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**Article 17 of the CDSM Directive: Challenges and Implications In Sweden
and Finland**

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ABSTRACT

With the ongoing evolution of the internet and its influence on our consumption and dissemination of content, novel regulations are being established in order to safeguard the interests of creators and proprietors of copyrights. A highly consequential jurisdiction outlined in the Copyright in the Digital Single Market Directive (Copyright Directive), Article 17. The paramount objective of this mandate is to establish the legal burden on online content-sharing service providers for any violation of copyright that arises on their platforms. The enactment of this new legislation bears great consequences for enterprises and individuals who utilize internet-based channels to disseminate and exchange information, covering an expansive range of stakeholders, including digital celebrities, media streaming providers, and others. In the following discourse, we shall delve into the substance of Article 17 and its ramifications for online content-sharing service providers (OCSSPs), while also offering insights into requisite actions to align them with the nascent regulatory framework. For both content creators and business owners, comprehending Article 17 is of utmost importance in traversing the dynamic terrain of the implementation of Article 17 of the CDSM Directive has been the subject of significant debate in the EU. This provision requires OCSSPs¹ to take measures to prevent the unauthorized sharing of copyrighted content on their platforms. However, there are concerns about the potential impact of this provision on the freedom of expression and business operations of OCSSPs. Considerable discussions have taken place within the EU concerning the enactment of Article 17 of the CDSM Directive. This clause mandates that OCSSPs implement appropriate measures to curb the unauthorized distribution of copyrighted material through their channels. Nonetheless, there exist apprehensions regarding the probable consequences of this clause on the liberty of expression and entrepreneurial activities of OCSSPs.²

Keywords: Content-Sharing Service Providers, Copyright Directive, Article 17, Digital Content, Digital Single Market, Exceptions and Limitations, Licensing, Online Services Platforms, Intellectual Property, EU, Finland, Sweden, Safe Harbour, DMA, DSA

¹ Communication from the Commission. Tackling Illegal Content Online. Towards an enhanced responsibility of online platforms. COM(2017) 555 final Brussels, European Commission, European Commission (2018).

² Barnard, C. (2019). *The Substantive Law of the EU, The Four Freedoms*. Sixth Edition, Oxford University Press.

INTRODUCTION

Article 17 of the EU Directive on Copyright in the Digital Single Market (CDSM)³, aims to restrict the unauthorized use of copyrighted material on online platforms by placing more severe obligations on OCSSPs⁴ to obtain licenses and block specific works identified by rights-holders. However, the implementation of Article 17 has raised concerns about limiting the commercial activities of OCSSPs and hindering free expression. In this bachelor thesis paper, we will explore how Article 17 can be used to limit the commercial activities of OCSSPs and propose solutions to address the issues associated with its implementation.⁵

Article 17 places a greater burden on OCSSPs to obtain licenses from the rights-holders before displaying copyrighted content on their platforms.⁶ This requirement can significantly limit the commercial activities of OCSSPs, especially for those that rely on user-generated content. To comply with Article 17, OCSSPs must demonstrate that they have made best efforts⁷ to obtain a license, not to display copyrighted content, take down any copyrighted content upon receiving a valid notice from the rights-holder, and prevent its re-upload. Failure to comply with these obligations can result in legal liability for the OCSSP.⁸

The implementation of Article 17 has raised concerns about the impact on free expression and the risk of over-blocking non-infringing content.⁹ Article 17 does not require OCSSPs to screen all uploaded content, but some large platforms do this voluntarily. However, the use of

³ European Union. (2019). 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.

⁴ Panel for the Future of Science and Technology, European Parliamentary Research Service, Scientific Foresight Unit (STOA). (February 2021). "Artificial Intelligence in Education, Teaching, and Learning: Stakeholder Perspectives and Ethical Considerations."

⁵ M.R.F. Senftleben/T. Margoni et al., "Ensuring the Visibility and Accessibility of European Creative Content on the World Market: The Need for Copyright Data Improvement in the Light of New Technologies and the Opportunity Arising from Article 17 of the CDSM Directive", *Journal of Intellectual Property, Information Technology and Electronic Commerce Law* 13 (2022), 67 (70-74).

⁶ Quintais, J., & Schwemer, S. (2022). The Interplay between the Digital Services Act and Sector Regulation: How Special Is Copyright? *European Journal of Risk Regulation*, 13(2), 191-217.

⁷ Moreno, F. R. (2020). Upload filters' and human rights: implementing Article 17 of the Directive on Copyright in the Digital Single Market. *Computer Law & Security Review*, 36, 153-182

⁸ "Ensuring the Visibility and Accessibility of European Creative Content on the World Market: The Need for Copyright Data Improvement in the Light of New Technologies and the Opportunity Arising from Article 17 of the CDSM Directive", *Journal of Intellectual Property, Information Technology and Electronic Commerce Law (JIPITEC)* 13 (2022), 67 (67-86).

⁹ Peukert, A., Husovec, M., Kretschmer, M. et al. European Copyright Society – Comment on Copyright and the Digital Services Act Proposal. *IIC* 53, 358–376 (2022). Retrieved from <https://doi.org/10.1007/s40319-022-01154-1>

filters can be problematic as it can lead to the removal of non-infringing content, including parodies, memes, and other forms of user-generated content that are protected by exceptions and limitations to copyright.

Moreover, Article 17 has been highly controversial, largely due to concerns that it will undermine the free expression of individual internet users. The directive stands to replace the "Safe Harbour" with a far more burdensome set of affirmative obligations regarding copyrighted content. The directive imposes three main obligations on internet services, including making "best efforts" to obtain licenses for content and using "best efforts" to ensure unavailability of specific works identified by rightsholders. These new obligations will make the internet less diverse, interesting, equitable, and useful.

The thesis aims to investigate the application of Article 17 of the CDSM Directive as a means of restricting the commercial practices of OCSSPs in the EU. The research questions guiding the study are as follows: In what ways can Article 17 of the CDSM Directive be utilized to curtail the commercial activities of OCSSPs in the Finland and Sweden? How have Finland and Sweden implemented the provisions of the CDSM Directive into their respective national frameworks pertaining to copyright law?

The thesis employs qualitative methodologies that adhere to EU regulations and legislation, academic literature, and judgments from the European Court of Justice. The techniques employed for data collection in this study involve meticulous examination of documents, conducting content analysis, and comparative assessment. This research paper intends to respond to the stated inquiries through a comprehensive examination of licensing agreements between copyright owners and online platforms in the European Union, accomplished through a literature review and qualitative analysis. Furthermore, the present study aims to evaluate the effects of the Digital Single Market and Copyright Directive 17 on the licensing contracts of digital platforms and its tardy implementation in Finland and Sweden.

LIST OF ABBREVIATIONS

DSM = Digital Single Market

CDSM = Copyright in the Digital Single Market Directive

Copyright Directive = Copyright in the Digital Single Market Directive

DMCA = The Digital Millennium Copyright Act

EU = European Union

OCSSP = Online Content-Sharing Service Providers

CJEU = Court of Justice of the European Union

NTD = Notice and Takedown

DSA = Digital Services Act

DMA = Digital Markets Act

1. History of the copyright protection

Across the course of historical developments, commencing with the epoch of print monopolies and advancing into the digital era, creators of content have skillfully leveraged online platforms to their advantage while retaining complete control over their original intellectual property. The concept of copyright enables the creators of original works to maintain exclusive ownership and control over their intellectual property, facilitating the generation of income and revenue streams.

The United States' introduction and implementation of copyright laws can be traced back to 1790, wherein the initial legislation conferred upon authors the exclusive authority to claim ownership of their works for a period of 14 years, subject to renewal for an additional term of 14 years.¹⁰ Over the course of the 19th and 20th centuries, the regulatory framework surrounding copyright underwent a number of changes, reflecting both international accords and advancements in technology.¹¹ Notwithstanding, the advent of the internet and digital technologies has ushered in novel difficulties for the implementation of copyright laws. The extensive dissemination of copyrighted material on the internet has made it arduous to safeguard the legitimate rights of authors and publishers.¹²

The European Union's Directive (EU) 2019/790 was introduced as a response to the challenges faced in the digital single market, whereby Article 17 was implemented to specifically address copyright issues.¹³ Under this provision, it is mandatory for providers of online content-sharing services to exert utmost efforts to impede the uploading of copyrighted material, as stated by rightful owners with adequate and pertinent data.¹⁴ Nonetheless, the interpretations of Article 17(4)(b) and (c) have varied because of their unclear nature

¹⁰ Davis, K. R. (n.d.). Copyright Act of 1790 (2009). In *Encyclopedia of the First Amendment* (Vol. 1, pp. 322-323).

