



LIABILITY OF ONLINE PLATFORMS IN EUROPE FOR THE ILLEGAL UPLOADING AND HOSTING OF PROTECTED WORKS

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Abstract

At the beginning of the 18th century, the Institute of Copyright and Intellectual Property protection was established as a state regulation system of relations in the field of competition in the market and control of the distribution of legal, literary content in the form of physical media. After the spread of the IT products, including the popularization of the Internet, various online platforms appeared through which authors and owners of intellectual property results can post their works to obtain material benefits and advertise the product. Internet "piracy" causes severe damage to the economic condition of the authors, for example, in the form of lost profits. The main document that regulates the issue of responsibility of online platforms is the Copyright Law Directive (EU) 2019/790 of the European Parliament and the Council of 17 April 2019 or, in other words, the Digital Single Market Directive. The European Union strives to protect its users as much as possible by developing recommendations and adopting legislative acts.

Keywords: *European Parliament, intellectual property, IT products, illegal content, online platforms, digital market, DSM Directive.*

1 INTRODUCTION

The international community has been purposefully dealing with the problem of copyright protection for quite a long time, primarily through the creation of international legislation. International conventions are necessary for developing unified norms that can ensure stability and law and order in public relations.

Looking back to the development of the copyright system and intellectual property protection, in

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general, we must say that changes in this area were initially rare and legally challenging to regulate. Regulation by order, distribution in the form of sale, replication of works, which the relevant laws regarding copyright holders have originally established, authors, and publishers, for example, Statute of Anne 1710, assumed the fundamental nature of works as material objects. Speaking of the production and replication of which is possible only exclusively in the form of things. Until the end of the 90s of the last century, digital space and online platforms were undeveloped, so a digital production method was used, which implied the impossibility of low-cost copying and distribution of works. Previously,

placement, copying, and replication required severe economic labor costs in factories, physical points of sale, etc. It was impossible to copy a film or a literary work without financial expenses; any magazine had to undergo a similar printing procedure as the original, making it challenging to distribute illegal content, assignments, and intellectual products in general. (Dozortsev, 2017)

The principles developed in the early stage of copyright and intellectual property protection are still applied. One of them is the principle of the temporality of copyright. It reflects in the issuance of temporary licenses for products distribution, the principle of maintaining competition. It protected the author and publisher of the work. However, one of the most important principles is the principle of achieving and maintaining a social compromise, namely, a balance of interests, in which society, represented by the state, agrees to a certain number of restrictions in exchange for the results of creativity of authors of works and publishers.

2 HISTORY OF THE DEVELOPMENT OF COPYRIGHT PROTECTION

At the beginning of the 18th century, the Institute of Copyright and Intellectual Property protection was established as a state regulation system of relations in the field of competition in the market and control of the distribution of legal, literary content in the form of physical media. Later in the 19th century, the same institution developed new regulations to regulate relations between the state and the academic production industry and between the authors of the works themselves and the industry. The development took place precisely in the direction in which the intellectual property law system was adopted in the last century, based on concluded international agreements. That is reflected not only in the basic understanding of the history of the development of copyright and intellectual property protection but also in one of the central documents, the Berne Convention for the Protection of Literary and Artistic Works of 1886, which is a binding international treaty in copyright and intellectual property protection. (WIPO, 1979)

The main emphasis was placed on the author of works' rights, not the publisher. The authors of the

Berne Convention, even considering the most recent changes, remained within the framework of the traditional industrial model of copyright, considering things in the form of a physical carrier of works, thus defining literary and artistic works as products. This idea reflects in the leading international agreements in copyright, and intellectual property developed and adopted later. For example, the TRIPS Convention of 1994 (WTO, 1994) and the World Intellectual Property Organization Copyright Treaty of 1996 (WIPO, 1996) contain similar interpretations.

In the 90s of the last century, it was challenging to assume that after a couple of decades, the Internet, in general, IT technologies will be the most important regulator of economic relations, the placement of intellectual property results on online platforms, their sale, and advertising. The Internet has become a decisive factor in influencing the intellectual property system and the lives of modern people. As physical media have begun to lose their value, the digital format is not tied to a specific place, making any content and information easy to access in any part of the planet.

