

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

IRELAND

Last Updated: 22 June 2022

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

National Expert(s):

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

Country: IRELAND (ÉIRE)

National Expert: PROF. GIUSEPPE MAZZIOTTI (Trinity College Dublin)

Last updated: 22 June 2022

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.**

Ireland did not recognise a specific protection for press publications prior to the implementation of the DSM Directive.

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.**

Article 15 has been transposed into Irish law under Regulation 13, Part 4 of the **European Union (Copyright and Related Rights in the Digital Single Market) Regulations 2021** (the Irish regulations).¹ This was by way of a statutory instrument which was signed into law on 19 November 2021, taking effect that same day.² This legislative procedure avoided any parliamentary scrutiny by Dáil Éireann (the Irish parliament) and thus did not benefit from any debate nor amendments. In mirroring the provisions of Article 15, Regulation 13(1) extends the protections available under the Irish implementation of the Information Society Directive to press publications.³

It is submitted that the transposition of Article 15 into Irish law is very much a case of an ‘ad litteram’ approach. In general, Regulation 13 of the Irish regulations bears a nearly identical text to Article 15 of the Directive. Furthermore, the Irish regulations fail to add any substantive specifications to the definitions of key concepts, with these provisions adding no guidance as to the meaning of terms throughout the transposition beyond what is contained within the Directive. For instance, this can be observed in relation to the meaning of ‘act of hyperlinking’ or indeed ‘appropriate remuneration’ neither of which is defined any further.

Link to Regulation 13 of the Irish regulations: <https://www.irishstatutebook.ie/eli/2021/si/567/made/en/print>

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

¹ European Union (Copyright and Related Rights in the Digital Single Market) Regulations 2021, SI 567/2021.

² European Union (Copyright and Related Rights in the Digital Single Market) Regulations 2021’ (Irish Department of Enterprise, Trade and Employment, 19 November 2021) < <https://enterprise.gov.ie/en/News-And-Events/Department-News/2021/November/2021119.html>> Accessed 28 March 2022.

³ Copyright and Related Rights Act 2000, s37, s40, s41 (Ireland).

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 differences) from the concept of “press publications” as defined by Art. 2(4) CDSMD.**

The Irish regulations utilise the same definitions as the CDSMD, with the subject matter being identical. This is due to Regulation 2(2), which states that any term used in the Irish regulations should be given the same meaning as that present in the Directive.

- 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 Irish regulations exclude the use of individual words and very short extracts from the general protections. Unfortunately, the Irish regulations offer no definition nor guidance as to the meaning of these terms.

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

The Irish regulations do not specifically deal with ‘mere facts’ and as such they would seem to fall within the protections.

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

Regulation 13(3) provides that when a work or other subject matter are incorporated into a press publication, the exclusive rights granted to press publishers should not be invoked to prohibit the use of public domain content (“works or other subject matter for which protection has expired”).

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

The Irish regulations do not provide any other threshold conditions for protection and extend general protections in the same vein as the Directive.

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.**

Under Regulation 13(1), the beneficiaries of this right are publishers of press publications established in the State for the online use of their press publications by information society service providers. So, the legal protection is reserved to any press publications established within the Irish state.

AC 3: Restricted acts

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

The Irish implementation protects against unauthorised acts of reproduction, adaptation, making available and of communication to the public of works or other protected subject matters as defined under Article 2 and 3(2) of the

Information Society Directive. Under Irish law, this includes the exclusive rights provided under Sections 37, 39 and 40 of the Copyright and Related Rights Act of 2000.

Rights in press publications are specifically restricted to “online uses” performed by information society service providers. The Irish regulations identify the scope of the rights by reference to the definitions of the exclusive rights of reproduction (Sect 39 CRRA) and making works available to the public (Sect 40 CRRA). The latter, in particular, is so broadly construed as to explicitly cover acts such as public performances and online distribution of press publications.

