REPUBLIC OF TÜRKİYE

ANKARA UNIVERSITY

GRADUATE SCHOOL OF SOCIAL SCIENCES

DEPARTMENT OF INTELLECTUAL PROPERTY RIGHTS, TECHNOLOGY POLICIES AND INNOVATION MANAGEMENT

LIABILITY OF PLATFORMS FOR ONLINE TRADEMARK INFRINGEMENT IN THE LIGHT OF EMERGING TECHNOLOGIES

Master's Thesis

Zülal KARAGÜLMEZ

Ankara, 2026

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<u>JURY MEMBERS OF THE THESIS</u>

1- Prof. Dr. Arzu Oğuz

2- Assoc. Prof. Dr. Hüseyin Can Aksoy

3- Dr. Cemre Çise Kadıoğlu Kumtepe

<u>Date of the Thesis Defense</u>

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ANKARA UNIVERSITY

To the Directorship of the Graduate School of Social Sciences

I hereby declare that all information in my master's thesis entitled **“LIABILITY OF PLATFORMS FOR ONLINE TRADEMARK INFRINGEMENT IN THE LIGHT OF EMERGING TECHNOLOGIES (Ankara, 2026)”,** which I prepared under the joint supervision of **Assoc. Prof. Dr. Zehra ÖZKAN ÜNER** and **Prof. Dr. Arzu OĞUZ,** has been collected, presented and submitted in compliance with academic rules and ethical conduct principles. As required by these rules and principles, I have fully indicated and cited all sources that are not original to this work. I also declare that I have acted according to scientific research and ethical rules during the study process, and if it is proven otherwise, I will accept all legal consequences.

10.08.2026

Zülal KARAGÜLMEZ

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Zülal Karagülmez

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LIST OF ABBREVIATIONS

TRIPS: Trade-Related Aspects of Intellectual Property Rights

WIPO: World Intellectual Property Organization

OECD: Organisation for Economic Co-operation and Development

CJEU: Court of Justice of European Union

Digital Services Act: DSA

Digital Market Act: DMA

EU: European Union

US: United States

UK: United Kingdom

U.S.C.: United States Code

ACPA: Anticybersquatting Consumer Protection Act

CDA: Communications Decency Act

DMCA: Digital Millennium Copyright Act

EUTMD: EU Trademark Directive

EUTMR: EU Trademark Regulation

GDPR: General Data Protection Regulation

P2B Regulation: Platform-to-Business Regulation

IPL: Industrial Property Law No. 6769

ISP: Internet Service Provider

ISSP: Information Society Service Providers

VLOPs: Very Large Online Platforms

ECISP: Electronic Commerce Intermediary Service Provider

ECSP: Electronic Commerce Service Provider

IP Adress: Internet Protocol Address

NFT: Non-Fungible Tokens

AI: Artificial Intelligence

gTLD: Generic Top-Level Domains

ccTLD: Country-Code Top-Level Domain

DAO: Decentralized Autonomous Organization

VeRO Programme: Verified Rights Owner Programme

C2C: Consumer-to-Consumer

B2C: Business-to-Consumer

B2B: Business-to-Business

IPP: Intellectual Property Protection

IACC: International Anti-Counterfeiting Coalition

AACA: Alibaba Anti-Counterfeiting Alliance

ICANN: Internet Corporation for Assigned Names and Numbers.

UDRP: Uniform Domain Name Dispute Resolution Policy

ADR: Alternative Dispute Resolution

TRABIS: TR Network Information System

BTK: Information and Communication Technologies Authority

INTRODUCTION

Trademarks have a history as long as commerce itself. Emerging prominently through the functions they perform, such as advertising, resolving ownership disputes, and providing quality assurance, trademarks have, since their inception, become indispensable tools of trade.

The advent of the internet, however, has transformed trademarks in both advantageous and challenging ways. On the positive side, the internet enables both consumers and trademark owners to reach across the globe. Trademark owners, in turn, gain the opportunity to expand their market reach, while consumers can access products and services of international trademarks, allowing them not only to easily verify the origin of a product but also to assess the trademark's reputation and quality within its target customer base with a single click. In this sense, the internet can be said to reduce both informational and transactional costs for the parties involved.

Conversely, the internet's inherent characteristics have significantly expanded the scope of traditional trademark rights and forms of infringement, which were previously constrained by geographic boundaries. Features such as user anonymity, rapid dissemination, and the ability to continue infringing through servers located in different jurisdictions can, at times, render online trademark infringements particularly burdensome for both trademark owners and consumers.

Nowadays, online platforms have become one of the primary environments in which trademark infringements frequently occur due to their dominant position within the internet ecosystem. These platforms are generally defined as digital services that provide services through the internet, facilitate interactions between at least two distinct but interdependent categories of users, and aim to create value for at least one of these user groups. However, as will be examined in detail in Chapter two of this thesis, platform structures have undergone continuous transformation since their emergence within the

Internet ecosystem, acquiring new features and functionalities in response to ongoing technological developments. Therefore, no universally accepted, uniform, and consistent definition of these structures has yet been established at the international level.

Online platforms are generally identified and classified according to the services they provide. Within the scope of this thesis, the platforms that have primarily emerged in judicial decisions concerning platform liability for online trademark infringements include search engine platforms, online marketplace platforms, social media platforms, and NFT marketplaces. Therefore, this thesis does not limit its analysis of platform liability solely to online marketplace platforms, which are frequently addressed in the literature, but also encompasses different types of platforms. Accordingly, the concept of "online platform" is adopted as a broader and more appropriate umbrella term capable of accommodating various platform models and adapting to different technological developments.

Discussions concerning the liability of online platforms generally focus on whether the relevant platform has played an active role in relation to the detection, removal, and prevention of the reappearance of trademark-infringing content available on its services. At the same time, due to the inherently cross-border nature of platform services, platform liability constitutes a legal issue that requires solutions at an international level. Nevertheless, no uniform and consistent international approach has been established to date. Instead, fragmented and region-specific approaches have emerged.

Among these approaches, the legal frameworks of the United States (US) and the European Union (EU) constitute the primary reference points, although they demonstrate both internal differences in approach and areas of convergence and divergence in practice. In addition to these two approaches, the position of Türkiye regarding this issue presents a distinct example. Although certain similarities with the EU framework can be observed due to the harmonisation process, particularly in terms of legislative developments, Türkiye has developed its own approach shaped by its specific legal and institutional context. In this regard, in order to understand the different approaches adopted towards platform liability, this thesis comparatively examines the legal frameworks of these three jurisdictions.

On this basis, this thesis seeks to answer the following main research question: How is platform liability for online trademark infringements conceptualised and regulated within the three jurisdictions, and to what extent are these regulatory approaches sufficient for determining platform liability in relation to existing and emerging forms of infringement arising from the development of the internet and new technologies?

In order to answer this central research question, this thesis is structured around four main objectives:

1. What are the different manifestations of trademark infringements in the online environment, what enforcement mechanisms are available to right holders in combating these infringements, and what challenges do they encounter?
2. How is the legal liability of online platforms conceptualised and regulated within the three jurisdictions examined?
3. What are the strengths and weaknesses of the approaches adopted in these three jurisdictions in relation to platform liability?
4. Are the existing legal approaches sufficient to determine platform liability in relation to newly emerging forms of infringement arising from technological developments?

Accordingly, the thesis consists of two main chapters. The first chapter examines trademark rights and the relevant legal regulations in order to determine the scope of trademark protection. Within this framework, various forms of trademark infringement observed in relation to platforms will be analysed, together with the ways in which such infringements differ from traditional infringements and the challenges arising in combating them. The second chapter examines the evolving structures of platforms within the contexts of Web 1.0, Web 2.0, and Web 3.0, introduces the concept of the platform, and subsequently analyses the legal regulations concerning platforms within the three jurisdictions. It further addresses the conditions under which online platforms may benefit from exemptions from liability for trademark infringements and the circumstances under which their liability may arise. At this point, it should be noted that the notion of platform liability within the scope of this study is limited to civil liability. Finally, the thesis examines the prominent forms of injunctive relief applied to platforms within the three jurisdictions in the context of preventing infringements. In the conclusion, the findings reached with respect to the US, the EU, and Türkiye will be summarised, the weaknesses within each of the three jurisdictions will be identified in a comparative framework, and an assessment will be provided regarding the legal approach that should be adopted in this field.

CHAPTER ONE

CONCEPTUAL AND LEGAL FOUNDATIONS OF TRADEMARKS IN THE DIGITAL AGE

I. CONCEPT, OVERVIEW OF THE LEGAL FRAMEWORK AND SCOPE OF TRADEMARKS IN THE DIGITAL AGE

A) CONCEPT AND DEFINITION OF TRADEMARKS

A trademark has broadly been described as a sign that enables goods to be associated with a particular undertaking and distinguished from those of competing undertakings[1]. The concept of a trademark is characterized by distinct features, with legal regulations and doctrinal interpretations playing a determining role in its formulation.

Contemporary legal definitions generally favor non-restrictive formulations. Under the US law, a trademark is defined as any word, name, symbol, device, or any combination thereof, used by a company to identify the source of a product or service and to distinguish it from goods or services produced and offered by competitors[2]. Similarly, within the legal frameworks of the EU[3] and Türkiye[4], trademarks are described as any

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[1] *Intellectual Property Handbook*, (Switzerland: World Intellectual Property Organization (WIPO), 2004), 68.

[2] Lanham Act §45, for further information see "*B.Overview of the Legal Framework of Trademark*".

[3] Article 4 of European Union Trademark Regulation 2017/1001 (EUTMR) and Article 3 of European Union Trademark Directive 2015/2436 (EUTMD), for further information see "*B.Overview of the Legal Framework of Trademark*".

[4] Article 4 of the Industrial Property Law No. 6769, for further information see "*B.Overview of the Legal Framework of Trademark*".

signs serving to distinguish the goods or services of one undertaking from those offered by others and also eligible for registration. This legal construction, framed by statutory regulations, operates on the principle that indicators with specific characteristics within commercial use are isolated and assigned for the use of a particular entity. In this context, trademarks not only signal to consumers that products originate from a single source but also provide legal protection against imitation, thus helping to differentiate the goods and services in the eyes of the public[5].

Beyond being a legally assigned right to a trademark owner, the concept of a trademark constitutes one of the indispensable elements of commercial life and holds significant importance for both producers and consumers. For producers, trademarks help differentiate their products from similar offerings, creating goodwill and facilitating competition by allowing businesses to attract customers based on the quality of their goods or services[6]. For consumers, trademarks serve as a mechanism to convey information embedded in the producer regarding the product or service, thereby reducing information asymmetry[7]. In this regard, for consumers with limited capacity to conduct comprehensive research on the origin, characteristics, or quality of a product, trademarks

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[5] Christine Haight Farley, "Trademarks in an Algorithmic World," *Trademark Reporter* 114, no. 6 (2024): 1132.

[6] Graeme B Dinwoodie, "The Function of Trademarks in the United States," in *The Cambridge Handbook of International and Comparative Trademark Law*, ed. Irene Calboli and Jane C. Ginsburg (Cambridge: Cambridge University Press, 2020), 179.

[7] Nicholas S Economides, "The Economics of Trademarks," *Trademark Reporter* 78 (1988): 526.

function as a practical substitute for such research, lowering search costs and facilitating the purchasing process[8].

In general, the concept of a trademark has historically been grounded on these foundations. However, this approach explaining early uses of trademarks gradually proved insufficient and was subsequently reformulated in light of evolving patterns of use reflected in judicial decisions and doctrinal analyses. Nevertheless, it is argued that these assessments still fail to fully capture the contemporary dimensions of the trademark concept[9].

Changing market structures and the diverse uses of trademarks that have emerged alongside them have extended the concept beyond merely indicating the source or reducing search costs. Indeed, to reflect this transformation in terminology, it is often noted that the term "brand[10]" is deliberately preferred over "trademark[11]." Today, the concept of a trademark has evolved into a multifaceted construct that not only conveys information, quality, or past experience associated with a product, but also reflects the status, preferences, and desires of its users[12].

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[8] William M Landes and Richard A Posner, "Trademark Law: An Economic Perspective," *The Journal of Law and Economics* 30, no. 2 (1987): 269.

[9] Farley, "Trademarks in an Algorithmic World," 1138.

[10] In marketing literature, a brand has been defined as a reputational asset that, over time, has been developed through effort and investment, encompasses a set of values and attributes, and has become a set of beliefs strongly embraced by consumers. For further details, see Peter J Urwin et al., *Valuing Brands in The UK Economy*, Westminster Business School, University of Westminster (London: British Brands Group, 2008), 9.

[11] Farley, "Trademarks in an Algorithmic World," 1177.

[12] Farley, "Trademarks in an Algorithmic World," 1177-78.

B) OVERVIEW OF THE LEGAL FRAMEWORK OF TRADEMARK

The value that the concept of a trademark has acquired from its initial use to the present has been greatly reinforced by the protection provided through legal frameworks established at the international, regional, and national levels. In this context, international regulations have provided a general framework for national and regional legislation, while efforts at the national and regional levels have aimed to ensure a more uniform application of trademark protection.

1. International

Trademark law began to modernize with the rise of international trade during the Industrial Revolution[13]. This process of globalization brought with it various international regulations in the field of trademark law. In this context, the first significant instrument was the Paris Convention of 1883[14]. Considered the foundation of international trademark protection[15], the Convention, which currently has 181 contracting parties, including the

[13] Sara Sachs, "Trademark Infringement: The Likelihood of Confusion of NFTs in the US and EU," *Brooklyn Journal of International Law* 49, no. 1 (2023): 338.

[14] Irene Calboli, "Trademarks: International Harmonization of National Laws," *Texas A&M University of Law Legal Studies Research Paper No:24-48* (2023): 3, https://doi.org/10.2139/ssrn.4665910.

[15] Sam Ricketson, "The Trademark Provisions in the Paris Convention for the Protection of Industrial Property," in *The Cambridge Handbook of International and Comparative Trademark Law*, ed. Irene Calboli and Jane C. Ginsburg (Cambridge University Press, 2020), 26.

US, the 27 Member States of the EU, and Türkiye[16], established principles such as national treatment[17], the right of priority[18], and the independence of trademark protection[19]. These and similar provisions under the Convention formed the basis for numerous subsequent international agreements[20].

By introducing an internationally recognised system for the classification of goods and services, the Nice Agreement contributed to the development of a more systematic

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[16] World Intellectual Property Organization (WIPO), "WIPO-Administered Treaties," accessed 25.07.2026, https://www.wipo.int/wipolex/en/treaties/ShowResults?search_what=C&treaty_id=2.

[17] The principle of national treatment is that a state grants foreign nationals or foreign residents the same rights and advantages that it provides to its own citizens. For more detailed information, see "Paris Convention for the Protection of Industrial Property," Wikipedia, The Free Encyclopedia, accessed 12.02.2025, https://en.wikipedia.org/wiki/Paris_Convention_for_the_Protection_of_Industrial_Property.

[18] The priority right means that the filing date of the first application made in a contracting state is also considered valid and takes precedence for subsequent applications filed in another contracting state within six months. For more detailed information, see "Paris Convention for the Protection of Industrial Property."

[19] The principle of the independence of trademark protection means that the decision on whether a trademark will be protected within the borders of a particular country depends on the initiative of that country. For more detailed information, see "Paris Convention for the Protection of Industrial Property."

[20] Sachs, "Trademark Infringement: The Likelihood of Confusion of NFTs in the US and EU," 338.

and efficient framework for trademark protection worldwide[21]. The Madrid System, encompassing the Madrid Agreement of 1891 and the Madrid Protocol of 1989, established a framework facilitating international trademark registration and protection across various regions, including the EU and the US[22].

Finally, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), concluded in 1995, is also of considerable importance as it clarified global minimum standards for trademark rights following the Paris Convention[23]. In addition to confirming the fundamental principles established by the Paris Convention[24], TRIPS addresses comprehensive issues such as the definition of a trademark, examples of signs that can constitute a trademark, likelihood of confusion, and combating counterfeiting,

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[21] "International (Nice) Classification of Goods and Services," Wikipedia, The Free Encyclopedia, accessed 20.08.2025, https://en.wikipedia.org/wiki/International_(Nice)_Classification_of_Goods_and_Services.

[22] "A History of Trademarks: From the Ancient World to the 19th Century," WIPOD-International Trademark System Talks: Transcript of Episode 1, WIPO, accessed 17.02.2025, https://www.wipo.int/en/web/podcasts/madrid/transcripts/international_trademark_system_talk_01#:~:text=Evidence%20suggests%20that%20the%20first,of%20flour%20to%20protect%20consumers.

[23] "Overview: the TRIPS Agreement," World Trade Organization, accessed 12.01.2025, https://www.wto.org/english/tratop_e/trips_e/intel2c_e.htm.

[24] See article 2 of TRIPS.

thereby establishing a more predictable, consistent, and robust global framework for the protection of trademarks under TRIPS[25].

2. Regional (EU)

The EU, whose primary objective is to create a single market within the Union where goods, services, capital, and persons can move freely[26], has also established the legal framework for trademark law in line with this goal. Within this framework, the European Commission initiated a project to establish a "Community Trade Mark" registration system, aiming to provide simultaneous exclusive protection across all member states[27]. Initially, a Trademark Directive was adopted to harmonize the national laws of the member states[28], followed by the enactment of the Community Trade Mark Regulation[29]. However, due to changing market conditions over time, neither the Directive nor the Regulation retained their original forms; both instruments have been revised multiple times to maintain their relevance and effectiveness.

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[25] Vanshik Datta and Dawood Drabu, "The Impact of TRIPS Agreement on International Trademark Regime," *International Journal of Law Management & Humanities* 6, no. 4 (2023): 1086.

[26] "European Single Market," Wikipedia, The Free Encyclopedia, accessed 20.08.2025, https://en.wikipedia.org/wiki/European_single_market.

[27] Luis-Alfonso Duran, "The New European Union Trademark Law," *Denver Journal of International Law & Policy* 23 (1995): 489.

[28] Council Directive 89/104/EEC of 21 December 1988 to Approximate the Laws of the Member States Relating to Trade Marks, O.J. L 40/1 (11 February 1989)

[29] Council Regulation 40/94 of 20 December 1993 on the Community Trade Mark, 1994 O.J. L 11/1 (14 January 1994).

The European Union Trademark Directive 2015/2436 (EUTMD)[30] and the European Union Trademark Regulation 2017/1001 (EUTMR)[31] are the Directive and Regulation currently in force, respectively. Notably, the provisions of the Directive largely overlap with the arrangements set out in the Regulation. This alignment has significantly contributed to the convergence of national legal systems among the member states[32]. Both instruments are fundamentally based on the principle of protecting trademarks through registration[33]. However, this framework does not preclude recognition of protection based on use as provided under national laws[34]. The most authoritative and decisive source for interpreting and understanding the legal framework established under EU trademark law is the case law of the Court of Justice of the European Union (CJEU), which is rendered both in response to objections concerning the registration or invalidity of EU trademarks and to preliminary ruling requests submitted by national courts when questions arise regarding the interpretation of Directive or Regulation provisions in trademark infringement cases or other disputes. It should be emphasized that CJEU decisions are legally binding, and national practices, procedural

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[30] Directive (EU) No. 2015/2436 of the European Parliament and of the Council of 16 December 2015 to Approximate the Laws of the Member States Relating to Trade Marks, O.J. L 336/1 (23 December 2015).

[31] Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union Trade Mark, O.J. L 154/1 (16 June 2017).

[32] Annette Kur, "The EU Trademark Reform Package-(Too) Bold a Step Ahead or Back to Status Quo?," *Marquette Intellectual Property Law Review* 19, no. 1 (2015): 21.

[33] Article 10 of EUTMD and Article 9 of EUTMR.

[34] Kur, "The EU Trademark Reform Package-(Too) Bold a Step Ahead or Back to Status Quo?," 21.

traditions, or domestic legal interpretations are secondary in relation to the Court's authoritative case law[35].

3. National

a) US

Trademark law in the US dates back to the founding of the country[36] and was developed for a long period within the framework of common law[37]. As a result, there was initially no need for specific statutory regulation. However, changing market conditions, evolving consumer behavior, and inconsistent decisions across states created the need for legislation to ensure uniformity in trademark law. Although some early draft efforts were unsuccessful, the Lanham Act, grounded in constitutional authority and still in force today, was ultimately enacted in 1946[38]. While various state-level trademark laws exist today, they are largely harmonized with the Lanham Act[39].

In the US, trademark protection is essentially based on the "first-to-use" system, under which the party that first uses a mark in commerce is generally recognized as having superior rights against subsequent users of the same or similar mark[40]. However, the

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[35] Kur, "The EU Trademark Reform Package-(Too) Bold a Step Ahead or Back to Status Quo?," 22.

[36] J Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, 4th ed., vol. 3rd (Clark Boardman Callaghan, 2014), §19:8.

[37] Graeme B Dinwoodie and Mark D Janis, *Trademarks and Unfair Competition: Law and Policy*, 5th ed. (Wolters Kluwer, 2018), 10.

[38] Trade-Mark Act of July 5, 1946, 60 Stat. 428, codified as amended at 15 U.S.C. §§1051.

[39] Dinwoodie and Janis, *Trademarks and Unfair Competition: Law and Policy*, 9.

[40] Sachs, "Trademark Infringement: The Likelihood of Confusion of NFTs in the US and EU," 354.

Lanham Act established a registration system not as the source of trademark rights but as a mechanism to strengthen them, and trademark protection is primarily structured around this system[41]. Unregistered marks, meanwhile, are afforded comparable protection under the rules of unfair competition[42].

b) Türkiye

In Türkiye, trademark law began to take shape with the enactment of legal regulations in the last quarter of the nineteenth century. In this context, new legal frameworks have been established to adapt to technological developments and evolving patterns of trademark use. Within this framework, the foundations of Turkish trademark law were laid with the enactment of the 1888 “Alameti Farika Nizamnamesi” (Trademark Regulation), while a more systematic legal structure was established through the Trademark Law No. 551, which entered into force in 1965[43]. However, the major milestone in the legislative framework emerged in 1995 as a consequence of the changes and developments that occurred in the post-TRIPS era. In this context, a new phase of transformation began in the field of intellectual property law, leading to the adoption of the Decree Law No. 556 on the Protection of Trademarks[44]. The enacted regulations have particularly sought to ensure alignment with EU legislation[45]. Indeed, the primary regulation currently in force governing trademark law is the Industrial Property Law No.

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[41] 15 U.S.C. §§ 1114, 1125(a).

[42] Dinwoodie and Janis, *Trademarks and Unfair Competition: Law and Policy*, 10.

[43] Türkiye, *Trademark Law No. 551*, Official Gazette No. 11951 (March 12, 1965).

[44] Türkiye, *Decree Law No.556 on the Protection of Trademarks*, Official Gazette No. 22326 (June 27, 1995).

[45] Hayri Bozgeyik and Yakup Macit, "Türk Marka Hukukunun AB Hukuku ile Olan İlişkisi," *Süleyman Demirel Üniversitesi Hukuk Fakültesi Dergisi* 14, no. 1 (2024): 595.

6769 (IPL)[46], which was also drafted with the same objective in mind[47].As in the EU legal framework, trademark rights are based on registration[48]. Protection for unregistered trademarks has been adopted only on a limited and exceptional basis[49].

C) SCOPE OF TRADEMARK PROTECTION

Trademark protection, by its very nature, is a right of territorial scope, limited in its boundaries, and granting the owner the ability to intervene only within these limits[50]. Within this framework, each trademark is protected as a separate entity in the specific geographic area where it is registered or otherwise legally recognized[51].

In the US law, Lanham Act Section 32 determines the scope of federally registered trademark protections, whereas Section 43 determines both registered and unregistered marks. These provisions are not mutually exclusive and are generally applied in conjunction[52].

In the EU, the scope of protection is defined under Article 10 of the EUTMD. This provision establishes a structured system of protection based on three main scenarios:

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[46] Türkiye, *Industrial Property Law No. 6769*, Official Gazette No. 29944 (January 10, 2017).

[47] Cahit Suluk, Rauf Karasu, and Temel Nal, *Fikri Mülkiyet Hukuku*, 3rd ed. (Ankara: Seçkin Yayıncılık, 2019), 159.

[48] Article 7(1) of Industrial Property Law No. 6769.

[49] Article 6(3) of Industrial Property Law No. 6769.

[50] Article 16 of TRIPS.

[51] McCarthy, *McCarthy on Trademarks and Unfair Competition*, §29.01.

[52] Kelly Collins, "Intending to Confuse: Why Preponderance Is the Proper Burden of Proof for Intentional Trademark Infringements Under the Lanham Act," *Oklahoma Law Review* 67 (2014): 84.

identical signs used for identical goods or services, similar signs used for similar goods or services where a likelihood of confusion arises, and the use of identical or similar signs in relation to well-known marks irrespective of similarity of goods or services.

A broadly similar conceptual structure is also reflected in Türkiye under Article 7 of the IPL, which also adopts a tripartite distinction between identical, similar, and well-known marks like EU.

There are certain common and divergent elements in the determination of the scope of trademark protection under the legal frameworks of the three jurisdictions. These elements are of particular importance for understanding trademark infringement and the related liability analyses that will be examined in the following sections.

1. Unauthorized Use

As noted earlier, a trademark right constitutes an absolute right[53] that enables the owner to prevent certain uses without their consent[54]. However, the owner cannot prohibit every unauthorized use. For instance, under US law, uses by third parties that are made in good faith and are not misleading to the public, explained under the doctrine of "nominative fair use[55]", fall outside the scope of the trademark protection. A similar

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[53] Hayrettin Çağlar, *Marka Hukuku Temel Esaslar*, 2nd ed. (Ankara: Adalet Yayınevi, 2015), 34.

[54] Arslan Kaya, *Marka Hukuku*, 2nd ed. (Arıkan Basım Yayım Dağıtım, 2024), 476.

[55] Nominative fair use has been explained as uses that cannot be easily identified without reference to the trademark, are reasonably necessary to describe the product or service, and do not suggest sponsorship or endorsement by the trademark owner. See Margreth Barrett, "Internet Trademark Suits and the Demise of "Trademark Use"," *UC Davis Law Review* 39, no. 2 (2006): 432.

approach is applied in the EU[56] and Türkiye[57], where such uses are limited under the concept of "honest practices[58]."

2. Use in Commerce

Under the Lanham Act, the requirement of "use in commerce" is expressly defined[59]. However, since this definition applies generally to all references to "use in commerce" within the Act, it has been reinterpreted specifically in the context of trademark use. In this regard, "use in commerce" has been explained as a use by third parties in the course of selling, marketing, or advertising their own goods[60]. In this regard, different conclusions have been reached depending on the manner in which the trademark is used. For instance, the triggering of competing advertisements through an advertising software program was not regarded as a "use in commerce," as it constituted merely

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56 Article 14 of EUTMD.

