

## ARTICLE 17 OF THE DIRECTIVE ON COPYRIGHT IN THE DIGITAL SINGLE MARKET

**Parveen Kumar Garg**

Guru Kashi University, Talwandi Sabo

### ABSTRACT

When a copyrighted work is requested to be removed from a service, the phrase "notice and stay down" refers to the need that the service ban the same material from reappearing in the future. It's a phrase used to express this idea. "Presumably authorised by law" situations (such as fair dealing rights) will be protected by safe harbour provisions incorporated into the German parliament's implementation of Article 17, including the prohibition of automatic filtering of uploads containing "minor" amounts of copied content that use less than 50% of the original work. Although this use is permissible, copyright holders may still complain, and providers are still required to compensate copyright holders.

**Keywords:** article, directive, copyright, digital, single, market

### I. Introduction

In order to prevent individuals from accessing illegal content, governments throughout the globe are progressively using Internet filter techniques. For example, online gambling, intellectual property, child safety, and national security are some of the reasons why politicians choose to restrict access to some information.

### II. Over blocking

Only the issue of child pornography has led to international consensus on what constitutes acceptable material from a public policy perspective. The report on YouTube's copyright enforcement activities from January to June of this year provides much-needed information on how YouTube's different copyright management systems operate. With YouTube's report on Article 17 of the CDSM directive, the ongoing argument over automated content filtering now has some hard evidence to back it up.

### III. Article 17

O As a matter of principle, Article 17 would enable internet platforms to be held accountable for illegal user material unless they behave as copyright police and bend over herself to guarantee that infringing content does not appear on their platforms. The Electronic Frontier Foundation (EFF) has frequently warned that such liability regimes would lead to upload filters, which are prone to mistake, costly for all but the biggest corporations, and violate basic user rights. If humans are confined to a black box designed by algorithms to make potentially destructive automatic takedown judgments, they will be unable to freely express their thoughts, critiques, images, films, or art. If an OCSSP can establish that they have endeavoured, Article 17 provides them with another safe haven:

1. Efforts to get approval (Article 17(4) (a)); and,
2. Article 17(4) (b) states that specialist co-ops must "ensure the inaccessibility of determined works for which the right holders have given the specialist co-ops with the significant and fundamental data."
3. Article 17(4) requires the best endeavours to eliminate and hold down content that has been advised (Article 17(3)) (c).

Creative works, innovations, or the emergence of products, art, and scientific discoveries are protected by intellectual property rights. Patents, trademarks, copyrights, and trade secrets are all forms of intellectual property (IP).

#### **IV. An important case in Poland vs EU case**

Articles 17(4) (b) and (c) of the DSM guideline have been mentioned to be revoked by Poland. There are no reasonable options in contrast to conforming to the obligations of Article 17(4) (b) and (c), consequently stages should apply transfer channels to do as such, as per Poland's contention in this occurrence. As per Poland, control and the limitation of data opportunity would follow therefore. To put it another way: Poland considers the mandate to be a significant issue since it moves the obligation regarding eliminating encroaching substances from the right holders to the stages, who should foster their own private requirement frameworks to try not to be expected to take responsibility for copyright encroachment. Over-obstructing is supported by the way that they don't confront any identical peril when they confine client privileges by restricting admittance to legal material. Oversight and the infringement of the Charter's major privileges to opportunity of articulation and data would follow thus. Subsequently, the Court ought to invalidate the risky components of Article 17.

#### **V. Best efforts obligation vs an obligation of result**

Article 17(4) b's obligation to put forth best attempts to restrict the accessibility of indicated works and Article 17(7's) prerequisite that any actions forced by stages should not restrict the accessibility of works that don't abuse copyright are at the core of the issue. Article 17(7), the "obligation of result" that sets the more grounded legitimate standard, overshadows Article 17's "commitment of best undertakings," as per the Commission's remarks. Both the Council and the Parliament concurred with this evaluation all through the consultation. At the end of the day, each of the three EU organizations contended that the safeguarding of clients' fundamental privileges should outweigh demands by right holders to limit admittance to their works.