After the spread of IT products, including the popularization of the Internet, various online platforms appeared through which authors and owners of intellectual property results can post their works to obtain material benefits, advertise the product, etc. However, a considerable amount of unauthorized, prohibited, and illegal content has appeared in addition to legal content. Most modern users have encountered this kind of content found on almost every central online platform. For a more detailed understanding of the problem, it is necessary to turn to its origins.

With the adoption of the Chase Act, this situation changed in 1891. According to it, foreign authors were granted copyright in a limited form. However, the agreements reached could not wholly solve the existing problem of intellectual property protection for non-US citizens since the rights were quite limited, and the clash of interests of authors and publishers continued until the American side signed the Berne Convention in 1989. (WIPO, 1979)

3 ENSURING COPYRIGHT PROTECTION IN THE MODERN WORLD

In the modern world, there is a severe problem with regulating the distribution of legal products and removing and prohibiting the distribution of illegal content. Modern "piracy" expresses through the unauthorized distribution of digital content on the Internet. However, there is no consensus on it in society and among legislators of various states in Europe, Asia, Latin America, etc. Internet "piracy" causes severe damage to the economic condition of the authors of works, for example, in the form of lost profits. As defined in Article 9 of the Berne Convention, the right to reproduction, including the exceptions reflected in this article, applies in the digital environment and includes the use of works that are in digital form.

3.1 The negative impact of illegal content

It is worth noting that, in general, a significant and direct negative impact of illegal content is expressed in risks to the property security of the authors of works, losses in sales volumes, brand depreciation, and reduced incentives for innovation and product production. On the part of the state, the negative impact of illegal content is expressed in the loss of tax profits, increased costs for law enforcement in information security, and possible negative consequences for national security.

Summing up, we can say that the nature of the consequences for consumers, authors, the government, and the economy may vary and depend on the type of violations, the industry of production, the kind of content, the variety of online platforms, the main goals of the author of the results of intellectual property and other factors. Another problem of the modern world is that it is problematic to calculate the net damage from the distribution, use, and download of illegal content on online platforms. So, it is almost impossible to determine the volume of prohibited content in the economy. That happens both because of a lack of data and for other reasons. For example, it is difficult to calculate the number of lost profits if the work is quite popular and posted on various platforms in different countries in the world. (Liptsik, 2019)

It is necessary to consider many different approaches and factors to regulate digital content that does not have a physical carrier. But initially, it is worth noting why it is required to fight illegal content and how the international community, especially European countries, regulates this issue. First, unauthorized copies of works: photos, films, music, and literary works do not benefit the authors and official publishers. Secondly, conditional substitution norms are often not fulfilled since unauthorized copies of musical works or cinematographic works do not have a certain high quality, which pushes the consumer away from the brand or manufacturer. The third problem is the deception of the user. For example, there are sites copies of world-famous Internet platforms in some European countries. So, in Ukraine, Belarus, and Russia, the Netflix platform is popular, but there is an exact copy of Netflix, Zetflix. Many novice users can get confused, not distinguish the original platform from the copy and subscribe to the second one.

Visually, the sites are the same and have a consonant name, previously the Zetflix platform claimed to have legal, authorized content, but this is not the case. The consumer pays for counterfeit, illegal content and does not know its distribution is not authorized. When using such online platforms, the consumer may encounter virus programs that collect personal information, bank card data, and information about family members. Such information may become an object of sale on the darknet. (Dozortsev, 2017)

It is necessary to refer to the legislation and experience of European countries to regulate the issue of combating the placement of illegal content on online platforms. Copyright legislation in the EU is quite conservative. Many of the provisions are currently not working since the Internet space is changing daily. New functions, features, payment methods, and IT programs are emerging that require separate regulation and consideration.

