

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

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

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Maja is currently a Research Affiliate at the Berkman Klein Centre for Internet and Society. Maja is co-chair of the GPAI Working Group on Data Governance. She is a member of the Board of Directors of Communia, an organization committed to the expansion of the public domain and the access and re-use of culture and knowledge, and has been the representative and legal lead of Creative Commons Slovenia since 2004.

Maja's recent work focuses on open science, open data, data governance and artificial intelligence, as well as the legal framework of copyright and data for research and science. Maja is the National Coordinator for Slovenia and the Regional Coordinator for the Western Balkans for the Knowledge Rights 21 project. Maja has been appointed by the Minister as the ERA (European Research Area) Action 2 Lead for Slovenia; ERA 2 focuses on the impact of copyright and data regulation on research and innovation.

Maja graduated from the Faculty of Law in Ljubljana (1996), holds a Master's degree from the Faculty of Law in Ljubljana (1999, Economics), Harvard Law School (2000, Law) and Facoltà di Giurisprudenza di Torino (2005, Intellectual Property), and a PhD from the Faculty of Law in Ljubljana (2006, Copyright Law).

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

## Country: SLOVENIA

National Expert: DR MAJA BOGATAJ JANČIČ (Open Data and Intellectual Property Institute (ODIPI))

Last updated: 3 October 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.

No.

2. Has Article 15 CDSMD been transposed into national law in your country? If so, please cite the legal act with which and the date on which this was done. Please also briefly indicate whether you consider that the transposition takes a textual (“*ad litteram*”) or intentionalist approach (e.g., one that is adaptive to national circumstances).

Yes. Act Amending the Copyright and Related Rights Act – ZASP-I (Official Gazette of the Republic of Slovenia, No. 130/22 of 11 October 2022).

The transposition takes a textual approach, as the provision is more or less copied/translated/pasted from CDSMD.

**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.**

139.a člen, Zakon o avtorski in sorodnih pravicah 1995, available at:  
<http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO403>

#### *Medijske publikacije*

##### *139.a člen*

*(1) Založnik medijske publikacije s sedežem v Evropski uniji ima za uporabo medijske publikacije v okviru storitev ponudnika storitev informacijske družbe, kot ga ureja zakon, ki ureja elektronsko poslovanje na trgu, izključno pravico:*

1. *reproduciranja svoje medijske publikacije;*
2. *dajanja na voljo javnosti svoje medijske publikacije.*

(2) Za medijsko publikacijo po tem zakonu se šteje zbirka, sestavljena pretežno iz literarnih del novinarske narave, ki lahko vključuje tudi druga avtorska dela ali predmete sorodnih pravic, in ki:

1. predstavlja posamezni del v periodični ali redno posodabljeni publikaciji pod enakim naslovom, kot je časopis ali revija splošnega ali posebnega interesa;
2. ima namen splošno javnost obveščati o novicah ali drugih temah ter
3. je objavljena v kateremkoli mediju na pobudo ponudnika storitve, ki je zanj uredniško odgovoren in ga nadzira.

(3) Za medijske publikacije iz prejšnjega odstavka se ne štejejo periodične publikacije, ki se objavijo v znanstvene ali akademske namene, kot so znanstvene revije.

(4) Pravici iz prvega odstavka tega člena ne vključujeta:

1. zasebne ali nekomercialne uporabe medijskih publikacij, kadar jih uporabljajo posamezni uporabniki;
2. dejanja vstavljanja hiperpovezave;
3. uporabe posameznih besed ali zelo kratkih izvlečkov iz medijske publikacije.

(5) Pravici iz prvega odstavka tega člena ne posegata v pravice avtorjev na delih in pravice imetnikov sorodnih pravic na predmetih sorodnih pravic, vključenih v medijsko publikacijo. Založnik medijske publikacije ne more uveljavljati pravic iz prvega odstavka tega člena:

1. nasproti avtorju dela, katerega avtorsko delo je vključeno v medijsko publikacijo, ali imetnika sorodne pravice, katerega predmet sorodne pravice je vključen v medijsko publikacijo, in tudi ne preprečiti avtorju ali imetniku sorodne pravice, da isto avtorsko delo ali isti predmet sorodne pravice uporablja neodvisno od založnikove medijske publikacije, v katero je vključeno;
2. nasproti drugemu uporabniku, ki je na podlagi neizključnega prenosa pridobil pravice za uporabo istega dela ali predmeta sorodne pravice, ki je na podlagi neizključnega prenosa pravic vključeno v založnikovo medijsko publikacijo;
3. tako, da prepove uporabo dela ali predmeta sorodne pravice, ki je vključen v njegovo medijsko publikacijo, če to delo ali predmet sorodne pravice ni več varovan po določbah tega zakona.