#### **VI. Article 11 - Freedom of expression and information**

Freedom of expression is a fundamental human right. This right includes the freedom to express one's views and to receive and distribute information and ideas without interference from governmental authorities and across borders. There must be respect for the media's freedom and plurality. International crimes and the presumption of innocence. Initially, Article 11 seems to imply that all people are presumed innocent unless proven guilty, which is a key principle of fair trials and the rule of law. There should be no unwarranted intrusions into a person's private and family life or his communications, nor any attacks on his honour and reputation. Every person is entitled under the law to a degree of legal protection in the face of such interference or attacks.

#### **VII. Articles 14 and 15 of e-commerce direct**

Facilitating organizations are liberated from liability under specific conditions under Article 14 of the E-trade Directive (2000/31). However long they: 1) don't have genuine information on criminal behaviour or data and, as respects claims for harms, know nothing about realities or conditions from which the criminal behaviour or data is clear; and 2) act speedily after acquiring such information or mindfulness, facilitating specialist organizations are excluded from risk.

#### **Eva Glawischnig-Piesczek v Facebook. The CJEU on jurisdiction and removal of hate speech**

With regards to understanding EU optional enactment, this case is a genuine illustration of what happens when the two are combined as one. Subsequently, Article 15 of the web based business Directive 2001/31 confines what suppliers can be compelled to do, while Article 8 seems to give Member States more opportunity. Absence of harmonization in EU misdeed law obstructs the establishments' endeavors to uphold a planned system to misdeed prosecution. What truly made a difference was whether or not Facebook (for this situation) could be compelled to erase unlawful substance that had been accounted for, yet in addition indistinguishable and equivalent substance from its servers wherever on the planet under Article 15. EU law has not fit as to the subject of overall injunctive help, and Member States are liable for coordinating Member States in any such orders that are as per public worldwide law, the European Court of Justice said. Most of the choice arrangements with legal understanding on content sifting, which Daphne Keller has effectively summed up here preceding the choice, Dan Svantesson has posted the choice here, Lorna Woods has posted the choice here, and there was a whirlwind of action on Twitter the day of the choice, for instance in this string. As usual, Andrej Savin gives a balanced point of view. I'm not an attorney work in online business law, nor do I case to be (decisions, decisions). Since the message passed on by slanderous proclamations made against a particular individual is held to be illicit, it ought to be evident that the wrongdoing of the substance of data doesn't stem in itself from utilizing specific terms consolidated with a particular goal in mind yet from the way that the message passed on by that content is held to be unlawful.' a similar applies to the prior Google v CNIL case, when the GDPR and Directive 95/46 were utilized.

#### **Sabam case (general monitoring)**

A Belgian court sued Net log, a social network, in order to enforce a filtering mechanism that would prohibit making available its clients' work without authorization. SABAM represents musicians and defends intellectual works. First, the Belgian court sought clarification from the European Court of Justice (ECJ) on whether the planned filtering process was in accordance with EU acquis. Directives 2000/31, 2001/29, and 2004/48 as well as basic rights such as the right to freedom of information were determined to be violated by the filtering process by the ECJ.

Defendant, SABAM, represents musicians and their copyright-protected works in regard to third parties. Social network Net log, like Facebook and other similar networks, is a defendant in this case. SABAM claimed that Net log users were distributing copyright-protected content belonging to its clients without permission or pay, which sparked a legal battle. Net log agreed to pay a fee to SABAM in 2009 in exchange for their use of copyright-protected data. SABAM then requested that Net log stop disseminating the material as of 2009.

#### **Case law CJEU L'Oréal v eBay**

Later L'Oréal documented a claim against eBay and a large number of its clients for brand name encroachment, the European Court of Justice decided that eBay might be considered answerable for the criminal behavior occurring on the closeout site, which will be an alleviation to mark proprietors (L'Oréal v eBay, C-324/09) . The European Court of Justice (ECJ) has decided that eBay can be considered liable for encroaching conduct on its web-based commercial center (L'Oréal v eBay, C-324/09). This judgment will be invited by brand proprietors.

