Chapter 20
Liability of Hosting Provider with Regard to Open Libraries

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ABSTRACT

Internet allows free access of information to anyone, without any particular quantitative, temporal or geographical restriction. At the same time, the use of Web 2.0 technologies allows users to offer their personal contributions in order to enrich projects, such as the renowned “open libraries’” project. However, the emergence of “open libraries’, which is much related to the concept of the so called “User Generated content”, may give rise to several types of copyright infringement by reason of impairing one or more of the original author’s exclusive rights. In addition, Internet Service Providers may facilitate users’ infringing activities by offering either a mere access to the net or by providing them with hosting services for various actions to take place that may be properly characterized as copyright infringements by the applicable copyright law. In the abovementioned context, this chapter examines the issue of whether an Internet Hosting provider could be held liable for copyright infringement in terms of any content originated by the user, especially in relation to an open library, by offering a deeper understanding on the rules governing ISP’s liability in the USA and the EU. The author attempts to describe the main recent developments taken place in this area of law and conclude on the most important differences between the US and the EU legal order.

INTRODUCTION

Understanding the legal issue of a host provider’s liability in the context of an open library is, by itself, a difficult task. The reason seems to be very simple: in order for a person to be held liable in any jurisdiction worldwide, an action, omission or a forbearance has to be committed (or just to take place) that may be properly characterized as an “infringement” by the applicable law. Such “infringement” in the digital world of an open library is primarily connected to the laws of Intel-
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