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MODERNISATION OF EUROPEAN UNION COPYRIGHT LAW IN THE AGE OF DIGITALISATION AND SOCIAL MEDIA

Bachelor's thesis

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ABSTRACT

This thesis examines the changes in the European Union copyright law and how it is harmonized within the age of digitalisation. It examines basic aspects of EU copyright history, current legislation and its reflections on social media, concentrating on YouTube. The sub questions of this thesis examine how is current EU copyright legislation taking into account today's digital society, what obstacles are social media, and especially YouTube, facing under current legislation and how based on copyright case law and current discussions, we could possible predict the future of copyright. This thesis finds lacks on definitions and harmonization and predicts that in the future, creativity will become a major subject of discussion, when trying to create a harmonization between the law and creative freedom.

Keywords: Copyright, Digitalisation, YouTube, Social media, Modernisation

INTRODUCTION

Digitalisation is one of the best advantages which we have gained in today's society. To be more specific, today we shall describe it more as a basic pilar than only an advantage. Thus, because it is one of the basic elements in today's society and effects the functionion of the digital era, it requires constant awareness for development, change and implementations of new legislations. Harmonization of copyright law during the time of digitalisation has to serve mankind in this new age of time, taking into account all the different aspects. Copyright and intellectual property as a entirety, is a field which has gained new issues, perspectives and development points during the time of digitalisation. Subjects that might have been remote to someone who is not a writer or a movie producer, have become more relevant and touches many. We face more detailed and non-visible infringements and need to protect and educate society to behave within a certain legal framework and make those frames informed and accessible.

When discussing this subject, social media plays a big part and has overall been an enormous and effective part of digitalisation. Social media is a comprehensive tool for many different usage reasons. It enables us to interact with others through various platforms, to be creative, make comedy or share or find academic work. In the European Union, The Proposal for Directive on Directive in the Digital Single Market was first purposed in 2016 and raised both supporters and critics, because of its effects on social media. Before the final published version in 2019, the discussion regarding its content was fierce and diverse, mainly due to Article 13, which is numbered as Article 17 in the final Directive. (Harmonization of the legal framework of social media creates obstacles due to the variousity of its content.) Due to new European Union legislations on copyright, social media has been buzzing with opinions both agreeing and disagreeing. People who want to be creative and create online content, might face difficulties due to these changes. This can create a fear of their creative freedom being taken away.

The final Directive 2019/790 on Copyright in the Digital Single Market came into force on 7 June of 2019. The final Directive contains Article 17 which has the purpose of trying to solve the value gap in the discharge of the Electricity Trading Directive 2000/31/EC. This creates an issue, since

the operating platform gets credit and financial gain from the advertisement within the copyrighted content. When it comes to the financial gain from the copyright infringements, the copyright owners find it difficult to seek remedies directly from the user who has uploaded the content. This has raised questions on whether the operating platform should be directly liable for the infringement instead and was one of the biggest issues of discussion when creating the final Directive on Copyright in the Digital Single Market. Article 17 was previously numbered as the Article 13 in the Proposal of the Directive, which raised a lot of conversation due to its uncertain definitions and alarming restrictions, mostly among social media content creators.

One of the challenges when aiming for a harmonized copyright protection, is having awareness of the fact, that interests, expectations and rights of internet users, are as relevant as rights of the copyright owners, who are creating the content. Legal framework needs to stay in the same speed as creative freedom[1]. Music is some of the most basic privileges that people can feel to have and have had for ages. The usage of already existing works might have been a regular thing among artists years ago and regardless of today's stricter legislation, copying is still present in our copyright society. This can be seen as music being made into remixes and parodies[2]. When creating legal framework, it needs to be taken into account, that rules cannot be complex for everyday users. This is also essential, because internet users are not only using the platforms anymore, they are the ones who are creating content for those platforms. In the future, this can cause new issues between lawmakers and content creators.

The sub questions of this thesis are following;

1) How is current EU copyright legislation taking into account today's digital society?
2) What obstacles are social media, and especially YouTube, facing under current legislation?
3) How will copyright and social media be harmonized in the future?

The hypothesis of this thesis, is that the lacks on current legislation, create obstacles and uncertainty for social media users and content creators and thus, will create an uncertain future.

[1] Inguanez, D. (2017). Considerations on the modernization of EU copyright: where is the user?. *Journal of Intellectual Property Law & Practice*, 12(8), 660-668., 660
[2] Cabay, J., & Lambrecht, M. (2015). Remix prohibited: How rigid EU copyright laws inhibit creativity. *Journal of Intellectual Property Law and Practice*, 5, 359-377., 359

1. EU COPYRIGHT LAW

1.1. What is copyright?

When taking a look at the Universal Declaration of Human Rights of 1948, Article 27(1) and (2) states that "(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits; (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."[3] Copyright is a part of intellectual property and consists of original artistic, musical, written and other creative works[4] and thus has the criterion of originality as one of its basic principles[5]. Based on the decisions made by the CJEU, and according to Article 36 of the Treaty on the Functioning of the European Union, copyright as a definition falls within the meaning of "industrial and commercial property"[6]. Having copyright means having a right to exclude infringing of your own property.

In addition, having copyright means having both economic and moral rights. Economic rights work as a guarantee for you as the copyright owner having the control over your original work and the remuneration for possible licensing or selling of the work. Moral rights protect the author from author infringements and works as a protection of their name and reputation. An idea itself cannot be protected by the copyright, it must be a form of that idea, for it to be protected. Copyright lasts 70 years after the authors death and after this, it enters the public domain, where copyright does not reach. However, there are exceptions and lists covering how to know whether a work in public domain is free of copyright protection.[7]

[3] Universal Declaration of Human Rights, UN General Assembly, United Nations, 217 (III) A, 1948, Paris, Art. 27
[4] European IPR Helpdesk, (2017), Fact Sheet: Copyright essentials 2017
[5] Cabay, J., & Lambrecht, M., (2015), *supra* nota 2, 360
[6] Ferrer, V. (2019). *Right this Way: A Potential Artificial Intelligence-Based Solution for Complying with Article 13 of the EU's 2018 Copyright Directive*, Retrieved from: https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1951&context=student_scholarship, 20 March 2020., 5
[7] *Supra* nota 4

