

Copyright and Related Rights in the Digital Single Market

Directive (EU) 2019/790 - Opportunities (and Issues) for CMOs

Eleonora Rosati

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eleonora.rosati@juridicum.su.se

Contents

Overview of the Directive's aims and contents

Focus on provisions in respect of which CMOs will play a major role

All clear? A couple of case studies

- Article 15 (press publishers' right)
- Article 17 (online content sharing service providers)

An aerial, high-angle photograph of a large, busy city square, likely in Europe. The square is filled with many small figures of people walking. The surrounding buildings are multi-story, with varied architectural styles, including some with ornate facades and others that are more modern. The roofs are mostly dark, with some lighter-colored ones. The overall scene is a dense urban environment.

Overview of the Directive's aims and contents

EU Commission (5/2015)

My first priority will be to put policies that create growth and jobs ... As a key ingredient for this, we must create a digital single market for consumers and businesses – making use of the great opportunities of digital technologies which know no borders.

To do so, we will need to have the courage to break down national silos in ... copyright ... and in competition law.





Günther H. Oettinger

@GOettingerEU



Modern [#copyright](#) rules,
[#DigitalSingleMarket](#) & [#investEU](#)
package are the key goals for 2015.
Let's work on them together.

9:05am - 6 Jan 15



Andrus Ansip @Ansip_EU · Mar 19

[#copyright](#) rules fit for digital age? I don't think so [@lisboncouncil](#) -
[#DigitalSingleMarket](#) to support creators & ensure access to content



Andrus Ansip @Ansip_EU · Feb 23

We are reforming & modernising [#copyright](#) rules to get rid of pointless
barriers on transfer & access to digital content [#AskAnsip](#)



Andrus Ansip @Ansip_EU · Apr 10

I hear the concerns of European filmmakers, need right balance in [#copyright](#)
between different interests and preserving cultural diversity.

The EU Commission's Proposal (9/2016)

1

Ensuring EU competitiveness

- Text and data mining (TDM)

2

Bringing clarity and building an internal market

- Teaching
- Preservation of cultural heritage

3

Creating a 'fair marketplace'

- Press publishers
- Online platforms
- Contracts of authors and performers

The Directive (4/2019): overview

1

Adapting exceptions and limitations to the digital and cross-border environment

- TDM: Arts 3 and 4
- Use of works and other subject matter in digital and cross-border teaching activities: Art 5
- Preservation of cultural heritage: Art 6

2

Improving licensing practices and ensure wider access to content

- Use, by cultural heritage institutions, of out-of-commerce works: Arts 8 – 11
- Measures to facilitate collective licensing (ECL et sim): Art 12
- Access to and availability of audiovisual works on video-on-demand platforms: Art 13
- Works of visual art in the public domain: Art 14

3

Achieving a well-functioning marketplace for copyright

- Press publishers' right: Art 15
- Uses of protected content by online services: Art 17
- Fair remuneration in exploitation contracts of authors and performers: Arts 18 – 22

A close-up photograph of a map with several red pushpins. The map is yellow and white, with some text visible like 'WALCOTT SQUARE' and 'ROAD'. The pushpins are scattered across the map, with one in sharp focus in the foreground and others blurred in the background.

Focus on provisions in respect of
which CMOs will play a major role

Obvious candidates: licensing-specific provisions

- Use, by cultural heritage institutions, of out-of-commerce works: Arts 8 – 11
- Measures to facilitate collective licensing (ECL et sim): Art 12
- Access to and availability of audiovisual works on video-on-demand platforms: Art 13
- Works of visual art in the public domain: Art 14
- Art 16: share of remuneration for private copying

Soulier and Doke, C-301/15

Reprobel, C-572/13

Infopaq, C-5/08 and progeny



But also areas where CRM might be
the only way!

An example: the TDM exceptions



How AI can reveal why some films do better than others. 🤖



BBC NEWS

BBC.COM

The emotions that make a film a hit... or a miss



FASHION

The New York Times

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FASHION REVIEW

Anti-Algorithm Fashion

Two entirely different collections from Telfar and Rodarte have one very important thing in common.



