

Digital Distance Education The Hungarian Emergency Law

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Milestones of implementation #1

- **First draft** (not public) by the end of summer of 2019.
- **Preparatory public consultation** in November and December 2019 (six panel discussions).
- **COVID** reaches Hungary in early 2020; **state of danger** declared on March 11, 2020 – temporary legislation via government decrees allowed from March 30, 2020.



Milestones of implementation #2

- **Education goes digital on March 16, 2020.**
- **Fast-track implementation of Art. 5 of the CDSM:** Government decree no. 125/2020. (IV.16.) on the application of limitations and exceptions for educational purposes in a state of emergency.
- The implementation of Article 5 took its final form by the acceptance of **Act LVIII of 2020 on June 16, 2020** (on the cessation of the state of danger, with the effect of June 18, 2020).



Milestones of implementation #3

- Preparation for the implementation of the CDSM and SatCab 2.0 Directives continues: first (full) **draft bill published on May 7, 2020**; it was submitted to **public consultation** in May-June 2020;
- **Amended draft bill of end of July 2020** submitted to targeted (semi-public) consultation until 14 August 2020;
- **Third version of draft bill was submitted** to semi-public consultation in February 2021. (Plans were changed from a November 2020 consultation due to the hopes of having access to the Commission guidance by the end of 2020.)



Milestones of implementation #4

- The bill was **submitted** to the Parliament on March 31, 2021 (at 10:12pm).
- The Parliament has **accepted the bill** with 136 yeas, 29 nays, and 1 abstain on April 28, 2021.
- **Act XXXVII of 2021** was **published** on May 6, 2021.
- **Date of entry into force: June 1, 2021.**





Key elements of the implementation of Art. 5 CDSM #1

- **Pre-implementation status quo** (in line with the InfoSoc Directive): analogue and digital on-the-spot educational exceptions, including the adaptation of works existed.
- **Amendment** of Art. 34(3) and (4); Art. 35(5); Art. 68(2) and Art. 113(1), as well as **introduction** of Art. 33/A and 34(3a) of Act LXXVI of 1999 on Copyright Law.
- Act XXXVII of 2021 will **renumber or amend** a few of the affected articles.

Key elements of the implementation of Art. 5 CDSM #2

- **Art. 33/A:** *secure electronic systems* [soon renumbered to Art. 33/A(2)3.];
- **Art. 34(3a):** the use is deemed to occur on the soil of the country where the educational institution is domiciled [technical amendments to come];
- **Art. 34(3)(b):** “borrowing” (“grand citation”) and **Art. 34(4)** on making and presenting derivative works (adaptations) in the course of (in-person) digital and distance education;
- **Art. 35(5):** distributing and making available to the public via secure electronic systems parts of books or (full) journal or newspaper articles for purposes of education/examination, in line with the number of involved students.
- **Art. 68(2):** the use of the image of works of fine art, architecture, applied art, industrial works of design which constitute an artistic creation and photographic works in the course of *scientific dissemination of knowledge*. (Replacing the ban on citing from these subject matters.)
- Art. 113(1) technical amendment.

Key notes/concerns related to the implementation of Art. 5 CDSM

► Note:

- No provisions regarding Art. 5(2) and (4) re existing licensing mechanisms and the provision of fair compensation for the benefit of rightholders.
Σ True exceptions are introduced.

► Concerns:

- Uncertainties related to the practical use of “secure electronic systems”:
 - can a lecturer rely on e.g. Google Classroom, Zoom; or she can only use the internal platforms of the educational institution? (What if the system cracks down under the pressure?)
- How broad is “scientific dissemination of knowledge”?
 - “Secure electronic systems” does not apply to these uses.
- Soon to be historical: until June 1, 2021, there is/was no meaningful link between digital education and the digital exceptions of cultural heritage institutions, including reproduction by libraries for educational purposes. [Art. 6 CDSM v. Art. 35(4) of the Hungarian Copyright Act.]



Readings (in English)

- *Péter Mezei*: [An update on the Hungarian implementation process of the CDSM Directive](#), Kluwer Copyright Blog, June 22, 2020
- *Paul Keller*: [Hungary's fast tracked implementation of Article 5 CDSM directive in response to the pandemic](#), Kluwer Copyright Blog, June 23, 2020
- *Dávid Ujhelyi*: [A third take on the Hungarian implementation of Art 5 of the CDSM Directive](#), Kluwer Copyright Blog, August 31, 2020

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