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Press Publishers' Right in Hungary

Brief Empirical Report after the Implementation

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Abstract: Access to information, consumption of media products and mass media have changed radically in the age of digital technologies. News gathering and aggregation platform services and social media sites have become indispensable, making news produced by press publishers available to the public in a collected, sorted and categorised form. The construction of the right of press publishers in the CDSM Directive raises a number of questions, and doubts have only been exacerbated by the Member States' transposition. Experience to date does not yet provide scope for a precise analysis and interpretation of the impact of Article 15. Nor is it known yet in what exact framework does the new related rights be exercised in the Member States. Transposition and subsequent events do not provide answers to the most pressing questions. These include whether competition law instruments can be more effective against the dominant platform giants, which seem reluctant to reach agreements with publishers. Does it violate the principle of contractual freedom to force industry platforms to enter into Article 15 licence agreements, when experience so far clearly shows that platforms would rather stop indexing content if they had to pay a fee for the content exploitation. While the intention to promote a free and diverse press, quality journalism, access to information for citizens, public debate and the development of a democratic society is more than welcome, experience so far paints a much more nuanced picture. In order to alley the doubts, this paper attempts to look into the details of the Hungarian implementation of press publishers' right, and to outline what do the Hungarian press industry representatives think about the new neighbouring right.

Keywords: press publishers, ancillary right for press publications, CDSM Directive, platform economy, news aggregator sites

1. About the press publishers' rights in a nutshell

The balance of power in the online market for press publications has been a matter of concern for legislators in the Member States of the European Union and, as a result, for legal scholars in the field for exactly a decade now (Peukert, 2016; Senfleben et al., 2017; Pihlajarinne & Vesala, 2018; Papadopoulou & Moustaka, 2020; Martial-Braz, 2020; Vučković, 2021; Harkai, 2021; Mezei & Harkai, 2024; Danbury, 2022; Harkai & Cross, 2023). News content producing organisations and platform services interested in collecting, aggregating and indexing the same content are natural competitors in the digital market.¹ The upset balance is caused by the fact that news aggregation services do not pay any monetary compensation to publishers for the news content they collect and index, while they earn substantial advertising revenues for the content they make available to the end users. Efforts to redress this imbalance have been seen first in Germany and then in Spain, with rather disappointment (Westkamp, 2013; Rosati, 2016; Rosati, 2021, p. 254; Stamatoudi & Torremans, 2021, pp. 723–724). The ultimate result of both experiments was that the targeted platforms, mainly Google, either only agreed to index the content for free after the related legal protection was raised to the level of a law, or stopped their service altogether and withdrew from the Spanish market. This has led to particularly sensitive losses in a market where the strange symbiotic relationship is essential for press publishers, since without indexing content, access to news content and traffic to the publisher's website will fall dramatically.

The dominant market and technological role of intermediary platforms is also associated with a significant social responsibility, which Poell et al. (2019) compares to the telecommunications, electronics and rail monopolies of the turn of the 19th and 20th centuries. Platforms rely on their technical background to be able to personalise advertising space and conditions based on user data, which gives them an advantage over publishers who also sell advertising space on their own websites but are at a disadvantage in the advertising market compared to intermediary platforms (Vučković, 2021, p. 1051). There are also positive benefits to coexistence between press publishers and news aggregator services.² They facilitate access to a public that press publishers would not necessarily reach directly. Although it is undoubtedly true that intermediaries acting as one-stop-shops can lead to information bubbles on the end user side which distort publicity and objective mass information (Moscon, 2019, pp. 42–43). Publishers turn everyday life events into news in a consumable way. In doing so, they take responsibility for financing, planning and organising the process of gathering and processing news, and maintaining a network of correspondents (Senfleben et al., 2017, p. 539). In contrast, news aggregator sites do

¹ According to Danbury (2022, pp. 24–25), press publishers' rights are intended to empower existing market players, but at the same time it is a barrier to new entrants, threatening media pluralism and causing market concentration. Even before the entry into force of Article 15, press publishers benefited at least indirectly from the profits generated by news aggregators, because the platforms directed substantial traffic to the press publishers' websites, which also increased competition between them. According to Peukert (2016, pp. 1–4), the related legal protection will not increase this traffic if the content of a given news portal is unattractive to end users. In other words, press publishers, who are already at a competitive disadvantage, will not be helped by this measure alone.

