

**Articles 15 & 17 of the Directive on
Copyright in the Digital Single Market**
Questionnaire – Annex to the Comparative
National Implementation Report

HUNGARY

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This comparative report is based on 11 national questionnaires prepared by national legal experts.

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The full study is available for download at: <https://informationlabs.org/copyright>

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PART I: Article 15 CDSMD

Note: The questions below concern the national implementation of Article 15 CDSMD in your country. They refer to this as the “local national implementation” or LNI. It is recommended that you read all the questions before beginning to compose answers. In all responses, please cite the relevant provisions of national law in your country.

Background information

1. **Did your national jurisdiction provide protection (whether via copyright or a relevant targeted related right) for press publications prior to the adoption of the CDSMD? If so, please briefly describe this, indicating any differences from the protection provided by Article 15 CDSMD.**

Hungary did not provide specific protection for press publications before the adoption of the CDSMD. Of course, any press publication fulfilling the general criteria of copyright protection (individual, original work of expression) received the same protection as other copyright protected works, but no neighbouring right was granted.

2. **Has Article 15 CDSMD been transposed into national law in your country? If so, please cite the legal act with which and the date on which this was done. Please also briefly indicate whether you consider that the transposition takes a textual (“*ad litteram*”) or intentionalist approach (e.g., one that is adaptive to national circumstances).**

If available, please provide a link to the legal provision in the official language(s) of your jurisdiction. If you are aware of a good (official or unofficial) English language translation, please include that as well.

Note: if there is no national implementation of Article 15 CDSMD, please proceed to Part II of the questionnaire.

The draft bill to implement CDSMD was submitted to the Hungarian Parliament on 31 March 2021. The Parliament passed the bill with 136 yeas, 29 nays, and 1 abstain on April 28, 2021. Act XXXVII of 2021 was published on 6 May 2021 and entered into force on 1 June 2021,¹ a few days before the official transposition day of the CDSMD. The CDSMD seems to be almost completely *ad litteram* transposed. The text of the Hungarian Copyright Act (hereinafter referred to as **HCA**) as well as the justification to it also includes verbatim copies of the articles/recitals of the CDSMD and adds only minimal extras to the CDSMD’s language.

¹ *Magyar Közlöny*, Issue 81/2021, pp. 3184-3197, available at: <https://magyarkozlony.hu/dokumentumok/526334b033ec56dda7906378ca38c272f80fb231/letoltes>. The current version of the complete HCA is available at <https://net.jogtar.hu/jogszabaly?docid=99900076.tv>. The unofficial English language translation of the HCA is provided to the principal researcher via email.

HCA in Hungarian: <https://njt.hu/jogszabaly/1999-76-00-00>

AC 1: Subject matter

- 3. What is the subject matter (object) of protection by the LNI and how is this defined? Please focus on any differences (including additions) from the concept of “press publications” as defined by Art. 2(4) CDSMD.**

The HCA contains in Art. 82/B the definition of press publications, which is a verbatim translation of the original definition in the CDSMD. The Hungarian lawmakers decided to apply the exact same approach as the EU legislation did.

- 4. Does the LNI protect against uses of individual words or very short extracts? If these are excluded from protection, how are they defined? Please note whether a qualitative or quantitative approach is taken and whether such short extracts may include non-literary content. Please note whether there are specific provisions on headlines.**

The HCA excludes individual words and very short extracts from the subject matter in Art. 82/C. The respective provision states that “consent of the publisher of a press publication is not required in respect of the use of individual words or very short extracts of the press publication”. The lawmakers did not define these expressions; leaving it to the courts to form specific qualitative or quantitative approaches later on. Headlines may be found to be short extracts at that point, but they are not mentioned specifically in the text of the law.

- 5. Does the LNI extend to mere facts reported in its subject matter? If these are excluded from protection, how are they defined?**

Mere facts reported in press publications are excluded from the scope of the HCA completely, including the newly introduced neighbouring right of press publishers. Art. 1(5) HCA clarifies that “copyright protection does not extend to facts and daily news items underlying announcements released in the press publications”. The Hungarian Act's structure means that this general provision applies to both works of copyright and the subject matter of neighbouring rights.