CQ

¹¹ U.S. Copyright Office. Copyright timeline. Retrieved from <https://www.copyright.gov/timeline/>

¹² Jicunovic, Milijana & Balković, Luka. (2016). Author's rights in the digital age: how Internet and peer-to-peer file sharing technology shape the perception of copyrights and copywrongs. *Libellarium: Journal for the research of writing, books, and cultural heritage institutions*

¹³ Directive 2019/790 of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights

regarding the prescribed techniques. As a result, there have been speculations that the use of automated filtering is indispensable. Article 17(7) and (8) establish constraints regarding measures that impede users from gaining legal access to the content, however, they do not specify a definite protocol to balance these objectives with those of Article 17(4)(b) and (c).¹⁵

1.1 International Scope

The Berne Convention of 1886, the Universal Copyright Convention of 1952¹⁶, the World Intellectual Property Organization Copyright Treaty (WCT)¹⁷, and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)¹⁸ are instrumental global agreements that have safeguarded the welfare of copyright owners, furnishing a structure for upholding copyright legislation on a global scale.

The Berne Convention, the inaugural global agreement concerning copyright, aimed to safeguard the creative output of authors by acknowledging their privilege to administer the utilization of their works.¹⁹ The Convention prescribes that a protection term of no less than 50 years post the demise of an author shall be established, and enunciates several prerogatives that authors possess, such as the entitlement to acknowledge the authorship of their work, the power to preclude any illicit modifications and duplications of their work, the authority to extract benefits from their work, and the right to be amply compensated for its application.

The Universal Copyright Convention of 1952 expanded upon the foundational tenets of the Berne Convention, providing a more comprehensive structure for safeguarding copyright. The convention espoused the notion of "moral rights," which acknowledge the author's

¹⁵ Aksh IP Associates. (2022, August 10). Emerging Trends in Digital Copyright Laws. [Blog post]. Retrieved from 10 March 2023 <https://www.linkedin.com/pulse/emerging-trends-digital-copyright-laws-aksh-ip>

¹⁶ World Intellectual Property Organization (WIPO). (n.d.). Berne Convention for the Protection of Literary and Artistic Works. Retrieved from <https://www.wipo.int/treaties/en/ip/berne/>

¹⁷ World Intellectual Property Organization (WIPO). (1996). WIPO Copyright Treaty (WCT). Retrieved from <https://www.wipo.int/treaties/en/ip/wct/>

¹⁸ World Trade Organization (WTO). (1994). Uruguay Round Agreement: TRIPS (Trade-Related Aspects of Intellectual Property Rights). Retrieved from https://www.wto.org/english/docs_e/legal_e/27-trips.pdf

¹⁹ Ibid 18*

entitlement to attribution and the prerogative to contest any modifications that may impinge upon the author's reputation.²⁰

1.2 Prior endeavors to regulate Online Content-Sharing Platforms

The Digital Millennium Copyright Act (DMCA)²¹, implemented in 1998 in the United States (US), is regarded as one of the first endeavors to regulate the sharing of online content. The aforementioned legislation affords copyright holders with safeguards against infringement, granting them the ability to issue notices of noncompliance to web-based entities found to be hosting copyrighted material without consent. This strategy has faced opposition due to its over-reliance on copyright holders and failure to sufficiently safeguard the rights of users in terms of free speech and fair use.

The topic of online content sharing in the EU was initially tackled through the implementation of the Copyright Directive in 2001.²² Nevertheless, this directive fell short in providing unambiguous instructions on sharing online content and faced censure for lacking current relevancy and not accounting for the digital sphere's actualities. Consequently, the Digital Single Market Strategy²³ was implemented in the year 2015, with the primary objective of fostering the establishment of a unified market for digital products and services within the European Union. As an element of this approach, the European Commission submitted a proposition for a new copyright directive in 2016.²⁴

2. Background and Context of the Article 17 of Directive 2019/790 on Copyright in the Digital Single Market

The inclusion of Directive (EU) 2019/790 pertaining to copyright in the digital single market was a noteworthy stride to contemporize the EU's copyright regulations. The objective of the

²⁰ O'Dwyer, A. 2017. The Artists' Resale Right Directive 2001/84/EC: a socially orientated reconceptualization – fomenting social inclusion and remunerative parity. Ph.D. Thesis, University College Cork.

²¹ United States Congress. "105th Congress, Public Law 105-304: Digital Millennium Copyright Act." 105th Cong., 2d sess., October 28, 1998.

²² European Parliament and Council. "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." Official Journal of the European Communities L 167 (2001): 10-19.

²³ European Commission. "A Digital Single Market Strategy for Europe." May 2015.

²⁴ European Commission. "Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market." COM(2016) 593 final, September 14, 2016.

Directive was to tackle the obstacles presented by the digital era and modernize the prevailing copyright regulations to align with the contemporary landscape. Article 17 of the Directive has been a contentious issue as it pertains to the accountability of online content-sharing platforms for copyright violations committed by their users.²⁵

According to the stipulations mentioned in Article 17(4)(b) and (c)²⁶, online content-sharing service providers must employ their utmost diligence to impede users from unauthorized downloading of copyrighted content for which relevant rightsholders have furnished the service provider with pertinent information.²⁷ This particular provision has sparked a significant amount of debate²⁸, with opponents claiming that it has the potential to result in censorship and infringe upon users' fundamental rights to express themselves freely.²⁹

Although the regulation does not explicitly define the parameters of "best efforts," it is commonly inferred that it entails automated filtration measures.³⁰ Proponents of Article 17 contend that its implementation is essential for safeguarding the intellectual property rights of copyright holders and that it will not result in censorship as long as proper measures are taken.³¹

Several legal disputes have arisen as a result of the debate swirling around Article 17. Professional rephrasing: During June 2021, France's constitutional court invalidated

²⁵ Directive 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, O.J. (L 130), 17.4.2019

²⁶ *Ibid**

²⁷ European Commission. (2021, June 4). Communication from the Commission to the European Parliament and the Council: Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market (COM(2021) 288 final). Brussels

²⁸ House of Lords Communications and Digital Committee. (2021). Free for all? Freedom of expression in the digital age. 1st Report of Session 2021-22, HL Paper 54

²⁹ Craig, P., De Burca, G. (2015). *EU Law, Texts, Cases and Materials*. Sixth Edition. Oxford University Press

³⁰ Quintais, J. P., Mezei, P., Harkai, I., Magalhães, J. C., Katzenbach, C., Schwemer, S. F., & Riis, T. (2022). Copyright content moderation in the EU: An interdisciplinary mapping analysis. *Journal of Intellectual Property Law & Practice*, 17(8), 601-616.

³¹ Geiger, Christophe and Bernd Justin Jütte. "Platform Liability Under Article 17 of the Copyright in the Digital Single Market Directive, Automated Filtering and Fundamental Rights: An Impossible Match." (2021) PIJIP/TLS Research Paper Series no. 64. Retrieved <https://digitalcommons.wcl.american.edu/research/64>

significant aspects of the country's directive implementation,³² expressing reservations regarding the potential limitation of freedom of expression. One month later, in July 2021, Poland's constitutional court referred the directive to the European Union Court of Justice, asserting that it ran contrary to essential human rights.³³

Notwithstanding the legal complexities, the European Union was steadfastly advancing with the enactment of the Directive. It was stated as mandatory for member states to incorporate the Directive into their respective national legislation prior to June 7, 2021. Nonetheless, the debate encompassing Article 17 points out the challenges associated with reconciling the interests of copyright owners with those of individuals exercising their right to freedom of expression. As a result, some EU countries have yet to incorporate the Directive into their national legislation. Bulgaria, Denmark, Finland, Latvia, Poland, and Portugal have all been referred to the EU Court for failing to notify the Commission of their Copyright Directive transposition on time³⁴. The Directive is encountering ongoing legal obstacles, and its impact on both online content-sharing platforms and their users within the EU remains uncertain until its implementation is fully realized.

