

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

LATVIA

Last Updated: 14 September 2023

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This comparative report is based on 25 national questionnaires prepared by national legal experts.

National Expert(s):

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Jurģis Īvāns studied law at the University of Latvia. His professional career is based on a strong knowledge of legal and copyright issues in libraries.

Since 2014, he has worked at the National Library of Latvia, initially as a project manager in the Digital Library Sector (Department of Technologies), assisting with copyright management of library and digital collections. Since 2018, he has been working as a senior legal advisor at the Ministry of Culture - Copyright Department. In 2020 he was appointed as a copyright expert under the Department of Library Development. One of his passions is teaching – for many years he has been a teacher of intellectual property rights in cultural heritage institutions.

ILONA PĒTERSONE (Latvian Ministry of Culture)

Ilona Pētersone has more than 10 years work-experience in the field of copyright. Since 2015 she is the Head of Copyright Unit of the Latvian Ministry of Culture and is responsible for copyright policy-making at national and international level, drafting of copyright legislation and supervision of the collective management organisations. Ilona is also the Chair of the Standing working group on copyright legislation which holds discussions on all the potential amendments to the Latvian Copyright Law.

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

Country: LATVIA

National Expert:

- JURĢIS ĪVĀNS (National Library of Latvia)
- Ilona Pētersone (Latvian Ministry of Culture)

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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.**

No. Till the implementation of the CDSMD the national jurisdiction did not provide any protection for press publications.

- 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).**

Yes, Article 15 CDSMD has been transposed into national law of Latvia. Implementation was done by amendments to the copyright law adopted on 23 March 2023, entry into force 5 April 2023.¹ The transposition took a textual approach.

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.

Copyright law: <https://likumi.lv/ta/id/5138-autortiesibu-likums>. At the moment, there is no official translation for the actual version of the copyright law.

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 definition of the object of protection is the same as in CDSMI Article 2 (4). Definition is in Copyright law Article 53.¹ part (2) and (3).

- 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**

¹ Adoption of Copyright law 23.03.2023., <<https://likumi.lv/ta/id/340802>>

and whether such short extracts may include non-literary content. Please note whether there are specific provisions on headlines.

The LNI excludes individual words or very short extracts from protection. This exception from protection is defined in Article 53.¹ (4): *The provisions of the first part of this Article shall not be applied to: [...] 3) use of individual words or very short extracts.*

No specific provisions or headlines are defined.

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

Not excluded. No specific definition.

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

Public domain works are excluded from protection, in Article 53.¹ part (7): *The press publisher is not allowed, based on the rights provided for in the first paragraph, to prohibit the use of works and objects of related rights, whose copyright or related rights have expired.*

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

No, there is no other new/different conditions, as it states in CDSMD Article 15.

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 beneficiaries are the press publishers. There are no specific conditions. No geographic limitations apply.

AC 3: Restricted acts

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

LNI protects publishers' rights against (or grants publishers exclusive rights) in Article 53.¹ (1): *"The press publisher has the following exclusive rights regarding the online use of the press publication by the information society service provider:*

1) directly or indirectly, temporarily or permanently reproduce the press release;

2) make the press release available to the public by wire or in another way so that it can be accessed at an individually selected place and at an individually selected time."

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

Hyperlinking is excluded from the scope of protection, as in CDSMD Article 15. Definition in Copyright law Article 53.¹ (4): *The provisions of the first part of this Article shall not be applied to: [...] 2) use of hyperlinking.*

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.

Law on Information Society Services² Article 1., part (1) point 1): “information society service - a distance service (parties do not meet simultaneously) which is usually a paid service provided using electronic means (electronic information processing and storage equipment, including digital compression equipment) and upon individual request of a service recipient. Information society services shall include the electronic trade of goods and services, sending commercial communications, offering possibilities for searching for information, access to it, and obtaining the information, services that ensure the transmission of information in an electronic communications network or access to an electronic communications network, and storage of information, and also online intermediation platform services.”

12. Uses of press publications by individual users for private or non-commercial purposes are excluded from the scope of protection of the respective regulation (Article 53¹, Paragraph 4, subpoint 1). 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.

LNI is the same as in CDSMD Article 15. Copyright law Article 53.¹ (5) prohibits publishers from invoking against authors and related rights owners. Paragraph 6 of Article 53¹ states that the publisher cannot invoke the new related right against third parties for use of works and other subject matter that the publisher included in protected press publications on the basis of simple (non-exclusive) licence. Therefore, it can be concluded that the holders of simple (non-exclusive) licences are protected (against the claims of the press publishers).

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.

