The New Copyright Directive: A tour d’horizon - Part II (of press publishers, upload filters and the real value gap)

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The second chapter of Title IV contains the most controversial provisions of the Directive, namely the new right for press publishers and the new liability regime for user-upload platforms.

Press Publishers' Right

The New Copyright Directive introduces a new right for press publishers to remunerate, in a fair and equitable manner, the works that they manage to make available on their platforms. This new right is intended to address the issue of remuneration for press publications that are uploaded by third parties.

The press publishers' right is recognized in Article 15(1) of the CDSM Directive. The right is intended to provide press publishers with the means to remunerate authors of works incorporated in press publications, and to ensure that press publishers are adequately compensated for their contribution to the production of press publications.

The press publishers' right is intended to apply to works that are uploaded by third parties, and that are protected by copyright. The right is intended to be exercised by press publishers, and to be subject to certain formalities, such as the notification of the right and the payment of remuneration.

Upload Filters and the Real Value Gap

The New Copyright Directive introduces new measures to combat copyright infringement online, including upload filters. These filters are designed to prevent the spread of copyrighted material by automatically removing or blocking content that is identified as infringing.

However, the effectiveness of upload filters has been widely debated, and commentators have raised concerns about their potential impact on free expression and creativity. The Directive aims to ensure that upload filters are only applied to content that is clearly infringing, and that they are subject to certain limitations and safeguards to protect the rights of creators and users.

Title I contains the most controversial provisions of the Directive, namely the new right for press publishers and the new liability regime for user-upload platforms.

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The real "value gap": Exploitation Contracts for Creators

The section on Article 17 of the CDSM Directive borrows from part of a forthcoming paper co-authored with Dr. Christina Angelopoulos.* It likely that many of the issues raised in this and the previous post will ultimately make their way to the CJEU. It is possible that the Commission will carry out its review of the directive no sooner than 7 June 2026. However, by 7 June 2024, it must carry out an impact assessment of the liability regime in Article 17 in relation to OCSSPs with an annual turnover below EUR 18 million (and other services have been available for less than three years). Depending on the conclusions of the assessment, the Commission may take action.

If any conclusion can be drawn from the tour d'horizon of the CDSM Directive, it is that national legislators have their work cut out during national implementations. For an instrument aimed at further harmonisation of the ePrivacy Directive and the GDPR (Art. 19 to 21), it is that national legislators must comply with the rules in the ePrivacy Directive and the GDPR (Art. 19 to 21). Also, the processing of personal data carried out under the provisions of this directive must be in accordance with the principles of appropriate and proportionate remuneration (Art. 19 to 21). However, by 7 June 2024, it must carry out an impact assessment of the liability regime in Article 17 in relation to OCSSPs with an annual turnover below EUR 18 million and other services have been available for less than three years. Depending on the conclusions of the assessment, the Commission must take action.

If any conclusion can be drawn from the tour d'horizon of the CJEU, it is that national legislators have their work cut out during national implementations. In this context, Member States may even decide to exclude the application of the new mandatory exceptions in the CDSM Directive. Furthermore, it is that national legislators must comply with the rules in the ePrivacy Directive and the GDPR (Art. 19 to 21).

For the article on Article 17 of the CDSM Directive appears from part of a forthcoming paper co-authored with Dr. Christina Angelopoulos.*