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

The Irish regulations exclude hyperlinking as per Article 15. However, the Irish act provides no definition or guidance as to which acts of hyperlinking are *not* covered. This solution indirectly allows the scope of this national provision to be determined by (and be compatible with) the notion of communication to the public and (protected) hyperlinks stemming from the case law 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.

Regulation 13(1) refers to online uses of press publications by ‘information society service providers’. Regulation 13(1)(a) specifically excludes the right from application in the context of private or non-commercial uses by an individual user.

OCSSPs are not explicitly mentioned under Regulation 13. However, given the policy aims of the CDSMD and the fact that the statute specifically refers to online use by ‘information society services’, these platforms are certainly covered by this new right.

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.

The Irish Act does not allow for the press publication rights to be invoked against right-holders in, and licensees, of incorporated subject matters. In that sense, the wording of Regulation 13(2) is identical to that of Article 15 of the CDSMD.

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 Irish regulations provide several exceptions to the press publication rights. Firstly, Regulation 13(4) clarifies that the copyright exceptions laid under Sections 51 to 55 of the CRRA 2000 shall apply *mutatis mutandis* in respect of the rights granted to publishers of press publications. These exceptions refer to fair dealing for purposes of criticism or review, instruction, or examination as well as anthologies for educational use and activities performed in educational establishments. The same provision prescribes that the rights in press publications shall be limited in scope by the exceptions laid down in the Irish legal transpositions of directives on the protection of computer programs (S.I. No. 26 of 1993), certain permitted uses of orphan works (S.I. No. 490 of 2014) and the implementation of the 2013 Marrakesh Treaty facilitating access to copyright works by visually impaired persons (S.I. No 412 of 2018).

Secondly, Regulation 14 provides an exception carved out in respect of text and data mining for research purposes. This exception applies to research organisations and cultural/heritage institutions who have lawful access to the protected works. A similar exception is provided for commercial text and data-mining purposes, covering users with lawful access, where the press publisher has not exercised their express reservation. Such a reservation must be (a) machine-readable in the case of content made publicly available online, including metadata and terms and conditions of a website or a service, and (b) in case of content not made publicly available online, clearly communicated to all persons who have lawful access to it.⁴

Thirdly, there is a general limitation of the rights in press publications under Regulation 16 to allow the digital use of works or other subject matter for the sole purpose of illustration for teaching. The requirements for such limitation are that (i) uses shall be attributed (through an indication of the author's name and of the source, if possible) and (ii) carried out under the authority of an educational establishment communicated to a limited audience of students and academic staff members.

Finally, protections are offered to cultural heritage institutions for their non-commercial use of out-of-commerce works subject to general criteria, i.e., that there is sufficient ability given to press publications and rights holders to have content removed⁵ as well as notification to the EUIPO Out-of-Commerce Works Portal⁶ etc.

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 Irish implementation of the CDSMD does not feature any provisions nor guidance on licensing, instead simply repeating Article 15 with no further elaboration.

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 Irish regulation does provide for revenue to be shared with authors as per Regulation 13(7), in keeping with Article 15. The provision mandates that authors should receive an appropriate share but, again, offers little guidance as to what an appropriate share for authors would be.

AC 8: Term of protection

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

The Irish regulations pertaining to terms of protection are set out under Regulation 13(5) and are identical to the provisions under Article 15 of the Directive. The term is two years.

⁴ Irish regulations, Regulation 15(3).

⁵ Ibid, Regulation 17(2).

⁶ Ibid, Regulation 17(5).

AC 9: Waiver

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

No mention is made by the Irish regulation of any ability to waive the press publication rights.

AC 10: Entry into effect

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

The protections under the Irish regulations came into effect on the date of signature, 19 November 2021. Under Regulation 13(6), the two-year term of protection does not apply to any press publications published prior to 6 June 2019.

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.