By Vanessa Friedman

Sept. 10, 2018



In a world of 'algorithmic culture,' music critics fight for relevance



ANALYSIS

By Cherie Hu
DECEMBER 11, 2018



A WHITE, CHART-TOPPING RAPPER criticized as "an avatar of algorithm culture." A young, major-label rock debut dismissed as "an algorithmic fever dream." A 20-year-old band's first release after a five-year hiatus bashed as "more

MOST POPULAR

Freelancers have a name for end rounds of edits: scope creep

The New York Times

Fashion Has Become 'Survival of the Fittest'

Andrew Rosen just stepped down as the chief executive of Theory, the brand he founded more than 20 years ago. He learned a few things along the way.



By Vanessa Friedman

April 5, 2019



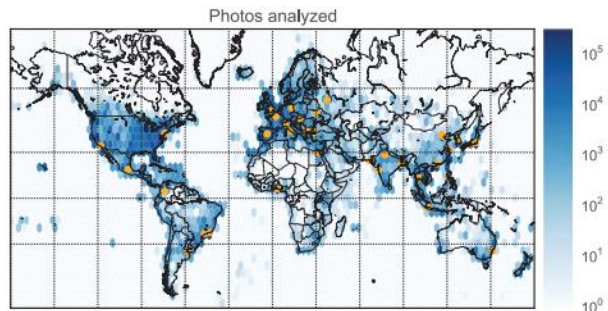
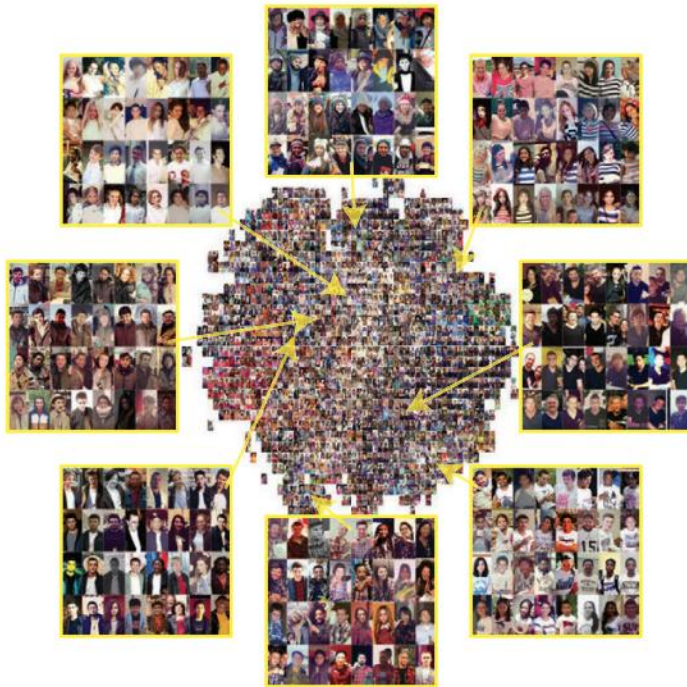
StreetStyle: Exploring world-wide clothing styles from millions of photos