² The term "news aggregator" refers to a platform or service that aggregates and indexes existing information to select the most relevant results (see Knapstad, 2021, p. 1320).

not invest in the news production process, but use ready-made news content created by press publishers. While they do generate significant indirect traffic to the publishers' websites, they have not yet benefited from the revenue generated by the service's business model (Höppner, 2018, pp. 2–3; Danbury, 2022, p. 21).

In a pre-internet society, news consumption was determined by the publisher or supply side. The circulation numbers made available to the public were based on the publisher's business decisions. The larger the circulation of a newspaper, the more economical it was for the publisher (Senftleben et al., 2017, p. 542). In the digital, online space, the processes of news production and consumption are no longer only influenced by the supply side, but also by the demand side (Senftleben et al., 2017, p. 540). The costs of press publishers creating and operating online news portals have fallen with the decline or even disappearance of print (Senftleben et al., 2017, p. 542), but the emergence of news aggregator services has resulted in a significant loss of advertising revenue as competition in the advertising market has emerged. In addition, the demand side has also shifted from press publishers to news aggregator platforms, where the platform has successfully sucked both news-consuming end users and advertisers away from press publishers by providing search functionality and an optimised user experience based on search results. This phenomenon has been further enhanced by the network effect. With the exponential growth in the number of new users and advertisers entering the platform, the publisher has not been able to keep pace and has become exposed to news aggregator platforms in order to increase the reach of its news content (Poell et al., 2019, pp. 5–6). Seeing the failure of legislative attempts in the Member States, the EU legislator took the initiative and created a press publishers' related right under the CDSM Directive,³ which guaranteed two economic rights relevant for digital, online uses, namely the rights of reproduction and communication to the public, to producers of press publications. The term of protection was set at two years, counting from the first day of January of the year following the publication. Following the entry into force of the provision and its transposition by the Member States, all online use of press publications is now subject to authorisation, with exceptions.⁴

Transposition in the Member States has provided interesting experiences but has not answered the core questions (Szalay & Polyák, 2019; Furgal, 2021; Peguera, 2022; Rendas, 2022; Sganga & Contardi, 2022; Furgal, 2023). These include the question of whether the invocation of copyright and related rights was the right solution to a problem that is essentially a market competition problem (Lampecco, 2021; Szilágyi, 2023). In the online media and advertising markets, press publishers compete with each other, while a dominant third player with a dominant market and technological position fundamentally determines end user access to news, while distorting the online advertising market.

³ For the relevant provisions of the Directive, see Articles 2(4) and 15 of the CDSM Directive. For more details on the legal policy rationale behind the legislation, see recitals 54 to 60.

⁴ For more details on the scope of the press publishers' rights, their relation to the InfoSoc Directive, the analysis of possible alternative protection mechanisms and the transposition in the Member States so far (Peukert, 2016, p. 73; Rosati, 2021; Stamatoudi & Torremans, 2021).

It is also clear that the new neighbouring right is tailored to press publications⁵ but does not take into account audiovisual news content produced by television organisations and collected and indexed by platforms such as Dailymotion. It is also unclear whether social media platforms should be considered users within the meaning of Article 15.⁶

2. The market situation of press publishers in Hungary and their attitude towards the press publishers' rights through some examples based on a – non-representative – questionnaire survey

The main legal policy reasons for protecting the press publishers' neighbouring rights include promoting a free and diverse press, quality journalism and access to information, as well as promoting public debate and the proper functioning of democratic society.⁷ While these objectives are welcome in principle in all Member States, they do not reveal much about the concrete circumstances in each Member State in terms of empirical data on the media market in question and the relationship between press publishers and platform providers. In view of this, it seemed appropriate to carry out a questionnaire survey targeting representatives of the online press in Hungary.⁸

3. Online news markets in Hungary

Before going into the questionnaire survey and the details of the responses, it is necessary to take a look at the market in which the press publishers benefiting from the press publishers' right operate. For this purpose, I have taken into account the data from the National Media and Infocommunications Authority's (*Nemzeti Média és Hírközlési Hatóság*) Internet Audience Measurement for the fourth quarter of 2022 and the first quarter of 2023. In Q4 2022, the news sites were visited by 5,591,889⁹ unique users and

⁵ (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.

