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LAW**

# **Assessment of Legal Framework of the Digital Copyright Infringements of Audio- Visual Services in the European Union**

**BACHELOR THESIS**

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## **DECLARATION OF HONOUR:**

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

(Signed) .....

RIGA, 2021

## **ABSTRACT**

Today, perhaps the most global problem on the Internet is the problem of Internet piracy, which is closely related to the accompanying problem - copyright infringement. Everything is “leaked” to the Internet: from music and pre-premieres of films to unpublished scientific papers and confidential documents. The reason for this phenomenon is, first of all, imperfect and ineffective legislation, both at the level of global and national level. Despite that, there are other factors such as economy and psychology that influence piracy. Statistics show that audiovisual content falls onto the category of most violated type of media, thus should be observed more critically. Technological progresses happen so fast, that it is very hard to create a homogenous system for copyright protection and think through the potential types of infringements that Internet may bring.

**Key words:** digital piracy, online copyright infringements, audiovisual content, service providers, intellectual property, Internet.

## SUMMARY

Digital piracy is a well-known issue of 21st century and probably everyone has faced it, or has questioned it. This Bachelor Thesis aims at clearly show the importance of this issue in relation to audiovisual services in the European Union. With the Covid-19 pandemic, people stay at homes a lot and try to find alternatives to their daily outside activities. One of which is of course attending movie theaters. The demand for online consumption of films, videos, and other audiovisual services has risen, but unfortunately a very small percentage of people is aware that there is a lot of illegal content available on the Internet platform. In fact, the irony is that most of the protected and legal media is not available for free. This causes an increase in online copyright infringements and use of pirated content, due to a high availability of pirated sources. The paper opens up a discussion about negative impact of digital piracy that people neglect and lack knowledge of. Additionally, it uses legal, economic and social analysis and tries to provide suggestion onto how to reduce piracy.

The Bachelor Thesis is divided into six parts – introduction, four main chapters and the conclusion. The Introductory part talks about methods and topicality of the research in order for a reader to get an understanding and sense of the approach that will further lead to a conclusion. It introduces the relevance of the issue of digital piracy more in-depth and defines the scope and limitations for the analysis. Chapter one introduces definition to the piracy, discussed reasons to why people download, distribute and use pirated content. The scope of these reasons includes individual intentions, such as social, monetary and others. Moreover, the Chapter talks about the scope for the areas covered by the issue of digital piracy and specifics of audiovisual services that are used for research of this Bachelor Thesis. Furthermore, the paper analysis relevant statistics that show categories for law-breakers, categories of the media that falls under the copyright infringements the most and emphasizes that younger ages, as well as people with low income flow, tend to use pirated content more often, due to lack of knowledge and awareness, or monetary opportunities. Additionally, Chapter one emphasizes the negative impact that digital piracy brings, and how owners of intellectual property are neglected, leaving them with no profit.

Chapter two introduces four different Directives, connected to the issue of digital piracy. The paper analyses components, provisions and articles of these documents in order to conclude which ones are more reliable and relatable to the global problem. The Chapter emphasizes the importance of the newest Copyright Directive with its ground-breaking Article 17, that will be discussed in details in relation to the case-law. Additionally, the Chapter covers the process of creation of the copyright legislation and national anti-piracy policies, provided by selected Member States. Legislative Chapter will smoothly lead a case-law application provided by the Chapter three, while making many references to the specific concepts provided by provisions of Directives. Such as, for example, communication to the public, introduced in the InfoSoc Directive and amended by the newest Copyright Directive. Case-law analysis includes four cases for preliminary ruling with the application of the DSM Directive. These cases deal with audiovisual services and online streaming platforms in particular. *UPC Telekabel Wien GmbH v Constantin Film Verleih GmbH* and *Wega Filmproduktionsgesellschaft* case is the only example of slightly different issue, nevertheless it also related to audiovisual services and the application of the concept of communication to the public.

Chapter four bases on interdisciplinary approach and methods to reduce piracy in the future. The first part of the chapter talks about the harmonization of the legal system, and the second part introduces a quantitative analysis of economic indications and how they influence piracy. Furthermore, the analysis also includes the conclusion on which field of digital piracy needs the most improvements and if the legislation covers it enough. Additionally, the Bachelor Thesis

concludes is the research paper was properly answered and if the solution to the problem was somewhat detected. The author also makes suggestions on how to improve the research in the future, and which factors influencing digital piracy should be prioritized.

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## INTRODUCTION

21st century is a new era for technological progress that is being innovated and improved every day. There is a long ongoing list of digital and physical tools, gadgets and even services that we use everyday to have a simpler life that help us shorten the time spend on our routine, work and other activities. For instance, if we need to translate something, we use internet to find the translation in seconds; if we need to communicate with someone – we call or send a text message through our gadgets. Most importantly, we can obtain any information with just a click as well as share it immediately to other person. The issue arises here, as most of the time people do not give a thought about the nature of the information that they send as they suppose that if it is freely available on the Internet then it may be distributed and used to their desire. Additionally, as gadgets become available for younger children as well, unfortunately they are not being educated about the concept of legal ownership and that every digital content that is found on the internet belongs to someone. In fact many people despite their ages do not realize that not all of the information obtained digitally may be transferred, copied, distributed and so on. Internet piracy is the world's most serious intellectual property problem. Therefore, developed European countries and the United States are constantly improving programs and technologies that not only help to detect these pirates, but also to contribute to the availability of legal content for end users and the development of a culture of respect for copyright. The scale of making illegal copies of various works and their distribution has increased dramatically with the occurrence of the Internet. The high speed of traffic, the availability of connection for a huge number of people have led to the fact that only minutes may pass since the moment of publication of a legal copy of a book, music, film or program to the appearance and the pirated content will appear, thus the content will be illegally copied and distributed from the origin. These violators are not only cybercriminals engaged in the illegal distribution of content but also end users who download or obtain this content online. For the creative industries (production of music, books, films, etc.), as well as for the software industry, this means a serious loss of income, a lack of incentive for creativity, the need for additional investments in anti-piracy tools. Digital copyright infringements are a huge problem nowadays as they are purely regulated and are very hard to detect. Even though there are multiple laws, methods, regulations and directives aiming and resolving this issue, officials are concerned. Moreover the United Nations Educational, Scientific and Cultural Organization (UNESCO) has brought attention to the risk behavior toward the owners of the intellectual property, such as producers, artists and others.<sup>1</sup> Their products and content is being illegally used and their sales and profits decrease drastically with unfortunately yet indefinite legal protection.

This Bachelor Thesis introduces the importance and relevance of copyright protection. Moreover, the research is narrowed down to the digital piracy of audiovisual services in the European Union. It will be observed that the importance of owners of the intellectual property, service providers and all of the parties involved in activities related to audiovisual services is oftenly neglected. Most importantly, the Thesis will observe relevant legislation that shapes and helps to reduce digital piracy. The issue arises because technological improvements occur much faster than relevant provisions are introduced thus it is impossible to get rid of digital piracy temporarily. In fact, even with the introduction of the newest Copyright Directive, it only takes two years for it to be implemented in national laws of each of the Member State, when it may only take

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<sup>1</sup> Darrell Panethiere, *The Persistence of Piracy: the Consequences for Creativity, for Culture, and for Sustainable Development* (Paris: the United Nations Educational, Scientific and Cultural Organization (UNESCO), 2005), p.10, accessed April 20, 2021, <https://unesdoc.unesco.org/ark:/48223/pf0000145517>.

a day for new technological changes to be introduced. The main suggestion that the Bachelor Thesis will give in reference to the research is how to reduce digital piracy.

The research includes different methods, whereas one of the most significant ones is Doctrinal. Chapters two and three discuss relevant legislation and recent case-law. In particular, legal doctrinal research is made through observation of official documents of the European Union, Directives and Charters. Additionally, databases help to find more in-depth legal analysis and application to the topic of digital piracy. The EU case-law helps to highlight the significance of digital piracy and that many cases are held unresolved due to the lack of relevant legislation. Moreover, the issue of online copyright infringements are not occurring only to the weak legal system but there are other factors such as social and economic ones which were obtained through interdisciplinary approach, showing that digital piracy has an extensive scope of factors making it the most acknowledged problem of intellectual property protection field. In particular, in order to make a more efficient analysis, empirical research is mostly used for social and economic scope of the paper. Statistics that represent quantitative data show the percentages for copyright infringements and the number of users who make these breaches. Moreover, it may be said that the whole Bachelor Thesis is a comparative method of analysis as it provides the comparison on factors influencing digital piracy and the discussion on the liable party behind it. Additionally the comparative research will be seen in legal analysis as well, as the Bachelor Thesis talks about the most relevant and effective copyright laws that may decrease the issue of digital copyright infringements of audiovisual services in the European Union.

The main research question is: «To What Extent does Legislation Cover the Issue of Digital Copyright Infringements of Audiovisual Services in the European Union?», because despite the other influencing factors, this is legal research and it is important to discuss how the problem of digital piracy is dealt with by application of latest laws and provisions. In order to come to a concrete answer to the question, it is important to observe if there is enough power in copyright laws to get rid of such a significant problem of 21st century. The emphasis is also made onto the interdisciplinary approach as making a conclusion on what indicator – legal, economic or social, influences trend on digital piracy the most.

Limitations observed by the research as chosen by the author of the Bachelor Thesis are seen firstly in the topicality of the paper itself. The topic is narrowed down to copyright infringements occurring on the Internet, as digitalization is the most suitable scope for the research in 2021. Additionally, it will be seen that audiovisual services are one of the main online services to be breached, especially streaming ones. Further statistics in Chapter one and Chapter four will show the significance of this limited scope in the numerical indications. Moreover, the limitations occurs when talking about the regions for research, as it is also narrowed down to only the Member States of the European Union. Time periods' limitations may also be seen in some parts of the research, as for example statistics, due to the fast technological improvements and irrelevance of any data taken before the year of 2000 or sometimes even 2010. As for the legal part, it is also limited in time period to some extent, as mostly newest and latest provisions impact case-law, again because of the digital century and fast improvements. Case-law limitations occurs as well, as only the most recent, well-known and relevant for latest issues are observed.

In the accession of the issue of digital piracy of audiovisual services in the EU, the Bachelor Thesis has the following structure. First of all, it is divided into four main Chapters. Chapter one introduces the concept of digital piracy, its significance, reasons for occurrence, types of content that falls onto the category of digital piracy, but of course in order to emphasize the impact of it, the paper will also discuss negative effects that pirated content brings. Quantitative data will highlight



the number of users that breach this type of intellectual property. Chapter two is based on legislation that cover the issue of digital piracy. Sub-chapters are stated in the periodical order of the occurrence of legal Directives, Regulations, and other types of official documents. The list will also be fulfilled with anti-piracy policies which are in a form of nationally implemented regulations in selected countries. Chapter three is based on the case-law analysis, as it is significant to show real-life observations of digital piracy of audiovisual services and how they are being judges and resolved using existing legislation. Some of the cases will be analyses more in-depth as they have been reasons for debates for a long time now, as have not reached a decision yet. The newest Directive DSM, will be emphasized a lot, as it a long-awaited set of provisions aiming at transforming the whole online copyright system. Chapter four is based on pure analysis and introduction of interdisciplinary approach in resolution of the issue of digital piracy. It will discuss economic relevancy through statistical analysis, as well as will make suggestion on the harmonization of legal, remuneration, economic and social system in order to the resolve an issue of online copyright infringements of audiovisual services in the European Union.

Research Question: «To What Extent does Legislation Cover the Issue of Digital Copyright Infringements of Audiovisual Services in the European Union?».

# 1. DIGITAL PIRACY

## 1.1 Definition of Piracy

The main concept of this Bachelor Thesis can be laid down by one term – *piracy*, which actually does not have a certain definition except it can be rephrased with more appointed synonyms such as *copyright infringements* that are most likely to be applied to digital content, that will be further discussed in details.<sup>2</sup> Thus, it is important to give a definition to the term *copyright*, which legally is a concept aiming to protect the suppliers/owners of a particular asset that they have made. These may be tangible or/and intangible assets, but particularly this research paper will be aimed at intangible ones in the form of digital media, sources, such as audiovisual content, that will further be detected and described in-depth. These copyright infringement can also be defined simply as either copying the content without permission, or distributing, selling it with on the market without the owner's consent.<sup>3</sup>

Overall, this topic is very uncertain and debatable, especially because when connecting it to a legal field, every jurisdiction varies and it may or may not be viewed as an actual infringement depending on the provider of the digital media, the legal background of it and even the region, where this content is being spread. When comparing these digital assets to the physical ones, the digital services may lead to unresolved and uncontrollable issues, especially of piracy, because physical resources cannot be spread as imperceptibly and be so hardly possible to catch and legally punish. Additionally, this topic is highly controversial as digital piracy is compared to stealing, even though the owner of their intellectual property is not dispossessed of it, but it is simply being copied without his or her consent.<sup>4</sup>

It is important to recognize that as the piracy is only related to the digital media, digital assets, then *hard media*, such as physical assets, or in other words tangible – DVD, CD, players, mobile phone, *etc.*, are excluded from the research.<sup>5</sup> Moreover, the being discussed digital content should legally be referred to as intellectual property, as for each of this digital media, there is an owner/provider.

