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Uneducating Copyright: Member States Can Choose Between "Full Legal Certainty" and Patchworked Licensing Schemes for Digital and Cross-Border Teaching Activities 669

The Directive on Copyright in the Digital Single Market supplements the existing exception for teaching of the Information Society Directive. The new exception focuses on digital and cross-border teaching, but fails to provide a legal framework that ensures full legal certainty and addresses the concerns of those engaged in teaching.

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In *Glawischnig-Piesczek* (C-18/18), the CJEU has been asked to provide guidance on the breadth and scope of art.15 of the E-commerce Directive, and thereby address the removal obligations of an online intermediary (eligible for the hosting safe harbour) as arising from an injunction obtained against it. In his Opinion, AG Szpunar advised that art.15 does not prohibit a court from ordering an intermediary to seek out and remove all content identical to that found illegal in relation to all users of its platform, as well as content equivalent to that found illegal, though the latter only in relation to the original user/poster. Equivalent information disseminated by other users should be removed when an intermediary becomes aware of it through a notification made by the concerned person, third parties or another source (as art.14 of the E-commerce Directive in any event envisions). The Opinion also submits that, in principle, a court or authority considering an application for an injunction based on an unharmonised national right might order removal worldwide. Like AG Szpunar's Opinion, this contribution submits that national courts or authorities should undertake a close scrutiny when issuing injunctions against intermediaries, envisage time limitations for them, and monitor their effects. This said, the approach recommended in relation to the material and personal scope of removal obligations might be hardly workable in practice without also entailing a general monitoring obligation on the side of the relevant intermediary. In any case, it should be possible for the subject who posted the original information found illegal, users of the services provided by the intermediary targeted by the injunction, and the intermediary alike to intervene to vary or discharge the order issued. In addition, the potential availability of worldwide injunctions based on unharmonised rights—as envisaged in the Opinion—is problematic, also from a policy standpoint. As such, it should be considered extrema ratio.

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A Decade of Fair Balance Doctrine, and How to Fix It: Copyright versus Fundamental Rights before the CJEU from *Promusicae* to *Funke Medien*, *Pelham* and *Spiegel Online* 683

From *Promusicae* to date, the fair balance test has evolved into an articulated, sector-specific doctrine, but loopholes have still affected its reliability and consistency over time. This article sketches the evolution of the fair balance case law, draws a conceptual map schematising the key elements of the doctrine, identifies its gaps, and illustrates how the CJEU can fix them, commenting on this basis on the recent AG Opinions and decisions in *Funke Medien*, *Pelham* and *Spiegel Online*.

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