

**Press publishers’
rights and digital
platforms: the CJEU
confirms
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ALERT

Press publishers' rights and digital platforms: the CJEU confirms the compatibility of the Italian legal framework with the DSM Directive

The Court of Justice of the European Union has delivered on May 12 its judgment in Meta Platforms Ireland ([C-797/23](#)) addressing for the first time several key issues concerning the Italian implementation of Article 15 of the Digital Single Market (Directive (EU) 2019/790 of 17 April 2019 on copyright and related rights in the Digital Single Market, "DSM Directive") concerning neighboring rights granted to press publishers.

The proceedings involved, alongside Meta Platforms Ireland and the Italian Communications Authority (AGCOM) several intervening parties including SIAE, GEDI Gruppo Editoriale and the Federazione Italiana Editori Giornali.

The decision is particularly significant for the European digital market, as it substantially confirms the compatibility of the Italian implementation model with DSM Directive, including the mechanisms designed to facilitate negotiations between online platforms and press publishers and the role entrusted to AGCOM in the determination of fair compensation.

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1. The regulatory background

Article 15 of Directive (EU) 2019/790 introduced a neighboring right for press publishers concerning the online use of press publications by information society service providers (“ISSPs”). The provision was intended to strengthen the economic sustainability of the publishing sector in light of the growing exploitation of journalistic content by digital platforms.

In Italy, Article 15 of the DSM Directive was implemented through Legislative Decree No. 177/2021, which introduced Articles 43-bis, 43-ter and 43-quater into the Italian Copyright Law.

Under Article 43-bis, press publishers are granted the exclusive right to authorize the online reproduction and communication to the public of their press publications by ISSPs. The provision also establishes a right to fair compensation and introduces transparency and disclosure obligations applicable to digital platforms.

One of the distinctive features of the Italian framework is the intervention mechanism involving AGCOM in cases where negotiations between press publishers and ISSPs fail to result in an agreement concerning the online exploitation of protected press content.

In such circumstances, AGCOM may intervene in the negotiation process and determine the criteria relevant for calculating the “fair compensation” (equo compenso) due to publishers for the use of their protected subject matter by digital platforms. These aspects were further developed by AGCOM Resolution No. 3/23/CONS, which sets out the procedural framework governing negotiations, transparency obligations and the criteria to be considered for the determination of fair compensation.

2. The questions referred to the Court

Several questions concerning the compatibility of the Italian regime with EU law were submitted to the Court, including:

- whether Member States may introduce mechanisms affecting the negotiation process between platforms and publishers;
- whether the intervention of an independent authority such as AGCOM is compatible with Article 15 of the DSM Directive;

- whether obligations concerning transparency and access to relevant data may legitimately be imposed on digital platforms; and
- whether the Italian framework unduly restricts the freedom to conduct a business enjoyed by online intermediaries.

3. The Court's findings

In its judgment, the Court of Justice of the European Union confirmed that Member States retain a margin of discretion when implementing Article 15 of the DSM Directive, provided that the measures adopted remain consistent with EU law principles, including proportionality and legal certainty.

The Court recognized that national systems may introduce procedural and regulatory tools aimed at addressing structural imbalances in bargaining power between digital platforms and press publishers. The judgment confirms that the involvement of an independent authority in the negotiation framework is not, per se, incompatible with EU law, particularly where such intervention seeks to facilitate the effective application of the rights granted under the DSM Directive.

At the same time, the Court clarified that the right granted to press publishers under Article 15(1) of the DSM Directive retains its preventive and exclusive nature and cannot be transformed into a mere entitlement to remuneration.



Importantly, the Court emphasized that national implementing measures remain compatible with EU law only insofar as they do not deprive press publishers of the possibility either to refuse authorization for the use of their press publications or to grant such authorization free of charge.

The Court further emphasized that the obligations imposed on ISSPs under the Italian framework – including transparency obligations and restrictions concerning the visibility of press content during negotiations – may only apply where the platform actually uses, or intends to use, press publications.

In this respect, the judgment leaves open a potentially significant issue: whether digital platforms may be regarded as directly using press publications where such content is uploaded, shared or otherwise made available by users through the service itself.

4. Concluding remarks

While confirming the overall compatibility of the Italian framework with EU law, the Court also clarified that national implementing measures remain compatible with Article 15 of the DSM Directive only insofar as they do not deprive press publishers of the possibility to refuse authorization or to grant it free of charge, do not impose payment obligations unrelated to the actual use of press publications, and comply with the principle of proportionality.

The decision is likely to strengthen the negotiating position of press publishers and further support the development of licensing models for the online use of journalistic content.

More broadly, the judgment confirms the legitimacy of regulatory mechanisms aimed at addressing bargaining asymmetries between large online platforms and content industries, while reaffirming that neighboring rights under Article 15 remain exclusive rights rather than automatic compensation entitlements.

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Angela has extensive experience in the field of intellectual property, gained over fifteen years of work in leading international firms, both in litigation and transactional matters, as well as in the area of extraordinary transactions.

Angela has unique and widely recognized expertise in the areas of copyright law, art law and cultural heritage, advising clients on issues relating to the circulation, management, and protection of art assets, as well as the contractual and legal issues related to national and international exhibitions and cultural events. Angela has also gained experience in estate planning, succession planning and trusts.

Moreover, Angela is well versed in the area of New Technologies - with particular focus on AI and blockchain -, telecommunications, media and entertainment, an expertise that she has developed during experiences both on secondment in other firms, as well as in-house at a well-known international audiovisual production and distribution group.

Angela also advises on complex commercial agreements, issues related to the provision of services in the digital environment, technology contracts, ICT systems, e-commerce, audiovisual commercial communication and sports law.

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