#### **Nova Productions v Mazooma (and Bell Fruit)**

Later an intensive investigation of the games, the appointed authority tracked down that there had been replicating, however that it was not "critical." "At an extremely serious level of over-simplification or reflection," the court expressed,

"the qualities were copied" and the duplicate had "no significant connection to the inventive embodiment" of the first work. As an abstract work, no significant strict code or design was duplicated, and as it were "summed up ideas" were acquired from the games for the literary work. "Self-evident," "ordinary," and practical similitudes were seen in a considerable lot of the connected angles, which doesn't uphold the "significant" proposition. Along these lines, there was no "subjugated duplicating," as the respondent's games (Jackpot Pool and Trick Shot) had been grown freely. Programming that simply utilizes summed up ideas from a prior program isn't an encroachment in this case, since it is the second somewhat recently that builds up that such programming doesn't have copyright security. The presence of shared characteristics in "yields" doesn't suggest that the actual product is something very similar (or, the simple reality that two puddings look and taste the same doesn't imply that the last formula is a duplicate of the first). The UK's status as a significant setting for innovation based prosecution has been affirmed by this choice. To some extent in this occurrence, the appointed authority shows an extraordinary degree of aptitude and a readiness to have a great time.

### **Telekabel wien gmbh v Constantin film**

Constantin Film and Wega, two film creation organizations, alluded the make a difference to the court that handles applications for between time measures to acquire, based on Article 81(1a) of the German Copyright Act, a request requesting UPC Telekabel Wien GmbH, a network access supplier, to eliminate a portion of their movies from the site.

The word 'delegate' incorporates any individual who ships a third-encroachment gatherings of a secured work or other topic in an Internet organization, as indicated by Article 8(3) D 2001/29 of the CJEU. The language of Article 8(3) of D 2001/29 doesn't propose that an extraordinary connection between the infringer and the delegate is essential. At the point when somebody utilizes an ISP's administrations to post ensured content online without the authorization of the privileges holder, they are disregarding Article 8(3) D 2001/29, which expresses that anyone who does as such without consent is abusing Article 3(2) D 2001/29.

### **Stichting brein v Ziggo bv and xs4all internet**

Stichting Brein is a Dutch establishment that ensures copyright holders' inclinations. Web access suppliers like Ziggo and XS4ALL are popular. Deluge programming was utilized by a few Ziggo and XS4ALL individuals to move copyright-secured content on the P2P site The Pirate Bay (TPB). Brein got a court order against Ziggo and XS4ALL to restrict all TPB-related area names and IP addresses. This request was maintained by the Court of First Instance, however the Appeal Court governed against it. Since to TPB's direct, secured works are being made accessible to general society without the consent of their proprietors, as indicated by the Netherlands' High Court of Justice. Endorsers of Ziggo and XS4ALL have additionally been viewed as encroaching on the copyright and related privileges of these freedoms holders by making secured works accessible without their approval on this stage. Regardless of whether TPB's exercises might be known as a "public articulation," the High Court couldn't discover that. CJEU was addressed by the High Court if creating and working a web-based stage that permits its clients to distinguish and trade ensured works comprises "correspondence to people in general." EU Directive 2001/29/EC, embraced on May 22nd, 2001, to blend a few parts of copyright and related privileges in the data society.

## **VIII. Conclusion**

Despite its restricted extension, Poland's activity for the invalidation of Article 17 (4) (b) CSMD and areas of Article 17 (4) (c) CSMD has merit. Specialist organizations must choose the option to apply programmed ex-bet screening of all client transfers to limit their culpability for copyright encroachments submitted by its clients, in spite of Article 17 CDSMD's unique necessities. In this manner, these standards infer an all-inclusive checking necessity, which is in opposition to the Charter. A prerequisite to screen all transfers of ensured works establishes an overall checking obligation, except if it is restricted to explicit utilizations that have been assigned as encroaching by courts, subsequently keeping away from the danger of overclocking, as indicated by the case law of the CJEU. Every one of the arrangements in issue neglect to accomplish a reasonable harmony between the essential privileges in question. Indeed, even to the detriment of others' creative articulation, CDSMD serves to protect the licensed innovation of rights holders. There are a few basic rights that are not considered when a stage is expected to take responsibility for the activities of its clients, including the right to opportunity of articulation and data, just as a stage administrator's all in all correct to lead a business without impedance from outsiders.

