

# Bargaining in the shadow of the press publishers' right

Ula Furgal and Martin Kretschmer  
CREATE, University of Glasgow

# 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 public policy problem of sustainable news environment

a private right 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

## **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

<http://www.create.ac.uk>

@copyrightcentre