1.2. History

Ever since 1988, the idea of European Union legislature on Copyright wanting to ensure a fair balance of interest and rights among users and right holders has been present and copyright as an industry has been an important element in the European economy.[8] Creating a harmonization within the EU, began to have an effect over the 1990s[9] by several new directives. Before the final version of the Directive 2019/790, the following directives and regulations were published; Satellite and Cable Directive (93/83/EEC), Database Directive (96/9/EC), Information Society Directive (2001/29/EC), Resale Right Directive (2001/84/EC), Rental and Lending Right Directive (2006/115/EC), Copyright Term Directive (2006/116/EC), Computer Programs Directive (2009/24/EC), Orphan Works Directive (2012/28/EC), Collective Rights Management Directive (2014/26/EU), Enforcement Directive (2004/48/EC), Directive implementing the Marrakesh Treaty in the EU (2017/1564/EU) and the Regulation implementing the Marrakesh Treaty in the EU (2017/1563/EU).[10]

1.2.1. InfoSoc Directive

The Directive 2001/29 on the harmonisation of certain aspects of copyright and related rights in the information society (InfoSoc Directive) adopted in 2001[11], has played a major part in the life of Copyright law. The word 'information society' was first introduced in 1993, by the Commission's White Paper[12]. The InfoSoc Directive comprehended within the topic of right to publish own content to the public and author's reproduction rights.[13] However, it was not keeping up with the digitalisation of techonolgical advantages such as smartphones and internet connection.[14] It is called to be impractical for today's users, specially when talking about hyperlinking, memes, GIFs and vines. One thing that gained InfoSoc positive feedback, was parody, due to its Article 5(3)(k) setting an exception of copyright. In its legal framework, InfoSoc has also lacked with social media content restrictions such as quatation and private copying.[15] In

[8] Jongsma, D. (2020). *Creating EU Copyright Law. Striking a Fair Balance*. (Doctoral Thesis) Hanken School of Economics, Helsinki., 172
[9] Rosati, E. (2013). *Originality in EU copyright: full harmonization through case law*. Edward Elgar Publishing, 16
[10] Tūbaitė-Stalauskienė Asta. (2018). EU Copyright Law: Developing Exceptions and Limitations Systematically – An Analysis of Recent Legislative Proposals. *Baltic Journal of Law & Politics,* 11(2), 155-181., 159
[11] 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, p. 10–19
[12] Rosati, E. (2013), *supra* nota 9, 16
[13] Ferrer, V. (2019), *supra* nota 6, 7
[14] Inguanez, D., (2017), *supra* nota 1, 668
[15] *Ibid*., 667

addition, the right of adaption, which is closely related to reproduction, is not harmonized by the InfoSoc Directive.[16]

1.2.2. Article 13 of the Proposal for Directive

Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market contained Article 13;

"1. Information society service providers that store and provide to the public access to large amounts of works or other subject-matter uploaded by their users shall, in cooperation with rightholders, take measures to ensure the functioning of agreements concluded with rightholders for the use of their works or other subject-matter or to prevent the availability on their services of works or other subject-matter identified by rightholders through the cooperation with the service providers. Those measures, such as the use of effective content recognition technologies, shall be appropriate and proportionate. The service providers shall provide rightholders with adequate information on the functioning and the deployment of the measures, as well as, when relevant, adequate reporting on the recognition and use of the works and other subject-matter.
2. Member States shall ensure that the service providers referred to in paragraph 1 put in place complaints and redress mechanisms that are available to users in case of disputes over the application of the measures referred to in paragraph 1.
3. Member States shall facilitate, where appropriate, the cooperation between the information society service providers and rightholders through stakeholder dialogues to define best practices, such as appropriate and proportionate content recognition technologies, taking into account, among others, the nature of the services, the availability of the technologies and their effectiveness in light of technological developments."[17]

One of the most essential movements after the release of proposed Article 13, was the fear of its negative effects to creative content and expressing of ideas.[18] Article 13 was also criticized for its impractically wide definitions, which gave room for uncertainty[19] and for example Google was

[16] Cabay, J., & Lambrecht, M., (2015), *supra* nota 2, 363
[17] Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on copyright in the Digital Single Market, COM/2016/0593 final - 2016/0280 (COD), Art. 13
[18]Tyner, A. (2019). The EU Copyright Directive: Fit for the Digital Age or Finishing It. *Journal of Intellectual Property Law*, 26(2), 275-288., 286
[19] Bridy, A. (2019). EU Copyright Reform: Grappling with the Google Effect, The Price of Closing the 'Value Gap': How the Music Industry Hacked EU Copyright Reform, *Vanderbilt Journal of Entertainment & Technology Law*, 22, 323-358., 352

one of the big names that was against the Directive ever since its Proposal[20]. According to Romero-Moreno, it was at risk that Article 13 would cause a violation of the rights of social network platforms and its users under Article 6, 8 and 10 of the Convention and thus suggested implementations to the Article[21].

When creating the Proposal, the Commission had the following focus areas contained; the fair remuneration of the copyright owners; platforms and their duties regarding new legal framework; if the addressing of news aggregators was in the need of an acknowledgment by the EU level; and whether the new digital changes were in symbiosis with the current rights. After focusing on these areas, the new Proposal for the Directive on Copyright in the Digital Single Market was released and by this Proposal the Commission had goals concentrating on remuneration of platforms based on their user-based content, overall image of this user-generated platforms such as YouTube, and how these platforms can work legally and without infringing copyright.[22] Regardless its fierce welcome, Article 13 was a crucial move in order to regulate the financial gains in the process of online content being published to the public.[23] One of the main subjects has also been the upload filter and how to improve it, but these filters gained critique due to small companies and platforms possibly getting harmed because of the need for new technology but having no resources.[24]

1.3. Current EU Copyright legislation

As previously mentioned, the problem on creating a fair balance of rights and interests among users and rightholders, is one of the aims of fixation for European Union legislation. When defining copyright infringement, national laws differ and create a non-harmonized foundation for the European Union copyright protection.[25] However, according to all eleven copyright directives and two regulations,[26] the bias from EU legislation towards right holders can be seen.[27] According

[20] Tyner, A., (2019), *supra* nota 18, 278
[21] Romero-Moreno, F. (2019). 'Notice and staydown' and social media: Amending Article 13 of the Proposed Directive on Copyright. International Review of Law, Computers & Technology: *Social Media Special Edition*, 33(2), 187-210., 205
[22] Ferrer, V. (2019), *supra* nota 6, 8
[23] *Ibid*., 11
[24] *Ibid*., 13
[25] Sganga, C., & Scalzini, S. (2017). From Abuse of Right to European Copyright Misuse: A New Doctrine for EU Copyright Law. *IIC - International Review of Intellectual Property and Competition Law*, 48(4), 405-435., 406
[26] Marinescu, A. M. (2015). EU DIRECTIVES IN THE FIELD OF COPYRIGHT AND RELATED RIGHTS. Challenges of the Knowledge Society, 5(1), 50-65., 50
[27] Jongsma, D., (2020), *supra* nota 8, 175

to Ramalho[28], there were more than half less references towards end users and intermediary industries, than to the content industries than authors and performers.