57 Article 7(5) of Industrial Property Law No. 6769.

58 Within the scope of honest practice, use has been explained as falling within the framework of the duty to act fairly with respect to the legitimate interests of the trademark owner, including the use of one's name or address, the use of non-distinctive or descriptive signs, and referential use for the purpose of indicating a specific function or purpose. See Annette Kur, Thomas Dreier, and Stefan Luginbühl, *European Intellectual Property Law : Text, Cases and Materials,* 2 ed. (Cheltenham, UK: Edward Elgar Publishing, 2019), 263-67.

59 15 U.S.C. § 1127.

60 Stacey L Dogan and Mark A Lemley, "Grounding Trademark Law through Trademark Use," *92 Iowa Law Review* (2007): 1676-77.

internal use[61]. By contrast, Google's offering of third-party trademarks for bidding by advertisers under its AdWords program has been held to constitute "use in commerce"[62].

In the EU, this requirement is formulated under Article 10(2) EUTMD as "use in the course of trade" and is understood as use for the purpose of obtaining a commercial advantage[63]. Nevertheless, the existence of such an advantage does not require substantial financial gain. Indeed, in one opinion, the Advocate General stated that even the sale of more than one or two cosmetic products on an online marketplace may be regarded as falling within the scope of commercial context[64].

This requirement is also reflected in Türkiye under the expression "use in the course of trade" in Article 7(3) of the IPL. It has been described as the use of the relevant trademark in commercial activities with the aim of obtaining economic advantage[65]. Accordingly, the existence of an economic benefit serves as the determining factor. For instance, in a decision, the use of a cargo company's trademark on a website in the context of grievance and complaint posts by former employees was not considered use in

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[61] *1-800 Contacts, Inc. v. Lens.com, Inc.*, 722 F.3d 1229 (10th Cir. 2013).

[62] *Rescuecom Corp. v. Google Inc.*, 562 F.3d 123 (2d Cir. 2009); *Rosetta Stone Ltd. v. Google Inc.*, 676 F.3d 144 (4th Cir. 2012).

[63] CJEU, *Arsenal Football Club plc v Matthew Reed*, Case C-206/01, [2002] ECR I-10273.

[64] Opinion of Advocate General Jaaskinen, *L'Oréal SA and Others v eBay International AG and Others*, Case C-324/09, 9 December 2010, para.82.

[65] Zeynep Yasaman, *Türk ve Avrupa Birliği Hukukunda İnternette Marka Hakkının İhlali* (On İki Levha Yayıncılık, 2020), 16.

commerce[66]. In a separate case, however, the Court held that a teacher's use of the claimant's trademark on a website providing free educational services constituted use in commerce, on the grounds that the website also contained paid advertisements[67].

3. Use that Has a Commercial Effect

The determination of the scope of protection of trademark rights, which are inherently territorial in nature, poses particular challenges in the context of internet use. While it is relatively straightforward to establish the existence of commercial impact in cases of trademark use in physical trade, reaching the same conclusion is considerably more difficult in relation to online uses, where the boundaries are inherently diffuse. In this regard, the 2001 Recommendation published by WIPO has provided international guidance[68]. Article 2 of the relevant text links the qualification of trademark use on the internet as use in commerce to whether such use creates a "commercial effect" within the relevant jurisdiction.

Among the legal systems examined, the requirement of "commercial effect" is expressly regulated solely under the IPL. Article 7/3(d) limits the scope of protection

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[66] Judgement of the Turkish Court of Cassation (11th Civil Chamber), March 17, 2014, E. 2013/15738, K. 2014/5119, Lexpera. https://www.lexpera.com.tr (accessed March 16, 2026).

[67] Judgement of the Turkish Court of Cassation (11th Civil Chamber), September 26, 2018, E. 2018/3688, K. 2018/5727, Lexpera. https://www.lexpera.com.tr (accessed March 16, 2026)

[68] "Joint Recommendation Concerning Provisions on the Protection of Marks, and Other Industrial Property Rights in Signs, on the Internet," (World Intellectual Property Organization (WIPO), 2001).

concerning internet uses, such as in domain names[69], routing codes, keywords, or similar uses, to situations that produce a commercial effect. The existence of such an effect does not require concrete acts such as placing products on the market, sales, or delivery; rather, it is sufficient that such an impact or impression is created[70].

In the other two jurisdictions, the "commercial effect" requirement is not expressly articulated as a statutory criterion. Nevertheless, in the context of cross-border trademark disputes involving domain names and other Internet-based uses, the "commercial effect" standard articulated in the WIPO soft law instruments has served as an important interpretative guideline[71].

4. Use in Relation to Goods and Services

Use of the sign in relation to goods and services constitutes another limitation defining the scope of trademark protection. The legislative frameworks of all three jurisdictions provide various examples of such use, including use on the product itself, in commercial documents, or within commercial advertising and promotional activities.

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[69] Domain name is described as an identifying mask that renders the numerical Internet Protocol (IP) addresses, used for routing and transmitting data packets, more permanent and human-friendly. See Milton Mueller, "Technology and Institutional Innovation: Internet Domain Names," *International Journal of Communications Law and Policy* 5 (2000): 5.

[70] Hamdi Yasaman et al., *Sınai Mülkiyet Kanunu Şerhi*, 1 ed., vol. 2 (İstanbul: Seçkin Yayıncılık, 2021), 1740.

[71] Graeme B Dinwoodie, Rochelle C Dreyfuss, and Annette Kur, "The Law Applicable to Secondary Liability in Intellectual Property Cases," *New York University Journal of International Law and Politics* 42 (2009): 225.

This requirement, also known as "trademark use[72]," serves to limit the scope of protection[73]. In other words, uses by third parties that are not carried out in relation to goods or services fall outside the scope of trademark protection. In general, the assessment places particular emphasis on the relationship between the goods or services of the alleged infringer and those of the trademark proprietor in cases of unauthorised use of the mark[74].

5. Likelihood of Confusion

Under US law, this requirement depends on the trademark owner's ability to show that the alleged use is likely to mislead the relevant consumer group[75]. This assessment is carried out within the framework of multifactor tests developed by the federal circuit courts. These assessments generally focus on several core considerations, such as how similar the marks are, the extent to which the goods or services are related, whether there is proof of actual confusion among consumers, and how distinctive the claimant's mark

[72] CJEU, *Céline SARL v. Céline SA*, Case C-17/06, [2007] ECR I-07041.

[73] Martin RF Senftleben, "Keyword Advertising in Europe-How the Internet Challengers Recent Expansions of EU Trademark Protection," *Connecticut Journal of International Law* 27, no. 1 (2011): 48.

[74] Regina Nelson Eng, "A Likelihood of Infringement: The Purchase and Sale of Trademarks as AdWords," *Albany Law Journal Science & Tehcnology* 18, no. 2 (2009): 514.

[75] Collins, "Intending to Confuse: Why Preponderance Is the Proper Burden of Proof for Intentional Trademark Infringements Under the Lanham Act," 84-85.

is[76]. However, these factors do not carry equal weight, and certain factors may be determinative on their own[77].

Under EU[78] and Turkish[79] law, this requirement is assessed particularly in cases involving the use of identical or similar marks in relation to identical or similar goods or services[80]. This assessment takes into account factors such as the similarity of the signs, the degree of similarity between the goods or services, the level of attention of the average consumer, and the distinctiveness of the earlier mark[81].

Furthermore, in both legal systems is also considered likelihood of association within this framework[82]. The latter situation emerges when the relevant public understands that the goods and services do not derive from the same commercial source but nevertheless perceives a connection between the undertakings involved[83].

6. Protection of Marks with a Reputation (Well-Known Marks Doctrine)

[76] Barton Beebe, "An Empirical Study of the Multifactor Tests for Trademark Infringement," *California Law Review* 94, no. 6 (2006): 1582.

[77] Beebe, "An Empirical Study of the Multifactor Tests for Trademark Infringement," 1589.

[78] Article 10(2)(b) of EUTMD.

[79] Article 7(2)(b) of Industrial Property Law No. 6769.

[80] Kur, Dreier, and Luginbühl, *European Intellectual Property Law : Text, Cases and Materials*, 250.

[81] Yasaman et al., *Sınai Mülkiyet Kanunu Şerhi*, 1637.

[82] Kur, Dreier, and Luginbühl, *European Intellectual Property Law : Text, Cases and Materials*, 240.

[83] Çağlar, *Marka Hukuku Temel Esaslar*, 110.

Under the Lanham Act, this protection is framed as protection against trademark dilution[84]. Two main types of dilution are generally recognised: blurring, which erodes the distinctiveness of a well-known mark, and tarnishment, which undermines its reputation[85]. Within the scope of this protection, owners of well-known marks are entitled to prevent such uses without the need to demonstrate a likelihood of confusion or deception.

A comparable scope of protection has been established for well-known trademarks in both the EU[86] and Türkiye[87]. In this regard, the EU designates such marks as "marks with a reputation[88]." In both jurisdictions, the application of this extended protection is contingent upon the mark being registered and possessing a reputation. Trademarks meeting these criteria are protected, irrespective of the similarity of goods or services, against any use that takes unfair advantage of their reputation, causes detriment to their reputation or distinctive character, or creates the impression of a link in the mind of the average consumer.

7. Adverse Effect on Trademark Functions

The final factor to be placed within this part is the adverse effect on trademark functions, which, although specific to EU law, constitutes a highly determinative criterion in the CJEU decisions. Under the legislative framework, double identity infringement is regulated in Article 10 of the EUTMD and similarly in Article 7(2) of the IPL. In such

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[84] 15 U.S.C. § 1125(c).

[85] Collins, "Intending to Confuse: Why Preponderance Is the Proper Burden of Proof for Intentional Trademark Infringements Under the Lanham Act," 84.

[86] Article 10(2)(c) of EUTMD.

[87]Article 7(2)(c) of Industrial Property Law No. 6769.

[88] Article 8(5) of EUTMR.

cases, protection is considered absolute, and neither a likelihood of confusion nor any additional assessment is required.

In practice, Turkish courts have followed the statutory framework and have accepted the existence of infringement in cases of double identity without conducting any additional assessment. By contrast, the CJEU has developed an additional criterion based on the adverse effect on the functions of the trademark[89].

The functions of a trademark are generally identified as the origin function, quality function, advertising function, investment function, and communication function. The origin function extends beyond indicating the actual manufacturer of the goods and also encompasses the trademark proprietor who stands behind the product and assumes economic responsibility for it[90]. Closely connected to this function, the quality function is associated with the ability of goods or services offered under the trademark to satisfy consumer expectations and to maintain a consistent standard of quality across purchases[91]. The advertising function relates to the role of trademarks as instruments that inform and persuade consumers[92]. By contrast, the investment function concerns the ability of a trademark to establish and preserve a reputation that serves to attract

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[89] CJEU, *Arsenal v. Reed*, Case C-206/01, November 12, 2002, ECLI:EU:C:2002:651, para.51-54.

[90] Farley, "Trademarks in an Algorithmic World," 1147.

[91] Alona Yarmak, "Trade Mark Dilemmas in the Metaverse:Interplay between Stakeholders," *Journal of Intellectual Property Law and Practice* (2025): 342, https://doi.org/10.1093/jiplp/jpae118.

[92] CJEU, *Google France SARL and Google Inc. v. Louis Vuitton Malletier SA*, Joined Cases C-236/08 to C-238/08, [2010] ECR I-2417, para. 91.

consumers and promote their continued loyalty[93]. Finally, the communication function has been explained by the role of trademarks as instruments of silent communication[94] through which individuals convey their social status, preferences, and expectations[95].

Initially, the CJEU examined only whether the origin function of the trademark had been adversely affected and referred to the other functions of the trademark only indirectly[96]. However, in its subsequent decisions, the Court expressly acknowledged that adverse effects on other trademark functions may likewise give rise to trademark infringement[97].

As previously noted, in the US, cases involving double identity are not classified as a standalone category of trademark infringement. Consequently, such cases are also assessed within the framework of the likelihood of confusion analysis, and no separate inquiry is conducted as to whether the functions of the trademark have been adversely affected[98].

II. ONLINE TRADEMARK INFRINGEMENT

[93] CJEU, *Interflora Inc v Marks & Spencer plc*, Case C-323/09, [2011] ECR I-08625, para. 60.

[94] *Matal v. Tam*, 137 S. Ct. 1744, 1769 (2017).

[95] Opinion of Advocate General Mengozzi, *L'Oréal SA and Others v eBay International AG and Others*, Case C-324/09, 9 December 2010.

[96] CJEU, *Adam Opel v Autec*, Case C-206/01, January 25,2007, ECLI:EU:C:2007:55.

[97] CJEU, *L'Oréal and Others v. Bellure*, Case C-487/07, June 18, 2009, ECLI:EU:C:2009:378, paras.58-60.

[98] Barton Beebe and C Scott Hemphill, "The Scope of Strong Marks: Should Trademark Law Protect the Strong More than the Weak," *New York University Law Review* 92 (2017): 1356-57.

A) CONCEPT AND GENERAL FEATURES

Trademark infringement derives its conceptual foundation primarily from the law of torts[99]. The characterization of an act as a tort requires that a person, through fault or negligence, causes harm to another's legally protected interest or infringes upon their rights[100]. At its core, trademark infringement is rooted in tortious conduct whereby the economic value and goodwill associated with a trademark are unfairly exploited, the disruption of fair market competition, and consumers are exposed to confusion concerning the origin of goods or services[101].

The anonymity and transnational nature of the internet, coupled with the growth of e-commerce[102] activities, have facilitated both the diversification of acts constituting trademark infringement and their execution through increasingly sophisticated

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[99] The term *tort*, which is stated to be of Norman origin, means "wrong," and is used to distinguish such unlawful conduct from wrongs arising from criminal acts and contractual relationships. For more detailed information see G Edward White, *Tort Law in America: An Intellectual History* (Oxford University Press, 2003), xxiii.

[100] Iris López Martínez, "The Reconciliation of Secondary Liability for Trademark and Copyright Law Through Tort Law in Different E-Commerce Situations. a Comparative Study Between Us and EU Systems" (Master Thesis Maastricht University, 2020), 13.

[101] Landes and Posner, "Trademark Law: An Economic Perspective," 265-66.

[102] E-commerce is defined as the production, distribution, marketing and/or sale of goods and services by electronic means. For more detailed information see World Trade Organization (WTO), "Decision of the General Council," (Geneva, 1998).

methods[103]. As will be elaborated below, such infringements are more difficult to monitor than traditional trademark violations, spread more rapidly, and, if not addressed promptly and effectively, may give rise to irreparable harm for rights holders. In this context, an understanding of the nature of these emerging trademark infringements will clarify the legal basis of online platform liability, which constitutes the subject of this thesis and will be elaborated upon in the second chapter.

B) TRADEMARK INFRINGEMENTS IN DIGITAL ENVIRONMENTS AND RELATED KEY CONSIDERATIONS

1. Domain Name Infringements

The use of domain names, which constitutes an important element of trademark owners' brand utilization strategies, has been transformed into a source of revenue by infringers. Today, the overall control of domain names is carried out by the California-based non-profit organization Internet Corporation for Assigned Names and Numbers (ICANN)[104]. The fundamental principle governing domain name registrations within this framework is the "first-come, first-served" principle[105]. Nevertheless, the implementation

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[103] Peter S Sloane, Chelsea A Russell, and Christina M Sauerborn, "Trademark Vigilance in the Twenty-First Century: An Update," *Fordham Intellectual Property Media & Entertainment Law Journal* 30, no. 4 (2020): 1203.

[104] Internet Corporation for Assigned Names and Numbers (ICANN), "About ICANN," accessed 25.07.2026, https://www.icann.org/resources/pages/about-icann.

[105] Under the first-come, first-served principle, domain names corresponding to trademarks owned by others could be allocated to third parties, as there was no established understanding that trademark owners were entitled to superior rights in domain names compared to other applicants. For more detailed information see Jacqueline D Lipton,

of this principle has given rise to various forms of trademark infringement, with cybersquatting being a prominent example. In such cases, domain names incorporating third-party trademarks are registered in bad faith, usually with a view to obtaining financial advantage[106].

In the US, the Anticybersquatting Consumer Protection Act (ACPA) was introduced as an amendment to §43(d) of the Lanham Act in order to address cybersquatting practices. Unlike conventional trademark infringement claims, the relevant provision establishes a separate legal framework for domain name-related violations. Accordingly, the bad-faith registration, use, or trafficking of a domain name, together with the requirement that the domain name is identical or confusingly similar to a distinctive or famous trademark, or that it impairs the distinctiveness of such a mark (dilution), falls within the scope of infringement. In this context, the legislator deliberately refrained from requiring the traditional elements of trademark infringement, such as "use in commerce" or use in connection with goods or services[107].

With the exception of certain specific regulations adopted by some EU Member States, neither the EU nor Türkiye has introduced a specific regulation comparable to the

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"Beyond Cybersquatting: Taking Domain Name Disputes Past Trademark Policy," *Wake Forest Law Review* 40 (2005): 1386.

[106] Steven Wright, "Cybersquatting at the Intersection of Internet Domain Names and Trademark Law," *IEEE Communications Surveys & Tutorials* 14, no. 1 (2010): 197.

[107] Tomas Korman, "The Relationship between Domain Names and Trademarks" (Master Thesis Central European University, 2013), 34-35.

ACPA. Therefore, in cybersquatting disputes, claimants generally rely on trademark law provisions and unfair competition rules when asserting their claims[108].

Although the ACPA provides a comprehensive legal framework, alternative dispute resolution mechanisms have become prominent due to the fact that ACPA-based litigation is generally lengthy and costly and cannot effectively address international domain name disputes. Among these mechanisms the most widely used system is the Uniform Domain Name Dispute Resolution Policy (UDRP) developed by ICANN based on recommendations provided by WIPO.

The UDRP provides a rapid and cost-effective mechanism for resolving disputes concerning generic Top-Level Domains (gTLDs)[109] administered under ICANN's authority. Acceptance of the UDRP has been established as a mandatory requirement for domain name registrars seeking accreditation from ICANN. Accordingly, registrars are required to incorporate specific dispute resolution provisions, including the UDRP rules, into their registration agreements, while domain name registrants registering domain

108 Gökçe Hilal Aldemir, "Internet Domain Name Infringements within the Framework of Unfair Competition Law and WIPO ICANN UDRP Procedure" (Master Thesis Istanbul Medeniyet University, 2025), 129.

109 Generic Top-Level Domains (gTLDs) refer to domain names that are not associated with any specific territory and can be registered and used globally, such as .com, .net, and .org.. For more detailed information see Aldemir, "Internet Domain Name Infringements within the Framework of Unfair Competition Law and WIPO ICANN UDRP Procedure", 12-13.

names through such registrars are likewise required to accept the UDRP procedures as a condition of registration[110].

Within the EU, in addition to the UDRP procedures, a specific alternative dispute resolution mechanism Alternative Dispute Resolution (ADR) has been established for .eu domain names. Pursuant to Regulation (EU) No 2019/517[111] and Regulation (EU) No 2020/857[112], this system is administered by EURid, which is authorised by the EU and applies a procedure largely based on the UDRP model.

In Türkiye, an alternative dispute resolution system compatible with the ICANN and UDRP framework has also been adopted pursuant to the Internet Domain Names Regulation of 2010[113] and the Communiqué on the Resolution of Disputes Concerning

[110] Internet Corporation for Assigned Names and Numbers (ICANN), "Statement of Registrar Accreditation Policy," accessed 26.07.2026, https://www.icann.org/en/contracted-parties/accredited-registrars/resources/agreements-and-policies/policy-statement#IIA.

[111] Regulation (EU) 2019/517 of the European Parliament and of the Council of 19 March 2019 on the implementation and functioning of the .eu top-level domain name and amending and repealing Regulation (EC) No 733/2002 and repealing Commission Regulation (EC) No 874/2004.

[112] Commission Implementing Regulation (EU) 2020/857 of 17 June 2020 laying down the principles to be included in the contract between the European Commission and the .eu top-level domain Registry in accordance with Regulation (EU) 2019/517 of the European Parliament and of the Council.

[113] Türkiye, *Regulation of Internet Domain Names*, Official Gazette, No. 27752, November 7, 2010.

Internet Domain Names of 2013[114]. This system governs disputes arising from the registration and use of ".tr" country-code top-level domain (ccTLD) names through the TR Network Information System (TRABİS), which is operated by the Information and Communication Technologies Authority (BTK)[115].

However, identifying the infringers in such cases is not always possible. For this reason, in the US[116], the EU[117], and Türkiye[118], trademark owners may at times seek to attribute liability to domain name registrars that facilitate the registration of infringing domain names. Nevertheless, such claims are generally dismissed on the grounds that registrars do not use the mark in commerce, do not actively participate in the selection of

[114] Türkiye, *Communiqué on the Resolution of Disputes Concerning Internet Domain Names*, Official Gazette, No. 28742, August 21, 2013.

[115] Aldemir, "Internet Domain Name Infringements within the Framework of Unfair Competition Law and WIPO ICANN UDRP Procedure", 93-98.

[116] *Lockheed Martin Corp. v. Network Solutions Inc.*, 194 F.3d 980 (9th Cir. 1999); *Solid Host, NL v. NameCheap, Inc.*, 652 F. Supp. 2d 1092, 1110 (C.D. Cal. 2009); *Petroliam Nasional Berhad (Petronas) v. Godaddy.com, Inc.*, No. 12-15584 (9th Cir. 2013).

[117] *Air France et autres v. AFNIC and EuroDNS*, Paris Court of Appeal (Pôle 5, Chamber 2), 19 October 2012; BGH, 17 May 2001, I ZR 251/99 (ambiente.de); BGH, 19 Feb. 2004, I ZR 82/01 (kurt-biedenkopf.de); BGH, 27 Oct. 2011, I ZR 131/10 (regierung-oberfranken.de).

[118] Judgement of the Turkish Court of Cassation (11th Civil Chamber), December 30, 2013, E. 2012/9713, K. 2013/23751, Lexpera. https://www.lexpera.com.tr (accessed March 16, 2026)

the domain name, and merely provide technical services upon the request of cybersquatters[119].

2. Infrıngements on Search Engines

Another form of online trademark infringement is observed in the use of search engines, which provide access to desired information amid the vast amounts of data available on the Internet.

These infringement claims initially arose from the use of competitors' or well-known trademarks as metatags[120] within webpage code. These tags, which afford websites the visibility they most need online, have given rise to infringement claims when used without authorization in a manner that replicate or closely resemble the corresponding trademark. US courts have generally held that such use can constitute

[119] Maarten Truyens and Patrick Van Eecke, "Liability of Domain Name Registries: Don't Shoot The Messenger," *Computer Law & Security Review* 32, no. 2 (2016): 330.

[120] A meta tag is an optional HTML element placed within the `<HEAD>` section of a web page, which provides information on how the page should be processed, indexed, ranked, and displayed, thereby assisting search engines in determining the page's position in search results. See Samuel Blankson, *Meta Tags: Optimising Your Website for Internet Search Engines* (Lulu Inc, 2007), 4.

trademark infringement[121]. Courts within the EU[122] and Türkiye [123] have adopted a similar approach. However, shortly thereafter, the excessive or irrelevant use of metatags led many search engines to render them entirely non-functional in search results.

Subsequently, search engines shifted toward keyword advertising, which triggers ads or sponsored links targeted at users. As with metatag usage, the use of trademark without authorization as a keyword has given rise to trademark infringement claims. Rights holders generally direct their claims concerning the unauthorized use of their trademarks as keywords against advertisers; however, in certain instances, they have also brought actions against Google, particularly where the number of infringers is substantial, the identification of such infringers is impracticable, or Google is perceived to have played a role in the use of those keywords[124].

In decisions related advertisers' usage, US courts generally rely on the likelihood of confusion as the decisive test[125]. On the other hand, the CJEU has assessed such cases

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[121] *Brookfield Communications Inc v. West Coast Entertainment Corporation*, 74 F.3d 1036 (9th Cir. 1999).

[122] CJEU, *Belgian Electronic Sorting Technology NV v Bert Peelaers*, Case C-657/11, July 11, 2013, ECLI:EU:C:2013:516.

[123] Judgement of the Turkish Court of Cassation (11th Civil Chambers), April 25, 2018, E. 2016/10542, K. 2018/3077, Lexpera. https://www.lexpera.com.tr (accessed September 17, 2025).

[124] Althaf Marsoof, *Internet Intermediaries and Trade Mark Rights* (London and US: Routledge, 2019), 5-6.

[125] *Network Automation Inc. v. Advanced Sys. Concepts Inc.*, 638 F.3d 1137, 1144 (9th Cir. 2011); *1-800 Contacts*, 722 F.3d 1229, 1243; *Lerner & Rowe v. Brown Engstrand & Shely LLC*, 119 F.4th 711 (9th Cir. 2024).

within the framework of the infringement criteria established under trademark law. In this context, particularly in cases of "double identity" infringement, the decisive factor is whether at least one of the trademark functions has been adversely affected[126]. Finally, under Turkish law, the use of keywords, as in the case of domain names, is explicitly listed as an independent form of infringement under Article 7/3(d) of the IPL. However, this does not mean that every use of a keyword automatically constitutes trademark infringement. The Court of Cassation also evaluates such cases within the general framework of trademark infringement criteria, taking into account factors such as the distinctiveness[127] and reputation of the mark[128], and whether the use gives rise to a likelihood of confusion[129].

In trademark infringement actions brought against Google, US courts have generally accepted Google's use of the relevant signs as "use in commerce," and have emphasized that the decisive criterion is whether such use gives rise to a likelihood of

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126 CJEU, *Google France*, Joined Cases C-236/08 to C-238/08, para.77-82; CJEU, *Interflora*, Case C-323/09, para. 50.

127 Judgement of the Turkish Court of Cassation (11th Civil Chambers), April 4, 2016, E. 2015/8530, K. 2016/3550 Lexpera. https://www.lexpera.com.tr (accessed March 17, 2026).

128 Judgement of the Turkish Court of Cassation (11th Civil Chambers), January 10, 2018, E. 2016/6297, K. 2018/172 Lexpera. https://www.lexpera.com.tr (accessed March 17, 2026)

129 Judgement of the Turkish Court of Cassation (11th Civil Chambers), December 12, 2016, E. 2015/12152, K. 2016/9489 Lexpera. https://www.lexpera.com.tr (accessed March 17, 2026).

confusion among consumers[130]. The CJEU, by contrast, held that the mere provision of signs as keywords to advertisers does not constitute use of those signs by Google in its own commercial communications, as they are not used to distinguish its own goods or services; therefore, concluded that such conduct does not give rise to trademark infringement[131]. Finally, although similar actions have also been brought against Google in Türkiye, such claims have generally been dismissed on the ground that no proper defendant relationship can be established, as Google falls within the scope of the liability exemptions applicable to service providers[132]. However, in the doctrinal literature, a view with which I also agree, it is argued that, in actions brought against search engines, a distinct evaluation of the circumstances of each case is necessary, and that determinations should not proceed on the basis of any a priori assumption regarding the absence of liability[133].

