

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

MALTA

Last Updated: 8 August 2022

Author Report: Dr Christina Angelopoulos (Associate Professor, University of Cambridge)

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

National Expert(s):

DR TIZIANA FILLETTI (L-Università ta' Malta)

Tiziana Filletti (B.A., LL.M (IMO-IMLI), M.Jur. (Oxon.), LL.D. (Melit.), Ph.D. (Melit.)) is the Head of Department of Commercial Law and a resident lecturer in Company Law and Corporate Insolvency Law at the Faculty of Laws, University of Malta. She obtained a Doctor of Philosophy (Ph.D.) degree in Corporate Insolvency Law. She also graduated with a Bachelor of Laws degree *summa cum laude*, Diploma of Notary Public and Doctor of Laws from the University of Malta. She furthered her studies at the International Maritime Law Institute where she was awarded a Master of Law degree with distinction. As a Chevening Scholar she read law at the University of Oxford where she was awarded a *Magister Juris* degree in Company Law and Corporate Insolvency Law.

The research project was funded by the Coalition for Creativity (C4C) (for more information see: <https://coalition4creativity.org>). Pursuant to the principles of academic freedom, the research was conducted in complete independence from third parties, including the commissioning party.

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

Country: MALTA

National Expert: DR TIZIANA FILLETTI (L-Università ta' Malta)

Last updated: 8 August 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.**

The main pieces of legislation in Malta’s regulatory framework for the sector are:

- Broadcasting Act¹;
- The Electronic Communications (Regulation) Act²; and
- More recently the Media and Defamation Act³, formerly known as the Press Act.

The statutory regulator being the Broadcasting Authority.

- 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.

The provisions of the CDSMD were transposed into Maltese law by way of an implementation decree issued by the Minister for Economy and Industry on the 18 of June 2021⁴. By and large a textual approach was taken.

Reference is to be made to Legal Notice 261 of 2021, Copyright Act (Cap. 415) – Copyright and related rights in the Digital Single Market Regulations, 2021 (the Regulations).

The link is as follows: <https://legislation.mt/eli/ln/2021/261/eng>

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

¹ Chapter 350, Laws of Malta.

² Chapter 399, Laws of Malta.

³ Chapter 579, Laws of Malta.

⁴ “*In exercise of the powers conferred by article 59 of the Copyright Act, the Minister for the Economy and Industry has made the following regulations :-*”

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.

Essentially the same – however the underlined text below vis-à-vis the definition of “periodicals” is the additional terms added to L.N. 261 of 2021 – Regulation 3:

"press publication" means a collection composed mainly of literary works of a journalistic nature, but which can also include other works or other subject matter, and which:

- (a) constitutes an individual item within a periodical or regularly updated publication under a single title, such as a newspaper or a general or special interest magazine;
- (b) has the purpose of providing the general public with information related to news or other topics; and
- (c) is published in any media under the initiative, editorial responsibility and control of a service provider.

Periodicals that are published for scientific or academic purposes, such as scientific journals and websites, such as blogs, that provide information as part of an activity that is not carried out under the initiative, editorial responsibility and control of a service provider, such as a news publisher, are not press publications for the purposes of these regulations.”

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.

No – according to Regulation 15(2) – please see underlined text below:

“The rights conferred by sub-regulation (1), shall not extend to mere facts reported in a press publication and shall not include the right to authorise or prohibit:

- (a) private or non-commercial uses of press publications by individual users;
- (b) acts of hyperlinking;
- (c) the use of individual words or very short extracts of a press publication.”

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

No – according to Regulation 15(2) – please see underlined text:

“The rights conferred by sub-regulation (1), shall not extend to mere facts reported in a press publication and shall not include the right to authorise or prohibit:

- (a) private or non-commercial uses of press publications by individual users;
- (b) acts of hyperlinking;
- (c) the use of individual words or very short extracts of a press publication.”

The terms “facts” is not defined in the definition section of the Regulations.

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

According to Regulation 15(5), the rights of publishers of press publications shall not be invoked to prohibit the use of works or other subject matter for which protection has expired.

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

No.

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.