- 6. Does the LNI extend to public domain content incorporated in its subject matter? If these are excluded from protection, how are they defined?**

The provisions of press publications do not specifically address this situation. At the same time, the general approach of the legislation is that copyright protected materials falling into the public domain may never receive protection again in any way, including the incorporation into new works or other subject matters. This general Hungarian legal practice prevents public domain contents incorporated into press publications from falling under the protection of press publications, and when assessing any infringement, they shall be excluded.

- 7. Does the LNI include any other threshold conditions for protection?**

No specific threshold is applied for protection, although any literary works of journalistic nature included in the publication must meet the standard of originality.

AC 2: Right-holders

- 8. Who are the beneficiaries of the protection for press publications in the LNI? Please indicate any exclusions, (e.g., territorial). Please indicate if the LNI employs lists of press publications or beneficiaries that would be covered.**

The press publishers are the beneficiaries without any specific – including territorial – restrictions. The LNI does not include a list of eligible organizations.

AC 3: Restricted acts

- 9. Against what kind of acts does the LNI protect? Please provide any relevant definitions.**

The HCA follows the structure of the CDSMD. Thus, it holds that the authorisation of the publisher of a press publication is required for the press publication to be:

- “a) made available to the public by cable or any other means or in any other manner so that members of the public may access the press publication from a place and at a time individually chosen by them, and
 - b) reproduced electronically for the purpose provided for in Paragraph a), if use is implemented by a service provider referred to in Paragraph k) of Section 2 of the ISSA.”
- [Art. 82/B(1)]

- 10. Does the LNI cover hyperlinking to the protected subject matter? If not, how is hyperlinking defined?**

Using a hyperlink to the press publication is expressly excluded from the scope in Art. 82/C point a) HCA. Hyperlinks as such are not defined by the HCA, but the Hungarian copyright practice follows the interpretation of the CJEU.

AC 4: Targeted users

- 11. Does the LNI target use by a specific kind of user (provider)? Please provide any relevant definitions. Specifically, please indicate whether private or non-commercial uses by individual users are covered. Please also indicate whether online platforms (OCSSPs) are covered.**

The HCA uses the definition of information society service provider as defined in the Hungarian transposition of the ECD, Act CVIII of 2001 on electronic commerce (hereinafter referred to as **E-Commerce Act**). It does not target within this category any specific type of provider, thus OCSSPs are covered as well. At the same time, private and non-commercial uses by individual users are *expressis verbis* excluded from the scope in Art. 82/C point c) HCA.

- 12. Does the LNI allow for the rights it provides to be invoked against:**
- a) **right owners whose content is incorporated in the protected subject matter?**
 - b) **holders of licenses to exercise rights in content that is incorporated in the protected subject matter?**
- Please describe the applicable rules.**

- a) The protection for press publishers has been incorporated into the chapter of neighbouring right-holders rendering the general provisions applicable for these right-holders as well. Subject to Art. 83(1) HCA, the protection of neighbouring right-holders “cannot influence the protection of copyrights in literary, scientific and art works”. As a result, press publishers’ right may never be invoked against right owners using their own works but it may be invoked where the author of the incorporated work is using the press publication itself without a permission from the press publisher.

- b) Based on the response given in point a), these rights may never be invoked against holders of licenses either, as the HCA treats right owners and licensees as right-holders whose rights may not be influenced by the neighbouring rights. This treatment is based on Art. 106(1) HCA that clarifies that where the expression “authors” is used by the HCA, the author’s heir at law or successor and other owners of rights under the copyright shall be included.

AC 5: Exceptions and limitations

13. Does the LNI recognise exceptions or limitations to the protection it provides? If so, please indicate what these are.

The HCA contains the specific exceptions of the CDSMD, thus it excludes hyperlinks, individual words or very short extracts and private or non-commercial uses by individual users. Beyond these exceptions, the general exceptions and limitations provided for by the HCA [Chapter IV.] shall be applied to all neighbouring rights based on Art.83(2) HCA, as well as the provisions regulating orphan works and out-of-commerce works. It thus renders “the authorization of owners of neighbouring rights not necessary in those cases in which the law does not require the authorization of the author of a copyrighted work”. These exceptions include but are not limited to quotations, specific uses for educational purposes and parody.

