



Harmonization and Fragmentation

Eleonora Rosati
6 October 2023

Contents

- Types of provisions in the DSM Directive
- Case study: Article 15
- What does the DSM Directive tell us about ourselves and the state of copyright harmonization in the EU?



Types of provisions in the DSM Directive

Freedom and constraints of EU Member States (in general)

Provisions allowing MS to choose whether to do stg in the first place	Provisions requiring MS to do stg while leaving discretion	Provisions that are prescriptive in content
ECL (Art 12)	Out-of-commerce works (Art 8(5))	TDM (Arts 3-4)
Teaching (Art 5(2))	Transparency obligation (Art 19(4))	Press publishers' right (Art 15)
Compensation for private copying (Art 16)	Revocation mechanism (Art 22(2))	Reproductions of public domain artworks (Art 14)
		OCSSPs (Art 17)

E Rosati, *Copyright and the Court of Justice of the European Union* (Oxford University Press, 2023), 2nd edition

Protection of press publications concerning online uses

1. Member States shall provide publishers of press publications established in a Member State with the rights provided for in Article 2 and Article 3(2) of Directive 2001/29/EC for the online use of their press publications by information society service providers.

The rights provided for in the first subparagraph shall not apply to private or non-commercial uses of press publications by individual users.

The protection granted under the first subparagraph shall not apply to acts of hyperlinking.

The rights provided for in the first subparagraph shall not apply in respect of the use of individual words or very short extracts of a press publication.

2. The rights provided for in paragraph 1 shall leave intact and shall in no way affect any rights provided for in Union law to authors and other rightholders, in respect of the works and other subject matter incorporated in a press publication. The rights provided for in paragraph 1 shall not be invoked against those authors and other rightholders and, in particular, shall not deprive them of their right to exploit their works and other subject matter independently from the press publication in which they are incorporated.

When a work or other subject matter is incorporated in a press publication on the basis of a non-exclusive licence, the rights provided for in paragraph 1 shall not be invoked to prohibit the use by other authorised users. The rights provided for in paragraph 1 shall not be invoked to prohibit the use of works or other subject matter for which protection has expired.

3. Articles 5 to 8 of Directive 2001/29/EC, Directive 2012/28/EU and Directive (EU) 2017/1564 of the European Parliament of the Council ⁽¹⁹⁾ shall apply mutatis mutandis in respect of the rights provided for in paragraph 1 of this Article.

4. The rights provided for in paragraph 1 shall expire two years after the press publication is published. That term shall be calculated from 1 January of the year following the date on which that press publication is published.

Paragraph 1 shall not apply to press publications first published before 6 June 2019.

5. Member States shall provide that authors of works incorporated in a press publication receive an appropriate share of the revenues that press publishers receive for the use of their press publications by information society service providers.

What type of approach?

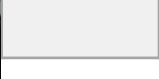
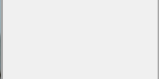
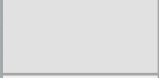
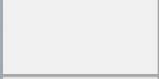
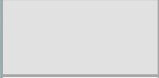
- Language: prescriptive
- Several autonomous concepts of EU law

- We know that already! *Poland*, C-401 / 19 (6 key safeguards for Article 17; EC Guidance too)

Article 15

(1)

(5)



What does the DSM Directive tell us about ourselves and the state of copyright harmonization in the EU?

“Deni

- How d
- Reope
- CJEU r
- And th





Conclusion

- Is the future of copyright still directives?
- Momentum: life post-Brexit
- Still suffering from PTSD though ...
- What could Member States do in the meantime?



Thanks for your attention!

eleonora@elawnora.com

<https://www.linkedin.com/in/eleonorarosati/>