

Legislative Bias and RIA:
Case Study of Article 17 CDSM in Czech Republic,
Public Choice Theory and Cognitive Biases
Ondřej Woznica, Michal Vosinek *

Contents

I. Introduction	169
II. Article 17 RIA in Czech Republic.....	172
A. Article 17 RIA Case Study.....	173
III. Systemic Issues and Mitigation Strategies	179
A. Public Choice and Regulatory Capture	179
B. Cognitive Biases	183
C. Mitigation Strategies to Improve RIA Processes	186
IV. Concluding Remarks.....	188
V. Bibliography.....	189

I. Introduction

Regulatory Impact Assessment ("RIA") is an essential component of good and effective governance. It provides – at least in theory – a structured methodology for a

* Ondřej Woznica is a Ph.D. candidate at Department of Legal Theory, Faculty of Law, Masaryk University, Brno, Czech Republic.

E-mail: Michal.Vosinek@law.muni.cz.

Michal Vosinek is a Postdoc researcher at Department of Law and Technology, Faculty of Law, Masaryk University, Brno, Czech Republic,

E-mail: Ondrej.Woznica@law.muni.cz.

This paper was written at Masaryk University as part of the project n. MUNI/A/1172/2022 'Fostering Internationally Oriented Scientific Results of PhD Students in Intellectual Property Law'.



cost-benefit analysis of proposed laws and their possible alternatives.¹ RIA as a process adopts an evidence-based approach, promoting clear, transparent, flexible, and consistent legislation. Using empirical methodologies, RIA assesses the potential impact of proposed legislation and requires legislators to conduct and document a thorough cost-benefit analysis. This systematic process is instrumental in making well-informed decisions and ensures that policy decisions are based on thorough evidence and rigorous analysis.²

This article focuses on how RIA is performed in the Czech Republic, studying a specific example of the transposition of Article 17 of the Directive on copyright and related rights in the Digital Single Market³ ("Article 17" and "CDSM"). The intense debate around Article 17 validates the choice to study it as a means to explore RIA processes. It has not only received wide scholarly attention but also became the center of public discourse.⁴ Even prominent online platforms protested Article 17, with few going so far as suspending their services as Wikipedia did for an entire day.⁵

Subsequently, the article narrows its focus on a specific part of the legislative process, using the transposition of a controversial European directive as an example. The research seeks to answer several questions. Firstly, how did the Czech legislature come to the specific solution presented in the RIA, and what supporting arguments were provided. Secondly, article explores whether these solutions and arguments were shaped under undue influences alien to proper legislative process. Lastly, the article asks which strategies mitigate observed issues and enhance RIA processes.

¹ OECD, 'Regulatory Impact Analysis: A Tool for Policy Coherence' (2009).

² Weigel, 'Regulatory Impact Analysis Meets Economic Analysis of Law: Differences and Commonalities' in A. Marciano, G. B. Ramello (eds.), *Encyclopedia of Law and Economics*, (New York, NY: Springer, 2019), pp. 1795–1802 p. 1796 et seq.

³ *Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC*.

⁴ For the scale of discussion see e.g., Stalla-Bourdillon et al., 'An academic perspective on the copyright reform' (2017) 33 *Computer Law & Security Review* 3–13; Nordemann, *Art. 17 DSMCD a Class of Its Own? How to Implement Art. 17 Into the Existing National Copyright Acts – Also a Comment on the Recent German Discussion Draft* (2020); Senftleben, *Bermuda Triangle – Licensing, Filtering and Privileging User-Generated Content Under the New Directive on Copyright in the Digital Single Market* (2019); Angelopoulos and Quintais, 'Fixing Copyright Reform: A Better Solution to Online Infringement' (2019) 10 *JIPITEC*; or non-academic publications such as Mat Reynolds, 'What is Article 13? The EU's divisive new copyright plan explained' *WIRED UK* (2019).

⁵ Meyer, 'Why Four Versions of Wikipedia Have Deliberately Gone Dark' (2019) *Fortune*.

It is important to note that the RIA discussed in this article focuses on European legislation being transposed into the Czech legal system. Therefore, to fully understand the full scope of possible weak spots in the RIA process, it is essential to conduct studies of RIA in other instances, including laws originating from within the Czech Republic. This would provide a clearer understanding of the full scope of RIA weaknesses. Nonetheless, additional RIAs are out of scope of this initial study of the problem.

The case study presented in the first Part of the article reveals several shortcomings of Czech RIA for Article 17. The RIA appears to serve as a retrospective explanation after the final legislative draft. Legal experts are primary responsible actors, despite their limitations in empirical methodologies and quantifying costs and benefits.⁶ Additionally, the consultation process lacks substantial and meaningful engagement with the public and critical stakeholders, further limiting the effectiveness of the RIA.

The second Part of the article focuses on these issues from public choice theory⁷ and behavioral economics⁸ perspectives, shedding light on the challenges of regulatory capture⁹ and cognitive biases¹⁰. The analysis offers insight into how interest groups may exert undue influence on the regulatory process and how cognitive biases may negatively impact decision-making, potentially leading to suboptimal and biased outcomes of RIA.

Finally, the article presents practical and actionable strategies to mitigate the identified risks. The strategies include strengthening the resilience of RIA processes include altering (i.e., reversing) the order of legislative drafting, involving economic experts alongside legal professionals, training officials to identify and counteract biases,

⁶ See Part II.A.

⁷ I.e. the study of behavior of political actors via economic method. Elkin-Koren and Salzberger, *The Law and Economics of Intellectual Property in the Digital Age*, p. 236 et seq.

⁸ Traditional economic models operate under the assumption of absolute rational choice. Behavioral sciences, however, showcase its limits, i.e., irrational acts. Behavioral economics, conversely, acknowledges irrational actors and proposes new theories that better reflect real-world behavior, moving beyond the old-school economic models. See Baron and Wilkinson-Ryan, 'Conceptual Foundations: A Bird's-Eye View', *Research Handbook on Behavioral Law and Economics* (Edward Elgar Publishing 2018) p. 19 et seq.

⁹ A situation where interest groups control the behavior of regulators. Shughart and Thomas, 'Interest Groups and Regulatory Capture' in Congleton, Grofman, Voigt (eds.), *The Oxford Handbook of Public Choice*, Volume 1, (Oxford University Press, 2019), p. 585.

¹⁰ I.e., cognitive patterns distorting rational behavior. Thaler and Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (Penguin Books, 2009) p. 23 et seq.

promoting transparency in consultations, utilizing scientific research, and improving institutional design to refine the RIA process continuously.

This article contributes to the ongoing research in three main ways. Firstly, it investigates a specific example of regulatory processes, identifying the associated challenges associated with RIA. Secondly, it offers an interdisciplinary analysis of these issues through the lenses of public choice theory and behavioral economics. Lastly, the article presents a range of recommendations that enhance regulatory and political processes. By intersecting the fields of legal theory, law & economics, public choice theory, and behavioral economics, this research equips policymakers and stakeholders with practical and actionable strategies to promote decision-making based on solid evidence.

