

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

**SLOVAKIA**

**Last Updated:** 20 July 2023

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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: SLOVAKIA

National Expert: DR ZUZANA ADAMOVIÁ (Intellectual Property and Information Technologies Law Department, Trnava University)

Last updated: 20 July 2023

### 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.**

Yes. Printed publications have been protected by copyright in Slovakia even before the CDSMD was transposed. Newspaper articles, photographs, caricatures and other objects that fulfil the conceptual features of an author's work are protected by copyright. Original databases are also protected by copyright if the method of selection or arrangement of the content of the database is the result of the creative intellectual activity of the author. In this context, the Copyright Act demonstratively states that the database is mainly a newspaper and a magazine.

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).**

Article 15 CDSMD was transposed into Copyright Act (Act No. 185/2015 Coll.) by Act No. 71/2022 Coll., valid from 16 March 2022 and effective from 25 March 2022. 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.**

Consolidated version (only in Slovak language):

<https://www.zakonypreludi.sk/zz/2015-185>

Amendment transposing CDSMD (only in Slovak language):

<https://www.zakonypreludi.sk/zz/2022-71>

Based on the information from the Ministry of Culture of the Slovak Republic, there is no official English translation of the Copyright Act including the CDSMD transposition.

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

## **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.**

For the purposes of the Copyright Act, a press publication is a separate collection consisting mainly of literary works of a journalistic nature, other works and other subject matters under the Copyright Act:

- a) which is regularly updated at least once a year under one title, such as newspapers or magazines of general or special focus,
- b) the purpose of which is to provide information to the public regarding news or other topics, and
- c) which is issued or made available to the public in any form at the initiative, under the editorial responsibility and under the control of the service provider (i.e., a service provider that, on its own initiative and under its control, publishes or makes available to the public a press publication).

Periodical publications that are published or made available to the public for scientific or academic purposes, such as scientific journals, are not considered press publications under the Copyright Act.

It should be noted that instead of using the term “press publications” Slovak copyright law uses the term “periodicals” to distinguish them from press publications according to media law. However, for the purposes of this contribution, the term “press publication” will be used as it corresponds to the English version of the CDSMD.

### **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.**

According to Sec. 129c (4) CA the exclusive rights of the publisher of press publications do not apply to:

- a) use of the press publication by an individual user for private use and for a purpose that is not directly or indirectly commercial,
- b) acts of hyperlinking,
- c) the use of a title (headline), individual words or a very short excerpt from a press publication, which is not capable of being a substitute for the entire work.

Regarding the individual words and very short extracts a rather quantitative approach is taken. Such short extracts may also include non-literary content.

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

Daily news is excluded from copyright protection pursuant to Sec. 5 CA. It follows from the logic of the matter that the new legislation should therefore not apply to daily news. On the other hand, while the use of public domain works (e.g., works for which the protection period has already expired) is specifically excluded from the scope of the new publishers' right, this does not expressly apply in relation to objects not covered by copyright protection. In case of mere facts and daily news, it would be possible to reach the same conclusion only on the basis of analogy.

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

No, the LNI does not extend to public domain content incorporated in its subject matter.

According to Sec. 129c (5) CA, the publisher of press publications cannot prohibit the use of those parts of the press publications that meet the conditions of free work according to Sec. 9 CA (the work becomes free if the period of property rights expires, if the author has no heirs or if heirs refuse to accept the inheritance, even before the expiration of the period of property rights).

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

N/A.

**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.**

According to § 129a (3) CA, a publisher of press publications is, for the purposes of the Copyright Act, a service provider established in a contracting state of the Agreement on the European Economic Area, which publishes or makes available a press publication on its own initiative and under its control.

The LNI does not employ lists of press publications nor beneficiaries that would be covered. The publishers' right regulated in the Copyright Act is not linked to the press publisher's and other publisher's regulation regulated in the Act No. 265/2022 Coll. on publishers and on registry in the field of media and audio-visual (act on publications).

**AC 3: Restricted acts**

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

The publisher has the right to use his/her press publications and the right to grant permission for the use of his/her press publications. The use of press publications for which the publisher grants the information society service provider consent covers the

- reproduction of the press publication online and
- making the press publication available online.