3. Infringements on Online Marketplace

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[130] *Rescuecom Corp. v. Google Inc.*, 562 F.3d 123, 129 (2d Cir. 2009); *Rosetta Stone Ltd.*, 676 F.3d 144.

[131] CJEU, *Google France*, Joined Cases C-236/08 to C-238/08.

[132] Judgement of the Turkish Court of Cassation (11th Civil Chambers), January 05, 2014, E. 2013/11325, K. 2014/19, Lexpera. https://www.lexpera.com.tr (accessed March 17, 2026)

[133] Tamer Soysal, "Marka Hukuku Perspektifinden İnternet Ortamında Anahtar Kelime (Meta-Tagging) ve Adwords Reklamcılık Uygulamaları," *Uyuşmazlık Mahkemesi Dergisi* 12 (2018): 716-17; Fülürya Yusufoğlu Bilgin, *Dijital Piyasalarda Yer Sağlayıcıların Hukuki Sorumluluğu-Marka, Telif Hakkı ve Haksız Rekabet Kapsamında*, 1 ed. (İstanbul: On İki Levha Yayıncılık, 2022), 524.

The widespread adoption of e-commerce has enabled commercial transactions, which were previously established physically within the same location, to be conducted remotely, rapidly, and efficiently in the digital environment. This development has paved the way for the emergence of online marketplaces[134]. The relatively low threshold for operating as a "seller" on online marketplaces allows both well-established companies that have been active in the market for a long time and new entrants seeking to rapidly gain brand recognition to participate on these platforms[135]. This has led to a significant increase in competition within such marketplaces.

The increasingly competitive environment has also led to a rise in trademark infringements, as sellers seek to gain prominence by exploiting the strength of marks belonging to others. However, due to low barriers to entry, the relatively high number of infringers compared to those in the physical marketplace, the ability to commit such infringements simultaneously from different jurisdictions within the borderless online environment, and, in some cases, the difficulty of identifying them due to anonymity, trademark owners across all three legal systems have increasingly turned their attention to online marketplaces, which they perceive as offering more effective avenues of enforcement[136].

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[134] Mark Leiser, Dania van Leeuwen, and Lotte Anemaet, "Online Intermediaries and Trademark Owners: The Legal Position and Obligations of Online Intermediaries to Trademark Owners Prior and post-Louboutin v Amazon," *Journal of Intellectual Property, Information Technology and E-Commerce Law* 15 (2024): 56.

[135] Leiser, van Leeuwen, and Anemaet, "Online Intermediaries and Trademark Owners: The Legal Position and Obligations of Online Intermediaries to Trademark Owners Prior and post-Louboutin v Amazon," 57.

[136] Marsoof, *Internet Intermediaries and Trade Mark Rights*, 10.

Compared to domain registrars and search engines discussed in the previous sections, online marketplaces engage in a wider range of activities involving the use and facilitation of third-party trademarks. In this regard, a range of practices may give rise to infringement claims, including: the listing of infringing products[137] and the implementation of algorithmic measures to enhance their visibility[138]; the offering of third-party trademarks as keywords through marketplace-integrated search engines, in a manner comparable to Google Ads[139]; the generation of drop-down suggestions linked to such keywords when users conduct searches based on a particular mark[140]; the display of products not directly related to the searched mark under headings such as "related products," thereby redirecting consumers[141]; and the provision of post-sale fulfilment services, including storage[142], packaging, shipping[143], and delivery[144].

[137] Judgement of the Turkish Court of Cassation (11th Civil Chambers), December 16, 2019, E. 2019/618, K. 2019/8167; Judgement of the Turkish Court of Cassation (Assembly of Civil Chambers), January 15, 2014, E. 2013/1138, K. 2014/16, Lexpera. https://www.lexpera.com.tr (accessed March 17, 2026).

[138] *Y.Y.G.M. SA v. Redbubble, Inc.* 75 F.4th 995 (9th Cir. 2023).

[139] *Gucci Am. Inc. v. Alibaba Grp. Holding Ltd.,* No. 15-cv-03784 (S.D.N.Y. 2015).

[140] *Cosmetic Warriors Ltd v Amazon.co.uk Ltd* [2014] EWHC 181 (Ch).

[141] *Multi Time Machine Inc. v. Amazon.com, Inc.*, 792 F.3d 1070 (9th Cir. 2015).

[142] CJEU, *Coty Germany GmbH v Amazon Services Europe Sàrl and Others*, Case C-567/18, April 2, 2020, ECLI:EU:C:2020:267.

[143] *Milo & Gabby LLC v. Amazon*, No. 16-1290 (Fed. Cir. 2017).

[144] CJEU, *Christian Louboutin SAS v Amazon EU Sàrl and Others*, Joined Cases C-148/21 and C-184/21, March 8, 2021, ECLI:EU:C:2022:1016.

Although it is accepted across all three jurisdictions that third parties who use another's trademark without authorization in the course of trade on online marketplaces may thereby commit trademark infringement, the more complex issue concerns the role played by marketplaces' practices in facilitating such infringement and whether that role can give rise to liability. The contours of this liability analysis will be examined in detail in Section II.

4. Infringements on Social Media

The concept of social media encompasses digital communication channels that function asynchronously and persistently over the internet, support mass-personal interaction among users, and derive their principal value from content generated by those users[145]. Over time, as internet technologies have advanced and become integrated into the daily lives of nearly every individual worldwide, social media applications have grown in popularity and attracted the attention of commercial actors, as well. In the current digital environment, nearly all trademark proprietors have established a presence on social media[146].

However, social media has also given rise to certain trademark infringement types that are specific to this environment. One such form of infringement is the unauthorised prior registration of third-party trademarks as usernames and their exploitation as a source

[145] Caleb T Carr and Rebecca A Hayes, "Social media: Defining, Developing, and Divining," *Atlantic Journal of Communication* 23, no. 1 (2015).

[146] Erin Connors, "Trademarks and Twitter: The Costs and Benefits of Social Media on Trademark Strength, and What This Means for Internet-Savvy Celebs," *New England Law Review* 52, no. 2 (2018): 197-99.

of income, similar to cybersquatting (username squatting)[147]. Another form of infringement is the use of hashtags[148] containing third-party trademarks[149]. However, not all hashtag uses constitute trademark infringement; in this context, whether the "use in commerce" requirement is satisfied is a determining factor[150]. On the other side, in addition to these specific types of infringement, counterfeiting activities are also observed on social media[151]. Infringers may engage in such activities either directly through social media accounts or via links shared on these accounts[152].

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147 Steven T Shelton, "Threats to Brands from Social Media," *New York Law Journal* 5, no. 14 (2012): 2.

148 Hashtags are a form of metadata created by combining a word or phrase without spaces and preceding them with the "#" symbol. They enable users to easily follow and navigate discussions on specific topics across social media platforms such as Twitter, Instagram, Facebook, and LinkedIn. See "Hashtag," SEOZoom, accessed 01.04.2026, https://www.seozoom.com/glossary/hashtag/.

149 Thomas J Curtin, "The Name Game: Cybersquatting and Trademark Infringement on Social Media Websites," *Journal of Law and Policy* 19, no. 1 (2010).

150 Enrico Bonadio and Akshita Rohatgi, "Social Media and Intellectual Property," in *Research Handbook on Social Media and the Law*, ed. Thaddeus Hoffmeister and Marilyn Bromberg (Edward Elgar Publishing, 2025), 220-21.

151 Connors, "Trademarks and Twitter: The Costs and Benefits of Social Media on Trademark Strength, and What This Means for Internet-Savvy Celebs," 208.

152 "Amazon Sues Influencers, Marketplace Sellers Over Alleged Counterfeit Scheme," The Fashion Law, 2023, accessed 18.03.2026, https://www.thefashionlaw.com/amazon-sues-influencers-marketplace-sellers-over-alleged-counterfeit-scheme/.

In this context, the fast-changing and rapidly disseminating nature of social media may enable infringers to reach a very large number of users before rights holders become aware of the infringement. In this dissemination process, not only direct infringers but also influencers[153], who constitute important actors within the social media ecosystem, may play a significant role[154]. In particular, unlike traditional advertising actors, influencers often lack sufficient awareness of legal regulations and due diligence obligations, which may result in infringing activities reaching wider audiences and thereby increasing the resulting harm[155].

It is not yet clearly established what role social media plays in these infringing activities. It is, in essence, argued that social media operators analyse vast amounts of data and, based on user behaviour, determine how product and service offerings are displayed to each user. In this respect, it is foreseen that they possess the technical capacity to detect infringing activities and infringers on their own as well[156]. However,

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[153] An influencer is an individual who has the power to influence others' decisions, behaviour or opinions through their authority, knowledge, position, or relationships. See Josef Vodák et al., "Who is Influencer and How to Choose the Right One to Improve Brand Reputation?," *Managing Global Transitions: International Research Journal* 17, no. 2 (2019): 150-51.

[154] Emma Goolsby, "Have You Been Duped? Counterfeiting and Contributory Trademark Infringement in the World of E-Commerce, Social Media, and Influencers," *Journal of Business, Entrepreneurship and the Law* 18, no. 1 (2025).

[155] Bonadio and Rohatgi, "Social Media and Intellectual Property," 222-23.

[156] Arielle Percival, "Social Networks, Counterfeit, and Contributory Trademark Infringement: Are Social Media Giants Still Protected Ten Years After Tiffany?," *University of the Pacific Law Review* 52, no. 4 (2021): 897-900.

under their general policies, they typically adopt the position that they are not aware of infringement unless it is notified to them by rights holders, upon which they may intervene.

In this context, because of the time-consuming, costly, and often unpredictable character of judicial proceedings[157], rights holders generally prefer to submit complaints directly to the relevant social media operator rather than initiating litigation[158]. Indeed, in many cases, relatively swift remedies can be achieved through the suspension or deactivation of the relevant account or the takedown of the infringing content. However, the scope of detected infringements compared to those that remain undetected is itself open to debate.

Furthermore, the review and decision-making processes following notification also suffer from a significant lack of transparency[159]. In some instances, complaints submitted by rights holders may be rejected or left unresolved without sufficient justification[160]. In such cases, rights holders may be required to resort to judicial proceedings. In this regard, rights holders in the US, the EU, and Türkiye have, depending

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[157] Daniel Doft, "Facebook, Twitter, and the Wild West of IP Enforcement on Social Media: Weighing the Merits of a Uniform Dispute Resolution Policy," *Marshall Law Review* 49, no. 4 (2016): 1002.

[158] Doft, "Facebook, Twitter, and the Wild West of IP Enforcement on Social Media: Weighing the Merits of a Uniform Dispute Resolution Policy," 980-81.

[159] Amy B Cyphert and Jena T Martin, ""A Change Is Gonna Come:" Developing a Liability Framework for Social Media Algorithmic Amplification," *University of California Irvine Law Review* 13, no. 1 (2022): 164.

[160] Doft, "Facebook, Twitter, and the Wild West of IP Enforcement on Social Media: Weighing the Merits of a Uniform Dispute Resolution Policy," 970.

on the circumstances of the case, initiated legal actions against direct infringers[161], social media platforms[162], and, in some cases, influencers[163]. However, as such litigation remains exceptional, the body of case law concerning trademark infringement on social media remains relatively limited across all three jurisdictions[164].

5. Infringements in Emerging Technologies

The final area to be addressed within the scope of trademark infringement concerns infringements observed in the use of emerging technologies. Today, many domestic and international trademark owners have begun to establish a presence in this digital environment, which they perceive as a new market, both to enhance the recognition of their trademarks and to intervene in potential infringement activities that may arise in this virtual space[165].

[161] For US, see *Nine West Dev. Corp. v. Does 1–10*, No. 07-cv-7533 (S.D.N.Y. 2007); for Europe, see *Frank Industries Pty Ltd v. Nike Retail BV*, Nike European Operations Netherlands BV, Nike (UK) Ltd [2018] EWHC 1893 (Ch); for Türkiye, see Judgement of the Turkish Court of Cassation (11th Civil Chambers), January 2, 2021, E. 2016/6607, K. 2018/484 Lexpera, https://www.lexpera.com.tr (accessed March 17, 2026).

[162] *La Russa v. Twitter, Inc.*, No. 09- 488101 (Cal. Super. Ct. 2009); Oneok, Inc. v. Twitter, Inc., No.4:09-cv-00597-TCK-TLW (N.D. Okla. 2009).

[163] *Petunia Prods., Inc. v. Rodan + Fields, LLC*, No. 8:21-cv-00630-CJC-ADS (C.D. Cal. 2021).

[164] Yasaman, *Türk ve Avrupa Birliği Hukukunda İnternette Marka Hakkının İhlali*, 364.

[165] Zehra Özkan Üner, "Metaverse Technology and IP Law: Emerging Challenges," *Ankara Üniversitesi Hukuk Fakültesi Dergisi* 73, no. 4 (2024): 2763.

Within metaverse[166] applications, the most frequently encountered trademark infringement claims to date have arisen in the context of the use of NFTs[167]. The NFTs created typically incorporate either the relevant trademark itself[168], a product image closely associated with the trademark[169], or the trademark's logo[170]. These NFTs are minted without the authorization of trademark owners and are subsequently used within metaverse environments or offered for sale on NFT marketplaces for profit.

In this regard, trademark proprietors have initiated infringement proceedings both in the US and the EU. (To date, there is no judicial decision in Türkiye specifically addressing this issue.) In these cases, courts have generally applied traditional legal remedies, such as ordering the defendant to takedown NFTs from the related websites.

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[166] The metaverse is a term derived from the combination of "meta" (meaning beyond) and "universe," and refers to a three-dimensional online environment in which users interact with one another through avatars in virtual spaces independent of the physical world. See Georg David Ritterbusch and Malte Rolf Teichmann, "Defining The Metaverse: A Systematic Literature Review," *IEEE Access* 20 (2022): 5, https://doi.org/10.1109/ACCESS.2023.3241809.

[167] An NFT is a cryptographically secured unit of data created and verified on a blockchain, stored in a digital ledger, and representing a unique asset. See Kimberly A Houser and John T Holden, "Navigating the Non-Fungible Token," *Utah Law Review* 2022, no. 5 (2022): 895.

[168] *Juventus F.C. v. Blockeras S.r.l.*, Docket No. 32072/2022 (Court of Rome, IP Chamber, July 20, 2022).

[169] *Hermès International and Hermès of Paris, Inc. v. Rothschild*, No. 22-cv-384 (JSR) (S.D.N.Y. Feb. 2, 2023).

[170] *Yuga Labs, Inc. v. Ripps, et. al.*, No. 22-4355-JFW (C.D. Cal. Apr. 21, 2023).

C) CHALLENGES IN THE ONLINE ENVIRONMENT

As can be observed from the types of infringement discussed in the previous heading, the online environment has transformed trademark infringements into a qualitatively different phenomenon compared to the physical world. In this context, combating direct (primary) infringers has become particularly more challenging for rights holders. These difficulties, which largely stem from the virtual, fast-paced, borderless, technically complex, and global nature of the internet, have prompted trademark owners to seek more effective enforcement mechanisms.

1. Personal Jurisdiction Issues

The borderless nature of the internet conflicts with the principle of territoriality of trademark rights. For instance, in situations where the effects of an act are felt in one country while the underlying conduct is carried out through multiple servers located abroad—or vice versa—uncertainty frequently arises with respect to jurisdiction.

In the US, the determination of personal jurisdiction is primarily grounded in the due process principle embodied in the Fifth and Fourteenth Amendments and has been shaped through case law[171]. Within this framework, courts in online trademark infringement cases generally assess the existence of personal jurisdiction based on whether the defendant's activities were directed at the US[172].

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[171] Richard D Freer, "American and European Approaches to Personal Jurisdiction Based Upon Internet Activity," *Emory Public Law Research Paper*, no. 07-15 (2007): 1.

[172] Eleonora Rosati, "The Localization of IP Infringements in the Online Environment: from Web 2.0 to Web 3.0 and the Metaverse," *Journal Of Intellectual Property Law and Practice* 18, no. 10 (2023): 20.

In the EU, the doctrine on international jurisdiction has been established through Regulation (EC) No 44/2001, which contains relatively detailed provisions governing jurisdictional matters[173]. In addition to this general legal framework, as noted earlier, although the requirement of "use with commercial effect" is not expressly provided for under EU legislation, the Member States of the EU nevertheless take into account criteria of a similar nature within this context[174].

In Türkiye, the determination of personal jurisdiction in cases involving online trademark infringements is assessed in light of the "commercial effect" criterion set out in Article 7(3)(d) of the IPL, as previously discussed[175]. In this respect, both in the EU and in Türkiye, as in the US, the determination of jurisdiction in cases of online trademark infringement is linked to whether the infringing conduct is targeted at the EU or Türkiye, respectively.

In the context of various judicial decisions, a set of criteria has been developed under the targeting doctrine. In this regard, the mere accessibility of a website from a given jurisdiction is not considered sufficient on its own[176], while a range of concrete factors are taken into account in establishing personal jurisdiction, such as the language used on the website, the use of a ccTLD, the currency employed, the ability of consumers

[173] Freer, "American and European Approaches to Personal Jurisdiction Based Upon Internet Activity," 5-7.

[174] Yasaman, *Türk ve Avrupa Birliği Hukukunda İnternette Marka Hakkının İhlali*, 32-33.

[175] Yasaman, *Türk ve Avrupa Birliği Hukukunda İnternette Marka Hakkının İhlali*, 17.

[176] *Ariel Invs., LLC v. Ariel Cap. Advisors LLC*, 881 F.3d 520, 522 (7th Cir. 2018).

to conclude sales contracts via the website, and the availability of delivery to the relevant jurisdiction[177].

However, these criteria are not exhaustive, and courts may rely on additional factors. For example, in a case brought in the US against two UK-based companies that used another party's trademark without authorization in connection with NFTs and marketed them on social media, the court relied on factors such as certain activities of the companies being linked to the US and the fact that a considerable portion of the account's followers were located in the US[178].

2. Enforcement Difficulties Specific to Decentralised Architecture

Although a fully decentralised structure has not yet been realised, the effectiveness of traditional legal remedies in addressing infringements that may arise within such systems is increasingly being called into question. In this context, it remains uncertain how personal jurisdiction should be determined, particularly where transactions are conducted through crypto-assets, ccTLDs are not used, automated translation tools are employed, interactions are carried out through AI avatars, and no physical delivery of goods takes place[179]. Moreover, although right holders may prefer to notice directly to the metaverse platform rather than initiating litigation, a further challenge arises in

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[177] CJEU, *Peter Pammer v. Reederei Karl Schlüter GmbH & Co KG and Hotel Alpenhof GesmbH v. Olivier Heller* Joined Cases C-585/08 and C-144/09, December 7, 2010, ECLI:EU:C:2010:740, para 93.

[178] *McCollum v. Opulous*, No. 2:22-cv-00587 (C.D. Cal. 2022).

[179] Rosati, "The Localization of IP Infringements in the Online Environment: from Web 2.0 to Web 3.0 and the Metaverse," 32.

identifying the appropriate intermediary or service provider capable of effectively addressing infringements within the metaverse's fragmented and multilayered ecosystem.

For instance, in an environment operated by a Decentralised Autonomous Organization (DAO), where decisions are made through user voting based on pre-established rules, the removal of infringing content would not be straightforward. In practice, the outcome of such a decision would depend on the attitudes of users being allotted votes with respect to the alleged infringement. For example, if participants in the metaverse have vested interests in the use of the relevant trademark, the fairness of the voting process may be called into question[180]. Moreover, even if the removal of content is decided unanimously, what is actually removed would merely be the listing, rather than the content embedded within the decentralized structure itself. Accordingly, since infringing content such as an NFT continues to exist on the blockchain even after its listing is removed, this creates significant challenges for rights holders in effectively addressing such infringements[181].

3. Anonymity of Online Infringers

Users may operate in the online environment anonymously[182]. In the context of online trademark infringements, this significantly complicates the ability of rights holders

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[180] Gaetano Dimita et al., *IP and Metaverse(s) - an Externally Commissioned Research Report*, Queen Mary Intellectual Property Research Institute (UK Intellectual Property Office, 2024), 30.

[181] Michael Goodyear, "Intellectual Property's NFT Gap: Twentieth-Century Copyright Law Could Limit Viable Uses of Blockchain," (2024): 4.

[182] Sloane, Russell, and Sauerborn, "Trademark Vigilance in the Twenty-First Century: An Update," 1221.

to directly identify infringers and intervene against infringing activities[183]. Indeed, infringers may take advantage of the anonymity afforded by the digital environment, where their identities are difficult to ascertain, to engage in infringing activities more boldly and with a lower risk of detection[184].

In this regard, anonymity has rendered the traditional investigative and identification methods fiscally impractical and, at times ineffective[185]. This issue further exacerbates the existing challenges that rights holders face in relation to infringements involving blockchain-based emerging technologies[186]. For instance, liability arising from

[183] Ian C. Ballon, "Content Moderation and Platform Liability: Service Provider and Website, Mobile App, Network and Cloud Provider Exposure for User Generated Content and Misconduct," in *E-Commerce & Internet Law: Treatise with Forms* (Thomson West Publishing, 2020), 49-12.

[184] Ballon, "Content Moderation and Platform Liability: Service Provider and Website, Mobile App, Network and Cloud Provider Exposure for User Generated Content and Misconduct," 49-10.

[185] Maia Woodhouse, "IP Enforcement in the Digital Age: Identifying Infringer in an Anonymous Online Environment," IPWatchdog, accessed 10.10.2025, https://ipwatchdog.com/2019/03/23/ip-enforcement-in-the-digital-age-identifying-infringers-online/.

[186] Madison Yoder, "An" OpenSea" of Infringement: The Intellectual Property Implications of NFTs," *The University of Cincinnati Intellectual Property and Computer Law Journal* 6, no. 2 (2022): 7-9.

infringements committed by users who conceal their identities behind AI-generated avatars within metaverse platforms remains uncertain and has yet to be clearly defined[187].

4. The Rapid Dissemination of Online Trademark Infringements

The fast, global, and borderless nature of the Internet causes the rapid and difficult-to-control spread of online trademark infringements[188]. This structural characteristic of the digital environment creates significant challenges for the effective protection and enforcement of trademark rights.

For example, even if rights holders manage to detect infringers online, reach them individually, and ensure that infringing content is taken down, these efforts tend to have limited effectiveness. Once infringing content is taken down, new listings concerning the same infringing products may already have reappeared on different websites[189]. In other words, traditional monitoring and enforcement measures directed at infringers themselves lose their effectiveness in the context of online infringements. This phenomenon, often described in the literature as the "whack-a-mole" problem[190], is metaphorically compared

187 Rosati, "The Localization of IP Infringements in the Online Environment: from Web 2.0 to Web 3.0 and the Metaverse," 25.

188 Frederick Mostert, ""Digital Due Process": A Need for Online Justice," *Journal of Intellectual Property Law & Practice* (2020): 7.

189 Mostert, ""Digital Due Process": A Need for Online Justice," 7.

190 Gaston Kroub, "Mass Counterfeiting Whack-a-Mole," Above The Law, accessed 19.10.2025, https://abovethelaw.com/2020/01/mass-counterfeiting-whack-a-mole/.

to fighting a multi-headed Hydra, where each enforcement action leads to the emergence of multiple new infringements[191].

5. The Infringers' Inability to Compensate for Damages

As noted in the context of online marketplaces, infringers are able to establish a presence in the digital environment far more easily than in the physical world, as doing so typically requires little capital investment or operational cost. However, this very feature creates an additional difficulty for trademark owners.

Even where such direct infringers can be identified, they are often either very young or financially incapable of satisfying a damages award. Consequently, compared to their counterparts in the offline marketplace, right holders frequently encounter significantly greater obstacles in recovering their losses in the online context[192].

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[191] Sloane, Russell, and Sauerborn, "Trademark Vigilance in the Twenty-First Century: An Update," 1203.

[192] Ballon, "Content Moderation and Platform Liability: Service Provider and Website, Mobile App, Network and Cloud Provider Exposure for User Generated Content and Misconduct," 49-12.

CHAPTER TWO

LEGAL REGULATIONS AND LIABILITY OF ONLINE PLATFORMS

I. ONLINE PLATFORMS AND THEIR LEGAL REGULATION

In the context of the global expansion of e-commerce, online platforms have become key actors. These platforms have become fundamental actors of the digital economy and have profoundly transformed the ways in which goods and services are offered, distributed, and consumed in the online environment[193]. In this evolving environment, trademarks have assumed a more prominent role in enabling the delivery of goods and services to consumers within platform-driven infrastructures.

In e-commerce conducted through online platforms, generally two types of trademarks play a role: the primary trademark belonging to the online platform itself and the secondary trademarks belonging to third parties offering goods or services under that platform[194]. Secondary trademarks benefit from the global user base of online platforms, gaining the advantage of offering goods and services under their own trademarks to a wide and diverse range of consumers. However, this structure also constitutes a primary source of online infringement. Infringers are often able to carry out their infringing activities more easily by hiding behind the appearance of legitimacy and trust created by online platforms in the eyes of consumers[195].

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[193] Sonia K Katyal and Leah Chan Grinvald, "Platform Law and the Brand Enterprise," *Berkeley Technology Law Journal* 32 (2017): 1136.

[194] Katyal and Grinvald, "Platform Law and the Brand Enterprise," 1144-45.

[195] Alexandra Chirosca, "Intermediary Liability within the IP Legal Framework," *Intellectus: Journal of Intellectual Property, Science and Education*, no. 1 (2025): 14.

As explained above, trademark owners, due to the inefficiency of direct enforcement against infringers, have increasingly turned to asserting their rights against online platforms, which they regard as the source or facilitator of online infringements. In this context, the question of how liability for trademark infringements occurring on online platforms should be addressed has emerged as a significant legal issue. The issue is further complicated by the need to balance the interests of trademark owners, online platforms, and consumers[196]. Before addressing the legal debates arising in this context, it is important to examine how online platforms emerged alongside the development of the internet and how they have evolved over time.

