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New Legislation on IP Infringement on e-Commerce Platforms

Law No. 7416, amending E-Commerce Law came into effect on January 01, 2023. This law obliges e-commerce platforms to take down a product if they receive a legitimate complaint alleging that a violation of intellectual and industrial property rights has occurred on their platform.

According to Law No. 7416, the general principle is that the intermediary service provider (i.e., the platform) is not responsible for the illegality of the content offered by the service provider. Nevertheless, it is obliged to take down a product upon a complaint by the right owner based on information and documents regarding the violation of IP rights.

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

A regulation complementing Law No. 7416 also came into effect as of January 01, 2023. According to this regulation:

- Complaints alleging IP rights infringement must be made to the platforms through their internal communication system – which the platforms will establish- or Notary Public or Registered Electronic Mail, and shall include:
 - a registration certificate demonstrating the complainant's ownership of that IP right;
 - o the identification and communication information of the complainant;
 - o a power of attorney (if the complaint is filed by proxy);
 - explanations and evidence to prove that the product complained of infringes the complainant's rights;
 - the internet address hosting the product complained of; and
 - a statement that the complainant will be responsible for any damages that may arise if the information and documents submitted within the complaint are incorrect.
- If the complaint does not meet the above conditions, the intermediary service provider will not process the complaint and shall inform the complainant of the deficiencies.
- The intermediary service provider will remove the product complained of within 48 hours of receiving the complaint and will inform the complainant, as well as the service provider.



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- An objection against the complaint must be made to the intermediary service provider through its internal communication system, or via a notary public or registered electronic mail, and will include:
 - the identification and communication information of the objecting party;
 - o a power of attorney (if the objection is filed by proxy);
 - explanations and evidence to prove that the product complained of does not infringe the complainant's rights;
 - documents, such as invoices and license agreements, demonstrating that the products complained of is an original and/or has been placed on the market with the authorization of the IP rights holder; and
 - o a statement that the objecting party would be responsible for any damages that may arise if the information and documents submitted within the objection are incorrect.
- If an objection does not meet the above conditions, the intermediary service provider will not process the objection and will inform the objecting party of the deficiencies
- If it is clear that the objection is rightful based on the information and evidence provided, the intermediary service provider will republish the product complained of within 24 hours of receiving the objection and will inform the objecting party, as well as the IP rights holder. The intermediary service provider will not process repeat complaints regarding the same product, unless new documents proving the infringement are submitted by the complainant.

The regulation clarifies how IP rights holders may file complaints with e-commerce platforms, as well as how objections to such complaints may be filed in return. It aims to provide a balanced, predictable and speedy procedure to protect IP rights against infringement on e-commerce platforms.

However, ambiguities regarding the procedure may still create problems in practice. For instance, while the internal communication system to be established by intermediary service providers would create a simple and functional tool to file complaints and objections, it remains to be seen whether such a system would fulfil the burden of proof.

On the other hand, intermediary service providers have a very limited period of time to take action upon receiving complaints and objections. Although these limits seek to ensure that complaints and objections are examined quickly, they will probably prove to be very challenging for intermediary service providers, and may call into question the depth and accuracy of the platforms' analysis on the merits of issues.



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Also, it should be noted that this procedure does not prevent parties from resorting to administrative and judicial bodies. Nevertheless, it seems that the complaint procedure would enable fast solutions and help rights holders to take down infringing products very quickly.

In fact, this fast-track complaint procedure for IP rights infringements is only a small part of a substantial change in the e-commerce legislation, which can be taken generally as a set of preventative and conservative rules. Upon request of a well-known e-commerce platform, the Council of State issued a stay order and administrative proceedings are currently pending. But it is still possible to request removal of content infringing IP rights based on the basic regulation concerning the responsibilities of e-commerce sites regarding the content that they host was included in Law No. 5651 on the Regulation of Internet Broadcasts and Prevention of Crimes Committed Through These Broadcasts (Internet law).