



## New law on e-commerce obliges platforms to remove infringing content

Mutlu Yıldırım Köse and Dilan Sila Kayalıca

Gün + Partners

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Legal updates: case law analysis and intelligence

- The new law does not make platforms responsible for infringing content, however they are obliged to remove it and report it to the relevant authority
- If the service provider objects to the complaint the platform may republish the material
- If the illegal content is not removed upon complaint, or if the content is not republished despite being proved to be legal, the platform will incur heavy fines

A new law (No 7416) regarding e-commerce — announced in the Official Gazette dated 7 July 2022, and coming into effect 1 January 2023 — will oblige sites to take down a product if they receive a legitimate complaint arguing that there is a violation of intellectual and industrial property rights on their platform.

The basic regulation concerning the responsibilities of e-commerce sites regarding the content that they host was included in Law 5651 on the Regulation of Internet Broadcasts and Prevention of Crimes Committed Through These Broadcasts (Internet law). Under this law, obligations and liabilities of hosting providers are regulated in general and the procedure of preventing access to the content was introduced in case of certain catalog crimes such as suicide, sexual abuse, incitement to use drugs or content violating personal rights.

Although there is no specific regulation regarding the violation of IP rights in the Internet law, it is a guide for us in terms of general definitions and liability. According to this law, although the hosting provider is not obliged to check the content it hosts or to investigate whether there is an illegal activity, it is obliged to take down illegal content if it is informed of a violation.

In 2015, Law 6563 on the Regulation of Electronic Commerce (e-commerce law) entered into force. The spread of e-commerce applications with developing technology made it necessary to establish a legal regulation in this area, and the e-commerce law has been enacted in order to transfer Directive 2000/31 on certain legal aspects of information-society services — in particular electronic commerce in the internal market — into Turkish law.

In the initial version of the e-commerce law, the intermediary service providers were not obliged to control the content provided by real and legal persons using their platforms, or to investigate any suspicious activity or situation related to the content and goods or services subject to the content in parallel with the principle in the Internet law.

With the new e-commerce law (No 7416), a comprehensive change has been made to Article 9 entitled "obligations of intermediary service providers", including the title of the provision. Following this change, the title of Article 9 was changed to "illegal content". Unless there is a contrary provision in other laws, the general principle is that the intermediary service provider is not responsible for the illegality of the content offered by the service provider. Nevertheless, it is obliged to remove the content and to report the illegal issue to the relevant public institutions and organisations without delay, if it becomes aware of the illegality of the content.

In the third paragraph of Article 9, the subject of violation of IP rights is specifically regulated; the intermediary service provider is obliged to take down the product subject to the complaint, upon the rights owner's complaint based on information and documents regarding violation of IP rights. If an objection is made to the complaint, the intermediary service provider will republish the product subject to the complaint. Although it has been foreseen that the complaint and objection should include the clear identity and address information of the relevant parties, information about the product in dispute, reasons for the removal of the product from publication or the necessity of republishing it, and other issues determined by the regulation, a regulation complementing the law has not yet been issued.

If the illegal content is not removed upon complaint, or if the content is not republished despite being proved to be legal, the intermediary service provider will be subject to an administrative fine from 10,000TL to 100,000TL for each violation.

It is envisaged that this fine will be a deterrent, and that the specific regulation on the violation of IP rights in the law will motivate e-commerce sites to continue their activities in accordance with the law.

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## Mutlu Yıldırım Köse

Author | Partner

[mutlu.yildirim@gun.av.tr](mailto:mutlu.yildirim@gun.av.tr)

Gün + Partners

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## Dilan Sıla Kayalıca

Author

Gün + Partners