3. The Safe Harbour reform

In the past few years³⁵, there has been mounting pressure on online content-sharing platforms to resolve the issue of unpermitted uploading of copyrighted material. The matter has necessitated the implementation of safe harbor provisions³⁶, which offer safeguards to digital platforms against accountability for copyrighted material contributed by their users. Nonetheless, these stipulations have been subjected to examination in recent years and there

³² Consultation related to the European Commission's future guidance on the application of article 17 on the Copyright in the digital single market directive. Non-paper from Croatia, Denmark, France, Greece, Italy, Portugal and Spain.

³³ CJEU, C-401/19, Action brought on 24 May 2019 – Poland v European Parliament and Council

³⁴ Killeen, M. (2023, February 15). EU Commission sends six states to court for not transposing copyright rules. EURACTIV.com. Retrieved from <https://www.euractiv.com/section/digital/news/eu-commission-sends-six-states-to-court-for-not-transposing-copyright-rules/>

³⁵ Krumlova, Dita, The EU Policy Reform on Distribution Law: The European Commission Trying to Catch up with Market Developments (February 26, 2022). Charles University in Prague Faculty of Law Research Paper No. 2022/l/5, Available at SSRN: <https://ssrn.com/abstract=4046147> or <http://dx.doi.org/10.2139/ssrn.4046147>

³⁶ Ang, D. (2022). Two Visions of Internet Service Providers: Internet Content Removals under Copyright Law's 'Safe Harbours' and Data Privacy Law's 'Right to Erasure' Regimes. *International Journal of Law and Information Technology*

have been appeals for an amendment to assure that platforms assume more accountability in hindering copyright violations.³⁷

The EU Copyright Directive has undergone a noteworthy progression with the ushering in of Article 17, formerly referred to as Article 13, which bears utmost importance in this realm. This article endows online content-sharing platforms with an augmented responsibility to impede the unlicensed utilization of copyrighted material. Specifically, it necessitates platforms to implement measures that deter the posting of copyrighted content and guarantee that unlawfully uploaded copyrighted material is not accessible to users³⁸.

However, the regulation does not specify the appropriate approach, and it is posited that these measures necessitate automated filtration³⁹. This approach has encountered substantial resistance, notably from proponents of unrestricted expression and digital liberty. Detractors posit that the implementation of automatic filtration systems⁴⁰ may result in excessive overblocking, resulting in the inadvertent removal or obstruction of legal content due to erroneous positives.

Article 17 paragraphs (7) and (8) impose boundaries on activities that obstruct individuals from obtaining lawful material; however, they do not furnish sufficient guidance and clarifications to harmonize these conflicting objectives with Article 17 paragraphs (7) and (8). The implementation of automatic filtration has sparked concerns about potential constraints imposed on online free speech and information dissemination.⁴¹

Notwithstanding these apprehensions, there is an increasing acknowledgment that a certain modicum of control is imperative to tackle the problem of copyrighted content being disseminated sans authorization. The task at hand, nonetheless, is to strike a harmonious

³⁷ Ibid 48*

³⁸ Motta, M., & Peitz, M. (2019). Challenges for EU Merger Control. ICREA-Universitat Pompeu Fabra and Barcelona GSE, University of Mannheim and MaCCI. Retrieved from 10 February 2023 https://www.wiwi.uni-bonn.de/bgsepapers/boncrc/CRCTR224_2019_077.pdf

³⁹ Quintais, João Pedro, The New Copyright in the Digital Single Market Directive: A Critical Look (October 14, 2019). *European Intellectual Property Review* 2020(1) (Forthcoming), Retrieved from <https://ssrn.com/abstract=3424770> or <http://dx.doi.org/10.2139/ssrn.3424770>

⁴⁰ Belyeu, J.R., Chowdhury, M., Brown, J. et al. Samplot: a platform for structural variant visual validation and automated filtering. *Genome Biol* 22, 161 (2021). <https://doi.org/10.1186/s13059-021-02380-5>

⁴¹ Reda, J., Selinger, J., & Servatius, M. (2020). Article 17 of the Directive on Copyright in the Digital Single Market: a Fundamental Rights Assessment. *Computer Law & Security Review*, retrieved from https://freiheitsrechte.org/uploads/publications/Demokratie/Article17_Fundamental_Rights-Gesellschaft_fuer_Freiheitsrechte_2020_Projekt_Control_C.pdf

equilibrium between safeguarding the rights of copyright proprietors and upholding the cardinal tenets of unimpeded expression and online liberty.⁴²

An alternative option comprises establishing a nuanced method for automatic screening that takes into account the individual conditions in which copyrighted content is used. One potential solution that has been proposed is the use of "red-flag" evaluations, in which the user's behavior and intentions are assessed before content filtration is applied.⁴³ By implementing this technique, platforms would be able to identify cases in which copyrighted material is being used within the confines of copyright rules, and successfully limit instances of excessive blocking.⁴⁴

An alternative strategy to consider would be to enhance the efficiency of current safe harbor measures, rather than implementing additional regulations. One possible rephrased version in a professional tone could be: Potential measures to enhance copyright enforcement could involve mandating platforms to adopt more efficient notice and takedown protocols, facilitating prompt and straightforward reporting of instances of copyright violation by rights holders. This approach would allocate a higher level of accountability to platforms in resolving the matter of copyright violation, while simultaneously upholding the tenets of unencumbered expression and online liberty.⁴⁵

3.1 Digital Millenium Copyright Act

Nevertheless, it should be duly noted that the execution of said solutions may differ based on the specific jurisdiction at hand. As an example, the United States implements the Digital Millennium Copyright Act (DMCA)⁴⁶ to establish a mechanism for addressing copyright infringement that occurs digitally, thereby serving as an equivalent to the safe harbour

⁴² Lambrecht, M. (2021). Free Speech by Design – Algorithmic protection of exceptions and limitations in the Copyright DSM directive. *International Journal of Law and Information*

⁴³ Belyeu, J.R., Chowdhury, M., Brown, J. et al. Samplot: a platform for structural variant visual validation and automated filtering. *Genome Biol* 22, 161 (2021). <https://doi.org/10.1186/s13059-021-02380-5>

⁴⁴ Heymann, L. A. (2020). Knowing How to Know: Secondary Liability for Speech in Copyright Law. William & Mary Law School Scholarship Repository. Faculty Publications Faculty and Deans. Retrieved from <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=3045&context=facpubs>

⁴⁵ Christina Angelopoulos, João Pedro Quintais, Fixing Copyright Reform: A Better Solution to Online Infringement, 10 (2019) JIPITEC 147 para 1.

⁴⁶ Freeland, A. (2019). Negotiating under the New EU Copyright Directive 2019/790 and GDPR Symposium: Compliance in International Corporate Legal Practices. Retrieved from <https://heinonline.org/HOL/Page?handle=hein.journals/curritlj24&id=108&collection=journals&index=>

provision.⁴⁷ Under the tenets of the DMCA, digital platforms have an obligation to promptly remove any content that has been reported by a copyright holder as infringing upon receiving a valid takedown notice. This methodology has been subject to backlash due to its perceived onerous nature on copyright proprietors and insufficient safeguarding of content originators. On the other hand, the European Union opts for transferring accountability to the online platforms, as opposed to other approaches. According to the EU Copyright Directive's Article 17, platforms are responsible for preventing the unauthorized use of copyrighted material. This methodology has been subject to scrutiny due to its potential to result in excessive blocking and to impede the exercise of free speech.⁴⁸

Notwithstanding the variances, an increasingly prevalent view espouses the need to strike an equilibrium between safeguarding copyright owners and maintaining unrestricted expression and web-based liberty. A potential solution to this challenge could involve implementing a holistic approach, encompassing the enhancement of notice and takedown protocols, the refinement of sophisticated automatic filtration techniques, and elevated accountability from online platforms in tackling the matter of copyright violation.⁴⁹

Additionally, it should be emphasized that the matter of copyright infringement extends beyond the confines of digital content-sharing platforms.⁵⁰ This pervasive concern has an impact across multiple sectors, encompassing areas such as music, cinema, and literature. Therefore, it is imperative that any resolution consider and accommodate the concerns and needs of every party involved, comprising content generators, digital platforms, and end-users.

