

# European Intellectual Property Review

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### Opinion

DR RICHARD DANBURY

#### **Why Article 15 of the Directive on Copyright in the Single Digital Market Is a Bad Idea 695**

This opinion looks at art. 15 of the Directive on Copyright in the Single Digital Market (CDSM Directive), the press publishers' right. Article 15 creates a right ancillary to copyright that benefits some publishers. It is triggered when some agents perform some online acts in respect of some specific content: in brief, online reproduction and making available news content produced by news publishers by commercial internet concerns. The opinion argues that art. 15 is deficient. Among other criticisms that can be made of the provision, the one made here is that the rationales for its passing contained the Recitals of the Directive are unconvincing given the nature of the right, and consequently it unduly benefits commercial news publishers. Moreover, the way art. 15 was passed reflects poorly on the European legislature.

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In a time of advanced digital technologies, the conflict between copyright and other fundamental rights has become more apparent. This article considers the copyright law's balancing mechanisms as well as "external" constitutional balancing tools and their potential for resolving a conflict of competing interests involved in a text and data mining (TDM) process. This topic is actual and valuable for our constantly evolving society and the issue, therefore, is of high priority within the system of modern copyright law. It deserves to be discussed in a comprehensive manner in order to express the palpable and ubiquitous wave of interests in the interaction between copyright and the right to information and advanced technologies that can be seen as a "demand" of our digital world.

GIUSEPPE B. ABBAMONTE

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This article is a first attempt to discuss the application of copyright law to AI. It looks at the matter from two different angles: (1) the use of copyrighted content to train AI technologies ("the input"); and (2) the possible copyright or equivalent intellectual property (IP) protection of a "creative" product generated by AI technologies ("the output"). This article refers primarily to the laws of the EU and US. Both systems implement international copyright treaties, such as the Berne Convention, and follow a broadly similar approach. In the "output" section this article briefly analyses the UK rules protecting computer-generated works.

DESMOND ORIAKHOGBA AND  
CHIJIJOKE OKORIE

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Based on a desk review, this article examines how multi-territorial licensing in Africa can be aligned with the overarching objectives of the Agreement on the African Continental Free Trade Area (AfCFTA Agreement), especially as it relates to its proposed Intellectual Property Rights Protocol, being negotiated. This article identifies and considers the implications of multi-territorial licensing on digital trade in copyright; and how the issues raised by the practice of multi-territorial licensing can be specifically addressed to achieve the goals of the AfCFTA Agreement. By looking to both relevant national and regional regimes in Africa, and by adapting the EU framework (CRM Directive 2014) in a manner that are driven by Africans and in tune with the lived-realities in Africa, this article recommends guiding rules for multi-territorial licensing in Africa that accords with the objectives and principles of the AfCFTA Agreement.

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PAOLO GUARDA AND LAURA  
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STEFAN MARTIN AND JONATHAN  
BOYD

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MICHELE LOCONSOLE

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