appropriate legislation to meet the Directive's requirements

### **Objectives of the DSM Directive**

- More cross-border access to content online
- A better functioning copyright marketplace
- Wider opportunities to use copyrighted materials in education, research and cultural heritage

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## Two debated articles

- Article 15 DSM Directive on new press publisher right (“linktax”)
- Article 17 DSM Directive on liability of user-upload platforms (“upload filters”)
- The objectives of Articles 15 and 17 is to achieve a well-functioning and fair marketplace for copyright
- Two polarises sides in the debate
  - American companies such as Facebook, Twitter, Microsoft and Google *versus* right holders and authors
  - Old business models *versus* new business models

# ARTICLE 15 of the DSM DIRECTIVE

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## Article 15 - Press Publisher Right

- A new “related” right
  - “Producers right” rather than “performer right”
  - Online use by information society service providers
    - Online reproduction and making available
      - Articles 2 and 3(2) InfoSoc Directive
  - Right to remuneration
  - In addition to existing rights
  - 2 years term of protection
    - 1 January following the publication

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## Article 15 - Press Publisher Right

- Publishers
  - News publishers or news agencies
- Press publications
  - Text
  - Pictures
  - Videos
  - Etc
- Whole or parts of it
- Published in any media

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## Article 15 - Press Publisher Right

- Journalistic press publications
  - Daily newspapers
  - Weekly or monthly magazines of general or special interest
- Not publications that are
  - Periodical publications for scientific or academic purpose
  - Non “editorial”
    - Blogs, Instagram accounts etc

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## Article 15 - Press Publisher Right

- Not acts that are
  - Private uses
  - Non-commercial uses
  - Acts of hyperlinking
  - Use of individual words or very short extracts (restrictive)
- + Exceptions in Article 5 InfoSoc Directive
- Compensation to photographers, reporters, producers etc
  - “Appropriate share” of the revenues that press publishers receive



# ARTICLE 17 of the DSM DIRECTIVE

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## Article 17 - Liability of User-Upload Platforms

- Online content-sharing service providers
  - Defined in Article 2(6)
  - Platforms with a profit-making purpose that store and give the public access to a large amount of works/subject matter uploaded by their users, which they organise and promote

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## Article 17 - Liability of User-Upload Platforms

- The providers responsibilities
  - Primarily liable for their users' uploads
    - Communication to the public or an act of making available to the public when uploaded by its users
  - Large providers
    - The audience and the size of the service that are not covered by Article 17
      - Less than 3 years and which have an annual turnover below EUR 10 million
      - Not exceeds 5 million monthly unique visitors (after 3 years)
  - Principle of proportionality

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## Article 17 - Liability of User-Upload Platforms

- Two options
  - Authorisation
    - Licensing agreement
  - Or avoid liability under cumulative conditions (to prevent uploads)
    - (a) made best efforts to obtain an authorisation;
    - (b) made best efforts to ensure the unavailability of specific works for which the right holders have provided them with the relevant and necessary information; and
    - (c) acted expeditiously, subsequent to notice from right holders, to take down infringing content and made best efforts to prevent its future upload
- Filter (no monitoring obligation)
  - Compare Article 15 E-Commerce Directive and

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## Article 17 - Liability of User-Upload Platforms

- Filter (no monitoring obligation)
  - Compare Article 15 E-Commerce Directive
  - Compare EUD C-360/10 SABAM and EUD C-70/10 SABAM
    - NOT
      - Filtering system = preventive monitoring
      - Identify (within all of the electronic communications of all its customers)
      - Determine (which files are stored and made available to the public unlawfully)
      - Prevent (block file-sharing/uploading etc.)
      - General monitoring is prohibited
    - YES
      - Limited monitoring, identifying and prevention

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## Article 17 - Liability of User-Upload Platforms

- Mandatory exceptions (compare Article 5 InfoSoc Directive)
  - Quotation
  - Criticism
  - Review
  - Caricature, parody or pastiche

# Thanks!

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