Regulation 15(1) makes reference to publishers of press publications that have the exclusive right to authorise or prohibit in respect of any online use by information society service providers. No geographic limitations apply.

AC 3: Restricted acts

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

According to Regulation 15(1), publishers of press publications have the exclusive right to authorise or prohibit in respect of any online use by information society service providers:

- “(a) the direct or indirect, temporary or permanent, reproduction of their press publications;
- (b) the making available to the public of their press publications, by wire or wireless means, in such a way that members of the public may access them from a place and a time individually chosen by them.”

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

No – according to Regulation 15(2) – please see underlined text below:

- “The rights conferred by sub-regulation (1), shall not extend to mere facts reported in a press publication and shall not include the right to authorise or prohibit:
- (a) private or non-commercial uses of press publications by individual users;
- (b) acts of hyperlinking;
- (c) the use of individual words or very short extracts of a press publication.”

The term “hyperlinking” is not defined in the definition section of the Regulations.

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.

According to Regulation 15(1), reference is made to “information society service providers” in that –

- “(1) Publishers of press publications shall have the exclusive right to authorise or prohibit in respect of any online use by information society service providers:
- (a) the direct or indirect, temporary or permanent, reproduction of their press publications;
- (b) the making available to the public of their press publications, by wire or wireless means, in such a way that members of the public may access them from a place and a time individually chosen by them.”

With respect to private or non-commercial uses by individual users this is covered by Regulation 15(2)(a):

“The rights conferred by sub-regulation (1), shall not extend to mere facts reported in a press publication and shall not include the right to authorise or prohibit:

- (a) private or non-commercial uses of press publications by individual users;”

Regulation 3 defines an “information society service” as a service within the meaning of article 2 of the Electronic Commerce Act which in turn is defined as:

“any service which is provided at a distance, by electronic means and at the individual request of a recipient of the service, whether such service is provided for consideration or not, and for the purposes of this definition:

- (a) "at a distance" means that the service is provided without the parties being simultaneously present;
- (b) "by electronic means" means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by any electromagnetic means;
- (c) "at the individual request of a recipient of the service" means that the service is provided through the transmission of data on individual request;”

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?**

According to Regulation 15(3):

“The rights conferred on publishers of press publications by virtue of sub-regulation (1) shall leave intact and shall in no way affect the rights of authors and other rightholders, in respect of the works and other subject matter incorporated in a press publication. The rights provided for in sub-regulation (1) may not be invoked against authors and other rightholders in respect of the works and other subject matter incorporated in a press publication and, in particular, shall not deprive them of their right to exploit their works and other subject matter independently from the press publication in which they are incorporated.”

- b) holders of licenses to exercise rights in content that is incorporated in the protected subject matter?**

Please describe the applicable rules.

According to Regulation 15(4):

“When a work or other subject matter is incorporated in a press publication on the basis of a non-exclusive licence, the rights provided for in sub-regulation (1) shall not be invoked to prohibit the use by other authorised users.”

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.

According to Regulation 15(6),

“The provisions of articles 9 and 42 of the Act, the Certain Permitted Uses of Orphan Works Regulations, and the Permitted Use of Certain Works and Other Subject Matter Protected by Copyright and Related Rights for the Benefit of Persons who are Blind, Visually Impaired or Otherwise Print-Disabled Order shall apply *mutatis mutandis* in respect of the rights provided for in sub-regulation (1).”

Articles 9 and 42 of the Copyright Act cover the rules on exceptions and limitations to copyright and on infringement respectively.

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 specific information is included in the national implementation.

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.

According to Regulation 15(9), it is stated that (please see underlined text below):

“Authors of works incorporated in a press publication shall receive an appropriate share of the revenues that publishers of press publications receive for the use of their press publications by information society service providers:

Provided that in the absence of agreement on the remuneration payable under this sub-article, the amount of such remuneration shall be determined by the Board.”

Yes, authors of works incorporated in a press publication shall receive an appropriate share of the revenues. No details are included. However, in the absence of an agreement on the remuneration payable this shall be determined by the Board.

AC 8: Term of protection

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

According to Regulation 15(7), the period of protection is of 2 years from the end of the year following the date on which that press publication is published.

