
Article 15

Press Publishers

Right

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What is at issue in Article 15?

- New exclusive right granted to EU press publishers to control online use of their press publications
- Problematic because:
 - Creates a new layer of related rights on top of copyright
 - **No originality** threshold
 - Prevents the use of extracts other than “**very short extracts**”

Breaking down Article 15

- **What?** Right to control uses (reproduction and making available) of “press publications” by “Information Society Service Providers” (A.1.1 ECD).
- **Who?** Only EU-based publishers benefit from this new right. [ISSPs can continue to use non-EU press publications]
- **For how long?** For 2 years after publication (from 1 January).

Breaking down Article 15

Does not apply to this content:

- **Publications published before 6 June 2019.**
- **Scientific publications**
- **Websites such as blogs**
- **Mere facts reported in the publication**
- **Public domain works that are contained in the publication**

Breaking down Article 15

Does not prevent these uses:


- Uses of individual words and **very short extracts** of the publication [Will snippets with thumbnails be covered?]
- Private or non-commercial uses by **individual users**
- Hyperlinks
- User has a license (e.g. CC) to use the work in the publication
- All uses under **exceptions**. R. 57 says that all exceptions apply.

How to deal with Article 15?

- **Member States must decide on whether to include **recital provisions** into national level legislative text.**
- **Transposition scenarios:**
 - **Move beyond Directive**
 - **Mitigate harmful provisions**
 - **Don't mitigate harmful provisions**

The Best Version of Article 15

- Definition of “very short extracts”: supports a **floor, not a ceiling**, with regard to length/amount of content this new right will cover
- Explicit about **limitations and exceptions**
- Specifically carves out **scientific and academic publications.**
- Specifically carves out **blogs.**



The Ideal National Transposition (Bonus Points)

- **Allows publishers explicitly to waive their rights**

The Worst Version of Article 15

- Member States define a **low ceiling** of “very short extracts”
- MS **ignore** including specific provisions mentioned in **recitals** (i.e. exceptions & limitations)
- MS try to make all (or part) of the press publisher’s right **unwaivable**.



France

- **First mover, already implemented**
- **Added a chapter (VIII) to the Code de la propriété intellectuelle**
- **“éditeur de presse” or “agence de presse”**
- **Online services must provide all usage/traffic data to press publishers**
- **Journalists have a right to receive a share of revenue**



France

- **Very short extracts exempted, but:**
- **Not if they reduce the need to refer to the article or can replace the article**
- **“lorsque l'utilisation de très courts extraits se substitue à la publication de presse elle-même ou dispense le lecteur de s'y référer”**



Netherlands

- **Does not attempt to clarify the very tricky question of “very short extracts”**
- **Argues that only the CJEU “has jurisdiction to give an authentic interpretation”**



Belgium

- **The draft law explicitly excludes:**
 - **Hyperlinks**
 - **Individual words & short extracts**
 - **Works with expired protection**
- **Authors have an unwaivable right to part of the revenue of the press publisher, modalities can be defined by the Crown**
- **No private, non-commercial mention, but: “autoriser la reproduction, pour son utilisation en ligne, qu'elle soit directe ou indirecte, provisoire ou permanente, en tout ou en partie, par un prestataire de services de la société de l'information”**



Hungary

- Hungary transposes the main restrictions to the new right
- However it misses to include “private or non-commercial uses of press publications by individual users”



Croatia

- News that have the character of simple media information are not protected, but have to be credited to the original publisher & journalist
- But new right covers the right to reproduce, to distribute, to make public, to adapt
- Publishers are entitled to compensation when sharing on internet platforms occurs
- Exemptions include free internet encyclopaedia, scientific repositories and free software repositories)
- According to Article 57 they cannot waive their right.
- Does not mention that L&Es apply

Germany

- Only administrative drafts
- Intention to set up a new press publisher right, not to update the existing one
- Exempts explicitly:
 - Private+non-commercial+individual
 - Hyperlinks
 - Defines “very short extracts”:
 - Headline
 - Thumbnail image up to 128x128px
 - A image or sound sequence up to 3 seconds

Thank you!

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