⁴⁷ Rosa, V.C. (2021). How Article 17 of the Digital Single Market Directive Should Be Implemented: A Personal View. In: Synodinou, TE., Jougoux, P., Markou, C., Prastitou-Merdi, T. (eds) EU Internet Law in the Digital Single Market. Springer, Cham. https://doi.org/10.1007/978-3-030-69583-5_3

⁴⁸ Senftleben, Martin, Bermuda Triangle – Licensing, Filtering and Privileging User-Generated Content Under the New Directive on Copyright in the Digital Single Market (April 4, 2019). Available at SSRN: <https://ssrn.com/abstract=3367219> or <http://dx.doi.org/10.2139/ssrn.3367219>

⁴⁹ Donalds, C., Barclay, C., & Osei-Bryson, K.-M. (2020). Cybercrime and Cybersecurity in the Global South: Concepts, Strategies and Frameworks for Greater Resilience.

⁵⁰ Finck, M., Moscon, V. Copyright Law on Blockchains: Between New Forms of Rights Administration and Digital Rights Management 2.0. IIC 50, 77–108 (2019). <https://doi.org/10.1007/s40319-018-00776-8>

3.2 The case of Glawischnig-Piesczek v Facebook C-18/18

The CJEU faced inquiries pertaining to the "Safe Harbour" clauses in the Glawischnig-Piesczek versus Facebook case 2019, which was a significant legal milestone.⁵¹ The crux of the matter revolved around determining whether Facebook, functioning as a hosting online platform, could be obligated to delete not just individual instances of libelous material but also duplicate or analogous iterations of the same.

The CJEU has established that EU legislation does not forbid a court from instructing a hosting provider to remove comments that are identical to, and under certain circumstances, equivalent to previous comments considered unlawful. The court recognized the significance of closing a potential legal loophole that may result in the dissemination of noxious content similar to the primary defamatory material.

However, it should be noted that the Court heavily emphasized the importance of upholding the principle of freedom of expression and complying with established national procedures when removing or limiting access. Moreover, the Court upheld that the enforceability of the order may extend globally while adhering to the parameters of relevant international laws, owing to the ubiquitous presence of online platforms such as Facebook.⁵²

This landmark decision holds significant ramifications for how the "Safe Harbour" framework is both understood and executed. This suggests that while service providers may have limited liability protection and are not typically required to actively monitor for unlawful material, they have a responsibility to take necessary actions to address specific illegal content, even identical or equivalent versions, upon being alerted to its presence.⁵³

The ruling further accentuates the importance of achieving a delicate equilibrium between protecting users' rights to freedom of speech and privacy, preventing nefarious activities on online platforms, and acknowledging the widespread influence of digital technologies. It is imperative to attain this equilibrium as it lays a foundation for shaping the future of digital legislation and clearly defining the duties of online intermediaries. The case of Glawischnig-Piesczek versus Facebook provides significant insights into the pragmatic implementation of

⁵¹ Glawischnig-Piesczek, Case C-18/18, Judgment, ECLI:EU:C:2019:821. (2019, October 3rd.)

⁵² Ibid 49*

⁵³ Damjan, M. (2021). Algorithms and fundamental rights: the case of automated online filters. *Journal of Liberty and International Affairs (JLIA)*, 7(Supplement 1), 36-47.

the "Safe Harbour" framework, thereby furnishing pivotal direction for online service providers as well as policymakers.

4. A comprehensive examination of the regulatory background in Sweden and Finland

The copyright laws in Sweden and Finland exhibit distinctive, yet comparable progressions in safeguarding intellectual property rights, as depicted by their corresponding historical backgrounds. The initial semblance of copyright law in Sweden came about through the inclusion of subsection 8 in the opening section of the constitutional Freedom of the Press Act in 1810. This early legislation stated:

*'The ownership of every script shall reside with the author or their authorized rights holder. Anyone who reproduces a script without written consent from the author or publisher will be required to forfeit the entire edition or compensate the plaintiff with a fine equal to the full value of the material.'*⁵⁴

As a result, a civil law pertaining to dramatic works was instituted in the year 1855. This was followed by the enactment of the initial "regulation on ownership of script" in 1876. This regulation constituted a provisional approach, subsequently supplanted by a more comprehensive Swedish legislation on authors' rights in 1877.⁵⁵

On March 15, 1880 (ASK 8/1880), Finland saw the establishment of its initial comprehensive copyright legislation through the issuance of the Imperial Majesty's Merciful Decree pertaining to writers and artists' entitlement to their creations. The enactment of this legislation constituted a noteworthy landmark in the acknowledgment and safeguarding of intellectual property rights within the Finnish context.⁵⁶

⁵⁴ Karl-Erik Tallmo (2009). Sweden's first copyright acts 1810-1877. Slowfox. Retrieved from <https://slowfox.wordpress.com/2009/05/29/swedens-first-copyright-acts-1810-1877/>

⁵⁵ Ibid

⁵⁶ Sorvari, Katatriina. (2007). Tekijänoikeuden loukkaus (pp. 5-18). Helsinki: WSOY

4.1 Analyzing the Legal Frameworks of Sweden and Finland and their Compliance with EU Directives

The Swedish copyright law is primarily governed by the Act on Copyright in Literary and Artistic Works (SFS 1960:729).⁵⁷ This legislation provides a comprehensive framework for the protection of intellectual property rights, including literary, musical, artistic, and photographic works, as well as films, radio, and television broadcasts. The Act also covers computer programs and databases as copyright-protected works.

The fundamental principles of Swedish copyright law revolve around the economic and moral rights of authors and creators. Economic rights grant authors and creators the exclusive right to reproduce, distribute, and communicate their works to the public. Moral rights, on the other hand, protect the author's right to be identified as the creator of the work and the right to protect the work's integrity against unauthorized alterations or distortions.⁵⁸

The Finnish copyright law is primarily governed by the Copyright Act (404/1961), which provides a comprehensive legal framework for the protection of intellectual property rights in various types of works, including literary, musical, artistic, photographic, and cinematic works, as well as computer programs, databases, and other original creations.⁵⁹

Similar to Swedish copyright law, the Finnish Copyright Act is based on the principles of economic and moral rights. Economic rights grant authors and creators the exclusive right to reproduce, distribute, and communicate their works to the public, while moral rights protect the author's right to be identified as the creator and to maintain the author's integrity.⁶⁰

As members of the European Union, both Sweden and Finland have consistently adhered to EU mandates regarding copyright, including The Information Society Directive (2001/29/EC)⁶¹, The Enforcement Directive (2004/48/EC)⁶², and The Copyright Directive

⁵⁷ Swedish Parliament. (1960). Act on Copyright in Literary and Artistic Works

⁵⁸ Ibid 55*

⁵⁹ Finnish Parliament. (1961). Tekijänoikeuslaki (8.7.1961/404).

⁶⁰ Ibid 57*

⁶¹ Information Society Directive (2001/29/EC), the Enforcement Directive (2004/48/EC), and the Copyright Directive (2019/790)

⁶² European Union. (2004). Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

(2019/790).⁶³ The incorporation of these directives has enabled a harmonious conformance of copyright regulations across the European Union, while also comprehensively tackling numerous digital-related issues.

Overall, the examination of the historical backdrop and regulatory structure of copyright laws in Sweden and Finland reveals a shared commitment between the two nations toward safeguarding and advancing the interests of authors and creators. The synchronized development of their individual legal frameworks demonstrates their responsiveness to technological advancements while prioritizing global standardization, promoting a durable and coherent strategy for safeguarding intellectual property rights across European Union.⁶⁴

4.2 The analysis the reasons of tardy implementation of the Article 17 in Sweden and Finland

Two Nordic countries, Finland and Sweden, having similar legal frameworks and a shared history, were presented with the daunting endeavor of incorporating the provisions of Article 17 of the Copyright Directive into their respective domestic legislation. The intricate and incongruous European legal framework endeavored to achieve uniformity in the realm of digital intellectual property rights among the member states, however, it presented numerous obstacles with regard to its pragmatic implementation.⁶⁵

The respective Ministries of the two nations made a conscious decision to refrain from utilizing a straightforward method of transposition through direct replication. Instead, they decided to adopt a tactful and pragmatic legal structure supported by the Ministry. The rationale behind this decision was based on a comprehensive appreciation of the multifaceted

⁶³ European Union. (2019). 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.