The objectives of EU Copyright can be laid down to three categories; primary, secondary and tertiary. The primary objective of the EU copyright protects the creativity, independence and dignity of performers and authors.[29] The idea of copyright being the aim and reward itself is reflected through this objective and by so it is protecting the material and moral interests of the authors. The protection of performers and authors can be seen as a vital objective and the most important compared to the other two. The secondary objective is an instrumental view of copyright and protects the incentivize creation of both authorial works and subject-matter protected by related rights.[30] This objective is created to better market efficiency and is necessary for competitors to not be able to sell creators property close to a marginal price and thus undermine creators. The tertiary objective emphasises the aim of job creation and investment within industries who are exploiting subject-matter protected by copyright.[31]

Originally harmonization of EU copyright law has started to develop from the objectives of proper functiong of the internal market and the improvement of the competitiveness of the European economy.[32] Even though copyright is still not fully harmonized throughout the European Union or even internationally, minimum standards on protecting copyright have already been set at international level by the Berne Convention, which all EU Member States are a part of.[33] As an example, InfoSoc Directive deals with reproduction rights which are laid down in Article 2. However, Member States could dictate exceptions to Article 2 but since European Union Member States all belong to the Berne Convention for the Protection of Literary and Artistic Works, it is not that simple. The Berne Convention restricts the exceptions by limiting them only to situations with no conflicts or unnecessary prejudice regarding the legitimate interests of the author.[34]

On 7 June 2019, the final Directive on Copyright in the Digital Single Market was taken into force after long debates regarding its preceding Proposal. One of its main purposes was to fix a so-called

[28] Ramalho, A. (2016*). The Competence of the European Union in Copyright Lawmaking. A Normative Perspective of EU Powers for Copyright Harmonization*, 54
[29] Jongsma, D., (2020), *supra* nota 8, 177
[30] *Ibid*.
[31] *Ibid*., 178
[32] van Eechoud, M. M. (2009). *Harmonizing European copyright law: the challenges of better lawmaking* (Vol. 19). Kluwer Law International BV, 11
[33] *Supra* nota 4, 2
[34] Ferrer, V. (2019), *supra* nota 6, 7

value gap. Value gap is usually created when a publicly available content is on a platform, for example YouTube, and someone has not paid for the right to publish that content. However, YouTube as a platform has advertisement financial gain from that material, when the copyright owner of that content does not get any financial revenue.[35]

Article 17 of the Directive (previous Article 13)

European Union accepted the Directive on Copyright in the Digital Single Market in 2019. One of the major changes was the current Article 17, which was previously known as the Article 13 in the Proposal of the Directive. Compared to the previous Article 13, Article 17 narrowed down the target group in a sense of leaving out the definition of 'information society service providers'.[36] Article 17 replaced it with the new definition of 'online content-sharing service provider' (OCSSP). When taking a deeper look into Article 17, Recital 62 is a great tool for seeing clearer under the surface. Recital 62 defines the Article more by YouTube, taking account its central advertisement business model in addition to excluding certain types of providers of OCSSP.[37] This however does not make anything certain for different providers, since Recitals only leave room for the CJEU to determine which providers fall under the definition.

One clear exclusion within the Article 17, was the licensing requirement for providers of OCSSP. This new Directive is created to make it easier for the copyright owners when it comes to debating about licenses with the operating platforms.[38] If the provider wants to stay clear of copyright infringements, all copyright protected material must be licensed if it is accessible on their platform.[39] Another clarifying exclusion, is the definition of 'public' in the Article 3(1) of the InfoSoc Directive. Previously it was argued whether platforms such as YouTube who share content uploaded by its users, falls withing the definition of 'public', but Article 17 clarifies this and defines it to fall within that definition.[40]

[35] Marušić, B. (2017). Derogating Regulative and Enforcement Powers in Copyright Protection in the Digital Market: A Trojan Horse for the EU? *Croatian Yearbook Of European Law &Amp; Policy*, 13, 169-190., 170
[36] Bridy, A., (2019), *supra* nota 19, 351
[37] *Ibid*., 130
[38]Rytinki,M.(2019). Kahden sukupolven kattava perintöoikeus tekijänoikeuden keston perusteluna. *Informaatiotutkimus*, 38(3-4)., Retrieved from: https://doi.org/10.23978/inf.88228, 15 April 2020., 46
[39] Bridy, A., (2019), *supra* nota 19, 353
[40] *Ibid*., 352

In respect of achieving the goals of Article 17, it set up a goal of 'best efforts' rather than 'technical measures' as Article 13 had set up.[41] A certain service provider can avoid being liable of an infringement by removing the content from their platform when an infringement is in question. After this, following the best efforts requirement, a platform needs to take preventive measures on how this type of infringement will not happen again.[42] Article 17 also contains a list on how these best efforts can be achieved by the provider.[43]

Ever since the first Proposal of the Directive in 2016 and even after the final Directive in 2019, the users of such platforms like YouTube, have been afraid of their creative rights being taken away. However, Article 17 has set out provisions containing providing measures that should not affect the users who are uploading content, which is not infringing copyright. Providers of OCSSP in connection with the Member States, have particular definitions on what shall be protected from unnecessary copyright infringement, such as reviews, quotations, criticism and parody.[44]
Despite Article 17 trying to create a clearer legislation for both providers and users, it has its difficulties when looking through the eyes of Member States trying to implement the law. What are the technical measures and how can they be implemented?[45] How can these technical measures be taken when automated content recognition (ACR) limitations can become in the way?

[41] *Ibid*., 353
[42] *Ibid*., 354
[43] 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
[44] Bridy, A., (2019), *supra* nota 19, 356
[45] *Ibid*., 355

2. SOCIAL MEDIA

Social media reaches people more and more every day and via more easier ways to use it, it now connects people over language and distance. It consists of writings, pictures, videos and everything in between. According to Jose Van Dijck[46], social media can be separated into four categories; social network sites, user-generated content sites, trading and marketing sites and play and game sites. It is a platform for creativeness and it has created a new type way to share art and work via internet. It does not only courage people to create original content, but creates a platform for third-party content to be created as well.[47] Due to social media being a huge platform available for such an audience, its legal framework has been under discussion ever since its beginning. One of the big discussion topics has been fair use, which has been compared to the legal framework of the United States.[48] Another subject has been private copying reflected to InfoSoc. Private copying is a familiar thing among many households and private people. People record things for private entertainment use or make a backup copy of a certain material. This backup copying is due to people having many different devices where to contain content and thus, transporting content from one device to another by backup copying is a common thing. The issue with private copying is that the common knowledge might not contain the deeper knowledge of copyright infringement when it comes to private copying.[49] People think that the harm caused is minimal or non-excistent. Should it be necessary for people to first purchase the content once and then after passing it onto every new device, purchase it again?