Exceptions cover private or non-commercial use, hyperlinking, use of individual words or very short extracts of a press publication.³ As the press publishers are considered to be the holders of the related rights, all the other exceptions normally applicable to the related rights holders apply to them as well (see Article 54 of the Copyright Law).

² Law on Information Society Services, < <https://likumi.lv/ta/id/96619-informacijas-sabiedribas-pakalpojumu-likum>.

³ Copyright law, section 53.1, (4) <<https://likumi.lv/ta/id/5138-autortiesibu-likums>>

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.**

No, LNI does not include provisions on the licensing.

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.

Authors of works incorporated in press publications must receive an “appropriate share” of the revenues that press publishers receive for the use of their press publications online.⁴

See answer to Q. 12. It does not specify size or any other details.

AC 8: Term of protection

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

The term of the protection is two years after the press publication is published.⁵ There was no need to implement the Directive’s 1 January rule as it was already present in Article 38 of the Copyright law as a general principle.

AC 9: Waiver

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

Right-holders can waive their rights, by Copyright law Article 53.¹ The general rules apply. It is not specified if authorisation can be given for free.

AC 10: Entry into effect

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

From 5 April 2023. The Directive’s 6 June 2019 rule is implemented in point 20 of the Transitional provisions of the Copyright Law (placed at the end of the law).

⁴ Copyright law, section 53.1, (8) <<https://likumi.lv/ta/id/5138-autortiesibu-likums>>

⁵ Copyright law, section 55., (3²) <<https://likumi.lv/ta/id/5138-autortiesibu-likums>>

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.

No.

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).**

Article 17 CDSMD has been transposed into national law in Latvia via Copyright law, Chapter VIII¹, Articles 56¹ to 56⁵. According to this, “[u]se of the work or related subject matter by an online content sharing service provider”. The transposition takes a textual approach.

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.

Copyright law: <https://likumi.lv/ta/id/5138-autortiesibu-likums>. At the moment, there is no official English translation to actual version of copyright law.

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

AC 1: Subject matter

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

The object of protection according to the LNI covers copyright-protected works, performances, phonograms, films and broadcasts.

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.**

No deviations from directive.

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”)?**

According to copyright law Article 56.² part (1), protection covers communication to the public and making available to the public”.

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”).**

LNI took a textual approach, and there are no elements taken from recitals.

- 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.**

No.

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?**

Article 10 of the Law on Information Society Services⁶ provided an immunity. Copyright law Article 56.² part (6) defines when this provision does not continue to apply:

“If the online content sharing service provider communicates to the public works or objects of related rights or makes them available to the public via wires or in another way so that they can be accessed at an individually selected place and at an individually selected time in the manner specified in the first part of this article, this online content sharing service provider shall not be subject to Information the provisions of the fifth part of Article 10 of the Law on information Society Services.”

- 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.**

Copyright law Article 56.² part (3) provides immunity if provider can prove, that he has:

“1) made the greatest efforts to obtain the permit;

2) has made the greatest efforts to ensure that such works or objects of related rights are not available to the public, for which the subjects of copyright or related rights have provided relevant and necessary information;

3) has made the greatest efforts and acted immediately to disable access to the work or object of related rights mentioned in the notification on his website or to remove this work or object of related rights from his website, not allowing its re-upload, if he has received a justified notification from the subject of copyright or related rights.”

The Latvian Copyright law uses the word “immediately” as it is the usual way a necessity for an expeditious action is described in the Latvian law. “Immediately” is interpreted as “without unjustified delay”, meaning that there can be situations when the action is delayed due to justified reasons. Note that the third prong of immunity conditions in the Latvian Copyright law asks for “sufficiently substantiated notice” from the right-holders, as it is written in the Directive. Unlike in the Directive, there is no direct reference to the second prong (point b) (this provision was initially drafted similarly to the one in the Directive, but was changed in the framework of the discussions in the Parliament).

⁶ Law on information Society Services, < <https://likumi.lv/ta/en/en/id/96619>>.

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 mentions “greatest efforts”. Copyright law does not specify “greatest efforts”, but the official law annotation (which is taken into account, for example, by judges in the court proceedings) clarifies, that it must be translated based on European Union Guidelines and Directive. It was agreed that the term “best efforts” is not suitable for the legal text in Latvian language due to purely linguistic reasons, but in essence the meaning of both these terms in the respective context can be interpreted similarly.

There are no references to “high industry standards of professional diligence” in the law.

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

According to Copyright law Article 56.² part (4):

“When determining whether the online content sharing service provider has fulfilled the obligations set out in the third part of this section, the principle of proportionality shall be applied, including according to the type, audience and size of the service, the type of work or related rights object uploaded by service users, as well as the availability of suitable and effective means and their costs to the service provider.”