Kevin Matzen *

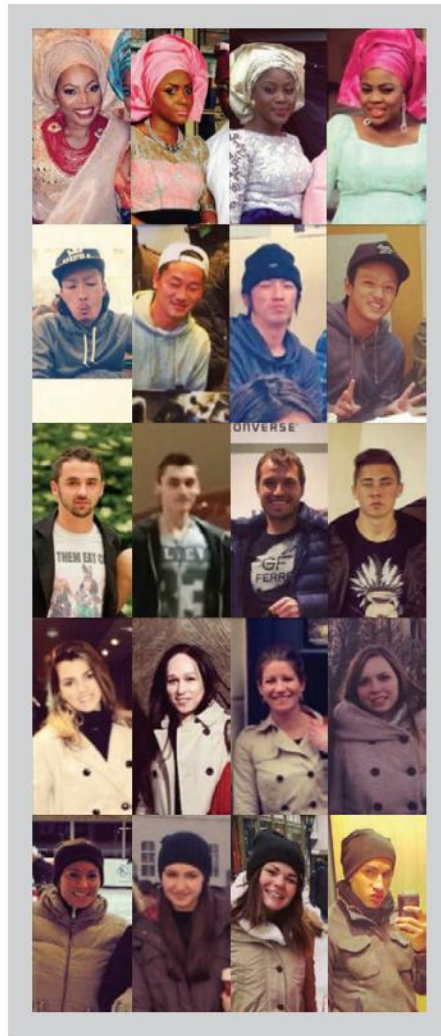
Kavita Bala †

Noah Snaveley ‡

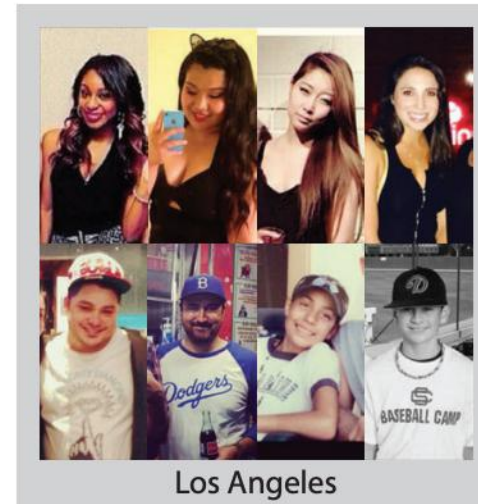
Cornell University



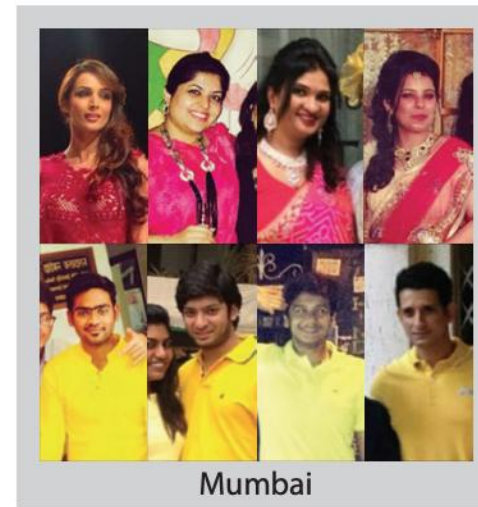
(a) Massive dataset of people



(b) Global clusters



Los Angeles



Mumbai

(c) Representative clusters per-city

<https://arxiv.org/pdf/1706.01869.pdf>

Approaches to TDM

USA: “to furnish statistical information to Internet users about the frequency of word and phrase usage over centuries” *Authors Guild v Google, Inc*, No. 13-4829 (2d Cir. 2015)

Certain EU Member States

Now 2 mandatory exceptions at the EU level

All clear? A couple of
case studies



Article 15: Protection of press publications concerning online uses


- Top stories
- For you
- Following
- Saved searches
- COVID-19
- U.S.
- World
- Your local news
- Business
- Technology
- Entertainment
- Sports
- Science
- Health

- Language & region
- English (United States)
- Settings
- Get the Android app
- Get the iOS app
- Send feedback
- Help

The AstraZeneca Vaccine: Should You Be Concerned?
 The New York Times · 4 hours ago

- The curious case of AstraZeneca's Covid-19 vaccine - STAT - STAT
 STAT · 3 hours ago


[View Full Coverage](#)




AstraZeneca vaccine
 Search results

[Save](#)

Major European nations suspend use of AstraZeneca vaccine
 Seattle Times · 17 hours ago




EU countries suspend AstraZeneca vaccine as US considers authorization; CDC review hints at Trump administration meddling: COVID-19 updates
 USA TODAY · 7 hours ago




Germany, France, Italy Suspend Use of AstraZeneca's Covid-19 Vaccine
 The Wall Street Journal · 9 hours ago

Fears And Misconceptions Over AstraZeneca Vaccine In France Persist
 NPR · 2 days ago

AstraZeneca's COVID vaccine suspended in more European nations over blood clot concerns
 CBS News · 8 hours ago



Spain, Germany, France and Italy pause AstraZeneca vaccine rollout
 CNN · 4 hours ago



About 187,000,000 results (0.60 seconds)

Oxford, AstraZeneca vaccine
COVID-19 vaccine

Overview

- News
- Effectiveness
- Safety
- Side effects

Share

www.ema.europa.eu › news › emas-safety-committee-c...
EMA's safety committee continues investigation of COVID-19 ...