According to the E-Commerce Directive, natural and legal person providing an information society service, falls within the definition of a Internet Service Providers (ISPs). In addition, ISPs are defined through three different characteristics.[50] These characteristics include; parties of the provided service are not necessarily present in the same place; the service is provided by electronic means and technical features; and on individual request, the transmission of the data is the key action to providing that service.

[46]Mcdonough Dolmaya, J., & Del Mar Sánchez Ramos, M. (2019). Characterizing online social translation. *Translation Studies: Special Issue: Online Social Translation: New Roles, New Actors? Guest Editors: Julie McDonough Dolmaya and María Del Mar Sánchez Ramos, 12*(2), 129-138., 130
[47] Bosher, H., & Yeşiloğlu, S. (2019). An analysis of the fundamental tensions between copyright and social media: The legal implications of sharing images on Instagram. International Review of Law, Computers & Technology: Social Media Special Edition, 33(2), 164-186., 164
[48] Inguanez, D., (2017), *supra* nota 1, 668
[49] *Ibid*., 665
[50] Marušić, B.,(2017), *supra* nota 35, 173

2.1. Social media and EU Copyright

2.1.1. Hyperlinking

The use of hyperlinking is a basic form of internet users' social media behaviour. However, hyperlinking has turned out to be a harmful thing for copyright owners. By hyperlinking, copyrighted material can be accessible to the public and thus the need for authorization from the copyright owner is crucial. Article 3(1) of the Directive on Copyright in the Digital Single Market reflects to the fact, that unauthorized use of the copyrighted material being published to the public or other types of activites reflecting to the copyrighted material, can cause an infringement to the copyright.[51] This however has raised conversation between internet users on whether hyperlinking should or should not fall within Artcile 3(1).[52] The discussion reflects to the fact whether hyperlinking should fall within the scope of 'communication to the public'. Some case law, such as Case of Svensson[53] and BestWater[54], show that CJEU has decided hyperlinking to actually establish communication to the public within the Article 3(1) of the Directive. Another case, which is linked to hyperlinking, is the case of GS Media. In this case it was discussed, that if there is no financial gain from the hyperlinked content, it should not cause an infringement of copyright. This is because under the Article 3(1) of the InfoSoc Directive, financial gain constitutes communication to the public and thus is infringing copyright.

2.1.2. Artificial Intelligence

In his article Ferrer[55] talks comprehensively about artifical intelligence (AI) and how it fits the age of digitalisation when reflected to the new legal framework on filters and user recognition. This artificial intelligence could be a part of creating content recognition technology. This new type of technology is something that could potentially increase the possibility of infringements. However, it is not yet well known, even though a well-know platform called Google Translator, works with artificial intelligence[56].

[51] Inguanez, D., (2017), *supra* nota 1, 661
[52] *Ibid*.
[53] Court decision, 13.4.2014, Svensson and Others, C-466/12, ECLI:EU:C:2014:76
[54] Order of the Court, 21.10.2014, BestWater International, C-348-13, ECLI:EU:C:2014:2315
[55] Ferrer, V., (2019), *supra* nota 6, 17
[56] *Ibid*.

The Commission has taken AI as a mission and there are few organizations and ventures to help with the process, such as A European Innovation Council pilot, AI-on-demand platform, European Fund for Strategic Investments (EFSI), VenturEU, Digital Innovation Hubs, European Structural and Investment Funds and Algorithmic Awareness Building Project. This is in addition the Commission's plan to grow AI as a technical tool.

2.2. YouTube

According to YouTube's official statistics, there are now over 2 billion YouTubes users in over 100 countries and it has the capacity to run with 80 different languages[57]. In comparison, in 2008 there were almost 2.9 million videos and approximately 70,000 visits.[58] It is used by its users over billion hours per day and YouTube's mobile app alone reaches more users than any U.S. TV-channel.[59] Even in 2012, it was estimated that all HTTP traffic was concentrated on YouTube by 20%.[60] YouTube has a major variety of content on their platform. Its introductions could be compressed to being a platform where people can be creative and share their work, but the variety can change from comedy and beauty tutorials, all the way to alcohol marketing[61]. This not only creates a free and creative platform but a necessity for YouTube to keep it clean and its own terms up to date based on international and national legislation. YouTube is a platform for creative people and thus copyright infringement is a common thing among this platform. Even though we think that today everyone has a basic knowledgement of copyright, there are still cases where a complete movie can be uploaded to YouTube illegally, as was done in a case in Argentina[62]. In addition to this specific case, YouTube has faced many copyright infringement lawsuit over the years.[63] Even though originality is a basic principle of copyright, defining what is original, can be very hard these days[64] and leaves uncertainity for determining infringement

[57] YouTube About, YouTube for Press, Retrieved from https://www.youtube.com/about/press/, 25 March 2020
[58] Yang, M., Seo, J., Patel, A., & Sansgiry, S. (2012). Content Analysis of the Videos Featuring Prescription Drug Advertisements in Social Media: YouTube. *Drug Information Journal*, *46*(6), 715-722., 716
[59] *Supra* nota 57
[60] Cameron, C., Khalil, I., & Tari, Z. (2014). An ID-based approach to the caching and distribution of peer-to-peer, proxy-based video content. *Journal of Network and Computer Applications*, 37(1), 293-314., 293
[61] Gupta, H., Lam, T., Pettigrew, S., & Tait, R. (2018). Alcohol marketing on YouTube: Exploratory analysis of content adaptation to enhance user engagement in different national contexts. *BMC Public Health, 18*(1), 1-10., 2
[62] Palazzi, P. (2014). Copyright criminal complaint against YouTube dismissed in Argentina. *Journal of Intellectual Property Law & Practice, 9*(3), 177-179., 178
[63] Erickson, K., & Kretschmer, M. (2018). 'This Video is Unavailable': Analyzing Copyright Takedown of User-Generated Content on YouTube. *Journal of Intellectual Property, Information Technology and E-Commerce Law*, 9(1), 75-89., 78
[64] Cabay, J., & Lambrecht, M., (2015), *supra* nota 2, 361

cases. Simple things such as school music class performances, fall under the infringingement,[65] but can seem harmless by the time of uploading them.

