

Liability of Internet Intermediaries in Relation to Trademark and Copyright Infringements: A Comparative Analysis of the EU and U.S. Legal Frameworks

Research project

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Abstract:

Over the past ten years, Internet intermediaries' liability for user-generated content has been one of the most burning issues facing Intellectual Property courts in Europe and in the United States. Although the relevant legal frameworks are quite similar on both continents, their application by the U.S. courts and by some European jurisdictions has been substantially different. In particular, some national courts in the EU have found Internet intermediaries liable for trademark and copyright infringements in relation to user-generated content several times over the past ten years.

The European E-commerce Directive and the European Information Society Directive provide safe harbor provisions very similar to the ones in the U.S. Digital Millennium Copyright Act (DMCA). From a comparative perspective, the rulings adopted by the European Court of Justice and the national courts in the EU are interesting, not only because they offer a rich reflection regarding the applicability of the safe harbor provisions to these intermediaries, but also because they carve out different solutions—whether legal or technical—in order to limit the development of copyright and TM infringements on these platforms. Likewise, U.S. case law outlines interesting developments regarding the balance between protecting IP rights on the one hand and fostering freedom of expression and a blooming digital economy on the other.

The main objective of this research is to outline the common ground between the two continents and to try to define some “good practices,” in order to offer stakeholders the opportunity to adopt a transatlantic approach in conducting their business.