AC 9: Waiver

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

No direct reference was found to a right of waiver in the Regulations.

AC 10: Entry into effect

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

According to Regulation 15(8):

“The rights provided by sub-regulation (1) shall not apply to press publications first published before the 6th of June 2019.”

Furthermore, according to Reg. 25 entitled “Transitional provisions”:

“Agreements for the license, assignment or transfer of rights of authors and performers shall be subject to the transparency obligation set out in regulation 18 as from 7 June 2022:

Provided that this regulation shall apply to agreements which come into force as from that date and in respect of those agreements entered into before that date which are still in force.”

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.

I do not believe that there is any other additional noteworthy divergences.

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.

The provisions of the CDSMD were transposed into Maltese law by way of an implementation decree issued by the Minister for Economy and Industry on the 18 June 2021.⁵ By and large a textual approach was taken. The words “therefrom either directly or indirectly” are added in the Maltese text after the words “with the purpose of making a profit” in the definition of online content-sharing service provider.

Reference is to be made to Legal Notice 261 of 2021, Copyright Act (Cap. 415) entitled the Copyright and related rights in the Digital Single Market Regulations, 2021 (the Regulations).

The link to the English version of the above-cited Regulations is as follows:
<https://legislation.mt/eli/ln/2021/261/eng>

AC 1: Subject matter

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

According to Reg. 16, an online content-sharing service provider must obtain the authorisation from the authors, performers, phonogram producers, film producers and/or broadcasting organisations, as the case maybe, in order to communicate to the public or make available to the public copyright-protected works or other protected subject matter.

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.

The beneficiaries of the protection are authors, performers, phonogram producers, film producers and/or broadcasting organisations.

⁵ “In exercise of the powers conferred by article 59 of the Copyright Act, the Minister for the Economy and Industry has made the following regulations...”

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”)?**

Reference is made to giving access to the public to copyright-protected works or other protected subject matter uploaded by the OCSSP’s users.

The *verbatim* legal qualification made is the following: “an act of communication to the public or an act of making available to the public.” [see Reg. 16].

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 term "online content-sharing service provider" is defined in Reg. 3 of the Regulations as a provider of an information society service of which the main or one of the main purposes is to store and give the public access to a large amount of content of copyright-protected works or other protected subject matter uploaded by its users, which it organises and promotes with the purpose of making a profit therefrom either directly or indirectly.

It is further stated that providers of services, such as not-for-profit online encyclopaedias, not-for-profit educational and scientific repositories, open source software-developing and-sharing platforms, providers of electronic communications services as defined in Directive (EU) 2018/1972, online marketplaces, business-to-business cloud services and cloud services that allow users to upload content for their own use, are **not** "online content-sharing service providers" within the meaning of the Regulations.

According to the proviso to Reg. 16(3)(b) of the Regulations, “the limitation of liability as established in article 21 of the Electronic Commerce Act shall not apply to service providers, the main purpose of which is to engage in or to **facilitate copyright piracy.**”

Although the term “large amount” is included in the above-cited definition of online content-sharing service provider the said term is not defined *per se*.

6. **Where 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.**

Although a number of laws existed dealing with certain aspects, no identical protection as contained in DCSDM was contemplated.

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?**

According to Regulation 16(3),

“(3) (a) When an online content-sharing service provider performs an act of communication to the public or an act of making available to the public under the conditions laid down in these

regulations, the limitation of liability established in article 21 of the Electronic Commerce Act shall not apply to the situations covered by this regulation.

(b) The preceding sub-regulation shall not affect the possible application of article 21 of the Electronic Commerce Act in relation to those service providers for purposes falling outside the scope of these regulations:

Provided that the limitation of liability as established in article 21 of the Electronic Commerce Act shall not apply to service providers, the main purpose of which is to engage in or to facilitate copyright piracy.”