2.2.1. Content ID

YouTube uses tehnical tools and features to guarantee that videos that are infringinging will get removed. These tools are called the Content ID, the Copyright Takedown Notice and the Content Cerification Programme. The Copyright Takedown Notice and the Content Verification Programme work similarily. They can both be used directly by the copyright holder and via issuing takedown request, content which is infringing their copyright, can be taken down[66]. Content ID however is used by copyright owners, who wish the infringement check to be automatic. This means, that an automatic scan is installed within Content ID and by the presubmitted material of the copyright owners, the technology can scan any possible infringements[67]. This all is connected to the flag process of YoutTube[68]. The copyright owners also have an option on which action is going to be taken; the video or audio of the video can be removed or they can demand a monetizement from the video[69].

As YouTube has become more of a regular job within the previous years than it has been before, the legal framework needs to suit it. However, it is confusing, since people might have gotten used to the idea, of YouTube being a carefree place to be creative, but having legal framework is a necessity when it comes to a platform like YouTube, where big moneys go around and it is not only about creative freedom anymore; money is a deal breaker. This can also be a problem when it comes to the content creators and their decision making on whether some content should be uploaded or not. They have to think a content's moral value, same where as the financial gain. It is easy to just create content that you know will get views and thus give you financial gain.[70]

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[65] Drummond, T. (2015). Understanding Copyright and Fair Use in the Music Classroom. *Music Educators Journal*, 102(2), 48-53., 52
[66] Van Mil, J. (2019). German Federal Court of Justice asks CJEU if YouTube is directly liable for user-uploaded content. Journal of Intellectual Property Law & Practice, 14(5), 355-356., 356
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[69] Reymond, M. (2016). Lenz v Universal Music Corp : Much ado about nothing? *International Journal of Law and Information Technology*, 24(2), 119-127., 125
[70] *Ibid*.

2.2.1 Current position of YouTube under EU Copyright

If YouTube wants to take official measures in preventing infringements, the technical measures needed for this goal have to be some what relevant to the Content ID.[71] Some criticism has been set towards Article 17, since the implementation of Article 17's speech-protective provisions can become very difficult. Automated content recognition systems (ACR) have certain limitations that make it hard to recognize whether material is public domain or has content which is copyrighted. YouTube's Content ID is a good example, and even though it can be said that Article 17 works in its benefit for a good ACR system, it has still faced criticism from its users[72]. One of the greatest fears that Article 13 of the Proposal for Directive on Copyright in the Digital Single Market created, was managing Content ID and its technologies in addition to upload filters.[73] Filters are a common use of technology when creating content recognition, but this might not always act as a identifying process.

YouTube, as such a creative platform, faced major threat when its users started fearing on behalf of their creative freedom. When fear comes to the picture, some creative ideas might never get posted due to fearing it is going to get removed regardless whether it is infringing copyright or not. However, copyright is a vital tool to keep creativity alive within copyright owners. Thus, copyright needs to be protected and major platoforms such as Google and YouTube, need to take measures to ensure the creativity stays alive within its users.[74] Even the CEO of YouTube, Susan Wojciki, has stated that Article 13 could possibly be a threat to the creative freedom.[75]

[71] Bridy, A., (2019), *supra* nota 19, 352
[72] *Ibid*., 134-135
[73] Tyner, A., (2019), *supra* nota 18, 285
[74] Nordemann, A. (2019). Upload filters and the EU copyright reform, Retrieved from: https://doi.org/10.1007/s40319-019-00805-0, 1 April 2020., 277
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3. CASE LAW AND ANALYSIS

YouTube functions differently within different legislations and when comparing those legislations, I find the U.S. and European Union legislation the most relevant when in connection to YouTube. Under U.S. legislation, YouTube has faced difficulties with fair use and its reflection to financial gain[76] same as where under E.U. legislation, the new Copyright on Digital Single Market has created its own difficulties. The topic and research problems of this paper are frankly new, and do not yet have variouse case law examples for examination. The following two cases are representing two bigger and variant cases in both legislations, specialicing in YouTube, giving a percpective of varying legal aspects of copyright, before analysing how copyright cases overall have changed and impacted the current legislations, and how the possible future will look like.

3.1. EU Case study

C-682/18 - YouTube

This case is still open and has been on-going since 2018. The Applicant who is a music producer and co-owner of a music publishing house called 'Petersongs Musikverlag KG', filed an action for an injuction and damages on grounds of copyright infringement against Defendants Google LLC, YouTube Inc., YouTube LLC and Google Germany GmbH. Google LLC as one of the shareholders is the legal representative of YouTube and the sole shareholder. The provisions of EU law that is cited through out this case are Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society, in particular Articles 3 and 8; Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), in particular Articles 14 and 15 and; Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, in particular Articles 11 and 13 in accordance with following national law, such as Gesetz über Urheberrecht und verwandte Schutzrechte (Law on copyright and related rights; 'the

[76] Kumar, P. (2008). Locating the boundary between fair use and copyright infringement: The Viacom–YouTube dispute. *Journal of Intellectual Property Law & Practice, 3*(12), 775-778., 775

UrhG'), in particular Paragraphs 97, 99, 101, 102a and Telemediengesetz (Law on telemedia; 'the TMG'), in particular Paragraph 10.[77]

An exclusive artist contract cretaed by 'Nemo Studio LF' and an artist called ME on 20 May 1996. The contract was about audiovisual recordings in addition to the audio of the artist's performances and the use of those materials. On 4 November 2008, ME began a tour called 'A Symphony Tour' which was dedicated to her album 'A Winter Symphony', released earlier in November 2008. After the release of the album and first few days of her tour, images and videos created by users were starting to appear on YouTube containing music pieces from the album, and private concert recordings from the tour. Thus, cease-and-desist declarations were requested towards the defendants by the applicant. Thus, YouTube disbales access to the videos by manually finding out the URLs of the specific videos. However, after removing the videos, similar moving images and videos were still found on YouTube. After this, the applicant field an action for "an injuction, disclosure of information and a declaration of liability for damages" against Google and YouTube based on being the rightful copyright owner of the audio recordings of 'A Winter Symphony' as a producer and as the artist. [78]

Discussion within the first question concluded Article 3(1) of Directive 2001/29/EC, and whether the operator of an video platform (here YouTube), which containts copyright protected content without the authorization of the owner, constitute an 'act of communication' when it is made accessible to the public, if; any earnings are made to the operator of the platform via adverstising; a licence for the videos is granted for the operator; the operator takes no actions on the material is being controlled or taken a look at before the uploading and thus the upload process of the material is automatic; for the time the videos are available to the public, a royalty-free worldwide license for the videos is provided for the operator; acceptible measures and tools are given to the copyright owner in case a need to block infringing videos; certain rankings and categories are provided by the operator on their platform for users as an overview; operator takes measures to clearly mention out the restriction on uploading copyright-infringing content before uploading material or if the knowledge of available copyright protected is lacking or if removing the content occurs after knowledge has been gained.[79]