AC 6: Licensing

14. Does the LNI include provisions on the licensing (incl. systems of extended collective licensing) of uses of press publications? If so, please briefly describe any relevant details. For example, these could involve the following:

- **criteria for determining the height of compensation;**
- **the process for negotiating compensation;**
- **transparency duties (incl. data sharing obligations);**
- **duties to engage in negotiations;**
- **oversight by a government authority;**
- **(mandatory) collective rights management.**

The HCA does not include any specific provisions on the licensing of uses of press publications because the general licensing provisions of Chapter V HCA are applicable in this case also, including transparency requirements. Chapter V addresses authors, however according to Art. 106(1) HCA, “[w]herever „author” is mentioned in this Act, the author’s heir at law or successor and other owners of rights under the copyright are duly construed to be included”. Collective rights management is regulated by Act XCIII of 2016 on the collective management of copyrights and of neighbouring rights (hereinafter referred to as CMO Act), and the press publishers’ new neighbouring right will be subject to it as well upon establishing collective management in this field. The Hungarian legislator decided not to introduce a mandatory collective management system for the press publishers’ right, but this does not prevent the relevant collecting societies or other relevant bodies from applying for collective management of rights. So far, collective management has not been applied for and approved in this field (the approved collecting societies are listed here: http://kjk.sztnh.gov.hu/en/szervezetek_nev_szerint_angol).

AC 7: Revenue sharing

15. Does the LNI require that any revenue it provides be shared with authors of works incorporated in its subject matter? If so, does it provide details on e.g., the size of the share or modes of collection and distribution or transparency obligations on press publishers? Please describe the applicable rules.

The HCA requires press publishers to provide an appropriate share to the authors of incorporated works from the revenues received for the uses described in Art 82/B(1) HCA. The only detail is for the share to be appropriate, recalling the provisions used for employers, to provide appropriate remuneration to authors where third party use is authorized by the employer. According to the legal practice of works created in employment, courts consider all relevant circumstances (type of use, territorial scope, medium, proportion of the work used, etc.) when measuring whether the remuneration in a given scenario is appropriate.

AC 8: Term of protection

16. What is the term of the protection afforded to press publications by the LNI?

The press publications are provided with two years of protection calculated from the first day of the year following the first publication of the press publication in line with the CDSMD [Art. 84(1) point g) HCA].

AC 9: Waiver

17. Can right-holders waive their rights under the LNI? Can authorisation be given for free?

The general rules of HCA apply here as well. Right-holders may not waive their rights in Hungary according to Art. 9(3) HCA. Generally, a license fee shall be paid for any use based on Art. 16(4) and Art. 42(1) HCA, but the parties may arrange otherwise in a license agreement in which the right-holder expressly waives his/her right of appropriate remuneration [Art.16(4) HCA].

AC 10: Entry into effect

18. From what date did the protection provided by the LNI come into effect in your jurisdiction?

The protection entered into force on 1 June 2021, but it is applicable to any press publication published after 6 June 2019, where the use of such publication happens on or after 1 June 2021.

Additional information

19. Can you think of any noteworthy divergence in the LNI from the standards set out in Article 15 of the CDSMD that you have not already addressed above? If so, please elaborate.

As HCA transposed the CDSMD *ad litteram*, there is no divergence from the Directive.

PART II: Article 17 CDSMD

Note: The questions below concern the national implementation of Article 17 CDSMD in your country. They refer to this as the “local national implementation” or LNI. It is recommended that you read all the questions before beginning to compose answers. In all responses, please cite the relevant provisions of national law in your country.

Background information

1. Has Article 17 CDSMD been transposed into national law in your country? If so, please cite the legal act with which and the date on which this was done. Please also briefly indicate whether you consider that the transposition takes a textual (“*ad litteram*”) or intentionalist approach (e.g., one that is adaptive to national circumstances).

If available, please provide a link to the legal provision in the official language(s) of your jurisdiction. If you are aware of a good (official or unofficial) English language translation, please include that as well.

Note: if there is no national implementation of Article 17 CDSMD you can end the questionnaire at this point.

Yes, please see answer to Q2 of Part I.