There is no divergence and, indeed, the Irish regulations are very much a replication of the CDSMD's provisions. What may be of note is Regulation 13(8) which provides: "Without prejudice to judicial remedies, disputes under this Regulation may be submitted to a mediator in accordance with the Mediation Act 2017." It seems unfortunate that Ireland did not follow through with the proposals under the Government's 'Modernising Copyright' plan in 2013, which would have seen the creation of a 'Copyright Council'. Perhaps such an organisation could have played a key role in the mediation and in supporting out-of-court dispute resolution schemes or in negotiations over licensing etc.⁷

⁷ See also Eoin O'Dell, 'Columba's 1,500th birthday is a good day to note that Ireland has implemented the DSM Directive, (almost) the whole DSM Directive, and nothing but the DSM Directive' (*Cearta*, 8 December 2021) < <http://www.cearta.ie/2021/12/columbas-1500th-birthday-is-a-good-day-to-note-that-ireland-has-implemented-the-dsm-directive-almost-the-whole-dsm-directive-and-nothing-but-the-dsm-directive/>> Accessed 3 April 2022.

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.

Article 17 has been transposed into Irish law under Regulation 18 of the European Union (Copyright and Related Rights in the Digital Single Market) Regulations 2021. Even with regard to Article 17, the Irish regulations take a broadly textual approach, the Irish law provisions being essentially identical (with the implementing Statutory Instrument going no further than what is provided for in the CDSMD). This leaves several interpretational questions, including as to the meaning of key terms like ‘best efforts’ etc., up to OCSSPs and potentially the courts to decide in the future. However, in this case, the implementation of Article 17 with no further elaboration is perhaps wise given the uncertainties and challenges which have characterised that Article until recently.⁸

Link: <https://www.irishstatutebook.ie/eli/2021/si/567/made/en/print>

AC 1: Subject matter

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

The subject matter of protection is copyright-protected works within the same meaning of the Copyright and Related Rights Act (cf. Sects 37 and 40), as interpreted and understood under applicable EU directives and in compliance with the CJEU case law.

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.**

According to Sect 19(2) of the LNI, the beneficiaries are the right-holders referred to in Sections 37 (“Acts restricted by copyright in a work”) and 40 (“Making available right”) of the Copyright and Related Rights Act (CRRA) of 2000. However, these CRRA sections contain provisions addressing only the types of restricted acts under Irish law, and not the different kinds of “Article 17-protected” right-holders. The only provision that could bring some clarity, in this regard, would be Sect 37(2) CRRA, under which “The copyright in a work is infringed by a person who without the licence of the copyright owner undertakes, or authorises another to undertake, *any of the acts restricted by copyright*” (emphasis added). Unfortunately, the mere reference to “copyright” in this

⁸ See, for instance, C-401/19 *Poland v Parliament and Council* [2022].

provision raises confusion and creates a conflict with the broader definition of Sect 19(1) of the LNI. Under Sect 19(1), the liability of content-sharing service providers arises by giving public access to “copyright-protected works *or other protected subject matter*” (emphasis added) uploaded by their users. Such a broader scope would be beneficial to “related rights” holders, such as performers, whose rights are not included in the Irish notion of “copyright”.

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”)?

Regulation 19 of the 2021 Irish statute explicitly refers to Sections 37 and 40 of the 2000 Copyright Act to identify the rights protected from unauthorised uses by OCSSPs. Section 37 refers to the rights restricted by copyright in a work, in particular the rights to copy, adapt and make works available to the public. Section 40, instead, specifically contemplates acts that fall within the scope of the right to make copyright works available to the public, using the same language used under Article 17(1) CDSMD.

Regulation 19(2) follows the main concept of Article 17(1) when specifying that, to be able to use copyright works legitimately, OCSSPs should clear *both* the reproduction right (included under Sect. 37) and the broadly shaped right of making content available to the public (specifically addressed under Sect. 40). This provision is very relevant in the music industry where these rights can easily be owned and licensed by different entities.

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”).

