



Bargaining in the shadow of the press publishers' right

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Press publishers' right

Art. 15 CDSM: a related (neighbouring) right of press publishers covering online use of press publications by information society service providers.

a <u>public policy problem</u> of sustainable news environment

a <u>private right</u> of press publishers

negotiation basis, with unspecified negotiation process

national implementations offering varying bargaining frameworks

adoption of the News Media Bargaining Code in Australia

Bargaining theory

'in the shadow of the law'

Classic paper by Mnookin and Kornhauser (1979)

Complex relationship between law and private ordering

Divorce example

Rational parties negotiate with endowments, credible threats, probabilities of enforcement

Negotiation frameworks

Competition law commitments (France: AdLC decision)

Collective management and licensing with extended effect (Denmark: DPCMO)

Final offer arbitration (Italy: AGCOM + Belgium, Czechia, Greece)

Extended News Previews (ENP) program (Google)

News Media Bargaining Code (Australia: ACCC/ACMA + Canada)

Analysis

	Bargainir	ng parties				Endowm	ents						Depende	ncy mitig	igation measures						Role of the authority						
	News media			platform s		News med	ws media			Digital plat	forms		News media		Digital platforms												
	Single media organisation	Group of media organisations	СМО	Statutory basis	Designation act	Exclusive right (copyright)	Entitlement to fair compensation	Right to receive information	Right to havae its content carried	g t	Right to abandon negotiations	Remuneration influenced by uneven bargaining	Recourse to the regulator	Recourse to the judiciary	<u> </u>	Obligation to negotiate in good faith	Non-discrimination requirement	Obligation to make a remuneration offer	Recourse to the regulator	Recourse to the judiciary	Interpretation of framework scope	tion o	Information gathering powers	Arbitration or mediaton facilitation	Determination of price	Pecuniary fines	Transparency and
France (commitments)	1	1	1	1	0	1	0	1	1	0	1	0	1	1	1	1	0	1	1	1	1	1	1	1	1	1	
(commitments)	1	1	1	1	0	1	U	1			1	0	1	1	1	1	U	1	1				1	1	1	1	
Denmark (ECL)	0	0	1	1	0	1	0	0	0	0	1	0	0	1	0	0	0	0	1	1	(0	0	1	1	0	
Italy (final offer				i						i					i												
arbitration)	1	1	1	1	0	1	1	1	1	0	1	0	1	1	1	1	0	0	1	1	1	. 1	1	1	1	1	
Czechia (last				į l											į												
offer arbitration)	1	1	1	1	0	1	1	0	1	0	0,5	0	1	1	0	1	0	0	1	1	1	. 0	1	1	1	0	
Google's ENP	1	0	0	1	0	1	0	0	0	0	1	0	0	1	0	0	0	1	0	0	C	0	0	0	0	0	
Australia	1	1	0	0	1	0	0	1	1	1	0	0	1	1	1	1	1	1	1	1	1	. 1	. 1	1	1	1	
Canada	1	1	0	1	0	0	0	0	1	0	0	1	1	1	1	1	1	1	0	1	1	1	1	1	1	1	

Analysis

Bargaining parties

(self)identification vs (qualified) designation

Endowments

well-resourced news media option to walk away by a platform

Dependency mitigation measures

behavioural obligations imposed on platforms

Role of the authority

supervisory function

Conclusions

It is not the statutory right but its institutional translation into bargaining that matters for the outcomes.

Bargaining frameworks sit as complex institutional constraints between pure private ordering and the law.





Thank you for your attention

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