



8.3.2021

NOTICE TO MEMBERS

Subject: Petition No 0671/2020 by I.D.C (Italian) on breach of intellectual property rights by Facebook

1. Summary of petition

The petitioner reports a breach of intellectual property rights by Facebook (FB) concerning a book of fiction he wrote and had initially promoted on that social network by setting up a page and special profile. Having been disappointed with FB's sponsorship, he decided to stop publishing its content on his FB page and modified his website on the book to remove all reference to it in his personal data on FB. To his surprise, FB reportedly violated his intellectual property rights (copyright and image rights) by publishing, for a fee, content taken from the book's new website (including the slogan used to advertise it). He reports that unauthorised use of content covered by his copyright and image rights was made on three occasions during the COVID-19 emergency, during which, he claims, FB took advantage of the fact that his attention was diverted by the ongoing health crisis.

2. Admissibility

Declared admissible on 28 September 2020. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 8 March 2021

The Commission pays special attention to the protection of intellectual property rights, including the copyright of the author of a literary work.

Under the EU copyright rules, notably under Articles 2, 3 and 4 of Directive 2001/29/EC¹ on

¹ 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.

Copyright in the Information Society, when a work is protected by copyright, the author of the work enjoy exclusive rights to authorise or prohibit specific uses of such work. These rules have been complemented and updated by Directive 2019/790 on copyright in the Digital Single Market², which however has not yet been implemented in national law (its implementation deadline is 7 June 2021).

In addition, pursuant to Article 14 of the Electronic Commerce Directive³, hosting service providers are exempted from liability for the information stored at the request of a recipient of the service, under certain conditions, notably that upon obtaining knowledge or awareness of the illegal content, they act expeditiously to remove or to disable access to illegal content. The Commission, in its Recommendation⁴, has set general guidelines for effective action against illegal content spread through online platforms and clarified the reasonable measures platforms are recommended to take.

In relation to the protection of personal data, the General Data Protection Regulation (EU)⁵ provides that any processing of personal data requires a legal basis. Potential legal bases in this situation are either processing of personal data on the basis of consent or if necessary for the performance of a contract to which the data subject is party (Article 6(1)(a) and (b)).

The application of the above legal framework requires a case by case assessment, based on the factual elements of each case. The Commission cannot take specific and direct measures with regard to the issues flagged by the petitioner.

The petitioner is advised to take action at national level, if relevant by bringing the case before national courts. If the petitioner sees a violation of his right to protection of personal data, the petitioner could also consider sending a complaint to the Italian data protection authority.

Conclusion

The Commission has no basis to take specific and direct measures with regard to the issues flagged by the petitioner.

² 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 (Text with EEA relevance.), OJ L 130, 17.5.2019, p. 92–125.

³ 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'), OJ L 178, 17.7.2000, p. 1–16.

⁴ C(2018) 1177 final; <https://ec.europa.eu/digital-single-market/en/news/commission-recommendation-measures-effectively-tackle-illegal-content-online>

⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), OJ L 119, 4.5.2016, p. 1–88.