17 hours ago — COVID-19 **Vaccine AstraZeneca** is a **vaccine** for preventing coronavirus disease 2019 (COVID-19) in people aged 18 years and older. COVID-19 ...

edition.cnn.com › ireland-stops-astrazeneca-rollout-intl
AstraZeneca vaccine: Ireland halts use of Covid-19 vaccine ...

20 hours ago — Ireland temporarily suspended the use of the **AstraZeneca Covid-19 vaccine** on Sunday following a report from Norway of patients developing ...

Top stories >



THE LOCAL
LATEST: Italy suspends use of AstraZeneca vaccine over blood clot concerns

14 hours ago



Wanted in Rome
Italy: Piemonte suspends AstraZeneca vaccine after death of teacher

1 day ago



la Repubblica
Pascal Soriot: "There are a lot of emotions on vaccines in EU. But it's complicated"

1 month ago

About

The University of Oxford, AstraZeneca vaccine is a vaccine that aims to protect against COVID-19.

Manufacturer/developer: **AstraZeneca, University of Oxford**

Research name: AZD1222 (ChAdOx1)

Vaccine type: Non-Replicating Viral Vector

Administration method: Intramuscular injection

Source: [who.int](https://www.who.int)
For informational purposes only. Consult your local medical authority for advice.

Feedback



More – or, at least, some – money?



Google refuses to pay publishers in France

The announcement pours cold water on publishers' hopes of getting more money from Google after an EU reform of online copyright law.



Google will not pay press publishers in France to display their content | Denis Chalet/AFP via Getty Images

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MARCH 15, 2021 | 12:08 AM

2. No more babies? The hormone-altering chemicals threatening human procreation

MARCH 10, 2021 | 7:05 PM

3. Merkel's CDU battered in key German state elections

MARCH 14, 2021 | 7:23 PM

4. More countries pause Oxford/AstraZeneca vaccine against EU regulator's advice

MARCH 15, 2021 | 8:47 PM

5. EU deal cements China's advantage in media war

MARCH 13, 2021 | 11:51 AM

Not the only issue ...

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

[...]

Recital 57

- The rights granted to the publishers of press publications under this Directive should have the **same scope** as the rights of reproduction and making available to the public provided for in Directive 2001/29/EC, insofar as online uses by information society service providers are concerned. **The rights granted to publishers of press publications should not extend to acts of hyperlinking.**
- [...]



What does this mean?

- a) Copyright does not cover acts of hyperlinking
- b) The new press publishers' right does not cover acts of hyperlinking ('link tax' etc)

Linking after *GS Media*, C-160/15

Accessibility of content	Content published with rightholder's consent	Profit-making intention	Knowledge that content linked to is unlawful	Act of communication to the public	Potential infringement
Freely accessible	Yes	n/a	n/a	No (<i>Svensson, GS Media</i>)	No
Not freely accessible	Yes	n/a	n/a	Yes (<i>BestWater, GS Media</i>)	Yes
Freely accessible	No	No	No	No (<i>GS Media</i>)	No
Freely accessible	No	No	Yes (eg because notified)	Yes (<i>GS Media</i>)	Yes*
Freely accessible	No	Yes	Presumed (rebuttable presumption)	Yes (<i>GS Media</i>)	Yes*
Not freely accessible	No	n/a	n/a	Yes	Yes

*If rightholder notifies link provider (without prior knowledge of unlawfulness) that content linked to is unlawful and he refuses to remove the link, and exceptions in Article 5(3) InfoSoc Directive are inapplicable.

What are the ~~outstanding~~ questions? *VG Bild-Kunst, C-392/19*



Should all links be treated
the same?