(6) Pravici iz prvega odstavka tega člena trajata dve leti od prve zakonite objave medijske publikacije. Ta rok začne teči prvega januarja tistega leta, ki sledi datumu objave medijske publikacije.

(7) Avtor ima pravico do primernega deleža prihodka, ki ga na podlagi prvega odstavka tega člena od ponudnika storitev informacijske družbe prejme založnik medijske publikacije, v katero je vključeno avtorsko delo tega avtorja. Avtor se tej pravici ne more odpovedati.

Copyright and Related Rights Act 1995, Article 139a, available at:

<http://www.pisrs.si/Pis.web/cm?idStrani=prevodi>

### **Press publications**

#### **Article 139a**

(1) The publisher of a press publication established in the European Union shall, for the use of a press publication in the context of the services of an information society service provider as regulated by the Act governing electronic commerce market, have the exclusive right to:

1. reproduce its press publication;
2. make its press publication available to the public.

(2) A press publication under this Act shall be deemed to be a collection composed mainly of literary works of a journalistic nature, which may also include other copyright works or subject matter of related rights and which:

1. 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;
2. has the purpose of providing the general public with information related to news or other topics; and
3. is published in any media under the initiative, editorial responsibility and control of a service provider.

(3) Periodicals that are published for scientific or academic purposes, such as scientific journals, shall not be deemed to be press publications referred to in the preceding paragraph

(4) The rights referred to in paragraph one of this Article shall not apply to:

1. private or non-commercial uses of press publications by individual users;
2. acts of hyperlinking;
3. the use of individual words or very short extracts of a press publication.

(5) The rights referred to in paragraph one of this Article shall be without prejudice to the rights of authors and the rights of holders of related rights with respect to the works and the subject matter of the related rights incorporated in the press publication. The publisher of a press publication may not enforce the rights referred to in paragraph one of this Article:

1. against the author of the copyright work that is incorporated in the press publication or the holder of a related right whose subject matter is incorporated in the press publication, and may not prevent the author or the holder of a related right from using the same copyright work or the same subject matter independently of the publisher's press publication in which it is incorporated;
2. against another user who, on the basis of a non-exclusive transfer, has acquired rights to use the same work or subject matter of a related right which is incorporated in the publisher's media publication on the basis of the non-exclusive transfer;
3. by prohibiting the use of a work or subject matter of a related right incorporated in its press publication if that work or the subject matter of a related right is no longer protected under the provisions of this Act.

(6) The rights referred to in paragraph one of this Article shall run for two years from the first lawful publication of the press publication. This term shall begin on 1 January of the year following the date of publication of the press publication.

(7) The author shall have the right to an appropriate share of the revenues that the publisher of the press publication in which the author's copyright work is incorporated receives from the information society service provider under paragraph one of this Article. The author may not waive this right.

**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.**

The definition of press publication and consequently the subject matter of protection by LNI is the same as defined in Article 2(4) CDSMD.

According to paragraph 2 of Article 139a of the Copyright and Related Rights Act (hereinafter the Slovenian Copyright Act), a press publication means a collection composed mainly of literary works of a journalistic nature, which may also include other copyright works or subject matter of related rights and which:

1. 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;

2. has the purpose of providing the general public with information related to news or other topics; and
3. is published in any media under the initiative, editorial responsibility and control of a service provider.

According to paragraph 3 of Article 139a of the Slovenian Copyright Act, periodicals that are published for scientific or academic purposes, such as scientific journals, are not press publications.

- 4. Does the LNI protect against uses of individual words or very short extracts? If these are excluded from protection, how are they defined? Please note whether a qualitative or quantitative approach is taken and whether such short extracts may include non-literary content. Please note whether there are specific provisions on headlines.**

The use of individual words or very short extracts of a press publication are excluded from protection (paragraph four of Article 139a of the Slovenian Copyright Act). There is no definition of the aforementioned terms.

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

According to Article 139a of the Slovenian Copyright Act, mere facts are not explicitly excluded from protection.

- 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 paragraph 5 of Article 139a of the Slovenian Copyright Act, the publisher of a press publication may not enforce the right to exclusively reproduce its press publication or make its press publication available to the public, by prohibiting the use of a work or subject matter of a related right incorporated in its press publication if that work or the subject matter of related right is no longer protected under the provisions of the Act.

Regarding the expiry of the terms of copyright protection, in general terms, copyright protection expires 70 years after the author's death (Article 59 of the Slovenian Copyright Act).

According to Article 9 of the Slovenian Copyright Act, ideas, principles or discoveries, official legislative, administrative or judicial texts or folk literary and artistic creations are excluded from copyright protection.