⁶ The fact that Facebook itself has launched its News Tab service in the US, UK, Germany, Australia and France seems to confirm the view that social media sites can also be covered by Article 15. This is not altered by the fact that social media platforms often include profiles of the press publishers themselves, through which they share their news content to ensure better reach (Furgal, 2023, p. 662).

⁷ CDSM Directive Recital (54).

⁸ The press publisher's right was transposed into the Hungarian copyright system by Article 23 of Act XXXVII of 2021, with effect from 1 June 2021. Articles 82/A to C of Act LXXVI of 1999 on Copyright are almost word for word identical to the relevant transposed sections of the CDSM Directive.

⁹ <https://shorturl.at/F3KzM>

in the following quarter by 5,606,124¹⁰ unique users. Among the ten websites with the highest number of internet users, 24.hu was the leader with 4,711,856 real users at the end of 2022, origo.hu was third with 4,512,888 users, index.hu was fifth with 4,466,172 and portfolio.hu was tenth with 3,697,568 users.¹¹

In the first quarter of 2023, 24.hu reached 4,674,932 real users, origo.hu 4,501,056, and index.hu 4,449,240.¹² The demographics-based measurement also includes Telex, which was the seventh most visited site among men in 2022,¹³ and eighth in the 18–29 age group and ninth in the 30–39 age group by generation in 2022.¹⁴ Telex was also in the top ten in 2022 by educational attainment. It was the tenth most visited website in the group with at least a high school education and the sixth most visited website in the group with at least a university education.¹⁵ If we look at the number of times people spent at least thirty minutes browsing on a given website in a given quarter, the following news portals were ranked in order of strength at the end of 2022: index.hu, origo.hu, blikk.hu, 24.hu, telex.hu, portfolio.hu, startlap.hu, femina.hu, nlc.hu and idokep.hu.¹⁶ In the first quarter of 2023, the top ten most visited websites (sixth place) were only among men.¹⁷ By educational attainment, it was eighth in the 18–29 age group and ninth in the 30–39 age group.¹⁸ In terms of educational attainment, in the first quarter of 2023, only those with tertiary education made the list, in sixth place.¹⁹ There are also instructive conclusions to be drawn from the Facebook fan base of the websites studied in 2022 and the first quarter of 2023. I consider this important because it is not yet clear whether social media sites fall within the scope of Article 15. It seems clear, and the data cited here supports this view, that social media has a key role to play in driving traffic to individual press releases and, conversely, to the website of a particular press publisher. Article 15 itself speaks of “online use by information society service providers” and, although it excludes the inclusion of hyperlinks, it can be argued that social media sites themselves index press publisher content as intermediary service providers. This is not changed by the fact that, in order to drive traffic and attention to their own websites, press publishers often create their own social media profiles and post their own news content. In 2022, 24.hu had the most Facebook followers (978,924), followed by Origo (third place, 517,408 followers), Index (fourth place, 626,587 followers), HVG (fifth place, 661,228 followers), Portfolio (eighth place, 259,680 followers), Telex (eleventh place, 538,366 followers) and 444 (twelfth place, 426,874 followers).²⁰ In 2023, 24.hu had 993,000 (first place), Origo 521,473 (third place), Index 630,000 (fourth place), HVG 671,495 (fifth place), Portfolio

¹⁰ <https://shorturl.at/hGnie>

¹¹ <https://shorturl.at/hGB4d>

¹² A magyarországi Top10 weboldal elérése 2023. I. negyedévében (EDME-Gemius 15+ beföld – 2023. I. negyedév).