## 1.2 Reasons for Digital Copyright Infringements

There are multiple reasons for an existence of these copyright infringements of digital content or simply piracy. Firstly, it is simply very easy to do, as copying of the audiovisual content does not require a lot of skills, as well as it is cheap to do, thus is popular among young ages. When people find a freely available movie on the internet, they instantly think about saving their money, disregarding the fact that this pirated content is illegal.<sup>6</sup> Additionally, briefly mentioning, the Internet platform is too broad and there is a lack of enough copyright laws, thus it is very hard to get caught while copying such content. Especially because digital content is relatively new, the issues

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<sup>2</sup> Piotr Strykowski and Danny Scorpecci, *Piracy of Digital Content* (2009), p.5. Available on: OECD Library. Accessed April 21, 2021.

<sup>3</sup> Alexander Peter Snelling, *Digital Piracy: How the media industry is being transformed* (Gandia: 2013), accessed April 21, 2021, p. 3, <https://riunet.upv.es/bitstream/handle/10251/35922/Memoria.pdf?sequence=1>.

<sup>4</sup> *Ibid.*, p. 9.

<sup>5</sup> Strykowski and Scorpecci, *supra* note 5, p. 12.

<sup>6</sup> Snelling, *supra* note 6, p. 9.

of piracy are not being brought up enough, thus probably most of the *law-breakers* are unaware of potential seriousness of the crime. Anonymity provided to criminals by the technical means of the network is a huge issue when fighting the copyrights infringements also known as piracy in the Internet. As the result, it is much more difficult to identify an intruder online rather than in the real world. Moreover, there is an issue with geographical restrictions meaning that some content is simply available in some countries or regions, and unavailable in others. It is also very easy to make profit with pirated content because it can be sold to any place around the world.<sup>7</sup>

On the other hand, with the improved and improving technology of the 21st century, it is actually a misconception that these activities cannot be traced. Actually, most of the actions being made online, even under the protection (in case of some payments), are most likely able to be measured and detected, thus people should become more aware that copyright infringements can be caught and that person or group of people can be easily punished under the number of regulations and laws.

«The reasons why online pirates appear to be anonymous, when in fact they are not, have nothing to do with technology and have everything to do with policy and government resolve, or lack thereof, to address the problem of online piracy».<sup>8</sup>

Contrary to that, there is a lack of a sufficient number of specialists in this field in the law enforcement agencies. In this regard, it becomes quite obvious that there is the need to educate children and students in regard to the correct attitude to such a phenomenon as piracy. One of the ways to solve this problem can be coverage in the school curriculum, for example, in the computer science course, of the problems of the intellectual property protection.

To be more specific with the reasoning behind the usage and non-usage of the pirated content, there is an official survey made for citizens of the European Union that has shown some interesting statistics. First reason that is taken into account by people avoiding this content is the affordability or in other words low prices for legal media. In fact, comparing the survey data from 2017 and 2020, it can be seen that the number of people using this reasoning has decreased, thus it may be concluded that it is due to a lower range of available and cheaper legal content. Nevertheless, the number of people realizing the harm of such infringements has risen, thus many of them simply have understood that the pirated digital content is against the law and actually destroys profits and businesses of the distributors. On the other side, the percentage has fallen regarding the reasoning associated with the disturbance of the EU economy overall, thus it may be concluded that people are more guided by the *feelings* of the particular distributors rather than of the economy as a whole. Relying on the other people's downfalls and maybe sad experiences with the usage or distribution of the pirated content is also not being a relevant reason for others to stop the big problem.<sup>9</sup> Almost the same percentage related to people fearing how they may be punished. The others are those who refuse to deal with such an issue and do not want to avoid it.

### 1.3 The Scope of Digital Piracy

It is important to define the scope of products and services that are being distributed and copied using illegal schemes. As previously mentioned, pirated content is narrowed down to intangible properties falling under the category of intellectual property. These are digital, online

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<sup>7</sup> Strykowski and Scorpecci, *supra* note 5, p. 48

<sup>8</sup> Panethiere, *supra* note 1.

<sup>9</sup> Edelman Berland, *European Citizens and Intellectual Property: Perception, Awareness and Behavior* (2013), accessed April 21, 2021, [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/Perception\\_study\\_2020/Perception\\_study\\_full\\_en.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/Perception_study_2020/Perception_study_full_en.pdf).

goods that can be accessed almost anywhere around the globe. Liable to piracy products include audiovisual content, such as TV shows, films, online events, music and radio, but such content as radio services and reading materials – books and magazines published online, and even video games also fall under that scope.<sup>10</sup> These are products supplied by a particular company or a person, protected by copyright law, nevertheless most likely easily opt to being copied and distributed. Another types of copyrights infringements online are digital art pieces, photographs and most importantly social media accounts. For instance, there are many cases of people *cat fishing* and pretending to be someone else online, using other people's photographs, videos and all sorts of personal information – name, age, family data, and many more. This kind of infringement is mostly acknowledged in relation to celebrities, but overall the Bachelor Thesis will be narrowed down to an analysis and research of piracy related to audiovisual services.

## 1.4 Statistics of Users

In order to show the scale of a problem of copyright infringements regarding online intellectual property, it is essential to look at the statistics for the percentages showing these lawbreakers. The survey represents data of the European Union in the year of 2020. Firstly, looking at those who do not use pirated content, it is said that half of the respondents were the ones willing to pay fees for the desired content, or either that content was available for them such as for example by the matters of geo-limitations. The other half was aware of the legal aspects and how disturbing it can be for the industry and providers themselves.<sup>11</sup> As for those who do perceive with illegal actions and download, distribute or use the pirated digital media in any other way, «1 out of 10 Europeans»<sup>12</sup> of the poll have positively replied. Though, the percentage of users who have done it on purpose have slightly declined in the past 3 years. To be more precise, numbers show that the illegal usage of digital content has declined in France «by 8 % between 2016 and 2017»<sup>13</sup>, in Sweden by 7% in the last year, in Spain by 5% 2 years ago regarding audio services and in Austria by 9% in the year gap of 2018 and 2019. Even though the group of users have decreased, the volume of the downloaded and distributed illegal content has still increased throughout the last years, thus simply this group of law-breakers have started to infringe the copyright laws more oftenly and with bigger scope. Moreover, the age group of the users who have obtained this content on purpose varies from 15 years old to 24, where the highest percentage of them are men rather than women. Also, most of such law-breakers are students and people leaving in bigger towns or cities.<sup>14</sup>

Judging by the Online Piracy Study that was published in 2018, it includes multiple surveys regarding the digital piracy in selected countries. It is observed that copyright infringements are mostly observed in Thailand, Brazil and Indonesia, with further high percentages for usage in two of the European Union's countries - Poland and Spain. While comparing the percentage of these law-breakers to the total population,

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<sup>10</sup> Stryzowski and Scorpecci, *supra* note 5, p. 19.

<sup>11</sup> Berland, *supra* note 14.

<sup>12</sup> Berland, *supra* note 14.

<sup>13</sup> Berland, *supra* note 14.

<sup>14</sup> Berland, *supra* note 14.

«Spain, Canada and Hong Kong are the top three countries for piracy, while piracy is the least common in Germany, Japan and Indonesia, the last due to low Internet penetration».<sup>15</sup>

Positively speaking, survey also confirms that digital piracy has declines in the years between 2014 and 2017 for the Member States, only showing the contrary for Germany.<sup>16</sup>

## 1.5 Negative Impact

The main aspect of the digital piracy is that it is certainly illegal, whereas many people perceive it as an activity which allows people to just make profit from distributing copied digital content, neglecting the seriousness of these infringements and that it actually harms the whole industry of that media.<sup>17</sup>

Despite the fact the digital piracy is an illegal activity, it also deprives the parties involved in creating and distributing goods and services of enough recognition and remuneration. Especially when taking into account less known companies and suppliers, these are the most disturbed groups, as when someone uses their products without consent, in summary, it leads to global economic problems. The profit and demand is reduced, causing the decrease it supply and job losses due to multiple reasons.

There is less money to invest in new software, developing music artists, and movies. There is less work for developers, testers, sound engineers, videographers, actors, scriptwriters, musicians, assistants, set designers, security guards, stores, salespeople, website developers and every other type of person who goes into creating, packaging, advertising, distributing, supporting, promoting or reviewing these products and services.<sup>18</sup>

Digital audiovisual services and other related products is a huge industry that shapes the economy of the whole world nowadays, and if there are people and factors that trigger it, it caused a direct negative effect on the economy.

The scope related to the pirated music content is actually wider and bigger than just the sound check producer who is responsible for main sound effects. Moreover, there is a huge group involved, such as singers, text and music writers, various types of producers and distributors, they all lose profit from the illegally copied music media.<sup>19</sup> They do struggle financially due to the decreased primary and legal sales of their content just because of these law breakers. Also, many of these artists expand with filming video clips related to their initial songs, thus it creates a whole new group of employees who work on filming, creating, editing, advertising the desired video content, and again, it creates more monetary and job-wise losses. The chain is so on-going that the whole industry then struggles on the field of music concerts, as it is known that any copyright infringements in the beginning of the process, decrease the success of further interest and sales.<sup>20</sup> Overall, music industry is very unstable and maybe when these infringements are applied in relation

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<sup>15</sup> Joost Poort and João Pedro Quintais, *Global Online Piracy Study* (2018), accessed April 21, 2021, [https://www.researchgate.net/publication/327026436\\_Global\\_Online\\_Piracy\\_Study](https://www.researchgate.net/publication/327026436_Global_Online_Piracy_Study).

<sup>16</sup> *Ibid.*

<sup>17</sup> Łukasz Tomczyk, «Article Evaluation of Digital Piracy», Faculty of Pedagogy and Psychology, *Pedagogical University of Cracow* (2021): p.2, accessed April 21, 2021, [doi.org/10.3390/fi13010011](https://doi.org/10.3390/fi13010011).

<sup>18</sup> The Societal Costs of Digital Piracy. WEBROOT. Available on: <https://www.webroot.com/us/en/resources/tips-articles/the-societal-costs-of-digital-piracy>. Accessed April 21, 2021.

<sup>19</sup> Panethiere, *supra* note 1.

<sup>20</sup> Panethiere, *supra* note 1.

to highly popular artists, the losses are less of an effect, but when the sales are caused to be decreased in relation to not so known artists, then it may trigger their business concretely.

National industry of any audiovisual content is comparatively smaller and less recognizable worldwide thus when even such industries are illegally copied and distributed, the domestic markets suffer from monetary losses and overall future success. Economically wise, it creates a downfall in the local economy and makes the country rely only on the foreign or just well-known film, music, television and other types of related industries. A smaller profit from sales from domestic audiovisual services decreases the GDP of a country in the long-run and thus not only culturally, but economically makes a country less recognizable. There is also another side to this issue, which can be actually seen as an advantage. If taking as an example very small countries where not only their industries are less likely to be recognized, but even people have lack of knowledge regarding to where this country is situated. If a *pirate* decides to copy for instance, a song from one of the national artists of that country and distribute it without his or her consent to the outside world, there is a chance for it to be purchased and even raise popularity, but this percentage is very low. Also, a positive side especially to music industry is that if this copied content would become recognizable, then ticket sales for concerts and related non-digital demand will rise. This is supported by the survey of 2014-2017, that shows that people who have purchased the pirated music content attracted 30% of these people purchasing tickets for concerts.<sup>21</sup> Nevertheless, despite of some positive cases,

«all of these industries require significant investment and, even in the absence of piracy, involve considerable risk to investors given the highly competitive markets for these works and the difficulty of predicting consumer tastes and desires».<sup>22</sup>

Thus, in almost a 100% cases, digital piracy can only bring harm.

It is said that there was a questionnaire in Russia that represents that most of the people living their do not think that copyright infringements of the audiovisual and other services are an issue and do not constitute a negative effect. In fact their opinion is that digital piracy supplies a negative effect only on big and recognizable industries, such as the ones in the United States. They say that these industries are not located in Russia but are mostly Western ones, and even these are not drastically disturbed by the effects of the piracy.<sup>23</sup> Contrary to that, there is also a percentage of artists from Russian Federation who are victimized by the copyright infringements and they undoubtedly, do not agree with the respondents to the questionnaire.

