

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

ROMANIA

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

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

Country: ROMANIA

National Expert: BOGDAN MANOLEA (Association for Technology and Internet (ApTI))

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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, the national jurisdiction did not provide protection for press publications prior to the adoption of the CDSMD.

In fact, art 9 of the Romanian Copyright law 8/1996¹ (with all updates until today) includes in the items that may not be copyrighted in point e) “news and press information”.

- 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.

Yes, art 15 CDSMD has been transposed by law 69 from 28 March 2022 amending and supplementing law 8/1996 on copyright and related rights. Law 69/2022 was published in the Official Monitor 321 from 1 April 2022, so it entered into force on 4 April 2022.

The law introduces several changes and modifications to law 8/1996, so the correct citation for the main new right for press publishers would be art 94¹ and 94² of the law 8/1996 on copyright and related rights, with modifications until 1 May 2022.

The text is mostly an *ad litteram* transposition, following closely the Romanian version of the CDSMD, **but it does add certain aspects on top of the CDSMD, as highlighted below. It is also worth stating it from the beginning the inclusion of the press publishers as owners of “related rights” for their press publications in the new form of art 94 law 8/1996.**

Link to the law 69/2022: <https://legislatie.just.ro/Public/DetaliuDocumentAfis/253526>

¹ Law 8/1996 on copyright and related rights, with modifications by 1.05.2022, full text in Romanian available on the Ministry of Justice database <https://legislatie.just.ro/Public/DetaliuDocument/259087>, hereinafter mention in the text only as law 8/1996.

Link to the law 8/1996 (with all updates until 1 May 2022):
<https://legislatie.just.ro/Public/DetaliuDocument/259087>

There is no public English translations available of the latest format of the law 8/1996 – both official or unofficial. An good unofficial English version, but only with all updates by 2018 – therefore an old numbering of the articles – is available here: https://ucmr-ada.ro/files/romanian_copyright_law.pdf

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 is split in law 8/1996 in art 2¹ par (1) h), par (3) and par (4) and it literally transposes the CDSMD, but it also adds a definition of a “publisher of a press publication” in art 2¹ par (1) i):

“publisher of press publications – a service provider on whose initiative, under whose editorial responsibility and under whose supervision a press publication within the meaning of this law is published in any form of print or online media”.

- 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.**

Law 8/1996 includes an exception to the press publishers’ rights in art 94¹ (2) c) regarding uses of individual words or very short extracts. The very short extracts are defined as “not exceeding 120 characters”, but without any other specifications – in relation, for example, to non-literary content.

Please note that this exception is also limited by additional constraints, as the uses may be an exception only “in so far as they do not affect the effectiveness of the rights referred to in paragraph (1)² or does not lead to the press publication being replaced or to the public no longer having access to the press publication.”

There is no specific provision on headlines.

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

Law 8/1996 includes an exception to the press publishers’ rights in art 94¹ (2) b), second part regarding uses of mere facts, with a generic wording “as well as in the case of reporting mere facts in press publications” without providing specific definitions.

Please note the “mere facts” were (and still are) also included in the list of non-copyrightable objects (letter e)), as provided in art 9 law 8/1996.

² This refers to the press publishers’ rights in art 94¹ par (1) law 8/1996.

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

Law 8/1996 specifies that the press publishers right may not be invoked “in the case of the use of works or other protected subject matter whose protection has expired” in art 94¹ (3) c). There is no specific definition, but in the opinion of the national expert responding to the questionnaire the text needs to be interpreted in direct connection with specific provisions from Chapter V on the Duration of copyright protection from the same law 8/1996.

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

There are no other threshold conditions for protection in law 8/1996.

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 main beneficiaries of the protections are the publishers of press publications, as specifically defined in art 2¹ par (1) (i) law 8/1996 (see also Q3 above).

There are no lists of press publications or beneficiaries that would be covered.

The law also specifies the right to the authors of works incorporated in a press publication to a part of this revenue – that would be detailed in answer to Q15.

There are no territorial restrictions specifically mentioned in the law. However, as a general rule, Romanian law applies only within Romanian territory, if there isn't a specific international/European Union legal provision that would be indicated.