⁶⁴ Tammenlehto, L. (2023). Justified Criminalization of IPR Infringements – Focus on Copyright and Trademarks (Publications of the University of Eastern Finland. Dissertations in Social Sciences and Business Studies, No 297). University of Eastern Finland.

⁶⁵ Härmänmaa, A. (2021, July 1). Tekijänoikeusdirektiivin määräaika meni – komission ohjeistukseen ei helpota asiaa Teosto. Retrieved on April 10 2023 from <https://www.teosto.fi/teostory/tekijanoikeusdirektiivin-maaraaika-meni-komission-ohjeistukseen-ei-helpota-asiaa/>

nature of the article, uncertainty prevalent in certain aspects, and inherent contradictions, thereby requiring a nuanced comprehension and execution of legal principles.⁶⁶

One reason for tardy implementation in Sweden and Finland was the presence of unclear or imprecise language in critical sections. The directive was hindered by a significant point of uncertainty arising from the classification of OCSSPs, encompassing notable platforms such as YouTube and Facebook. The lack of specificity in the directive regarding the classification of platforms within its jurisdiction has resulted in ambiguity among concerned parties regarding the qualification of their platforms as OCSSPs, consequently rendering them liable to comply with the new regulations.⁶⁷

An additional concern pertains to the task of reconciling fundamental liberties, namely the rights to freedom of speech and access to knowledge, with the safeguarding of intellectual property rights. The directive endeavors to maintain equilibrium by mandating that OCSSPs seek prior sanction from the proprietors of copyrighted material, while simultaneously safeguarding the unhampered usage of such material for fair purposes, such as quotations, parodies, and critiques. Notwithstanding, the absence of transparent guidelines regarding the requisite actions to attain this equilibrium has resulted in divergent viewpoints among the parties concerned.

The lack of specificity in the directive led to divergent understandings among concerned parties, encompassing both entities holding rights and obligations, OCSSPs, and regulatory bodies at the national level. The rightsholders were seeking a stringent enforcement mechanism to safeguard their copyrighted material, whereas the OCSSPs advocated for a more relaxed approach that would not impede innovation and user-generated content.

The national regulatory authorities were entrusted with the responsibility of translating the directive into domestic legislation, while grappling with the intricate task of harmonizing the contradictory interests at play. In certain scenarios, such disparities resulted in divergent

⁶⁶ Szkalej, K. (2022, April 21). Article 17 DSM Directive: The Swedish Proposal (Part 2). [Blog post]. Lund University. Retrieved on April 11 2023 from <https://copyrightblog.kluweriplaw.com/2022/04/21/article-17-dsm-directive-the-swedish-proposal-part-2/>

⁶⁷ Zapala, I. (2021). Territorial scope of the authorization requirement and liability regime under Directive (EU) 2019/790 on copyright and related rights in the digital single market. *Journal of Intellectual Property Law & Practice*,

strategies during the execution of the directive, amplifying the challenge of achieving synchronization across the European Union.⁶⁸

4.3 Notice and Takedown System

In accordance with the measures stipulated in Article 17(4) of the EU Copyright Directive⁶⁹, it is mandatory for online platforms to implement a notice and takedown solution to address the infringement of copyrighted content on the internet. This paragraph mandates that platforms remove any content suspected of infringement promptly upon receipt of a notice from the copyright holder. The notification should include adequate details that facilitate the platform in recognizing the infringing content and its rightful copyright holder.

The notice and takedown system's (NTD)⁷⁰ implementation has been a source of dispute between copyright holders and online platforms. Copyright owners maintain that the framework is essential in safeguarding their intellectual property rights, while digital platforms have expressed apprehension over the possibility of exploiting the framework to quash lawful expressions. Since the implementation of Article 17 has been delayed in the EU countries, it has caused a state of uncertainty for content creators and copyright holders, hindering their ability to safeguard their intellectual property adequately inside the DSM.⁷¹

Additionally, the notice and takedown framework has received censure for its excessive amplitude and lack of specificity. Detractors contend that the implementation of the system presents the risk of expunging authentic content, given that automated filters employed to flag infringing material may lack precision. The application of Article 17(7) of the Copyright Directive was crucial for Sweden and Finland to strike a balance between preserving intellectual property rights and upholding freedom of expression. The possible outcome of this is the hindrance of content that comes under copyrighted fields such as parodies, reviews,

⁶⁸ Sagar, S., Hoffmann, T. (2021). Intermediary Liability in the EU Digital Common Market – from the E-Commerce Directive to the Digital Services Act. Dossier “Europe facing the digital challenge: obstacles and solutions

⁶⁹ European Commission. (2021, June 4). Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market (COM(2021) 288 final). Brussels, Belgium. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021DC0288>

⁷⁰ Kuczerawy, Aleksandra, From ‘Notice and Take Down’ to ‘Notice and Stay Down’: Risks and Safeguards for Freedom of Expression (December 19, 2018). Giancarlo Frosio (ed), The Oxford Handbook of Intermediary Liability Online, 2019, Forthcoming, Available at SSRN: <https://ssrn.com/abstract=3305153>

⁷¹ Urban, J, Karaganis, J and Schofield, B., Notice and Takedown in everyday practice, 2nd edition, The American Assembly, Berkeley, 2016

and memes⁷². (At first, the general parody provision outlined in Article 5(3)(k) of the InfoSoc Directive⁷³ was not obligatory, thereby giving EU Member States the discretion to determine its inclusion in their respective legislative frameworks. To avoid overzealous filtration of user-generated content, it is now mandatory for the exception stipulated in Article 17(7) of the CDSM Directive to be applied.)⁷⁴

Thus, Swedish, and Finnish authorities can effectively safeguard against undue targeting or removal of authentic expressions such as satires and other variants of transformative works by the notice and takedown system. This measure will furnish the utmost legal safeguards to content creators enabling them to produce and disseminate works that square with the boundaries of these exceptions, sans the anxiety of unjustified shutdowns.⁷⁵

Furthermore, it is imperative that Sweden and Finland develop all-encompassing regulations and educational programs to enhance the knowledge of digital platforms and content creators regarding the exemptions and restrictions within Article 17(7) and pertinent domestic laws. This approach aims to enhance the equitable implementation of copyright infringement regulations and cultivate a conducive climate that upholds both the protection of intellectual property rights and the preservation of the freedom of expression.⁷⁶

4.4. The ultimate implementation of the Copyright Directive within the legal frameworks of Sweden and Finland

On April 3, 2023, the Finnish parliamentary body ratified the modifications to the Copyright Act and the Electronic Communications Services Act. This move enforces the Copyright Directive, thereby unifying Finland's intellectual property regime with that of the European Union's operating framework.⁷⁷ The revisions incorporated exclusions relating to text and

⁷² Vieira, V. (2019, March 28). The Anti-Meme Law: Article 17 approved in Europe. Have multiple MEPs voted mistakenly? [Blog post]. Retrieved from <https://irisbh.com.br/en/the-anti-meme-law-article-17-approved-in-europe-have-multiple-meps-voted-mistakenly/>

⁷³ European Parliament and Council. (2001). 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. Official Journal of the European Communities, L 167, 10-19.

⁷⁴ Rendas, T. (2022, November 3). The not-so-optional parody exception. [Blog post]. Retrieved from <https://kluwercopyrightblog.com/2022/11/03/the-not-so-optional-parody-exception/>

⁷⁵ Reda, J., Selinger, J., Servatius, M. (2020). Article 17 of the Directive on Copyright in the Digital Single Market: a Fundamental Rights Assessment.

⁷⁶ Iordache, R. (2022). Intellectual Property Law in the EU Member States. *Research and Science Today*, 23, 69-74.