Another negative effect may be seen in a slightly indirect scope. It is investment in the field of intellectual property as a whole, which includes audiovisual sector as well, but may be occurring in relation to any of its components and any other type of creative media. There is a risk that if the copyright laws will be abandoned often, then investors may not decide to rely on such a field and will choose to invest in a more reliable business, that is not being legally abandoned.<sup>24</sup> The higher there is a legal possibility to negligence, the higher there is a chance that some business will not be competent and its sales will be decreasing. Thus, cultural development may struggle not only by the effect of the digital piracy, but due to the lack of believe from investors, who are essential for many industries to be rising and become recognizable.

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<sup>21</sup> Poort and Quintais, *supra* note 20.

<sup>22</sup> Panethiere, *supra* note 1.

<sup>23</sup> Panethiere, *supra* note 1.

<sup>24</sup> Panethiere, *supra* note 1.

There is also a negative effect caused by the means of piracy in relation to the societal norms, as this activity is criminal and is compared to have terroristic nature. This, is due to copyright infringements group actions, whose motives are that piracy is an easy, profitable and low risk method of making money. From the other side, this is indeed a criminal activity, just less likely to be caught in comparison to «drugs and paedophilia, to even gunrunning and terrorism»<sup>25</sup>, but it still infringes the copyright laws and many other regulations such as the concept of the rule of law.<sup>26</sup>

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<sup>25</sup> Panethiere, *supra* note 1.

<sup>26</sup> Panethiere, *supra* note 1.

## 2. LEGISLATION

### 2.1 Legal Introduction

Issues related to the digital or simply any copyright infringements have originated firstly after the overall existence of copyright laws as there would not be any illegality if there were no laws regarding ownership and possession of intellectual property. Borrowing someone else's work was considered morally reprehensible in ancient times, and distortion of the work was condemned by public opinion in ancient Greece and Rome, and much earlier in India. Globally, the first set of legal rules was introduced in the United Kingdom in the beginning of the eighteenth century (even though it is not a Member State of the European Union), and was named the Anne's Statute, after which copyright laws have only formed officially in the end of the eighteenth century in France regarding writers and artists, and almost for two centuries other countries used it as a legal example for how to deal with copyright issues.<sup>27</sup>

21st century has brought many improvements to humanity, as for instance the new digital era has made many daily tasks easier where some of them are seamless to us already. Nevertheless, transformation of the physical audiovisual services to online ones, has also increased the number of pirates who infringe copyright laws and make it more difficult for them to be caught and punished.<sup>28</sup> Laws surrounding this particular topic are being improved and changed a lot lately. The reason for that is that primarily copyright restrictions applied to physical media content, whereas nowadays it seems to be weak in many cases when dealing with digital piracy. These create challenging tasks for any parties involved.

Copyright topic is primarily connected to Private International Law which decided on most of the cases related to digital piracy. When dealing with the European Union, legislation determines jurisdiction of a particular case and which court has it. Furthermore, this court establishes the applicable law, taking into consideration that it is a digital issue thus most of the time, not only one Member State is involved. One of the applicable regulations is the Brussels I, that rules out that the liable party may «be sued either in the place of the defendant's domicile or in the place of the harmful event»<sup>29</sup>, but is being limited when the case has a digital nature. Further, the Rome II Regulation determines the applicable law. As the digital piracy is mostly of the wide nature, then all of the 27 Member States are included and evaluated when dealing with copyright legislation.<sup>30</sup> Nevertheless, there is no certain solution of how to deal with online cases that involve multiple Member States. Further analysis will deal with newest applicable Directives and Regulations, as well as how case-law has shaped protection regarding copyright infringements of the audiovisual services online.

Looking back at even 5 years ago, there was a lack of applicable laws, directives and regulations that would certainly resolve disputes concerning digital piracy, and those, that would be binding. Nevertheless, 2019 has brought the Directive on Copyright in the Digital Single Market,

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<sup>27</sup> Stina Teilmann, *British and French Copyright: A Historical Study of Aesthetic Implications* (Denmark: Department of Comparative Literature, 2004), accessed April 20, 2021, [https://www.sdu.dk/-/media/files/forskning/phd/phd\\_hum/afhandling/2005/0\\_teilmann+pdf.pdf](https://www.sdu.dk/-/media/files/forskning/phd/phd_hum/afhandling/2005/0_teilmann+pdf.pdf).

<sup>28</sup> Brett Danaher, Michael D. Smith and Rahul Telang, «Copyright Enforcement in the Digital Age: Empirical Evidence and Policy Implications», *Communications of the ACM* (2017), accessed May 11, 2021, WIPO/ACE/10/20/PPT.

<sup>29</sup> *Ibid.*

<sup>30</sup> Danaher, Smith and Telang, *supra* note 31.



which «introduced three new horizontal limitations, declaring them mandatory and not overridable by contract».<sup>31</sup> Moreover, this Directive has brought changes to an already existing one – the Copyright in the Information Society Directive (Directive 2001/29/EC), also known as the InfoSoc Directive, which will also further be discussed in more details. Three major decisions were also released by the European Court of Justice’s Grand Chamber – Funke Medien, Pelham and Spiegel Online. These relate to piracy and directive principles as well as the versatility that fundamental rights give national lawmakers and judiciary in the area of restrictions and prohibitions.<sup>32</sup>

When talking about legal protection of digital audiovisual services, there are two parties needed for protection, that cause debate regarding the right implementation of the laws. The Service Provider is a party who distributes certain content around digital space – the Internet, and there is a Right Holder, who is a party that created the work and owns it first hand.<sup>33</sup> The Service Provider creates a whole market for demand of audiovisual services and other kind of digital goods and services, thus without a body who would share, there would not be so many *buyers*, and without these *buyers*, there would not be competition on the market. On the other side, the Right Holders deserve protection of their works, with which they make profit by allowing certain selected platform to distribute it.<sup>34</sup> A downfall is that nowadays, the Service Providers usually receive higher remuneration for media content than actual owners. The debate should finally come to an end by either bringing both parties for cooperation, or by implementing and acknowledging relevant regulations. The already existing ones will further be observed in order to address the issue precisely.

## 2.2 Digital Single Market

With the severe transformation from everything physical to digital, the Single Market has also been doubled to the Digital Single Market by the European Commission. The Digital Market is established by the free movement regulation, but one that is not sanctioned in EU Treaties.<sup>35</sup> Nowadays the digitalization prevails thus the European Union’s Digital Single Market Strategy aims at giving out the access to create a common and effective digital space for the users of anything found online. Moreover, it aims at benefiting towards the economy and society which builds the online economy and boosts the demand. Finally, great environment is another key aspect of this Digital Single Market’s Strategy, aiming at «creating the right conditions and a level playing field for digital networks and innovative services to flourish».<sup>36</sup> Contrary to the Single Market, the

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<sup>31</sup> Caterina Sganga, *A new era for EU copyright exceptions and limitations? Judicial flexibility and legislative discretion in the aftermath of the Directive on Copyright in the Digital Single Market and the trio of the Grand Chamber of the European Court of Justice*, (Scuola Superiore Sant’Anna di Pisa, 2020), accessed April 21, 2021, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3804228](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3804228).

<sup>32</sup> *Ibid.*

<sup>33</sup> Adam Freeland, *Negotiating under the New EU Copyright Directive 2019/790 and GDPR* (Journal of International Economic Law, 2020), pp. 106–122. Available on HeinOnline database. Accessed April 21, 2021.

<sup>34</sup> *Ibid.*

<sup>35</sup> Mirela Mărcuț, *Crystalizing the EU Digital Policy: An Exploration into the Digital Single Market* (Springer, 2017), pp.78-79.

<sup>36</sup> EU Digital Single Market, available on: [eufordigital.eu/discover-eu/eu-digital-single-market/](https://eufordigital.eu/discover-eu/eu-digital-single-market/). Accessed April 21, 2021.

digital one creates a field of thousands of markets as it has a digital nature and can not be measured, thus it is even said that every country has its own Digital Single Market.<sup>37</sup>

## 2.3 Berne Convention

The Berne Convention enforced in 1886, set a beginning to the copyright protection, which has been the key moderator for current laws regarding digital piracy. The Convention is managed by over 177 countries, helping make adjustments to national laws. Throughout the last decades, the Convention has been revised a lot and

«became the basis for World Intellectual Property Organization (WIPO), created in 1967 as a specialized agency of the United Nations».<sup>38</sup>

Nowadays, the World Trade Organization provides basis of the legal aspects of piracy and copyright.<sup>39</sup> The Berne Convention introduced the protection on the ownership of artistic works and explored the *communication to the public*, which is now contained in many Directives and Regulations:

«the making available to the public of the original and copies of their works through sale or other transfer of ownership».<sup>40</sup>

Protection of distribution, reproduction, ownership were all firstly introduced by the Berne Convention. Despite this, the Convention did not have enough power to deal with the issue of digital copyright infringements, which is due to the lack of specifics and of course, the lack of relevance to the digitalization and technological progress.<sup>41</sup>

## 2.4 E-Commerce Directive

The Directive enforced in 2000 – Directive 2000/31/EC, is also known as the E-Commerce Directive is one of the methods to adopt the laws to the online services and engage the Member States of the European Union. It aims at engaging «the internal market by ensuring the free movement of information society services between the Member States».<sup>42</sup> It provides definition to the new terms such as ISPs, online contracts, hosting platforms and services and many more, but mainly deals with the «information society service».<sup>43</sup> Precisely, along with the other Directive, it introduces three methods of control. Firstly, the relationship between the supplier and consumer. Secondly, while online regulating the side of the provider of some content, for example the owner

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<sup>37</sup> Mărcuț, *supra* note 38, p.80.

<sup>38</sup> Bashar H. Malkawi, «European Intellectual Property Review», *Sweet & Maxwell and its Contributors* (2021), available on Westlaw International database. Accessed April 22, 2021.

<sup>39</sup> Bashar H. Malkawi, «A long "TRIP" home: how the Berne Convention, TRIPS Agreement, and other instruments complement the international copyright system», *Sweet & Maxwell and its Contributors* (2021), available on Westlaw International database. Accessed April 22, 2021.

<sup>40</sup> Allen N. Dixon and Martin F. Hansen, «The Berne Convention enters the digital age», *Sweet & Maxwell and its Contributors* (2021), available on Westlaw International database. Accessed April 22, 2021.

<sup>41</sup> Panethiere, *supra* note 1, p. 30.

<sup>42</sup> Christiane Wendehorst, «Platform Intermediary Services and Duties under the E-Commerce Directive and the Consumer Rights Directive», *Journal of European Consumer and Market Law* (2016), available on Kluwer Law Online database. Accessed April 22, 2021.

<sup>43</sup> *Ibid.*

of some intellectual property, such as the relationship between the supplier and a particular online platform. Lastly, the owner of the platform is controlled by him or herself, looking into specifics of his or her internet service in the form of a contract as well. Nevertheless, contractual regulations are also contributed to by the national laws and several official bodies of the European Union.<sup>44</sup> The Directive introduces the new market for digital services and is an inevitable regulation for future issues related to digital piracy.

## 2.5 Infosoc Directive

The Information Society Directive was implemented by the European Union's official institutions and was enforced on June 22, 2001. It aims at insuring that the approaches of this Directive connects to international law, such as does not contradict it in order to escape biased opinion and decisions. Additionally, it insures to make a severe emphasis on the overall copyright and intellectual property protection, including the fast changes in technological progress. Another objective of this Directive is to balance the monetary side of the copyright issues, such as in relation to the suppliers, producers of the chosen services, including audiovisual content.<sup>45</sup> Also, it aims at balancing out disputes between every Member States's legal system, so the solutions to these copyright disputes are resolved in the same way, by applying policies states in the EU Directive on Copyright in the Information Society. Despite the existing limitations of this Directive»

«enforcement certainly represents a particularly weak part of the protection system envisaged by the EU legislator, mostly due to an excessive reliance on TPMs, which in the end did not develop into the predominant approach for protecting online content, contrary to expectations when the InfoSoc Directive was first enacted»,<sup>46</sup>

it gave a kick start to the Court of Justice of the European Union, allowing to move forward with issues of copyright infringements, which change and expand almost every day when talking about digital field. The InfoSoc Directive ensures to observe copyright related issues in legal manner rather than logical, thus focusing on the protection of the rights of the owners of intellectual property. It makes an emphasis to impact any changes concerning digital improvements, thus these are not treated as of a regular physical nature.

Looking at the scope of the Directive that is listed under the Article 1, it is observed that the Directive does not concern legal defense of databases and video computer games, as well as it excludes protection of TV content, also there are certain limitations in legal protection of intellectual property and the set time limits of any other copyright issues.<sup>47</sup> Thus, it may be seen already that primarily for this research, the InfoSoc Directive limits the protection of audiovisual services. Additionally, as mentioned before, with radical changes in technological progress, the

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<sup>44</sup> Wendehorst, *supra* note 45.

<sup>45</sup> Andrea Renda, Felice Simonelli, Giuseppe Mazziotti, Alberto Bolognini and Giacomo Luchetta, «The Implementation, Application and Effects of the EU Directive on Copyright in the Information Society», *Centre for European Policy Studies* (2015), p. 2, accessed April 21, 2021, [https://www.ceps.eu/wp-content/uploads/2015/11/SR120\\_0.pdf](https://www.ceps.eu/wp-content/uploads/2015/11/SR120_0.pdf).