Online: <https://bit.ly/3WEKbmf>

¹³ <https://shorturl.at/MeDK>

¹⁴ <https://tinyurl.com/3z2pa67e>

¹⁵ <https://tinyurl.com/3z2pa67e>

¹⁶ <https://tinyurl.com/3z2pa67e>

¹⁷ <https://tinyurl.com/3yxw2dap>

¹⁸ <https://tinyurl.com/3yxw2dap>

¹⁹ <https://tinyurl.com/3yxw2dap>

²⁰ <https://tinyurl.com/3z2pa67e>

262,000 (eighth place), Telex 553,338 (eleventh place), 444 had 437,711 (twelfth place) followers.²¹ Among the news portals considered important and approached in the research (Telex, HVG, Válasz Online, Portfolio, Magyar Hang, 444) did not make the list of the most visited sites, but portals that ranked high (Blikk, Femina, Mindmegette, Nők Lapja Cafe, Nosalty, Ripost), which are not primarily engaged in collecting, organising and reporting daily news, and therefore, bearing in mind the above-mentioned objectives of the CDSM Directive as set out in the recitals, I excluded them from the press publishers surveyed.

4. Research methodology and the results of the survey

The first and most important aspect in selecting the respondents to the questionnaire was to clarify who should be considered a press publisher. In Article 2(4), the CDSM Directive defines only the term ‘press publication’, from which, however, the term ‘press publisher’ can be derived, which is understood to mean a service provider which, at the initiative, under the editorial responsibility and under the control of the editor, publishes a press publication. During the research, I focused on publishers that are engaged in the compilation and publication of news and news content and are at the forefront of news consumption on the Internet. In the first round of the survey, I contacted the editorial offices of 24.hu, Origo, Index, Portfolio, Telex, HVG and 444 by email, and then, in the light of the first round’s experience, I added Válasz Online and Magyar Hang to the list of respondents. I grouped the questions into three subject areas. In the first group, I asked about data traffic, the role of intermediary service providers and the press publishers’ views on the digital advertising market. The second set of questions concerned the agreements with online intermediary service providers referred to in Article 15 CDSM, and the third set of questions dealt with the perception and application of Article 15 by the press publishers.

Before presenting the results of the questionnaire, it is important to note that it cannot be considered representative, as only three of the press publishers surveyed – 24.hu, Telex and Magyar Hang – provided specific answers to the issues raised. Two other editorial offices were reached by phone – Válasz Online and Portfolio – but both declined to answer the questions asked. HVG’s answers could not be fixed for technical reasons, and the other publishers did not answer the questions in the questionnaire despite my repeated attempts. Nevertheless, the responses from the three press publishers provide insight into the specific challenges that press publishers must face in the platform ecosystem. The responses to those challenges and, in particular, the perception of the press publishers’ rights by stakeholders.

The first question asked was whether the presence of platform providers weakens or strengthens competition in the Hungarian news market. This question is important, as press publishers that are quite active in the online space are also competitors in terms of end user reach, traffic generated and online advertising revenues. Two out of three respondents thought that intermediary providers tended to weaken competition.

²¹ <https://tinyurl.com/3yxw2dap>

The second question focused on end user reach and traffic to press publishers' websites, with one of them saying that the presence of intermediary service providers had a distinct negative impact on the media market and reach, another one of them saying it had a rather negative impact, while the third publisher said that the presence of intermediary service providers had a rather positive impact on reach and availability.

Before the rise of the online press, the largest daily, weekly and monthly newspapers were also published in print in Hungary. In the age of online media, print media publishing has been pushed into the background, so in the third question I wanted to know how the internet has influenced the print publishing market. Two of the respondents said it had no impact, while one of them said it had had a negative impact. Given the range of respondents, these answers are not surprising, as both 24.hu and Telex are essentially online news sites from the moment of their launch.

Particularly critical in the online information space is the emergence of opinion or information bubbles, which distort public discourse and the scope of accessible information by making available content that is relevant to the metadata of end users. These information bubbles might be broken by print press coverage, so it is legitimate to ask whether or not online press representatives plan to publish print publications. Two of them answered no to this question and one did not exclude the possibility.

Increasing competition in the online space and dwindling resources have led many press publishers to hide some of their content behind a paywall, charge readers a fee per view (pay-per-view) or make the whole newspaper available only on a subscription basis. Respondents gave the following answers regarding paid content:

1. *"We are not using it yet, but we are thinking about it. We are convinced that pay-for-view models do not harm, but rather strengthen the position of the press and represent a return to the centuries-old press tradition where the reader and the advertiser jointly financed the media product."*
2. *"We do not use, we collect grants and all our content is currently free."*
3. *"Articles that we sell for money in print can only be published behind paywall, and those that are only online but require significant journalistic effort. Readers need to understand – and we need to educate them – that journalism costs money, so quality content cannot be free."*

The next question asked whether, after the entry into force and transposition of Article 15, intermediary service providers had engaged in any conduct that negatively affected the display and use of news content. One of respondents answered yes, with reluctance on the part of intermediary platforms to reach an agreement with the publisher, which temporarily reduced reach, and two indicated other not specified experiences.