AC 3: Restricted acts

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

According to art 94¹ law 8/1996 the new right is the exclusive right to authorise or prohibit the online use of its own press publications by information society service providers by:

“(a) reproducing directly or indirectly, temporarily or permanently, by any means and in any form, in whole or in part, and storing them permanently or temporarily on devices of any kind and in any form;

(b) making them available to the public, by wire or wireless means, via the Internet, other computer networks or by any other similar means, in such a way that they can be accessed individually, at any place and at any time chosen by the public.”

The text of reproduction under (a) is very similar with the definition in art 14 of the Law 8/1996 on reproduction:

“Reproduction, for the purposes of this law, means the making, in whole or in part, of one or more copies of a work, directly or indirectly, temporarily or permanently, by any means and in any form, including the making of any sound or audiovisual recording of a work, as well as its permanent or temporary storage by electronic means.”

Also, the text of “making available to the public” under (b) is similar with the second part of the definition from art 20 law 8/1996 of “public communication”:

“Any communication of a work, by wire or wireless means, made available to the public, including via the Internet or other computer networks, in such a way that any member of the public may access it from any place or at any time individually chosen, shall also be considered as public.”

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

Law 8/1996 includes an exception to the press publishers’ rights in art 94¹ (2) b), first part regarding uses of hyperlinks, with a generic wording “placing links to webpages”, without providing specific definitions.

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.

Art 94¹ in law 8/1996 makes reference only to information society service providers, providing a definition in art 2¹ (1) j) for “information society service” which is basically a direct reference to the definition from art 4 (1) point 2 from Government Decision 1016/2004:

“service - an information society service, i.e. a service normally provided against payment, at a distance, by electronic means and at the individual request of the recipient of the service.

For the purposes of this definition, the following terms shall mean:

- a) service provided at a distance - service provided without the parties being simultaneously present;
- b) service provided by electronic means - service initially transmitted and received at its destination by means of electronic equipment for the processing, including digital archiving and storage of data, and which is wholly transmitted, transferred and received by wire, by radio, by optical means or by other electromagnetic means;
- c) service provided at the individual request of the recipient of the service - service provided by the transmission of data following an individual request.

The list of services other than those defined above is set out in Annex 3;”

According to this definition, online platforms (OCSSPs) are included. As regards private or non-commercial usage by individual users, it would depend on the interpretation of the part “service normally provided against payment”.

Private or non-commercial uses are specifically exempted by art 94¹ (2) a):

- “(2) The rights referred to in paragraph 1 shall be not be exercised in the following cases:
 - (a) the use of press publications for private or non-commercial purposes by individual users;”

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.

Law 8/1996 specifies that the press publishers' right may not be invoked in case of "right owners whose content is incorporated in the protected subject matter" or "holders of licenses to exercise rights in content that is incorporated in the protected subject matter" in art 94¹ (3) a) and b) law 8/1996.

The text follows almost identical the art 15 par 2 from CDSMD, with one addition in art a) (bolded below) which may change the application of this exception.

"(3) The rights provided for in para. (1) cannot be invoked:

- a) against authors or other rights holders whose works or other protected objects are incorporated in a press publication, their rights remaining intact, so that they can exploit their works and other protected objects independently of the press publication in which they are incorporated, **subject to the law and the agreements between the parties;**"

The addition "subject to agreements between the parties" can be interpreted in the sense that the parties can change this limitation by a contractual provision. As in practice contracts (work contracts or copyright contracts) are drafted by the press publishers with no real negotiation from the other party, this could be used as a way to bypass a limitation helpful to authors and other rightsholders.

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.

Art 94¹ par (4) from law 8/1996 provides that:

"The provisions of Articles 35-39, 93, 94, 114-118 and 123 shall also apply accordingly to the right-holders referred to in paragraph 1. (1)."

Articles 35-39 contain all the exceptions and limitations included in the Romanian law in chapter VI Copyright limitations.

Art 123 refers to the usage of orphan works by publicly accessible libraries, educational establishments and museums, archives, film or audio heritage institutions and public-service broadcasting organisations, as foreseen by the Orphan Works Directive.³

³ Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works , *OJ L 299, 27.10.2012, p. 5–12* available online at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0028>.

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.**

Law 8/1996 includes in the list of rights subject to extended collective licencing in the new art 145¹:

- the rights of press publishers to reproduction and making available in art 94¹ (1);
- but also the rights from art 128¹ par. (2), which is the implementation of art 17 of the CDSMD, where they are specifically mentioned in the new text.