A) EMERGENCE AND EVOLUTION OF PLATFORMS

The internet ecosystem, at the center of which platforms stand today, was originally established in the 1960s as part of the network (ARPANET) project, which was developed for military purposes to connect computers over long distances[197]. Beginning in the early 1990s, with the opening of the internet to private individuals, the use of the web increased rapidly[198]. Although this early form of the internet emerged with the claim of eliminating intermediaries in the physical world (disintermediation)[199], in practice it merely replaced traditional intermediaries with their online counterparts[200]. Even in its earliest stages, individuals could access the internet only through intermediary service

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[196] Chirosca, "Intermediary Liability within the IP Legal Framework," 14.

[197] Ali Karagülmez, *Bilişim Suçları ve Soruşturma-Kovuşturma Evreleri*, 5th ed. (Seçkin Yayıncılık, 2014), 52.

[198] Karagülmez, *Bilişim Suçları ve Soruşturma-Kovuşturma Evreleri*, 53.

[199] Christopher Ryan, "How Disintermediation is Changing the Rules of Marketing, Sales and Distribution," *Interactive Marketing* 1, no. 4 (2000): 368.

[200] Marsoof, *Internet Intermediaries and Trade Mark Rights*, 2.

providers. Platforms, which constitute the main subject of this study, also fundamentally provide intermediation services[201]. However, they did not attain their current structure instantly, but rather evolved gradually over time.

1. Web 1.0 Period and Online Intermediaries

The Web 1.0 era, which began with the invention of the World Wide Web (www) developed in 1991 by Tim Berners-Lee and his colleagues, was characterized by the perception of the internet as a vast library where anyone with the necessary technical infrastructure could access any desired information with a single click[202]. During this period, the technical infrastructure necessary for users to access relevant content on the internet was provided by internet service providers (ISPs) referred to as online intermediaries[203]. Within the framework of the static nature of the web at that time, the activities of online intermediaries were limited to technical functions[204] such as the

201 Jaani Riordan, "A Theoretical Taxonomy of Intermediary Liability," in *Oxford Handbook of Online Intermediary Liability*, ed. Giancarlo Frosio (Oxford University Press, 2020), 40.

202 Alexandra Pörner, "The Evolution of the Internet - Web 1.0, Web 2.0, Web 3.0, Web 4.0," Seeburger Blog, accessed 20.04.2025, https://blog.seeburger.com/.

203 Karine Perset, *The Economic and Social Role of Internet Intermediaries* (Paris: OECD Publishing, 2010), 9-11.

204 Kristofer Erickson and Martin Kretschmer, "Empirical Approaches to Intermediary Liability," in *Oxford Handbook of Online Intermediary Liability*, ed. Giancarlo Frosio (Oxford University Press, 2020), 104.

transmission, temporary storage, or hosting of content provided by third parties, and thus were passive and neutral in nature[205].

Shortly after these developments, browsers such as Mosaic, Netscape, and Internet Explorer were introduced, facilitating users' access to internet content. With the increasing ease of internet use provided by these browsers, the number of websites and online content grew significantly. This expansion in content subsequently led to the emergence of search engines, which are online intermediary entities that facilitate access to desired information and remain vital to contemporary online activity[206]. Early examples of these intermediaries included Yahoo, Lycos, and Excite, whereas Google, today the leading industry player, emerged shortly thereafter in 1998[207].

On the other hand, during this period, with the expansion of e-commerce, online marketplaces such as eBay and Amazon emerged as commercial intermediaries between buyers and sellers[208]. However, these platforms were limited to providing services that merely connected buyers and sellers and facilitated interaction between them. Within the

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[205] Emily Laidlaw, "The Challenge Designing Intermediary Liability Laws," *Canadian Journal of Law and Technology* 21, no. 1 (2023): 71.

[206] Carsten Ullrich, *Unlawful Content Online: Towards a New Regulatory Framework for Online Platforms* (Baden-Baden: Nomos, 2021), 70.

[207] "Google," Wikipedia, The Free Encyclopedia, accessed 10.10.2025, https://tr.wikipedia.org/wiki/Google.

[208] Ullrich, *Unlawful Content Online: Towards a New Regulatory Framework for Online Platforms*, 73.

technological constraints of Web 1.0, these platforms essentially replicated brokerage-type services[209].

During this period, real-time user interaction was largely confined to limited environments such as chat rooms and newsgroups[210].

2. Web 2.0 Period and "Web as a Platform"

The Web 2.0 era, which began with the "Web as a Platform" approach introduced by Tim O'Reilly in 2004, marks a fundamental transformation in the structure of the internet[211]. The technological foundation of this period was largely based on the increase in internet bandwidth and processing power. This structure enabled a transition from the relatively limited websites of the Web 1.0 era to applications that leverage network effects, which improve as user numbers increase[212]. The core logic of this period was built on encouraging users to generate content and to interact with one another through that content[213]. Although the apparent aim was to provide users with a broader scope of internet use, the underlying objective of platforms was to shift content production costs

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[209] Aneesh Zutshi and Antonio Grilo, "The Emergence of Digital Platforms: A Conceptual Platform Architecture and Impact on Industrial Engineering," *Computers & Industrial Engineering* 136 (2019): 546, https://doi.org/10.1016/j.cie.2019.07.027.

[210] Tarleton Gillespie, "Platforms are not Intermediaries," *Georgetown Law Technology Review* 2 (2017): 206.

[211] Tim O'reilly, "What is Web 2.0: Design Patterns and Business Models for the Next Generation of Software," *Communications & Strategies*, no. 65 (2007): 19.

[212] Richard Collins, *Three Myths of Internet Governance: Making Sense of Networks, Governance and Regulation* (Intellect Books, 2009), 40.

[213] Ullrich, *Unlawful Content Online: Towards a New Regulatory Framework for Online Platforms*, 78.

onto users, thereby expanding platform ecosystems through increased interaction and strengthening their sectoral dominance. In addition, sustainable revenue models such as targeted advertising were developed through the use of large datasets derived from user interactions[214].

For example, search engines have been able to achieve rapid developmental momentum by adapting these datasets to personalised search result services. In particular, Google's integration of data obtained not only through its own products and services such as Gmail, the Android operating system, the Chrome browser, and YouTube, but also through collaborations with external sources, has played a significant role in its competitive advantage in the search engine market[215].

During this period, online marketplace platforms such as eBay and Amazon also sought to expand their initially limited service capacities. In this context, a wide range of intermediary services, including buyer-seller matching, product and service listing and display, order and payment processing, as well as storage, logistics, shipping, and delivery, were integrated into these platform structures[216]. Furthermore, as a reflection of Web 2.0 technologies, user interaction was enhanced by enabling the sharing of reviews supported by images and videos of products and sellers. In addition, through mobile and

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[214] Farley, "Trademarks in an Algorithmic World," 1162-70.

[215] Ullrich, *Unlawful Content Online: Towards a New Regulatory Framework for Online Platforms*, 72.

[216] OECD, *Unpacking E-Commerce: Business Models, Trends and Policies* (OECD Publishing, 2019), 73-81.

multi-channel access as well as developer integrations, online marketplace platforms evolved into multi-sided platform structures benefiting from strong network effects[217].

The Web 2.0 era also facilitated the emergence of contemporary social media platforms such as Instagram, Facebook, Twitter, and YouTube, which are based on O'Reilly's concept of a business model grounded in user-generated content[218]. Today, these platforms have become a gateway to the internet for many users around the world[219]. Additionaly, these platforms possess significant potential not only for interaction but also for commercial activities, including shopping. These activities, referred to as social commerce, initially began with the use of social media platforms by trademark owners as tools for engagement and brand awareness. Over time, with the integration of features such as "buy" buttons, in-platform shopping tools, and influencer marketing into platform architectures, they have evolved into an inseparable function of these platforms[220].

This period was further marked by the expansion of diverse platform-based service models, including sharing economy platforms such as Uber and Airbnb, which allow individuals to compete with traditional market entrants by overcoming sectoral

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[217] Ullrich, *Unlawful Content Online: Towards a New Regulatory Framework for Online Platforms*, 77.

[218] O'reilly, "What is Web 2.0: Design Patterns and Business Models for the Next Generation of Software," 37.

[219] Ullrich, *Unlawful Content Online: Towards a New Regulatory Framework for Online Platforms*, 80.

[220] Laura Aade, "The Regulation of Social Media Commerce under the DSA: A Consumer Protection Perspective," *Computer Law & Security Review* 59 (2025): 2, https://doi.org/10.1016/J.CLSR.2025.106181.

entry barriers; cloud platforms such as Dropbox[221], which respond to increasing storage demands driven by data growth; and location-based service platforms that enable users to generate and interact with content related to their physical locations[222]. However, since the platform structures most frequently discussed in the context of online trademark infringement are the aforementioned three categories, further details regarding other types of platforms will not be addressed.

3. Web 3.0 Period and Its Impact on Platform Structures

Web 3.0 represents an era characterized by decentralization, interoperability, and user empowerment[223]. In this period, the internet infrastructure is built upon blockchain networks based on publicly accessible and distributed ledger technology, rather than centralized servers[224]. Within this system, data is not controlled by a specific authority or organization; instead, it is stored in a distributed manner across network participants. This development enables the fragmentation of centralized databases, which constituted the

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[221] Ullrich, *Unlawful Content Online: Towards a New Regulatory Framework for Online Platforms*, 82-85.

[222] Jaani Riordan, *The Liability of Internet Intermediaries*, Philosophy in Law, (Oxford: Oxford University, 2016), 40-43.

[223] Guido Perboli, Francesca Merlo, and Chiara Vandoni, "Decentralizing the Future: Value Creation in Web 3.0 and the Metaverse," *Open Research Europe* 5:226 (2026): 3, https://doi.org/10.12688/openreseurope.20906.1.

[224] Perboli, Merlo, and Vandoni, "Decentralizing the Future: Value Creation in Web 3.0 and the Metaverse," 4.

primary source of platform power during the Web 2.0 era, thereby allowing control over such data to be transferred substantially to users[225].

The full realization of the Web 3.0 paradigm across the broader web ecosystem depends primarily on the adoption of these technologies by users and the achievement of widespread participation[226]. Therefore, this transformation is not expected to occur abruptly, but rather through a gradual transitional process. To this end, various implementations of Web 3.0 technologies are currently being developed on top of the existing Web 2.0 infrastructure, including platforms such as OpenSea[227]. Within this framework, certain hybrid platform structures have emerged.

Although these platforms utilize technologies specific to Web 3.0, such as blockchain, crypto wallets, and NFTs, they structurally retain the fundamental characteristics of the Web 2.0 platform model. Indeed, while these platforms enable users to create, buy, and sell digital assets, they also continue to perform content moderation functions in a centralized manner, such as blocking users, removing specific NFTs from

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[225] Margaret James and Timothy Li, "Web 3.0 Explained, Plus the History of Web 1.0 and 2.0," Investopedia, 2024, accessed 2.4.2025, https://www.investopedia.com/web-20-web-30-5208698.

[226] Lavanya Bhandari and Siddhi Shivilkar, "Transition from Web 2.0 to Web 3.0," *International Journal on Science and Technology* 16, no. 1 (2025): 4.

[227] Hanna Gaweł, "Web 2.5 As A Safe Shift from Web 2.0 to Web 3.0: A Definition of Web 2.5 in Informatological Approach," *Cambridge Open Engage* (2022): 6, https://doi.org/10.33774/coe-2022-sj2w3.

listing, or promoting certain collections[228]. Although these platforms have contributed significantly to the rapid global expansion of digital assets and the NFT ecosystem, there is still no clear consensus regarding their legal status at the national and international levels, due to the fact that the sector remains in an early stage of development and is based on a hybrid structural model[229].

B) CONCEPT OF PLATFORM

The literature offers various definitions of the concept of platforms however no consensus has yet been reached regarding its precise boundaries[230]. According to the OECD, online platforms are digital services designed to mediate interactions among at least two separate yet interdependent categories of users through internet-based provision[231]. In the European Commission's view, online platforms are undertakings functioning within two- or multi-sided market structures, using internet-based systems to

[228] Catherine Smirnova, "Do We Live in Web 2.5? And What Does It Mean?," Digital & Analogue Partners, accessed 17.10.2025, https://medium.com/coinmonks/do-we-live-in-web-2-5-and-what-does-it-mean-c9d7004fe14a.

[229] Rosati, "The Localization of IP Infringements in the Online Environment: from Web 2.0 to Web 3.0 and the Metaverse," 10-11.

[230] OECD, *An Introduction to Online Platforms and Their Role in the Digital Transformation* (Paris: OECD Publishing, 2019), 20.

[231] OECD, *An Introduction to Online Platforms and Their Role in the Digital Transformation*, 21.

mediate interactions between distinct but interdependent user groups and to generate value for at least one of these groups[232].

However, as can also be observed from the platform structures discussed in the previous section, the concept of a platform does not constitute a static and easily delineable construct. Rather, it exhibits a dynamic character that continuously evolves in response to technological developments, changing business models, and sectoral differentiation. For this reason, instead of attempting to formulate a single, universally applicable definition, it is more appropriate to identify the core characteristics that platforms tend to exhibit.

In this respect, the main features of platforms may be outlined as follows: hosting, organizing, and circulating content—wholly or predominantly user-generated—and social interactions; being built on an infrastructure that process data generated through such interactions for purposes including customer services, advertising, and profit[233]; exhibiting, at times, monopolistic tendencies due to network effects[234]; being fueled by data; being automated and organized through algorithms and user interfaces; being formalized through ownership relations by business models; and being governed through user agreements[235].

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[232] European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Digital Single Market Strategy for Europe*, COM (2015).

[233] Tarleton Gillespie, *Custodians of the Internet: Platforms, Content Moderation, and the Hidden Decisions that Shape Social Media* (Yale University Press, 2018), 14-15.

[234] Nick Srnicek, *Platform Capitalism* (Cambridge: Polity Press, 2017), 35.

[235] José Van Dijck, Thomas Poell, and Martijn De Waal, *The Platform Society: Public Values in a Connective World* (New York: Oxford University Press, 2018), 9.

Today, while a large number of platforms incorporate all or a significant portion of these characteristics, those that succeed in maximizing user engagement and retaining users on the platform for extended periods of time have become central actors within the digital ecosystem. Google, Amazon, and Meta (Facebook) may be cited as prominent examples of such platforms, due to the diverse range of services they provide across different sectors[236].

In contemporary digital environments, internet usage is largely mediated through these platforms. Their dominant position within the online ecosystem, combined with their control over vast amounts of data and their capacity to intervene in and shape content flows, renders them key focal points in the context of online trademark infringements. This situation has led to the positioning of platforms as primary actors upon whom responsibility is increasingly attributed, both by rights holders and by regulatory authorities, with respect to online infringements, thereby placing their liability and potential duty to intervene at the center of ongoing legal and policy debates[237].

C) LEGAL FRAMEWORKS REGULATING PLATFORMS

Current legal regulations concerning online platforms have established a framework governing the legal status of platforms, their liability regimes, and their content management obligations. However, these regulations do not explicitly define the specific scope of platform liability in relation to online trademark infringements. Rather, they set forth general principles that limit platform liability or subject it to certain conditions in relation to unlawful content. In this context, a proper understanding of the

[236] Ullrich, *Unlawful Content Online: Towards a New Regulatory Framework for Online Platforms*, 90-92.

[237] Ullrich, *Unlawful Content Online: Towards a New Regulatory Framework for Online Platforms*, 96-97.

legal framework governing online platforms in the US, the EU, and Türkiye will enable an accurate interpretation of platform liability approaches concerning trademark infringements within these three jurisdictions.

1. US Legal Framework

The early development of the internet in the US was shaped by the approach that the online environment should largely remain free from direct government intervention. Accordingly, it was argued that online platforms should be governed primarily through self-regulation rather than extensive state control[238].

In line with this approach, at the federal level, there is no single comprehensive legal instrument that regulates the legal liability of online platforms in a general and holistic manner. Instead, the existing regulatory framework consists of fragmented provisions addressing specific areas such as privacy, online child safety, financial services, and health data.

Among these, only two key regulations are directly relevant to the subject of this study. The first is Section 230 of the Communications Decency Act (CDA)[239], which grants online platforms immunity from liability for content published by their users. The second is the Digital Millennium Copyright Act (DMCA)[240], which regulates platform liability specifically within the limited scope of copyright law.

This limited interventionist approach toward online platforms in the US largely continued throughout the 2000s[241]. However, political developments between 2017 and

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[238] Anu Bradford, *Digital Empires: The Global Battle to Regulate Technology* (Oxford University Press, 2023), 42, https://doi.org/10.1093/oso/8780197649268.001.0001.

[239] Communications Decency Act, 47 U.S.C. § 230 (1996).

[240] Digital Millennium Copyright Act, 17 U.S.C. §§ 512 (1998).

[241] Bradford, *Digital Empires: The Global Battle to Regulate Technology*, 48-50.

2021, along with growing concerns regarding freedom of speech, disinformation, election integrity, and the increasing economic and societal influence of online platforms, led to a reassessment of the regulatory approach[242]. For instance, during this period, new legislative measures such as the INFORM Consumers Act were adopted, aiming to enhance transparency obligations of platforms, particularly in relation to the sale of counterfeit and unlawful goods[243]. Although these measures do not directly alter the core liability regime of online platforms, they demonstrate a shift toward a more active regulatory approach concerning platform activities.

a) The First Amendment

The First Amendment to the United States Constitution provides that Congress may not enact any law that abridges the freedom of speech or of the press. This provision forms the foundation of the principle of free expression and provides the normative basis for the historically permissive approach of the US toward online platforms[244]. In principle, user-generated content on online platforms is also considered within the scope of free expression; however, this protection applies primarily against governmental action and does not directly constrain the content removal or moderation decisions of private platforms[245].

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[242] Hennadii Shcherbak, "Regulation of Online Platforms in the US Law," *Foreign Trade: Economics, Finance, Law* 139, no. 2 (2025): 41-43, https://doi.org/10.31617/3.2025(139)04.

[243] Improving Access to Information for Online Platforms Act (INFORM Act), 15 U.S.C. § 45f (2020).

[244] Bradford, *Digital Empires: The Global Battle to Regulate Technology*, 42.

[245] *O'Handley v. Padilla*, 2022 WL 93625 (N.D. Cal. Jan. 10, 2022).

In the context of online trademark infringement, defendants also invoke a First Amendment defense[246]. In such assessments, the distinction between expressive uses, such as commentary, criticism, or parody, and commercial uses is particularly important, as the First Amendment defense is generally not recognized in cases involving commercial exploitation or a risk of consumer confusion[247].

b) Communications Decency Act (CDA)

In 1996, Congress amended the CDA under the heading "Protection for Private Blocking and Screening of Offensive Material." This provision, commonly known as Section 230 (47 U.S.C. § 230), grants online platforms immunity from liability arising from content published by their users. It also establishes that platforms cannot be held liable for their good faith decisions to filter, restrict, or moderate content that they consider obscene, offensive, or violent (the "Good Samaritan" immunity)[248].

However, pursuant to Section 230(e), federal intellectual property claims are explicitly excluded from the scope of this immunity.

c) DMCA

Enacted in 1998, the DMCA was designed to address online copyright infringement by creating a legal framework for the protection of digital content and by restricting the liability of online service providers. In this regard, Section 512 of the DMCA classifies online service providers into four categories based on the nature of the services they provide: conduit services under § 512(a), caching services under § 512(b),

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[246] Eric Goldman, *The United States' Approach to 'Platform' Regulation*, Tufts University (2023), 12.

[247] *Rogers v. Grimaldi*, 875 F.2d 994 (2d Cir. 1989).

[248] Valerie C. Brannon and Eric N. Holmes, *Section 230: An Overview* (Congressional Research Service, January 4, 2024), 2.

hosting services under § 512(c), and providers of "information location tools" under § 512(d).

For these service providers, a "safe harbor" protection is established, provided that certain conditions are fulfilled. These conditions include, inter alia, the implementation of effective mechanisms for receiving and processing complaints submitted by copyright holders[249].

2. EU Legal Framework

The legal regulation of this issue in the EU has evolved in a more comprehensive and gradual manner compared to the US. In this context, the first foundational regulation was the E-Commerce Directive, adopted in 2000[250]. This Directive was enacted with the aim of fostering trust in the digital sphere, encouraging the development of e-commerce, and securing the free movement of information society services within the internal market. Within this framework, certain regulatory provisions were introduced for information society service providers (ISSPs), which today largely correspond to online platforms[251].

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[249] Alan S Wernick, "US Internet Service Provider Liability," *Computer Law & Security Review* 17, no. 4 (2001): 247-49.

[250] 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 (E-Commerce Directive), OJ L 178, July 17, 2000, 1–16.

[251] Alexandre de Streel and Martin Husovec, *The E-commerce Directive As The Cornerstone of The Internal Market* (Luxembourg: European Parliament, 2020), 13.

With the proliferation of digital services, the protection of personal data processed in the online environment has become one of the EU's key regulatory priorities[252]. Accordingly, the General Data Protection Regulation (GDPR)[253] was adopted with the aim of providing individuals with greater control over their personal data and imposing comprehensive obligations on all natural and legal persons engaged in data processing activities.

Furthermore, the Digital Single Market Strategy[254], which aims to enhance the EU's competitiveness in the digital economy and ensure the free movement of goods and services in the digital environment, has provided an important policy framework for the development of more comprehensive regulations targeting online platforms[255]. Within this strategy, online platforms were recognised as key actors in the digital economy, while it was also noted that some platforms, because of their market power and data advantages,

[252] Mehmet Bedii Kaya, *Avrupa Birliği P2B Tüzüğü: Aracı Hizmet Sağlayıcılar ve Arama Motorları İçin Adil ve Şeffaf Platform Kuralları* (İstanbul: On İki Levha Yayıncılık, 2022), 5.

[253] 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), OJ L 119, May 4, 2016, 1–88.

[254] European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Digital Single Market Strategy for Europe*.

[255] Kaya, *Avrupa Birliği P2B Tüzüğü: Aracı Hizmet Sağlayıcılar ve Arama Motorları İçin Adil ve Şeffaf Platform Kuralları*, 5.

may give rise to competition concerns, particularly for small and medium-sized enterprises[256].

In this context, the Platform-to-Business Regulation (P2B Regulation) was first adopted in 2019[257]. This Regulation introduced transparency obligations for platforms with respect to ranking criteria, account suspension decisions, and contractual terms, in order to ensure fairness and transparency in the relationships between online platforms and the businesses that use them.

Following this, the Digital Services Act (DSA)[258], which updates certain aspects of the E-Commerce Directive and establishes specific obligations for platforms within the EU, and the Digital Markets Act (DMA)[259], which aims to create a fair and contestable digital market, were adopted in 2022.

a) E-Commerce Directive

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256 European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Digital Single Market Strategy for Europe*, 11.

257 Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on Promoting Fairness and Transparency for Business Users of Online Intermediation Services, OJ L 186, July 11, 2019, 57–79.

258 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and Amending Directive 2000/31/EC (Digital Services Act), OJ L 277, October 27, 2022, 1–102.

259 Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on Contestable and Fair Markets in the Digital Sector and Amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), OJ L 265, October 12, 2022, 1–66.

The E-Commerce Directive is the first legal instrument within the EU specifically devoted to core e-commerce issues. Under Article 2(b) of the Directive, services provided over the internet are structured around the concept of ISSPs. This term, which constitutes an autonomous concept under EU law[260], is defined in Article 1(1)(b) of Directive 2015/1535 on information society services. In this definition, the scope of the relevant service is characterised by normally being offered for payment, performed at a distance, via electronic means, and initiated upon user request. This broad category encompasses a wide range of economic activities conducted online, including online platforms[261].

Articles 12, 13, and 14 of this Directive classify online intermediaries into three categories, mere conduit, caching, and hosting, and establish a graduated liability regime based on the level of knowledge and control they possess over the content[262]. The Directive establishes an exemption from liability for intermediary ISSPs that acts as a "mere-conduit" by transmitting third-party information in the provision of network access services. The liability of caching service providers, which temporarily store content to enhance network efficiency, and hosting service providers, which store information provided by users, is likewise limited[263]. These provisions entered into force shortly after

[260] Riordan, *The Liability of Internet Intermediaries*, 27.

[261] Commission of the European Communities, *On Barriers to Widespread Access to New Services and Applications of The Information Society through Open Platforms in Digital Television and Third Generation Mobile Communications* (2003), 8.

[262] Ekin Korkmaz Göka, "Elektronik Ticaret Platformlarının Üçüncü Kişilerin Fikri ve Sınai Hakkını İhlal Eden İçerikten Kaynaklanan Hukuki Sorumluluğu," *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi* 30, no. 2 (2024): 6.

[263] OECD, *The Role of Internet Intermediaries in Advancing Public Policy Objectives* (OECD Publishing, 2011), 22.

the DMCA and were influenced by the liability framework established therein[264]. However, unlike the DMCA, the E-Commerce Directive adopts a horizontal approach that applies not only to copyright infringements but to all types of legal violations.

b) DSA and DMA

Overall, while the DSA regulates the liability regime applicable to online intermediaries, the DMA establishes ex ante specific obligations for powerful market actors that meet the threshold criteria determined by the European Commission and are designated as "gatekeepers[265]." In this context, since the subject of this thesis is directly related to the legal liability and obligations of online platforms, a detailed examination of the DSA is of primary importance.

Pursuant to Article 2 of the DSA, which determines the scope of application of the Regulation, it is provided that the rules set forth therein shall apply exclusively to internet service providers. In this respect, it can be observed that the DSA departs from the broader concept of ISSPs adopted under the E-Commerce Directive. Another significant innovation introduced by the same provision concerns the territorial scope of application. Accordingly, the DSA applies not only to service providers established within the EU but also to intermediary services providing services to recipients located in the Union. Furthermore, the DSA expressly provides that it shall be without prejudice to the application of certain existing Union legal instruments, including the E-Commerce

264 Eric Goldman, "An Overview of the United States' Section 230 Internet Immunity," in *Oxford Handbook of Online Intermediary Liability*, ed. Giancarlo Frosio (Oxford University Press, 2020), 167.

265 Joe Sunderland et al., *Digital Markets Act – Impact Assessment Support Study – Annexes*, European Commission (2020).

Directive[266]. Therefore, rather than replacing the framework established by the E-Commerce Directive, the DSA further specifies and supplements certain aspects previously regulated under that Directive. In this regard, the classification of intermediary services under the E-Commerce Directive as “mere conduit”, “caching”, and “hosting” services has been consolidated under the broader category of “intermediary services” defined in Article 3(g) of the DSA. At the same time, service providers are further differentiated into more specific categories based on their size, functions, and impact on the digital ecosystem. Indeed, for the first time at the Union level, the DSA explicitly defines “online platforms” (Article 3(i)) and “online search engines” (Article 3(j)) as distinct, autonomous, and systematic legal categories.

