

The Violations of Industrial and Intellectual Property Rights on E-Commerce Platforms Have Been Regulated For The First Time

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The Regulation on E-Commerce Intermediary Service Providers and E-Commerce Service Providers ("Regulation") was published in Official Gazette dated 29 December 2022 and numbered 32058.

Most of the E-Commerce Regulation's provisions are effective as of 1 January 2023, while remaining provisions will enter into force gradually. The Regulation aims to define the procedures and principles concerning the operations and supervision of e-commerce service providers and e-commerce intermediary service providers and concerning commercial relations between them, for ensuring the fair and effective competitive environment and development of electronic commerce.

Besides, the Regulation mainly focuses on the e-commerce area that needs up-to-date legal regulations due to the rapidly developing nature of e-commerce, also bears regulations related to violations of intellectual and industrial property rights.

The intellectual property related issues, which are regulated between the articles 12 and 14 of the Regulation, can be summarized as follows:

- It is possible to file a complaint against a violation of intellectual and industrial property rights. The application and relevant documents enlisted in the Regulation shall be submitted to the relevant e-commerce intermediary service provider.
- E-commerce intermediary service provider shall remove the goods subject to complaint from the relevant platform within 48 hours following the receipt of the complaint and shall inform the e-commerce service provider and right holder.
- Although it is possible to object the complaint, it is expected for the submission of relatively more solid explanations and evidence at this stage. In that manner, the invoices or equivalent documents proving the originality of the goods and agreements, other documents and evidence indicating the right holders retrospectively or other individuals supplying the goods to the market under authorization of right holder may be used.
- In cases where the rightfulness of e-commerce service provider's objection is clearly determined, e-commerce intermediary service provider will re-publish the good subject to complaint in the platform within 24 hours following the receipt of objection and shall immediately inform e-commerce service provider and right holder.

- Unless additional documents proving intellectual and industrial property rights are submitted, e-commerce intermediary service provider shall not process any further complaints about the same product and same claim, and will inform the complainant in that regard.
- The examination conducted by e-commerce intermediary service provider shall be limited to examination of information and documents supplied by e-commerce service provider.

Furthermore, the Regulation has not been limiting the parties' right to seek judicial/administrative remedies by explicitly indicating that "The relevant individuals right to apply to administrative and judicial authorities has been preserved".

With this Regulation, the violations of intellectual and industrial property rights on e-commerce platforms are regulated in the legislation, in a manner that providing an effective solution. Until now, there was no specific regulation on violation of rights on online platforms; an possible violations and liabilities have been regulated partially -under relevant sections- in the Law numbered 5651 on the Regulation of Publications on the Internet and the Suppression of Crimes Committed by Means of Such Publications ("Internet Law"), Turkish Copyright Law numbered 5846, Industrial Property Law numbered 6769, Turkish Commercial Code numbered 6102, and Code of Obligations numbered 6098.

Even if it is unknown how the practice will evolve around the Regulation; the existence of such regulation can be evaluated as beneficial at first glance for fulfilment of existing shortcomings and obtainment of outcomes faster.

To briefly mention due to its importance; under the Internet Law, the obligations/liability balance and several notions in electronic/online platforms have been regulated. Correspondingly, pursuant to Internet Code; "hosting service provider shall remove the unlawful content it provided given that it is notified in accordance with article 8 and 9 of this Law.". The method is known as "warn & remove" in practice; and accordingly, the relevant hosting service provider is obliged to remove illegal content after being notified. The service provider, not having any obligation to search, know and initiate comprehensive research on the content of the violation, shall limit its activities to technical contribution. Nonetheless, since there has not been any specific regulation on determination of relevant content's illegal character by the relevant hosting service provider or on the character of notification to be made to hosting service provider, "warn & remove" method has not been providing the positive and quick results as expected.

The Regulation can be seen as first detailed and written regulation on these practices, which are based on general legislations and case law.

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