<sup>46</sup> *Ibid*, p. 3.

<sup>47</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ L 167, 22.6.2001. Available on: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001L0029>. Accessed April 21, 2021.

Directive does not take into consideration «downloading files, reading and sharing news online, remixing content, accessing streaming TV».<sup>48</sup>

Furthermore, Article 2 of the Information Society Directive shows the binding importance of the copyright restrictions that shall be protected according to it by Member States. Moreover it states particular parties that fall under this protection.<sup>49</sup> These are almost everyone who in some kind own or have represented their work, including parties responsible for audiovisual content, which is main for the scope of this Bachelor Thesis. The Article 2 of the InfoSoc Directive makes an emphasis on the word *reproduction*, that it is restricted under the rights of the owners of a particular work. Due to the fact that the Directive was implemented in 2001, when the technology and the Internet was not so widely used and was not extensive, it did not foresee the newest fast ways of delivering and distributing information. Nowadays, when people even send some files from one device to another, it is considered as a distribution, also referred to in the Directive as *reproduction*.<sup>50</sup> Additionally, Articles 3 and 4 of the same Directive provide similar rights to these owners of their goods and services, that allow them to also protect and set limitations for the distribution and public use of their works. Article 3(1) of the same Directive has been used in many recent cases, as it determines the rights and basis for the service provision in regards to the communication to the public. The European Court of Justice in its Svensson judgment has brought up the means of the applicability of this article to the cases when there are websites with «clickable links to works freely available on another website»<sup>51</sup>. The judgment has decided that these are not included in the scope of the Article 3(1) of the InfoSoc Directive. This is because the initial ISP of the link have restricted direct access to that service and thus persons who access it through other platforms are considered to be *new public*, as they firstly must seek access from the initial supplier.<sup>52</sup>

The InfoSoc Directive has a set of limitations and exceptions listed under the Article 5, in which only 5(1) are of a binding and mandatory nature. These include particular acts stated in the Article 2 above. For the purposes of the Article 5(1), these should be of a particular goal:

«a transmission in a network between third parties by an intermediary, or a lawful use of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Article 2.»<sup>53</sup>

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<sup>48</sup> Federico Ferri, «The dark side(s) of the EU Directive on copyright and related rights in the Digital Single Market», *China-EU Law Journal* (2020), accessed April 21, 2021, [doi.org/10.1007/s12689-020-00089-5](https://doi.org/10.1007/s12689-020-00089-5).

<sup>49</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, *supra* note 50.

<sup>50</sup> Agata Drzewińska, «Digital exhaustion in European Union», *Uppsala University, Disciplinary Domain of Humanities and Social Sciences, Faculty of Law, Department of Law* (2019), accessed April 22, 2021, [urn:nbn:se:uu:diva-385620](https://nbn-resolving.org/urn:nbn:se:uu:diva-385620).

<sup>51</sup> Joao Pedro Quintais, «Private copying and downloading from unlawful sources», *International Review of Intellectual Property and Competition Law* (2015), available on Westlaw International Database. Accessed May 10, 2021.

<sup>52</sup> *Ibid.*

<sup>53</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, *supra* note 50.

The remaining components of the Article 5 are not mandatory, in fact the beginning of the Article 5(2) states that these exceptions *may* occur.<sup>54</sup> It means that Member States of the European Union may decide on which exceptions to apply, and whether any of them should actually be used in certain cases related to copyright.

Moreover,

«According to the CJEU, Member States are to ensure that right holders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right.»<sup>55</sup>

The Article 8(3) of the InfoSoc Directive suggests that service providers, such as those in possession of people's data are directly the ones to detect those who act against the law, even not doing it intentionally. Without this act, the security of the Directive would be decreased.<sup>56</sup> These service providers can also be referred to as Internet Service Providers (ISPs) for the scope of this Bachelor Thesis. They are suppliers of online services who control and hold data about the consumers, as already mentioned. They may provide certain content or access to websites, which can easily be tracked. On one hand, due to their capabilities, they should put more effort when working with infringements and thus help either reveal the information about the law-breakers or limit access for them to certain content and databases. There are also opinions that ISPs should be liable for copyright infringements and any other infringements occurring on their supplied basis. Internet Service Providers have also argued that they are not responsible for these breaches, in fact that they follow the eCommerce Directive that states that they are «mere conduit providers».<sup>57</sup> Nevertheless they agree to be having responsibility over their *customers* in the sense of protectionism of their data.<sup>58</sup>

## 2.6 DSM Directive

With the wide range of technological improvements, the InfoSoc Directive implemented in 2001 needed improvement and overall, the Member States of the European Union needed more secure and more up to date laws regarding copyright protection, especially when it concerns the digitalization of intellectual property. Thus, in the year of 2019, the European Parliament along with the Council of the European Union implemented a new, advanced Directive – The Directive on Copyright in the Digital Single Market (the Directive 2019/790), also shortly referred to as a DSM Directive. The Directive is much more detailed than the previous comparable one – the InfoSoc Directive. The new Directive consists of 86 recitals and 32 articles, and consists of five parts – general provisions, measures to improve licensing practices and ensure wider access to content,

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<sup>54</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, *supra* note 50.

<sup>55</sup> European Union Intellectual Property Office, «IP enforcement case-law collection on the balance between the right of information and fundamental rights in the European Union», (2018), accessed April 22, 2021, doi:10.2814/36519.

<sup>56</sup> *Ibid.*

<sup>57</sup> Ivan Hadaya, «Combating Copyright Piracy in the EU: the Application of Article 8 (3) of Directive 2001/29/EC against Internet Service Providers» (2017), accessed April 22, 2021, <https://www.sty.net/@Bin/227712/Master+Thesis+-+Ivan+Hadaya.pdf>.

<sup>58</sup> *Ibid.*

measures to achieve a well-functioning marketplace for copyright, and final provisions.<sup>59</sup> It focuses on more digitalized content as well as how it affects the issues of transfer between the Member States, as mentioned in the Article 1 of the same Directive.<sup>60</sup> It also makes several amends to almost all of the past provisions states in the InfoSoc and other Directives, as it takes into consideration «cloud computing, internet of the things, artificial intelligence».<sup>61</sup> The amendments to the previously existing Directives – Directive 96/9/EC (Database Directive) and 2001/29/EC (InfoSoc) are laid down in the Article 24 of the newest Directive. The Database Directive is the oldest among abovementioned ones, but is excluded for the basis of this research as it only deals with the copyright protection of databases.

It is important to mention that the three right stated in the Articles 2, 3 and 4 of the InfoSoc Directive remain unchanged as transferred to the new Directive. Moreover, the set of limitations and exceptions that are also represented by the old Directive under the Article 5 have been enforced into a new one, but were changed to a binding nature.<sup>62</sup>

The Directive 2019/790 covers many of the digital frameworks acknowledged in recent years, such as variety of online platforms, that give access to audiovisual services for instance, and many more, but nevertheless it contradicts and distorts natural factors. These are personal freedom for individuals to perform, create businesses freely and create a competitive market on the Internet platform.<sup>63</sup> The more technology progresses, the more advanced the protection becomes, with its risky and sometimes slightly unfair nature.

Most importantly, the Article 17 of the DSM Directive is the most significant change to the newest realities of digital era. It may also attract many contradictions and debates, but nevertheless opens a new field of copyright regulations and rights for internet service providers and their platforms. The Article allows ISPs to better and more efficient communication between them and customers, while also

«Instead of changing the law so that it is legal and easier for users "to do something commonplace", legislators have engineered it so that online gatekeepers have an incentive to prevent, block, filter and sanitize proactively that commonplace digital creativity.»<sup>64</sup>

The Article's tactic is to create an equal space between two parties and ensure to close the *value gap* between them, thus enriching the level of remuneration for the ISPs, also referred to as OCSSPs, and accessibility to its users. The Article takes into account the importance of video and media sharing platforms, and those that allow customers to share content themselves –

«electronic communication services, providers of business-to-business cloud services and cloud services, online marketplaces, not-for profit online encyclopaedias, not-for-profit

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<sup>59</sup> Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, OJ L 130, 17.5.2019, p. 92–125. Available on: <https://eur-lex.europa.eu/eli/dir/2019/790/oj>. Accessed May 10, 2021.

<sup>60</sup> *Ibid.*

<sup>61</sup> Ferri, *supra* note 51.

<sup>62</sup> Ferri, *supra* note 51.

<sup>63</sup> Dr Franck Gloglo, «Understanding the modernisation of European Union's copyright law in a changing world», *Sweet & Maxwell and its Contributors* (2021), available on: Westlaw International database. Accessed April 22, 2021.

<sup>64</sup> João Pedro Quintais, «The new copyright in the Digital Single Market Directive: a critical look», *European Intellectual Property Review* (2020), available on: Westlaw International Database. Accessed May 10, 2021.

educational and scientific repositories, and open source software developing and sharing platforms».<sup>65</sup>

Communication to the public rule was also transferred from the pre-existing Directives, such as the InfoSoc one, but now has been more carefully studied in regards to the time relevancy. For instance, the DSM Directive implies that ISPs should deeply engage with the users and are primarily acting against the law if their users upload pirated content, or in other ways make breaches, not without many exceptions and limitations. In order for the ISPs to prevent the direct liability, the Article 17(4) implies that should show means of protection, supervision, caution and knowledge of potential copyright infringements from their users. They should also extract pirated content and ensure that it will not reappear. Article 14 states that:

«Member States shall provide that, when the term of protection of a work of visual art has expired, any material resulting from an act of reproduction of that work is not subject to copyright or related rights, unless the material resulting from that act of reproduction is original in the sense that it is the author's own intellectual creation.»<sup>66</sup>

Further research of the applicable case law will show the importance of these new amendments as even with an existence of the InfoSoc Directive, there was a lack of legal supervision from the service providers and owners of the platforms and other intellectual property. The debate was dominating the question of liability of the ISPs even if they have taken down the pirated content, or in other words if the ISPs were legally liable even when they detected the copyright infringement and removed it in short notice.<sup>67</sup> A positive note is that the Directive will also take into account each platform in a sense of its size, number of users and the nature of provided services in order to achieve fair result and judgement in case-law. Article 17(6) implies that it will resolve such issues differently if the services are newer and smaller, and in fact, they are likely to be extracted from these regulations. Nevertheless, the proceeding will be unanimous in a sense that legal authorities will not infringe the digital freedom of users and extract their identities publicly.<sup>68</sup> Due to the fact that the DSM Directive does not have a legal power yet, it will take some time for right interpretation and applicability, but anyways, this is the first Directive that takes into account suitable for this time issues, and most importantly does not avoid Charter right for equality and freedom.

## 2.7 Broadcasting

Audiovisual services are also very common on the satellite television, which differs in legal terms and copyright protection from the scope of video streaming services and online video platforms. In fact, broadcasting is not regulated by the InfoSoc Directive, as the Article 1(2) defines does not include it. Nevertheless, the Directive 93/83 – Satellite and Cable Directive manages it, but only relates to the issues of the 1993 time. The Directive implies to emphasize an international scope of satellite audiovisual services, their free movement and insures to reach distribution rights between all Member States.<sup>69</sup> In fact, Article 8 of this Directive states:

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<sup>65</sup> *Ibid.*

<sup>66</sup> Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, *supra* note 59.

<sup>67</sup> Quintais, *supra* note 64.

<sup>68</sup> Quintais, *supra* note 64.

<sup>69</sup> Jaime Espantaleon, «Exhaustion light in European television», *European Intellectual Property Review* (2010), available on: Westlaw International Database. Accessed May 11, 2021.

«Member States shall ensure that when programmes from other Member States are retransmitted by cable in their territory the applicable copyright and related rights are observed and that such retransmission takes place on the basis of individual or collective contractual agreements between copyright owners, holders of related rights and cable operators».<sup>70</sup>

Additionally, this Directive also emphasizes the rule of the communication to the public in the Article 2, stating that that right should be protected and the copyright protection is indeed essential in such terms, thus it may be concluded that communication to the public is inevitably significant to most or even all audiovisual services online.<sup>71</sup> It sets the platform for further judgement as investigates the intention of each of such services, and if it is protected under the copyright law. The communication to the public must be brought out by the owner of the work and not by pirates, thus may not be used in the means of profitability and illegal distribution. Despite the copyright and public use protection, satellite audiovisual services also involve a lot of geo-blocking. These are geographical restrictions and limitations, making a particular services unavailable for access in one country, and available in another. Most of these restrictions are applied in order to promote national product or for example it may be unnecessary to show political and other news portals not in the country of origin.