The seventh question asked whether the press publisher publishes other content. All respondents answered yes to this question.

In the eighth question, I wanted to know whether the demand for printed publications has decreased over the last ten years. The two answers to this question were as follows:

1. *“We started our activity five years ago, the first year was a ramp-up year. Interestingly, our circulation increased during COVID, then slightly declined for a while, and now seems to be stabilising due to a lot of work.”*
2. *“It has decreased, and there is a lot of publicly available data on this.”*

The ninth question asks about the demand for subscription content over the past decade, with the following responses:

1. *“Telex has been in existence for three years and survives on grants. It is not a classic subscription, so it is not possible to say whether there has been an increase in demand for the content subscribed to.”*
2. *“The paywall was introduced about two years ago, and since then the number of subscribers has been steadily increasing, but the base is still low: about 2,000 compared to 4,500 print subscribers and 650 pdf subscribers.”*
3. *“Print has declined, online has just increased and will continue to increase.”*

The tenth question asked for data on internet traffic over the last ten years. The answers are particularly interesting in the light of the data presented above.

1. *“Telex was created three years ago, and in three years we have been growing steadily, starting from zero and now we have 500,000 readers (real users) every day.”*
2. *“We are five years old, at first online was not a priority (90% of our revenue came from print sales). For a while, for other external reasons, online was more of a priority, then traffic went up quite a bit, but due to Facebook’s algorithm changes, for example, it has fluctuated for reasons beyond our control.”*
3. *“Significantly, ten years ago we had a few tens of thousands of unique visitors a day, today we have hundreds of thousands. Some of the Gemius audience measurement data is public, where you can see this clearly.”*

The eleventh question asked whether the press publishers surveyed had incorporated the provisions of Article 15 of the CDSM Directive into their operating practices or had concluded an agreement with any intermediary service provider. Two of the respondents answered no to both sub-questions, while one had incorporated the provisions into their practice but had not concluded a specific agreement with any service provider.

The twelfth question concerns the competition between press publishers. In this context, one of the key objectives is to increase end user reach, in which the service provided by platforms is an important tool. We asked whether they pay news aggregators extra to display their press product as opposed to their competitors, one of them said yes, while two of them responded negatively.

The thirteenth question asks whether the press publisher works with Google or other platform providers (e.g. Yahoo News, Meta, X) to provide wider access to news or uses the

advertising and analytics services of a service (e.g. Google Analytics, Google+ social tool). The responses to this question were rather short:

1. *"We do not cooperate, we use Google Analytics to measure traffic."*
2. *"We use the analytics tools provided by Google."*

The fourteenth question deals in part with the problem of information bubbles mentioned above, asking whether a dedicated press publisher app for smartphones would help bypass news gathering and delivery platforms – where information bubbles themselves are created – in terms of either reach or advertising revenue. Two of the respondents saw a dedicated app as more helpful, while one of the respondents said it would help explicitly.

The fifteenth question asks, in relation to the objectives set out in the recitals of the CDSM Directive, whether the press publishers' rights contribute to the maintenance of quality journalism and media pluralism. According to all the respondents, it can contribute to it.

The sixteenth question may well be a trade secret, so it is not surprising that there were no complete answers to the question of how press publishers share the revenues with the columnist authors, or how the new related right has changed the relationship between authors and publishers. Two short answers to this question were received:

1. *"Journalists are paid, which fact does not depend on various external agreements."*
2. *"Authors are paid according to their contract, there has been no change to it after the implementation of Article 15."*

The seventeenth question concerned one of the most, if not the most, important problems of press publishers' rights, namely the actual exercise and management of the rights. We asked whether they exercise the right under individual agreements or in collective rights management, whether they enforce the related royalty claim even in collective rights management and, if so, which collective rights management organisation acts on their behalf, the only response was a very brief "not exercised". I will address this issue separately in the conclusion, as it reveals a lot about the uncertainties surrounding the press publishers' rights.

