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ABSTRACT OF THE DOCTORAL DISSERTATION

„CONTENT FILTERING AS A MECHANISM FOR COPYRIGHT PROTECTION OF INTERNET-HOSTED MATERIAL“

Content filtering is one of the key measures that can help combat online copyright infringement involving intermediary service providers. Automated anti-infringement systems rely on this approach to identify and subsequently remove or block infringing content. In addition, these systems can redirect the revenue generated by such content from infringers to rightsholders. It significantly affects the daily use of the Internet by every Internet user. At the same time, however, its application raises a number of legal questions, particularly as to who is obliged to apply it in what way and to what extent. The above doubts have been further exacerbated recently due to the introduction in the EU on 17 April 2019 of Article 17 of Directive 2019/790 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (DSM). This provision represents a real revolution in the regulation of liability and obligations to prevent copyright infringement by certain hosting service providers - the so-called online content-sharing service providers (OCSSP).

The aim of the dissertation is to investigate the characteristics, nature, limits and legal conditions for the use of content filtering for copyright protection in the practice of hosting providers. The stated aim of the thesis led to the following main research hypothesis:

Content filtering by hosting providers, as required by EU law, has a positive impact on the actual level of copyright protection on the Internet, and the possible risks associated with it can be mitigated by the introduction of appropriate safeguards.

To verify the hypotheses thus stated and the nine supporting hypotheses, the dissertation adopts a structure based on an introduction, six chapters and a conclusion. Each chapter contains a separate introduction and a presentation of the conclusions drawn from that chapter.

The first chapter discussed basic concepts, definitions and preliminary issues for further consideration. The chapter highlights the background of content filtering in the fight against illicit content and focuses primarily on copyright-infringing content on the web. This was followed by a definition of content filtering, which is used throughout the dissertation in the context outlined. The various features of filtering were also distinguished. Afterwards, a thorough examination was conducted on the technical constraints associated with automatic content recognition technologies, which were essential components of the filtering process. The chapter concludes by defining the entities most affected by filtering, which enables the grid of concepts used later in the thesis to be outlined.

The second chapter focuses on situating the content filtering obligation within the broader issue of a hosting provider's liability for copyright infringement in the EU, Poland and the US. The chapter begins by defining the concept of hosting in EU law and in Polish law, which is necessary in order to discuss further liability rules for this category of entities. The starting point for further consideration is the presentation of the typology of liability (primary, secondary and injunctive) that a hosting provider may incur. It is with this division in mind that further examination of the regulation of this liability in international copyright law, EU law, Polish law and US law is carried out, with additional analysis as to their relationship to the exclusion of liability of hosting providers under the safe harbour. Under US law, the possible legal bases that may result in the application of content filtering in the practice of hosting providers subject to US legislation are additionally examined.

The third chapter is devoted directly to the content filtering obligations of hosting providers to address copyright infringement outside the scope of Article 17 DSM. It includes research into the application of filtering as a duty of due diligence and filtering issued on the basis of court rulings in European Union law and in the law of EU Member States where this practice has emerged (Germany, Austria, Italy, the Netherlands and Poland). The entire chapter concludes with the presentation of the author's proposal, based on previous research, of principles for the imposition of content filtering orders by courts against hosting providers in European Union law.

The next three chapters examine the most recent basis for filtration in European Union law, namely Article 17 of the DSM. The fourth chapter examines the political, social and economic determinants of the reform of the obligations of hosting providers that Article 17 DSM represented in European copyright law. The research in this chapter seeks to establish for what purpose the EU legislator adopted Article 17 DSM and whether such a stated purpose was justified by research and data on the reasons for the reform.

Chapter 5 is devoted to the normative construction of the content filtering obligation introduced against online content service providers under Article 17 DSM. The chapter begins with an analysis of the legislative history of Article 17 DSM, together with its earlier versions, before moving on to examine the personal scope of the provision and the very meaning of the term OCSSP. It then discusses Article 17 DSM in terms of its threefold nature, that is, the OCSSP liability regime for the actions of its users (Article 17(1)-(3) DSM), the OCSSP disclaimer regime in the absence of authorisation (Article 17(4)-(5) DSM) and the mandatory safeguards against threats to fundamental rights that the disclaimer regime provided for may generate (Article 17(6)-(10) DSM). The chapter concludes with a conflict of laws analysis of the scope of this provision.

The final, sixth, chapter presents considerations aimed at determining how the content filtering process indicated in Article 17 DSM should work in practice. First, the proposed models for the application of filtering under Article 17 DSM by the European Commission in the Guidelines for Article 17 of Directive 2019/790 on Copyright in the Digital Single Market, Advocate General Henrik Saugmandsgaard Øe in his opinion in Case C-401/19, and then the models proposed in legal doctrine and science are analysed. This was followed by a comparative legal study of the completed implementations of Article 17 of the DSM into national laws. In total, this analysis covered 23 countries. The greatest attention is given to the differences that these implementations show in relation to the text of Article 17 DSM. Due to the fact that, at the time of completing the writing of this thesis, Poland had not yet implemented Article 17 of the DSM into its law - the analysis in the next section examines a draft of such implementation dated 17 February 2023. The entire chapter concludes with the author's proposal for the application of filtering within the normative framework of Article 17 DSM.

This dissertation focuses on EU law and the regulations of individual Member States, with particular emphasis on Polish law. However, the phenomenon of the liability of Internet intermediaries - i.e. the main issue under which content filtering should be placed - is a global

phenomenon, and its development links European law (understood as EU law and the law of its individual states) very closely with US federal law. These standards, also due to the universal operation of the largest online platforms, complement each other, and knowledge of the common context leads to a better understanding of them, which is why the dissertation is also based on foreign legislation, case law and literature.

To the best of the author's knowledge, there is no comprehensive monographic study devoted to the subject of this dissertation in Polish or foreign literature. This means that there is therefore a gap in the legal literature, which this thesis attempts to fill.

The research for this dissertation was completed on 10.04.2023, although it takes into account the changes introduced by Regulation 2022/2065 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), the provisions of which will be applied from 17 February 2024, i.e. after the completion of this dissertation.

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