II. Article 17 RIA in Czech Republic

The introduction of RIA to legislative processes stems from a desire to promote an evidence-based approach in law-making and to enhance lucidity, traceability, flexibility, and consistency.¹¹ As such, RIA aligns well with the better regulation initiative.¹² Although the steps of legislative processes are often thoroughly documented, this article emphasizes the significance of the initial stages of legal drafting.

The concept of RIA is not new in the Czech Republic. The country has included RIA in its legislative process since 2005. The Office of the Government oversees the RIA, with a specialized RIA department serving as the coordinating body. There is also a dedicated working party that assesses the quality of RIA.¹³ The OECD repeatedly gave positive evaluations of the Czech RIA framework.¹⁴ The only critique made by the OECD involved the Czech Republic's limited ability to quantify the impact of the planned legislation.¹⁵

¹¹ Weigel, 'Regulatory Impact Analysis Meets Economic Analysis of Law', p. 1798.

¹² European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Better regulation: Joining forces to make better laws (COM/2021/219 final)* (2021).

¹³ See the official government information providing a historical overview. Vláda ČR 'Ukotvení RIA v České republice'; Also see OECD, *Better Regulation Practices across the European Union* (2019) pp. 136–37.

¹⁴ OECD 'Regulatory Policy Outlook' (2015) p. 152 et seq.; Czech Republic Factsheet in OECD, *Better Regulation Practices across the European Union*.

¹⁵ OECD, *Better Regulation Practices across the European Union*, p. 136.

The following Part concentrates on the application of RIA to Article 17.¹⁶ As indicated by previous research, the RIA of Article 17 reveals a number of problems that warrant a closer examination.¹⁷ The objective of the following Part is to identify, describe and categorize the issues found within the RIA of Article 17. At this place, it is appropriate to note that Article 17, under examination, has been in effect in the Czech Republic since January 2023.¹⁸

A. Article 17 RIA Case Study

First and foremost, Article 17 must be briefly explained. For the following analysis, there are three areas challenging the Czech implementation.¹⁹ First, Article 17, respectively Article 2 (6) CDSM, creates a subcategory of ISP services known as online content-sharing service providers.²⁰ This category was predominantly meant to capture UGC-centered platforms such as YouTube. Article 17 (1) then states that these online platforms directly engage in use of copyright-protected works with their own acts of communication to the public. That also means that they must either obtain necessary licenses or bear the liability for infringement.

The second issue is the liability mechanism outlined in Article 17 (4) consisting of best effort to obtain licenses, take-down and stay-down obligations.²¹ This mechanism, however, raises many issues, including fundamental rights risks, as highlighted by the

¹⁶ This refers to a change made to the Czech Copyright Code, of which Article 17 is now part. ‘Bill amending Act No. 121/2000 Coll., on Copyright, on Rights Related to Copyright and on Amendments to Certain Acts (Copyright Act), as amended, and other related acts’.

¹⁷ For an initial analysis by one of the authors refer to Woznica, ‘Legislative pitfalls: Case study of article 17 DSM Directive RIA in the Czech Republic’ (2023) *Jusletter IT*.

¹⁸ Chamber of Deputies Parliament of the Czech Republic ‘Parliamentary Print 31’.

¹⁹ For detailed analysis, see also Woznica, ‘Control, Compensation, and Access in Digital Copyright: Property and Liability Rule Analysis of Article 17 CDSM Directive’ (Masaryk University, Faculty of Law 2024) 149 et seq. <<https://is.muni.cz/th/uxxvw/>> accessed 3 March 2025.

²⁰ Rosati, *Copyright in the Digital Single Market: Article-by-Article Commentary to the Provisions of Directive 2019/790* (Oxford University Press 2021) 315 et seq.; Husovec and Quintais, ‘How to License Article 17? Exploring the Implementation Options for the New EU Rules on Content-Sharing Platforms under the Copyright in the Digital Single Market Directive’ (2021) 70 *GRUR International* 325, 327 et seq.

²¹ Rosati *Copyright in the Digital Single Market* 336 et seq.; Leistner, ‘European Copyright Licensing and Infringement Liability Under Art. 17 DSM-Directive’ (2020) 12 *Zeitschrift für geistiges Eigentum* 1, 165 et seq.

CJEU in case of *Poland*.²² The third area raises the issue of licensing mechanisms for communication to the public right.²³

Nonetheless, as discussed extensively by others, Article 17 presents national legislators with much wider scope of considerations, including, e.g., design of protective measures in content moderation processes, design of license extensions under Article 17 (2) or character of Article 17 communication to the public.²⁴ One such flexibility worth exploring was, e.g., German imposition of limits on filtering prescribed by Article 17 (4).²⁵ Various approaches and flexibilities can be also seen in Commission guidance published days before implementation deadline or national solutions to various Article 17 elements.²⁶

Yet, the Czech solution to Article 17 follows the original CDSM wording in verbatim. While that may seem like an optimal solution, Angelopoulos identified several shortcomings in Czech implementation, namely (i.) additions that do not exist in Article 17 or exist only in non-binding recitals and are contradicted by binding text of CDSM; (ii.) incompatible gold plating where national legislation exceeds Article 17 requirements in incompatible ways; (iii.) excessive minimalist transposition where Article 17 minimum requirements are not met; (iv.) variations in terminology that blur clarity and meaning of original legal text; and (v.) homing tendencies where

²² CJEU Case *C-401/19 Poland v European Parliament, Council of the European Union*, 26 April 2022, *ECLI:EU:C:2022:297 (Poland)*, Paras 55 and 58.

²³ Various options explored in depth by e.g., Husovec and Quintais ‘How to License Article 17?’.

²⁴ See e.g., Rosati *Copyright in the Digital Single Market*; Husovec and Quintais ‘How to License Article 17?’; Leistner ‘European Copyright Licensing and Infringement Liability Under Art. 17 DSM-Directive’; Quintais et al., ‘Copyright Content Moderation in the EU: An Interdisciplinary Mapping Analysis’ (SSRN.com, 1 August 2022) <<https://papers.ssrn.com/abstract=4210278>> accessed 10 July 2023; Geiger and Jütte, ‘Towards a Virtuous Legal Framework for Content Moderation by Digital Platforms in the EU? The Commission’s Guidance on Article 17 CDSM Directive in the Light of the YouTube/Cyando Judgement and the AG’s Opinion in C-401/19’ (SSRN.com, 18 July 2021) 17 <<https://papers.ssrn.com/abstract=3889049>> accessed 21 July 2024.

²⁵ For details see Angelopoulos, ‘Comparative National Implementation Report: Articles 15 & 17 of the Directive on Copyright in the Digital Single Market’ <<https://informationlabs.org/wp-content/uploads/2023/12/Full-DCDSM-Report-Dr-Angelopoulos.pdf>> accessed 21 April 2024.