Under this definition, an online platform is characterized as a type of hosting service that stores information at the request of a recipient of the service and disseminates that information to the public. However, where such dissemination constitutes merely an ancillary and secondary component of another service, cannot function independently of the principal service for technical and objective reasons, and is not designed to circumvent the application of the Regulation, that activity falls outside the definition of an online platform.

In addition, Article 3(h) of the DSA also provides a definition of “illegal content”. Accordingly, any information that, either independently or in connection with an activity, including the sale of products or the provision of services, is not in compliance with Union law or the law of any Member State that is in conformity with Union law, irrespective of the precise subject matter or nature of that law, falls within the scope of the concept of illegal content. In relation to the liability of intermediary service providers arising from

[266] Article 2/3 of DSA.

the dissemination of such illegal content, the DSA also establishes a liability framework defining the circumstances under which they may benefit from exemptions from liability.

In this regard, the liability exemptions and limited liability regime applicable to mere conduit, caching, and hosting services under the E-Commerce Directive have been maintained and further elaborated in Articles 4, 5, and 6 of the DSA. In this respect, while the DSA preserves the fundamental framework governing the liability of intermediary service providers established by the Directive, it also introduces additional obligations.

Moreover, the DSA explicitly incorporates the “Good Samaritan” provision in Article 7. Under the E-Commerce Directive regime, intermediary service providers faced the risk that voluntarily reviewing and removing content could lead to the presumption that they had obtained actual knowledge of illegal content, thereby potentially triggering liability[267]. Article 7 of the DSA expressly provides that intermediary service providers will not be deprived of liability exemptions solely because they carry out voluntary own-initiative investigations or take measures to detect, remove, or otherwise address illegal content. This provision aims to encourage platforms to engage in proactive content moderation.

In addition, Chapter III of the DSA establishes comprehensive due diligence obligations, particularly for online platforms. The most extensive and stringent of these obligations apply to platforms designated as “Very Large Online Platforms” (VLOPs), defined as those reaching an average of more than 45 million monthly active users within the EU[268]. These platforms are subject to extensive requirements, including the

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[267] Joris Van Hoboken et al., *Hosting Intermediary Services and Illegal Content Online, An Analysis of the Scope of Article 14 ECD in Light of Developments in the Online Service Landscape*, European Commission (2018), 41.

[268] Article 33 of DSA

assessment of systemic risks, the implementation of effective mitigation measures, the preparation of transparency reports, and submission to independent audits. Through these measures, the DSA also seeks to enhance platform accountability and ensure more effective protection of users against illegal and harmful content.

Before concluding this overview of the DSA, it should be noted that other provisions relevant to this thesis will be examined in the subsequent sections where appropriate. Therefore, they are not addressed here in order to avoid repetition.

3. Türkiye Legal Frameworks

Legal regulations concerning the internet and the digital ecosystem in Türkiye have largely been shaped by the process of harmonisation with the EU acquis and by the needs arising from digitalisation. In this regard Universal Services Law[269], represents the first major legislative development, treating internet access as a form of positive state obligation and categorising it as "universal service[270]." The Law acknowledges the internet as one of the fundamental components of modern society and lays down the relevant principles and implementation procedures for ensuring that all individuals have access to internet services under reasonable, continuous, and non-discriminatory conditions.

With regard to online service providers and their liabilities, four key legal regulations stand out. Among these, the first positive provision concerning the liability of

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[269] Türkiye, *Law No. 5369 on Universal Services*, Official Gazette, No. 25856, June 25, 2005.

[270] Alper Işık, *İnternet Aktörleri ve Egemenliğin Değişen Boyutları* (İstanbul: On İki Levha Yayıncılık, 2023), 204.

ISPs is Additional Article 4/3 of the Law on Intellectual and Artistic Works[271]. This provision for the first time in Türkiye, a mechanism similar to that of the DMCA, enabling copyright holders to apply to service providers in cases of infringement[272]. Another regulation concerning the conditional liability of service providers is Article 58/4 of the Turkish Commercial Code[273], which is specifically designed in the context of unfair competition violations.

Alongside these limited regulations, the Internet Law[274] provides a more comprehensive regulatory framework[275]. This law establishes a regulatory framework for content disseminated online and aims to combat crimes committed through online platforms. In this respect, it has played a central role in shaping the legal regime governing the internet in Türkiye.

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[271] Türkiye, *Law No. 5846 on the Regulation of Electronic Commerce*, Official Gazette, No. 7981, December 5, 1951.

[272] Veysel Başpınar and Doğan Kocabey, *İnternette Fikri Hakların Korunması* (Yetkin Yayınları, 2007), 252-53.

[273] Türkiye, *Law No. 6102 on the Regulation of Electronic Commerce,* Official Gazette, No. 27846, February 14, 2011.

[274] Türkiye, *Law No. 5651 on the Regulation of Publications on the Internet and the Suppression of Crimes Committed by Means of Such Publications*, Official Gazette, No. 26530, May 23, 2007.

[275] Yusufoğlu Bilgin, *Dijital Piyasalarda Yer Sağlayıcıların Hukuki Sorumluluğu-Marka, Telif Hakkı ve Haksız Rekabet Kapsamında*, 16.

Another legislation relating to e-commerce actors is The Electronic Commerce Law[276]. This Law provides a regulatory framework for online commercial activities and communications, with the aim of ensuring trust, transparency, and legal certainty in the e-commerce environment.

Furthermore, the framework established under this Law has been further elaborated by the Electronic Commerce Regulation[277], which entered into force in 2022. The Regulation details the obligations imposed on e-commerce platforms and service providers, thereby seeking to strengthen the legal infrastructure governing e-commerce in Türkiye.

a) Internet Law

Under Internet Law, online actors are classified into four main categories. First, the content provider, defined under Article 2(1)(f) of the Law, refers to natural or legal persons who produce, process, or transmit information made accessible to internet users. The second category is the access provider, regulated under Article 2(1)(e). An access provider is defined as any natural or legal person that enables users to access the internet. Third, the hosting provider, defined under Article 2(1)(m), encompasses natural or legal persons who provide or operate systems that host services and content in the online environment. By its nature, this category also includes online platforms. In this context,

[276] Türkiye, *Law No. 6563 on the Regulation of Electronic Commerce,* Official Gazette, No. 29166, November 5, 2014.

[277] Türkiye, *Regulation on Service Providers and Intermediary Service Providers in Electronic Commerce*, Official Gazette, No. 32058, December 19, 2022.

the definitions of “social network provider” under Article 2(1)(s)[278] and “gaming platform” under Article 2(1)(ü)[279] have also been separately incorporated into the Law. Finally, the collective use provider, regulated under Article 2(1)(i), is defined as natural or legal persons who provide internet access to users at a specific location and for a certain period of time.

Although it contains certain provisions applicable to platforms that may be classified as hosting providers[280], Internet Law is primarily a regulation with a criminal law character. Therefore, its impact on online trademark infringements arising in the context of e-commerce is not direct but rather indirect[281].

b) The Electronic Commerce Law and The Electronic Commerce Regulation

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[278] According to this definition, a social network provider refers to a natural or legal person that enables users to create, access, view, or share content, including text, images, audio, and location data, in the online environment for the purpose of social interaction.

[279] According to this definition, a gaming platform refers to a natural or legal person that provides the software or technical infrastructure for the display, sale, distribution, download, or playing of digital games and related additional content over the internet, and that enables or coordinates users’ access to games or content, licence management, or interactions between users.

[280] Ahunur Açikgöz and Murat Gürel, "Başkasına Ait İçerikteki Fikrî ve Sınai Hak İhlalleri Nedeniyle Dijital Platformların Hukuki Sorumluluğu," *İstanbul Hukuk Mecmuası* 82, no. 3 (2024): 724.

[281] Ayten Sıla Büyüker, "Evaluatıon of Trademark Infringement in Online Marketplaces within the Scope of EU and Turkish Law" (Master Thesis Marmara Universitesi, 2024), 30.

Pursuant to Article 2(1)(a) of the Electronic Commerce Law and Article 4/1(e) of the Electronic Commerce Regulation, e-commerce refers to any economic and commercial activity carried out online in an electronic environment without the parties being physically present face-to-face. The concept of electronic environment is defined under Article 2(1)(ğ) of the Law and Article 4/1(ı) of the Regulation as platforms where e-commerce activities are conducted, such as websites, mobile sites, or mobile applications.

Until the amendments introduced in 2022, online platforms were predominantly treated as ISPs, defined under Article 2(1)(d) of the Law as natural or legal persons providing the e-commerce environment[282].

Following the amendment, the terms "electronic commerce intermediary service provider" (ECISP) and "electronic commerce service provider" (ECSP) were introduced into the Law. The ECISP, which corresponds to online platforms[283], is defined under Article 2(1)(f) of the Law and Article 4/1(f) of the Regulation as an ISP that enables users to conclude contracts or place orders regarding goods or services made available by ECSPs within an online marketplace. The ECSP, in turn, is defined under Article 2(1)(g) of the Law and Article 4/1(h) of the Regulation as a service provider that concludes contracts or receives orders for the supply of goods or services either within an e-commerce marketplace or through its own e-commerce environment.

II. LIABILITY OF PLATFORMS FOR TRADEMARK INFRINGEMENTS

282 Açikgöz and Gürel, "Başkasına Ait İçerikteki Fikrî ve Sınai Hak İhlalleri Nedeniyle Dijital Platformların Hukuki Sorumluluğu," 699.

283 Göka, "Elektronik Ticaret Platformlarının Üçüncü Kişilerin Fikri ve Sınai Hakkını İhlal Eden İçerikten Kaynaklanan Hukuki Sorumluluğu," 20.

Liability of online platforms has been one of the most central legal issue faced by the internet ecosystem, originating from early debates on the liability of ISPs and gradually expanding to encompass online platforms[284].

In this context, certain fundamental concepts play a decisive role in determining platform liability across all three jurisdictions. Among these, the “safe harbour” exemption, which defines the circumstances in which liability does not arise, is particularly prominent. The liability regime falling outside the scope of safe harbour protection is, in turn, structured around elements such as the knowledge standard, the notice-and-takedown mechanism, and the prohibition of general monitoring.

A) CONDITIONS FOR PLATFORM LIABILITY

1. Safe Harbour

From the early stages of the internet era, intermediary service providers, aware that they could be held liable in relation to hosted content, have sought exemption from content-based liability arising from the services they provide[285]. This demand was positively received by policymakers in many parts of the world, with the aim of promoting the growth and development of internet technologies. As a result, intermediaries were granted exemption from liability, provided that they did not actively participate in

[284] OECD, *The Role of Internet Intermediaries in Advancing Public Policy Objectives*, 71.

[285] OECD, *The Role of Internet Intermediaries in Advancing Public Policy Objectives*, 73.

infringing activities within the scope of their services and did not have knowledge of the infringement[286].

a) US

The concept of "safe harbour," which is generally used in doctrine to refer to a narrow exception derived from an otherwise applicable regulatory framework, has been explained, in the specific context of online platform liability, as an exception that regulated actors may fall within by taking certain steps or performing specific actions[287].

In this context, the primary regulation is §230 of the CDA, which grants immunity to ISPs from being held liable as a "publisher" or "speaker" for content created by third parties. However, federal intellectual property rights were explicitly excluded from the scope of this immunity. Consequently, §512 of the DMCA was enacted to establish a safe harbour regime specifically for copyright infringements. Under this framework, service providers may benefit from safe harbour protection provided that they do not have actual or constructive knowledge of the infringement, or that they swiftly remove such content upon obtaining knowledge.

In contrast, there is no equivalent statutory safe harbour regime specifically tailored to trademark infringement. Although some commentators characterize the provision concerning paid advertising under Section 32(2)(B) of the Lanham Act as a

[286] Aleksandra Kuczerawy, "From 'Notice and Takedown'to 'Notice and Stay Down': Risks and Safeguards for Freedom of Expression," in *Oxford Handbook of Online Intermediary Liability*, ed. Giancarlo Frosio (Oxford University Press, 2020), 525.

[287] Molly Shaffer Van Houweling, "Safe Harbors in Copyright" (Preliminary Draft Presented at the 2006 IP Scholars Conference., 2006).

trademark-specific safe harbour[288], its highly limited scope has rendered it insufficient to fill the gap in practice. Therefore, courts have developed a comparable framework through case law. The issue, which was first addressed in the context of trademark infringement in *Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*[289], was subsequently examined for the first time in the context of online trademark infringement in *Tiffany (NJ) Inc. v. eBay Inc.*[290]. In that case, the key factor that exempted eBay from liability was its implementation, in the trademark context, of an approach similar to that under the DMCA, despite the absence of any corresponding legal obligation[291].

Indeed, this approach has evolved into a de facto standard for other platforms. Conversely, actors that tolerate infringement or fail to adopt adequate preventive measures continue to face potential liability[292].

However, according to the view in the doctrine, with which I also agree, the absence of a clear safe harbour regime specific to trademark infringement limits the

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288 Mark A Lemley, "Rationalizing Internet Safe Harbors," *Journal of Telecommunications and High Technology Law* 6 (2007): 105-06.

289 *Inwood Lab'ys, Inc. v. Ives Lab'ys, Inc.,* 456 U.S. 844 (1982).

290 *Tiffany (NJ) Inc. v. eBay, Inc.*, 600 F.3d 93 (2d Cir 2010).

291 Graeme B Dinwoodie, "A Comparative Analysis of the Secondary Liability of Online Service Providers," ed. Graeme B Dinwoodie, vol. 25, *Secondary Liability of Internet Service Providers* (Springer, 2017). 33.

292 Ballon, "Content Moderation and Platform Liability: Service Provider and Website, Mobile App, Network and Cloud Provider Exposure for User Generated Content and Misconduct," 49-74.

predictability of this case law-based framework[293]. This situation enables rights holders to advance claims aimed at expanding platform liability, while simultaneously leaving platforms uncertain as to the precise scope and limits of the expected standard of conduct. As a result, this legal uncertainty gives rise to risks of both over-compliance and under-compliance, ultimately increasing transaction costs for all stakeholders and undermining legal predictability.

b) EU

The safe harbour regime in the EU was first established under Articles 12, 13, and 14 of the E-Commerce Directive and applies only to ISSPs that perform activities of a technical, automatic, and passive nature[294]. Within this framework, a service provider is exempt from liability provided that it does not have actual knowledge of the illegality of the content it hosts or, once becoming aware of such content, promptly removes it or restricts access thereto. As previously noted, this safe harbour regime has been revised under Articles 4, 5, and 6 of the DSA. Nevertheless, the fundamental logic of the safe harbour system has been preserved under the DSA.

However, unlike the E-Commerce Directive, the DSA introduces important exceptions to the liability exemption applicable to hosting service providers. Pursuant to Article 6(3) of the DSA, safe harbour protection does not apply where the recipient of the service is acting under the authority or control of the platform. Furthermore, under Article 6(4), liability exemption does not apply where the presentation of the product on the platform is such that it would lead an average consumer to believe that the product is provided directly by the platform itself.

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[293] Andrew Ligon Fant, "Reconsidering the Willful Blindness Doctrine in Contributory Trademark Infringement," *Journal of Intellectual Property Law* 29, no. 2 (2022): 343.

[294] Recital 42 of E-Commerce Directive.

EU courts assess whether a platform falls within the scope of safe harbour protection by first determining whether it plays an active role in the infringement. This assessment has been conducted through the specific service structures of different platform types. For instance, the "activeness" of search engines has been evaluated in light of their role in displaying relevant search results within the scope of the services they provide[295], whereas online marketplaces have been assessed based on their role in presenting or promoting sales offers[296]. Similarly, social media platforms have been evaluated with regard to their role in the dissemination of allegedly infringing content[297].

In this context, once courts determine that the relevant platform does not play an active role, they proceed to assess the specific statutory conditions—such as knowledge of unlawful content and the obligation to act upon obtaining such knowledge—in order to decide whether the limits of the safe harbour exemption have been exceeded[298].

Although CJEU case law provides some guidance to Member States in this regard, the fact that these decisions are inherently fact-specific, combined with the increasing diversification of platform services alongside technological developments, at times makes

[295] CJEU, *Google France*, Joined Cases C-236/08 to C-238/08, para.143.

[296] CJEU, *L'Oréal v. eBay*, Case C-324/09, 12 July 2011, ECLI:EU:C:2011:474, paras.112-117.

[297] CJEU, *YouTube and Cyando,* Joined Cases C-682/18 and C-683/18, 22 June 2021, ECLI:EU:C:2021:503, para 109.

[298] Ullrich, *Unlawful Content Online: Towards a New Regulatory Framework for Online Platforms*, 164.

the determination of the scope of safe harbour exemptions challenging for Member States[299].

c) Türkiye

In the Turkish legal system, a safe harbour–like regime has been established through statutory regulations. In this regard, Articles 5 and 6 of Internet Law provide that ISPs, such as hosting providers and access providers, shall not be held liable for unlawful content, provided that they remove such content upon being notified of its illegality. A similar framework is also adopted under Article 9 of the Electronic Commerce Law with respect to ECISP. Accordingly, these service providers are required, upon becoming aware of unlawful content, to remove such content without delay and to notify the relevant public authorities concerning the illegality in question.

However, unlike the approach adopted by EU courts, Turkish courts do not distinguish levels of intermediary involvement when applying the safe harbour doctrine. In other words, once a platform becomes aware of an infringement and removes the relevant content, it is highly likely to benefit from this exemption[300]. This approach has been subject to criticism on the grounds that it may overlook the role that the platform

[299] Ullrich, *Unlawful Content Online: Towards a New Regulatory Framework for Online Platforms*, 166.

[300] Judgement of the Turkish Court of Cassation (11th Civil Chamber), April 30, 2025, E. 2024/4811, K. 2025/2973; Judgement of the Turkish Court of Cassation (11th Civil Chamber), October 7, 2025, E. 2025/1117, K. 2025/5983. *Lexpera*. https://www.lexpera.com.tr (accessed March 16, 2026)

itself may have played, in certain circumstances, in the occurrence of the infringement[301], and I share this view.

Applying the conditions for immunity in the Turkish approach in a rigid, almost formulaic manner tends to constrain the development of case law in this field. In particular, the reality that platforms—through their increasingly complex business models—blur consumer perception is often overlooked. In this regard, it is submitted that assessing the extent to which a platform is involved in the infringement process from the perspective of the average consumer, and determining the applicability of immunity accordingly, would align more closely with the contemporary approach.

2. Knowledge Standard

The knowledge standard plays a critical role in determining under what circumstances platform operators are deemed to have knowledge of infringing activity and, consequently, may be held liable.

a) US

In US law, the knowledge standard is based on actual knowledge and awareness. Within this framework, "actual knowledge" is typically triggered only by a proper notice, whereas "awareness" can be triggered by a "red flag" situation that would be obvious to a reasonable person operating under similar circumstances[302]. Despite this distinction, US

[301] Erdem Büyüksağiş and Defne Kahveci, "E-Ticaret Platformlarının Satılanın Ayıplarından Sorumluluğu," *Yeditepe Üniversitesi Hukuk Fakültesi Dergisi* 19, no. 3 (2022): 137-38.

[302] Christina Angelopoulos, *European Intermediary Liability in Copyright: A Tort-Based Analysis* (Netherlands: Kluwer Law International BV, 2017), 83.

courts have adopted such a high standard for the red flag test that, in most cases, awareness is considered to nearly overlap with actual knowledge[303].

Specifically in the context of trademark infringement, this standard was first articulated in Inwood case, where it was associated with whether the infringement was known or whether there was reason to know of it[304]. Moreover, the first decision to examine this standard in detail in relation to online platforms was *Tiffany v. eBay*. Within this framework, the court emphasized that eBay's liability requires concrete and current knowledge of specific instances of infringement, and general awareness of counterfeit sales was deemed insufficient[305].

Subsequent case law has similarly embraced this approach. For instance, in another decision, a defendant who failed to act despite infringement notices issued by Louis Vuitton was found to have satisfied the specific knowledge requirement and was held liable[306]. Moreover, within the assessment of the knowledge standard, the "reason to know" element, also referred to as willful blindness, plays a critical role[307]. In this regard, the implementation of appropriate preventive measures by platforms against repeated

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[303] Béatrice Martinet Farano, *Internet Intermediaries' Liability for Copyright and Trademark Infringement: Reconciling the EU and US Approaches*, Stanford Law School and the University of Vienna Scool of Law (2012), 79-80, http://www.law.stanford.edu/organizations/programs-and-centers/.

[304] *Inwood Lab'ys, Inc. v. Ives Lab'ys, Inc.*, 456 U.S. 844, at 853-54 (1982).

[305] *Tiffany (NJ) Inc.*, 600 F.3d at 106-107.

[306] *Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc.*, 658 F.3d 936 (9th Cir. 2011).

[307] Ballon, "Content Moderation and Platform Liability: Service Provider and Website, Mobile App, Network and Cloud Provider Exposure for User Generated Content and Misconduct," 49-76.

infringing listings or infringers may reduce the risk of liability[308]. Finally, technological tools and their effectiveness in preventing similar infringements may also influence the determination of the applicable knowledge standard. For example, in one case, the defendant was held liable on the grounds that, despite having limited knowledge of the infringement, they failed to use effective intervention tools that could have stopped the infringement even with that level of knowledge[309].

b) EU

Under EU law, two distinct scenarios are recognised in relation to the knowledge standard: "being notified" and "having knowledge." "Being notified" arises from a notification of infringement made by the rights holder[310] or by the entities designated as "trusted flaggers[311], whereas "having knowledge" is determined based on the standard of a diligent trader, even in the absence of a specific notification or warning[312].

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308 *Mori Lee, LLC v. Sears Holdings Corp.*, No. 13cv3656, 2014 WL 4680739, at 2-3 (S.D.N.Y. 2014)

309 *1-800-Contacts, Inc.*, 722 F.3d 1229, 1252-54.

310 CJEU, *Google France*, Joined Cases C-236/08 to C-238/08, para.120.

311 Under Article 22 of the DSA, the status of 'trusted flagger' is granted, upon application by any entity, by the Digital Services Coordinator of the Member State in which the applicant is established, where the applicant has demonstrated that it satisfies all the conditions laid down in that Article. Trusted flaggers are entities entrusted with the task of detecting, identifying, and submitting notices concerning illegal content. Online platforms are required to process notices submitted by trusted flaggers as a matter of priority and without undue delay.

312 CJEU, *L'Oréal v. eBay*, Case C-324/09, para.120.

For platforms to remain within the scope of safe harbour exemptions, they are expected not only to respond to actual knowledge of infringement received from third parties but also to act promptly against infringements they identify proactively as part of voluntary measures[313]. Moreover, within case law, the state of lacking knowledge is associated with the platform's passive role regarding the infringement, which is also a prerequisite for safe harbour protection[314]. In other words, a platform that plays an active role in the relevant infringement is presumed to have knowledge of the infringing content[315].

c) Türkiye

In the context of Turkish law, the knowledge standard applied in determining platform liability had, prior to the 2022 amendments, been limited to the state of "being notified" as regulated under Article 9 of the Internet Law. Within this framework, assessments regarding the knowledge standard were confined to circumstances such as the submission of a lawsuit petition to the platform[316], a court order[317], or notifications

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[313] CJEU*, L'Oréal v. eBay*, Case C-324/09, para.122.

[314] CJEU, *Google France*, Joined Cases C-236/08 to C-238/08, paras.113-114.

[315] Yusufoğlu Bilgin, *Dijital Piyasalarda Yer Sağlayıcıların Hukuki Sorumluluğu-Marka, Telif Hakkı ve Haksız Rekabet Kapsamında*, 95.

[316] Judgement of the Turkish Court of Cassation (Assembly of Civil Chambers) of 15 January 2014, E.2013/11-1138, K. 2014/16, Lexpera. https://www.lexpera.com.tr (accessed March 16, 2025).

[317] Judgement of the Turkish Court of Cassation (11.Civil Chamber) of 26 November 2014, E.2014/10712, K. 2014/18417, Lexpera. https://www.lexpera.com.tr (accessed March 16, 2025).

supported by concrete evidence provided by the right holder[318], while situations in which the platform became aware of the infringement on its own initiative were largely disregarded.

However, this situation has changed to some extent following the 2022 amendments. Under Article 24 of the Regulation, medium-sized, large, and very large-scale platforms are now required to submit annual reports to the Ministry regarding violations of the Industrial Property Code identified on their platforms. In this context, it is envisaged that the relevant platforms may become aware of potential infringements through their own monitoring and reporting activities[319]. Supporting this interpretation, Article 10 of the Regulation refers not to situations where the platform is "notified" of unlawful content, but rather to situations where the platform "becomes aware" of such unlawfulness and is therefore expected to intervene. Accordingly, with this amendment, the scope of the knowledge standard giving rise to platform liability has been broadened.

3. Notice & Takedown Procedure

In practice, the "Notice and Takedown" corresponds to a process operated by platforms in response to court or right owners demand that content is unlawful.

a) US

The basis of the safe harbor exemption described above rests on the existence of a multi-layered set of obligations under Section 512 of the DMCA, which is grounded in a notice-and-takedown system for copyright infringement. By contrast, no comparable

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[318] Judgement of the Turkish Court of Cassation (11.Civil Chamber) of 30 September 2019, E.2018/4667, K. 2019/5975, Lexpera. https://www.lexpera.com.tr (accessed March 16, 2025).

[319] Göka, "Elektronik Ticaret Platformlarının Üçüncü Kişilerin Fikri ve Sınai Hakkını İhlal Eden İçerikten Kaynaklanan Hukuki Sorumluluğu," 22-23.

statutory framework has been established in trademark law. The approach in this field has instead developed primarily through judicial case law—particularly following the decision in *Tiffany v. eBay*—and is shaped by a common law-based notice-and-takedown regime grounded in knowledge of specific instances of infringement[320]. Following this decision, many online platforms voluntarily implemented similar notice-and-takedown systems allowing for the submission of trademark infringement notices and the removal of the allegedly infringing content[321]. However, this flexible approach in trademark law has provided platforms with broad discretion in designing their notice-and-takedown mechanisms.

Within this framework, some platforms have largely adopted a model based on the DMCA, while others have developed additional and distinct practices that go beyond its requirements. In essence, a valid infringement notice under the DMCA must include six core elements: a signature, identification of the copyrighted work(s) at issue, identification of the allegedly infringing material and its location, contact information of the complaining party, a good faith statement, and a statement under penalty of perjury regarding the complainant's authorization to act. However, a study has shown that platforms may impose up to thirty-nine different and divergent additional requirements for trademark infringement notices[322]. This diversity is regarded as a structural

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[320] Michael Goodyear, "Common Law Notice-and-Takedown," *New York University Journal of Intellectual Property & Entertainment Law, Forthcoming* 15 (2025): 109, https://doi.org/10.2139/ssrn.5186987.

