

**Implementation structure of the CDSM Directive (Directive 2019/790)
Hungary**

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Please note that the Draft Proposal follows the language and logic of the Directive whenever comments are omitted.

The proposal intends to implement the CDSM and the SatCab Directives within the frames of the Hungarian Copyright Act (Act LXXVI of 1999), except of Art. 12 of the CDSM Directive that will be implemented in Art. 18(1) of the Act on Collective Rights Management (Act XCIII of 2016).

CDSM Art.	Hungarian Draft Proposal	Comments
1	-	No expressed implementation.
2	2(1) - §33/A(2)2	
	2(2) - §33/A(2)3	
	2(3) - §33/A(1)2	
	2(4) - §82/A	
	2(6) [in conjunction with 17(1)] - §26(8a)	This new paragraph intends to clarify that making accessible already published protected subject matter via OCSSP platforms is also communication to the public.
3	§35/A(2) and §84C(3b) + §95/A(1)	The proposal switches the order of TDM exceptions for the benefit of research organizations and the general public. The justifications claim that this logic is due to the fact that Art. 4 allows TDM for a broader range of audience. No expressed encouragement in the text or the justifications regarding defining commonly agreed best practices [compare to Art. 3(4)].
4	§35/A(1) + §84C(3b)	
5	5(1) - §33/A(3) in conjunction with §33/A(1)3, §33/A(2)1, §33/A(4) and §35(5)	The norms would generally allow digital and distant education more efficiently, in compliance with the Directive's language.
	5(3) - §33/A(3a)	
	5(2) and 5(4)	No implementation.
6	§35(4)	
7	7(1) - §33(4)	
8	§41/L-M and §84/B(1a)	
9	9(1) - §41/M(3)	
	9(2) - §41/M(5)	
10	§41/N	
11	-	No expressed reference to stakeholder dialogues in the text.
12	CMO Act §18(1)	
13	-	No exact implementation of the text or any reference to the compliance of the Hungarian Copyright Act with these provisions.
14	-	No exact implementation of the text or any reference to the compliance of the Hungarian Copyright Act with these provisions.
15	15(1) - §82/B-C	The justification of §82/C correctly lists three exceptions from the scope of ancillary rights, in compliance with Art. 15(1) second, third and fourth sentences. The text of the norm, however, misses to include "private or non-commercial uses

		of press publications by individual users”. That is a formal mistake, easy to be cured.
	§83(1) complies with 15(2)	
	15(4) - §84(1)(g)	
16	-	No exact implementation of the text or any reference to the compliance of the Hungarian Copyright Act with these provisions.
17	17(1) - §57/A(1) and §57/B(1) in conjunction with §26.§ (8a); as well as in conjunction with §73(1)(f), §76(1)(d), §80(1)(e) and 82§(1)(d) (regarding the application of OCSSPs liability regarding the use of subject matter protected by related rights)	Definition in line with Art. 17 and recital 62. Does not define “large amount” or “important role”, however, the justifications clarify that in determining what “large amount” might mean the size of the OCSSP and number of affected subject matter shall be taken into consideration. Authorization shall be obtained through collective rights management (CRM is prescribed by law). Rights holders might opt-out from such system in compliance with §18(1) of the CMO Act. §26.§ (8a) declares expressis verbis that OCSSPs activity is communication to the public/making available to the public.
	17(2) - §57/B(2)	Other than the literal implementation of 17(2), the new rule introduces a burden of proof on the OCSSPs side, in case there is reasonable doubt regarding the validity (existence of) clearance of rights by end-users (that is, that the permission granted to end-users also cover the use of protected subject matter on the platform of the OCSSP).
	17(3) - §57/C	
	17(4) - §57/D(1)	“Best efforts” are implemented as “the care that is generally expected under the given circumstances” (which is the general standard under Hungarian Civil Code §1:4(1)).
	17(5) - §57/D(2)	
	17(6) - §57/E	
	17(7) - §57/G + regarding parodies and other L&Es: §34/A in conjunction with §13	<p>§57/G implements literally the first sentence of Art. 17(7). At the same time, it omits to implement the second sentence here. This generally true to the fact that parody etc. exceptions are intended to be implemented as a general exception to copyrights under §34/A (see comments below). This logic, however, indirectly leads to the omission of the declaration of quotation, criticism, review, use for the purpose of caricature, parody or pastiche as “user rights” [“Member States shall ensure that users (...) are able to rely on (...)]. In light of the fact that L&Es are generally not declared to be user rights in Hungarian law, this omission looks problematic.</p> <p>The proposal includes two options to introduce a parody exception, and both of them favour the general introduction of a parody exception. Option A) allows “anyone to use any work for the purposes of (...) parody by evoking the original work and by expressing humour or mockery”. Option B) allows “anyone to use any work for the purposes of (...) creating a parody, caricature or pastiche”. In both cases, the use shall not affect more than a reasonable amount of the original work. Option B) recommends following the language of Directive 2001/29, and recommends leaving the interpretation of the concepts of parody, caricature and pastiche to the courts.</p>

		<p>Option A), however, focuses solely on parodies. Lacking any special justification for this wording, we believe that Option A) either recommends omitting the implementation of the caricature and pastiche exceptions or deems them to be parts of the concept of parody. Option A), however, expressly recommends including the <i>Deckmyn</i> requirements in the corpus of the Copyright Act.</p> <p>Furthermore, regarding §13: Option A) also proposes to introduce a new §13(2) according to which the right of integrity might only be infringed, if the use is not necessary and proportional for the purposes of parody.</p>
	17(8) - §57/F	
	17(9) - §57/H-I	
	17(10)	No formal implementation
18	Formal changes to §55	18(1) is properly covered by §16(4) regarding authors, §55 extends 18(1) to performers.
19	§55/A	
20	20(1) - §48(1) 20(2) - §48(2)	Bestseller clause was already present in Hungarian law, hence the implementation of 20(1) in §48(1) was much more a formality (terminological changes + reference to out-of-court settlement possibilities).
21	§102	
22	-	No exact implementation of the text or any reference to the compliance of the Hungarian Copyright Act with these provisions.
23	23(1) - §55/B 23(2) - §60(4)	
24	-	
25	-	
26	-	
27	-	
28	-	
29	-	
30	-	
31	-	
32	-	

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