There are general definitions of "reproduction of a work" and "making (a work) available" in the Copyright Act.

Making a reproduction of a work is a permanent or temporary physical, digital or other capture of a work or part of it from the original work or from a reproduction of the work (Sec. 21 CA).

Making a work available to the public is disseminating the work in such a way that an individual can access it from a place and time of their choosing (Sec. 27 CA).

These definitions also apply appropriately to the use of press publications.

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

The exclusive right of the publisher of press publications does not apply to acts of hyperlinking.

However, there is no definition of hyperlinking in the Copyright Act.

Individual types of hyperlinks are not distinguished.

#### **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 Sec. 129c (2) CA, the provider of information society services may use the press publication only with the consent of the publisher of press publication, unless the Copyright Act law provides otherwise. This means that uses by individual users other than ISPs are not covered by this regulation.

The Copyright Act, in relation to the definition of the information society service provider refers to Act No. 55/2018 Coll. on providing the information on technical regulations and on obstacles to the free movement of goods. According to the Sec. 2 b) of this Act:

- information society service is a service provided for payment, remotely, electronically and based on the individual request of the recipient of the service;
- providing a service remotely means providing an information society service without the presence of one of the parties;
- providing the service electronically means sending the information society service from the place of origin and receiving the information society service at the destination via an electronic device by transmission through an electronic communication network;
- providing a service based on the individual request of the service recipient means providing an information society service through data transfer based on the individual request of the service recipient.

Since online platforms are a type of information society service provider, the regulation also applies to it.

According to Sec. 129c (4) CA, the exclusive rights of the publisher of press publications do not apply to use of the press publication by an individual user for private use *and* for a purpose that is not directly or indirectly commercial. This provision results from the Slovak translation of Art. 15 par. 1 CDSMD, which uses the conjunction “and” in contrast to the English version, in which the conjunction “or” is used (*“The rights provided for in the first subparagraph shall not apply to private or non-commercial uses of press publications 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.**

Only the publisher of press publications may invoke his/her exclusive right. Another person only in the case when the publisher transferred his/her rights to this person.

The rights of the publishers of press publications do not affect the rights of authors and other right-holders in connection with the works and other subject matters that are included in the press publication; this also applies if the subject of protection administered by a collective management organisation or by an independent rights administrator is included in the press publication on the basis of a non-exclusive license.

#### **AC 5: Exceptions and limitations**

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

The LNI refers to the general copyright regulation dealing with exceptions and limitations (Sec. 129e CA). This means that exceptions and limitations are applicable also in relation to the right of the publisher of press publications.

## AC 6: Licensing

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

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

The LNI refers to the general regulation regarding license agreements (with the exception of certain provisions). Basically, all the rules that apply to license agreements including determining the amount of remuneration and other aspects will apply also on contracts between publisher of press publications and the ISP. The bestseller clause and regulation on certain information obligations do not apply.

As for the remuneration, the universal rule applies that the agreed remuneration for granting of the license, as well as the method of determining it, must correspond to the individual way of using the work. This remuneration should correspond to the expected economic appreciation of the work and be proportional to the author's creative share in the valued work. If the remuneration is not agreed depending on income or revenue from the use of the license, it must correspond to the scope, purpose and time of use of the work. The cases when the remuneration can be agreed as a one-time lump-sum reward are indicated in examples (e.g. the time range of the license is no more than one year, use of work of a journalistic nature, use of work for a non-commercial purpose etc.).

There is no special regulation dealing with

- the process for negotiating compensation;
- duties to engage in negotiations;
- the oversight by a government authority (except the CMO is involved);
- mandatory collective rights management.

The legal regulation of extended collective licenses (ECL) is very excessive in Slovakia and concerns a large number of ways of use. This includes, among other things, making reproductions of press publication and making the press publication available to the public, which can therefore be licensed through ECL.

In addition, there is currently no collective management organization in Slovakia that would be granted the right to exercise collective management of press publications, so these rights are currently managed only on an individual basis. However, even if such authorisation were to be granted, a legislative change still would be necessary. For licensing of press publications through ECL it would be necessary to add to the list of uses that can be licensed through ECL the making of online copies (reproduction) of the press publication.