## 2.8 Anti-Piracy Policies

One of the straightforward and narrowed method to regulate copyright infringements online are demand side and supply side anti piracy policies. Starting of with the demand side one, these are specific regulations, aimed at controlling those related to copying, distributing and transferring illegally obtained content.<sup>72</sup> One of the most known implementations of this kind of policy can be seen in France, which enforced *Hadopi Law* in 2009. It has brought several objectives, one of which is to bring innovations to the copyright law and supply new preventive measures. Moreover, it desired to focus on the audiovisual services in all of it means, as well as aimed to bring changes to the future copyright protection system. This system was accepted as an actually effective method of protection by many people. Looking at the functioning of this demand side policy, its method consists of two steps – a cautionary step and a judicial step. The first one is controlled «by a specialized authority commonly referred to as the ‘Hadopi’, and the second one includes a potential claim to the court.»<sup>73</sup> While working on the first stage, this authority in a form of various teams collects evidence of breaches online which occurred in a particular period of time and confirms with user that he or she acts by the corresponding laws and they are not cases for any digital piracy. While the authority communicates with that user, that official body warns him or her of potential or

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<sup>70</sup> Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, OJ L 248, 6.10.1993, p. 15–21. Available on: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A31993L0083>. Accessed May 11, 2021.

<sup>71</sup> L. Guibault and J.P. Quintais, *The influence of new technologies on copyright* (Strasbourg: European Audiovisual Observatory, 2014).

<sup>72</sup> Dr. Brett Danaher, Assistant Professor, Department of Economics, Wellesley College, Dr. Michael Smith, Professor, Heinz School of Public Policy and Management, Carnegie Mellon University, and Dr. Rahul Telang, Professor, Heinz School of Public Policy and Management, Carnegie Mellon University, «COPYRIGHT ENFORCEMENT IN THE DIGITAL AGE: EMPIRICAL ECONOMIC EVIDENCE AND CONCLUSIONS», Geneva: (2015), accessed April 22, 2021, WIPO/ACE/10/20 .

<sup>73</sup> Alexandre Entraygues, «The Hadopi Law - new French rules for creation on the Internet», *Sweet & Maxwell and its Contributors* (2021), available on Westlaw International. Accessed April 21, 2021.



occurring risks. With the repetition of the violation, their communication resumes in terms of potential and more serious measures. Nevertheless not every infringement can be brought to court due its wide range and sometimes not being severe. There is also another method of regulation of digital copyright infringements as ruled by the Hadopi Law, which is called *Media Chronology*. This methods aims at looking at the «the chronological order and time frame for exploiting feature films on video, video-on-demand and television.»<sup>74</sup>, as the remuneration for such content is not a one time process.<sup>75</sup>

Another demand side anti piracy policy was enforced in Sweden in 2009 as well, and is called *IRPED*, aiming at having faster access at identification of the law breakers.<sup>76</sup> At first, with the national recognition of such a protective measure the infringements declined, especially when talking about digital audio services, in fact they became much more profitable for their providers. Some even believed that the significant number of people who illegally copied this content switched to legally accessible platforms. Despite such a success in the beginning, it all came back to where it was, such as the number of copyright law infringements has reoccurred.<sup>77</sup>

In conclusion, demand side policies are a way of controlling potential copyright infringements on different levels, and if implemented correctly, may lead to certain success. These policies indeed catch people's attention and may fear them and make precautions of their actions online.

Additionally, there are supply side anti piracy policies that aim at regulating actions of suppliers and providers of the illegally obtained online content. These policies mostly deal with either blocking the source of distribution or restricting an access to it entirely.<sup>78</sup>

One of the cases of such policy deals with blocking the websites and is known as the *Pirate Bay* that was acknowledged in 2003. This kind of supply policy was very debatable as some people argued if it is an adequate and successful preventive measure, thus the main question was if it would decrease the amount of pirated content. «ISPs have the capability to exercise significant control over the traffic generated by their subscribers»<sup>79</sup>, meaning that internet communication services can bring success to such a policy, but they considered these regulations irrelevant for the desired purposes. The action of blocking websites was implemented in the copyright law of Finland, allowing it to occur if the website provider is not identified. This made it easier to proceed with such an action as that provider did not have to be sued personally, but nevertheless the measure aimed at limiting the amount of potential infringements. Throughout some time, unfortunately these measures were not considered to be efficient, thus did not severely affected the issue of digital piracy from the suppliers' side.<sup>80</sup> Probably, it is due to the fact that these law breakers kept unanimity, thus they lacked fear regarding potential penalties and could pursue with their illegal

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<sup>74</sup> *Ibid.*

<sup>75</sup> Enraygues, *supra* note 66.

<sup>76</sup> Advisory Committee on Enforcement, *supra* note 65.

<sup>77</sup> Advisory Committee on Enforcement, *supra* note 65.

<sup>78</sup> Advisory Committee on Enforcement, *supra* note 65.

<sup>79</sup> Petteri Günther, «The plan for a digital Single Market in Europe and reforming EU copyright rules to develop a market-oriented approach to reduce infringement on the internet», *Sweet & Maxwell and its Contributors* (2021), available on Westlaw International. Accessed April 21, 2021.

<sup>80</sup> *Ibid.*

actions on other platforms until they are also blocked. Either way, it there would be a significant amount of restrictions in the form of blocking, thus if

«enough sites are blocked, it creates enough inconvenience for pirates that some of them migrate their consumption toward legal channels.»<sup>81</sup>

Despite the slight inefficient policy, many countries implemented similar policies to their copyright laws, so they allowed the website blocking with the same conditions.

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<sup>81</sup> Advisory Committee on Enforcement, *supra* note 65.



The debate that this case has brought lays in the unbalanced judgement of it. It is essential to consider activities of both parties, as emphasizing the protection of only communication company decreases the impact of the copyright regulations in regard to the film production companies, thus contradicting the nature of the Directive 2001/29.<sup>87</sup> Rights and freedoms available to both parties should not be neglected and obtained equally. Moreover, the judiciary has suggested that it is a duty for the UPC to apply warn its customers of copyright infringements and digital piracy in the Internet, while also not setting restrictions and not depriving consumers of their rights, as well as not acting against the law. There are certain fundamental rights as well as the European Union law, which prevails and dominates, as well as safeguards such cases to be solved in the right way.<sup>88</sup>

### 3.2 Preliminary Ruling under the Copyright Directive

As it has already been mentioned, the newest Copyright Directive will soon be completely enforced, right when all of the Member States will implement its provisions into their national laws. The Directive concerns many relevant to nowadays issues and thus it also concerns the awaited decisions from the judicial side. In fact, furthermore, the Bachelor Thesis will introduce four cases involving the pending decisions from the Court of Justice of the European Union, which will put these cases before the preliminary ruling. These cases may be considered similar thus the decision for one case might be referenced to other ones.<sup>89</sup>

### 3.3 Stichting Brein v News-Service Europe BV

Current case stated under the name Stichting Brein v News-Service Europe BV (Case C-442/19) concerns a file sharing service. In particular, the «Stichting Brein is a Netherlands foundation which safeguards the interests of copyright holders.» Two providers for the content are Ziggo and XS4ALL, whose customers use a BitTorrent files website that supplies several digital services online – audiovisual services for instance, but it also allows people to transfer content to one another. In order to do so, customers have to firstly get an access to a *BitTorrent Client*, which also gives people an opportunity to make these *torrent files*. There is a list of actions required to be completed in order to create and share these torrent files, thus it is important to mention that they are usually illegally shared and obtained files that are being used without the knowledge of it from the rightholders. In the case, the Stichting Brein foundation asked the two customers mentioned before – Ziggo and XS4ALL, to be restricted of their supply permanently, thus their services do not contradict the scope of the Stichting Brein’s goals. The debate has concerned the Article 3(1) of the InfoSoc Directive, as referred to by the Supreme Court of the Netherlands, on the basis of the concept of the communication to the public. It has decided that the case falls under the given criteria and in order to have an up-to-date judicial decision, the Court has applied for a preliminary ruling with the four questions<sup>90</sup>, one of which is:

“(1. Has an operator of a platform for Usenet services (as NSE has been), under the circumstances as described in [points 1 to 7] and [16 hereof], made a communication to the

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<sup>87</sup> Dore, *supra* note 76.

<sup>88</sup> Dore, *supra* note 76.

<sup>89</sup> Pierre-Yves Gautier. «Why internet services which provide access to copyright infringing works should be immune to liability», *European Intellectual Property Review* (2020), available on: Westlaw International Database. Accessed May 10, 2021.

<sup>90</sup> *Stichting Brein v. Ziggo BV*, C-610/15. Before the European Court of Justice (Second Chamber), 14 June 2017, [2017] E.C.D.R. 19. Available on: Westlaw International database.

public within the meaning of Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p.10; ‘the Copyright Directive’)?»<sup>91</sup>,

as the primary concern is regarding the concept of the communication to the public.

### **3.4 Puls 4 TV GmbH & Co KG v YouTube LLC and Google Austria GmbH**

The case Puls 4 TV GmbH & Co KG v YouTube LLC and Google Austria GmbH (Case C-500/19) is another recent concern for the preliminary ruling, in regards to the awaited Copyright Directive. Firstly, when talking about the factual components of the case, the Puls 4 is a broadcasting platform originated in Austria. The case concerns the desire to set restrictions on the YouTube platform in order to limit its supply of the particular content – «videos containing films or motion pictures, or parts thereof, produced by the plaintiff which were uploaded by unauthorized persons».<sup>92</sup> The YouTube platform is so global that the content that is requested to be uploaded is being checked through a machine that does not suspect some cases of illegal activities, but most of them are directly taken off if there is a slight concern. It means that such job processed by the YouTube is highly inaccurate. It has been ruled out that with the application of the *safe harbor* function, the platform YouTube is indeed in control of the copyright infringements when such videos are requested for the upload, thus it is a liable party even if it preceded with the removal action. Nevertheless, there was also an opposition determined by the other Court, whose opinion was that the YouTube video streaming service does not have a responsibility to oversee every infringement and in fact supplies an entertaining function to its consumers. YouTube is not responsible to constructing a relation with the provider of certain audiovisual content under legal circumstances, other wise the number of its customers would certainly decrease. As mentioned before, the final decision will be provided by the Court of Justice of the European Union with the application of the incoming DSM Directive, but until then it was suggested that the safe harbor perspective should be a privilege for the mentioned above video streaming platform.<sup>93</sup> The main question for the preliminary ruling will detect if the YouTube can be held accountable for copyright infringements supplied by the uploaded videos, or it is a neutral party in such a process.

### **3.5 Frank Peterson v Google LLC, YouTube LLC, YouTube Inc and Elsevier Inc. v Cyando**

One of the other cases concerning copyright infringement in the European Union is a C-682/18 Frank Peterson v Google LLC, YouTube LLC, YouTube Inc and C-683/18 Elsevier Inc. v Cyando , which involves Cyando and YouTube. Cyando «is the owner of the cyberlocker Uploaded»<sup>94</sup>, and YouTube is an online platform that distributes video content. The background of

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<sup>91</sup> Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice in C-442/19. Available on: <http://curia.europa.eu/juris/showPdf.jsf?text=&docid=220011&pageIndex=0&doclang=EN>. Accessed May 10, 2021.

<sup>92</sup> Rainer Schultes (Geistwert), «Puls 4 v YouTube in Austria does not anticipate Article 17,» *Kluwer Copyright Blog* (2019), accessed May 11, 2021. Available on: <http://copyrightblog.kluweriplaw.com/2019/04/02/puls-4-v-youtube-in-austria-does-not-anticipate-article-17/>.