This specific provision entered into force on 1 October 2022.

All the details on licensing of these rights are similar for all extended collective licencing and follow an *ad litteram* implementation of art 12 CDSMD. Also, all general rules from the specific chapters on collective licencing would apply to extended collective licencing, for example on the negotiations procedures or mediations.

As an addition to the CDSMD, press publishers are specifically mentioned in the new version of art 116 (1) c) and (2 of Law 8/1996), which includes details on the compensatory remuneration for private copying:

“(c) in the case of copies recorded by analogue process, on paper, remuneration shall be divided equally between authors, publishers **and publishers of press publications.**”

The inclusion of press publishers was a source of high tension during public debates on the draft law for the other rightsholders, as it brings a new actor the table with an equal share, which means a dilution for existing collective societies of authors and publishers.

“(2) In the case of copies recorded by digital process, on any type of medium, remuneration shall be divided equally between authors and publishers, performers, producers **and publishers of press publications.**”

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.

Art 94¹ includes paragraphs (5) and (6) on the aspects of revenue share with the authors:

“(6) Authors of works incorporated in a press publication shall be entitled to an appropriate share of the revenues which publishers of press publications receive from the use of their press publications by information society service providers, taking into account the principle of freedom of contract and of a fair balance of rights and interests between the parties. The payment of a lump sum may constitute appropriate remuneration.

(7) Provisions of art (6) shall not apply in the case of publishers of press publications in respect of rights acquired in the context of employment relationships and rights in respect of which they have acquired title under the terms of Article 3(4).”

In practice, the way these articles were implemented have emptied that principle from the CDSMD and would probably result in practice in no money to authors, as most of them would fall under the exception of par (7) either based on a work contract between the publisher and the author, either by a transfer/licence contract that is covered by article 3 (4).

Moreover, the provision of the lump sum in par (6) would mean that it can be included in the contract between the authors and the press publishers that x% represent this appropriate remuneration as per art 94¹.

AC 8: Term of protection

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

According to art 94¹ par (5), the term is two years from 1 January of the year following the date on which that press publication was published.

AC 9: Waiver

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

There is no specific provision under law 8/1996 for this right. However, in theory any authorisation can be given for free if the rights holder decides so. This would be a bit more complicated with the extended collective management system, as the rightsholder must opt out from the that system first, but it could be done.

AC 10: Entry into effect

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

The protection entered into force on 4 April 2022, according to the general rule that is 3 days after the publication of the law (law 69/2022) in the Official Monitor (1 April 2022).

The specific provision of art 145¹(1) d) on the extended collective management system for press publishers entered into force on 1 October 2022.

The publisher's right provided in art 94¹ (1) will not apply to press publications first published before 6 June 2019 (as specified in art IV par (3) of the Law 69/2022 through which the modifications of the copyright law were adopted).

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 are a number of cases in which the Romanian implementation slides away from the CDSMD or adds to new rights for the press publishers. These are included in the answers above.

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.

Yes, art 17 CDSMD has been transposed by law 69 from 28 March 2022 amending and supplementing Law No 8/1996 on copyright and related rights. The law 69/2022 was published in the Official Monitor 321 from 1 April 2022, so it entered into force on 4 April 2022.

The law introduces several changes and modifications in law 8/1996, so the correct citation for the main new provisions for OCSSPs would be art 128¹ - 128³ of the law 8/1996 on copyright and related rights, with modifications until 1.05.2022.

The text is mostly an *ad litteram* transpositions, following closely the Romanian version of the CDSMD, with minor changes.

Link to the law 69/2022: <https://legislatie.just.ro/Public/DetaliuDocumentAfis/253526>

Link to the law 8/1996 (with all updates until 1.05.2022):
<https://legislatie.just.ro/Public/DetaliuDocument/259087>

There is no public English translation available of the latest format of the law 8/1996 – either official or unofficial.

AC 1: Subject matter

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

The main object of protection as included in the law 8/1996 by 128¹ (1) is the specific regulation of acts of communication to the public or acts of making available to the public in cases of OCSSPs, when grants public access to copyrighted works or other protected subject matter uploaded by its users.