[321] López Martínez, "The Reconciliation of Secondary Liability for Trademark and Copyright Law Through Tort Law in Different E-Commerce Situations. a Comparative Study Between Us and EU Systems", 45.

[322] Goodyear, "Common Law Notice-and-Takedown," 154.

consequence of a notice-and-takedown system that has evolved through case law rather than comprehensive statutory regulation.

Concerns that divergences within the system may lead to inefficiencies have resulted in recommendations that platforms adopt industry-standard practices[323]. However, this situation may, at times, lead to the neglect of efficient notice-and-takedown systems implemented by certain platforms, while in other instances contributing to the standardization of practices that fail to adequately balance the interests of platforms, rights holders, and users, thereby imposing disproportionate burdens on rights holders[324]. Indeed, an increasing trend has been observed in which some platforms impose additional and onerous requirements on reporting rights holders. For instance, although filing a lawsuit under the Lanham Act does not require trademark registration, some platforms nevertheless require proof of trademark registration as part of the notification process. Similarly, there is a growing practice of requiring users to create an account in order to submit infringement notices, thereby introducing obligations that exceed minimal registration requirements[325]. While such requirements may be manageable for large-scale trademark owners, they are considered to create a disproportionate administrative burden for smaller rights holders.

[323] National Telecommunications and Information Administration U.S. Department of Commerce, *DMCA Notice-and-Takedown Processes: List of Good, Bad, and Suboptimal Practices* (2015), 2, https://www.uspto.gov/sites/default/files/documents/DMCA_Good_Bad_and_Situational_Practices_Document-FINAL.pdf.

[324] Goodyear, "Common Law Notice-and-Takedown," 156.

[325] Goodyear, "Common Law Notice-and-Takedown," 157.

More recently, NFT-based platforms have become part of this increasingly complex structure. Due to the absence of clear statutory regulation regarding the appropriate system to be adopted, these platforms have generally incorporated commonly accepted platform-based notification mechanisms into their systems[326]. However, the requirement to submit separate notices for each individual infringement has placed significant strain on rights holders[327]. It has even been reported that a single trademark owner submitted more than 100,000 infringement notices to a single NFT platform within the span of just one month[328].

In light of these issues, the adequacy and effectiveness of a flexible, common law-based notice regime has become increasingly debatable in the face of digitized and large-scale trademark infringements. In this context, there appears to be a need for clear statutory regulation in the US that takes into account the forms of trademark infringement, the capacities of rights holders, and the operational capabilities of platforms.

b) EU

Prior to the DSA, although the E-Commerce Directive referred to a notice-and-takedown system, it did not clearly define how notifications from rights holders should be structured or formulated (i.e., it was left in a skeletal form[329]). In this respect, only

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[326] Goodyear, "Intellectual Property's NFT Gap: Twentieth-Century Copyright Law Could Limit Viable Uses of Blockchain," 4.

[327] Kevin Collier, "NFT Art Sales are Booming. Just Without Some Artists' Permission," NBC News, accessed 10.10.2025.

[328] *Non-Fungible Tokens and Intellectual Property- A Report to Congress,* (USPTO, 2024), 54.

[329] Dinwoodie, "A Comparative Analysis of the Secondary Liability of Online Service Providers." 40.

defining the system and leaving detailed regulation to the EU countries led to the development of divergent procedures aimed at fulfilling the same requirement[330].

By contrast, the DSA has established more specific rules regarding this procedure. Under Article 16 of the DSA, hosting service providers and online platforms are required to operate mechanisms for the notification and removal of illegal content. In this context, providers are required to ensure the availability of notice and action mechanisms that are simple to use, readily accessible, and capable the submission of notices exclusively via electronic channels. Furthermore, the provision also lays down specific criteria that notices must fulfil for the platform to process them. Accordingly, a notice will be regarded as valid only where it must include a reasoned explanation of the alleged infringement, information sufficient to locate the content precisely, the identity and email address of the notifying party, and a statement confirming that the information submitted is, to the best of the notifier's knowledge, accurate and complete.

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[330] For example, in Germany and France, an infringement notice gives rise not only to an obligation to remove the content but also to an obligation to prevent similar infringements. In this system, referred to as "notice and staydown" or "notice and action," the measures taken in response to a notice cover not only the specific infringement in question but also essentially similar infringing situations. In the United Kingdom, by contrast, rather than a notice-and-takedown mechanism, blocking injunctions issued by courts are generally applied to address infringements. These injunctions, which can easily be extended to ISPs of infringing websites, may also be issued against platforms. For more detailed information see Ansgar Ohly, "The Liability of Intermediaries for Trade Mark Infringement," in *Research Handbook on Trademark Law Reform* (Edward Elgar Publishing, 2021), 28.

Through this system, a diligent hosting service provider that receives such a notice is expected to assess the notification in a timely, careful, and objective manner and take appropriate action, particularly where the unlawful nature of the content is apparent without requiring an in-depth legal analysis. The measures that may be adopted following such notices are regulated under Article 17 of the DSA, which requires platforms to provide a detailed statement of reasons to the content provider before implementing any restrictive measure.

Furthermore, Article 20 of the DSA imposes an obligation on online platform providers to establish an internal complaint-handling mechanism concerning decisions taken in response to such notices. However, pursuant to Article 19 of the DSA, online platforms operated by micro or small enterprises that do not qualify as “VLOPs” are exempt from this obligation. Paragraph 6 of the same Article further requires that decisions within the framework of this mechanism be taken by personnel possessing appropriate qualifications and that such decisions must not be based solely on automated tools. In this context, complaints must be examined in a timely, fair, and diligent manner, and removal decisions must be reversed where appropriate.

In addition to the notice-and-takedown system established within the framework of statutory regulation, organically developed notification mechanisms based on voluntary cooperation and agreements between intermediaries and rights holders also exist[331]. In this context, such notice-and-takedown systems may encompass not only the

[331] Notice-and-takedown procedures constituted a central element of the Memorandum of Understanding (EU MoU), concluded in 2011 between trademark owners and internet platforms in Europe, which defined their respective roles in combating online counterfeiting. For more detailed information see Dinwoodie, "A Comparative Analysis of the Secondary Liability of Online Service Providers." 41.

removal of detected infringements but also the implementation of proactive and preventive measures[332]. In this context, the “Good Samaritan” principle incorporated into the legal framework under Article 7 of the DSA has also eliminated the liability hesitations that previously arose among platforms regarding the adoption of such measures[333]. Because unlike the previous regime, Article 7 explicitly clarifies that intermediary service providers remain eligible for liability exemptions even if they proactively investigate or take voluntary measures to identify, remove, or otherwise mitigate illegal content.

At this point, it is suggested that a similar form of cooperation could be established between NFT platforms and rights holders, as well. It is anticipated that such cooperation would be more beneficial for rights holders than the implementation of standard notice-and-takedown procedures[334], the effectiveness of which remains subject to certain uncertainties[335].

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[332] "Memorandum of Understanding on the Sale of Counterfeit Goods on the Internet ", European Commission, accessed 26.11.2025, https://single-market-economy.ec.europa.eu/industry/strategy/intellectual-property/enforcement-intellectual-property-rights/memorandum-understanding-sale-counterfeit-goods-internet_en.

[333] Joris van Hoboken et al., *Hosting Intermediary Services and Illegal Content Online: An Analysis of the Scope of Article 14 ECD in Light of Developments in the Online Service Landscape*, European Commssion (2018), 41.

[334] Dimita et al., *IP and Metaverse(s) - an Externally Commissioned Research Report*, 61.

[335] Corinne Tan, "Rights in NFTS and the Flourishing of NFT Marketplaces," *International Journal of Law and Information Technology* 32, no. 1 (2024): 8, https://doi.org/10.1093/ijlit/ease018.

c) Türkiye

Article 9(2) of the Electronic Commerce Law and Article 5 of the Internet Law impose on online platforms the obligation to promptly remove infringing content upon notification and to inform the relevant public authorities. Article 9(3) of the Electronic Commerce Law establishes a separate notice system specifically for infringements of intellectual and industrial property rights. The details of this system are set out in the relevant Regulation.

Pursuant to Article 12(1) of the Electronic Commerce Regulation, titled "*Application for Complaint Concerning the Infringement of Intellectual and Industrial Property Rights*," the complaint must be submitted through the internal communication system, via a notary public, or through Registered Electronic Mail ("REM"). The complaint must include information and documents evidencing ownership of the right; the identity and address details of the complainant; where applicable, information regarding the representative and power of attorney; the grounds and evidence demonstrating the alleged infringement; information identifying the location of the infringement online; and a statement acknowledging that the applicant shall be liable for any damages arising if the complaint is unfounded.

According to Article 12(3) of the Regulation upon receipt of a complaint, the online platform is required to remove the product subject to the complaint from publication without delay and, in any event, within a 48-hour period, while duly informing both the content provider and the rights holder. The notification addressed to the content provider must also include information regarding the internal complaint mechanism available to challenge the complaint. Unlike the DSA, this internal complaint mechanism is imposed as an obligation on all online platforms, irrespective of their size. However, in my view, such a generalised system may impose an additional burden on newly emerging platforms in the market. In this regard, a targeted approach—similar to that in the EU, focusing on large platforms where infringements occur more frequently—and the effective oversight of whether these specific platforms properly enforce the mechanism may ensure that the intended outcomes of the legal framework are achieved.

Pursuant to Article 14 of the Regulation, online platforms are required to examine the information and documents submitted within the scope of an objection application and, where the merits of the objection are clearly apparent, to reinstate the product subject to the complaint within no later than twenty-four hours from receipt of the objection and to notify the right holder and the relevant content provider without delay. Under the provision, the platform's review is limited to the materials submitted by the content provider. Furthermore, the platform shall not process further complaints concerning the same product and the same allegation unless new evidence demonstrating the infringement.

A notable aspect of the regulation is that the criterion of the "clear apparentness of the merits" is not prescribed at the stage of assessing the initial infringement notice but only within the objection procedure against the removal decision. This systematic choice has been subject to criticism in the literature[336]. In the absence of a comparable threshold requiring that the initial complaint demonstrate a clear and prima facie infringement, platforms may be compelled to undertake substantive legal assessments and, acting cautiously, may be inclined to remove content. Such a structure risks generating an over-removal effect, potentially leading to unnecessary and disproportionate restrictions on competition and the freedom of enterprise.

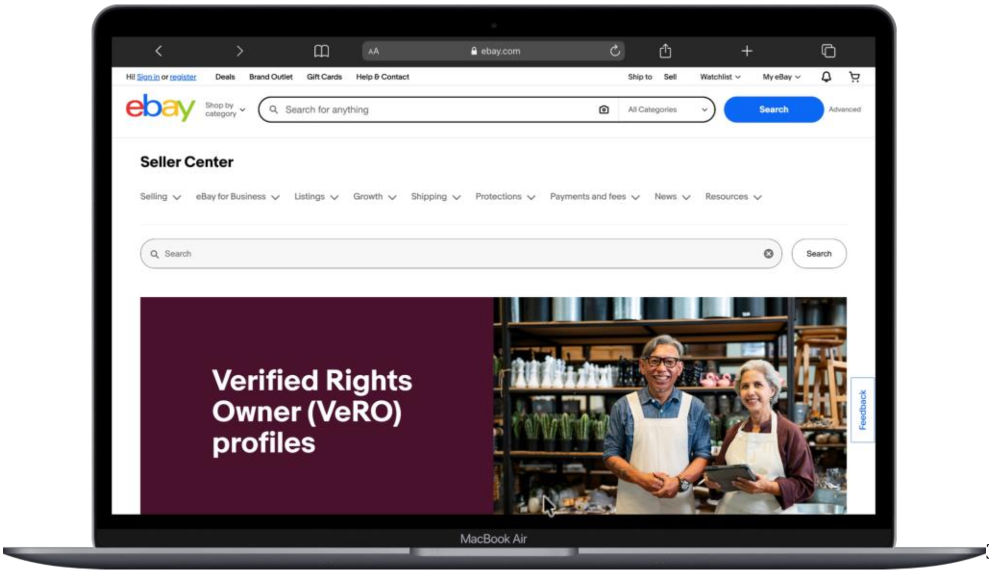
[336] Yusufoğlu Bilgin, *Dijital Piyasalarda Yer Sağlayıcıların Hukuki Sorumluluğu-Marka, Telif Hakkı ve Haksız Rekabet Kapsamında*, 487.

In this regard, rather than limiting such a clarity requirement to the objection stage alone, extending it to both infringement notifications and objections to removal decisions would have constituted a more proportionate and systemically coherent approach.

4. Measures Taken by Platforms

As can be observed, there are no clearly established international rules governing the operation of the notice and takedown system, which constitutes a key basis for determining either the liability or the exemption thresholds of platforms in relation to trademark infringements. This has led to divergences in practice among internationally operating platforms. While some platforms have developed voluntary internal monitoring and preventive mechanisms in order to avoid potential liability claims, including the use of technological tools such as artificial intelligence (AI), others appear to rely on more limited intervention mechanisms restricted to a simple notice-and-takedown system. In order to examine these differences, the practices of seven internationally operating platforms were selected for analysis. The selection of these platforms was based on three criteria: (i) their significance in the context of online trademark infringement enforcement, (ii) the diversity of intermediary service models they represent, and (iii) their economic relevance and broad user reach.

a) eBay



[337]

Founded in 1995 in the US by Pierre Omidyar, eBay operates as a global online marketplace and auction platform facilitating transactions between individuals and businesses[338].

According to eBay, he platform has made significant investments in technological systems and various initiatives aimed at protecting intellectual property rights and maintaining a secure and trustworthy trading environment for users[339]. In this context, eBay has developed online dispute resolution mechanisms to facilitate the rapid and impartial resolution of buyer–seller disputes that may arise from transactions conducted

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[337] The screenshot of the relevant platform was generated by the author using the *Responsive Site Test* Chrome extension developed by Mobile First, accessed on 25.07.2026, https://chromewebstore.google.com/detail/mobile-simulator-responsi/ckejmhbmlajgoklhgbapkiccekfoccmk.

[338] Encyclopaedia Britannica, "eBay," accessed 14.05.2025, https://www.britannica.com/money/eBay.

[339] "Investing Billions in Trust & Safety," eBay Main Street, accessed 10.07.2025, https://www.ebaymainstreet.com/smallbiz/issues/trust-and-safety.

on the platform[340]. Through these mechanisms, eBay seeks to provide a neutral environment for communication between buyers and sellers regarding products bearing trademarks, thereby enabling the early resolution of less complex disputes.

Among the primary enforcement mechanisms adopted by eBay for addressing trademark infringements is the VeRO (Verified Rights Owner) Programme. As of 2023, the VeRO program includes more than 68,000 registered intellectual property rights holders. Through this program, rights owners are able to notify eBay of listings that are potentially counterfeit or otherwise infringing[341]. By creating a participant profile, each rights holder may describe the intellectual property rights it owns and explain how those rights may legitimately be used[342]. Uses that are inconsistent with the conditions specified within the program may then be identified and reported to eBay. Upon receiving such notices, eBay systematically reviews them and may remove the allegedly infringing content without conducting an independent substantive investigation into the merits of the complaint[343].

In addition to acting upon incoming notices, eBay reportedly employs proactive measures, including a sophisticated filtering system designed to detect potentially

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[340] "Dispute Resolution Overview," eBay, accessed 26.07.2026, https://pages.ebay.com/services/buyandsell/disputeres.html.

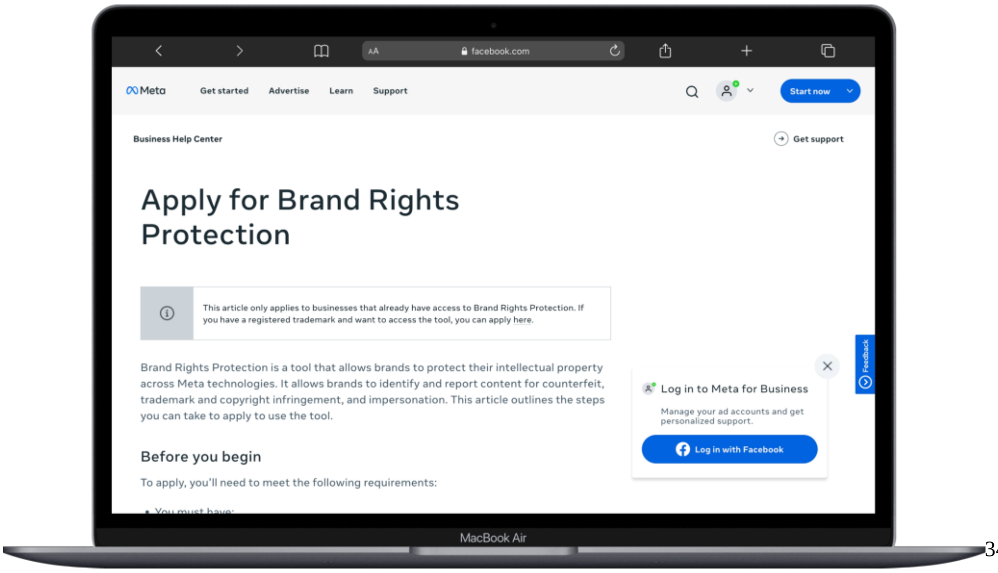
[341] "How eBay is Protecting Buyers and Brands," eBay Main Street, accessed 10.07.2025, https://www.ebaymainstreet.com/smallbiz/news-events/how-ebay-protecting-brands-and-buyers?utm_source=chatgpt.com.

[342] "Verified Right Owner (VeRO) Profiles," eBay, accessed 14.07.2025, https://www.ebay.com/sellercenter/resources/verified-rights-owner-profiles.

[343] "Verified Right Owner (VeRO) Profiles."

infringing listings and to refer them for review by customer service representatives[344]. According to eBay, the majority of trademark-related issues on the platform are resolved through these internal monitoring and enforcement mechanisms[345].

b) Facebook



[346]

Founded in 2004 by Mark Zuckerberg as a service structured around interpersonal communication and information sharing, Facebook has operated under the corporate umbrella of Meta Platforms, Inc. since 2021[347]. As of September 2025, the platform

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344 Barton Beebe, *Trademark Law: An Open-Source Casebook* (New York University School of Law, 2024), 666. https://www.tmcasebook.org/.

345 "Investing Billions in Trust & Safety."

346 The screenshot of the relevant platform was generated by the author using the *Responsive Site Test* Chrome extension developed by Mobile First, accessed on 25.07.2026, https://chromewebstore.google.com/detail/mobile-simulator-responsi/ckejmhbmlajgoklhgbapkiccekfoccmk.

347 "Introducing Meta: A Social Technology Company," Meta, accessed 10.08.2025, https://about.fb.com/news/2021/10/facebook-company-is-now-meta/.

reportedly has approximately 3.54 billion daily active users (DAUs)[348]. The scale it has reached significantly increases both the risk of intellectual property infringements and the platform’s exposure to potential liability claims.

Within this framework, Facebook has developed various voluntary measures aimed at the protection of trademark rights. Foremost among these is the Brand Rights Protection system. This system provides rights holders with dedicated reporting tools designed to facilitate the more effective identification and notification of allegedly infringing content[349]. Moreover, rights holders may submit infringement reports not only with respect to the Facebook platform but also across other platforms operated by Meta, such as Instagram. Facebook states that, upon receipt of a complete and valid infringement notice, it generally removes the relevant content within one day or less. In cases of repeated violations, the platform may adopt progressively escalating measures, including service restrictions, account suspension, or the permanent removal of a page[350]. Furthermore, users are provided with the opportunity to appeal Facebook (Meta)’s decisions to remove or retain content before the Oversight Board, an independent body composed of experts selected from different regions of the world[351].

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348 *Meta Reports Third Quarter 2025 Results*, (Meta Platforms, 2025), https://investor.atmeta.com/investor-news/press-release-details/2025/Meta-Reports-Third-Quarter-2025-Results/default.aspx.

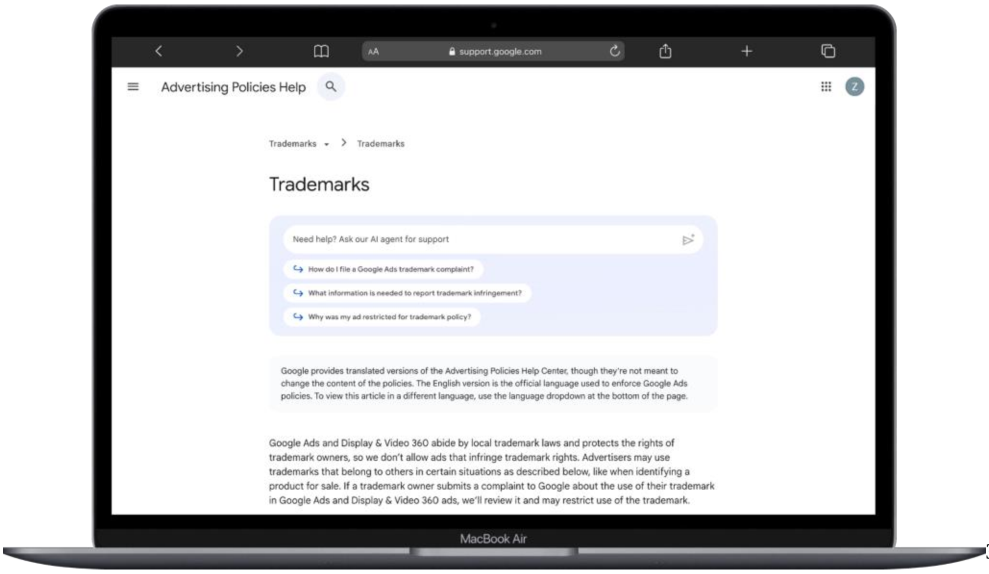
349 "How We Report Intellectual Property(IP) Rights," Meta, accessed 3.11.2025, https://transparency.meta.com/reports/intellectual-property/protecting-intellectual-property-rights/.

350 "How We Report Intellectual Property(IP) Rights."

351 "What is the Oversight Board?," Meta, accessed 26.07.2026, https://www.facebook.com/help/711867306096893.

In addition to operating a notice-based (reactive) system, Facebook also employs proactive detection mechanisms. According to the platform's statements, machine learning models are used to analyse specific keywords associated with piracy and counterfeiting activities, and filtering is conducted with respect to accounts that have previously been subject to enforcement action for trademark infringement. Through these mechanisms, potential infringements may be identified prior to or independently of a formal notice[352].

c) Google



[353]

Founded in 1998 by Larry Page and Sergey Brin, Google operates across internet search services, online information distribution, and advertising technologies. Although the company currently offers a wide range of internet-based services and products, it is widely acknowledged that its primary source of revenue derives from its keyword

[352] "How We Report Intellectual Property(IP) Rights."

[353] The screenshot of the relevant platform was generated by the author using the *Responsive Site Test* Chrome extension developed by Mobile First, accessed on 25.07.2026, https://chromewebstore.google.com/detail/mobile-simulator-responsi/ckejmhbmlajgoklhgbapkiccekfoccmk.

advertising service, Google Ads[354]. As previously noted, this advertising model gives rise to a distinct area of legal debate due to the potential unauthorized use of third parties' trademarks.

Within the scope of its Google Ads service, Google generally prohibits the use in advertisements and in website/application content of trademarks owned by others. However, Google has stated that this policy is not enforced through ex officio or proactive monitoring, but rather through a notice-based system operating upon complaints submitted by rights holders within the framework of the service[355]. In this respect, the model adopted by Google is based on a complaint-driven (reactive) intervention mechanism rather than on proactive supervision.

Under the most recent version of its Trademark Policy, which entered into force on 24 July 2023, Google provides that, across all jurisdictions, it will review complaints concerning the use of third-party trademarks in advertisement titles and/or ad text where such use is made by a direct competitor and/or in a confusing, deceptive, or misleading manner[356]. By contrast, Google does not restrict the use of trademarks as keywords,

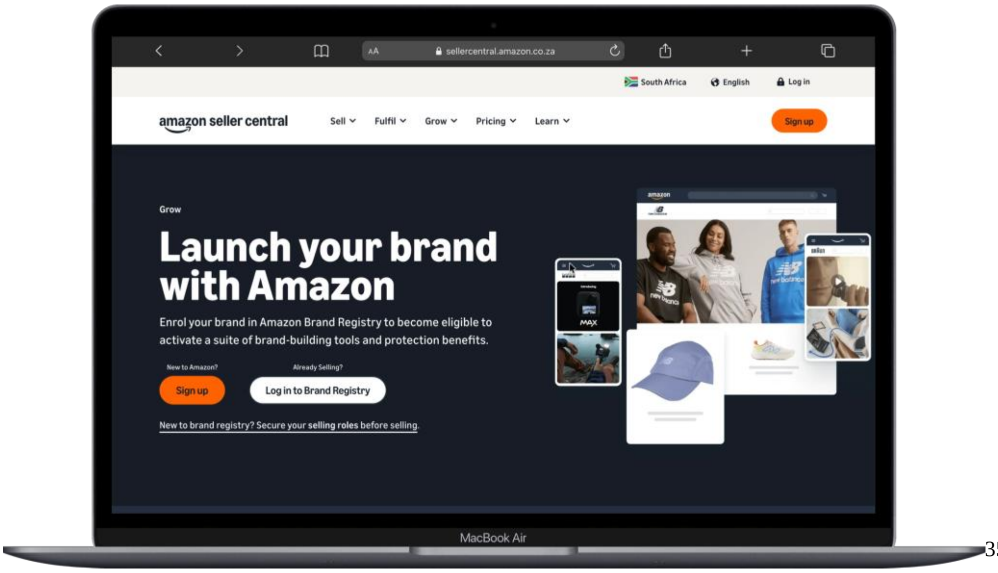
[354] "Google."

[355] "Google Ads Policies," Google, accessed 10.09.2025, https://support.google.com/adspolicy/answer/6008942?sjid=812420945830654389-EU&visit_id=639003003734130972-611655075&rd=1.

[356] Prior to this policy amendment, it was indicated that where trademark owners submitted repeated complaints, Google could impose proactive restrictions on advertisers engaging in unauthorized trademark use. However, following the policy change, rights holders are reportedly required to submit separate complaints for each individual instance of infringing use. For more detailed information see Leo Kittay and Todd Martin, "The New Google Ads Trademark Policy Goes Live July 24," Chambers and Partners, accessed

within the second-level domain of the display URL, or on the advertisement's landing page, provided that such use complies with the policy's criteria, including reseller, informational, or descriptive use exceptions[357].

d) Amazon



[358]

Amazon, founded in 1994 by Jeff Bezos in Washington, initially operated as an online book marketplace and gradually expanded its product range to become a multi-category, global e-commerce ecosystem. Today, the company, often referred to as "The Everything Store", is considered one of the "Big Five" American technology firms

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01.09.2025, https://chambers.com/articles/the-new-google-ads-trademark-policy-goes-live-july-24-3?utm_source=chatgpt.com.