Where the rights of publishers of press publications are managed collectively, a special provision is relevant regarding the case when the user does not agree with the collective management organization on the granting of a license. In such a case, the user may apply to the court to determine the content of the license agreement, including remuneration and replacement of the expression of willingness to enter into such an agreement.

However, it should be emphasised that the condition for such a procedure and especially for the user to be able to legally use the protected subject matter during the court proceedings is that the user pay the CMO 80% of the reward according to the valid and effective tariff of the CMO. Such legislation is very unbalanced and discourages users from using the only mechanism where the CMO does not decide on the amount of its rates.

### **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 Sec. 129h CA, the publisher of press publications is obliged to pay the right-holders of the subject matters included in the press publication a reasonable share of the remuneration for granting the license to the information society service provider within six months from the expiry of the protection period according to Sec. 129d CA (i.e. within six months after the expiry of the two-year protection period).

The revenue sharing applies to related rights holders as well as authors.

### **AC 8: Term of protection**

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

The exclusive (property) rights of publishers of press publications last for two years from publication. The duration of the property rights of the publisher of press publications will end on the last day of the calendar year in which the duration of the property rights expires.

### **AC 9: Waiver**

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

The Copyright Act does not specifically regulate whether the publisher of press publications can waive his/her rights. For comparison, it is specifically regulated that authors and performing artists may not waive their rights. It can be deduced from it that the publisher of press publications can waive his/her rights, as there is no legal regulation that would prevent him/her from doing so (in addition the publisher's right is only economic right, but copyright and performers right cannot be waived because they include also moral rights).

The authorisation can be also 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?**

The protection provided by the LNI is effective from 25 March 2022.

According to Sec. 190b (8) CA, the provision of § 129c CA providing exclusive rights to press publisher does not apply to periodicals that were first published before 6 June 2019.

### **Additional information**

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

N/A

## 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 was transposed into Copyright Act (Act No. 185/2015 Coll.) by the Act No. 71/2022 Coll. valid from 16 March 2022 and effective from 25 March 2022.

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.**

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<https://www.zakonypreludi.sk/zz/2022-71>

Based on the information from the Ministry of Culture of the Slovak Republic, there is no official English translation of the Copyright Act including the CDSMD transposition.

**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?**

Protection of copyright works and other subject matters (artistic performances, phonograms, audiovisual recordings, broadcasts, press publications and databases) used on online platforms for sharing content.

### **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.**

Authors, performers, phonogram producers, audiovisual producers, broadcasters, publishers of press publications, and database owners, as well as other right-holders executing their rights (e. g. employers, heirs etc.).



### **AC 3: Exclusive rights**

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

The LNI protects right-holders against acts of communication to the public. According to Sec. 27 CA, the communication to the public of a work is the public dissemination of a work by any technical means by wire or wireless in such a way that this work can be perceived by persons in places where they would not be able to perceive it without this transmission. The term “communication to the public” covers broadcasting, retransmission, making available and other acts of communication to the public. The term “making a work available to the public” means disseminating the work in such a way that an individual can access it from a place and time of their choosing (Sec. 30 CA).

### **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”).**

There is no legal definition of the online content sharing provider in the Slovak copyright law. In the Copyright Act the term “provider of the services of online content sharing” is used, but not explained. However, in the Media Services Act (Act No. 264/2022 Coll.) the term “provider of the content sharing platform” is used. This provider is defined as follows:

A content sharing platform provider is a person who provides a content sharing platform and determines how it organizes and promotes the shared content for profit.

A content sharing platform is an information society service whose main purpose or one of its main purposes or whose fundamental function is to store a large number of works and other subject matters according to a special regulation uploaded by its users and disseminate them according to a special regulation.

The following are not content sharing platforms:

- online encyclopedias and educational and scientific repositories, the purpose of which is not to make a profit;
- platforms for developing and sharing computer programs with open source code;
- online marketplaces, inter-company cloud services and cloud services that allow users to upload content for their own use or the needs of the state.

This is the closed list of carve-outs.