- 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.**

According to Article 139a of the Slovenian Copyright Act, the beneficiaries of the protection for press publication are publishers of press publications established in the European Union.

### **AC 3: Restricted acts**

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

According to paragraph one of Article 139a of the Slovenian Copyright Act, the publisher of a press publication established in the European Union has, for the use of a press publication in the context of the services of an information society service provider as regulated by the Act governing electronic commerce market, the exclusive right to:

1. reproduce its press publication;
2. make its press publication available to the public.

This provision defines the services of an information society service provider in connection with the Electronic Commerce Market Act (<http://www.pisrs.si/Pis.web/cm?idStrani=prevodi>).

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

According to paragraph four of Article 139a of the Slovenian Copyright Act, the rights of the publisher do not apply to acts of hyperlinking. Nevertheless, the provision does not provide for any definition of hyperlinking.

### **AC 4: Targeted users**

#### **11. Does the LNI target use by a specific kind of user (provider)? Please provide any relevant definitions. Specifically, please indicate whether private or non-commercial uses by individual users are covered. Please also indicate whether online platforms (OCSSPs) are covered.**

According to paragraph 4 of Article 139a of the Slovenian Copyright Act, private or non-commercial uses of press publications by individual users are not covered.

#### **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 paragraph 5 of Article 139a of the Slovenian Copyright Act, the publisher of a press publication cannot enforce the rights against the author of the copyright work that is incorporated in the press publication or the holder of a related right whose subject matter is incorporated in the press publication, and may not prevent the author or the holder of a related right from using the same copyright work or the same subject matter independently of the publisher's press publication in which it is incorporated.

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

Please describe the applicable rules.

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

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

Exceptions and limitations are set out in Articles 46-57b of the Slovenian Copyright Act and apply to all rights.

## **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 Slovenian Copyright Act does not include any provisions on the licensing of uses of press publication. The licensing is regulated in the Act Regulating Collective Management of Copyright and Related Rights (<http://www.pisrs.si/Pis.web/cm?idStrani=prevodi>).

## **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 paragraph 7 of Article 139a of the Slovenian Copyright Act, the author has the right to an appropriate share of the revenues that the publisher of the press publication in which the author's copyright work is incorporated receives from the information society service provider when reproducing and making its press publications available to the public. Nevertheless, the provision does not provide any further details.

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

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

According to paragraph 6 of Article 139a of the Slovenian Copyright Act, the publisher's right to reproduce and make its press publications available to the public runs for two years from the first lawful publication of the press publication. The term begins on 1 January of the year following the date of publication of the press publication.

## **AC 9: Waiver**

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

According to paragraph 7 of Article 139a of the Slovenian Copyright Act, author has the right to an appropriate share of the revenues that the publisher receives. According to the same provision, this right to remuneration is unwaivable.

Upon careful examination of this provision, a pertinent question arises regarding the individuals or entities entitled to an appropriate share of the revenues. According to Slovenian Copyright Act the term "author" can be interpreted as either the creator of the work or the holder of material copyrights. The practical consequence of the wording of this implementation will become evident when applied in practice (most probably it will be managed through the existing system of collective management of rights in Slovenia.)

**AC 10: Entry into effect**

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

The Act Amending the Copyright and Related Rights Act – ZASP-I came into effect on 26 October 2023.

According to transitional and final provisions of the ZASP-I, the provisions of the new Art. 139a of the Copyright and Related Rights Act do not apply to media publications 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.**



## 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 of the CDSMD has been transposed into Slovenian national law through an amendment to the “Zakon o avtorski in sorodnih pravicah (Copyright and Related Rights Act; from now on: ZASP)”. The amendment was published in the number 130-3087/2022 of the Official Gazette of the Republic of Slovenia on 11 October 2022 and entered into force on 26 October 2022.

Upon closer examination, it is evident that the transposition of Article 17 of the CDSMD into Slovenian national law takes a textual (“*ad litteram*”) approach. This is further corroborated by the fact that Article 17 of the CDSMD has been broken down and transposed into amended Articles 163.c through 163.h of the Slovenian Copyright and Related Rights Act. This detailed incorporation suggests a strong adherence to the original text of the EU directive, without significant adaptations to fit 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.**

Official language of the jurisdiction: <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2022-01-3087?sop=2022-01-3087>

English translation: <https://www.wipo.int/wipolex/en/text/587464>

**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?**

Article 163.c of the ZASP stipulates that the object of protection are copyrighted works when they are made available on online content-sharing services.