357 "Trademarks," Google, accessed 10.09.2025, https://support.google.com/adspolicy/answer/6118?visit_id=639002777470688480-1029152365&rd=1.

358 The screenshot of the relevant platform was generated by the author using the *Responsive Site Test* Chrome extension developed by Mobile First, accessed on 25.07.2026, https://chromewebstore.google.com/detail/mobile-simulator-responsi/ckejmhbmlajgoklhgbapkiccekfoccmk.

alongside Alphabet, Apple, Meta, and Microsoft[359]. Amazon attributes its global growth and market dominance largely to a business model grounded in consumer trust, presenting its investments in brand and product safety as a core component of this trust framework[360].

Within the scope of its trademark protection policy, Amazon is reported to employ highly proactive monitoring mechanisms. In this context, the company states that it monitors billions of daily changes on product detail pages, including the creation of new listings and modifications to existing ones, through advanced algorithms and machine learning systems. It reports that these scans focus on keywords, text, and logos that are identical or similar to registered trademarks, and that the data and insights obtained from each scan are used to develop and enhance its proactive protection system[361].

In addition to its proactive monitoring activities, Amazon provides institutionalized protection tools for registered trademark owners. Within this framework, the Brand Registry system has been developed to offer rights holders free protection regardless of whether they sell products on the platform[362]. The system includes the “Report a Violation” tool, which allows rights holders to directly submit infringement notifications; the “Transparency” program, which aims to prevent counterfeit products from entering the supply chain through product-specific serialization verification; and

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[359] "Amazon (company)," Wikipedia, The Free Encyclopedia, accessed 22.4.2025, https://en.wikipedia.org/wiki/Amazon_(company)#Products_and_services.

[360] *Brand Protection Report*, (Amazon, 2024), https://assets.aboutamazon.com/22/3b/a9c54c7940f683f90022a3d1aaec/amazon-bpr-2024-3-21-2024-final.pdf.

[361] *Brand Protection Report*.

[362] "Amazon Brand Registry," Amazon, accessed 3.11.2025, https://sell.amazon.com/brand-registry.

"Project Zero," which grants Amazon, under the authorization received from rights holders, the ability to automatically remove listings of counterfeit products without prior notification. Furthermore, the IP Accelerator program is designed to assist small and medium-sized enterprises in expediting their trademark registration processes, enabling them to benefit from the platform's protection mechanisms at an earlier stage[363].

Amazon also reports participation in various collaborative initiatives aimed at the global detection of counterfeit products and malicious actors, the suspension of accounts, and, where necessary, notification of competent public authorities[364].

e) Alibaba

[363] "Amazon Brand Registry."

[364] For instance, within this framework, it is reported that Amazon has established the Counterfeit Crimes Unit (CCU), which carries out anti-counterfeiting actions worldwide through civil litigation, joint investigations, and seizures conducted in collaboration with law enforcement authorities. For more detailed information see "Amazon Brand Registry."

[365]

Founded by Jack Ma in Hangzhou, China, on 28 June 1999, Alibaba functions as a multi-layered e-commerce ecosystem integrating consumer-to-consumer (C2C), business-to-consumer (B2C), and business-to-business (B2B) transactional models[366]. In terms of its service structure, it is characterized as an integrated platform model that combines online marketplace functions, financial services, and digital infrastructure components[367].

Within the scope of its activities for the protection of trademarks and other intellectual property rights, Alibaba has established the Intellectual Property Protection

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[365] The screenshot of the relevant platform was generated by the author using the *Responsive Site Test* Chrome extension developed by Mobile First, accessed on 25.07.2026, https://chromewebstore.google.com/detail/mobile-simulator-responsi/ckejmhbmlajgoklhgbapkiccekfoccmk.

[366] "Alibaba Group," Wikipedia, The Free Encyclopedia, accessed 20.07.2025, https://tr.wikipedia.org/wiki/Alibaba_Group.

[367] Esther A Zuccaro, "Gucci v. Alibaba: A Balanced Approach to Secondary Liability for E-commerce Platforms," *North Carolina Journal of Law & Technology* 17, no. 5 (2016): 152.

(IPP) platform. The IPP system functions as a notice-and-takedown mechanism, enabling rights holders or their authorized representatives to register their trademarks on the platform and submit infringement notifications[368]. In addition, the BrandSafe system is made available on an invitation basis to rights holders with a consistent and reliable history of notifications. This system is reported to provide a more streamlined and expedited process for submitting and reviewing infringement claims compared to the standard notification procedure[369].

Alibaba further indicates that it integrates trademark data provided by rights holders with AI technologies to identify potentially infringing listings and high-risk sellers. Through these proactive monitoring activities, it is reported that certain infringing content can be blocked before being published[370].

From an international cooperation perspective, Alibaba is reported to integrate the MarketSafe SME Program, developed in collaboration with the International Anti-Counterfeiting Coalition (IACC), into its overall trademark protection strategy. The program is said to aim at enhancing the knowledge and awareness of trademark rights, as well as providing guidance and support to enable more effective protection of these rights[371]. In addition, it is reported that in 2017 Alibaba established the Alibaba Anti-Counterfeiting Alliance (AACA), in collaboration with law enforcement authorities,

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[368] *Alibaba International Intellectual Property Protection Platform Handbook*, (Alibaba International, 2025), 5, https://ipp.aidcgroup.net/#/handbook.

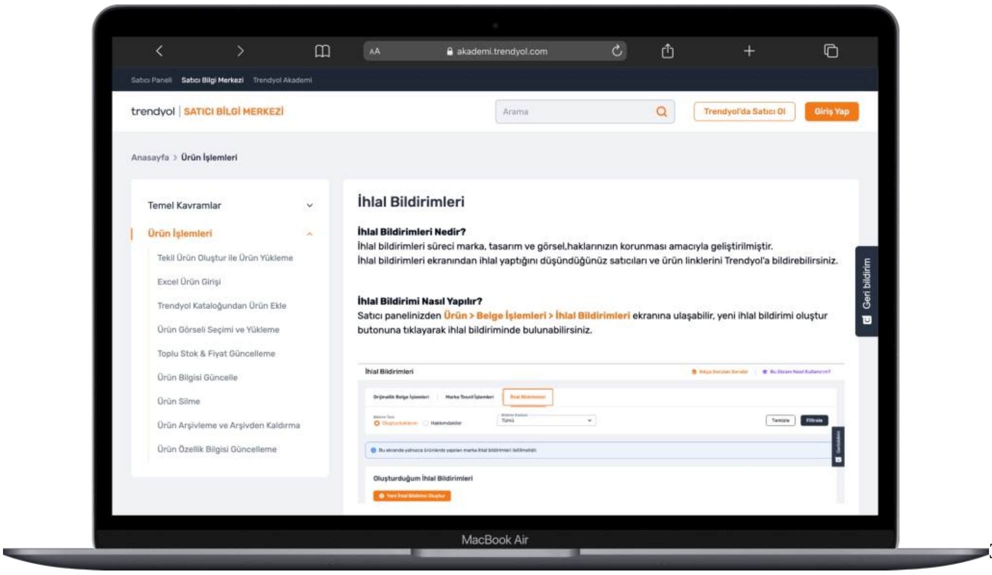
[369] "BrandSafe," Alibaba International, accessed 09.10.2025, https://ipp.aidcgroup.net/#/BrandSafeHome.

[370] *Alibaba International Intellectual Property Protection Platform Handbook*, 7-8.

[371] *Alibaba International Intellectual Property Protection Platform Handbook*, 20.

rights holders, and industry representatives[372]. Within this network, activities such as proactive online monitoring, test-purchase programs, offline investigations and enforcement measures, sector–law implementation workshops, litigation processes, and public awareness campaigns are reportedly conducted[373].

f) Trendyol



[374]

Founded in 2010 by Demet Mutlu, Trendyol, one of Türkiye's leading e-commerce platforms, initially operated as an online shopping site specializing in clothing products, but subsequently evolved into a multi-category marketplace where various

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[372] *Alibaba International Intellectual Property Protection Platform Handbook*, 18-19.

[373] Zhou Wenting and He Wei, "Top Brands Flocking to Alibaba's Global Anti-Counterfeiting Alliance," China Daily, accessed 12.12.2025, https://perma.cc/9J8L-L6A2.

[374] The screenshot of the relevant platform was generated by the author using the *Responsive Site Test* Chrome extension developed by Mobile First, accessed on 25.07.2026, https://chromewebstore.google.com/detail/mobile-simulator-responsi/ckejmhbmlajgoklhgbapkiccekfoccmk.

sellers can offer their products[375]. Following the partnership agreement with Alibaba Group in 2018, Alibaba Group currently holds an 86.5% stake in Trendyol[376]. As of the first half of 2025, Trendyol reportedly connects approximately 170,000 sellers with over 400 million products[377].

With the aim of protecting the rights of trademark holders operating on the platform, Trendyol has introduced certain policies. These include prohibiting sellers from using a trademark to which they do not hold rights, whether as a brand name or store name, and requiring sellers to obtain authorization certificates in order to sell branded products[378].

A central component of Trendyol’s trademark protection strategy is the Trendyol Brand Protection Portal. Rights holders who register their trademarks through this program can restrict the sale of their products on Trendyol to themselves or to authorized sellers designated by them. The system allows transactions to be processed directly using

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375 "Trendyol," Wikipedia, The Free Encyclopedia, accessed 10.06.2025, https://tr.wikipedia.org/wiki/Trendyol.

376 "Trendyol."

377 "Trendyol 2025'in İlk Yarısında Türkiye'nin Alışveriş Haritasını Açıkladı," Habertürk, accessed 19.08.2025, https://www.haberturk.com/trendyol-2025in-ilk-yarisinda-turkiyenin-alisveris-haritasini-acikladi-3809315-teknoloji.

378 Abdullah Erkam Yılmaz, "Trendyol'un Buybox Sisteminde Marka İhlalleri ve Türk Hukuku Kapsamında Değerlendirme," LinkedIn, 15.08.2025, https://www.linkedin.com/pulse/trendyolun-buybox-sisteminde-marka-ihlalleri-ve-t%C3%BCrk-hukuku-y%C4%B1lmaz-vucqf/.

the trademark registration number in Türkiye, without the need for visual or product-based evidence[379].

The program also enables rights holders to report identified infringements more easily. Short instructional videos explaining how to submit infringement notifications to the platform have been prepared[380]. Moreover, Trendyol reportedly prioritizes the processing of notifications submitted through this system, which facilitates a faster resolution of reported infringements[381].

g) Opensea

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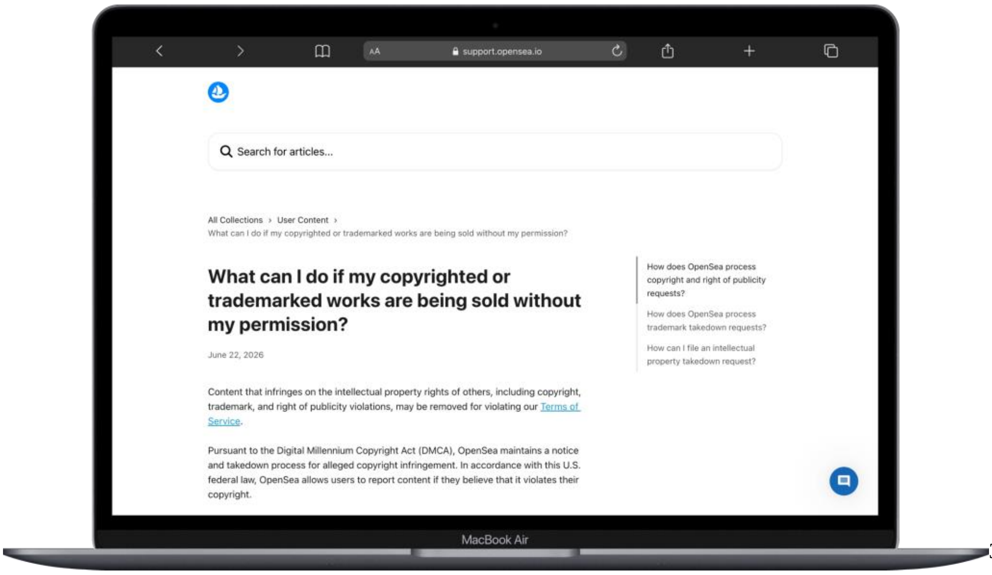
[379] "Sahte Ürünlerle Mücadelede Amazon ve Trendyol'un Resmi Politikaları," B10 Digital, accessed 10.11.2025, https://b10.com.tr/sahte-urunlerle-mucadelede-amazon-ve-trendyolun-resmi-politikalari/.

[380] "İhlal Bildirimi & Marka Tescil ve Belge İşlemleri," Trendyol, accessed 12.10.2025, https://akademi.trendyol.com/Education?Search=marka%20ihlal.

[381] Yılmaz, "Trendyol'un Buybox Sisteminde Marka İhlalleri ve Türk Hukuku Kapsamında Değerlendirme."



[382]

OpenSea, established in 2017 by Devin Finzer and Alex Atallah, developed from inspiration drawn from a blockchain-based NFT game released in the same period. It operates as a marketplace where digital representations of real-world objects can be minted, bought, and sold as NFTs[383].

Under its trademark protection policy, OpenSea states that infringing content will not be hosted on the platform and that accounts of repeat infringers may be suspended. However, the platform emphasizes that such measures are implemented only where infringements are expressly reported by rights holders or their authorized

[382] The screenshot of the relevant platform was generated by the author using the *Responsive Site Test* Chrome extension developed by Mobile First, accessed on 25.07.2026, https://chromewebstore.google.com/detail/mobile-simulator-responsi/ckejmhbmlajgoklhgbapkiccekfoccmk.

[383] "Opensea," Wikipedia, The Free Encyclopedia, accessed 21.10.2025, https://en.wikipedia.org/wiki/OpenSea.

representatives[384]. In other words, OpenSea does not adopt a proactive approach to trademark enforcement.

In order to facilitate the notification process, OpenSea has established an online reporting system through which rights holders may submit notices of alleged trademark infringements[385]. Nevertheless, in cases involving the identification of thousands of infringing NFTs, the requirement to file separate requests for each alleged violation, combined with reports of delayed responses and a history of rejecting certain takedown requests, has been described as potentially discouraging for some trademark owners[386].

5. General Monitoring Prohibition

This principle establishes that online platforms are under no general duty to monitor information they transmit or store, nor to proactively detect unlawful activities[387]. It is seen as a key mechanism for balancing competing fundamental rights, including personal data protection, freedom of expression and information, entrepreneurial freedom, and the free movement of goods and services within the market[388].

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384 "Prohibited Content and Disputed Items," accessed 21.10.2025, https://support.opensea.io/en/articles/10643369-prohibited-content-disputed-items-policy.

385 "Prohibited Content and Disputed Items."

386 Collier, "NFT Art Sales are Booming. Just Without Some Artists' Permission."

387 Giancarlo Frosio and Sunimal Mendis, "Monitoring and Filtering: European Reform or Global Trend?," in *Oxford Handbook of Online Intermediary Liability*, ed. Giancarlo Frosio (Oxford University Press, 2020), 545.

388 Angelopoulos, *European Intermediary Liability in Copyright: A Tort-Based Analysis*, 301-02.

a) US

The DMCA does not contain an explicit provision establishing either a general monitoring obligation or a prohibition thereof. However, the absence of such a provision has been interpreted as indicating that platforms are not expected to engage in monitoring within this framework[389].

In this regard, in *Lockheed Martin Corp. v. Network Solutions, Inc.*, the defendant, an operator of a domain name registration service that directed information and user traffic, was analogized to the US Postal Service. The court ruled that the nature of such services precluded any reasonable expectation of monitoring or control obligations, and thus the defendant was not liable for infringement[390]. Similarly, in *Viacom v. YouTube*, it was emphasized that YouTube was not subject to a proactive monitoring obligation with respect to infringing content[391].

Nevertheless, although there is no legal requirement compelling platforms to implement monitoring or filtering technologies, various platforms have voluntarily adopted such technologies in practice[392].

b) EU

Within EU law, this principle, initially introduced by Article 15 of the E-Commerce Directive, is now set out in Article 8 of the DSA. In a judgment of the CJEU

[389] López Martínez, "The Reconciliation of Secondary Liability for Trademark and Copyright Law Through Tort Law in Different E-Commerce Situations. a Comparative Study Between Us and EU Systems", 36.

[390] *Lockheed Martin Corp. v. Network Sols., Inc.*, 194 F.3d 980, 985 (9th Cir. 1999).

[391] *Viacom Int'l, Inc. v. YouTube, Inc.*, 940 F. Supp. 2d 110, 117 (S.D.N.Y. 2013).

[392] Esa Lyykorpi, "Intermediary Liability for Trademark Infringement" (Master Thesis Hanken School of Economics, 2023), 68.

addressing this concept, it was also held that imposing an obligation on intermediaries to actively monitor all data of each user, with a view to preventing future infringements on a website, would be contrary to the requirements of fairness and proportionality set out in Article 3 of the Enforcement Directive, and therefore could not be imposed[393].

At the same time, Recitals 47 and 48 of the E-Commerce Directive provide that Member States may prescribe specific monitoring obligations for intermediaries in order to detect and prevent certain types of illegal activities. However, since such specific monitoring obligations constitute an exception to the prohibition of general monitoring, they must be construed narrowly and remain limited in scope[394]. Despite this caveat, concerns have been raised in the case law of the CJEU that the boundary between specific monitoring and prohibited general monitoring is not always clearly delineated, thereby creating the risk that intermediaries may, in practice, be compelled to engage in de facto general monitoring[395]. In this context, any monitoring obligation to be imposed, particularly in the field of trademark law, must be carefully circumscribed, both with regard to the alleged infringers and the subject matter concerned[396].

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393 CJEU, *L'Oréal v. eBay*, Case C-324/09, paras.139-140.

394 Frosio and Mendis, "Monitoring and Filtering: European Reform or Global Trend?," 546.

395 Sophie Stalla-Bourdillon, "Online Monitoring, Filtering, Blocking…What is The Difference? Where to Draw The Line?," *Computer Law & Security Review* 29, no. 6 (2013): 712.

396 Martin Senftleben, "Intermediary Liability and Trade Mark Infringement: Proliferation of Filter Obligations in Civil Law Jurisdictions?," in *Oxford Handbook of Online Intermediary Liability*, ed. Giancarlo F. Frosio (Oxford: Ocford University Press, 2020), 15.

c) Türkiye

Under Turkish law, this principle is incorporated into Article 5(1) of the Internet Law, according to which a hosting service provider has no obligation to monitor the content for which it provides hosting services or to investigate whether such content involves any unlawful activity. A similar provision had previously been included in Article 9(1) of the Electronic Commerce Law; however, this was amended in 2022 by Law No. 7416. Following the amendment, the current version of Article 9(1) no longer contains an explicit reference to a duty to investigate.

This legislative change does not, however, introduce any investigative obligation for intermediary service providers. Rather, it eliminates the duplication between the two statutory provisions and restructures Article 9 as a general exemption from liability with respect to content. Consequently, Article 5(1) of the Internet Law now constitutes the principal provision governing the prohibition of general monitoring under Turkish law[397].

B) TYPES OF LIABILITY

The regulatory framework specifically addressing the liability of online platforms for trademark infringements remains extremely limited on a global scale[398]. Accordingly, this issue is generally addressed by reference to general legal principles. In this context, improper conduct such as trademark infringement may give rise to both criminal and civil liability.

[397] Açikgöz and Gürel, "Başkasına Ait İçerikteki Fikrî ve Sınai Hak İhlalleri Nedeniyle Dijital Platformların Hukuki Sorumluluğu," 43.

[398] Ohly, "The Liability of Intermediaries for Trade Mark Infringement," 4.

Criminal liability concerns the imposition of legal sanctions for conduct prohibited by law and classified as a criminal offence[399]. In this regard, federal criminal liability for trademark infringement is provided for in the US under 18 U.S.C. §2320 which adresses trademark counterfeiting. Within the EU, criminal sanctions in this area fall predominantly under national legal orders, as the Union does not hold a general competence to establish criminal liability[400]. Lastly, in Türkiye, Article 30 of the Industrial Property Code No. 6769 sets forth criminal liability for trademark infringement. In this context, a platform may, in theory, incur criminal liability either by directly violating the relevant criminal provisions through its own conduct, or by assisting third parties who engage in infringing activities. However, as the primary focus of this study is civil liability, and given the limited role of criminal liability in the context of online trademark infringements involving platforms, this issue will not be examined in further detail.

Civil liability, in general terms, refers to the obligation to compensate for harm caused by a person's acts or omissions. In the context of trademark infringement, this entails the obligation to redress the damage resulting from infringing conduct[401]. As noted earlier, trademark infringement is fundamentally characterized as a tort; accordingly, the

[399] Ruiz Claudio Gallardo and Gálvez J. Carlos Lara, "Liability of Internet Service Providers (ISPs) and The Exercise of Freedom of Expression in Latin America," (2011): 4. https://wilmap.stanford.edu/entries/general-resources-chile.

[400] Ullrich, *Unlawful Content Online: Towards a New Regulatory Framework for Online Platforms*, 144.

[401] Gallardo and Lara, "Liability of Internet Service Providers (ISPs) and The Exercise of Freedom of Expression in Latin America," 4.

assessment of liability is governed by the principles of tort law. Within this framework, the distinction between primary and secondary liability assumes particular importance.

1. Primary Liability

As a general rule, primary liability is understood to arise from a person's own tortious acts[402]. In the context of online trademark infringements, a platform's primary liability is, in principle, contingent upon all elements of the trademark infringement being directly attributable to the platform's own acts or omissions, irrespective of whether the conduct was carried out knowingly or intentionally[403].

a) US

Within the scope of platforms' primary liability, the principal statutory basis is the Lanham Act. As explained above, courts assess whether the conditions established under the Act for registered and unregistered trademark infringement are satisfied.

In cases brought against online platforms alleging primary trademark liability, courts have generally first examined whether the mark at issue is eligible for protection. If this question is answered in the affirmative, they then assess whether the relevant conduct constitutes "use in commerce." Where such use is established, courts proceed to evaluate whether the use is likely to mislead consumers regarding the origin of the defendant's goods or their possible endorsement[404].

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402 Ohly, "The Liability of Intermediaries for Trade Mark Infringement," 18.

403 Frederick Mostert, "Intermediary Liability and Online Trade Mark Infringement: Emerging International Common Approaches," in *The Oxford Handbook of Online Intermediary Liability*, ed. Giancarlo Frosio (Oxford University Press, 2020), 370.

404 *Tiffany (NJ) Inc.*, 600 F.3d 93 para.101-102; *Lasoff v. Amazon.com Inc.*, 2017 WL 372948, at 8–14 (W.D. Wash. Jan. 26, 2017).

One of the principal categories of cases alleging primary liability concerns Google's keyword advertising service. In this context, trademark owners have accused both Google and other platforms that purchase third-party trademarks as keywords to advertise their own services of primary infringement. The claims against Google have centered on allegations that it automatically generated registered trademarks as potential keywords, stored them in an internal directory, made them available for purchase, and subsequently permitted their use in a manner allegedly capable of misleading consumers. Upon review, the appellate court held that such conduct could constitute "use in commerce" and remanded the case to the trial court for an assessment of likelihood of confusion[405]. However, because Google reached a settlement with the plaintiffs at that stage, a more detailed judicial evaluation of primary liability was ultimately precluded[406].

With respect to platforms that purchase trademarks as keywords, allegations of primary liability have typically arisen where consumers clicking on a sponsored link triggered by the trademarked keyword are redirected to allegedly infringing products. Nevertheless, in certain cases courts have concluded that, where the platform also offers genuine products bearing the relevant trademark, the mere purchase of the trademark as a keyword does not, in itself, give rise to primary liability[407].

In addition, allegations of primary liability have also been advanced in circumstances where the trademark is used directly by the platform itself[408], or where the

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[405] *Rescuecom Corp.*, 562 F.3d 123; *Rosetta Stone Ltd.*, 676 F.3d 144.

[406] Philip Lindell, "Trademark Infringement Online: The Accountability of Internet Intermediaries for Third-Party Trademark Infringement in the EU and the US" (Master Thesis Uppsala Universitet, 2020), 54.

[407] *Lasoff*, 2017 WL 372948, at 7-8; Tiffany (NJ) Inc., 600 F.3d 93 para.103.

[408] *Tiffany (NJ) Inc.*, 600 F.3d 93 para.103.

platform allegedly fails to prevent infringing uses by third parties[409]. Claims based on the platform's own use of the mark have frequently been rejected where such use was assessed under the doctrine of nominative fair use, particularly in cases involving product identification or promotion[410].

Claims asserting primary liability on the basis that the platform failed to prevent infringements occurring on its marketplace have likewise generally not been upheld, on the ground that no actionable "use" of the mark was carried out by the platform itself[411]. Nevertheless, courts have emphasized that the scope of liability may expand depending on the platform's role in, and degree of control over, third-party infringing activities. In a decision, the court considered that defendant Redbubble had moved from a passive intermediary position to an active role where it engaged third-party manufacturers following consumer orders, shipped products under its own label and packaging, and designated its own address as the return address. On this basis, the platform was found potentially liable for direct trademark infringement[412].

In another case, in the context of an online print-on-demand service, the defendant SunFrog's "deep and indispensable involvement" in the product listing process, providing design-generation software, storing prior designs in its database, and actively advertising these listings on social media platforms such as Facebook, was considered a decisive

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409 *Perfect 10, Inc. v. Giganews, Inc.*, CV11- 07098 AHM (SHx), 2013 WL 2109963 (C.D. Cal. Mar. 8, 2013)

410 Kari Kammel et al., "Responsibility for The Sale of Trademark Counterfeits Online: Striking a Balance in Secondary Liability While Protecting Consumers," *AIPLA QJ* 49 (2021): 221.

411 *Perfect 10, Inc.*, 2013 WL 2109963.

412 *Ohio State University v. Redbubble, Inc.*, 989 F.3d 435, 447-48 (6th Cir. 2021).

factor leading the court to issue a summary judgment in favor of the plaintiff in relation to direct trademark infringement[413].