[77] Request for a preliminary ruling, 6.11.2018, YouTube, C-682/18
[78] *Ibid.*
[79] *Ibid.*

Analysis of the first question brings up that comparable provisions in the German UrhG have to be depicted in accordance with the Directive 2001/29 since the rights of communication to the public, when making the current situation and materials accessible to the public, create a harmonized right according to Article 3(1) and (2)(a) and (b) of the Directive.[80]

When reflecting to Article 3(1) of the Directive, the Court of Justice has prioritized the user's role and their interference's nature in addition to the assessment and context when reflecting to the concept of 'communication to the public'. The Court discusses whether YouTube's activity in this current case has actually constituted an act of communication under the Article 3(1) of the Directive 2001/29 and by the view of the present Chamber, the question might be answered positively or at least assumed when reflecting to the audios from the album 'A Winter Symphony'. YouTube was aware of the illegal accessibility of these audios to the public on their platform and did not make further actions on deleting them or at least not within a reasonable time. When taking a better look at the so-called indispensable role the user plays, the nature of the interference and the criteria within, the user has to have complete knowledge of the actions and consequences of his makings in order to conduct an act of communication. However, regardless of having an indispensable role, YouTube could yet post material and third parties could still create content that is infringing copyright. Here it must be taken into consideration, that YouTube has a commercial interest due to gaining financial benefits from advertisements on their platform. [81]

3.2. U.S. Case study

Viacom Int'l, Inc. v. YouTube

The Plaintiffs (Viacom International Inc., and other copyright holders) filed action based on direct and secondary infringement of copyright against YouTube, in 2010. The action was based on approximately 79,000 audiovisual videos, which were publicly displayed, reproducted and performed on YouTube. The Plaintiffs claimed that YouTube had not followed the rules with safe harbor protection according to the Digital Millennium Copyright Act over the last three years that the videos were accessible. The Plaintiffs filed claim based on 17 U.S.C. & Section 504(c), defining it as damages from the alleged infringement in addition to injunctive and declatory relief.

[80] *Supra* nota 77
[81] *Ibid.*

YouTube as a platform requires its users to register to their platform in order to upload videos and thus accept the Terms of Use agreement. These steps were taken by the Defendant. The Terms and Use of YouTube included agreeing to not to post any material which contains copyrighted material without authorization of the copyright owner, if the user themselves is not the owner. If there would be consent of the owner, YouTube would automatically gain the license rights. Defendant made copies and exact duplicates of the video and since YouTube uses an algorithm of related videos, these duplicates and copies automatically pop up in the 'related videos' section in their platform. This makes the content gain even more views.[82]

Safe harbor protection of the §512 of the Digital Millennium Copyright Act (DMCA) was the foundation of the Defendant's claim, and in order for the DMCA to grant safe harbor, certain crtieria has to be met. These criteria include falling undeer the definitins of being a service provider, meeting the basic technical measures of protecting copyrighted material and overall adopting certain policies. According to Section §512(c) of the DMCA, specific facts of an infringement are set and it consists of having the required knowledge an awareness of infringing copyright and of the takedown process. The District Court held, that YouTube as the Defendant had fulfilled these requirements.[83]

The first question, that the Court discussed, concerned the need for required knowledge or awareness of specific infringing activity under the § 512 safe harbor of the Digital Millennium Copyright Act (DMCA). The answer to the question was positive, since according to the §512 (c), the service provider needs to have the required knowledge and awarness, but according to §512(c)(1)(A) these two factors do not create disqualification of the provider on their own. However, it is set out in §512(c)(1)(A)(iii) that it is about the process of obligation to remove, which constitutes the definition of knowledge and awareness. This occurs due to the fact of knowing what to remove and what not. [84]

The Plaintiffs then raised a question of 'red flag' knowledge compared to actual knowledge on the basis of §512(c)(1)(A)(i) and §512 (c)(1)(A)(ii). The Plaintiffs claimed that the definition of red flag and actual knowledge leaves an empty space for uncertainity in the form of standard

[82] Viacom Int'l, Inc. v. YouTube, No. 07 Civ. 2103 WLF 2532404 (S.D.N.Y 2010)
[83] *Ibid.*
[84] *Ibid.*

objectiveness and subjectiveness. According to similar cases, service providers only need the required knowledge of the infringement process and definion rather than the requirement of determing if specific materials fall under the category of illegal and therefor infringing. Within this case, survey evidence was used to prove that YouTube as the Defendant was aware of the material posted on their platform and that the material was infringing copyright. This survey evidence however could not fully prove the knowledge and awareness of YouTube about the infringing material but in addition other evidence such as emails and conversations regarding the videos, showed evidence that the Defendant would have been aware of the infringing material. Some evidence even showed that the Defendant was aware of the infringement but wanted to keep the content accessible as long as possible before an official takedown notification. This raised the Plaintiff's right for claiming the knowledge and awareness of the Defendant to be accurate. [85]

The second question concerned the possibility to use the common law willful blindness doctrine, in order to prove, under the DMCA, the knowledge or awareness in case of infringements. The anwser to the question was also positive, stating that the issue was based on first impression. The issue was about 'willfully blind' and 'conscious avoidance' and whether the Defendant falls under these two factors. The DMCA does not mention willful blindness but it has references to the subject within §512(c). Thus, the broad monitoring duty slightly falls away of DMCA's lap but it still has its limitations to willful blindness doctrine; even though it does not bolish the doctrine completely. [86]

The third question concerned the definition of 'right and ability to control' and whether a certain service provider can have that control on infringing activity under § 512(c)(1)(B) of the DMCA. The question took a perspective of not possibly having an item-specific knowledge about infringing activity. The answer to the question was negative, since it does not matter whether the item-specific knowledge of infringing actitivty excists. The service provider regardless holds the 'right and ability to control'. An issue occurs, if a service provider would gain financial benefits from infringing activity, while under the knowledge of that activity. However, under the §512(c(1)(A), this service provider would be excluded in the first place from safe harbor since no removal of the copyrighted content has happened. Since the first construction was rejected due to delivering excessive language, another construction was suggested by the Plaintiffs. Another

[85] *Supra* nota 82
[86] *Ibid.*

construction suggested by the Plaintiffs was also rejected due to rendering of §512(c) internally conflicting. [87]