However, according to Sec. 64c CA, the limited liability according to Copyright Act shall not apply in the case of an online content sharing service provider whose main purpose is to perform or facilitate the unauthorised use of works.

#### **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.**

The targeted service providers were considered to infringe the relevant exclusive IP rights in Slovakia also prior to the adoption of the LNI, however, only based on the secondary liability (provided the conditions of the safe harbour were not fulfilled).

## 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, in Slovakia prior to the transposition of the CDSMD the service providers targeted by the LNI did benefit from the protection of an immunity based on the Article 14 of the ECD. However, after the transposition of the CDSMD, the Copyright Act provides that in the case of communication to the public the provider of the online content sharing service cannot invoke the limitation of liability according to a special regulation (hosting safe harbour).

- 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 LNI provides two categories of immunity for targeted service provider – general online platforms and new online platforms.

### Category 1 – general online platforms

The provider of the online content sharing service is liable for the unauthorised communication to the public of the work, if it does not prove that it:

- a) has made all reasonable efforts to obtain consent for such use;
- b) in accordance with high industry standards of professional care, has used all reasonable efforts to ensure the unavailability of a work about which the author has provided relevant and necessary information, and
- c) without undue delay after receiving a sufficiently reasoned notice from the author, has disabled access to the notified work or remove it from each of its websites and use all efforts that can be fairly required to prevent its future upload in accordance with letter b).

### Category 2 – new online platforms

A provider of an online content sharing service, whose services have been operating on the market in the territory of the Slovak Republic, an EU Member State or a contracting state of the Agreement on the European Economic Area for less than three years and whose annual turnover does not exceed 10 million euros, bears responsibility for unauthorised communication to the public of the work, if it does not prove that it:

- a) has used all reasonable efforts to obtain consent for such use; and
- b) without undue delay after receiving sufficiently a reasoned notice from the author, has disabled access to the notified work or removed it from each of its websites.

[i.e. only ex post obligations]

The provider of the online content sharing service according to the above paragraph, for which the average monthly number of unique visitors to the services, calculated on the basis of the previous calendar year, exceeds five million, simultaneously with the proof according to above paragraph, also has the obligation to demonstrate that it has made all the efforts that can be fairly required, to prevent the future upload of a work about which the author has provided it with relevant and necessary information in advance.

- 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.**

Although the Copyright Act adopts general concepts (e.g., best efforts, high industry standards of professional diligence), it does not explain or specify them in any particular way. The term “best efforts” is translated into the Slovak language as “všetko úsilie, ktoré je možné spravodlivo požadovať”. This literally means “all effort that can be fairly demanded” or “reasonable effort”. The term “high industry standards of professional diligence” is translated into Slovak language as “vysoké odvetvové štandardy odbornej starostlivosti”, which corresponds to the English wording.

- 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 Sec. 64a (2) CA, when assessing whether the provider of the online content sharing service has fulfilled its obligations (see the point 8/ above), appropriate consideration shall be given in particular to:

- a) the type and scope of the service, the size of its target group and the type of work uploaded by the user;
- b) the availability of suitable and effective means and their costs for the provider of the online content sharing service;
- c) the type of content uploaded by users.

- 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, see the point 10 above.

#### **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.**

The answer to the question whether the LNI depends the conditions of the immunity on right-holder cooperation is that partially it does.

The actions of the online content sharing service provider are highly dependent on the information and actions of the author or other right-holders.

For example, a provider of an online content sharing service should, in accordance with high industry standards of professional care, use all reasonable efforts to ensure the unavailability of a work about which *the author has provided relevant and necessary information*. Without this information, the provider cannot fulfil his/her primary obligation of preventive care.

In addition, the provider, without undue delay after receiving a sufficiently justified *notification from the author*, is obliged to disable access to the notified work or remove it from each of its websites. In other words, the author must give reasonable notice to the provider for the provider to disable access to the work or remove it from the website to fulfil its responsive care.

From the above, it follows that for the purposes of the primary obligations on the part of the content sharing service provider, either the provision of a notification or more detailed information by the author or other right-holders is necessary. Other criteria for cooperation between the author/right-holder and the content sharing service provider have not been modified.