AC 1: Subject matter

2. What is the subject matter (object) of protection by the LNI?

Any work or other subject matter (protected by related rights) that might be uploaded to any OCSSP’s system by the users of these services (end-users) is the subject matter (object) of protection by the LNI. No subject matter is expressly excluded from the scope of the new provisions.

AC 2: Right-holders

3. Who are the beneficiaries of the protection provided by LNI? Please note whether there are any deviations from the directive.

Any authors and related rights-holders who have the right of making available to the public of the protected subject matter capable of being uploaded to an OCSSPs’ system are the beneficiaries of the protection provided by LNI.

AC 3: Exclusive rights

4. Against what kind of act does the LNI protect right-holders? Is a legal qualification given to those acts (e.g., “communication to the public”)?

The LNI expressly calls the use of uploaded subject matter by the OCSSPs a making available to the public. The justification of the HCA further clarifies that the said right is *not a sui generis right*. The new rules on OCSSPs form a part (or a type) of the already existing making available to the public right as regulated in Article 26(8) HCA, but these rules apply to certain users only. In this way, without any express reference to the term, the new system in Hungary shall be treated as a *lex specialis* regime for the making available to the public of protected subject matter by certain users (OCSSPs).

AC 4: Targeted providers

- 5. Does the LNI target a specific kind of service provider? Please provide any relevant definitions, including any exclusions (“carve-outs”). Please focus on any differences from the concept of “online content sharing providers” (OCSSPs) as defined by Article 2(6) CDSMD and any elements taken from the recitals (e.g., facilitating piracy, definitions of “large amounts”).**

HCA does not differ from the CDSMD’s language in this regard. The definition of OCSSPs was transposed ad litteram; while the carve-outs as listed in Article 2(6) CDSMD were expressly mentioned by the justification of the new regime.

- 6. Were the targeted service providers considered to infringe the relevant exclusive rights in your country prior to the adoption of the LNI?**

Yes, direct liability applies – just in line with the existing EU liability regime (see the *Ziggo* case). In other words, the CDSMD has at least doubled the liability regime of online content sharing (mainly streaming) service providers. Those service providers that can be classified as OCSSPs, shall face the new liability regime of Article 17 CDSMD. Those service providers that fall out of the concept of OCSSPs, continue to be subject to the mixed e-commerce/copyright liability system (including injunctions and the notice-and-take-down procedure), in case they act in good faith; or the direct copyright liability regime, as designed by the CJEU in *The Pirate Bay* judgment, in case they are bad faith service providers. The latter two liability tracks used to exist in Hungary before the transposition of the CDSMD.

AC 5: Scope of protection

- 7. In your national jurisdiction prior to the transposition of the CDSMD did the service providers targeted by the LNI benefit from the protection of an immunity (e.g., the national implementation of the hosting safe harbour provided by Article 14 of the ECD (Directive 2000/31/EC))? If so, does this provision continue to apply?**

Yes, they could be immune from liability under the Hungarian E-Commerce Act’s safe harbour system for hosting service providers and the codified notice-and-take-down regime.² As of now, Article 57/D expressly excludes the application of the safe harbour regime of the E-Commerce Act; but Article 57/E(2)(c) and (3) clarify that the notice-and-take-down regime of the E-Commerce Act shall be analogically applied to the content moderation practices of OCSSPs.

- 8. Does the LNI provide an immunity for targeted service providers against the protection it introduces? If so, please describe the conditions for this immunity. To the extent that such conditions relate to obligations to take action against infringing content, please distinguish between obligations to take action against current infringing content and obligations to take action against future infringing content.**

The immunity standards of Article 17(4) CDSMD were literally transposed by Article 57/E(2) HCA. (The complete text might be accessed from the text of the HCA as attached to this report.) This applies to current and future (possible) infringements as well [in line with Article 17(4)(c) CDSMD / Article 57/E(2)(c) HCA].

² Act CVIII of 2001 on electronic commerce, Article 10 and 13, respectively.

9. Does the LNI identify a standard of care to which targeted service provider should adhere in relation to the conditions of the immunity? For example, the Directive makes reference to “best efforts” and to “high industry standards of professional diligence”. Please also discuss whether you consider any such terms used in the LNI to represent accurate translations of the corresponding terms in the EU provision, preferably taking into account both the English language and the national language versions.