### **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.**

Article 163.c/1 of the ZASP provides protection exclusively to the author. The term author is construed to encompass both the original author and those individuals to whom the author transferred their rights in accordance

with Article 70 of the ZASP. It is important to note that the ZASP does not include a provision which would equate the term author with the term right-holder.

The definition of an author is provided in Article 10 of the ZASP, which describes an author as “a natural person who has created a copyright work” and the definition of a copyrighted work is provided in Article 5 of the ZASP, which describes copyrighted works as “individual intellectual creations in the fields of literature, science, and the arts, which may be expressed in any mode.” Furthermore, Article 163.b/3 of the ZASP extends the scope of beneficiaries to include right-holders of related rights, in addition to the original author.

The most notable divergence between the Slovenian ZASP and EU standards, particularly those set forth in Article 17/2 of the CDSMD, is in the definition of a right-holder. Article 17 of the CDSMD explicitly references the narrowly defined list of right-holders in Article 3 of the Directive 2001/29/EC while ZASP expands this definition with inclusion of the rights of publishers in Articles 139 to 141 of the ZASP. This deviation is significant because the inclusion of these additional types of right-holders in Slovenian law raises questions concerning its complete alignment with EU standards.

### **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”)?**

Article 163.c/1 in accordance with Article 163.b/3 of the ZASP offers protection to right-holders against unauthorised “communication to the public” of copyrighted works via online content-sharing service providers. Specifically, the unauthorised acts covered under Article 163.c of the ZASP pertain to “making available to the public” works which have been uploaded to the server of an online content-sharing service provider by its users. The phrase “communication to the public” is the legal term used to qualify these acts, thereby defining the legal framework within which right-holders are safeguarded.

### **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”).**

According to Article 163.b of the ZASP, the definition of an online content-sharing service provider aligns textually with the CDSMD. It defines such a provider as an information society service under the provisions of the Slovenian Electronic Commerce Market Act (Zakon o elektronskem poslovanju na trgu – from now on: ZEPT),<sup>1</sup> which itself implements relevant EU legislation. Specifically, an online content-sharing service provider is deemed to be a service “whose main purpose or one of the main purposes is to store and offer to the public access to a large number of copyright works uploaded to a server by users of its services and organised and promoted by that provider for the purpose of making a profit.”

However, there are some noteworthy aspects:

1. Exclusions: Article 163.b/2 of the ZASP specifies that certain types of information society service providers, such as not-for-profit online encyclopedias and scientific or educational repositories, are not considered online content-sharing service providers. This is consistent with the CDSMD.
2. Large amounts: The term “large amount of copyrighted works” is not specifically defined in the ZASP, which seems to be in line with Recital 63 of the CDSMD. The lack of a specific definition allows for case-by-case assessments based on a combination of elements.

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<sup>1</sup> Uradni list RS, nr. 96/09 through 18/23 – ZDU-10.

3. Facilitating piracy: Unlike Recital 62 of the CDSMD, which specifies that service providers facilitating copyright piracy should not benefit from liability exemption mechanisms, the ZASP does not explicitly address this point.
4. Information Society definition: The definition of an “information society service” in the ZASP is more narrow compared to Directive 2015/1535, referred to by the CDSMD. In Slovenian law, an information society service is defined as “economic activities conducted over the internet that are continuously accessible,”<sup>2</sup> while the EU Directive defines it as “any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services” with a specific set of exclusions in the annex, which are not so obvious in Slovenian law.

Given these points, while the general framework aligns closely with EU directives, there are nuanced differences, particularly regarding the definition of information society services and the absence of specific provisions related to facilitating piracy.

**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.**

Prior to the adoption of the LNI, targeted service providers in Slovenia were considered to potentially infringe upon relevant exclusive rights.<sup>3</sup> According to the extensive discussion by Damjan,<sup>4</sup> it seems that the liability of service providers was considered to be primary in nature. Damjan indicates that service providers are culpably liable based on general tort law for various types of infringement, including violations of personality rights and copyright laws. This is in addition to the special rules in ZEPT that describe the conditions for exclusion from liability. Importantly, Damjan notes that the recipient of the services usually does not act on behalf of the service provider in legal transactions. As a result, there appears to be no basis for the service provider to be held responsible for the actions of its customers as if they were its own actions (secondary liability). What is decisive for the liability of the service provider is not the conduct of the person who directly provided (i.e., published on the internet) the contentious content, but rather the service provider's own actions in compliance with Articles 9 to 11 of the ZEPT after becoming aware of the illegal nature of certain content. If the service provider fails to take appropriate action, the public availability of such content on its servers is the consequence of its omission, and liability may arise from this failure to act.