²⁶ Communication from the Commission to the European Parliament and the Council COM/2021/288 final Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market.

Article 17 is fitted in previous legal text despite logic of the original provision.²⁷ As such, Czech implementation has potential for disharmonizing effect.²⁸

Czech verbatim character is similar to the one used in France and the Netherlands.²⁹ It also mirrors the original legal draft provided by the Ministry of Culture ("Ministry"), which the RIA accompanied.³⁰ The only substantial modification of note during the legislative process is an amendment that allows claims against online content-sharing service providers³¹ for repeated and unlawful blocking, which could result in the prohibition of their services.³²

Turning onto the RIA itself, the most noteworthy aspect is the narrow definition of problems and available options as seen in table below. The minimalist option (option 1) generally mirrors the original text of Article 17 without any changes, whereas the extended option (option 2) tends to incorporate additional text from the CDSM recitals. In other words, the implementation is less than creative and follows the original text without any considerations for other available options. Limited exception is in the exercise of rights where option 1 suggests no action, and option 2 proposes applying an extended collective licensing scheme to rights under Article 17.³³

The identified problems and their corresponding options as specified by Ministry are detailed in the table below (A = Online content-sharing service provider definition; B

²⁷ See Angelopoulos, 'Comparative National Implementation Report: Country Compliance Fact Sheet' 1 <<https://informationlabs.org/wp-content/uploads/2023/12/Full-DCDSM-Report-Dr-Angelopoulos.pdf>> accessed 21 April 2024; For details see also Angelopoulos 'Comparative National Implementation Report: Articles 15 & 17 of the Directive on Copyright in the Digital Single Market'.

²⁸ However, fault is also in the original text of Article 17, its legal form and other national transpositions. Angelopoulos 'Comparative National Implementation Report: Articles 15 & 17 of the Directive on Copyright in the Digital Single Market' 10.

²⁹ Keller, 'Article 17, the year in review (2021 edition)' (January 2022).

³⁰ Compare 'Bill amending Act No. 121/2000 Coll., on Copyright, on Rights Related to Copyright and on Amendments to Certain Acts (Copyright Act), as amended, and other related acts'; 'Act No. 121/2000 Coll., on Copyright, on Rights Related to Copyright and on Amendments to Certain Acts (Copyright Act), as amended, and other related acts'.

³¹ So-called "OCSSP". Article 2 (6) *Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC*.

³² Legal person entitled to protect interests of competitors or customers can claim the injunction. See Section 51a 'Act No. 121/2000 Coll., on Copyright, on Rights Related to Copyright and on Amendments to Certain Acts (Copyright Act), as amended, and other related acts'.

³³ For more detail see also Woznica, 'Legislative pitfalls: Case study of article 17 DSM Directive RIA in the Czech Republic'.

= Liability regime under Article 17 (4); C = Exercise of rights affected under Article 17). The first column identifies the problem tackled, while the second outlines the benefits of the proposed option. The third column lists associated problems and risks, and the fourth outlines costs. Lastly, the fifth column provides an overall evaluation:

Benefits, problems, costs, and risks of the options considered				
<i>option</i>	<i>benefits</i>	<i>problems/risks</i>	<i>costs</i>	<i>overall</i>
A.1	(+) greater guarantee of uniform regulation across the EU	(-) less legal certainty for actors in the digital market segment (interpretation disputes)	neutral	neutral
A.2.	(+) greater legal certainty for actors in the digital market segment	(-) risk of lower level of harmonization within the EU (-) risk of non-compliance with possible future interpretation of the CJEU neutral prevail	neutral	(-) prevail
B.1.	(+) greater guarantee of uniformity of regulation within the EU (+) less risk of possible inconsistency with future CJEU case law	(-) possible interpretative doubts (will be, at least partially, removed by the EC Guidelines on Article 17)	(-) costs associated with the use of technology to identify and remove content and handle complaints (for a number of actors – already used under existing legislation)	neutral

B.2.	(+) partially increased legal certainty for the addressees of the legislation	(-) risk of a lower level of harmonization within the EU (-) risk of eventual non-compliance with future CJEU case law	(-) costs associated with the use of technology to identify and remove content and handle complaints (in the case of a number of entities – already used under existing legislation)	(-) prevail
C.1.	(+) Maintaining a greater degree of contractual freedom (+) simplification of obtaining a license (+) greater legal certainty for users (both service providers and service users)	(-) less legal certainty for users	(-) greater administrative costs for service providers in obtaining permission from right holders	(+) prevail
C.2.	(+) simplification of obtaining a license (+) preservation of contractual freedom (opt-out) (+) greater legal certainty for users (both service providers and service users)	(-) strong preference for maintaining freedom of contract (i.e., max. opt-out regime) in some areas (e.g., audiovisual) (-) large number of rights holders not yet represented by the CS	(-) higher administrative costs for collective managers	neutral

Table 1 – Benefits, problems, costs, and risks of the options considered³⁴

The options outlined by the RIA represent a very limited set of potential solutions and present a significant shortcoming. In contrast to creative implementations, such as the German transposition which completely revised the core of Article 17 and

³⁴ RIA In ‘Bill amending Act No. 121/2000 Coll., on Copyright, on Rights Related to Copyright and on Amendments to Certain Acts (Copyright Act), as amended, and other related acts’, pp. 153–54.

implemented further safeguards, the Czech tunnel vision is rather obvious.³⁵ Regardless of which solution is better, the RIA was clearly limited in scope of considered problems and outlined solutions and failed to consider any additional options.

The tunnel vision could be explained by Broulík and Bartošek who highlight that Czech RIA is conducted after the initial legal draft is completed.³⁶ Frequently, it simply serves as a post-hoc explanation of why the already chosen approach is the most suitable. In other words, the RIA is not an economic exercise employing empirical methods to tackle the issue.³⁷ Instead, it is a formal exercise to justify why a chosen solution is the only possible route.³⁸

Another significant concern is the lack of quantification of impacts, a deficiency directly linked to the lack of empirical methodology. As previously mentioned, this was a critique raised by the OECD.³⁹ The above table illustrates this problem, as the overall evaluation could very well result from comparing the number of identified positives (+) and negatives (-). Given the absence of additional details on the overall evaluation, it is not possible at this stage to conclude whether this is true.⁴⁰ Nevertheless, it is clear that the quantification of costs and benefits is non-existent except for the identification of wide categories where change might occur.

Another shortcoming was the stakeholder consultation. Annex n. 1 of the RIA provides a list of involved stakeholders.⁴¹ These consultations were conducted privately, with participation based only on a direct invitation from the Ministry.⁴² In other words, the Ministry selected stakeholders involved at its own discretion. A review of the list of stakeholders reveals a dominant representation from online platforms, authors, collective societies, and other actors from the creative industry.⁴³

³⁵ Boshier, 'De minimis uses and the German implementation of Art 17 DSM Directive' (May 2021); 'DSM Directive Implementation Tracker - Germany'.

