

PRESS PUBLISHERS' RIGHT: IMPLEMENTING ART. 15 AND THE GLOBAL CONTEXT



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**Copyright in the Digital Single Market Directive -
Implementation**

An EU Copyright Reform Resource

<https://www.create.ac.uk/cdsm-implementation-resource-page/>

Article 15

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 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.

Individual words and
very short extracts

Exceptions and
limitations

Appropriate share of
revenues

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

(4) 'press publication' means a collection **composed mainly** of literary works of a journalistic nature, but which can also include **other works or other subject matter**, and which:

(a) constitutes an individual item within a periodical or regularly updated publication under a single title, such as a newspaper or a general or special interest magazine;

(b) has the purpose of providing the general public with information related to news or other topics; and

(c) is published in any media under **the initiative, editorial responsibility and control of a service provider**.

Periodicals that are published for scientific or academic purposes, such as scientific journals, are not press publications for the purposes of this Directive;

Publisher of a press
publication: beneficiary
of the right

Works (and other matter)
included in a press
publication

Initiative, editorial
responsibility and control
of a service provider

Countries

France: *LOI n° 2019-775 du 24 juillet 2019 tendant à créer un droit voisin au profit des agences de presse et des éditeurs de presse* (24 July 2019)

Netherlands: *Implementatiewet richtlijn auteursrecht in de digitale eengemaakte markt* (11 May 2020)

Germany: *Entwurf eines Ersten Gesetzes zur Anpassung des Urheberrechts an die Erfordernisse des digitalen Binnenmarkts* (15 January 2020)

Belgium: *Voorgestelde tekst ter omzetting van richtlijn 2019/790 /Texte proposé afin de transposer la directive 2019/790* (30 January 2020)

Croatia: *Nacrt Prijedloga Zakona o Autorskom Pravu i Srodnim Pravima* (17 April 2020)

Hungary: *Európai Unió szerzői jogi reformcsomag magyar jogba történő átültetésének új javaslata* (7 May 2020)

Italy: *Legge di delegazione europea 2019* (14 May 2020)

Individual words and very short extracts

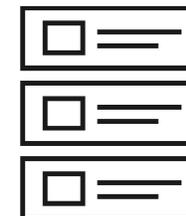
Often not specified

Value-based approach:
efficiency (substitution)
economic significance
freedom of expression

Croatia: cannot include a videos or photographs

Germany: in particular

- 1) heading
- 2) small image up to 128x128 pixels
- 3) audio, video or audiovisual sequence up to 3 seconds



Exceptions and limitations

Articles 5 to 8 of Directive 2001/29/EC [...] shall apply mutatis mutandis the catalogue applies, but not prior selection from the catalogue

Application of catalogues relevant for copyright works or for other related rights



Appropriate share of revenues

Guarantee of authors' participation in new revenues

Often not specified

France as an exception with detailed provisions: equitable and appropriate share, separate to the salary. Not determined individually, but through collective agreements. Transparency obligation.

Croatia: obligatory collective management, share separate from the salary

Belgium: non-assignable, legislative intervention optional

Netherlands: dispute resolution by the arbitration board



Press publication & press publisher

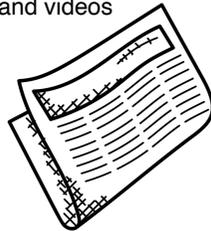
Often not specified

No consideration of initiative, editorial control and responsibility

France and **Croatia**: other works in particular include photos and videos

Croatia: emphasis on financial aspect of press publishing

France: link with press and media regulation



Other?

Croatia: new related right for publishers of press publication lasting **50 years**, including:

- 1) Right of reproduction
- 2) Right of communication to the public
- 3) Right of distribution and lending right
- 4) Right of alteration

Introduced **alongside** press publishers' right as prescribed in art. 15 CDSM Directive

France: detailed rules on calculation of remuneration of publishers & transparency obligation for online services

France: right of communication to the public

Belgium: exception for private non-commercial uses not included as superfluous

France: abuse of dominant position

September 2019: Google decides it will no longer display previews of press content (opt-in system)

November 2019: APIG and AFP file complaints with the Competition Authority

April 2020: **Competition Authority decides on interim measures**

Google likely to hold and abuse a dominant position on the French general search market

Google's action to cause serious and immediate damage to press sector

Interim measures:

Google to enter **good faith negotiations with publishers**

Google to **restore previews**

Google to pay remuneration for **retroactive uses**

Global context

Australia

July 2019: the Australian Competition and Consumer Commission (ACCC) digital platforms enquiry and report

*Recommendation 7: Designated digital platforms to provide **codes of conduct governing relationships between digital platforms and media businesses***

*Sharing of revenue/compensation for uses of news media content
Tackling bargaining power imbalances*

November 2020: deadline for code delivery

April 2020: Negotiations cut short
ACCC tasked with preparation of **mandatory code of conduct**

Ireland

April 2020

„I think this Australia approach is innovative it's interesting, and [...] the new government will want to study that and see if it makes sense to **implement something similar in Ireland.**”

Canada

May 2020

Open letter of press publishers urging to follow Australian and French examples

Government: intervention is not a **priority**

National Union of Journalists

April 2020

News Recovery Plan for UK and Ireland

6% windfall tax on tech giants

February 2020

the Wall Street Journal reports on ongoing **negotiations between Google and press publishers**

Thank you for your attention!

Questions or comments?

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