**AC 5: Scope of protection**

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

Prior to the transposition of the CDSMD service providers targeted by the LNI appeared to benefit from the “safe harbour” provision under Article 11 of the ZEPT. This provision provided a form of immunity, essentially shielding these online content-sharing service providers (OCSSPs) from liability for data stored at the request of service recipients, so long as the service providers were not aware of the unlawful nature of the data or acted quickly to remove it upon obtaining such knowledge.

However, this landscape has changed with the enactment of Article 163.c/2 of the ZASP. The “safe harbour” provision in the ZEPT no longer applies to these service providers, altering the framework of liability for OCSSPs and effectively revoking their previous immunity.

**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**

<sup>2</sup> Article 1 of the Electronic Commerce Market Act.

<sup>3</sup> B. J. Turk: Pravni vidiki deljenja vsebin na spletu, URL: »<https://www.findinfo.si/medijsko-sredisce/v-srediscu/pravni-vidiki-deljenja-vsebin-na-spletu-307458>«.

<sup>4</sup> M. Damjan: Odškodninska odgovornost internetnih posrednikov, in: M. Damjan (ed.): Pravo v informacijski družbi. IUS Software, GV založba, Ljubljana 2014, p. 26.

**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.**

Based on Article 163.c/3 of the ZASP and relevant EU law, LNI does provide a form of conditional immunity for targeted online content-sharing service providers (OCSSPs). However, this immunity is subject to meeting specific obligations to mitigate the risk of copyright infringement:

1. Efforts to obtain permission: The OCSSP must make all reasonable efforts to obtain permission from the author for the copyrighted work in question. This condition primarily addresses the concern of currently infringing content.
2. Due diligence for current content: The OCSSP must act with the diligence of a “good professional” (in Slovene “*dober strokovnjak*”) to ensure that specific copyrighted works, for which it has been provided relevant and necessary information, are unavailable on its platform. This aspect also pertains to current infringing material.
3. Notice and takedown for current content: Upon receiving a substantiated request from the author, the OCSSP must promptly remove the infringing content or disable access to it.
4. Preventive measures for future content: In addition to immediate removal or disablement, the OCSSP must take all reasonable measures to prevent the re-upload of the same infringing content in the future. This condition explicitly deals with future infringing content and signifies a proactive obligation to monitor and filter such content.

**9. Does the LNI identify a standard of care to which targeted service provider should adhere in relation to the conditions of the immunity? For example, the Directive makes reference to “best efforts” and to “high industry standards of professional diligence”. Please also discuss whether you consider any such terms used in the LNI to represent accurate translations of the corresponding terms in the EU provision, preferably taking into account both the English language and the national language versions.**

The LNI, based on Article 163.c/3 of the ZASP, sets forth a standard of care using terms like “all reasonable efforts” (in Slovene: “*si je po najboljših močeh prizadeval*”) and “acting with the diligence of a good professional” (in Slovene: “*si je v skladu s skrbnostjo dobrega strokovnjaka prizadeval*”).

It’s noteworthy that there is a discrepancy between the original Slovene version and the English translation of the ZASP. Specifically, the English version of the ZASP uses the phrase “all reasonable efforts,” which may not capture the full intent of the original Slovene language. The Slovene term “*si je po najboljših močeh prizadeval*” actually aligns much more closely with the concept of “best efforts”, as outlined in the CDSMD. Unlike “all reasonable efforts,” the term “best efforts” typically implies a higher standard of care that goes beyond mere reasonableness. Therefore, it appears that the Slovene version of the ZASP is more in line with the EU directive’s higher standards, whereas the English translation of the ZASP might not fully convey this.

Additionally, there’s a difference between the terms “high industry standards of professional diligence,” as mentioned in the Directive, and “diligence of a good professional,” as stated in the ZASP. Even though the terms may be translated differently, according to explanations in the amendment to the ZASP,<sup>5</sup> the intended standard of diligence seems to be the same – higher than the diligence of a prudent businessperson. According to commentary of Article 17 of the CDSMD,<sup>6</sup> the evaluation of what constitutes “best efforts” or “high industry standards” is dependent on the type of content at issue, market practices, and the reference industry. In the context of the Slovene

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<sup>5</sup> Official Explanations to the Amendment of the ZASP, Article 27, URL: [»https://www.iusinfo.si/literatura/OBZA101Y2022N234IXP0C0A27/«](https://www.iusinfo.si/literatura/OBZA101Y2022N234IXP0C0A27/).

<sup>6</sup> E. Rosati: Article 17, in: E. Rosati (ed.): Copyright in the Digital Single Market. Oxford University Press, Oxford 2021, p. 330.