Is it only about technical
restrictions on access or also
contractual restrictions?

https://www.youtube.com/watch?v=vNTOZWxisbE&ab_channel=CorrieredellaSera



L'Alliance de la Presse d'Information Générale et Google France signent un accord relatif à l'utilisation des publications de presse en ligne

21 janvier 2021

L'Alliance de la Presse d'Information Générale et Google annoncent aujourd'hui un accord portant sur la rémunération des droits voisins au titre de la loi française. Il s'agit d'une étape majeure qui est franchie aujourd'hui: c'est l'aboutissement de nombreux mois de négociations dans le cadre déterminé par l'Autorité de la concurrence.

Article 17: Use of
protected content by
online content-sharing
service providers

OCSSPs

NOTION OF 'VALUE GAP'

ALLEGED ABUSE OF SAFE HARBOURS

WHO'S LIABLE FOR WHAT?



The Pirate Bay

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black panther


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Search results: black panther

Displaying hits from 0 to 30

Type	Name (Order by: Uploaded , Size, ULed by, SE, LE)	View: Single / Double	<u>SE</u>	<u>LE</u>
Video (HD - Movies)	Black.Panther.2018.1080p.BRRip.x264-BRRIP Uploaded 05-02 07:56, Size 2.17 GiB, ULed by <i>Anonymous</i>		4509	455
Video (Movies)	Black Panther 2018 NEW PROPER HD-TS X264-CPG Uploaded 02-24 15:35, Size 2.38 GiB, ULed by xxxlavalxxx		806	100
Audio (Music)	Kendrick Lamar - VA - Black Panther: The Album (2018) Uploaded 02-09 04:23, Size 113.18 MiB, ULed by Freak0370		339	16
Video (HD - Movies)	Black.Panther.2018.720p.BluRay.x264 Uploaded 05-02 15:46, Size 1.07 GiB, ULed by SeekNDstroy		275	35
Video (HD - Movies)	Black.Panther.2018.1080p.BluRay.x264-SPARKS[EtHD] Uploaded 05-02 03:14, Size 11.01 GiB, ULed by EtHD		138	31
Video (Movies)	Pantera Negra.Black Panther.2018.720.TS.Dublado.PT.LAPUMiA.mp4 Uploaded 02-16 08:44, Size 2.44 GiB, ULed by <i>Anonymous</i>		135	4
Audio (Music)	Kendrick Lamar- Black Panther The Album Music From (2018) Uploaded 02-09 06:30, Size 113.79 MiB, ULed by kajalsus		126	24
Video (HD - Movies)	Black Panther 2018 4K 2160p BluRay x265 10bit HDR Uploaded 05-16 06:58, Size 15.38 GiB, ULed by HobbitFilmz		104	39
Video (HD - Movies)	Black.Panther.2018.1080p.BRRip.6CH.MkvCage Uploaded 05-02 08:45, Size 2.63 GiB, ULed by <i>Anonymous</i>		101	2

Audio Video Applications Games Porn Other 

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Black.Panther.2018.1080p.BRRip.x264-BRRIP

Type: [Video > HD - Movies](#)
Files: [2](#)
Size: 2.17 GiB (2325333772 Bytes)
Info: [IMDB](#)
Spoken language(s): English
Texted language(s): English

Uploaded: 2018-05-02 07:56:40
GMT
By: *Anonymous*
Seeders: 5839
Leechers: 487
Comments 14

Info Hash:
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Black Panther (2018)
<http://www.imdb.com/title/tt1825683/>
IMDB RATING: 7.7



#CsillagSzületik #mozistar

Lady Gaga & Bradley Cooper - Shallow (OSCAR 2019)

4,167,869 views

49K 1.2K SHARE SAVE ...