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.

Copyright Article 56.³ specifies that immunity applies, if:

“(1) If an online content sharing service provider, whose services have been available in the European Union for less than three years and whose annual turnover is less than 10 million euros, has not received permission for the use of the object of work or related rights referred to in the first part of Article 56.2 of this law, it is responsible for infringement of copyright or related rights, except when it proves that:

1) has made best efforts to obtain permission;

2) upon receiving a justified notice from the subject of copyright or related rights, has taken immediate action to disable access to the work or object of related rights mentioned in the notice on his website or to remove this work or object of related rights from his website.

(2) If the average number of unique visitors per month of the provider of online content sharing services referred to in the first paragraph of this section, calculated based on the previous calendar year, exceeds five million, in addition to the obligations set out in the first paragraph of this section, it is necessary to prove that it has made the greatest efforts to would not allow re-uploading of such works or objects of related rights for which the subjects of copyright or related rights have provided relevant and necessary information.”

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.

According to LNI Article 56.² part (5):

“The provider of online content sharing services, while fulfilling the obligations set out in Paragraphs 2 and 3 of Part Three of this Article in cooperation with the subjects of copyright and related rights, shall not deny access to works uploaded by users or objects of related rights, the use of which does not violate copyright and related rights, including works or related rights objects, the

use of which is subject to the restrictions of the property rights of the author or the subject of related rights.”

As in the Directive, “relevant and necessary information” is mentioned in connection to the “notice and take-down” procedure and “sufficiently substantiated notice” is mentioned in relation to the “notice and stay-down” procedure. But the law does not specify any distinction between these terms in the context of cooperation with the right-holders.

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.

No.

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.

According to Article 56.² part (7): “The provisions of this Article do not create a general supervision obligation for the provider of online content sharing services.” No definition of “general supervision” is provided.

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.

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.

Before the LNI was adopted Copyright law provided exceptions to copyright for uses for the purpose of quotation, criticism, review, caricature and parody.⁷ After LNI pastiche has been added to these exceptions.

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

No.

⁷ Copyright law, Article 19.

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.**

There are no provisions on the licensing and no criteria.

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 LNI Copyright law Article 56.² part (2):

“If the provider of the online content sharing service has obtained permission to publish the work or related subject matter or to make it available to the public by wire or otherwise in such a way that it can be accessed at an individually selected place and at an individually selected time, such authorization also covers the activities of users of the online content sharing service for non-commercial purposes or user activities that do not generate significant revenue.”

Nothing is said in the law about the reverse situation.

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?

No.

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.

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.

No.

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.

According to Copyright law Article 56.⁴:

“(1) The provider of online content sharing services determines an effective and fast procedure in which it, immediately and without requiring payment, examines complaints submitted by users regarding the disabling of access to uploaded works or objects of related rights or their removal.

(2) When considering complaints submitted in accordance with the first part of this section, the online content sharing service provider shall ensure that:

- 1) the involved subject of copyright or related rights is informed about the submission of the complaint;
- 2) the involved parties have the opportunity to justify their complaints;
- 3) the decision to disable access to an uploaded work or object of related rights or to remove it is checked by a natural person.”

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.

According to Copyright law Article 67.¹:

“The interested party has the right to turn to the mediator: [...] 7) if the dispute is about disabling access to a work or related rights object uploaded by a user of online content sharing services or about its removal from the website.”

The availability of the recourse to the courts is not stated in the amendments. In case of qualifying the copyright infringements, the right to use exceptions or limitations is taken into account (Article 68, Paragraph 2).

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.

No.

AC 13: Information obligations

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

According to copyright law article 56.⁵:

“Online content sharing service provider's obligation to provide information

(1) At the request of the subject of copyright or related rights or its representative, the online content sharing service provider is obliged to provide it with information on:

- 1) the implementation of the cooperation referred to in the third part of Article 56.2 of this Law, including information on the implemented measures and tools, to ensure that the public does not have access to such works or objects of related rights for which permission has not been obtained;

2) the use of works or objects of related rights covered by the license agreement between the provider of online content sharing services and the subject of copyright or related rights, including the intensity of use and revenues.

(2) The provider of online content sharing services is obliged to inform users in the terms of service provision about their possibilities to use works and objects of related rights, based on the limitations of the property rights of the author or the subject of related rights provided for in this law.”

AC 14: Waiver

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

There is no specific regulation – but copyright law has general principles, that can be referred to for the right to waive. The general principle is that the right holder can always decide whether he gives authorisation for free or for a remuneration.

AC 15: Entry into effect

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

From 5 April 2023.

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)?

No.

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.

No.