In the explanatory report to the Copyright Act it is stated: The provision introduces two different models of providing information: “relevant and necessary information” provided in advance and “adequately justified

notification” applied subsequently. Relevant and necessary information should be provided in advance, as it serves to prevent the uploading and making available of illegitimate content. If right-holders do not provide relevant and necessary information about their specific works or other subject matter to online content sharing service providers, online content sharing service providers should not be liable for unauthorised acts of public transmission of such unidentified works or other subject matter. The information in question should be accurate to allow the online content sharing service provider to act. The information that may be considered “relevant” will vary depending on the works concerned and the circumstances surrounding the particular works and other subject-matter. The information should be accurate, at least as far as the person of the holder of rights to a specific work or subject of protection is concerned. The information that may be considered “essential” will vary depending on the solutions implemented by the service providers. Whether information provided by right-holders is both “relevant” and “necessary” should be assessed on a case-by-case basis. As cooperation is key, the notion of “necessary and relevant information” also presupposes that service providers take into account the nature and quality of information that right-holders can realistically provide. In view of this, cooperation between right-holders and providers of online content sharing services on the best approach to identification of works should be encouraged.

On the contrary, “adequately justified notification” comes into consideration after uploading illegitimate content (ex post).

**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.**

N/A.

#### **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 Sec. 64e (2) and (4) CA the provider of the online content sharing service is obliged to establish an effective and fast procedure for dealing with complaints and requests for correction, which the user of his/her online content sharing service will be able to use in the event of disputes related to the denial of access to the uploaded work or its removal. The assessment of the denial of access to the uploaded work or the removal of the uploaded work based on a complaint must not be subject to a procedure that is exclusively automated.

General monitoring is defined in the Sec. 6 (5) e-commAct. If the service provider provides information society services to the extent according to Sec. 6 (1, 3 and 4) e-commAct, i. e., mere conduit, caching and hosting services, he/she is not obliged to monitor the information or entitled to search for the information that is transmitted or stored. However, if he/she finds out about the illegality of such information, he/she is obliged to remove it from the electronic communication network or at least prevent access to it; the court can order the service provider to remove it from the electronic communication network even if the service provider did not find out about its illegality.

**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.**

N/A.

## 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, exceptions and limitations to copyright regarding use for both the purposes of quotation, criticism and review and for the purposes of caricature, parody and pastiche were provided in Slovak law also prior to the adoption of the LNI.

*Quotation, criticism and review (Sec. 37 CA)*

Copyright is not infringed by a person who without authorisation of its author uses the released work or its part by means of quotation primarily for the purpose of review or critique of the work. Using of a work or its part must be in accordance with customs and its scope may not exceed the scope justified by the purpose of quotation.

*Caricature, parody and pastiche (Sec. 38 CA)*

Copyright is not infringed by a person who without authorisation of its author uses the work by means of caricature, parody or pastiche in the manner not giving rise to likelihood of confusion with the original work.

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

The complete list of exceptions and limitations regulated in the Slovak copyright law applies. There is no special regulation regarding the communication to the public for which the provider of the online sharing content services is responsible.

## 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.**

All the rules that apply to license agreements including determining the amount of remuneration and other aspects will apply also on contracts between right-holders and the provider of the online content sharing service.

As for the remuneration, the universal rule applies that the agreed remuneration for granting of the license, as well as the method of determining it, must correspond to the individual way of using the work. This remuneration should correspond to the expected economic appreciation of the work and be proportional to the author's creative share in the valued work. If the remuneration is not agreed depending on income or revenue from the use of the license, it must correspond to the scope, purpose and time of use of the work. The cases when the remuneration can be agreed as a one-time lump-sum reward are indicated in examples (e.g.. the time range of the license is no more than one year, use of work of a journalistic nature, use of work for a non-commercial purpose etc.).

There is no special regulation dealing with:

- the process for negotiating compensation;
- duties to engage in negotiations;
- the oversight by a government authority (except the CMO is involved);
- mandatory collective rights management.

The legal regulation of extended collective licenses (ECL) is very excessive in Slovakia and concerns many ways of use. This includes, among other things, making a musical work, a literary work, a work of fine art or a press publication available to the public, which can therefore be licensed through ECL.