³⁶ Broulík and Bartošek, *Ekonomický přístup k právu*, 1 ed. (C. H. Beck, 2015) p. 141.

³⁷ Ibid., p. 141.

³⁸ Ibid., p. 141.

³⁹ OECD, *Better Regulation Practices across the European Union*, p. 136.

⁴⁰ See RIA In 'Bill amending Act No. 121/2000 Coll., on Copyright, on Rights Related to Copyright and on Amendments to Certain Acts (Copyright Act), as amended, and other related acts'.

⁴¹ Ibid., p. 188.

⁴² The Ministry approached 120 potential stakeholders. See *ibid.*, p. 183.

⁴³ See *ibid.*, p. 188.

However, the user perspective was underrepresented, with no more than 5 out of the total 74 stakeholders representing user interests.⁴⁴

The issues identified above collectively present several key observations for further analysis in the following Part. RIA often adopts a limited perspective of costs and benefits, mainly serving as an ex-post justification after the draft legislation has been finalized. Additionally, it is legal experts who predominantly carry out the RIA process with little or no substantial incorporation of empirical methodologies and quantification. The consultation process often lacks substantive and meaningful engagement with the public and all relevant stakeholders. Together, these issues spotlight areas that require more in-depth scrutiny to foster a more comprehensive and well-informed RIA.

III. Systemic Issues and Mitigation Strategies

The previous Part observed a number of issues that occurred in Article 17 RIA in Czechia. While identifying such issues itself is beneficial, an additional step is necessary. The challenges observed translate into broader, systemic weaknesses in the Czech RIA process, which is the central focus of this Part.

This part focuses on two issues identified above. The first problem is the tunnel vision and narrowness of problems identified. Second issue discussed is the non-representativeness of stakeholder consultations. It offers perspectives from public choice theory and cognitive biases⁴⁵ to delve deeper into systemic problems. The Part concludes by proposing mitigation strategies that reduce these identified risks and enhance the effectiveness of the RIA processes.

A. Public Choice and Regulatory Capture

Public choice research revolves around the idea of institutional actors as rational entities who act seeking specific outcomes.⁴⁶ The approach focuses on analyzing the

⁴⁴ See *ibid.*, pp. 188–89.

⁴⁵ I.e., cognitive pattern distorting rational behavior. Thaler and Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness*, p. 23 et seq.

⁴⁶ Congleton, 'Rational Choice and Politics: An Introduction to the Research Program and Methodology of Public Choice' in Congleton, Grofman, Voigt (eds.), *The Oxford Handbook of Public Choice*, Volume 1, (Oxford University Press, 2019), p. 4 pp. 4–5.

behaviors of voters, politicians, interest groups, and bureaucracy, studying them from the perspective of law, economics, and political science.⁴⁷

This Part analyzes the actions of bureaucracy, interest groups, and politicians that interact during the drafting process and RIA. The primary question here is the role of bureaucracy, which acts as an agent for politicians⁴⁸ while simultaneously being a target for interest groups' rent-seeking activities.⁴⁹ The main concern is the issue of regulatory capture, a situation where interest groups exert significant control over political and regulatory processes, effectively capturing the legislation drafting process.⁵⁰

Regulatory capture involves interest groups having a high degree of control over political and regulatory processes.⁵¹ It closely relates to the interest groups influencing the legislative process to induce policy outcomes that favor their rent-extraction ability.⁵²

In the case of RIA, the target of rent-seeking, at least in the examined drafting phase, are those involved with the drafting process with influence over the final draft submitted to the legislative process. In other words, the bureaucracy is at the receiving end of the actions of interest groups, making them a focal point of rent-seeking attempts during the RIA process.

The role of bureaucracy is particularly noteworthy in this context; it can be seen as an agent of political representation while also being the target of interest groups and their rent-seeking attempts. A principal-agent relationship describes situations where a principal, the political representation in this case, delegates its work to its agents, the bureaucracy.⁵³ However, an agency problem can arise in this relationship. This

⁴⁷ Elkin-Koren and Salzberger, *The Law and Economics of Intellectual Property in the Digital Age*, p. 236 et seq.

⁴⁸ I.e., politicians as principals and bureaucrats as their agents. Eisenhardt, 'Agency Theory: An Assessment and Review' (1989) 14 *The Academy of Management Review* 57-74 at 58 et seq.

⁴⁹ I.e., attempts to secure favourable legislative results. Congleton, 'The Political Economy of Rent Creation and Rent Extraction' in Congleton, Grofman, Voigt (eds.), *The Oxford Handbook of Public Choice, Volume 1*, (Oxford University Press, 2019), p. 534.

⁵⁰ Shughart and Thomas, 'Interest Groups and Regulatory Capture', p. 585.

⁵¹ Ibid., p. 585.

⁵² I.e., rent-seeking activity of interest groups. Congleton, 'The Political Economy of Rent Creation and Rent Extraction', p. 534.

⁵³ Eisenhardt, 'Agency Theory', p. 58.

describes a situation where the principal's and agent's motivations and goals differ, making it difficult for the principal to monitor the agent's actions effectively.⁵⁴

When it comes to RIA, the political representatives (the principals) may face challenges overseeing the bureaucracy (the agents) without incurring significant costs.⁵⁵ However, the influence of principals should not be underestimated. Political representatives influence legislative work primarily through their strategic and managerial decisions rather than through direct involvement in the details of legislative work.⁵⁶ In other words, the already set political preference effectively limits the bureaucracy's ability to conduct a high-quality RIA, since the end results are already set in advance.⁵⁷

Interest groups also turn towards the agents – the bureaucracy – as it is easier to exert control over them than over politicians.⁵⁸ This situation creates opportunities for interest groups to attempt to capture the legislators, i.e., the Ministry in the case of Czechia's Article 17.

Interest groups, which organize to exert collective influence, are more likely to emerge when the group is smaller and homogenous.⁵⁹ This means that larger and more diverse interest groups, such as online users, often find it more challenging to act collectively.⁶⁰ According to Shughart and Thomas, regulatory regimes often advance the interest of smaller, more concentrated groups with a stronger ability for collective action, often at the expense of dispersed interests such as consumers.⁶¹

⁵⁴ Ibid., p. 58.

⁵⁵ Macey, 'Winstar, Bureaucracy and Public Choice' (1998) 6 *Supreme Court Economic Review* 173–200, p. 174.

⁵⁶ As noted by a study involving the Czech legislative process. Škop et al., *Tvorba práva - empirická studie* (Masarykova univerzita, 2019) p. 173.

⁵⁷ Such response was even confirmed by a governmental respondent in the study done by Škop et al.: 'Then if you want to do an RIA, you have no other options. But you still have to do an RIA. In this case, I propose to do two options. Option 0 is the status quo, option 1 is what is wanted.' See *ibid.*, p. 173.