Code of Obligations,<sup>7</sup> the “diligence of a good professional” also refers to industry standards. However, the phrase may not be as explicitly clear as “high industry standards”, which indirectly refers to the relevant practices.<sup>8</sup>

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

Yes, the conditions for immunity in the LNI are subject to the principle of proportionality. Article 163.c/4 of the ZASP explicitly states that in assessing whether an online content-sharing service provider has fulfilled its obligations, the principle of proportionality should be considered. Specifically, this involves taking into account:

1. The type, audience, and extent of the services and the type of copyright works uploaded by the users of the service.
2. The availability and cost of suitable and effective means for the service provider to comply with these obligations.

In sync with Recital 66 of the CDSMD, the principle of proportionality in Article 163.c/4 of the ZASP is not a one-size-fits-all approach but rather a nuanced concept. It introduces differentiating obligations for service providers that vary based on several factors such as the scale of the service, the type of content hosted, and the technology available for monitoring. This creates a flexible framework where the obligations of service providers can evolve with technological advancements and market dynamics. Smaller providers or those hosting less risky content types might face less stringent requirements. Additionally, the financial feasibility of implementing compliance measures is considered, meaning that costly solutions may not be required for small-scale 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.**

Yes, the conditions for immunity under the ZASP do indeed differ based on the characteristics of the specific online content-sharing service provider, particularly in relation to its size and age. The principle of proportionality is explicitly mentioned in Article 163.c/4 of the ZASP, which stipulates that in determining whether a service provider has complied with its obligations, several factors should be considered. These include “the type, audience and extent of the services” and “the availability of suitable and effective means and their cost for the service provider.”

Article 163.d further clarifies these distinctions by setting forth special conditions for “new online content-sharing service providers,” defined as those available to the public in the EU for less than three years and with an annual net turnover not exceeding EUR 10 million. Apart from the different scope of providers, as set in Article 163.d, key differences for conditions of immunity for new specific service provider primarily revolve around diligence requirements and the prevention of re-uploads. Specifically, the general Article 163.c requires that the service provider act with “the diligence of a good professional” to ensure that specific copyrighted works are not made available on their platform. This element of professional diligence is notably absent in Article 163.d which regulates new service providers. Additionally, Article 163.c mandates that the service provider must make efforts to prevent the re-upload of copyrighted works that have been notified and removed. This requirement is not explicitly stated in Article 163.d, making the conditions for immunity somewhat less stringent for new online content-sharing service providers. Article 163.d/4 introduces an additional condition for immunity for larger new online content-sharing service providers, specifically those with more than 5 million unique monthly visitors. This additional condition requires these providers to demonstrate that they have made best efforts to prevent further uploads of copyrighted works that have been notified and for which the author has provided relevant information.

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<sup>7</sup> Uradni list RS, nr. 97/07 through 20/18 – OROZ631.

<sup>8</sup> V. Rijavec, komentar 6. člena Obligacijskega zakonika, URL: »<https://www.iusinfo.si/literatura/COM101Y2003N8670613239P1C1A6/>«.

## **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.**

Yes, the LNI in the form of Article 163.d of the ZASP explicitly depends the conditions of a service provider's immunity on the level of cooperation from right-holders. This is in strict alignment with the spirit of Recital 66 of the CDSMD. In this regulatory framework, the onus is placed upon right-holders to furnish "relevant and necessary information" to guide service providers in identifying and subsequently removing or disabling unauthorised content. Specifically, if service providers receive this level of detailed information from right-holders and fail to act upon it, they may be held liable for unauthorised acts of communication to the public.

### **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.**

Yes, the LNI does allow right-holders to "earmark" content whose unauthorised online availability could cause them significant economic harm. This is specified in Article 163.g of the ZASP. According to this article, an author may request that an online content-sharing service provider remove his notified copyrighted work or disable access to it if the work has been uploaded and communicated to the public without the author's permission. Importantly, the author is required to "substantiate his request to the extent necessary" for the service provider to make an informed decision regarding the removal or disabling of access to the work.

Furthermore, the regime set in place for such earmarked content, as regards the rights of the users, is detailed in Article 163.h of the ZASP. In cases of removing such "earmarked" content, an effective, and free complaint procedure for users must be in place. That is to say, users must be promptly informed of such actions and given the option to file a complaint, which must be decided by a human being without delay.

## **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 LNI does not require service providers to engage in general monitoring for unauthorised content. This is evident in Article 163.c/3/3 of the ZASP, which specifies that the service provider's obligation to act is triggered only when substantiated information is provided by the author. This effectively means that the service provider is not required to carry out general monitoring of all content; rather, their responsibilities are activated by the receipt of "detailed and verified information". Nevertheless, the ZASP does not provide a precise definition for this term.