The LNI is slightly tricky in this regard. “Best efforts” is generally replaced by “az adott helyzetben általában elvárható legnagyobb gondosság”, translated to English in the unofficial translations of the HCA as “best efforts within reason under the circumstances”. This terminology aims to reflect the common standard of the Hungarian Civil Code on diligence. The unofficial English translation of the HCA applies the CDSMD’s language (“best efforts”) but translates the official Hungarian statutory language incorrectly. The term “gondosság” means “diligence” in English. The Hungarian expression “az adott helyzetben általában elvárható legnagyobb gondosság” might be better translated as “the greatest diligence usually expected under the given circumstances”. No doubt the latter translation is longer, but it reflects the meaning of the Hungarian standard much better.

Regarding the exact question, the Hungarian law replaced “best efforts” in all the three cases with the Hungarian diligence standard. Hence, the transposition of Article 17(4)(b) necessitates some kind of “verbal gymnastics”. The following table summarizes the language issues with the text:

CDSMD	Official Hungarian version of the HCA	Unofficial translation of the HCA	Unofficial translation of the HCA by the national reporters
in accordance with high industry standards of professional diligence, best efforts...	a szakmai előírásokra és szokásokra tekintettel az adott helyzetben általában elvárható legnagyobb gondossággal...	in accordance with high industry standards of professional diligence, best efforts within reason under the circumstances...	in accordance with industry regulations and usages, the greatest diligence usually expected under the given circumstances...

The table clearly indicates that while the unofficial translation tries to comply with the official English version of the CDSMD, and also consequently translates best efforts as “best efforts within reason under the circumstances”, the official Hungarian statutory version misplaces the requirement of diligence. Under the official transposition, diligence is not part of the high industry standards, but part of best efforts (which best efforts are otherwise used in Hungarian as diligence themselves).

Furthermore, “high” is missing from the Hungarian text, and “mere” industry standards – without any qualification – are required to be taken into consideration. Standards are translated as “előírások és szokások”, which might be translated officially as “(industry) regulations and usages”.

In short, the Hungarian implementation tried to comply with both the Directive’s novel terminology and the existing Hungarian civil law standards, but the final wording – at least with respect to Article 17(4)(b) – is slightly incorrect.

10. Are the conditions for the immunity in the LNI subject to the principle of proportionality? If so, please describe any specified implications.

Yes, it is, in literal compliance with the CDSMD. Only a technical change has been made by the Hungarian legislation in this regard. Point (a) of Article 17(5) CDSMD is separated in Article 57/E(5) HCA into two points: (a) on the type, the audience and the size of the service; and point (b) on the type of works or other subject matter uploaded by the users of the service. Consequently, point (b) of Article 17(5) CDSMD is numbered as Article 57/E(5)(c) HCA.

11. Do the conditions of the immunity differ depending on the characteristics of the specific service provider (e.g., size or age)? If so, please describe those differences, providing any relevant definitions.

Yes, the start-up exception is transposed by Hungary, too, but once again ad litteram. Compare to Article 57/F HCA. These new rules will enter into force, however, only on 1 January 2023. This might lead to a slightly absurd result: companies that could otherwise qualify for the start-up immunity, face stricter obligations between 1 June 2021 and 31 December 2022.

AC 6: Right-holder cooperation

12. Does the LNI depend the conditions of the immunity on right-holder cooperation? If so, please describe what cooperation is expected of right-holders.

Yes, Article 57/E(2)(b) HCA is in literal compliance with Article 17(4)(b) CDSMD. At the same time, neither the HCA, nor the justification of the new amendments adds any further clarification to right-holders' duty of collaboration. No administrative level provisions/guidance are provided either.

13. Does the LNI allow right-holders to “ earmark ” content the unauthorised online availability of which could cause them significant economic harm? If so, please provide any definitions and conditions that govern such earmarking and describe any special regime set in place for earmarked content.

The HCA is silent in this regard.

AC 7: General monitoring

14. Does the LNI permit the conditions of the immunity to result in general monitoring? If not, please explain how “general monitoring” is defined.

The HCA – in line with the CDSMD – expressly states that the application of Article 57/E HCA on the immunity of OCSSPs (in fact: the monitoring practices to earn the safe harbour) shall not lead to general monitoring obligations. Neither the HCA, nor the justification of the HCA defines what general monitoring is. None of these texts state anything else than that general monitoring obligation are prohibited.