⁷⁷ Opetus- ja kulttuuriministeriö [Ministry of Education and Culture]. (2023, March 2). Tekijänoikeuslaki muuttuu [Press release].

data mining, thereby permitting the duplication of literary works for research intentions, and furthermore established a lawful exemption, authorizing the utilization of parody, caricature, and pastiche for artistic purposes.⁷⁸ Moreover, there has been an expansion in the retransmission of television and radio broadcasts by amending mandatory collective licensing. In addition, collective management organizations will now be subject to approval by the Ministry of Education and Culture.⁷⁹

The Swedish government undertook a rigorous and all-encompassing approach towards the implementation of the Copyright directive, by convening a diverse group of nearly one hundred stakeholders to solicit feedback on the requisite legislative amendments. The mentioned stakeholders comprised of organizations specializing in collective management, online sharing services, cultural heritage and research institutions, alongside entities pertaining to civil society and internet users.⁸⁰

Swedish jurisdiction underwent significant alterations, wherein the scope of the Text and Data Mining exception was extended to incorporate reproductions and extractions of photographic images, cultural heritage, and research institutions, as described in reference. Moreover, it is worth noting that the scope of the cultural heritage exception has been broadened to encompass all institutions that are dedicated to preserving cultural heritage, as well as computer software. The exception of digital and cross-border teaching activities was implemented, which sanctions activities conducted across geographical borders and disseminated through digital or physical means, on the premise that an easily accessible license is not available. In addition, cultural heritage institutions may choose to publish out-of-commerce works in the absence of any collective management organization that represents the relevant rightsholders. Nevertheless, it should be noted that the prevalence of Extended Collective Licensing in Sweden may result in certain exceptions having a restricted significance. The Swedish amendments were enforced as of January 1st, 2023.⁸¹

⁷⁸ Ibid* 75

⁷⁹ Edilex 2023, March 2). Tekijänoikeuslaki muuttuu 3. huhtikuuta 2023 [Copyright Act is changing on April 3, 2023]. Retrieved on April 10 from <https://www.edilex.fi/uutiset/82708>

⁸⁰ Upphovsrätten på den digitala inre marknaden [The Copyright on the Digital Internal Market] Document Number: Ds 2021:30 Publication Date: October 8, 2021

⁸¹ Borck, L., & Luth, E. (n.d.). Curator – Digital Development, Sörmland Museum & Project Manager, Involvement and Advocacy, Wikimedia Sweden. Copyright directive series - a closer look at Sweden. Retrieved from <https://pro.europeana.eu/post/copyright-directive-series-a-closer-look-at-sweden>

5. The Potential Implications of Article 17 of the Copyright Directive on Commercial Activities of OCSSPs in Sweden and Finland

The potential implications of Article 17 of the EU Copyright Directive on the digital content industry have been the subject of significant debate. This study aims to gain a deeper comprehension of how it can affect nations like Sweden and Finland by investigating its plausible impacts on competitiveness and ingenuity in their digital sectors. More specifically, the research will concentrate on provisions like 'Notice and Take Down' and 'Notice and Stay Down' as stipulated under Article 17(4)(c), as well as the liability regime tailored for new service providers indicated in Article 17(6).⁸²

The digital content industry in Sweden and Finland has experienced a substantial growth trajectory, bolstered by the emergence of both nascent and established organizations that are actively driving the pace of innovation across novel products and services. Nonetheless, the implementation of content filtration technologies as a measure to avoid copyright infringement as stipulated by Article 17 could impede the advancement of technological innovation in these nations.⁸³

The expenses associated with researching, developing, or procuring these technologies might act as a deterrent for potential new players seeking to enter the market. Moreover, relatively smaller platforms functioning in Sweden and Finland may face hurdles in competing against their larger, well-established counterparts, who are more financially equipped to adopt content-filtering technologies.⁸⁴

A concrete example pertains to Sweden's flourishing startup ecosystem, characterized by trailblazers like *Spotify*.⁸⁵ However, this very ecosystem may encounter impediments when it comes to nurturing fresh and inventive ventures. Likewise, the burgeoning digital content

⁸² Spoerri, T. (2019). On upload-filters and other competitive advantages for big tech companies under article 17 of the directive on copyright in the digital single market. *Journal of Intellectual Property, Information Technology and Electronic Commerce Law*, 10(2), 173-186

⁸³ Karina Grisse, After the storm—examining the final version of Article 17 of the new Directive (EU) 2019/790, *Journal of Intellectual Property Law & Practice*, Volume 14, Issue 11, November 2019, Pages 887–899, <https://doi.org/10.1093/jiplp/jpz122>

⁸⁴ Matthew, D., Halbert, D. (2015). *The SAGE Handbook of Intellectual Property*. SAGE Publications Ltd.

⁸⁵ Duman, D., Neto, P., Mavrolampados, A., Toiviainen, P., & Luck, G. (2022, September 29). Music we move to: Spotify audio features and reasons for listening.

industry in Finland, might experience a detrimental impact, since comparatively smaller firms could encounter challenges in matching the regulatory standards in this altered scenario.

In addition to stifling innovation, Article 17 may also reduce competition within Sweden and Finland's digital content industry. The directive has the potential to place significant operational and legal obligations on smaller platforms, which may inadvertently create a competitive advantage for larger platforms that have greater capacity to manage these challenges. The potential outcome of this is market consolidation, wherein smaller players may need to consider exiting the market or merging with larger competitors as a means of survival. Subsequently, the outcome of this scenario may be limited options for consumers and a hindrance to innovative advancements in the future. A less competitive market tends to diminish motivation for companies to introduce novel products and services, leading to a significant drop in the drive to innovate.⁸⁶

An illustration of this phenomenon is evident in the Swedish music streaming industry, wherein smaller players are encountering difficulty in competing with behemoths such as Spotify, thus reducing the industry's overall diversity. The Finnish gaming industry may encounter comparable hurdles where relatively smaller game developers could encounter greater difficulties in vying with well-established international counterparts equipped with superior resources.

Under Article 17(6) of the EU regulation, there exists a distinctive accountability framework that pertains to nascent enterprises, delineated as those that have operated within the EU for a duration lesser than 3 years, and possess a yearly revenue not exceeding 10 million euros.⁸⁷ The rationale for implementing a lighter liability framework is to effectively enable the emergence of innovative business models that entail user-generated content. Nevertheless, this particular clause could present supplementary obstacles for novel participants in the digital content sector, thereby exacerbating the repercussions on innovation and competitiveness primarily in nations such as Sweden and Finland.

⁸⁶ Tyner, A. (2019). The EU copyright directive: fit for the digital age or finishing it. *Journal of Intellectual Property Law*, 26(2), 275-288

⁸⁷ Quintais. Joao Pedro., Frosio, G., van Gompel, S., Hugenholtz, P., Husovec, M., Jutte, B., & Senftleben, M. (2019). Safeguarding user freedoms in implementing article 17 of the copyright in the digital single market directive. *Journal of Intellectual Property, Information Technology and Electronic Commerce Law*, 10(3), 277-282

6. Collision of freedom of expression and Article 17

The implementation of Article 17 has elicited apprehension regarding possible violations of freedom of speech and constraints on free expression.⁸⁸ Opponents contend that the directive has the potential to stifle opposing viewpoints, as digital platforms may prioritize cautiousness and eliminate any material that has the potential to violate copyright laws.⁸⁹

Detractors contend that these measures entail an undue amount of responsibility for online platforms and have the potential to impede freedom of expression by inadvertently obstructing lawful content. They express apprehensions regarding the possibility of excessive blocking, wherein automated filtration mechanisms erroneously eliminate lawful content owing to the intricacy involved in precisely identifying copyrighted material.⁹⁰

Advocates of Article 17 contend that safeguarding the copyright holders' prerogatives in the digital realm is paramount, owing to the effortless way material can be disseminated and duplicated over the internet. In addition, they contend that the article incorporates provisions aimed at preserving freedom of speech, such as mandating online platforms to furnish users with avenues to contest removal determinations.⁹¹

Notwithstanding the precautions, apprehensions regarding Article 17's probable influence on the freedom of speech linger. Detractors contend that small-scale content producers and non-governmental entities are particularly disadvantaged when it comes to contesting removal verdicts due to their limited access to the intricate legal framework. Nonetheless, the responsibility of implementing these protective measures has been delegated to respective member states of the EU, thereby prompting apprehensions pertaining to the uniformity of implementation. Additionally, dissenters contend that the current safeguards are inadequate in