There is also an outright explicit prohibition against general monitoring in Article 163.e/3 of the ZASP, which specifically states that conditions of the immunity shall not impose a general monitoring obligation in respect of the content uploaded by users to the server.

### **15. Does the LNI recommend or dissuade from using any specific kind of technology in order to adhere to the conditions for immunity? If so, please describe.**

The LNI in the form of the ZASP does not explicitly recommend or dissuade from using any specific kind of technology to adhere to the conditions for immunity. Unlike the complaint and redress mechanism, which mandates human review according to Article 163.h/4, the LNI leaves the choice of technology to the service provider.

## **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.**

Prior to the adoption of the LNI, Slovenian national law did provide for exceptions or limitations to copyright for specific purposes. Article 53 of the ZASP-H allowed for the transformation of a disclosed work under several conditions, one of which specifically pertained to the creation of a parody or caricature. This transformation was permissible as long as it did not create confusion regarding the source of the original work. This signifies that the pastiche exception was incorporated into the legislation solely upon the enactment of the LNI.

Additionally, Article 51 of the ZASP addresses the matter of quotations, articulating that it's permissible to quote segments of a disclosed work or entire disclosed works, provided it serves the purposes of illustration, argumentation, or reference. This Article implicitly encompasses critique, as it aligns with argumentation. A crucial stipulation within the law for this exception is the clear indication of the source and authorship of the original work, should such information be available on the work being quoted or transformed.

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

According to Article 163.e/1 of the ZASP, the LNI explicitly addresses only quotation, criticism, review, caricature, parody, and pastiche exception or limitation. It does not preclude the application of other exceptions or limitations; thus, additional limitations as provided in Articles 46 to 57.d of the ZASP may be invoked.

## **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.**

In general, the LNI does not prescribe a fixed set of criteria for determining compensation levels, transparency requirements, or data-sharing mandates. However, it does stipulate a "best efforts" approach as outlined in Article 163.d/3/1 of the ZASP. Per this Slovenian legal clause, online content-sharing service providers are obligated to demonstrate their best efforts in securing licensing agreements with authors. This entails that service providers are anticipated to actively engage with collective management organizations and individual rights-holders diligently. Consequently, an inability to procure a fair and balanced agreement might suggest that the service provider fell short of the "best efforts" standards delineated in the ZASP.<sup>9</sup>

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<sup>9</sup> M Leistner: European copyright licensing and infringement liability under Art. 17 DSM- Directive compared to secondary liability of content platforms in the U.S.— Can we make the new European system a global opportunity instead of a local challenge?' (2020) 2 Zeitschrift für Geistiges Eigentum 123, p. 149– 150; and E. Rosati: Article 17, in: E. Rosati (ed.): Copyright in the Digital Single Market. Oxford University Press, Oxford 2021, p. 331.

**19. Under the LNI, do licenses obtained by a platform cover the platform’s users and/or the other way around? If so, please explain.**

Under the LNI, as indicated by Article 163.c/1 of the ZASP, licenses obtained by an online content-sharing service provider do extend to cover the platform's users in specific situations. Specifically, the permission granted to the service provider to communicate copyrighted works to the public also encompasses acts of communication carried out by users of that provider’s services. However, this coverage is limited to cases where users act without the intention to obtain direct or indirect economic advantage or where their activities do not generate substantial revenue.

Under the LNI framework, and considering Article 163.c and Recital 69 of the CDSMD, it appears that if a user has authorisation to use a copyrighted work, this authorisation does extend to cover the platform's act of communication to the public. Article 163.c specifies that an online content-sharing service provider performs an act of communication to the public when it makes such copyrighted works available. Thus, if the user has obtained the author’s permission, it seems plausible that this permission would also cover the platform's actions in making the work available to the public.

**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?**

Yes, the LNI does include a concept of “legitimate uses,” as outlined in Article 163.e/1 of the ZASP. According to this provision, an online content-sharing service provider may not prevent the availability of a copyrighted work uploaded by a user if the work is being used in the context of exceptions and limitations. Moreover, the article specifies that users should not be prevented from uploading and communicating content generated by them for the explicit purposes of quotation, criticism, review, caricature, parody, or pastiche.

**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?**

In the context of the LNI as outlined in the ZASP, there is no specific concept of “manifestly infringing uploads.” The legislation does not differentiate between uploads that are “manifestly infringing” and those that are “non-manifestly infringing.” Therefore, there are no specialised definitions or treatments for uploads based on the level of their apparent infringement within the ZASP framework.