<sup>93</sup> *Ibid.*

<sup>94</sup> Sunniva Hansson."YouTube and Cyando - Advocate General unpicks CJEU's case law on communication to the public», Sweet & Maxwell and its Contributors (2020), available on Westlaw International. Accessed April 22, 2021.

the case is the following: In the case of the YouTube platform, personal videos of Sarah Brightman were uploaded illegally and Frank Peterson, who is a record producer has requested for them to be deleted. After the videos were re-uploaded, he claimed against the video-hosting platform. In the second case of a cyberlocker Uploaded, consumers uploaded 3 electronic books and shared «links on third party websites».<sup>95</sup> Thus, the publisher of these books has filed a claim against the cyberlocker. Furthermore, the applicable laws and Directives were established by the Court of Justice. It is mentioned that the latest Copyright Directive cannot be referred to as it was not enforced by the time of the judgement. Nevertheless, there were three main questions raised concerning the InfoSoc Directive and the Directive 2000/31. Firstly, the German Federal Court of Justice raised an issue whether both hosting websites breach the Article 3 of the InfoSoc Directive, that refers to the

«right to the communication to the public of works and right of making available to the public other subject-matter».<sup>96</sup>

The Advocate General states that the court has found that the only parties to communicate to the public are the persons who transferred the videos and the books without consent. In fact, there is also an opinion that these users who uploaded the content have done it with a purpose of further remuneration, thus they were acknowledging their actions, thus the breach of the law with initial intent is a cause of debate.<sup>97</sup>

Another issue refers to the Article 8(3) of the same Directive questioning the liability of the platforms themselves. Lastly, the question arisen involving the Directive 2000/31 on the E-Commerce, concerning the Article 14 that gives a right to store information privately without the acknowledgement of the nature of that content. The YouTube and the Uploaded appear to be joined cases as confirmed by the Court of Justice of the European Union.<sup>98</sup>

The main issue of this case is

«between direct and indirect liability, it is a pragmatic one and one which ensures the law remains relevant and applicable to the technological reality of today.»<sup>99</sup>

Under the legislation of the InfoSoc Directive, it is observed that there is not mandatory ruling that only one party may be accountable for the breach referenced in the Article 3 regarding communication. In fact the case law is also deprived from such ruling. It was confirmed that non of the hosting services may be responsible for copyright violations as a basis for primary liability. When additionally applying the case law, the conclusion states that the video-hosting platform YouTube is not responsible for the breaches, nevertheless it is not so definite in case of a second service. Mainly, it was observed that both YouTube and Cyando are protected by the *safe harbor* and the wording «‘actual knowledge’ and "awareness of facts or circumstances from which illegal activity is apparent" refer to ‘specific illegal information’».<sup>100</sup> Following the conclusion, the bodies were asked to file orally on the basis of the new Directive – The Directive 2019/790, and even though it was not in effect at that time, it deals with the issues of online platforms and has direct

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<sup>95</sup> *Ibid.*

<sup>96</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, *supra* note 50.

<sup>97</sup> Hansson, *supra* note 83.

<sup>98</sup> Hansson, *supra* note 83.

<sup>99</sup> Hansson, *supra* note 83.

<sup>100</sup> Hansson, *supra* note 83.

provisions regarding these joined cases. Thus, judging by the Article 17 of this Directive, both platforms are not exempt from the Article 3 of the InfoSoc Directive, in fact they are also not protected by the «hosting safe harbor».<sup>101</sup> Due to the fact that the new Directive will be altered into the national law by the Members of the European Union by June 2021, it will bring new regulations. Specifically, the future uploaded materials should be permitted according to the Directive 2019/790, meaning that the Directive will prevail over the InfoSoc one, which will be exempt from this ruling.<sup>102</sup> It was also said that the owners of the content may file injunctions against the content sharing services as ruled under the law of the European Union, that will cause mandatory objectives to the operators of these online services.<sup>103</sup> The joined cases have been brought up for the preliminary ruling and the decision derived by the Advocate General is of today's nature.

### 3.6 Analysis of the Four Cases for Preliminary Ruling

Four of the cases discussed above, concern the similar unresolved issue – defining the liable party and if the ISPs should be responsible for cautiously suspect such problems of digital copyright infringements in advance. With the relevancy of the InfoSoc Directive at the time of the appeared cases, Article 14(1) has been drawn to attention.<sup>104</sup> The Article introduces an issue of the responsibility held on the side of the ISPs and that in fact

«Member States shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service,...»<sup>105</sup>

while also listing several circumstances. These are that the ISP is not aware of the infringements or the ISP has detected them and has deleted them. Another relevant and applicable Article to such cases is the Article 15(1), that implies that it is illegal to dictate a rule that the ISPs must look precisely into the requested files for upload. Judging by these two Articles, it can be seen that these are directly applicable cases and that when the final decision will occur, it may be transposed to similar issues and faster lead to their solutions. Contrary to that, the InfoSoc Directive has an Article 3(1) that refers to the concept of communication to the public. Nevertheless, it is not as clear in its applicability up to date, especially because the Article 17 of the newest Copyright Directive implies amendments to it and thus will be decided for resolution after coming into force. Under the Article 14(1), it is also implied that it is highly challenging to detect if the ISP was aware of the infringement, unless it is very clear. This is why the digital era is very complicated to trace and regulate, and such cases should be dealt with up to date laws and circumstances.<sup>106</sup>

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<sup>101</sup> Hansson, *supra* note 83.

<sup>102</sup> GTG Advocates. Copyright Infringement and Online Platforms – Recent Opinions and Judgments from the CJEU, available on: <https://www.gtgadvocates.com/copyright-infringement-and-online-platforms-recent-opinions-and-judgments-from-the-cjeu/>. Accessed April 22, 2021.

<sup>103</sup> Court of Justice of the European Union, *PRESS RELEASE No 96/20 Luxembourg, 16 July 2020 Advocate General's Opinion in Joined Cases C-682/18 Frank Peterson v Google LLC, YouTube LLC, YouTube Inc., Google Germany GmbH and C-683/18 Elsevier Inc. v Cyando AG*, available on: [https://curia.europa.eu/jcms/jcms/p1\\_3118083](https://curia.europa.eu/jcms/jcms/p1_3118083). Accessed April 22, 2021.

<sup>104</sup> Gautier, *supra* note 90.

<sup>105</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, *supra* note 52.

<sup>106</sup> Gautier, *supra* note 90.

Additionally, even with the legal importance of both the InfoSoc Directive and the newest Copyright Directive, the Charter of Fundamental Rights prevails, as it is a primary law in the European Union. In fact, the Article 17(2) of the Charter states that «Intellectual property shall be protected».<sup>107</sup> Thus may be contradicted if not making the IPSs liable, as they should still be aware of illegal activities on their online platforms to some extent. Nevertheless, the balance of the hierarchy of law is highly important thus the Court of Justice of the European Union will primarily ensure that secondary legislation does not go against the primary one, as well as

« providing a balanced interpretation consistent with both the principles of equality of arms and the well-known principle of proportionality... ».<sup>108</sup>

Even with the complication derived from the online matters, the *rule of law* should never be neglected and the judicial officials of the European Union will ensure that.<sup>109</sup>

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<sup>107</sup> Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012P%2FTXT>. Accessed May 11, 2021.

<sup>108</sup> Gautier, *supra* note 90.

<sup>109</sup> Gautier, *supra* note 90.



## 4. ANALYSIS

### 4.1 Harmonized Legal and Remuneration System

One of the latest changes brought to the era of digital audiovisual services and their copyright protection is the DSM Directive, which introduces the Article 17, aiming at determining the liability in case of copyright infringements in cases involving OCSSPs – online content-sharing service providers. There has been determined that under this Article, video-streaming services breach the law, as under the rule of communication to the public they provide «access to works uploaded by their users». Thus, platforms are not being protected against accusations and the safe harbor of hosting, as it was applicable earlier. It is suggested that there are few solutions to reduce their liability and for them not to directly fall under the Article 17. Firstly, these OCSSPs can directly contact each user before he or she uploads a desired file, and make an official paper that would state the originality of the work, and other similar characteristics and legal objectives. The other way is also listed in the Directive, and as it was previously mentioned, there are several criteria such as showing their good intentions and ways of preventive measures. Of course it is still a highly debatable and unsettled issue as the Directive does not yet have a legal power and was not seen in process. Some people mention that its provisions contradict already enforced regulations, but there is still a chance that it to work. In case of OCSSPs, they might have to be very precautionous and put a lot of effort into observing their customers more carefully. There are automatic ways to look at each case, but even in the digital era, sorting out each case personally will bring more success and less unexpected infringements.<sup>110</sup>

Probably in upcoming years and future enforced DSM Directive, legal officials will have many complications in creation of a coherent and perfect legal system when dealing with digital copyright infringements, thus those who would boost positive changes and reduce the number of topic-related cases are OCSSPs and of course the consumers. As for the platforms owners and service providers, should create a well managed system that would set stricter restrictions and preventive measures, thus users would face fear when deciding to upload pirated content, or in other cases would simply be more communicative and cautious – will acknowledge legislation and potential damages more. It may be concluded that there is a lack of «harmonized EU framework for accessory liability for copyright infringement»<sup>111</sup>, which is indeed a huge problem as technology and online communications contribute to almost a 90% of the 21st century. Another issue when dealing with digital piracy is a

«compensation system for right-holders covering non-commercial direct copyright infringement by end-users online, in particular in the context of user-upload platforms».<sup>112</sup>

Contributing in improvement of the legal system applicable in such issue, especially when making an unequal and in a sense unfair judgement that service providers responsible for the infringements supplied by their customers. Harmonizing the digital copyright legislation can be done through the judicial power, application and analysis of case-law. Purely relying on the provisions of the new Directive would make judicial decisions biased and impulsive, rather they should modify and examine past cases and find the best solution for each case individually, as well

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<sup>110</sup> Dr. Christina Angelopoulos and Dr. João Pedro Quintais, «Fixing Copyright Reform: A Better Solution to Online Infringement,» *JIPITEC – Journal of Intellectual Property, Information Technology and E-Commerce Law*, accessed May 11, 2021, [urn:nbn:de:0009-29-49137](https://nbn-resolving.org/urn:nbn:de:0009-29-49137).

<sup>111</sup> *Ibid.*

<sup>112</sup> Angelopoulos and Quintais, *supra* note 111.

as by referring to primary legislation. Digital piracy does not only concern direct breaches and actions that contradict copyright law, but it also concerns behavior of every individual, user of the content and his or her intentions. Digital infringements may also be accidental due to lack of knowledge and skills, or may also be intentional, thus encourages for time-consuming solutions. As far as it looks, most of the cases rely on only one concept – communication to the public, when actually there many more factors shaping digital piracy cases.

«A properly balanced regime for accessory copyright liability – particularly one that respects fundamental rights – would not hold intermediaries liable for online infringements where there is no mental element or where duties of care have not been violated.»<sup>113</sup>

Furthermore, another important area for improvement is remuneration of the right-holders. In other words, owners of intellectual property and in this case right-holders of the audio-visual services are left with no financial aid and compensation in cases of breaches, thus the system should imply the contrary. These right-holders have a right to receive a pure monetary amount due to losses and other reasons:

«[T]he grant of a right of fair compensation ensures, first, that creators receive a share of the amounts collected under the statutory licence system and, second, that they are not forced to transfer that share to exploiters, i.e. publishers and other derivative right-holders.»<sup>114</sup>

This statement also shows that they have a right to receive the whole sum, without compensating other persons involved in distribution, promotion and similar services related to their intellectual property. As there is no such system yet existing, there is also no determinant on the specific sum for compensation, but the journal «Fixing Copyright Reform: A Better Solution to Online Infringement» suggests that the monetary amount should include many factors.<sup>115</sup>

There are several options despite direct legal regulations that may provide copyright protection to suppliers and that will inevitably decrease the number of infringements in the scope of digital piracy. One of these options is an already existing *freemium*. It is known that most of the supplied audio and visual content is restricted under the monetary limitations, such as people have to purchase a desired service or subscribe to it by paying a certain amount of money (fee) every month or year for instance. Freemium allows people to either try to use the desired platform or service for free for some limited time, or allows them to permanently use it for free but with several restriction. For example, a well-known Spotify music platform has both of these options and when the person decided to use their service without paying for it, he or she is simply not able to download this music and listen to it offline, as well they are not able to scroll and perform some other useful action while using Spotify. Nevertheless, they are opt to use legally obtained music for free, having an opportunity to switch to a payable variant anytime they want. Similar *freemium* options are allowed by Youtube, Netflix and other platforms, and it is even seen that

«As a result from 2011 to 2015, the amount of web traffic of combined Netflix and YouTube increased from 39% to 52%, which is a relatively big result for video streaming services».<sup>116</sup>

It means that people have started to use legal platforms even though Netflix for example is a subscription based one, with a time-limited free period. Nevertheless, the amount of pirated

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<sup>113</sup> Angelopoulos and Quintais, *supra* note 111.

<sup>114</sup> Angelopoulos and Quintais, *supra* note 111.

<sup>115</sup> Angelopoulos and Quintais, *supra* note 111.

<sup>116</sup> Andrei Capastu, «Digital Piracy Approaches: Trends and Need for Innovation», Orebro University (2017), available on: <https://www.diva-portal.org/smash/get/diva2:1141424/FULLTEXT01.pdf>. Accessed April 22, 2021.

available content is being more thoughtfully observed and removed thus despite the somewhat costly content, people start to use it more as well as to promote and advertise it.