- 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.**

According to Reg. 16(4) of the Regulations, the onus of proof is placed on the service providers:

“If no authorisation is granted, online content-sharing service providers shall be liable for unauthorised acts of communication to the public, including making available to the public, of copyright-protected works and other subject matter, unless the service providers demonstrate that they have:

- (a) made best efforts to obtain an authorisation, and
- (b) made, in accordance with high industry standards of professional diligence, best efforts to ensure the unavailability of specific works and other subject matter for which the rightholders have provided the service providers with the relevant and necessary information, and in any event,
- (c) acted expeditiously, upon receiving a sufficiently substantiated notice from the rightholders, to disable access to, or to remove from their websites, the notified works or other subject matter, and made best efforts to prevent their future uploads in accordance with paragraph (b).”

- 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.**

Yes, reference is made to both “best efforts” as well as “high industry standards of professional diligence.”

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

Yes – according to Reg. 16(5) of the Regulations, the following elements shall be *inter alia* be taken into account in light of the principle of proportionality:

- “(a) the type, the audience and the size of the service and the type of works or other subject matter uploaded by the users of the service; and
- (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.**

Although the above-cited Reg. 16(5) of the Regulations makes reference to “the type, the audience and the size of the service and the type of works or other subject matter” no definitions are provided of said terms.

According to Reg. 16(6),

“In respect of new online content-sharing service providers the services of which have been available to the public in the Union for less than three years and which have an annual turnover below ten million euro (€10,000,000), calculated in accordance with Commission Recommendation 2003/361/EC, the conditions under the liability regime set out in sub-regulation (4) are limited to compliance with paragraph (a) of sub-regulation (4) and to acting 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.

Provided that where the average number of monthly unique visitors of such service providers exceeds five (5) million, calculated on the basis of the previous calendar year, they shall also demonstrate that they have made best efforts to prevent further uploads of the notified works and other subject matter for which the rightholders 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.

As indicated by the answer to Q. 8, (a), right-holders must provide service providers with “relevant and necessary information” to trigger the obligation to ensure the unavailability of specific works and other subject matter. They must also provide a sufficiently substantiated notice to trigger an obligation to disable access to, or to remove from their websites, the notified works or other subject matter.

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 direct reference is made to right-holders’ right to “ earmark” content the unauthorised online availability.

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 Reg. 16(8), the application of this Regulation shall **not** lead to any general monitoring obligation on OCSSPs.

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 direct reference to this issue found in the Regulations.

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.

The above-mentioned restrictions are contained in article 9(1) – specifically in sub-articles (k) and (s) – of the principal Act namely Copyright Act (Chapter 415, Laws of Malta accessible in English via <https://economy.gov.mt/en/legislations/Commerce%20Department/Copyright%20Act.pdf>).

According to Reg. 16(7), the cooperation between online content-sharing service providers and right-holders shall not result in the prevention of the availability of works or other subject matter uploaded by users which do not infringe copyright and related rights, including where such works or other subject matter are covered by an exception or limitation in terms of the Copyright Act.

The rights provided by the Copyright Act and the Regulations do not preclude online content-sharing service providers from uploading and making available content generated by users on online content-sharing services in the context of: a) quotation, criticism, review; and b) use for the purpose of caricature, parody or pastiche.

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

Further restrictions are provided in the above-cited Article 9 of the Copyright Act (see article 9 via attached link in English: <https://economy.gov.mt/en/legislations/Commerce%20Department/Copyright%20Act.pdf>).

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.**
-
- The scope of the new press publishers' right is defined in line with the provisions of the DCSDM.
 - Principle of appropriate and proportionate remuneration: according to Reg. 17 of the Regulations, where authors or performers licence or transfer the exclusive rights for the exploitation of their works, or other subject-matter, they are entitled to receive appropriate and proportionate remuneration. In the absence of an agreement the amount of such remunerations shall be determined by the Board. In determining the appropriate and proportionate remuneration to the actual or potential economic value of the licensed or transferred rights, account shall be taken of the author's or performer's contribution to the overall work or other subject matter and all other circumstances of the case, such as market practices or actual exploitation of the work.
 - Negotiating mechanism: according to Reg. 13 of the Regulations, where parties are facing difficulties related to the licensing of rights when seeking to conclude an agreement for the purpose of making available audiovisual works on video-on-demand services, including regarding any right-holder authorisation which may be required, any party thereto may call upon the assistance of one or more mediators appointed by the Malta Mediation Centre. The mediators shall be so selected that their independence and impartiality are beyond reasonable doubt. The tasks of the mediators shall be to provide assistance with negotiations and to help the parties to reach an agreement, including, where appropriate, by submitting proposals to them. Both participation in the procedure as well as the conclusion of any agreement pursuant to the procedure, shall be entirely voluntary and shall not affect the contractual freedom of any party thereto.
 - Transparency obligation: according to Reg. 18 of the Regulations authors and performers are to receive on a regular basis, at least once a year, and taking into account the specificities of each sector, up to date, relevant and comprehensive information on the exploitation of their works and performances from the parties to whom they have licensed or transferred their rights, or their successors in title, in particular as regards modes of exploitation, all revenues generated and remuneration due. Provided that where these rights have been sub-licensed, authors or performers, or their mandated representatives, shall at their request receive additional information from the respective sub-licensees, in the event that the original licensee does not hold all the information that would be necessary for the purposes of the above sub-