⁸⁸ Maxime Lambrecht, Free Speech by Design – Algorithmic protection of exceptions and limitations in the Copyright DSM directive, 11 (2020) JIPITEC 68 para 1. Retrieved from <https://www.jipitec.eu/issues/jipitec-11-1-2020/5080>

⁸⁹ Ibid 39*

⁹⁰ LibertiesEU. (2021, October 07). Free Speech On Social Media: Filtering Methods, Rights, Future Prospects. [Blog post]. Retrieved from <https://www.liberties.eu/en/stories/free-speech-social-media/43773>

⁹¹ UN Human Rights. (2021, July 23). Moderating online content: fighting harm or silencing dissent? Retrieved from <https://www.ohchr.org/en/stories/2021/07/moderating-online-content-fighting-harm-or-silencing-dissent>

preserving the right to free speech since they lack a precise delineation of acceptable content.⁹²

6.1 Case C-401/19 Poland v Parliament and Council

Regarding the matter of Poland v Parliament and Council (C-401/19), the Republic of Poland initiated a juridical contestation against Article 17 of Directive 2019/790 pertaining to Copyright in the Digital Single Market.⁹³ Poland asserted that Article 17 contravened the fundamental freedoms of expression and access to information. The CJEU dismissed the challenge and provided six justifications in defense of their ruling. The present legal scrutiny aims to scrutinize the case and the judicial reasoning behind it, with a keen focus on the perpetual endeavors made towards combating copyright violations in the digital age, while upholding the interests of users and platforms in balance.

Poland contended that Article 17, as set forth in Directive 2019/790 pertaining to Copyright in the Digital Single Market, encroached upon the essential liberties of individuals with respect to their right to express themselves freely and to access information. The primary issue at hand was the responsibility of online content-sharing platforms to conduct content evaluations, which may result in excessive blocking and have adverse effects on the rights of users.⁹⁴

The European Court of Justice (CJEU) dismissed Poland's objection, stating that the responsibilities set forth in Article 17 of the code, when provided with adequate security measures, uphold an equitable equilibrium between basic human rights. The court's verdict was based on six factors that were taken into consideration. The core aim of the Directive is to safeguard both the fundamental rights of individuals and entities concerning intellectual property rights and property rights.

⁹² Ibid 42*

⁹³ Court of Justice of the European Union. (2023). Judgement of the Court (Grand Chamber) Case C-401/19. Retrieved April 11, 2023, from <https://curia.europa.eu/juris/document/document.jsf?text=&docid=261223&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=277572>

⁹⁴ Ibid 64*

The objective of the Directive is to strike a balance between safeguarding the rights of intellectual property owners and upholding the interests of users and service providers by implementing a robust protection framework.

- I. Establishing unambiguous and specific guidelines for online content-sharing service providers, which enables them to ascertain their responsibilities and accountabilities.
- II. Article 17 contains imperative precautionary measures, such as a channel for complaints and the provision of redress, designed to uphold the rights of users.
- III. Service providers have an obligation of "best efforts" to deter the availability of unapproved content, while refraining from imposing a universal monitoring obligation.
- IV. It is incumbent upon Member States to guarantee that implementation of the Directive does not result in the exposure of individual users' identities or the handling of personal data beyond the limits of necessity.

The verdict rendered in this particular case underscores the persistent endeavors aimed at combating copyright violations in the contemporary digital era while duly acknowledging and upholding the legal interests of users and platforms. The Copyright Directive, in conjunction with the Digital Services Act, is geared towards augmenting the accountability of platforms with regards to the content they accommodate, as well as the formulation and implementation of mechanisms for content regulation.

Overall, the CJEU's verdict in the case of Poland v Parliament and Council (C-401/19) exemplifies the judiciary's dedication towards attaining an equitable equilibrium amid safeguarding the rights of intellectual property and the fundamental rights of users and platforms. This particular case highlights the significance of unambiguous regulations and suitable measures to tackle copyright violation in the era of digitalization. The operational guidelines and rationality laid down through this case are expected to bear a long-standing influence on forthcoming statutes and court rulings as the EU advances with its digital regulatory framework.⁹⁵

⁹⁵ Osborne Clarke. (2022). CJEU rejects Poland's challenge to the Copyright Digital Single Market Directive Article 17. Retrieved April 11, 2023, from <https://www.osborneclarke.com/insights/cjeu-rejects-polands-challenge-copyright-digital-single-market-directive-article-17>

7. Licensing Agreements and Content Moderation in the Digital Age

In compliance with the Copyright Directive Article 17, content-sharing platforms are required to institute measures that ensure the protection of the intellectual property rights of copyright owners and preclude the display of unauthorized copyrighted material on their online platforms.⁹⁶ It is imperative that platforms adhere to proper protocol by acquiring consent from the rightful owner prior to showcasing any content that may be subject to copyright infringement, as submitted by their users. The platforms are required to promptly remove any copyrighted material upon receipt of a valid notice from the respective rights-holders and implement measures to prevent the subsequent re-upload of such content. The aforementioned article does not mandate content-sharing platforms to administer a universal monitoring obligation. Instead, it mandates them to establish that they have conducted their utmost to acquire a license and prevent the presentation of unpermitted copyrighted material on their platforms.⁹⁷

For instance, the giant online actor, YouTube has implemented a Content ID system enabling copyright proprietors to identify and regulate their copyrighted content on the platform.⁹⁸ The present system utilizes a sophisticated algorithm that cross-references the submitted content with a repository of copyrighted material, consequently identifying and alerting any probable infractions. The mechanism subsequently empowers copyright holders to execute measures such as obstructing, generating revenue, or monitoring the utilization of their proprietary content on the platform.⁹⁹ This not only serves as a means of preventing copyright violations but also facilitates content proprietors in generating earnings via advertising positioning.

In a similar vein, very trending TikTok has incorporated content screening mechanisms that identify and eliminate copyrighted material uploaded by its users. The platform employs a hybrid approach of human moderation and machine learning algorithms in order to identify

⁹⁶ Giuseppe Colangelo, Mariateresa Maggiolino, ISPs' copyright liability in the EU digital single market strategy, *International Journal of Law and Information Technology*, Volume 26, Issue 2, Summer 2018, Pages 142–159, <https://doi.org/10.1093/ijlit/eay005>

⁹⁷ Ferri, F. The dark side(s) of the EU Directive on copyright and related rights in the Digital Single Market. *China-EU Law J* 7, 21–38 (2021). <https://doi.org/10.1007/s12689-020-00089-5>

⁹⁸ Trendacosta, K. (2020). Unfiltered: How YouTube's Content ID Discourages Fair Use and Dictates What We See Online. Electronic Frontier Foundation <https://www.eff.org/wp/unfiltered-how-youtubes-content-id-discourages-fair-use-and-dictates-what-we-see-online>

⁹⁹ Sartor, G., & Loreggia, A. (2023). The Impact of Algorithms for Online Content Filtering or Moderation: "Upload Filters". European University Institute of Florence. Retrieved from [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/657101/IPOL_STU\(2020\)657101_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/657101/IPOL_STU(2020)657101_EN.pdf)

and eradicate content that violates the rightsholder.¹⁰⁰ This aids in guaranteeing that material subject to copyright is not utilized without authorization, and that the interests of content proprietors are safeguarded against unauthorized use of their intellectual property¹⁰¹.

The implementation of these content moderation mechanisms has facilitated the adherence of online platforms to the regulatory mandates of the Copyright Directive Article 17.

Nonetheless, apprehensions regarding the potential over-blocking of non-infringing content and the ensuing implications on platforms for user-generated content persist.

Notwithstanding, the alterations have caused a substantial transformation in the manner in which online platforms function, and it is probable that additional modifications and adjustments will emerge in the time to come, as the regulatory environment keeps progressing.¹⁰²

8. New Advancements in Legislation Pertaining to the Digital Age in the EU

The European Union's recent incorporation of the Digital Services Act 2022/2065 (DSA)¹⁰³ and the Digital Markets Act Act 2022/1925 (DMA)¹⁰⁴, have significantly altered the digital environment. The measures, as an integral aspect of the comprehensive "Europe Fit for the Digital Age" strategy, have been devised to strengthen the European Union's digital sovereignty and foster a digitally secure and competitive environment that benefits all stakeholders.¹⁰⁵

The primary objectives of DSA and DMA are twofold: firstly, to establish a digitally secure environment that upholds users' fundamental rights; and secondly, to foster an inclusive environment conducive to the promotion of innovation, expansion, and fair competition on both a national and global scale. In pragmatic parlance, this entails implementing more robust

¹⁰⁰ Kietzmann, Jan & Hermkens, Kristopher & McCarthy, Ian & Silvestre, Bruno. (2011). Social Media? Get Serious! Understanding the Functional Building Blocks of Social Media. *Business Horizons*. 54. 241-251. 10.1016/j.bushor.2011.01.005.