3.2 Terms of article 17 of Directive (EU) DSM 2019/790

The European Parliament has organized a working group responsible for the development, preparation of recommendations, the creation of directives, and updating of the provisions of the copyright law. Initially, the working group's task

was to develop requirements to protect authors and publishers of music content from illegal downloading and use on large online platforms such as YouTube. Sites' users could embed a piece of music into their video without specifying the author, without requiring prior permission, which violated the manufacturer's copyright.

At present, the most important and complex document that regulates the issues of responsibility and protection of the intellectual property is the Copyright Law (Directive (EU) 2019/790 of the European Parliament and the Council of 17 April 2019 (DSM Directive). (Document 32019L0790, 2019)

So, based on the provisions of Article 17, it follows that content distributors, and large online platforms, for example, YouTube, Facebook, and Spotify, are required to cooperate with copyright holders, especially in situations where illegally downloaded copyright provisions protect content that has been discovered.

When the author or publisher did not permit distribution of the content belonging to him, the content distributor, the online platform, is obliged to develop a proper mechanism that allows one to demand the removal of previously uploaded content if this decision was made inexpedient. He must do it within a specific time. Also, article 17 regulates the importance of avoiding automatic blocking and that the commercial load on enterprises, small and medium-sized online platforms, should be proportional to ensure copyright protection. (Baranovsky, 2019)

In addition to the above, article 17 obliges online platforms, platforms, and large sites to apply copyright law, so the content should be checked by special filters at the stage of uploading and posting and not when receiving a complaint from users- authors. Online platforms should not allow illegal content on their sites, and if this happens, it should be deleted immediately with an express agreement with the author of the work. If there is illegal content uploaded and distributed on the platform, the author, the publisher, has the right to file a claim to protect their copyrights and demand compensation. Each EU directive must be formulated clearly and enforced by law by each Member State. That is to ensure the participation of all interested parties in determining the

processes that should reflect in the legal framework. (Document 32019L0790, 2019)

Another conflict of law is the collision of the provisions of article 17 of the Copyright Law and the Directive on Online Commerce, which prescribes limited liability of online platforms and services for copyright infringement when downloading and posting online content. The legislator did not consider that many parody videos, pictures, memes, sounds, or parts of any works become illegal because they are made on the basis and when using the content of other authors or publishers.

It is not physically possible to track the placement of all content. Therefore, online platforms, Internet sites, and social networks implement automated security filters. However, monitoring and checking all the uploaded or previously posted and distributed content are impossible. In a situation with videos or photos, any user of the platforms mentioned earlier can download a video, music, or image, take a screenshot, or record a screen and re-post it on the same online forum or other Internet sources. (EC, 2017)

For example, when an online platform has posted a world-famous literary work without coordinating it with the actual author and sells it on its platform at a reduced price without paying royalties to the author, it is possible to calculate the initial material damage roughly. The calculation will base on the volume of pieces sold on the platform according to the purchase histories. Still, it is impossible to calculate the subsequent damage from the distribution of unlicensed content already purchased at a reduced price since books or films can be distributed by users on other platforms, study groups on websites, and so on. Accordingly, it is challenging to apply measures of material responsibility in full. (WIPO, Information on the World Intellectual Property Organisation, 1996)

Article 17 is the most extensive and establishes special rules for operators, owners, and right-holders of online services; the Directive addresses the sharing of content posted on the Internet. It should be noted that European legislators have made some exceptions in determining the responsibility of operators and copyright holders of online platforms. Thus, the Directive excludes non-commercial online encyclopedias and educational or scientific

tutoring platforms from sharing content and software that is publicly available. (COM(2017) 708 final, 2017) The European legislator points out the need to apply Articles 15 and 17 of the 2019 Directive to large online platforms with a broad audience and significant material capabilities. Since it is precise, such media play a central role in the modern virtual market. Well-known online sites can implement filters and use them, but only novice sites do not have such an opportunity.

3.3 Terms of article 15 of Directive (EU) DSM 2019/790

In addition to the previously mentioned article 17, it is worth noting article 15 (article 11 in the draft law). According to it, online platforms are obliged to pay publishers remuneration if they provide a link to the news publications of these publishers. Here we talk about Internet links indicated in the title, quoting a fragment of an event or news. Online platforms mean not only commercial projects but also mean social media spaces. Moreover, they are represented by search services, personal blogs, and non-profit volunteer projects, such as Wikipedia, Wolfram, and Bibliomania.