⁵⁸ Macey, 'Winstar, Bureaucracy and Public Choice', p. 174.

⁵⁹ As explained by Olson's size principle according to which large groups face more free-riding that prevents efficient collective action and group emergence. Heckelman, 'Collective Action' in Congleton, Grofman, Voigt (eds.), *The Oxford Handbook of Public Choice, Volume 1*, (Oxford University Press, 2019), pp. 469–70.

⁶⁰ *Ibid.*, p. 469.

⁶¹ Shughart and Thomas, 'Interest Groups and Regulatory Capture', p. 586.

From these observations it can be concluded that smaller, concentrated interest groups have a higher capacity to organize and influence the bureaucracy during the legislative process. RIAs are particularly vulnerable to regulatory capture during consultations where bureaucracy engages with interest groups. Therefore, more organized interest groups can attempt to influence regulators during these consultations to access more favorable legislative outcomes.

This dynamic serves well to explain observed problems in case of RIA for Czechia's Article 17. The stakeholders primarily represented the interests of the creative industries and online platforms, while engagement with users of copyright-protected content was neglected.⁶²

The topics discussed by the RIA also suggest a degree of regulatory capture, as the agenda was largely defined by interest groups. For example, there was a significant debate on the filtering regime under Article 17(4), where the platforms' obligations and rightsholders' rights that impact the role of creative industries and online platforms are heavily discussed.⁶³ However, the RIA failed to adequately consider safeguarding user rights and access to copyright exemptions and limitations.⁶⁴ In other words, the lack of representation of users resulted in a failure to consider their interests, which are significantly affected by the proposed legislation. This can be compared with the situation in Germany, where the user's position was central in both academic discourse and implementation of the CDSM.⁶⁵

Consequently, it is possible that non-representativeness of stakeholder consultations enables extensive lobbying, agenda setting and ultimately led to discussed tunnel vision. Consequently, RIA should seek to engage with stakeholders beyond the obvious choices as it risks hearing only one side of the story.

⁶² See Part II.A.

⁶³ Such as Article 17 elements of high industry standard or relevant and necessary information or general monitoring obligation. RIA In 'Bill amending Act No. 121/2000 Coll., on Copyright, on Rights Related to Copyright and on Amendments to Certain Acts (Copyright Act), as amended, and other related acts', pp. 140–49.

⁶⁴ Compare RIA In 'Bill amending Act No. 121/2000 Coll., on Copyright, on Rights Related to Copyright and on Amendments to Certain Acts (Copyright Act), as amended, and other related acts'.

⁶⁵ At the same time, the user position was central to academic discussion and implementation in Germany. See Quintais et al., 'Safeguarding User Freedoms in Implementing Article 17 of the Copyright in the Digital Single Market Directive: Recommendations From European Academics' (2019); Boshier, 'De minimis uses and the German implementation of Art 17 DSM Directive'.

B. Cognitive Biases

In contrast to the discussion above, this Part considers influences on the actors performing RIA that would cause them to deviate from optimal rationality. The bureaucracy engaged in RIA is not immune to the influence of cognitive biases. Should the authorities be unaware of them, these biases can negatively impact the attempts at an objective and rational evaluation necessary for the appropriate legislation to pass.

Some key biases that might play a significant role include anchoring, availability, status quo, and social desirability. It is important to recognize that the landscape of biases is vast, and this selection is not exhaustive.⁶⁶ It is important to note that this article's assessment is based on the consultation of the literature in behavioral economics and psychology, not on the authors' own empirical research involving the individuals involved in performing RIAs. As such, the offered insights should therefore be treated as theoretical explorations. Further empirical research could reveal a more nuanced and comprehensive understanding of the role of biases in RIA.

1. Anchoring Bias

Anchoring refers to the tendency to rely disproportionately on an initial piece of information, known as the *anchor*, during decision-making.⁶⁷ It can happen consciously or subconsciously. Anchoring generally involves two stages. First, an anchor point is established. This serves as the reference for the evaluation of information that is received afterward. Subsequently, adjustments are made around the anchor to arrive at an acceptable decision.⁶⁸ For instance, a well-documented expression of this bias involves prices, where individuals tend to base their perception of a reasonable price for a product on the first price they encounter.⁶⁹

⁶⁶ For example, additional biases that could be relevant to this analysis could be confirmation bias, where authorities may favor information that confirms their preconceptions, loss aversion, where the decision-makers may be overly cautious in options that entail any losses or changes, and hindsight bias, which might affect how past decisions are evaluated.

⁶⁷ Bahník, Englich and Strack, 'Anchoring effect' *Cognitive illusions: Intriguing phenomena in thinking, judgment and memory*, (New York, NY, US: Routledge/Taylor & Francis Group, 2017), pp. 223–41. p. 226. See also Ariely, Loewenstein and Prelec, "Coherent Arbitrariness": Stable Demand Curves Without Stable Preferences' (2003) 118 *Quarterly Journal of Economics* 73–106.

⁶⁸ Bahník, Englich, and Strack, 'Anchoring effect', p. 416.

⁶⁹ See Rikala, 'Anchor-Based Promotions in Retailing: How Consumers Respond to an Additional Anchor?' (2021) 27 *Journal of Promotion Management* 921–51. For non-numerical anchors, see Jain, Nayakankuppam, and Gaeth, 'Perceptual anchoring and adjustment' (2021) 34 *Journal of Behavioral*

When performing the RIA, the initial EU legislation or earlier draft versions would act as an anchor. The individuals in the bureaucracy are then motivated to make only incremental adjustments (or none at all) rather than critically analyzing or considering alternative approaches and solutions. This stifles creativity and innovation in finding solutions that are better tailored to (current) national legislation. The result of verbatim transposition can be due to this effect.

2. Status-Quo Bias

Status-quo bias entails an inherent preference for maintaining the current situation. It manifests in a reluctance towards change and an inclination to view the existing situation as a benchmark.⁷⁰ Status quo bias presents a different influence on decision-making from anchoring bias. It creates a preference for the current situation while anchoring bias acts more as a limiting force when it comes to exploring different options.

In RIA, this would mean that the bureaucracy views the original EU legislation as a de facto standard against which all alternatives are compared. The minimal standards proposed by Article 17 in its original version are considered the 'default.' Considering the above presented RIA, it is apparent that the RIA prefers to use the defaults provided by the original Article 17, leading to inertia and preventing the adoption of changes or alternative approaches that would benefit national legislation.⁷¹ Similarly, the RIA repeatedly refers to the legal regulation preceding Article 17 and compares new rights and obligations to it.⁷² That could suggest a certain tendency towards the previous legal framework from which Ministry seeks as slight deviation as possible, thus proposing verbatim transposition.

3. Social Desirability Bias

Social desirability denotes a tendency of individuals to respond in a manner that is perceived to be socially acceptable or favorable, even if it does not align with the best

Decision Making 581–92. and Feldman, Schurr, and Teichman, 'Anchoring Legal Standards' (2016) 13 *Journal of Empirical Legal Studies* 298–329.

