

The Liability of the Information Society Service Provider for the Infringement of Copyright

Abstract

This diploma thesis deals with conditions of emergence and exclusion of liability of internet society service providers (ISP) with a focus on copyright.

The thesis first defines the terms, which are essential for understanding of the topic. Then, in second chapter, it deals with copyright on the internet, specifically with the author's right to communicate work to the public, which can be violated in large extent by the internet users or ISPs themselves. In this regard, the thesis focuses on the case law interpretation of the concept of the right to communicate works to the public and conditions under which the ISP themselves may be found to be communicating works to the public without authorization.

In third chapter, the thesis the work examines the relevant provisions of the E-Commerce Directive, which outlines the scope of the liability of ISPs providing hosting services. The thesis analyses the conditions of the safe harbour, i.e. the conditions that must be met by these providers in order not to incur liability for content which is stored by the users of their services. The recent CJEU is examined in this regard. In addition, the thesis analyses the prohibition of the general monitoring obligation, which is set out in Article 15 of the e-commerce Directive.

Subsequently the thesis discusses Directive on Copyright in the Digital Single Market (DSM Directive) in detail. DSM Directive introduces a new category of ISP, i.e., online content sharing service providers, new obligations for these providers and a new liability regime. Due to recent expiration of the deadline for DSM Directive implementation, the thesis examines in more detail the circumstances and reasons for the DSM Directive adoption, the criticism and the possible conflict with the Charter of Fundamental Rights on the European Union, it also examines the definition of an ISP and the obligations set out in Article 17 of the Directive and analyses the draft amendment to the Copyright Act which should implement the DSM Directive into national legal order.

The final part presents an overview of the instruments which serve for protection the rights of persons, whose rights have been infringed by the activities of ISPs, namely the instruments of copyright law and the law of protection against unfair competition.

Keywords: Internet Service Provider, Safe Harbour, Hosting