regulation. Where that additional information is requested, the first counterpart of authors and performers shall provide information on the identity of those sub-licensees.

- Oversight by a government authority: reference is made to a Board as defined by the Copyright Act (Cap. 415, Laws of Malta).

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.

According to Regulation 16(2), where an online content-sharing service provider obtains an authorisation, that authorisation shall also cover acts of communication to the public and, or acts of making available to the public where such acts are carried out by users of the services when the users are not acting on a commercial basis or where their activity does 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?

According to Reg. 16(9)(e) of the Regulations:

“These regulations shall not affect legitimate uses, such as uses under exceptions or limitations provided for in Union law, and shall not lead to any identification of individual users nor to the processing of personal data, except in accordance with Directive 2002/58/EC and Regulation (EU) 2016/679.”

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 reference seems to be made of the concept of “manifestly infringing uploads” in the Regulations.

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.

The Regulations do not contain any *ex ante* safeguards for user rights as such.

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 Reg. 16(9) of the Regulations, online content-sharing service providers must put into place an effective and expeditious complaint and redress mechanism which is to be made available to the users of their services and in the event of disputes over the disabling of access to, or the removal of, works or other subject matter uploaded by them. Reasons must be given by right-holders requesting that access to their specific works or other subject matter be disabled or that those works or other subject matter be removed. Complaints must be processed without undue delay, and decisions to disable access to or remove uploaded content shall be subject to human review.

Furthermore, users of online content-sharing services may refer any dispute relating to the disabling of access to, or the removal of, works or other subject-matter uploaded by them, or regarding the use of an exception or limitation to copyright and related rights, to the Board for its determination. Provided that this shall be without prejudice to users’ right of recourse before the Civil Court, First Hall.

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 - according to Reg. 16(9) of the Regulations, online content-sharing service providers must put into place an effective and expeditious complaint and redress mechanism which is to be made available to the users of their services and in the event of disputes over the disabling of access to, or the removal of, works or other subject matter uploaded by them.

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 specific sanctions are included in the Regulations.

AC 13: Information obligations

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

The information obligations are placed on the online content-sharing service providers:

According to Reg. 16(8)(b) online content-sharing service providers shall provide right-holders at their request with adequate information on the functioning of their practices with regard to the cooperation, where licensing agreements are concluded between service providers and right-holders, information on the use of content covered by the agreements.

Furthermore Reg. 16(9)(f) of the Regulations states that, online content-sharing service providers shall inform their users in their terms and conditions that they can use works and other subject matter under exceptions or limitations to copyright and related rights provided for in Union law.

AC 14: Waiver

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

No direct reference to right-holders' rights to waiver.

AC 15: Entry into effect

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

The implementation decree is dated 18 of June 2021. Furthermore, according to the transitional provisions (reg. 25 of the Regulations),

“Agreements for the license, assignment or transfer of rights of authors and performers shall be subject to the transparency obligation set out in regulation 18 as from 7 June 2022:

Provided that this regulation shall apply to agreements which come into force as from that date and in respect of those agreements entered into before that date which are still in force.”

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 direct reference to fundamental or human rights.

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.

I do not believe that there are any other additional noteworthy divergences.