

The upcoming amendment to the Copyright Act and online content sharing regulation

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We would like to provide you with a brief summary of two laws introducing new regulation of the online environment in response to developments in this area as well as the need to implement EU law. These are an amendment to Act No. 121/2000 Coll., the Copyright Act and a completely new law on video sharing platform services.

Amendment to the Copyright Act

The forthcoming amendment to the Copyright Act affects many areas, but one of the most significant changes is the introduction of the institute of *online content sharing services provider*. The main purpose of such service is to publish a large number of (copyrighted) works to the public, with the provider organising and promoting these works for profit. Typically, one can think of services such as Spotify, Netflix, Disney+ or YouTube, but also of social networks that allow their users not only to upload content but also to make it available (share it) with other users, such as Facebook or Instagram. In contrast, non-profit encyclopaedias and scholarly repositories, online marketplaces and cloud services that allow uploading content for personal use only are not *online content sharing services*.

It is important to note the regulation of liability of the online content sharing service provider for the content shared. According to the proposal, the provider should always be liable for any unauthorised use of the work unless the conditions for excluding liability are met - these are (i) making best efforts to obtain authorisation for the work (i.e. obtaining a licence is preferred to removing the content), (ii) making efforts to prevent the uploading of a work about which the author has provided the necessary information, and (iii) removing the unauthorised work without delay after being notified by the author and taking measures to prevent re-uploading. For start-ups and smaller providers, the regime is more lenient, but the responsibility for the content is still their.

In addition, the provider will have an information obligation both towards the author (regarding procedures to prevent unauthorised use) and towards users (regarding the possibilities of legal use of the work). At the same time, providers will be obliged to put in place an effective and prompt mechanism for dealing with user complaints and disputes relating to the prevention of access to or removal of a work uploaded by them. For the resolution of disputes related to the provision of online content sharing services, the amendment introduces the possibility of using a mediator, which was previously only available for matters relating to collective management of copyright. The mediator's scope will also be extended to include assistance in negotiating licence contracts for the use of audio-visual works and resolving certain licensing disputes.

The amendment also adds "supplementary online service of the broadcaster", to the list of possible uses of a work, which consists of broadcasting the work online simultaneously with a television or radio broadcast, making it temporarily available online after the broadcast and using it to produce trailers and reviews. However, this scheme explicitly does not apply to works included in the transmission of sports matches. This includes the use of copyrighted works, for example, as a part of online TV broadcast "ivysílání" ČT or internet broadcasts of radio stations. The legal regulation will thus cover essentially all legal ways of sharing audio-visual works on the internet.

Other changes include a legal licence for digital education (the possibility of using copyrighted works for illustrative purposes in teaching) and automatic data analysis, the possibility of reproducing and making available works unavailable on the market by libraries and other selected institutions, or the regulation of the rights of publishers of magazines, especially in relation to their online use.

The amendment is currently heading for its third reading as Parliamentary Document No. 31.

Video Sharing Platforms Services Act

Further regulation of the online environment is also brought by the new law on video sharing platform services, especially due to the need to protect minors, consumers and other vulnerable groups in view of the development of technology and access to it. The new act defines a video sharing platform as an information society service whose main purpose or function is to provide programmes or video recordings created by users to the general public for the purpose of information, entertainment or education. Unlike the content sharing services mentioned above, this platform provider only determines the arrangement of the users' recordings, does not select or compile the programmes, the content is created and posted by the users themselves. Therefore, the platform provider is not editorially responsible

for the content of the recordings, but is responsible for the content that the provider itself offers to the public via the platform. Only a part of the content of an online platform can serve as a platform for sharing video content (for example YouTube, which contains both user-contributed content and 'YouTube originals', i.e. content published directly by the provider). In contrast, the regulation does not apply to activities of a non-commercial nature, such as the provision of audio-visual content on private websites or the activities of non-commercial associations.

To enable effective supervision across the EU, platform providers will be registered by the Broadcasting Council in a special list, based on a mandatory notification made before the launch of the platform. The list will be public, with some data available online. The law also imposes a broad obligation on providers to protect both minors from content unsuitable for their development and the general public from hateful content, content inciting to violence and content whose sharing constitutes a criminal offence. The regulation also affects commercials on platforms - they must be easily recognisable, must not exploit the trust of minors and must not promote tobacco products or prescription drugs. However, this obligation is linked exclusively to the organisation of the content and not to the content itself (for which the provider is not editorially responsible) and therefore the adoption of measures specified by law will be sufficient to comply with it. The Council will then only supervise whether the platform provider has taken reasonable measures to protect its users and will not assess the content on the video sharing platform itself.

The Act on Video Sharing Platform Services was published in the Collection of Laws under 242/2022 Coll. and came into force on 15 September 2022.