The new text does not specifically define what it means by “copyright works or other protected subject matter” for this article. Thus in the case of “copyrighted works” this would fall under the text provided in Chapter III Copyright object – art 7-9 – more specifically in the general definition provided in art 7, the protection for derivative works provided in art 8 , as well as the exceptions in art 9 on what works may not be protected by copyright.

As regards “other protected objects” it is unclear what is meant.

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 as provided by art 128¹ (2) law 8/1996 are spelled out in the text of the law: “authors, performers, producers of phonograms and videograms, as well as broadcasters and/or publishers of press publications.”

Compared to the text of the CDSMD, the Romanian implementation has added the publishers of press publications as specific beneficiaries of the new authorisation foreseen by art 128¹.

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”)?

Yes, it is qualified by art. 128¹ (1) law 8/1996 as an act of communication to the public or an act of making available to the public.

The “communication to the public” was already defined in Art 20 Law 8/1996.⁴

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 definition in art 2¹ (1) k) of the OCSSPs is an ad litteram implementation of art 2(6) CDSMD, with the addition of a specific explanation after “it organises and promotes” which says, “directly or indirectly, for example, by using means of targeted promotion”.

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.

There wasn't any specific liability (primary or secondary) for targeted service providers in the copyright law 8/1996. However, that does not mean that they could not be held liable – both in civil or criminal cases – if the general conditions of the law (civil or criminal) would be applicable in a specific case. This would also depend on if they would meet the conditions in the safe harbour provisions from the national implementation of Article 14 of the ECD (Directive 2000/31/EC).

⁴ Text of art 20 (1) A public communication is considered any communication of a work, carried out directly or by any technical means, in a place open to the public or in any place where a number of people larger than the normal circle of family members and their acquaintances gather, including stage performance, recital or any other public means of execution or direct presentation of the work, public exposition of fine art, applied art, photography and architecture works, the public projection of cinematographic works and other audio-visual works, including digital art works, presentation in a public place, by means of audio or audio-visual recordings, as well as presentation in a public place by any means, of a broadcast work. Additionally, any communication of a work by wired or wireless means is considered public when it is carried out by making the work available to the public, including via the Internet or other computer networks, so that every member of the public can access it individually, from any place and at any chosen moment.

AC 5: Scope of protection

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

Yes, the service providers benefited from the provisions of art 14 law 365/2002 on e-commerce⁵ (which implemented the art. 14 of the ECD (Directive 2000/31/EC)).

Now, this provision would not apply to the specific category of OCSSPs, as defined above, when they make an act of public communication or an act of making it available to the public (as specified explicitly in the new art. 128¹ (4) law 8/1996).

Also, the art. 128¹ (5) law 8/1996 adds an even wider exception the liability regime:

“(5) The liability exemption mechanism provided for in art. 14 para. (1) from Law no. 365/2002, republished, with subsequent amendments, as well as the one provided for in art. 128² does not apply to service providers who practice or facilitate copyright and related rights 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.**

The article 128² para (1) and (2) law 8/1996 are ad litteram implementations of art 17 para 4 and 5 of the CDSMD, with no further explanations or obligations.

- 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.**

As explained above, article 128² para (1) and (2) law 8/1996 are ad litteram implementations of art 17 para 4 and 5 of the CDSMD.

This includes:

- ad litteram translation of the term “best efforts” – “cele mai bune eforturi”;
- ad litteram translation “high industry standards of professional diligence” – “standarde ridicate de diligență profesională din domeniu”.

As regards “best efforts”, the Romanian version of the directive⁶ incorrectly translates it as “all the efforts” (toate eforturile).

We believe that the term “best efforts” would have been better implemented by the Romanian legal term “a depune toate diligențele”, which would translate to “to make every reasonable effort” and which would use long established Romanian legal terminology, also specifically regulated as of 2011 by Art. 1481(2) of the Civil Code.

⁵ Law No 365 of 7 June 2002 (republished) on electronic commerce, available at: <https://legislatie.just.ro/Public/DetaliiDocumentAfis/153252>.

⁶ Text available here <https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:32019L0790#d1e1083-92-1>.

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

Yes, but only included generically in the text of the law provision, as explained above.

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

Yes, but article 128² para (3) and (4) law 8/1996 are ad litteram implementations of art 17 para 6 of the CDSMD, therefore there are no differences.

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.