## 4.2 Economic Analysis

Despite the weaknesses shown in the legal system managing the issue of digital piracy, especially with the global effect of technological progress on other spheres, there are other factors affecting trends and breaches of consumption of the protected intellectual property. Further discussion will be based on economic factors that influence digital piracy and audiovisual services in particular. First of all, one of the most important indicators is the overall percentage of consumption of the pirated content. In fact, the Figure 6 provides that in the year of 2018, the leading EU countries for such infringements were Latvia and Lithuania, whereas Denmark and Finland had the least cases of such breaches. It is also mentioned that there is a decrease for piracy in all of the Member States despite «Slovenia, Malta and Latvia»<sup>117</sup>. Thus, in 2018, Latvia was the main State to have such a high rate of copyright infringements with no improvement. Moreover, as for the statistics for the year 2018, Figure 8 shows the percentage of type of content that has been involved in digital piracy. The numbers suggest that the highest percentage falls onto the category of streaming content ( 75.3%), with the least piracy seen in torrent (10.4%), downloads (8.8%) and ripper (5.5%).<sup>118</sup> This means that most of the issues of digital piracy are being seen because of the streaming content that includes online platforms such as YouTube, Netflix, TV programs, films, podcasts, broadcast and many other types of digitally obtained streaming content. The whole Bachelor Thesis has been based on such type of the content and with the analysis of case-law and recent legislation, it may be concluded that in 2020-2021, the dominant content for digital piracy is still the streaming one. Moreover, if looking at the film category of audiovisual content, the streaming type prevails in 2018 again, but is represented by the decreasing trend line, thus having a positive prospect. The report also states that «[f]ilm piracy decreased in all Member States except Italy and Slovakia during the 2017-2018 period»<sup>119</sup>, nevertheless the Figure 20 shows that again, the most breaches in the field of TV is shown by Lithuania and Latvia, with the dominating streaming type of content.<sup>120</sup> Moreover,

«Piracy was highest in Lithuania and Latvia at more than 19 activities per user per month, and lowest in Finland, at approximately 3.6 monthly activities per user».<sup>121</sup>

The report has also shown numbers for music piracy, but this is not included in the scope of the research for Bachelor Thesis, thus the trends will not be provided.

Despite the trend lines of digital piracy by category and Member State, there are other factors influencing such an issue, depending on each State's economy, social life and others. The report that this research is based on covers billions of personally obtained data from the digital piracy breaches that occurred in the European Union from around 2017 to 2018. In order to thoughtfully make a hypothetical suggestion about reduction of the piracy in the future, it is

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<sup>117</sup> European Union Intellectual Property Office, «Music, films and TV (2017-2018), trends and drivers», *Online copyright infringement in the European Union* (2019), p. 24, accessed May 11, 2021, doi:10.2814/907556.

<sup>118</sup> European Union Intellectual Property Office, *supra* note 117, p.26.

<sup>119</sup> European Union Intellectual Property Office, *supra* note 117, p.28.

<sup>120</sup> European Union Intellectual Property Office, *supra* note 117, p.35.

<sup>121</sup> European Union Intellectual Property Office, *supra* note 117, p.35.

important to look at some specific reasons that cause users to obtain illegal content online. First of all, even though it has already been mentioned in Chapter one, income is the first cause of piracy «The higher per capita income, the lower the consumption of pirated content per capita»<sup>122</sup>. The more people earn, the more money they have to spend on their leisure, such as they are able to buy subscriptions to legal services or go to the cinema and watch a legal film. The overall data that represents the consumption for each country suggests that thus the wealthier the Member State is, the bigger percentage of people have enough income to purchase legal content, as well as it is also suggested that these States have better legal system for copyright protection. Additionally, there is an income inequality that causes the consumption of pirated content. In particular, this is more of a social factor as people compare themselves and if they see that some wealthier people watched a particular film, they ignore the fact that it was obtained legally just by paying a small amount of money. The only important driver for them is the immediate desire to watch that movie as well, so they find some freely available but illegal service to watch that film. There many other factors influencing digital piracy and most of them vary by country as every Member State has different social system of norms, different approach and level of education, percentage of unemployment and Gini coefficient that represents the equality of distribution of income and may lead to assumptions on the percentage of people that are able to purchase legal content and the percentage that will certainly obtain it illegally. There has also been observed earlier that younger people tend to access the pirated content more often.<sup>123</sup> Additionally, the market size is also very important as if there would be more of the available legal services then people would consume less of the pirated one. Also, it includes free alternatives such as a freemium mentioned above.

Latvia and Lithuania are the main countries for high percentages of users obtaining pirated content each month. The percentages are 26.99% and 26.34% respectively. Moreover, when looking at the trend percentage between 2017 and 2018, it is observed that judging by the whole European Union, there has been a decrease in 15.1%. Nevertheless, the biggest decrease occurred in Germany (by 25.7%), and the only countries with an increase were Slovenia (by 3.9%), Latvia (by 2%) and Malta (by 2.8%).<sup>124</sup>

In order to analyse specifics and reasons for trends of digital piracy in countries with the highest percentage of infringements, more statistics are taken into consideration. First of all, due to the fact that income per capita is one of the main factors – Latvia, Slovenia and Malta should be evaluated as their statistics for digital piracy have only increased. Latvia and Malta have shown to have the least income per capita in years of 2013-2019 among these four States. Even though they are not in the end of the list, comparing their disposable incomes to the indicator of disposable income for all 28 Member States, their values are much more lower (e.g. Latvia's income per capita in 2019 was \$15,519, whereas an average of all EU countries equaled to \$23,599).<sup>125</sup> This confirms that people living in Latvia have less monetary opportunities for purchasing streaming and other type of audiovisual content. Moreover, another important indicator is the equality in the distribution of this income, also known as the Gini Coefficient. Looking at the EU statistics, it is observed that Latvia and Lithuania have one of the highest percentages in years of 2013-2019. Comparatively, Gini Coefficient for 28 Member States in 2019 is 30.7%, whereas in Slovenia it is 23.9%, and

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<sup>122</sup> European Union Intellectual Property Office, *supra* note 117, p.37.

<sup>123</sup> European Union Intellectual Property Office, *supra* note 117, p.48.

<sup>124</sup> European Union Intellectual Property Office, *supra* note 117, p.54.

<sup>125</sup> Adjusted gross disposable income of households per capita. Eurostat. Available on: [https://ec.europa.eu/eurostat/databrowser/view/sdg\\_10\\_20/default/table?lang=en](https://ec.europa.eu/eurostat/databrowser/view/sdg_10_20/default/table?lang=en). Accessed May 11, 2021.

35.2% in Latvia.<sup>126</sup> What it means is that high levels of digital piracy for Latvia and Lithuania may have been caused by the poor distribution of income, whereas for Latvia it was mostly due to overall low disposable income level. Unemployment rate is not a relevant factor for digital piracy in the European Union, as by looking at the statistics from 2013-2019, none of these four countries has high indicators, in fact Greece, North Macedonia and Montenegro have been experiencing high unemployment rate throughout this period of time.<sup>127</sup>

### 4.3 How to Reduce Digital Piracy

The Thesis suggests that are multiple regulations that targets service providers, users, owners of the intellectual property and any other party involved in the distribution and consumption of the online content, depending on various factors. Nevertheless, it has already been concluded that the main problem is technology itself. No-one can create a unique and homogeneous solution to the issue of digital piracy as technological improvements are on the step faster then human-being. Nevertheless, there are several important aspects that people should focus on to reduce piracy. First of all, when talking about legal system, unfortunately it is hard to trace every user and detect every illegally downloaded and distributed content even with the help of specific machines and programs. Of course, with the upcoming DSM Directive there inevitably will be improvements in cases related to digital piracy, but probably not all of them will be dealt with unbiased manner as it was previously discussed. One way to reduce the number of cases is the promotion of legal content, such as for example through freemium options, or through educating people about possible sanctions and the negative impact. Nevertheless, the adoption of new copyright laws will not solve the issue of digital piracy permanently as there are various other factors influencing it. The ones that are not less significant are social and economic as well as it is important to mention that digital piracy varies in every country and the statistics above confirm it. Focusing the methods of improvement on specific regions may decrease digital piracy. In fact it was observed that the weakest States are Latvia, Slovenia and Lithuania, thus these two countries should be areas of focus. Additionally, as it has also been determined that streaming services are mostly involved in digital piracy, thus these should be regulated more thoughtfully. Latvia, Slovenia and Lithuania should improve their educational system, distribution of disposable income, improve its income per capita data as well, thus changes will occur and the percentage digital copyright infringements will decline. Moreover, throughout the interdisciplinary analysis of the issue of digital piracy related to audiovisual services, it is observed that despite the lack of proper laws and provisions that protect all of the online distributed content, there are many social issues that drive users to breach the copyright law, thus in order to reduce piracy, more attention should be brought in analysis of different social drivers and educational system. Younger ages tend to learn a lot from the scope of Internet, thus media and online platforms should promote the potential negative effects and should introduce the simplified importance of copyright protection.

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<sup>126</sup> Gini coefficient of equivalised disposable income - EU-SILC survey. Eurostat. Available on: <https://ec.europa.eu/eurostat/databrowser/view/tessi190/default/table?lang=en>. Accessed May 11, 2021.

<sup>127</sup> Total unemployment rate. Eurostat. Available on: <https://ec.europa.eu/eurostat/databrowser/view/tps00203/default/table?lang=en>. Accessed May 11, 2021.

## CONCLUSION

The main research question of the Bachelor Thesis is «To What Extent does Legislation Cover the Issue of Digital Copyright Infringements of Audiovisual Services in the European Union?». It has been evaluated through various types of methodological research and analysis. Legislation analysis was mainly accessed in Chapters two and three. Firstly, when talking purely about legal provisions and relevant Directives, it was observed that InfoSoc Directive has been the latest document to access issues of digital piracy. It was the first Directive to introduce concept of «communication to the public», which makes it easier to judge cases based on the intention and covariance of copyright protection. Most of the analysis has been observing streaming and online platforms, as these were the latest cases of confusion. There are multiple parties involved, such as service providers, end-users who may access or download the content, as well as there are owners of the specific intellectual property. It was also observed that InfoSoc is not in capability to resolve many of the recent cases as new technological innovations and types of programs has entered the market, thus the European Union has introduced the newest DSM Copyright Directive in 2019. The downfall is that it has not yet been enforced, as Member States have to implement its provisions into their national laws before the Directive comes into its legal power. Internet services are responsible for violation of copyright of copyright holders by users, which should force Internet services to take a more active position in the protection of such rights. The Directive will also have an impact on Internet users: Internet services will be required not only to track what content users are downloading, but also to remove content that may violate other people's rights. A similar system is already used in YouTube. When the Directive is adopted, other Internet services will be required to implement similar filters. Directive 2019/790 offers a solution to the problem of digitization and wider public access to the cultural heritage of the through a dual mechanism of licensing and limitation and exclusion. Moreover, one of the main upcoming Articles that will improve the digitalization of online audiovisual services is the Article 17, as it will make an emphasis of the liability of internet intermediaries, such as online streaming platforms. Directive (EU) 2019/790 contains certain conditions to allow non-application of liability rules to providers of online content sharing services. For example, if permission has not been obtained from the copyright holder, online content sharing service providers are liable unless of the occurrence of some extensions that are also listed under the DSM Directive. It may be concluded that judging by the existing and enforced legislation, the covariance of the issue of digital piracy is in fact extensive, nevertheless, due to the fact that there are many parties involved, and that is very hard to trace online actives on the Internet, the court decisions may be biased and unequal, with additional poor remuneration system. Case-law analysis talks mostly about cases involving these online platform services, and additionally there are four chosen cases for preliminary ruling, which are in line for the application of the DSM Directive due to the lack of enough relevant national copyright laws, as well as lack of proper existing EU legislation. It means that even InfoSoc Directive is not in capability to resolve some issues of digital piracy, thus there is a hope that the newest Directive will be enough to cover all of the problems and cases of online copyright infringements of audiovisual services.

Chapter four is an essential part of this Bachelor Thesis as it introduces the interdisciplinary approach to the topic of digital piracy and observes that there are actually other important factors influencing it. Economic indicators such as income per capita, Gini coefficient, unemployment rate has shown that Latvia, Slovenia and Lithuania are three countries in the European Union where the digital piracy rates prevail. Thus, it was concluded that through the economic approach, these Member States should be primary areas of improvement and focus, as these poor factors are also influenced by some social issues. When people do not have enough disposable income, purchasing legal content is not their incentive, as in fact they try to obtain the desired audiovisual service for

free. The same may be said about the high percentages for the distribution of the disposable income, as when there too many poor and too many wealthy people, inequality occurs, influencing social statuses and thus increasing desire and circumstances for the copyright infringements. It was also observed that Latvia and Slovenia has not experienced a decrease in digital piracy, thus despite all of the legal applications and cautionary steps, there two States should be basis for attention and improvement.

The Bachelor Thesis has provided an extensive legal analysis on the scope of the cover of the EU legislation, but the author suggests that in order to provide more in-depth and concrete solutions to the improvement of digital piracy, the interdisciplinary approach should be investigated more. In particular, future studies should observe psychology and social reasons behind copyright infringements and find mechanisms that would raise awareness of the significance of the issue of online copyright infringements in the European Union. Nevertheless, as it was previously mentioned, the main issue is the digitalization, as technological progress will always be on the step further than any legal, economic and social sources of defense.