⁷⁰ Kahneman, Knetsch, and Thaler, 'Anomalies: The Endowment Effect, Loss Aversion, and Status Quo Bias' (1991) 5 *Journal of Economic Perspectives* 193–206. p. 205; Samuelson and Zeckhauser, 'Status quo bias in decision making' (1988) 1 *Journal of Risk and Uncertainty* 7–59. p. 41.

⁷¹ For a similar account in the area of contract law, see Hoffman and Wilkinson-Ryan, 'The Psychology of Contract Precautions' (2013) 80 *The University of Chicago Law Review* 395–445.

⁷² See the RIA in 'Bill amending Act No. 121/2000 Coll., on Copyright, on Rights Related to Copyright and on Amendments to Certain Acts (Copyright Act), as amended, and other related acts'.

course of action or the individuals' actual beliefs.⁷³ It presents a desire to maintain good relations, adhere to internal instructions, maintain good (workplace) relations, or avoid disrupting the established order.

In RIA, this can have significant impacts. Those in the bureaucracy might lean towards decisions or assessments that they believe will be viewed favorably by their peers, superiors, those in the government, or perhaps those that they find to be the norm addressees – such as the creative industry association representatives. As the majority of those engaging with the RIA performing authorities are creative industry representatives, they can exert significant influence at the interpersonal level. As discussed above in connection to public choice theory, their views can dominate the process also on this cognitive (and social) level. The hierarchy of the bureaucracy can also further exacerbate this bias. For instance, lower-level bureaucrats may make decisions regarding the RIA to please their superiors rather than deciding based on an objective assessment of the situation.⁷⁴

Social desirability can compromise the integrity and objectivity of the RIA, as decisions might be influenced more by the desire for social approval than by thorough, unbiased analysis. This bias can be contrasted to the motivations described under public choice theory above, where rational self-interested actions govern intersections between political actors, bureaucracy, and interest groups. In the case of social desirability bias, the key driving force is not self-interest but rather a desire not to disrupt social relations.

4. Availability Bias

The availability bias is characterized by a tendency to rely more on information that is easily accessible or readily comes to mind, often skewing the perception of reality by putting particular emphasis on anecdotal evidence, familiar data, or recent events.⁷⁵

⁷³ For a summary of social desirability see Holden and Passey, 'Social desirability' Handbook of individual differences in social behavior, (New York, NY, US: The Guilford Press, 2009), pp. 441–54.

⁷⁴ Such situation was even confirmed by a governmental respondent in the study done by Škop et al.: 'Then if you want to do an RIA, you have no other options. But you still have to do an RIA. In this case, I propose to do two options. Option 0 is the status quo, option 1 is what is wanted.' See Škop et al., *Tvorba práva - empirická studie*, p. 173.

⁷⁵ Tversky and Kahneman, 'Availability: A heuristic for judging frequency and probability' (1973) 5 *Cognitive Psychology* 207–32. p. 229.

This bias can lead to a distortion of decision-making, causing an over-reliance on immediate or salient information.⁷⁶

In the realm of RIA, this bias can lead to a narrow focus on immediately available information, such as the content of CDSM and Article 17. The structure of the consultation process severely limits the scope of information available to the bureaucracy performing the RIA, effectively sidelining broader public interests and perspectives of online users. This narrow lens restricts the width of information considered during the assessment. To counter this, it is essential to incorporate diverse perspectives, especially from stakeholders across different sectors.⁷⁷ This would help in creating a more appropriate and well-informed RIA.

C. Mitigation Strategies to Improve RIA Processes

The previous Parts highlighted the risks of regulatory capture and cognitive bias that can negatively impact the quality of RIA. These issues were identified in the specific context of Czechia's Article 17 RIA.

This Part concludes the article by recommending actionable strategies that mitigate the observed risks and potentially improve the quality of RIA. Although these recommendations are based on a Czech case study, they can also enrich RIA processes in other countries.

The first recommendation is to reverse the current order of legal drafting, i.e., to conduct a RIA and prepare the relevant legislative draft afterward.⁷⁸ As it stands, the legal draft is prepared first, and the RIA is conducted afterward. One significant drawback of the current situation is the potential of a narrow view of the issues at hand and the possible solutions available, i.e., writing RIA to justify an existing legal draft. There is a myriad of reasons why regulators may have these limited views, including the influence of interest groups – which advocate for specific solutions – political decisions or cognitive biases.⁷⁹ By conducting the RIA before drafting the relevant legislation, regulators could assess the potential regulatory measures more comprehensively and objectively.

⁷⁶ Dube-Rioux and Russo, 'An availability bias in professional judgment' (1988) 1 *Journal of Behavioral Decision Making* 223–37. p. 233–234.

⁷⁷ See, for example, Satya-Murti and Lockhart, 'Recognizing and reducing cognitive bias in clinical and forensic neurology' (2015) 5 *Neurology: Clinical Practice* 389–96.

⁷⁸ As mentioned in Broulík and Bartošek, *Ekonomický přístup k právu*, p. 141.

⁷⁹ As described in previous Parts.

The second recommendation is to involve professionals with an economic background in RIA. Currently, RIAs in the Czech Republic are predominantly conducted by lawyers as a formal exercise. This can limit the consideration of economic principles and the ability to conduct empirical analysis.⁸⁰ By including professionals with expertise in economics, public policy, and related fields, the RIA process could be made more holistic and informed. Such professionals could identify potential unintended consequences that may otherwise be overlooked. By incorporating legal and economic perspectives into RIAs, a more balanced approach could be achieved, resulting in higher quality RIA process.

Next, it is crucial that the legislative process actively interacts with underrepresented groups. The earlier Parts of this article have discussed the potential adverse effects of private closed-door consultations on RIAs. These effects include regulatory capture, social desirability, and availability bias.⁸¹ By opening the consultations to the public, regulators can engage with a broader range of stakeholders, most notably those that would be otherwise ignored. This would enable the emergence of additional perspectives. It is imperative as the emergence of collective action is less likely in more diverse groups. As such, it is crucial for bureaucratic actors to engage these stakeholders proactively and to seek their input as much as possible.

Furthermore, the RIA framework must be continuously updated to reflect the evolving state of knowledge. Current research is ever-increasing and regulatory processes must adapt to this dynamic change. Take, for example, the approach of Cass Sunstein during his tenure in the White House Office of Information and Regulatory Affairs, where he implemented behavioral methodology and 'nudging' into the regulatory process.⁸² RIA processes must be adaptable to implement these types of advancements continuously and including diverse pools of professionals, as previously suggested, could facilitate this necessary know-how needed for this adaptability.

In addition, authorities must be aware of the biases mentioned earlier and take active steps to mitigate their influence. This can be achieved through ensuring a diverse representation of opinions during the assessment, cultivating an environment that encourages critical thinking, providing training to counter decision-making biases,

⁸⁰ Compare with supra note 73, p. 141.