The Irish regulations target OCSSPs as defined by the CDSMD, with the definition and targeting being identical.

6. Were the targeted service providers considered to infringe the relevant exclusive rights in your country prior to the adoption of the LNI? Please indicate whether any liability was primary or secondary.

As per s. 40(7) of the 2000 Act, considering the relevant provisions and the conditions laid down under Directive 2000/31 (ECD), these service providers were not considered to be infringing the relevant exclusive rights. A service provider’s secondary liability arose in so far as the provider failed to remove the infringing material after having been notified by the copyright holder or after having acquired knowledge of an infringing activity.

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?

Prior to the implementation of the CDSMD, a liability limitation was provided to service providers under s. 40(7) of the Copyright and Related Rights Act 2000.

- 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 conditions for immunity are identical to Article 17, with no definition provided outlining what constitutes “best efforts” nor “high industry standards of professional diligence.” This is an unfortunate element of the Irish regulations, as they offer very little in the way of guidance and simply implement the CDSMD, leaving much of the practicalities to OCSSPs, etc.

- 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.**

Regulation 20 copies the standards and the (English) language referenced in the Directive with no further elaboration as to the meaning of these terms.

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

Proportionality is mentioned under Regulation 20(2), which reads as follows:

“In determining whether the service provider has complied with its obligations under paragraph (1), and in light of the principle of proportionality, the following matters (but not limited to those matters) shall be taken into account: (a) the type, the audience and the size of the service and the type of work or other subject matter uploaded by the user of the service; (b) the availability of suitable and effective means and their cost for service providers.”

- 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.**

In an exact recreation of Article 17, the Irish regulations repeat the varying requirements for new OCSSPs “the services of which have been available to the public in the European Union for less than 3 years and which has an annual turnover below EUR 10 million, calculated in accordance with Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium sized enterprise”. These service providers shall only “be obliged to act expeditiously, upon receiving a sufficiently substantiated notice, to disable access to the notified works or other subject matter or to remove those works or other subject matter from their websites.”⁹

The definition and its interpretation are thus identical.

AC 6: Right-holder cooperation

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

The main condition established under the Regulation 20(1) of the Irish LNI is that the rightholders shall provide user-generated content platforms with the relevant and necessary information for detecting their works so as to make them unavailable, if not properly licensed. Regulation 20(1)(c) specifies that, if the provider's best efforts cannot ensure the unavailability of specific works for which the right-holders have supplied information (“in any

⁹ Irish regulations, Regulation 20(3).

event”) – cf. Regulation 20(1)(a) and 20(1)(b) – rightholders shall submit a sufficiently substantiated notice for takedown of their notified works to the provider. Regulation 20(1)(c) also provides that a sufficiently substantiated notice obliges the service provider to make best efforts to prevent future uploads of such works, in accordance with Regulation 20(1)(b).

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.

This point is not addressed under the Irish LNI.

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 Irish regulations do not permit general monitoring and do not define “general monitoring” in any way in the LNI.

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.

The LNI makes no mention of any specific kinds of technology that can be used to adhere to the requirements, with resulting ambiguity as to what constitutes “best efforts to ensure the unavailability.”

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.

Under the Copyright and Related Rights Act (CRRRA) 2000, Irish law recognised the exceptions in relation to criticism and review, subject to fair dealing.¹⁰ In 2019, the Copyright and Other Intellectual Property Law Provisions Act 2019 introduced an exception for caricature, parody and pastiche in keeping with the Information Society Directive, subject naturally to fair dealing requirements.¹¹

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

The Irish regulations extend the application of exceptions to all recognised exceptions that fall under the 2000 Act, as amended. This includes exemptions related to education, research, and statistical data collection, as well as parody, criticism and review etc.¹²

¹⁰ Copyright and Related Rights Act 2000, s 49-52.

¹¹ Copyright and Other Intellectual Property Law Provisions Act 2019, s 13.

¹² Irish regulations, Regulation 21(2).