**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.**

In the context of the LNI outlined in Slovenia's ZASP, there are no additional *ex ante* mechanisms designed for the avoidance of action against legitimate content. The relevant provisions for online content-sharing, which range from Articles 163.b through 163.h of the ZASP, do not specify any such *ex ante* safeguards.

**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 LNI as captured in Slovenia's ZASP does make provisions for effective and rapid complaint and redress mechanisms in case of disputes.



Firstly, the legislation mandates that online content-sharing service providers must offer users a complaint procedure that is “rapid, effective, and free-of-charge” for the removal of content or for disabling access to said content.

Secondly, the service providers are required to promptly inform users when content they have uploaded has been removed or access to it has been disabled. The communication must include the reasons for such action and inform the user of their right to file a complaint against the decision.

Thirdly, the ZASP mandates that the terms and conditions for using the service, including the complaint procedure, must be published prominently on the service provider’s website. This ensures that users are aware of their rights and the procedures for filing complaints before they even engage with the platform.

Fourthly, the legislation specifies that a complaint must be decided “without delay by a human being.” This clause ensures that a human review process is integral to the complaint procedure, offering a more nuanced approach than automated systems might provide.

Finally, aside from this formal complaint procedure, the ZASP allows for both the service provider and the user to opt for alternative dispute resolution methods as outlined in Article 82.a of the Act. This offers an additional route for resolving disagreements outside of the formal complaint system. In practice, these alternative dispute resolution mechanisms are seldom invoked.

**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.**

In addition to formal complaint procedures outlined in Article 163.h, the LNI as described in the ZASP provides for multiple avenues to settle disputes over posted content. According to Article 163.h/5, both the service provider and the user can agree to resolve disputes in accordance with Article 82.a of the ZASP. This article specifies that authors and users can resolve disputes through mediation or any other form of alternative dispute resolution. In practice, these alternative dispute resolution mechanisms are seldom invoked.

Article 82.a also allows organisations representing authors of particular categories of copyrighted works to initiate these alternative dispute resolution procedures on behalf of the author.

In cases where alternative dispute resolution does not suffice, recourse to the courts is also available as per Article 167 of the ZASP. This article offers a comprehensive list of legal remedies that a right holder may seek, e.g., prohibiting the infringement. However, the procedures are notably slow and lack effectiveness.

**AC 12: Sanctions**

**25. Does the LNI foresee sanctions in cases of abuses of the procedures it introduces by right-holders, users and/or platforms? If so, please describe these.**

The LNI as described in the ZASP does not appear to explicitly provide for sanctions in cases of abuses of the procedures it introduces, whether by right-holders, users, or platforms. The legislation does outline the rights and responsibilities of each party involved, but there is no specific section detailing punitive measures for abuses or misuse of these procedures.

### **AC 13: Information obligations**

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

The LNI under the ZASP imposes specific information obligations on online content-sharing service providers (OCSSPs). According to Article 163.f of the ZASP, the platform is required to provide relevant information to authors upon their request. Specifically, this information should cover the type of measures the platform has taken to prevent unauthorised acts of communication to the public. In addition to outlining the preventative measures, platforms are also obligated to disclose information about the use of copyrighted works if the platform has obtained permission from the author for such use. These information obligations appear to align with the broader guidelines of Article 17/8 of the CDSMD,<sup>10</sup> which mandates that OCSSPs should provide rightholders with adequate information concerning their practices related to cooperation under Article 163.c and 163.d of the ZASP.

It's worth noting that while the 2018 Commission Recommendation encourages the adoption of clear and transparent policies and the regular publication of reports on activities, such specific recommendations for transparency are not explicitly covered in Article 163.f of the ZASP.

### **AC 14: Waiver**

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

Yes, it appears that right-holders can waive the rights provided by the LNI under the ZASP. The legislation does not explicitly define the form that authorisation must take, implying a level of flexibility. This suggests that right-holders have the discretion to give authorisation in various forms, including potentially waiving their rights entirely. Additionally, the concept of remuneration is not specifically defined in the legislation. This absence of a strict definition, connected with the forementioned flexibility as to the form of authorisation, allows for the possibility that authorisation could be granted 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 under the ZASP came into effect in Slovenia on 26 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)?**

The LNI under the ZASP does not explicitly address the relationship between the protection it provides against OCSSPs and fundamental or human rights. However, Article 163.e/1 of the ZASP does imply a recognition of the human right to freedom of expression. Specifically, the article states that the measures taken by an OCSSP may not prevent users from uploading and communicating content generated for purposes such as quotation, criticism, review, caricature, parody, or pastiche.

#### **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.**

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<sup>10</sup> European Commission: Commission Recommendation of 1.3.2018 on Measures to Effectively Tackle Illegal Content Online (2018), p. 12.