15. Does the LNI recommend or dissuade from using any specific kind of technology in order to adhere to the conditions for immunity? If so, please describe.

No, the HCA is silent in this regard.

AC 8: Exceptions and limitations

16. Prior to the adoption of the LNI, did national law provide for an exception or limitation to copyright for uses for the purpose of a) quotation, criticism and review; and b) caricature, parody or pastiche? If not, has it now introduced such exceptions or limitations? Please describe the conditions under which such exceptions or limitations apply.

One of the key specific novelties of the Hungarian implementation of the CDSMD was a general introduction of criticism, review, caricature, parody and pastiche in the Hungarian legal system. (Quotation has been a part of the Hungarian copyright law for decades, in line with the Berne Convention and the later international/regional norms, including the InfoSoc Directive.) The new rules on criticism, review, caricature, parody and pastiche exceptions were introduced in Article 34/A HCA. First, they represent exceptions (they are completely free of charge and necessitate no prior authorization). Second, they apply to ALL uses – both offline and online (both in OCSSP-relevant and non-OCSSP-relevant circumstances). Third, the justification of the new amendments also clarifies

with respect to the parody exception (but should be analogically applied to all the other exceptions) that it shall leave moral rights intact.

17. Do other exceptions or limitations apply to the protection provided by the LNI? If so, please describe.

Yes. Article 57/E(4) HCA expressly states that the application of OCSSP's immunity regime shall not result in the prevention of legitimate uses. The justification of the HCA expressly clarifies that these legitimate uses cover each and every exception and limitation (or as Hungarian terminology has it, "free uses" / "szabad felhasználások"), as well as the use of public domain or creative commons contents. The justification of the HCA points out that the HCA remains silent on how the functioning of such legitimate uses might be practically guaranteed; but it notes that recommendations – coming from the EU level – e.g., the use of "pre-filtering" ("upload filters") technologies by OCSSPs (to identify the plausibility of lawfulness of sources) or pre-flagging the lawfulness of uploaded contents by end-users, might be relevant for this purpose.

AC 9: Licensing

18. Does the LNI include provisions on the licensing (incl. systems of extended collective licensing) of relevant uses? If so, please briefly describe any relevant details. For example, these could involve the following:

- **criteria for determining the height of compensation;**
- **the process for negotiating compensation;**
- **transparency duties (incl. data sharing obligations);**
- **duties to engage in negotiations;**
- **oversight by a government authority;**
- **(mandatory) collective rights management.**

Not under the transposition of Article 17 CDSMD.

19. Under the LNI, do licenses obtained by a platform cover the platform's users and/or the other way around? If so, please explain.

Absolutely. This is the unofficial translation of Article 57/C HCA that speaks about the complete coverage of end-users' activities by the license acquired by OCSSPs and the limited coverage of OCSSPs by the license acquired by end-users:

"Where a content-sharing service provider obtains an authorization for communication to the public of a work or subject matter of related rights protection, it shall also cover acts carried out by users of the services for the purpose of provision of content-sharing services, when they are not acting on a commercial basis or where their activity does not generate revenues on a commercial scale. Where authorization for communication to the public is granted to the user of the service, it shall also apply to the content-sharing service provider within the framework of the use rights given to the user."

As the justification of the HCA clarifies, in line with recital (69) CDSMD, the licensing of use (upload to OCSSPs systems) by the end-users does not allow for the presumption of the coverage of the use of contents by the OCSSPs as well. How OCSSPs shall proceed to figure out the scope of the end-users' license is, however, not clarified.

AC 10: Legitimate uses: *ex ante* safeguards

20. Does the LNI include a concept of "legitimate uses"? If so, how are these defined? How are legitimate uses treated?

See the answer to Q17 in AC8.

21. Does the LNI include a concept of “manifestly infringing uploads”? If so, how is this defined? How are “manifestly infringing” and “non-manifestly infringing” uploads treated?

No, the HCA is silent in this regard.

22. Does the LNI include other *ex ante* mechanisms for the avoidance of action against legitimate content? If so, please describe these citing the relevant provisions of national law.