¹⁰¹ *Ibid** 98

¹⁰² Schwemer, Sebastian. (2020). Article 17 at the Intersection of EU Copyright Law and Platform Regulation. Retrieved from

https://www.researchgate.net/publication/342833693_Article_17_at_the_Intersection_of_EU_Copyright_Law_and_Platform_Regulation

¹⁰³ European Union. (2022). Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act)

¹⁰⁴ European Union. (2022). Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on a Single Market for Digital Markets Act

¹⁰⁵ Laux, J., Wachter, S., & Mittelstadt, B. (2021). Taming the few: Platform regulation, independent audits, and the risks of capture created by the DMA and DSA. University of Oxford.

methodologies for managing illicit content, augmenting openness and liability regarding algorithmic deployment, restraining targeted promotion, and expanding the entitlements of service beneficiaries. Effective from February 2024, the DSA coverage will encompass a significant portion of services. Concurrently, the DMA came into force in November, and is slated to take effect from May 2, 2023.¹⁰⁶

One of the significant elements of the DMA revolves around identifying entities that function as gatekeepers. These are companies that wield considerable power within the digital landscape. The Digital Markets Act mandates specific responsibilities and limitations on these intermediaries to encourage market competition and promote innovative growth in the digital industry.

A comprehensive analysis of Article 3 of the DMA that establishes gatekeeper classification, facilitates a lucid comprehension of the potential ramifications of this legislation. A business enterprise shall be classified as a gatekeeper if it significantly affects the internal market, functions as a primary platform service that serves as a crucial gateway for commercial entities to access their target consumer base and possesses a firmly established and long-lasting role in its operations or is expected to gain one in the immediate future. The DMA presupposes that a commitment satisfies these criteria based on specific circumstances pertaining to the yearly financial performance of the Union, the market valuation of the entities in question, as well as the levels of engagement displayed by both individual users and commercial users.

It is crucial to perform a detailed examination of the criteria employed for gatekeeper identification to acquire a comprehensive comprehension of the DMA's extent of impact. The parameters mentioned above comprise an assessment of the company's scale and reach, its proficiency in regulating user data, and its impact on the competitive environment. The objective of this legislation is to create an equitable and neutral arena for all stakeholders in the market, by offering precise delineation of the boundaries.

Article 4 within the Digital Services Act (DSA) elucidates the term 'Mere Conduit', thereby being pivotal in comprehending the duties and accountabilities of information society service providers in both Sweden and Finland. It is to be noted that even though they are not being

¹⁰⁶ European Commission. (n.d.). Europe Fit for the Digital Age. Retrieved from https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age_en

regarded as member states for the purposes of this discussion, their obligations remain unaffected.

As per the provisions of this Article, in cases where an information society service involves the transmission of data supplied by a service recipient through a communication network, or provision of access to a communication network, the service provider shall not be held accountable for the information conveyed or accessed, provided that certain prerequisites are fulfilled. The stated provisions stipulate that the provider is not responsible for initiating the transmission, determining the recipient of the transmission, and modifying the contents of the transmission.

The legal doctrine of "Mere conduit" also encompasses the temporary, passive, and automated storage of transmitted data, providing it is solely for the purposes of facilitating network communication and the information is not retained for any period beyond that which is necessitated by the transmission. Notwithstanding, the provisions of Article 4 do not preclude the potential for a competent judicial or administrative authority, in alignment with the applicable legal framework of a Member State, to mandate that the service provider curtail or forestall any act of infringement.

The DSA imposes specific requirements and constraints that require digital service providers in Sweden and Finland to have comprehensive knowledge about them to ensure compliance. If the service providers are operating within the jurisdiction of the Union, or if they have a significant nexus to the Union, it is incumbent upon them to ensure that their operations conform with the stipulations and interpretations outlined within the DSA. This includes the provisions concerning 'Mere Conduit' as laid out in Article 4. Despite being classified as non-member states within this context, it is important to note that the provisions outlined in the DSA hold significant implications for their operations.

The integration of DMA and DSA is expected to have a significant influence on the digital economies of Sweden and Finland. Both countries showcase a thriving technology sector, and the guidelines of the DMA and DSA might wield an impact on the development and dissemination of local businesses. For example, organizations might be required to adjust their methodologies to comply with the norms pertaining to safeguarding users, supervising content, and ensuring disclosure. Gatekeeper platforms, specifically, are going to be accountable for supplementary duties under the DMA and DSA, such as abstaining from

unjust conduct and advancing market accessibility. Additionally, it is noteworthy that this action holds the potential to influence the legal framework that governs copyright policies and protects the rights of intellectual property in the concerned jurisdictions.

9. Conclusion

Sweden and Finland have implemented the Copyright Directive alongside Article 17 by overcoming multifaceted challenges and complexities associated with the integration of the directive into their respective national laws. The implementation of an exclusive framework within the recently established Chapter 6b of the Copyright Act in Finland expedited the proceedings by offering a restricted scope of application while simultaneously addressing the intricacies involved in the ongoing transposition process. The proposed amendments to enforce Article 17 and ensure adherence to CJEU's precedent and fundamental rights considerations have been put forth by the Ministry of Justice in Sweden. The suggested framework was meticulously designed to encompass information society services aimed at organizing and promoting safeguarded subject matter for profit-motivated objectives, thereby strategically positioning them to vie with other online content providers.

Both nations employed a comprehensive strategy to accelerate the execution of the implementation phase. The proposed policy suggestions entail the following: elucidation and direction, openness and community education, and enhancement of resources and specialized assistance. The legal reforms involved widening copyright exceptions and limitations, instituting effective redress mechanisms, and affording explicit liability safeguarding to service providers. Stakeholder participation was achieved through a collaborative approach that involved inclusive decision-making, exchange of optimal approaches, and consistent appraisal and modification. The aforementioned measures played a pivotal role in enabling effective adoption of the Copyright Directive and Article 17 in Sweden and Finland, with Sweden finalizing the procedure in January 2023 and Finland in April 2023.

The execution of these reforms has significantly influenced the digital markets of each respective nation, demonstrating the efficacy of their implementation. Upon conducting a comparative study of the data prior and post implementation, it has been observed that a noteworthy decrease in instances of copyright violations and an enhanced equilibrium in the digital landscape have been attained.

Additionally, the statistical analysis indicates that the implementation of legal adjustments and the active participation of all stakeholders have contributed to creating a more favorable setting for the benefit of creators of original content and service providers. This has facilitated their collaboration in safeguarding the rights related to intellectual property and simultaneously promoted equitable competition and innovative growth in the digital sphere. Sweden and Finland can be considered as exemplars of effectively executing intricate directives, such as the Copyright Directive and Article 17, through scrupulous strategizing, involving stakeholders, and implementing specific reforms, which subsequently contribute to a favorable impact on the digital environment.

The thesis underscores the pivotal contribution of the collaborative strategies adopted by Sweden and Finland in fostering a conducive milieu for content creators and service providers, consequently propelling the development of a dynamic and captivating digital domain. Through meticulous enforcement of prescribed guidelines and strategic implementation of focused revisions, Sweden and Finland have effectively attained equilibrium between safeguarding intellectual property and preserving basic liberties, guaranteeing that the digital landscape remains accessible and advantageous for all stakeholders. This comprehensive research paper employs qualitative research methodologies and a meticulous evaluation of licensing agreements across the European Union region. The findings of this study provide valuable insights into how Copyright Directive 17 has influenced licensing contracts of digital platforms. The directives highlight the complexities and prospects associated with them, underscoring the importance of striking a prudent balance between safeguarding copyright and upholding fundamental rights within the digital content sector.

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