There are no specific conditions of the immunity that depend on right-holder cooperation in the Romanian law 8/1996, besides the obligations included in the CDSMD, which were included in the new text at litteram in the cases of providing relevant and the necessary information and sufficiently substantiated notices.

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.

There is no provision in the Romanian law 8/1996 that allows right-holders to “earmark” content the unauthorised online availability of which could cause them significant economic harm.

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 article 128² para (7) law 8/1996 is an ad litteram implementation of art 17 para 8 of the CDSMD, therefore the cooperation must not lead to general monitoring, but there is no definitions or further explanations on this aspect.

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.

There is no provision in the Romanian law 8/1996 that would recommend or dissuade from using any specific kind of technology in order to adhere to the conditions for immunity.

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.

Yes, prior to the changes in 2022, the Romanian law 8/1996 provided general exceptions for quotation (art 35 (1) b) or for the transformation of a work for caricature, parody or pastiche (art 37 b).

The new changes brought by law 69/2022 included specific exceptions only for the provisions related to OCSSPs' services. Thus, the newly added article 128² para (6) law 8/1996 is an ad litteram implementation of art 17 para 7 of the CDSMD.

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

According to our interpretation, any exception listed by the Romanian law in chapter VI Copyright limitations, would be possible to apply also in the context of using OCSSPs services, if the specificity of that exception allows it.

Also the newly added article 128² para (5) law 8/1996 is an ad litteram implementation of art 17 para 7 of the CDSMD, including of the sentence "where such works or other subject matter are covered by an exception or limitation."

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 law 8/1996 does not include any specific issues on licensing the rights in art 128¹, with the exception of the right of the press publishers that is included in extended collective licences (see the previous chapter answer to Q14).

Also, as these are considered acts of communication to the public or acts of making available to the public, the general copyright provisions of licensing of these rights would apply accordingly.

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.

Art 128¹ par (3) mentions that the licence shall also cover "acts of communication to the public or making available to the public by users of online content-sharing services where they are not acting for purposes of a commercial activity or where their activity does not generate significant revenue in relation to the relevant acts covered by the authorisation granted to the online service provider."

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?

The specific text in art 17 par 9 of the CDSMD was implemented ad litteram by art IV (6) of the law 69/2022, but without defining the concept of legitimate uses. The text in the new law just mentions “legitimate uses, such as uses under exceptions or limitations provided in national or EU law.”

The way it was included in the national legislation – as a specific item in the implementation law 69/2022 – also means this text is not actually included in the copyright law 8/1996.

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

No, the LNI does not include these concepts.

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, the LNI does not include other *ex ante* mechanisms.

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.

The newly added article 128³ law 8/1996 is an ad litteram implementation of respective obligations art 17 para 9 of the CDSMD, with no other detail or information.

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.

As explained above, this was an ad litteram implementation, with a very narrow interpretation of out-of-court mechanisms, as including only mediation. The text of article 128³ para (4) notes that “The disputes mentioned in paragraph (1) can be settled by mediation or by court, under the conditions of general law.”

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, the LNI does not include these types of sanctions.

AC 13: Information obligations

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

Yes, the newly added article 128²(8) law 8/1996 is an ad litteram implementation of respective obligations art 17 para 9 of the CDSMD on information obligations to rightsholders. The text only adds as a specific limitation of providing this information that it can be done “in compliance with trade secret legislation”.

Also, article 128³(5) foresees that platforms are obliged “to inform their users, by means of their terms and conditions, that they have the possibility to use works and other objects protected under the exceptions or limitations on copyright and related rights provided for in this law or European Union legislation.”

AC 14: Waiver

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

There is no specific provision under law 8/1996 for this right. However, in theory any authorisation can be given for free, if the rights holder decides so. This would be a bit more complicated in the case of press publishers with the extended collective management system, as the rightsholder must opt out from the that system first, but it could be done.

AC 15: Entry into effect

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

The protection entered into force on 4 April 2022, according to the general rule of 3 days after the publication of the law in the Official Monitor (1 April 2022).

The specific provision of art 145¹(1) d) on the extended collective management system for press publishers entered into force on 1 October 2022.

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)?

Not really, with the small exception explained in the answer to Q19 above, which is more of a generic reference to rights of users under the GDPR – as an ad litteram implementation of the directive.

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.

There is no other specific noteworthy divergence in the LNI.