⁸¹ See Parts III.A and III.B.4.

⁸² Weigel, 'Regulatory Impact Analysis Meets Economic Analysis of Law', p. 1796; Thaler and Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness*.

and using structured methodologies for evaluation that are open to and would favor more innovative and unexpected solutions.⁸³

Finally, the risk of regulatory capture could be mitigated by designing institutions to minimize the principal-agent problem.⁸⁴ Control measures over bureaucratic actors, either by ad-hoc supervision or by way of initial regulatory design and structure, can help alleviate the problem of bureaucratic drift, which can otherwise lead to regulatory capture.⁸⁵ However, it is not the goal of this article to suggest a specific structure for such a resilient system.

IV. Concluding Remarks

This article examined issues of RIA on a specific case of Czechia's legislative process involving Article 17. The analysis reveals several weaknesses and explores why these issues occur, using public choice theory and behavioral economics. The main challenges identified are regulatory capture – where interest groups exert too much influence on the regulatory processes – and cognitive biases, which may lead to skewed analysis and biased decision-making.

The article suggests several actionable strategies to address these issues and improve RIA's resilience. By adopting and implementing these recommendations, this article argues that the quality of RIA can be improved, leading to improved regulations and government decisions.

The first strategy is conducting RIAs before drafting legislation, allowing for a broader view of possible approaches. Secondly, article emphasizes the value of involving economics-educated professionals alongside legal experts to ensure a more multi-faceted analysis and reflecting the evolving state of knowledge in various relevant fields, such as behavioral economics and psychology. Furthermore, the article highlights the need to adequately train officials to identify and address bias and advocates for consultation transparency. Lastly, it encourages the continual improvement of the RIA processes through better institutional design.

⁸³ See Larrick, R. P. (2004). Debiasing. In D. J. Koehler & N. Harvey (Eds.), *Blackwell handbook of judgment and decision making* (pp. 316–337). Blackwell Publishing. <https://doi.org/10.1002/9780470752937.ch16>.

⁸⁴ Eisenhardt, 'Agency Theory', 58.

⁸⁵ Macey, 'Winstar, Bureaucracy and Public Choice', pp. 179–80.

V. Bibliography

Angelopoulos, Christina, 'Comparative National Implementation Report: Articles 15 & 17 of the Directive on Copyright in the Digital Single Market' <<https://informationlabs.org/wp-content/uploads/2023/12/Full-DCDSM-Report-Dr-Angelopoulos.pdf>> accessed 21 April 2024.

Angelopoulos, Christina, 'Comparative National Implementation Report: Country Compliance Fact Sheet' <<https://informationlabs.org/wp-content/uploads/2023/12/Full-DCDSM-Report-Dr-Angelopoulos.pdf>> accessed 21 April 2024.

Angelopoulos, Christina and Quintais, João Pedro, 'Fixing Copyright Reform: A Better Solution to Online Infringement' (2019) 10 JIPITEC <<https://www.jipitec.eu/issues/jipitec-10-2-2019/4913>>.

Ariely, Dan, Loewenstein, George and Prelec, Drazen, "Coherent Arbitrariness": Stable Demand Curves Without Stable Preferences' *QUARTERLY JOURNAL OF ECONOMICS*.

Bahník, Štěpán, Englich, Birte and Strack, Fritz, 'Anchoring Effect', *Cognitive illusions: Intriguing phenomena in thinking, judgment and memory, 2nd ed* (Routledge/Taylor & Francis Group 2017).

Baron, Jonathan and Wilkinson-Ryan, Tess, 'Conceptual Foundations: A Bird's-Eye View', *Research Handbook on Behavioral Law and Economics* (Edward Elgar Publishing 2018) <<https://www.elgaronline.com/edcollchap/edcoll/9781849805674/9781849805674.0007.xml>> accessed 17 March 2024.

Bill amending Act No. 121/2000 Coll., on Copyright, on Rights Related to Copyright and on Amendments to Certain Acts (Copyright Act), as amended, and other related acts 2021 <<https://odok.gov.cz/portal/veklep/material/KORNC7DHSVAC/>> accessed 7 July 2023.

Bosher, Hayleigh, 'De Minimis Uses and the German Implementation of Art 17 DSM Directive' (*The IPKat*) <<https://ipkitten.blogspot.com/2021/05/guest-post-de-minimis-uses-and-german.html>> accessed 2 October 2025.

Broulík, Jan and Bartošek, Jan, *Ekonomický přístup k právu* (C H Beck 2015) <<https://www.beck.cz/ekonomicky-pristup-k-pravu>> accessed 7 July 2023.

Chamber of Deputies Parliament of the Czech Republic, Parliamentary Print 31 <<https://www.psp.cz/sqw/historie.sqw?o=9&t=31>> accessed 7 July 2023.

Communication from the Commission to the European Parliament and the Council COM/2021/288 final Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market.

Communication from the Commission to the European Parliament, the Council, the European economic and social committee and the Committee of the regions Better regulation: Joining forces to make better laws (COM/2021/219 final).

Congleton, Roger D, 'Rational Choice and Politics: An Introduction to the Research Program and Methodology of Public Choice' in Roger D Congleton, Bernard Grofman and Stefan Voigt (eds), *The Oxford Handbook of Public Choice, Volume 1* (Oxford University Press 2019) <<https://doi.org/10.1093/oxfordhb/9780190469733.013.1>> accessed 25 July 2023.

Directive 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (CDSM Directive).

Dube-Rioux, Laurette and Russo, J Edward, 'An Availability Bias in Professional Judgment' (1988) 1 Journal of Behavioral Decision Making 223.

Eisenhardt, Kathleen M, 'Agency Theory: An Assessment and Review' (1989) 14 The Academy of Management Review 57.

Elkin-Koren, Niva and Salzberger, Eli, *The Law and Economics of Intellectual Property in the Digital Age: The Limits of Analysis* (Routledge, Taylor & Francis Group 2013).

Feldman, Yuval, Schurr, Amos and Teichman, Doron. 'Anchoring Legal Standards' (2016) 13 Journal of Empirical Legal Studies 298.

Geiger, Christophe and Jütte, Bernd Justin, 'Towards a Virtuous Legal Framework for Content Moderation by Digital Platforms in the EU? The Commission's Guidance on Article 17 CDSM Directive in the Light of the YouTube/Cyando Judgement and the AG's Opinion in C-401/19' (SSRN.com, 18 July 2021) <<https://papers.ssrn.com/abstract=3889049>> accessed 21 July 2024.

Heckelman, Jac C, 'Collective Action' in Roger D Congleton, Bernard Grofman and Stefan Voigt (eds), *The Oxford Handbook of Public Choice, Volume 1* (Oxford University Press 2019) <<https://doi.org/10.1093/oxfordhb/9780190469733.013.23>> accessed 25 July 2023.

Hoffman, David A and Wilkinson-Ryan, Tess, 'The Psychology of Contract Precautions' The University of Chicago Law Review.