Thus, according to the §512(c)(1)(B) the 'right and ability to control' infringing action requires something more than the ability to remove or stop access from a platform containing infringing material. This has been a common question and discussion topic among district courts as an auxiliary element, but has caused struggling on finding enough supervision. In addition, the amount of evidence is crucial when deciding whether YouTube as a Defendant had the right and ability to control infriniging action or whether they had finacial gains from that action. On the account of the latter three factors, the district court held that YouTube as the Defendant had software functions which fell under the scope of safe harbor for infringmenent. [88]

3.3. Analysis

The author now wants to predict, how things are going to look like in the future in the field of copyright and especially social media. Since we are constantly changing and improving legal aspects of everything, things are without a doubt going to change for a yet unknown direction. There have even been times, when the trust for digital media surviving the online markets was not strong[89], which seems impossible to grasp, but that does not mean, that those 'impossible scenarios' could never happen again. The way case law varies through out the years, is due to changing opinions on the priority of copyright reflecting to other things such as developing technology and people's creativity. In his paper about the future of the EU copyright, Ferrand came up with an idea of a copyright timeline; "A very condensed version of copyright history could look like this: texts (1800), works (1900) and tools (2000)"[90]. This for the author is a statement which is extremely relevant to understand and wonder, when suspecting the future. Same as the history, the future could go in phases, where one aspect is more focused on than others.

[87] *Ibid*.
[88] *Ibid*.
[89] Farrand, B. (2019). "Towards a modern, more European copyright framework", or, how to rebrand the same old approach?, Retrieved from: https://eprints.ncl.ac.uk/file_store/production/256399/6BFC5438-9FF0-41AE-B030-605222C85980.pdf, 23 March 2020., 1
[90] *Ibid*.

A U.S. case of Sony Corp. of Am. v. Universal Ciru Studios, Inc., in 1984, is a good example on how priority of copyright and other matters have changed through out the years. In this case, copyright could have been seen as kicked right in the faced, where as today, legislations seems to make it as a priority. The case concerned home-taping of television shows, which the Court ruled as fair use since it is non-commercial and "time-shifting". However, the Defedants, Sony Corporation and Sony Corp., of America, were actually manufacturing these home videotapes and selling them to Betamax.[91] In other words, in today's society, this would mean a situation where a new app is developed, which gains major technological advantages for people using other peoples music without consent and the Court would say, that the technological advantage is more essential, than the copyright protection of that music.

Compared to the previous one, in another U.S. case the tables were turned. MP3-players, were 'the thing' before we could imagine having one inserted to our phones and it was great technological advantage to enter the market in the late 1990s[92]. In the case of UMG Recordings, Inc. v. MP3.com, Inc., in 2000, the defendant was a website called MP3.com, which contained approximately all the content of every CD ever made, in the aims of giving MP3 owners access to their personal music libraries or collections. Here, the problem was the distinction between space shifting and time shifting. These terms handle the process of getting access to a device from another device and recordings. MP3.com was copying the CD's into their platform which the Court then ruled not being fair use. In MP3.com's defence, they said the concepts of consumer protection were on their side and fulfilled the terms of their actions. However, the Court ruled that this defence had no valid grounds, and basically would have only meant that this copying was made due to consumer happiness and demand[93]. Thus, the author wants to make a conclusion, that at this time the direction had been shifted to a more positive direction for copyright protection in the U.S. legislation.

One of the most essential problems and aims, that the EU copryight law should, and is currently aiming for, is harmonization during the age of digitalisation and social media. This is the ultimate key for copyright to work, since copyright reaches unlimited amount of users through internet. Another case example, which I find relevant when discussing about harmonization, is Case 158/86 Warner Brother Inc., v. Metronome Video ApS, which took place in 1988. The case concerned the

[91] Sony Corp. v. Universal City Studios, 464 U.S. 417 (1984)
[92] Mary Bellis, 2019, The History of MP3 Technology, Retrieved from: https://www.thoughtco.com/history-of-mp4-1992132, 5 May 2020
[93] UMG Recordings, Inc. v. MP3.com, Inc., 92 F. Supp. 2d 349 (S.D.N.Y. 2000)

film ‘Never Say Never Again’ for which Warner owned the copyright in the United Kingdom, where it was also produced. However, the management of the video production right was assigned to Metronome in Denmark. Aftter this, Mr. Christiansen, the Defendant, made a purchase of that film’s copy in the United Kingdom and then imported that into Denmark for hiring-out purposes. In Denmark, it is said in the legislation, that the author of a film can take restraining action on the hiring-out of material, if a consent is not yet given. Thus, the Plaintiffs, Warner and Metronome, made a demand to the Copenhagen City Court to prohibit Mr. Christiansen doing such a hiring-out. However, according to Article 30 and 36 of the EEC Treaty, since the permission for the circulation of that film in that Member State was already given, Articles do not prohibit the application of that Member States national law. Thus, the author did not have the right to restrain the hiring-out of that video tape, since the consent only gives the author the right of controlling the initial sale.[94] This case represents a good example of copyrights’ complexity and the need for harmonization in the European Union. Importance of protecting copyright owners’ rights, is an element where EU’s copyright protection is headed and has been heading for the past years, including the newest Directive.

When analysing chapter 3.1 and 3.2, the author finds few similarities. Both cases are complex and very dependant on small details. In Case 682/18, whether the action falls under the definiton of ‘act of communication’, depends form a list that is diverse and long. This shows the complexity when defining right judgement, same as the Viacom case, which concerns the definition of ‘right and ability to control’. In addition, the author disvocers, that both cases share the same problem; both are having a battle whether YouTube as a platoform is liable for the copyright infringements or not. This leads the author to a well-known case called the Napser case.

One of the changing points within social media and mainly with peer-to-peer file sharing, was the Case of A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004 (2001). Napster was a platform, which provided access to a library containing music files in digital form and enabled users to download the files they wanted. This was a new, and most importantly, a free way to get access to music of your willing. The Court thus decided, that this action fell within the definition of infringement which, however, could have been controlled by Napster. This was examined through three different uses on the platform, which conducted as fair use for the platform users. Napster had knowledge of infringing action, and had the duty to act on it.[95] Thus, this case was a turning point in the peer-

[94] Court decisions, 17.5.1988, Warner Brothers And Another/Christiansen, C-158/86, ECLI:EU:C:1988:24
[95] A&M Records, Inc. v. Napster, 239 F.3d 1004 (9th Cir. 2001)

to-peer file sharing field and the copyright protection of music online, since it was the beginnign of enging the wrongful though of the platoform not being liable and putting the blame on the users. However, as told in chapter 1.3, Article 17 of the Directive 2019/790, makes this wrongful though impossible to work in action. Since the Article 17 forces platforms to have licensing in order to stay clear form copyright infringments, it is their responsibility and not the users. However, Article 17 also contains certain criteria which have to be met, if the provider does not want to be liable of infringement. This is the definition of 'best efforts' presented in Article 17.