Nothing else than what reported under Q17 in AC8.

AC 11: Legitimate uses: *ex post* safeguards

23. Does the LNI provide for effective and expeditious complaint and redress mechanisms in the event of disputes? If so, please describe these. If applicable, please include information on time limits, decision-makers, procedural steps and whether any review is performed by humans.

Article 57/G HCA obliges OCSSPs to have an effective and expeditious complaint and redress mechanism that requires the due justification of the complaint; the process of such complaint without undue delays; to subject the process of the complaint to human review; it reserves the right to apply judicial or ADR mechanisms to settle the dispute; and, finally, it immunizes OCSSPs from liability for the repeated upload of content made available again resulting from a complaint lodged by the user of the service. Other than these – CDSMD-compliant – provisions, the HCA and the justification of the HCA remain completely silent on the details of the procedure. There is no word on time limits or competent decision-makers.

24. Does the LNI foresee for any other ways of settling disputes over content posted on their platforms (e.g., out-of-court mechanisms or recourse to the courts, incl. collective redress)? If so, please list these.

Yes, a general reference to the use of judicial recourse or ADR mechanism is allowed under Article 57/G(4) HCA, but no express details are provided by the HCA or the justification of the HCA.

AC 12: Sanctions

25. Does the LNI foresee sanctions in cases of abuses of the procedures it introduces by right-holders, users and/or platforms? If so, please describe these.

Not at all.

AC 13: Information obligations

26. Does the LNI impose information obligations on platforms? If so, please describe these.

Article 57/H imposes two such obligations – both are derived from the CDSMD. First, in line with Article 17(9) CDSMD, Article 57/H(1) HCA obliges OCSSPs to inform their users via their terms and conditions on the exceptions and limitations that end-users might rely on throughout the use of the OCSSPs’ service. Second, in line with Article 17(8) CDSMD, Article 57/H(2) HCA obliges OCSSPs to provide information upon the request of right-holders on their practices related to content moderation [under Article 57/E(2) HCA]. No other obligations are included in the HCA – especially not related to information obligations towards end-users or administrative organs (e.g., the HIPO).

AC 14: Waiver

27. Can right-holders waive the rights provided by LNI? Can authorisation be given for free?

Negative to the first question. The HCA includes no reference point to (or special rule on) the second question. Hence, the general rules of licensing under Article 16(4) HCA apply, which declare that the fees due for the use shall be in line with the income generated by the use. At the same time, free-of-charge use contracts might be concluded by parties in the online environment. Indeed, as a part of the amendment of the HCA to transplant the CDSMD into Hungarian law, Article 45(2) HCA was also amended. There, the statute expressly refers to free-of-charge licenses twice. From these, the first example is of express relevance to us. This rule says that “*A use contract need not be made in writing if: (...) b) concluded for licensing non-exclusive, free use rights defined in the second sentence of Subsection (8) of Section 26*”. Although the main reason to introduce this rule was – according to the justification of the HCA – to ease the formality requirements of licensing, its substance is expressly about making it possible to license free-of-charge on-demand uses. As indicated earlier, the use by OCSSPs is classified as making available to the public under Article 26(8) HCA. Consequently, any licensing related to the uses by OCSSPs can be concluded free-of-charge (and without the need to make it in writing).

AC 15: Entry into effect

28. From what date did the protection provided by the LNI come into effect in your jurisdiction?

1 June 2021.

Additional information

29. Does the LNI explicitly address the relationship between the protection it provides as against OCSSPs and fundamental or human rights (whether of OCSSPs or third parties)?

The only case where the LNI refers to fundamental rights is related to the newly introduced (general) parody exception. (These statements were expressed with respect to parodies, but they are – most probably – analogically applicable to caricature, pastiche, criticism and review; all of which have significant fundamental rights basis, too.) As such, OCSSPs are obliged to respect the fundamental rights of users to express their opinion (and impart information in the form of parody, caricature, pastiche, criticism and review), and so such uses shall be left intact by OCSSPs.

30. Can you think of any noteworthy divergence in the LNI from the standards set out in Article 17 of the CDSMD that you have not already addressed above? If so, please elaborate.

Not really. The Hungarian implementation is a really mature work of excellent copyright experts – but not a really creative one.