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.**

Drawing upon Article 19 of the CDSMD, Regulation 22 of the LNI embodies duties of transparency specifically targeted at OCSSPs. Regulation 22(2) provides that where a licensing agreement is concluded between an online content-sharing service provider and a rightholder, the service provider shall provide the rightholder, at his or her request, with sufficiently specific information on the use of the works covered by their agreement. According to Regulation 22(3), this information shall include (a) data on the exploitation of the rightholders' works; and (b) data on the revenues generated by the online content-sharing service provider. Regulation 22 clarifies that, notwithstanding the above-mentioned obligations, the provider shall not be required to disclose its business secrets and to supply detailed and individualised information on each work unless this is established for in a contractual agreement.

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.

Under Regulation 19(3), licenses obtained by platforms must cover acts of users (falling under Article 3(1) and (2) of Directive 2001/29/EC).¹³ The acts must be for non-commercial purposes or shall not generate significant revenues.

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?

Under Regulation 30(1) ("Legitimate uses and data protection"), the LNI provides that its regulations shall not affect legitimate uses, such as uses under exceptions provided for under the CRRRA of 2000 or any other enactment.

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 concept of manifestly infringing uploads is included in the Irish implementation.

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.

It does not.

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.

¹³ Implemented under Irish law in the Copyright and Related Rights Act 2000, s37, s40.

The Irish regulations do make provision for effective and expeditious complaint/redress mechanisms as per Article 17 of the CDSMD. However, Regulation 23 provides no details as regards time limits, merely requiring that there be no “undue delay” without guidance as to what this constitutes. Regulation 23 provides that an online content-sharing service provider shall put in place an effective and expeditious complaint and redress mechanism that is available to users of its services in the event of disputes over the disabling of access to, or the removal of, works or other subject matter uploaded by it. Furthermore, where a right-holder requests to have access to his or her specific work or other subject matter disabled or to have that work or other subject matter removed, he or she shall state the reasons for the request. Finally, it is established that decisions to disable access to or remove uploaded content shall be subject to human review.

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.

Here, the Irish regulations foresee the possibility of the use of out-of-court mediation and arbitration processes, both of which are subject to the specific Irish legislation on these processes¹⁴ and without prejudice to judicial remedies.¹⁵

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.

The Irish regulations do not make mention of sanctions for abuse of process that are not already available under current law.

AC 13: Information obligations

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

Regulation 22 establishes clear transparency obligations on OCSSPs. These obligations require that an OCSSP provide the right-holders with “adequate information” on the functioning and practices of its removal in co-operation with right-holders under Regulation 21. In the case where there is a licensing agreement, Regulation 22(3) sets out that transparency information provided to right-holders must include (a) data on the exploitation of the right-holders’ works, and (b) data on the revenues generated by the online content-sharing service provider. This does not extend to the provision of actualised details, unless provided for in a contractual agreement and operates without prejudice to the business secrets of the OCSSPs. Moreover, Regulation 23(4) requires OCSSPs to inform their users that they can use works and other subject matter under exceptions or limitations to copyright and related rights in their terms and conditions.

AC 14: Waiver

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

There is no provision contained within the Irish regulations for the waiving of rights nor for their free authorisation.

¹⁴ See generally the Mediation Act 2017 and The Arbitration Act 2010.

¹⁵ Irish regulations, Regulation 24.

AC 15: Entry into effect

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

The protections offered by the Irish regulations came into effect on the same day as the Irish regulations took effect, 19 November 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)?

As the Irish regulations are, in essence, a near exact replication of Article 17, there is no explicit provision that addresses the relationship between fundamental rights and the protection of Article 17, save for the mentioning of freedom of expression protections under Regulation 21. However, Regulation 21(2) aims to ensure the safeguarding of *all* the exceptions provided under the Copyright and Related Rights Act of 2000, going beyond the specific exceptions contemplated under Article 17(7).

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.

N/A.