The Possible Future of Copyright and YouTube

Regardless of YouTube being a very young party in the field of copyright, it yet holds a strong position. As it is growing daily, it is now one of the biggest social media platforms all over the world. Since YouTube is a platform for videocontent, copyright holds them tightly under its grip. YouTube's current changes due to EU's copyright protection, have raised questions and discussion over creativity being taken away, but when we say that creativity will die due to too strict limitations, does it mean that creativity should overrun copyright protection? The CEO of YouTube, Susan Wojcicki, has commented on the Directive 2019/790 that, "It could create serious limitations for what YouTube creators can upload. This risks lowering the revenue to traditional media and music companies from YouTube and potentially devastating the many European creators who have built their businesses on YouTube"[96]. Regardless of this statement, Susan claims to be supportin the copyright holders rights, which in my opinion creates a contradiction[97].

Creativity is everything and nothing at the same time. It is essential, but not necessary. But if we take a look at YouTube, it could be seen as the heart of it. Then again, what was the starting point of creativity? A great philosopher Voltaire once said, "Originality is nothing by judicious imitation. The most original writers borrowed one from another"[98]. Maybe that is the problem and will always be. Creativity is never fully original, since it has always sparked inspiration from another

[96] Andy Malt, (2019), YouTube CEO says battle against European safe harbour reforms is not over, Retrieved from: https://completemusicupdate.com/article/youtube-ceo-says-battle-against-european-safe-harbour-reforms-is-not-over/, 5 May 2020
[97] *Ibid*.
[98] Sergey Markov, (2017), *Philosophers About Creativity*, Retrieved from: https://geniusrevive.com/en/philosophers-about-creativity/, 5 May 2020

work or something that is already excisting. If the future of copyright, and specially YouTube, means that creativity will be taking over copyright, we could say that in a way, it already has. The amount of critique that Directive 2019/790 got from creators, is already a sign of protest on behalf of creativity, against copyright protection. This could create a major problem in legal aspects and case law in the future, if a clear distinction is not drawn between these two. As the author previsouly referenced Ferrand on his idea on copyright timelime, the author preidcts, that the next chapter in this timeline, is creativity and its limiting and enabling perspectives. But if the future holds a higher respect to creativity than copyright protection, it could be, that we are facing same type of situation, as in the case of Sony Corp. of Am. v. Universal Ciru Studios, Inc. This would mean, that the timeline is not moving forward but actually going back in time, only with a different problem this time.

CONCLUSION

This thesis examined copyright law of the European Union from persepctives of digitalisation and social media. This thesis examined these perspective, by focusing on an internet platform YouTube and its technical means, in addition to the effects changing legsilation has caused and possibly will cause in the future. This examination has been done by looking into the history of copyright law in the European Union, how it has been developing and modernisating through out digitalisation and increasing usage of social media. This thesis has examined current copyright legislation by focusing on Article 13 of the Proposal of the Directive on Copyright in the Digital Single Market and Article 17 of the final version of the Directive. This thesis examined YouTube and it technical features, such as Content ID and other possible solutions, such as Artifical Intelligence. This thesis examined changing attitudes towards copyright via case law and examined cases from both EU and U.S. case law, to make findings on possible similarities.

The first research question examined how the current European Union copyright protection is taking into account today's digital society. The author has examined, the history in order to see how the current copyright protection has been created, what might have been problems in the past, and how they have been solved. The author has found, that harmonization and copyright owners rights, have been a priority for a long time and harmonization will keep on being a priority even with the digital society. InfoSoc Directive could be seen as the bridge to the current legislation, since later directives have taken into account the areas that InfoSoc was lacking either completely or partly. However, when the Proposal for the Directive on Copyright in the Digital Single Market was proposed, it seemed like digital society felt threatened and not protected. Article 13 of the Proposal created a new type of tumult from the creators on the internet, fearing that their rights and creativity would be taken away, even though Article 13 was aiming for harmonization between authors' and users' rights. After fierce discussion and even criticism, the final Directive presented Article 17, which had taken into account different aspects which Article 13 could have concluded.

The second research question examined to find any possible obstacles for social media and especially YouTube, which could occur due to current copyright legislation. One of the biggest

changes after Napster, has been the responsibility shift from users to the platform services. This is still a problem and a fiercly discussed subject, as proven in the case analysis of this thesis. Maybe the definionts of current legislation is still not as clear and straightforward and leaves room for uncertainity. This uncertainity can become crucial for platforms like YouTube, or other social media platforms, which hold the responsibility of millions of users. However, the responsibility of internet platoforms, such as YouTube, to prevent copyright infringements, was defined in Article 17 of the final Directive. These definionts included the licensing part, which gives the platform a clear instruction on how to prevent possible infringements. In addition, the change from Article 13's 'technical measures' into Article 17's 'best efforts' could be one of the major protection tools, since it lays down a comprehensive list of ways to act in their 'best efforts' to prevent copyright infringements. However, the level of success with this measurement, can only be proven in the future, after seeing the Directive work more and possibly create new case laws. In addition to the responsibility, harmonization is and will for an unknown time be an obstacle in some parts. The European Union is not fully harmonized, even though the road is looking bright and essential changes towards a fully harmonized Union have been made. Nonetheless, social media needs a certain level of harmonization, in order to function in everyone's favore. Whether the level of harmonization is looking positive or not, could not however be proven by the author, and only prediction that the author has constructed, is that the fierce discussions and criticisms are far from over.

The third question examined case law and tried to predict how the future of social media and YouTube could look like. As the author analysis, in the past case law has shown the diversity of opinions on the relevancy of copyright. There have been times, when copyrighted was not the priority and technical advantages were ruling the battle. Even though knowledge of basic copyright has developed to a better direction within few years, there is still a long way to go to a time when no uncertainity is present within social media users. When predicting the future, the author draws a conclusion to a possible next phase of a copyright timeline. This phase is creative freedom and whether it will outrule copyright or not. When comparing the past and specifying to a certain case, where copyright was not the priority, the author predicts that the timeline will not move forward but actually go back in time and face the same opinion differencies, but with a new problem.

In a way, the subject of creativity, could answer all three research questions. The current legislation is protecting copyright owners, which allows them to be creative and original. However, not all content creators feel prtected, when certain limitations are entered into social media. This can also

become an obstacle for social media and platforms like YouTube, when content creators start fearing the creation process and eventually decide not to upload content anymore, and thus effect social media platforms negatively. And if the creative freedom is taken away, the possibility of copyright protection losing its purpose and future, could not be only a groundless prediciton anymore.

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