## **Bibliography**

### **Primary Sources**

#### Cases

An important case in Poland vs EU case

Eva Glawischnig-Piesczek v Facebook. The CJEU on jurisdiction and removal of hate speech

Sabam case (general monitoring)

Case law CJEU L'Oréal v eBay

Nova Productions v Mazooma (and Bell Fruit)

Telekabel wien gmbh v Constantin film

Stichting brein v Ziggo bv and xs4all internet

Statutes and statutory instruments

EU legislation and cases

Article 11 - Freedom of expression and information

Articles 14 and 15 of e-commerce direct

### **Secondary Resources**

#### **Journals**

Basar, Feyza. "Is freedom of expression in danger in the light of the CJEU decisions on the cases C-507-17 Google v. CNIL i C-18/18 Eva Glawischnig-Piesczek v. Facebook?." (2021).

Burri, Mira, and Zaira Zihlmann. "Intermediaries' Liability in Light of the Recent EU Copyright Reform." *Indian J. Intell. Prop. L.* 11 (2020): 35.

Cavaliere, Paolo. "Glawischnig-Piesczek v Facebook on the Expanding Scope of Internet Service Providers' Monitoring Obligations." *Eur. Data Prot. L. Rev.* 5 (2019): 573.

Fabbrini, Federico, and Edoardo Celeste. "The right to be forgotten in the digital age: the challenges of data protection beyond borders." *German law journal* 21, no. S1 (2020): 55-65.

Fahey, Elaine, Veronika Shleina, Kate Klonick, Natalia Menéndez González, Andrew Murray, and Maria Tzanou. "The law of Facebook: Borders, regulation and global social media." (2020).

Geiger, Christophe, and Bernd Justin Jütte. "Platform liability under Article 17 of the Copyright in the Digital Single Market Directive, Automated Filtering and Fundamental Rights: An Impossible Match." *Automated Filtering and Fundamental Rights: An Impossible Match* (January 30, 2021) (2021).

Keller, Daphne. "Dolphins in the net: Internet content filters and the Advocate General's Glawischnig-Piesczek v. Facebook Ireland opinion." *Stanford Center for Internet and Society* 4 (2019).

Leistner, Matthias. "European Copyright Licensing and Infringement Liability Under Art. 17 DSM-Directive Compared to Secondary Liability of Content Platforms in the US—Can We Make the New European System a Global Opportunity Instead of a Local Challenge?." (2020).

Milczarek, Ewa. "Preventive content blocking and freedom of expression in European law—conflict or symbiosis?." *Journal of Media Law* (2021): 1-14.

Miscia, Martin. "Google v CNIL and Glawischnig-Piesczek v Facebook: What Remains Beyond the EU's Reach." Available at SSRN 3709080 (2020).

Pollicino, Oreste. "Data Protection and Freedom of Expression Beyond EU borders: EU Judicial Perspectives." *Data Protection beyond Borders. Transatlantic Perspectives on Extraterritoriality and Sovereignty*, Hart (2021).

Presuel, Rodrigo Cetina. "Universality vs. Standardization: The Privatization of Communication Rights on Social Media." *Handbook of Communication Rights, Law, and Ethics* (2021): 57-74.

Radoja, Katarina Knol. "Freedom of Expression on the Internet—Case 18/18 Eva Glawischnig-Piesczek v Facebook Ireland Limited." *Balkan Social Science Review* 15, no. 15 (2020): 7-25.

Sanmark, Wilhelm. "The Intermediary Liability Conundrum: Are Safe Harbors Useful?." (2021).

Shleina, Veronica, Elaine Fahey, Kate Klonick, Natalia Menéndez, A. D. Murray, and Maria Tzanou. "The law of Facebook: borders, regulation and global social media." *Regulation and Global Social Media* (May 16, 2020) (2020).

### **Online Journal**

Frosio, Giancarlo, and Oleksandr Bulayenko. "Study on Dynamic Blocking Injunctions in the European Union." Study prepared by the European Union Intellectual Property Office (EUIPO) in collaboration with the Center for International Intellectual Property Studies (CEIPI) (2021).

## **Articles**

Svantesson, Dan Jerker B. "Scope of jurisdiction online and the importance of messaging—lessons from Australia and the EU." *Computer Law & Security Review* 38 (2020): 105428.

Svantesson, Dan. "Grading AG Szpunar's Opinion in Case C-18/18—A Caution against Worldwide Content Blocking as Default." *Masaryk University Journal of Law and Technology* 13, no. 2 (2019): 389-400.

Winklbauer, Stephan. "Austria: First Global Ban of Defamatory Post on Facebook." *Computer Law Review International* 22, no. 1 (2021): 15-18.