## **BIBLIOGRAPHY**

### **Primary sources**

#### **Legislation**

1. Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012. Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012P%2FTXT>. Accessed May 11, 2021.
2. Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, OJ L 248, 6.10.1993, p. 15–21. Available on: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A31993L0083>. Accessed May 11, 2021.
3. Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, OJ L 130, 17.5.2019, p. 92–125. Available on: <https://eur-lex.europa.eu/eli/dir/2019/790/oj>. Accessed May 10, 2021.
4. Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ L 167, 22.6.2001. Available on: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001L0029>. Accessed April 21, 2021.

#### **Case-Law**

1. *Stichting Brein v. Ziggo BV*, C-610/15. Before the European Court of Justice (Second Chamber), 14 June 2017, [2017] E.C.D.R. 19. Available on: Westlaw International database.

#### **Advocate General Opinions**

1. Court of Justice of the European Union, PRESS RELEASE No 96/20 Luxembourg, 16 July 2020 Advocate General's Opinion in Joined Cases C-682/18 Frank Peterson v Google LLC, YouTube LLC, YouTube Inc., Google Germany GmbH and C-683/18 Elsevier Inc. v Cyando AG, available on: [https://curia.europa.eu/jcms/jcms/p1\\_3118083](https://curia.europa.eu/jcms/jcms/p1_3118083). Accessed April 22, 2021.



## Secondary sources

### Books

1. Guibault L., and J.P. Quintais, *The influence of new technologies on copyright*. Strasbourg: European Audiovisual Observatory, 2014.
2. Mărcuț, Mirela. *Crystalizing the EU Digital Policy: An Exploration into the Digital Single Market*. Springer, 2017.
3. Panethiere, Darrell. *The Persistence of Piracy: the Consequences for Creativity, for Culture, and for Sustainable Development*. Paris: the United Nations Educational, Scientific and Cultural Organization 2005. Accessed April 20, 2021. <https://unesdoc.unesco.org/ark:/48223/pf0000145517>.
4. Strykowski, Piotr, and Danny Scorpecci. *Piracy of Digital Content 2009*, Available on: OECD Library. Accessed April 21, 2021.

### Journal Articles, Reports, Academic Research Papers, Official Guidelines

1. Angelopoulos, Dr. Christina, and Dr. João Pedro Quintais, «Fixing Copyright Reform: A Better Solution to Online Infringement,» *JIPITEC – Journal of Intellectual Property, Information Technology and E-Commerce Law*. Accessed May 11, 2021, urn:nbn:de:0009-29-49137.
2. Capastu, Andrei. «Digital Piracy Approaches: Trends and Need for Innovation», Orebro University (2017). Available on: <https://www.diva-portal.org/smash/get/diva2:1141424/FULLTEXT01.pdf>. Accessed April 22, 2021.
3. Danaher, Brett, Michael D. Smith and Rahul Telang, «Copyright Enforcement in the Digital Age: Empirical Evidence and Policy Implications», *Communications of the ACM* (2017). Accessed May 11, 2021, WIPO/ACE/10/20/PPT.
4. Danaher, Dr. Brett, Assistant Professor, Department of Economics, Wellesley College, Dr. Michael Smith, Professor, Heinz School of Public Policy and Management, Carnegie Mellon University, and Dr. Rahul Telang, Professor, Heinz School of Public Policy and Management, Carnegie Mellon University, «COPYRIGHT ENFORCEMENT IN THE DIGITAL AGE: EMPIRICAL ECONOMIC EVIDENCE AND CONCLUSIONS», Geneva: (2015). Accessed April 22, 2021, WIPO/ACE/10/20 .
5. Dixon Allen N., and Martin F. Hansen, «The Berne Convention enters the digital age», *Sweet & Maxwell and its Contributors* (2021). Available on Westlaw International database. Accessed April 22, 2021.
6. Dore, Giulia. «And They Lived Happily Ever after UPC Telekabel: A Copyright Fairy Tale or a Chance to Strike a Fair Balance,» *Queen Mary Journal of Intellectual Property* (2015). Accessed April 22, 2021, 10.4337/qmjip.2015.02.07.
7. Drzewińska, Agata. «Digital exhaustion in European Union», Uppsala University, Disciplinary Domain of Humanities and Social Sciences, Faculty of Law, Department of Law (2019). Accessed April 22, 2021, urn:nbn:se:uu:diva-385620.
8. Entraygues, Alexandre. «The Hadopi Law - new French rules for creation on the Internet», *Sweet & Maxwell and its Contributors* (2021). Available on Westlaw International. Accessed April 21, 2021.

9. Espantaleon, Jaime. «Exhaustion light in European television», *European Intellectual Property Review* (2010). Available on: Westlaw International Database. Accessed May 11, 2021.
10. Ferri, Federico. «The dark side(s) of the EU Directive on copyright and related rights in the Digital Single Market», *China-EU Law Journal* (2020). Accessed April 21, 2021, doi.org/10.1007/s12689-020-00089-5.
11. Freeland, Adam. «Negotiating under the New EU Copyright Directive 2019/790 and GDPR,» (Journal of International Economic Law, 2020): pp. 106–122. Available on HeinOnline database. Accessed April 21, 2021.
12. Gautier, Pierre-Yves. «Why internet services which provide access to copyright infringing works should be immune to liability», *European Intellectual Property Review* (2020). Available on: Westlaw International Database. Accessed May 10, 2021.
13. Gloglo, Dr Franck. «Understanding the modernisation of European Union's copyright law in a changing world», *Sweet & Maxwell and its Contributors* (2021). Available on: Westlaw International database. Accessed April 22, 2021.
14. Günther, Petteri. «The plan for a digital Single Market in Europe and reforming EU copyright rules to develop a market-oriented approach to reduce infringement on the internet», *Sweet & Maxwell and its Contributors* (2021). Available on Westlaw International. Accessed April 21, 2021.
15. Hadaya, Ivan. «Combating Copyright Piracy in the EU: the Application of Article 8 (3) of Directive 2001/29/EC against Internet Service Providers» (2017). Accessed April 22, 2021, <https://www.sty.net/@Bin/227712/Master+Thesis+-+Ivan+Hadaya.pdf>.
16. Hansson, Sunniva.»YouTube and Cyando - Advocate General unpicks CJEU's case law on communication to the public», *Sweet & Maxwell and its Contributors* (2020). Available on Westlaw International. Accessed April 22, 2021.
17. Malkawi, Bashar H..«A long "TRIP" home: how the Berne Convention, TRIPS Agreement, and other instruments complement the international copyright system», *Sweet & Maxwell and its Contributors* (2021). Available on Westlaw International database. Accessed April 22, 2021.
18. Malkawi, Bashar H.. «European Intellectual Property Review», *Sweet & Maxwell and its Contributors* (2021). Available on Westlaw International database. Accessed April 22, 2021.
19. Poort, Joost, and João Pedro Quintais. «Global Online Piracy Study» (2018). Accessed April 21, 2021, [https://www.researchgate.net/publication/327026436\\_Global\\_Online\\_Piracy\\_Study](https://www.researchgate.net/publication/327026436_Global_Online_Piracy_Study).
20. Quintais, João Pedro. «Private copying and downloading from unlawful sources», *International Review of Intellectual Property and Competition Law* (2015). Available on Westlaw International Database. Accessed May 10, 2021.
21. Quintais, João Pedro. «The new copyright in the Digital Single Market Directive: a critical look», *European Intellectual Property Review* (2020). Available on: Westlaw International Database. Accessed May 10, 2021.
22. Renda, Andrea, Felice Simonelli, Giuseppe Mazziotti, Alberto Bolognini and Giacomo Luchetta, «The Implementation, Application and Effects of the EU Directive on Copyright in the Information Society», *Centre for European Policy Studies* (2015): p. 2. Accessed April 21, 2021, [https://www.ceps.eu/wp-content/uploads/2015/11/SR120\\_0.pdf](https://www.ceps.eu/wp-content/uploads/2015/11/SR120_0.pdf).
23. Schultes, Rainer (Geistwert). «Puls 4 v YouTube in Austria does not anticipate Article 17,» *Kluwer Copyright Blog* (2019). Accessed May 11, 2021. Available on: <http://>

copyrightblog.kluweriplaw.com/2019/04/02/puls-4-v-youtube-in-austria-does-not-anticipate-article-17/.

24. Sganga, Caterina. «A new era for EU copyright exceptions and limitations? Judicial flexibility and legislative discretion in the aftermath of the Directive on Copyright in the Digital Single Market and the trio of the Grand Chamber of the European Court of Justice,» (Scuola Superiore Sant'Anna di Pisa, 2020). Accessed April 21, 2021, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3804228](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3804228).

25. Snelling, Alexander Peter. *Digital Piracy: How the media industry is being transformed* (Gandia: 2013), p. 3. Accessed April 21, 2021, <https://riunet.upv.es/bitstream/handle/10251/35922/Memoria.pdf?sequence=1>.

26. Teilmann, Stina. «British and French Copyright: A Historical Study of Aesthetic Implications,» (Denmark: Department of Comparative Literature, 2004). Accessed April 20, 2021, [https://www.sdu.dk/-/media/files/forskning/phd/phd\\_hum/afhandlinger/2005/0\\_teilmann+pdf.pdf](https://www.sdu.dk/-/media/files/forskning/phd/phd_hum/afhandlinger/2005/0_teilmann+pdf.pdf).

27. Thornton, Penny. CJEU rules on site-blocking orders in UPC Telekabel v Constantin Film. Available on: <https://www.hlmediacomms.com/2014/03/27/cjeu-rules-on-site-blocking-orders-in-upc-telekabel-v-constantin-film/>. Accessed April 22, 2021.

28. Tomczyk, Łukasz. «Article Evaluation of Digital Piracy», Faculty of Pedagogy and Psychology, *Pedagogical University of Cracow* (2021): p.2. Accessed April 21, 2021, [doi.org/10.3390/fi13010011](https://doi.org/10.3390/fi13010011).

29. Wendehorst, Christiane. «Platform Intermediary Services and Duties under the E-Commerce Directive and the Consumer Rights Directive», *Journal of European Consumer and Market Law* (2016). Available on Kluwer Law Online database. Accessed April 22, 2021.

### **Official documents and papers**

1. Edelman Berland, *European Citizens and Intellectual Property: Perception, Awareness and Behavior* (2013), accessed April 21, 2021, [https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/observatory/documents/Perception\\_study\\_2020/Perception\\_study\\_full\\_en.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/Perception_study_2020/Perception_study_full_en.pdf).

2. European Court Reports. "Judgment of the Court (Fourth Chamber) of 27 March 2014. UPC Telekabel Wien GmbH v Constantin Film Verleih GmbH. Case C-314/12», Celex No. 62012CJ0314. Available on Westlaw International database. Accessed April 22, 2021.

3. European Union Intellectual Property Office, «IP enforcement case-law collection on the balance between the right of information and fundamental rights in the European Union», (2018), accessed April 22, 2021, [doi:10.2814/36519](https://doi.org/10.2814/36519).

5. European Union Intellectual Property Office, «Music, films and TV (2017-2018), trends and drivers», *Online copyright infringement in the European Union* (2019), accessed May 11, 2021, [doi:10.2814/907556](https://doi.org/10.2814/907556).

4. Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice in C-442/19. Available on: <http://curia.europa.eu/juris/showPdf.jsf?text=&docid=220011&pageIndex=0&doclang=EN>. Accessed May 10, 2021.

## Websites

1. Adjusted gross disposable income of households per capita. Eurostat. Available on: [https://ec.europa.eu/eurostat/databrowser/view/sdg\\_10\\_20/default/table?lang=en](https://ec.europa.eu/eurostat/databrowser/view/sdg_10_20/default/table?lang=en). Accessed May 11, 2021.
2. EU Digital Single Market, available on: [eufordigital.eu/discover-eu/eu-digital-single-market/](http://eufordigital.eu/discover-eu/eu-digital-single-market/). Accessed April 21, 2021.
3. Gini coefficient of equivalised disposable income - EU-SILC survey. Eurostat. Available on: <https://ec.europa.eu/eurostat/databrowser/view/tessi190/default/table?lang=en>. Accessed May 11, 2021.
4. GTG Advocates. Copyright Infringement and Online Platforms – Recent Opinions and Judgments from the CJEU, available on: <https://www.gtgadvocates.com/copyright-infringement-and-online-platforms-recent-opinions-and-judgments-from-the-cjeu/>. Accessed April 22, 2021.
5. Global Freedom of Expression. UPC Telekabel Wien GmbH v. Constantin Film Verleih GmbH, available on: <https://globalfreedomofexpression.columbia.edu/cases/upc-telekabel-wien-gmbh-v-constantin-film-verleih-gmbh/>. Accessed April 22, 2021.
6. The Societal Costs of Digital Piracy. WEBROOT. Available on: <https://www.webroot.com/us/en/resources/tips-articles/the-societal-costs-of-digital-piracy>. Accessed April 21, 2021.
7. Total unemployment rate. Eurostat. Available on: <https://ec.europa.eu/eurostat/databrowser/view/tps00203/default/table?lang=en>. Accessed May 11, 2021.