The last three questions move somewhat away from the right of press publishers and focus on the problems of the lawful use of content produced by artificial intelligence and other content. The eighteenth question focuses on whether newsrooms use artificial intelligence to produce their news content, and if so, exactly what, how much and for what purposes. The responses to this question were as follows:

1. *"We do not use artificial intelligence to generate news content."*
2. *"We do not use AI."*
3. *"For the time being, we are exploring the possibilities offered by AI and thinking about how to integrate its positive effects into our daily workflows."*

The nineteenth question asked whether and how editorial offices and press publishers take action against illegal use of their own content by other press publishers and online news portals. The answer to this question was unanimously in the negative.

The last question sought to find out whether press publishers and editorial offices check the legality of the content used in the production of news, to which one of the respondents answered in the negative, while two of them stated that they check the legality of the content they use.

5. Summary

The main rationale for the questionnaire survey was that, although there is a growing literature on the press publishers' rights, its practical use, operation, management of the rights, imposition, collection and distribution of royalties is still not clear. Article 15 and the legal policy reasons behind it, as set out in the recitals of the CDSM Directive, are clear, the intention is noble and welcome. However, it appears from the literature that platform providers are either only willing to index press publications for free or would rather give it up in order to avoid paying the fair amount of remuneration and making agreements with press publishers. Publishers themselves are in competition with each other, not only with the platforms with which they have a symbiotic relationship, as they need their intermediary service if they want to attract the attention and traffic of end users to the online news portals that have been launched through platformisation (Harkai, 2024a; Harkai, 2024b). Not much is known about the practice either. In the Hungarian press publishing market, Repropress has an extended collective rights management role as a representative collective rights management organisation.²² It represents press publishers that are located in Hungary and whose activity falls under the scope of Section 82/A Paragraph (1) of the Act LXXVI of 1999 on Copyright.

Following the implementation of the press publishers' rights in Hungary, Repropress proposed in its draft royalty tariffs a 5% rate for search engines and 3.6% rate for social media service providers. This would have resulted in expected revenues of HUF 4.3 billion by 2022. The report, available on the Repropress website, shows that the operators concerned did not cooperate with the collecting society. The draft royalty tariffs have not even been approved by the relevant ministry, the Ministry of Justice.²³ The situation in the Hungarian online press market is well illustrated by the fact that, according to Repropress, Google is in principle complying with the new rules, as it has negotiated with press publishers individually, but they are offering a rather low amount of remuneration. Moreover, the rates are not the result of a consensus, but are set by Google itself in a way unknown to the press publishers. In return for the low fees, Google obtains a broad licence to use the content, but also excludes the possibility of further exercise and enforcement of the press publishers' rights. Nor did Google provide any information on its pricing methodology in response to an official request from Repropress.²⁴

²² <https://tinyurl.com/2byaz2ab>

²³ <https://tinyurl.com/2p8m2mrf>

²⁴ <https://tinyurl.com/277bzynz>

The main conclusion that can be drawn from the non-representative results of the questionnaire is that press publishers have little information about the new related right or do not consider it an issue that determines their daily operations. It is widely believed that online intermediaries using their news content weaken competition in the independent news market and can adversely affect access. The provisions of Article 15 have either not been incorporated into the internal practices of the three respondents or have been incorporated into but not yet agreed with the intermediaries concerned. At the same time, there is unanimity that the press publishers' right can contribute to maintaining quality journalism and media pluralism.

The news content market also shows that the range of content available to end users seems to be fragmenting in the same way as we have seen in the streaming market. The primary reason for this is that independent online news outlets living off the market are increasingly hiding their content behind different subscription models (paywall, pay-per-view, monthly fee). While there is no doubt that shrinking revenue streams and the business model require a broadening of the available financial resources, this practice may raise concerns about freedom of access to information because it potentially locks information away from those who are unwilling or unable to pay for it. If an effective enforcement mechanism could be built for supporting the measures enshrined in Article 15, this could significantly improve the market position of independent news providers and ultimately bring us closer to the objectives set out in the recitals.

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