Mozi Star
Published on Feb 25, 2019

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Domani - Artisti Uniti p l'Abruzzo (NOMI Auto)
Marshall Pich
Recommended for you

7:21



Mix - Lady Gaga & Bradley Cooper - Shallow (OSCAR 2019)
YouTube

50+



Fabio Rovazzi - Faccio Quello Che Voglio (Official Video)
Fabio Rovazzi
Recommended for you

9:00



someone like you, Role of a Deep - Adele Live at the Royal Albert Hall
Tatan Wonka
32M views

12:53



SUSAN BOYLE "I DREAM OF JEAN-PAUL GATTEAU" BRITAIN'S GOT TALENT
kuyaHD
Recommended for you

6:51



Live Aid | Bohemian Rhapsody (2018) - scene compilation

Meet us at WIRED Smarter this October BOOK TICKETS

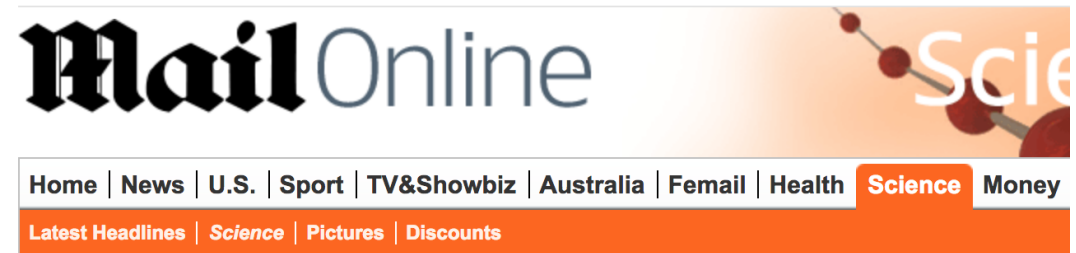
Tech FOLLOW M

Say goodbye to gifs and memes if this new European copyright law passes

WIRED Opinion

If we don't act now, Article 13 could break the internet by mistake

With Article 13 of the Copyright Directive, the EU Parliament wanted to give a sop to big media corporations. This will backfire horribly



Wikimedia warns EU copyright reform threatens the 'vibrant free web'

Natasha Lomas @riptari / 4 weeks ago

Comment

End of internet memes? EU approves controversial copyright law that 'could kill off the web's user-generated content' such as reaction GIFs, quotes from online articles and music remixes

- The Copyright Directive intends to update copyright for the internet age
- It hands more power to companies to block their copyrighted content online
- But this also includes user-generated content, such as online memes, that include copyrighted material



About Issues Our Work Take Action

Why the Whole World Should Be Up in Arms About the EU's Looming Internet Catastrophe

BY CORY DOCTOROW | SEPTEMBER 5, 2018



Destroy everything.



**OH, I'M SO SORRY – I
THOUGHT YOU WERE A WAITER.**







Actual content of Article 17

01

Licensing
obligation

02

Scope of the
licence

03

Users'
'rights'

04

Mitigation
measures

05

'Exemptions'