In a situation where article 15 of the copyright law is violated, a magazine or news publisher may receive a lawsuit from a publication that previously published a piece of news, commentary, or project and did not have any agreements regarding the publication of content on other platforms. This article was adopted to protect small and medium-sized publications and little-known authors. Still, in practice, large corporations stopped cooperating with little-known companies and authors because it is unprofitable from an economic point of view. (Document 52016PC0593, 2016)

The Directive introduced a new object of exclusive rights, which aims at ensuring the protection of European publishers, journals, and authors, especially the protection of publications in the press (press publications).

Speaking about the responsibility of persons who contribute to the illegal distribution and placement of unlawful content on online platforms, in addition to the Directive on Copyright in the Digital Single Market (EU Copyright Directive), the provisions of

the national legislation of each EU Member State apply.

According to the Court of Justice of the European Union (CJEU), the online platform operator's passive role is also expressed in the technical measures taken to detect illegally downloaded content (§ 109). In addition, the online platform operator is obliged to rely on freedom of expression when deciding on the removal of content (§ 116).

In addition to the previously adopted regulations, in 2020, the European Commission announced a legislative proposal using the Digital Services Act (DSA). This legislative act reflects the ability of users of online platforms to promptly report on the availability, placement, and distribution of legitimate content on the Internet. It is planned to create working groups to identify such content in each member State of the European Union. When adopting this regulatory action and using it with national legislation, it is planned that illegal content can be deleted regardless of the country or place of its creation. (Andreyeva, 2018, pp. 23-25)

The European Commission insists that the current measures to remove and hold accountable for posting illegal content on online platforms are not effective enough. The European Commission needs to develop new standards of responsibility and regulation on this issue. (Podshibikhin & Leontyev, 2001, pp. 65-68)

In 2018, the Commission issued a recommendation to develop effective measures to combat illegal content on the Internet. The submission text confirms the provisions of article 17 and article 15 of the Copyright Law. Online platforms, namely their owners, operators are responsible for managing, storing, and hosting content. The content must undergo a filtering procedure, preventing unlicensed content from entering the platforms.

The recommendation points to the need for all participating countries to apply the same responsibility measures about this issue, which will allow solving similar matters more quickly and help reduce the trend of repeated downloads or illegal content on online platforms.

4 CONCLUSION

Summing up, it should be noted that adopting the Directive on Copyright in the Digital Single Market is necessary to ensure the right to freedom of speech, freedom of expression, and freedom of opinion, and to protect the property rights to the results of intellectual work. Many of the provisions of this Directive are subject to more detailed elaboration, as many tools allow circumventing these provisions and avoiding liability, including the provisions of articles 15 and 17 ambiguous cause practice when applied in different countries of the European Union. In particular, the owners and responsible persons of online platforms themselves must create a safe environment for the user and the author of works.

It is necessary to regulate the general mechanism of consideration of complaints of the rightsholder, ways of compensation for damages, and the general practice of applying this Directive. It is vital to establish prompt notification of users of online platforms about the availability of appropriate terms and conditions of use, placement and distribution of content, information about restricting access to previously posted unlicensed

works, prompt removal of unlicensed content, and immediate assistance to real copyright holders of positions. It is vital to develop user-friendly terms of use of the content, according to the norms of both copyright and related law of the European Union. It is crucial to convey the economic interests of the copyright holders of works to the user and owners of online platforms.

Those responsible for downloading illegal content are not interested in consumers' opinions and the audience's loyalty. Subscribers do not play any role since often such people use either one-day online platforms or create new profiles with encrypted addresses to maximize material profit and avoid any responsibility. The European Union strives to protect its users as much as possible by developing recommendations and adopting legislative acts. For more active development in this direction, the states of the European Union need to act together so that the national legislation of European countries does not contradict the trends and recommendations of the European Commission, which seeks to develop a unified policy on this issue.

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