Holden, Ronald R and Passey, Jennifer, 'Social Desirability', *Handbook of individual differences in social behavior* (The Guilford Press 2009).

Husovec, Martin and Quintais, Joao P., 'How to License Article 17? Exploring the Implementation Options for the New EU Rules on Content-Sharing Platforms under the Copyright in the Digital Single Market Directive' (2021) 70 GRUR International 325

Jain, Gaurav, Nayakankuppam, Dhananjay and Gaeth, Gary J, 'Perceptual Anchoring and Adjustment' (2021) 34 Journal of Behavioral Decision Making 581.

Judgment of the Court of 26 April 2022, Poland v European Parliament, Council of the European Union, C-401/19, ECLI:EU:C:2022:297 (Poland)

Kahneman, Daniel, Knetsch, Jack L and Thaler, Richard H, 'Anomalies: The Endowment Effect, Loss Aversion, and Status Quo Bias' (1991) 5 Journal of Economic Perspectives <<https://www.jstor.org/stable/1942711>> accessed 11 July 2024.

Keller, Paul, 'Article 17, the Year in Review (2021 Edition)' (*Kluwer Copyright Blog*, 24 January 2022) <<https://copyrightblog.kluweriplaw.com/2022/01/24/article-17-the-year-in-review-2021-edition/>> accessed 25 July 2023.

Larrick, Richard P, 'Debiasing', *Blackwell handbook of judgment and decision making* (Blackwell Publishing 2004).

Leistner, Matthias, 'European Copyright Licensing and Infringement Liability Under Art. 17 DSM-Directive' (2020) 12 Zeitschrift für geistiges Eigentum 1

Macey, Jonathan R, 'Winstar, Bureaucracy and Public Choice' (1998) 6 Supreme Court Economic Review 173.

Meyer, David, 'Why Four Versions of Wikipedia Have Deliberately Gone Dark' (*Fortune*, 2019) <<https://fortune.com/2019/03/21/wikipedia-dark-eu-copyright-protest/>> accessed 27 July 2023.

Nordemann, Jan Bernd, 'Art. 17 DSMCD a Class of Its Own? How to Implement Art. 17 Into the Existing National Copyright Acts – Also a Comment on the Recent German Discussion Draft' (SSRN.com, 12 July 2020) <<https://papers.ssrn.com/abstract=3649626>> accessed 23 May 2024.

OECD, *OECD Regulatory Policy Outlook 2015* (OECD Publishing 2015) <https://www.oecd.org/en/publications/oecd-regulatory-policy-outlook-2015_9789264238770-en.html> accessed 2 October 2025.

OECD, *Regulatory Impact Analysis: A Tool for Policy Coherence* (OECD 2009) <https://www.oecd.org/en/publications/regulatory-impact-analysis_9789264067110-en.html> accessed 2 October 2025.

Quintais, João Pedro and others, 'Copyright Content Moderation in the EU: An Interdisciplinary Mapping Analysis' (SSRN.com, 1 August 2022) <<https://papers.ssrn.com/abstract=4210278>> accessed 10 July 2023.

Quintais, João Pedro and others, 'Safeguarding User Freedoms in Implementing Article 17 of the Copyright in the Digital Single Market Directive: Recommendations From European Academics' (SSRN.com, 11 November 2019) <<https://papers.ssrn.com/abstract=3484968>> accessed 25 July 2023.

Reynolds, Matt, 'What Is Article 13? The EU's Divisive New Copyright Plan Explained | WIRED UK' [2019] *Wired* <<https://www.wired.co.uk/article/what-is-article-13-article-11-european-directive-on-copyright-explained-meme-ban>> accessed 27 July 2023.

Rikala, Veli-Matti, 'Anchor-Based Promotions in Retailing: How Consumers Respond to an Additional Anchor?' (2021) 27 *Journal of Promotion Management* 921.

Rosati E, *Copyright in the Digital Single Market: Article-by-Article Commentary to the Provisions of Directive 2019/790* (Oxford University Press 2021)

Samuelson, William and Zeckhauser, Richard, 'Status Quo Bias in Decision Making' (1988) 1 *Journal of Risk and Uncertainty* 7.

Satya-Murti, Saty and Lockhart, Joseph, 'Recognizing and Reducing Cognitive Bias in Clinical and Forensic Neurology' (2015) 5 *Neurology. Clinical Practice* 389.

Shughart, William F and Thomas, Diana W, 'Interest Groups and Regulatory Capture' in Roger D Congleton, Bernard Grofman and Stefan Voigt (eds), *The Oxford Handbook of Public Choice, Volume 1* (Oxford University Press 2019) <<https://doi.org/10.1093/oxfordhb/9780190469733.013.29>> accessed 25 July 2023.

Senftleben, Martin, 'Bermuda Triangle - Licensing, Filtering and Privileging User-Generated Content Under the New Directive on Copyright in the Digital Single Market' (SSRN.com, 4 April 2019) <<https://papers.ssrn.com/abstract=3367219>> accessed 31 August 2024.

Škop, Martin and others, *Tvorba Práva - Empirická Studie* (Masarykova univerzita 2019) <<https://is.muni.cz/auth/publication/1600617/gacr-skop-tvrobaprava.pdf>> accessed 25 July 2023.

Stalla-Bourdillon, Sophie and others, 'An Academic Perspective on the Copyright Reform' (2017) 33 Computer Law & Security Review 3.

Thaler, Richard H and Sunstein, Cass R, *Nudge: Improving Decisions about Money, Health, and the Environment* (1st edn, Penguin Books, an imprint of Penguin Random House LLC 2021).

Tversky, Amos and Kahneman, Daniel, 'Availability: A Heuristic for Judging Frequency and Probability' (1973) 5 Cognitive Psychology 207.

Vláda ČR, 'Ukotvení RIA v České republice' <<https://ria.vlada.cz/ria/institucionalni-zajisteni/>> accessed 2 October 2025.

Weigel, Wolfgang, 'Regulatory Impact Analysis Meets Economic Analysis of Law: Differences and Commonalities' in Alain Marciano and Giovanni Battista Ramello (eds), *Encyclopedia of Law and Economics* (Springer 2019) <https://doi.org/10.1007/978-1-4614-7753-2_750> accessed 27 July 2023.

Woznica, Ondřej, 'Control, Compensation, and Access in Digital Copyright: Property and Liability Rule Analysis of Article 17 CDSM Directive' (Masaryk University, Faculty of Law 2024) <<https://is.muni.cz/th/uxxvw/>> accessed 3 March 2025.

Woznica, Ondřej, 'Legislative pitfalls: Case study of article 17 DSM Directive RIA in the Czech Republic' [2023] Jusletter IT <https://jusletter-it.weblaw.ch/issues/2023/27-April-2023/legislative-pitfalls_2df5c8275f.html_ONCE&login=false> accessed 24 July 2023.