



Enforcement of copyright in the online environment

Recent developments in the EU copyright legal framework

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Exchange of Best Practices on Enhanced Copyright Protection and New Digital Technologies

Overview

1. EU legal framework

- Article 8 of Directive 2001/29/EC (InfoSoc Directive)
- Article 9 and 11 IPRED of Directive 2004/48/EC (IPRED)

2. New rules

- Article 15 and Article 17 Directive on Copyright in the Digital Single Market (CDSM)
- Digital Services Act (DSA)

3. Non-legislative initiatives

- Recommendation on combating online piracy of sports and other live events

4. New challenges

- AI and TDM exceptions

1. EU legal framework – Article 8 Directive 2001/29/EC ("InfoSoc")

- Member States shall provide sanctions and remedies in respect of infringements of the rights and obligations of rightholders
- Sanctions must be **effective, proportionate and dissuasive.**
- Rightsholders can bring an action for damages and/or apply for an injunction

1. EU legal framework – Articles 9 and 11 of Directive 2004/48/EC ('IPRED')

- Injunctions available against alleged infringers and intermediaries can be of **two types**:
 1. **Article 9** - Interlocutory injunctions (provisional and precautionary measure)
 - prevent the infringement or prohibit the continuation
 2. **Article 11** - Permanent Injunctions (procedure on the merits of the case)
 - to prohibit the continuation of the infringement

2. New rules (1/2) - the Directive on copyright and related rights in the Digital Single Market

- The DSM Directive aims at ensuring a better functioning **copyright marketplace in the online environment**.
- New provisions for press publishers and rightsholders in general to control content on platforms, while respecting legitimate uses and users' rights:
 - **Article 15**: Platforms need authorization for press publications, unless they use very short extracts or hyperlinks.
 - **Article 17**: Platforms ('OCSSPs') are directly liable for 'communication to the public' unless they prove they have made their '**best efforts**' to obtain an authorization or have taken down notified content and kept it down.

2. New rules (2/2) - the Digital Services Act (DSA)

- The **Digital Services Act** (DSA) builds on the e-Commerce Directive to address new challenges online.
- **Objective:** ensuring a safe, predictable and trustworthy online environment. The DSA seeks to tackle the presence of "illegal content", including "non-authorized use of copyright protected material" (recital 12)
- **The DSA is without prejudice** to 'Union law on copyright and related rights', as per Art. 2(4)(b) DSA and recital 11
- It introduces conditional liability exemption and due diligence obligations for hosting providers and enhanced obligations for very large online platforms (VLOPs) and very large online search engines (VLOSEs).

2. New rules (2/2) - the Digital Services Act (DSA) cont'

Question from the audience: *“How does the new DSA affect the exemptions of internet or online intermediaries from liability?”*

The DSA does not affect the liability exemptions of online intermediaries (these exemptions were already established by the e-Commerce Directive)

However, the DSA clarifies certain elements:

- There are new examples of intermediaries in recitals for the three categories (mere conduit, caching, hosting);
- It is clarified that online search engines are online intermediaries, without specifying which of the three categories they fall into (that is to be assessed on a case-by-case basis);
- There is clarification that voluntary own-initiative investigations into illegal content does not make services automatically ineligible for liability exemptions.

Article 17 of the DSM Copyright Directive establishes a special liability regime for OCSSPs, and the DSA is without prejudice to that regime. As regards other cases of IP right infringements (e.g. trademarks), the general DSA rules apply.

3. Non legislative initiatives - Recommendation on combating online piracy of sports and other live events

- **Aim:** assist Member States, national authorities, rightholders and providers of intermediary services to make the best use of existing legal remedies against online piracy of live events
- **Scope:** unauthorised retransmissions of broadcasts of live events taking place through illegal websites, apps, or IPTV
- **Recommended actions:**
 - Prompt treatment of notices addressed to hosting providers
 - Use of dynamic injunctions addressed to Internet Service Providers
 - Cooperation between market players and national authorities
 - Availability of the legal offer

4. New challenges – AI and TDM exceptions

- AI raises challenges for the use of copyright-protected content in the training of AI models.
- The DSM Directive introduced two exceptions for text and data mining (TDM):
 - **Article 3**: for scientific research purposes
 - **Article 4**: for any other purposes, including commercial
- Article 4 DSM Directive also introduces an **opt-out mechanism**: rightholders can decide to reserve the use of their works for TDM

Thank you



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