Even if in the given case there is no mandatory collective management, the clearing of rights to communication to the public is usually carried out through collective management organizations. A special provision is relevant regarding the case when the user does not agree with the collective management organization on the granting of a license. In such cases, the user may apply to the court for the court to determine the content of the license agreement, including remuneration and replacement of the expression of willingness to enter into such an agreement.

However, it should be emphasized that the condition for such a procedure and especially for the user (online platform) to be able to legally use the protected subject matters during the duration of the court proceedings is that the user must still pay the CMO 80% of the reward according to the valid and effective tariff of the CMO.

In the explanatory report to LNI it is stated: Regarding the models of obtaining consent for the use of protected objects, the provider of online content sharing services can use different license models – individual license agreements with individual right-holders, license agreements concluded through collective rights management organizations (mass, collective and extended collective license agreements – so-called ECL) or also some form of public licenses (e.g. Creative Commons). Nothing precludes the granting of licenses on a free basis, and of course the right-holders have the option not to grant consent within the framework of contractual freedom. To demonstrate best efforts, service providers should at least proactively reach out to right-holders who can be easily identified and located. For example, proactively contacting collective management organizations should be a minimum requirement for all providers of online content sharing services. The consent granted for the use of the objects of protection for the provider of online content sharing services also applies to the use of this service by the user, if this is not done within the scope of the performance of a profession, business or if such actions do not generate significant income.

**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 Sec. 64f) CA the dissemination of a work by an online content sharing service provider is considered a communication to the public even if it was uploaded by a user of this service. If the author has granted the provider of the online content sharing service consent to the communication to the public of the work, this consent applies to the same extent to the acts of communication to the public of the work performed by the user of this service; this does not apply to such actions according to the first sentence, which the user performs in the course of his/her profession, business, or if such actions generate significant income.

There is no special regulation for the situation when license obtained by a user covers the platform. In such case only special civil regulation on the contract in favour of third party could apply (a person who is not a party to the contract can acquire rights based on such a contract). In practice, however, I find it quite unlikely.

**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?**

There is no special regulation including a concept of “legitimate uses”. However, general regulation of exceptions and limitations applies.

**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?**

N/A.

**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.**

N/A.

**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 Sec. 64e (2) – (5) CA the provider of the online content sharing service is obliged to establish an effective and fast procedure for dealing with complaints and requests for correction, which the user of the online content sharing service will be able to use in the event of disputes related to the denial of access to the uploaded work or its removal. Such complaints must be dealt with without undue delay. The assessment of the denial of access to the uploaded work or the removal of the uploaded work based on a complaint must not be subject to a procedure that is exclusively automated.

**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.**

The provider of the online content sharing service, the user of this service or the author/other right-holder may use procedures according to special regulations (e.g., arbitration/mediation) to resolve disputes with another provider of the online content sharing service, the user of this service or the right-holder. Subjects may also use out-of-court (contractual) mechanisms (e.g., settlement agreement) or recourse to the courts.

**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.**

N/A.

**AC 13: Information obligations**

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

According to Sec. 64e (1) CA the online content sharing service provider is required to:

- a) provide the author, at his/her request, with adequate information about the procedures referred to in Sec. 64a and 64b CA (see the point 8/); and
- b) provide the author with information about the use of the work based on the consent granted in the license agreement.

The Copyright Act does not specify any more specific regulation regarding the provision of information to authors/other right-holders. In general, however, it can be stated that while the obligation to provide information on rights settlement procedures can be more general and included, for example, in general terms and conditions, information on the use of works/other objects of protection based on the consent granted in the license agreement should already be personalised and specified.

#### **AC 14: Waiver**

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

The authors are not provided with any new or special right as they exercise “only” copyrights, namely right to communication to the public (it similarly applies also to other right-holders). According to the Slovak law, copyright cannot be waived nor transferred. However, the authorisation can be given also for free. The same applies also to performing artists.

However, the phonogram producers, audiovisual recordings producers, broadcasters, press publishers and the database owners may waive their exclusive (property) rights. They can still give the authorisation for free.

#### **AC 15: Entry into effect**

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

The protection provided by the LNI is effective from 25 March 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)?**

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.**

N/A.