Article 17 of DSM Directive

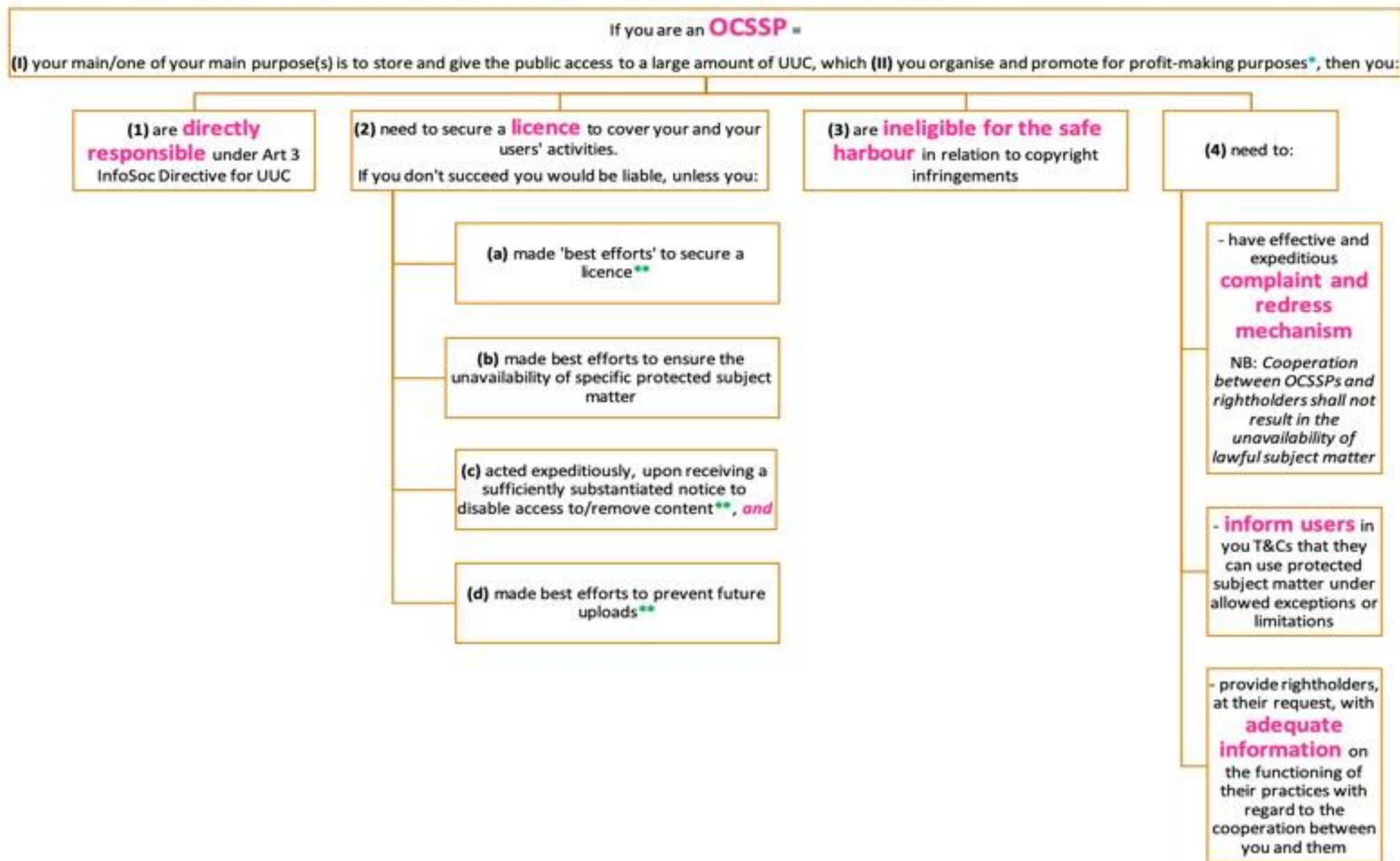
* The notion of 'OCSSP' does **not** include providers of services like: not-for-profit online encyclopedias, not-for-profit educational and scientific repositories, open source software-developing and-sharing platforms, electronic communication service providers as defined in Directive (EU) 2018/1972, online marketplaces, B2B cloud services and cloud services that allow users to upload content for their own use

** If your service (i) has been available in the EU for less than 3 years **and** (ii) has an annual turnover below €10m, then you only need to comply with (a) and (c). If, in addition to (i) and (ii), (iii) the average number of monthly unique visitors exceeds 5 million, then you also need to comply with (d).

by [Eleonora Rosati](#)

@eLAWnora

April 2019



Who's
an
OCSSP?



(6) ‘online content-sharing service provider’ means a provider of an information society service of which the main or one of the main purposes is to store and give the public access to a large amount of copyright-protected works or other protected subject matter uploaded by its users, which it organises and promotes for profit-making purposes.

- Storage
- ‘Large amounts’ and suggestions of *de minimis* exclusions
- Profit-making purposes (direct/indirect)
- No need for EU establishment but mere targeting? (rec 8 and Art 11 DSA)

A licence
from
whom?





1

Subject matter with
different transitional
regimes (eg, films)



2

Subject matter whose
rightholders cannot
be identified/located



3

Subject matter with
multiple owners and
complex rights
ownership history

Next steps and conclusion

NATIONAL TRANSPOSITIONS (BY 7 JUNE 2021)

POLISH CHALLENGE TO ARTICLE 17 (C-401/19; IN PROGRESS)

OPPORTUNITIES FOR CMOS BUT ALSO UNCERTAINTIES

(LITIGATION)

(REFERRALS TO THE CJEU)



IT IS BOTH A JOY AND A WONDER INDEED.

Thanks for your attention!

eleonora.rosati@juridicum.su.se

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