Another allegation of the platform's primary liability was more recently raised in a case concerning NFT-related trademark infringements. In the case, the claimant trademark owner alleged that the defendant platform minted NFTs prominently incorporating its trademarks and marketed and sold those NFTs on the platform by exploiting the goodwill associated with the mark, allegedly at inflated prices[414]. However, as the parties reached a settlement while the proceedings were ongoing, the court did not render a substantive determination on the issue of primary liability in that context[415].

b) EU

In the EU, the primary liability framework applicable to online platforms has been shaped by the CJEU, developed in light of the conditions set out in the EUTMD and the EUTMR. In these precedents, the courts have generally assessed whether the trademark at issue was used within the platform's own commercial communication, whether such use adversely affected the functions of the trademark, and whether it was likely to cause confusion among consumers.

In this context, the CJEU did not qualify Google's activities—namely the storage, organisation, and display of keywords corresponding to protected trademarks within the scope of its advertising services—as trademark use, on the ground that such signs were

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[413] *H-D U.S.A., LLC v. SunFrog, LLC*, 311 F. Supp. 3d 1000 (E.D.Wisc. 2018).

[414] *Nike, Inc., v. StockX LLC*, No. 1:22-cv-00983, Complaint, D.I. 1 (S.D.N.Y. Feb. 3, 2022).

[415] Nicholas Vlahos, "Nike and StockX Settle Lawsuit After Three-Plus Years in Court," Sole Retriever, accessed 17.11.2025, https://www.soleretriever.com/news/articles/nike-stockx-settle-lawsuit-august-2025?utm_source=chatgpt.com.

not used within Google's own commercial communication[416]. On the other hand, the purchase of third parties' trademarks as keywords by online platforms in order to advertise their own services has been regarded by the CJEU as constituting "use in the course of trade." The Court stated that primary liability may be established where the advertisement prevents reasonably attentive internet users from understanding whether the goods or services are offered by the trade mark owner, an economically linked undertaking, or an unaffiliated third party[417].

Furthermore, it has been argued that online platforms may incur primary liability due to certain activities connected with infringements committed by third parties on their marketplaces. For example, in one case the CJEU examined whether providing technical conditions such as storage facilities to infringers could amount to infringing use. As a result, it concluded that a platform which does not itself offer the goods for sale or place them on the market cannot, on that basis alone, be regarded as using the sign within provider's commercial communication[418].

However, it has been stated that where a link can be established, in the perception of third parties, between the service provided and the goods or services protected by the trademark, such circumstances may justify a finding that a "use" exists within the meaning of trademark law[419].In a recent landmark judgment, the CJEU accepted that

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[416] CJEU, *Google France*, Joined Cases C-236/08 to C-238/08, para.50-58.

[417] CJEU, *L'Oréal v. eBay*, C-324/09, para.97 and CJEU, *Google France*, Joined Cases C-236/08 to C-238/08, para.51-52.

[418] *Coty Germany*, Case C-567/18, para. 39.

[419] Eleonora Rosati, "The Louboutin/Amazon Cases (C-148/21 and C-184/21) and Primary Liability under EU Trade Mark Law," *European Intellectual Property Review* 44, no. 7 (2022): 438.

where a platform presents its own products and those of third-party sellers through a uniform display format, systematically features its own logo in all related advertisements, and provides additional services such as storage, dispatch, and returns management, a reasonably well-informed and observant consumer may perceive the trademark as being used by the platform operator itself[420]. This ruling significantly limited the previously broad immunity enjoyed by platforms against direct trademark infringement claims and opened the door to findings of primary liability[421].

It is considered that this doctrinal shift may also have important implications for metaverse platforms, which play a central role in NFT transactions. If such platforms fail to clearly distinguish third-party offers from their own commercial communications, they may be exposed to direct trademark infringement liability alongside users[422].

c) Türkiye

The primary or direct liability of online platforms for online trademark infringements is essentially assessed on the basis of the infringement criteria set out in IPL. In this context, courts generally examine whether the trademark in question is used in the platform's own commercial communication, whether such use produces a commercial effect, and whether it is likely to give rise to confusion among consumers.

Courts generally assess the existence of direct liability by reference to the role of the service provider in the publication of the relevant content. At this point, whether the content was shared with an intent to infringe does not affect the existence of direct

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[420] CJEU, *Christian Louboutin*, Joined cases C-148/21 and C-184/21, para.48.

[421] Cesar Ramirez-Montes, "EU Trademarks in the Metaverse," *IDEA* 63, no. 3 (2023): 690.

[422] Ramirez-Montes, "EU Trademarks in the Metaverse," 717.

liability[423]. For instance, in one case, the defendant's arguments that it had no intention of profiting from the relevant trademark on the website and that it merely provided a guidance service did not prevent the finding that the defendant had used the trademark in advertisements placed on its own website; consequently, the Court of Cassation held the defendant directly liable[424]. In another decision, a platform that provided its members with an environment to share news, maintain blogs, and engage in comments and discussions was deemed directly liable, as its ability to produce and modify content through affiliated editors rendered its defense of lacking intent to infringe invalid[425].

With respect to keyword use, however, Türkiye diverges from the approaches adopted in the US and the EU. Pursuant to Additional Article 2(1)(c) of the Law on Electronic Commerce, it is prohibited for ECISPs or ECSPs to carry out marketing and promotional activities on online search engines using registered trademarks without obtaining the prior explicit consent of the trademark owner[426]. Additionally, as previously mentioned, under Article 7(3)(d) of the IPL, the use of another's trademark as a keyword is expressly listed as an act of infringement. In other words, for example, where an online

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[423] Yusufoğlu Bilgin, *Dijital Piyasalarda Yer Sağlayıcıların Hukuki Sorumluluğu-Marka, Telif Hakkı ve Haksız Rekabet Kapsamında*, 502.

[424] Judgement of the Turkish Court of Cassation (11th Civil Chamber), 26 November 2014, E. 2014/10712, K. 2014/18417, Lexpera. https://www.lexpera.com.tr (accessed March 16, 2026)

[425] Judgement of the Turkish Court of Cassation (11th Civil Chamber), 08 November 2023, E. 2022/2165, K. 2023/6582, Lexpera. https://www.lexpera.com.tr (accessed March 16, 2026)

[426] Zeynep Yasaman, "Marka Hakkının İhlali: İnternet Üzerinde Gerçekleşen Kullanımlar Bakımından," *Galatasaray Üniversitesi Hukuk Fakültesi Dergisi* (2024): 201-02.

marketplace purchases, without authorization, the trademarks of sellers operating on its platform as keywords, this constitutes direct infringement without the need for any additional conditions[427]. Indeed, in the case law of the Court of Cassation, the use of another's trademark as a keyword has been regarded as a form of use capable of producing a significant impact on the internet and has therefore been evaluated as direct infringement[428].

2. Secondary Liability

The concept of secondary liability has generally been used as an umbrella term encompassing various forms of trademark infringement claims[429], grounded in economic and moral justifications[430] and originating in the US[431]. It has been argued that secondary

[427] Yusufoğlu Bilgin, *Dijital Piyasalarda Yer Sağlayıcıların Hukuki Sorumluluğu-Marka, Telif Hakkı ve Haksız Rekabet Kapsamında*, 524.

[428] Judgement of the Turkish Court of Cassation (11th Civil Chamber), 16 January 2024, E. 2022/4203, K. 2024/326, Lexpera. https://www.lexpera.com.tr (accessed March 16, 2026)

[429] Graeme B Dinwoodie, "Secondary Liability for Online Trademark Infringement: The International Landscape," *Columbia Journal of Law & the Arts* 37 (2014), https://ssrn.com/abstract=2427967.

[430] Mark Bartholomew and John Tehranian, "The Secret Life of Legal Doctrine: The Divergent Evolution of Secondary Liability in Trademark and Copyright Law," *Berkeley Techonology Law Journal* 21 (2006): 1366.

[431] Angelopoulos, *European Intermediary Liability in Copyright: A Tort-Based Analysis*, 9.

liability provides the most suitable framework for delineating the liability of online platforms arising from online trademark infringements[432].

At the international level, the secondary liability of platforms for online trademark infringements appears to be shaped by two distinct dynamics: a positive approach and a negative approach[433]. Under the positive approach, adopted in common law jurisdictions such as the US, courts determine whether platform activities give rise to secondary liability by directly applying established doctrines of contributory and vicarious liability. In other words, liability is assessed affirmatively through pre-existing secondary liability principles.

By contrast, under the negative approach, followed in the EU, the assessment begins with determining whether the platform benefits from a “safe harbour” exemption. Only if the platform falls outside the scope of this immunity does the inquiry proceed to whether liability arises under the domestic liability doctrines of the relevant Member State[434]. A similar model has been adopted in Türkiye, where liability emerges in cases where the platform fails to comply with the statutory conditions for exemption[435].

a) US

Within the framework of secondary liability in the US, the predominant form of liability applicable to online platforms is contributory liability. Rooted in the general tort

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[432] Goodyear, "Common Law Notice-and-Takedown," 14.

[433] Dinwoodie, "A Comparative Analysis of the Secondary Liability of Online Service Providers." 18-19.

[434] Dinwoodie, "A Comparative Analysis of the Secondary Liability of Online Service Providers." 13.

[435] Göka, "Elektronik Ticaret Platformlarının Üçüncü Kişilerin Fikri ve Sınai Hakkını İhlal Eden İçerikten Kaynaklanan Hukuki Sorumluluğu," 30-31.

doctrine of aiding and abetting[436], contributory liability refers to the joint and several liability of a platform that knowingly acts in concert with the direct infringer, provides material assistance to the infringement, or induces the infringing conduct[437].

The Inwood decision established that contributory trademark liability may be imposed where a party deliberately facilitates another's infringing conduct or continues supplying goods or services despite knowledge, or constructive knowledge, of trademark infringement[438]. Within the context of online platforms, the criterion of "continuing to supply its product" has been understood as linked to the level of control the platform maintains over the mechanisms enabling third-party infringement[439].

For instance, in the Lockheed Martin decision, the court held that the defendant—providing domain name registration services allegedly facilitating unauthorized use of the plaintiff's trademark—was not liable for contributory infringement. The decision rested on the finding that the defendant performed a purely mechanical function in registering domain names and did not exercise sufficient direct control or monitoring over the infringing activity[440]. By contrast, in another case, the fact that the defendants exercised control over servers hosting websites used for the sale of counterfeit handbags proved decisive in establishing contributory liability. The court reasoned that the defendants,

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436 Restatement (Second) of Torts, §876(b) (1979).

437 Bartholomew and Tehranian, "The Secret Life of Legal Doctrine: The Divergent Evolution of Secondary Liability in Trademark and Copyright Law," 1367.

438 *Inwood*, 456 U.S. 844, at 853-54.

439 Ballon, "Content Moderation and Platform Liability: Service Provider and Website, Mobile App, Network and Cloud Provider Exposure for User Generated Content and Misconduct," 49-76.

440 *Lockheed Martin*, 194 F.3d at 986.

characterized as occupying a "master switch" position in keeping the websites operational, failed to disable access despite their ability to do so[441].

Similarly, in litigation brought against Alibaba, the defendant platform was found contributorily liable on the grounds that it continued to provide essential services to infringing sellers under its control despite having knowledge of the infringement[442]. In this regard, a platform's failure to act expeditiously upon acquiring knowledge of infringing activity may also play a determinative role in establishing contributory liability. For example, in another case, the court characterized the defendant's delayed responses to infringement notices and its belated adoption of a repeat infringer policy as a "head-in-the-sand" approach, and on that basis found contributory liability[443]. Nevertheless, the threshold for what constitutes a "delay" remains ambiguous: in certain cases, a three-month delay has been deemed sufficient[444], while in others, delays of 18 and 27 days in responding to separate complaints have been considered determinative in establishing contributory liability[445].

Another form of liability occasionally considered in the US in relation to online platform responsibility is vicarious liability, developed as an extension of the agency principle known as respondeat superior[446]. This form of liability arises from the relational proximity between the primary infringer and the secondary actor. It is triggered where the

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441 *Louis Vuitton Malletier*, 658 F.3d 936.

442 *Spy Optic, Inc. v. Alibaba.com, Inc.*, 163 F. Supp. 3d 755, 766 (C.D. Cal. 2015)

443 *H-D U.S.A.*, 311 F. Supp. 3d 1000, 1039-41.

444 *1-800 Contacts*, 722 F.3d 1229, 1252-55.

445 *Spy Optic, Inc.*, 163 F. Supp. 3d 755, 766.

446 Dinwoodie, "A Comparative Analysis of the Secondary Liability of Online Service Providers." 9.

relationship between the parties is sufficiently close to justify treating them, in effect, as a single economic entity[447]. Notably, under this doctrine, there is no requirement that the secondary party have knowledge of the tortious conduct or materially contribute to the infringement[448]. Within this framework, courts examine whether there exists an express or *de facto* partnership between the direct infringer and the party alleged to be vicariously liable; whether the parties possess authority to bind one another in transactions with third parties; and whether ownership or control over the infringing goods is shared[449].

In litigation brought against Google, the allegation that Google was vicariously liable on the basis that it exercised joint control with infringers over the display of infringing advertisements or sponsored links on its search engine results pages was not accepted as sufficient evidence[450].

Similarly, in another case concerning Amazon, it was argued that Amazon should be held vicariously liable on the grounds that more than three million sellers affiliated with the platform were engaged in a form of partnership with Amazon when purchasing infringing third-party sponsored link advertisements. The court rejected these claims, holding that the relationship between Amazon and the relevant sellers was confined to

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[447] *Hard Rock Café Licensing Corp. v. Concession Servs., Inc.*, 955 F.2d 1143, 1150 (7th Cir. 1992)

[448] Farano, *Internet Intermediaries' Liability for Copyright and Trademark Infringement: Reconciling the EU and US Approaches*, 53.

[449] Zuccaro, "Gucci v. Alibaba: A Balanced Approach to Secondary Liability for E-commerce Platforms," 162.

[450] *Rosetta Stone Ltd.*, 676 F.3d 144.

contractual terms and did not give rise to any agency relationship, nor to actual or apparent authority[451].

In a further case—one of the relatively rare instances in which vicarious liability was recognized—the defendant, a provider of print-on-demand services, argued that the infringing designs had been created by third parties and that its employees responsible for packaging the products lacked the capacity to detect such infringements. The court, however, did not accept the lack of employee training as a defense precluding liability and held the defendant vicariously liable for the acts of its employees[452].

b) EU

The landscape of secondary liability rules in the EU is relatively fragmented[453]. This is largely because, even where a platform falls outside the safe harbour regime, this does not automatically mean that it is directly liable; rather, the determination of liability depends on the relevant national legal system of each Member State.

For example, in France, contributory liability is governed by Articles 1240–1241 of the Code Civil, which establish fault-based civil liability in cases where damage is caused and negligence leads to harm. In Germany, meanwhile, contributory liability is assessed under the concept of “Störerhaftung” (interferer liability) in the German Civil Code (BGB). Under this doctrine, liability requires a wilful and causal contribution to the infringing act, as well as the possibility of preventing the infringement through the

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451 *Sellify Inc. v. Amazon.com, Inc.*, 2010 WL 4455830, at 2–3 (S.D.N.Y. 2010).

452 *H-D U.S.A.*, 311 F. Supp. 3d 1000, 1039.

453 Ullrich, *Unlawful Content Online: Towards a New Regulatory Framework for Online Platforms*, 122.

exercise of a reasonable duty of care[454]. On the other hand, in Italy, secondary liability has traditionally been understood through the doctrine of respondeat superior as a form of vicarious liability, while contributory liability remains less clearly defined in doctrinal terms[455]. However, due to the increasingly complex and often opaque role of online platforms, it is also stated that determination of secondary liability has become progressively blurred[456].

Despite these differences, Member State courts have, particularly since 2011, been influenced by the interpretative framework developed by the CJEU in landmark decisions such as *Google France v Louis Vuitton* and *L'Oréal v eBay*[457]. In the first of these cases, it was alleged by the claimant, Louis Vuitton, that Google, through its AdWords service, exercised control over search results by directing users to websites offering counterfeit goods. In support of this claim, it was argued that Google drafted the commercial messages displayed alongside sponsored links, suggested keyword combinations to enhance the effectiveness of advertisements, and received remuneration for providing this service. In its assessment, the CJEU held that the mere fact that Google was remunerated for its AdWords service and displayed advertisements linked to keywords selected by

[454] Matthias Leistner, "Structural Aspects of Secondary (Provider) Liability in Europe," *Journal of Intellectual Property Law & Practice* 9, no. 1 (2014): 79.

[455] Elisa Bertolini, Vincenzo Franceschelli, and Oreste Pollicino, "Analysis of ISP regulation under Italian law," in *Secondary liability of internet service providers*, ed. Graeme B. Dinwoodie (Springer, 2017), 141-42.

[456] Ullrich, *Unlawful Content Online: Towards a New Regulatory Framework for Online Platforms*, 112-13.

[457] Ullrich, *Unlawful Content Online: Towards a New Regulatory Framework for Online Platforms*, 205.

advertisers was not, in itself, sufficient to establish that Google had control over the infringement[458]. The Court nevertheless underlined that the assessment of whether Google played an active role depended on the national court's evaluation of its involvement in shaping the advertising message and managing the selection of keywords[459].

In my opinion, CJEU did not provide sufficiently clear guidance on this point. By leaving the determination of this pivotal issue to the national court, the CJEU inevitably opened the door to divergent approaches among Member States. Indeed, in this context, although Google has been considered to fall within the scope of safe harbour protection under the assessments of some Member States, certain Member States have departed from this approach[460]. For instance, French courts have, in certain cases, considered functionalities such as "Autocomplete" or "Suggest" as indicative of a more active role, thereby supporting findings of contributory liability[461].

Another key ruling delivered by the CJEU concerned eBay, which had been a frequent defendant in early cases brought against online marketplaces across different Member States. In the case, L'Oréal argued that eBay had gone beyond the bounds of a merely technical and passive role by actively participating in the sales process and by playing a role in the creation and organisation of offers. Accordingly, L'Oréal contended that eBay could not avail itself of the hosting exemption.

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458 CJEU, *Google France*, Joined Cases C-236/08 to C-238/08, paras.116-117.

459 CJEU, *Google France*, Joined Cases C-236/08 to C-238/08, paras.118-119.

460 Ullrich, *Unlawful Content Online: Towards a New Regulatory Framework for Online Platforms*, 165.

461 Ullrich, *Unlawful Content Online: Towards a New Regulatory Framework for Online Platforms*, 166.

The CJEU held that activities such as setting terms of service for its service, hosting sales offers, providing general information to consumers, and generating revenue from these activities are not, in themselves, sufficient to establish an "active role." However, it also indicated that services such as optimising the presentation or promotion of sales offers may be regarded as indicators of an active role capable of leading to the loss of the exemption[462]. Nevertheless, the final assessment in this regard was also left to the national courts. While this guidance has served as an important benchmark for Member States, the diversity of platform services, differences in national legal traditions, and varying levels of technical understanding have led to divergent outcomes in similar cases[463].

For instance, in France, in a case brought against Alibaba, features such as a premium seller programme and the preferential display of certain products were considered to serve the platform's own commercial interests, leading to a finding of liability[464]. By contrast, in Germany, in another case brought against Alibaba, the platform's provision of ancillary services—such as offering multiple language options and buyer protection mechanisms in relation to the sale of infringing content—was not considered sufficient to establish liability[465].

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[462] CJEU*, L'Oréal v. eBay*, Case C-324/09, paras.115-116.

[463] Ullrich, *Unlawful Content Online: Towards a New Regulatory Framework for Online Platforms*, 170.

[464] *Lafuma Mobilier v Alibaba et autres* (2017) (Unreported) (Tribunal de Grande instance, Paris).

[465] Ullrich, *Unlawful Content Online: Towards a New Regulatory Framework for Online Platforms*, 173.

Although no longer an EU Member State since 2020, it is also instructive to refer to a case from the United Kingdom. In proceedings brought against Amazon, the platform's internal search engine autocomplete function completed user queries with product names associated with the "*Lush*" trademark, even though products belonging to the Lush brand were not available on the platform, and displayed a mixed list of results, including products sold by Amazon and by third-party sellers. The court held that, while the mere listing of third-party products does not in itself constitute infringement, the manner in which the search results were presented went beyond the limits of passive intermediation[466]. Accordingly, Amazon was found to have exceeded the limits of neutrality and was held liable.

At the EU level, there also exists a form of liability conceptually comparable to US-style vicarious liability, often framed as "liability for the acts of another[467]." Indeed, certain provisions like Article 14 of the Directive 2000/31/EC, now Article 6 of the DSA, have been interpreted as reflecting this logic[468]. Nevertheless, this form of liability has traditionally been construed narrowly. Its limited development within the EU is commonly explained by the existence of alternative liability doctrines, as well as by the reluctance of European courts to extend vicarious liability to new or evolving contexts[469].

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[466] *Cosmetic Warriors Ltd v Amazon.co.uk Ltd*, para. 57.

[467] Paula Giliker, "Vicarious Liability or Liability for the Acts of Others in Tort: A Comparative Perspective," *Journal of European Tort Law* 2, no. 1 (2011): 31, https://doi.org/10.1515/jetl.2011.31.

[468] Farano, *Internet Intermediaries' Liability for Copyright and Trademark Infringement: Reconciling the EU and US Approaches*, 55.

[469] Farano, *Internet Intermediaries' Liability for Copyright and Trademark Infringement: Reconciling the EU and US Approaches*, 55.

c) Türkiye

Under Turkish law, the liability of online platforms is generally assessed within the framework of secondary liability, particularly in situations where, after becoming aware of an infringement, the platform facilitates, assists, encourages, or otherwise participates in the unlawful act[470].

Previously, Article 61(1)(e) of the repealed Decree-Law No. 556 expressly provided that participation in, assistance with, encouragement of, or facilitation, under any form or condition, of trademark infringement would give rise to indirect liability. However, this provision was repealed in 2009, and no equivalent rule was introduced in subsequent legislation[471]. Accordingly, the assessment of the secondary liability of online platforms is conducted under the guidance of the general tort provisions set forth in Articles 49 et seq. of the Turkish Code of Obligations No. 6098[472]. In this context, the rules on joint and several liability contained in Article 61 serves as guiding principles.

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[470] Judgement of the Turkish Court of Cassation (11th Civil Chamber), 20 January 2012, E. 2012/15509, K. 2012/540; Judgement of the Turkish Court of Cassation (11th Civil Chamber), 16 December 2019, E. 2019/618, K. 2019/8197, Lexpera. https://www.lexpera.com.tr (accessed December 16, 2024)

[471] Yusufoğlu Bilgin, *Dijital Piyasalarda Yer Sağlayıcıların Hukuki Sorumluluğu-Marka, Telif Hakkı ve Haksız Rekabet Kapsamında*, 516-17.

[472] Uğur Çolak, *Türk Marka Hukuku*, 2 ed. (İstanbul: On İki Levha Yayıncılık, 2023), 729.

In the case law, platforms are generally assessed within the scope of "hosting provider" status, and their contributory liability is limited to situations where, despite being notified of unlawful content, they fail to remove such content[473].

In this context, in a case brought against Google concerning keyword advertising infringement, the Court of Cassation dismissed the action on the grounds of lack of standing, holding that the defendant's conduct fell within the scope of the liability exemptions applicable to service providers under the Internet Law[474]. However, this approach does not confer blanket immunity on Google. As noted above, under Turkish law, the use of another's trademark as a keyword constitutes direct trademark infringement pursuant to Article 7(3)(d) of the IPL. Accordingly, where right holders notify Google and request the removal of infringing advertisements, a failure to act may trigger Google's liability, as well[475].

Indeed, in a case brought against GittiGidiyor, the court held that once the platform became aware of the infringement, it was required to take the necessary measures. Failing this, it would be held jointly and severally liable with the content provider for the damage suffered by the trademark owner from the moment it acquired

[473] Açikgöz and Gürel, "Başkasına Ait İçerikteki Fikrî ve Sınai Hak İhlalleri Nedeniyle Dijital Platformların Hukuki Sorumluluğu," 727-28.

[474] Judgement of the Turkish Court of Cassation (11th Civil Chambers), January 05, 2014, E. 2013/11325, K. 2014/19, Lexpera. https://www.lexpera.com.tr (accessed March 17, 2026).

[475] Yusufoğlu Bilgin, *Dijital Piyasalarda Yer Sağlayıcıların Hukuki Sorumluluğu-Marka, Telif Hakkı ve Haksız Rekabet Kapsamında*, 524.

knowledge[476]. Yet, in one case brought against Trendyol, the court held that the platform could not be held liable on the grounds that the claimant had not submitted a notice-and-takedown notification regarding the allegedly infringing content[477].

In another case, the trademark owner alleged that the defendant platform, Şikayetvar, was liable on the grounds that it failed to remove content posted on its website Şikayetvar, despite being notified, and did not provide an equal right of reply. However, the Court of Cassation held that the relevant comments fell within the scope of freedom of expression and that the use of the trademark and logo did not constitute commercial use. Accordingly, the failure to remove such content did not give rise to trademark infringement liability. Nevertheless, the decision did not end there. The Court further found the defendant liable under the provisions on unfair competition, taking into account that, where the claimant sought to respond to comments concerning its trademark, it was not afforded equal conditions compared to those posting complaints and was required to pay a fee in order to do so[478].

Finally, although it concerns liability arising from the sale of defective products by platforms, it is useful to refer to a decision of the Court of Cassation that may also

[476] Judgement of the Turkish Court of Cassation (Assembly of Civil Chambers), January 15, 2014, E. 2013/1138, K. 2014/16, Lexpera. https://www.lexpera.com.tr (accessed March 17, 2026).

[477] Judgement of the Turkish Court of Cassation (11th Civil Chambers), March 28, 2024, E. 2022/6207, K. 2024/2541, Lexpera. https://www.lexpera.com.tr (accessed April 17, 2026)

[478] Judgement of the Turkish Court of Cassation (11th Civil Chambers), April 29, 2024, E. 2022/7451, K. 2024/3328, Lexpera. https://www.lexpera.com.tr (accessed March 17, 2026).

serve as a precedent for the assessment of liability in trademark infringement cases. In this case, the first-instance court held the defendant ÇiçekSepeti liable on the grounds that the claimant had relied on the trust generated by the platform when making the purchase and that the defendant received a commission from the supplier. However, this decision was overturned by the Court of Cassation in the interest of the law, on the basis that ISPs are not under an obligation to monitor content provided by suppliers pursuant to Article 9 of the Electronic Commerce Law[479].

This ruling has been criticised in the doctrine, a view with which I concur. The court failed to sufficiently examine the internal functioning of the platform. A more nuanced assessment—taking into account factors such as the operational structure of ÇiçekSepeti, the perception it creates among consumers, and the extent of its involvement in the infringement process, particularly through fulfilment services—could have provided a more predictable framework for determining the limits of intermediary immunity. Otherwise, such a presumption risks overlooking the potential contribution of evolving and increasingly complex platform services to infringements.

C) PLATFORMS AS ACTORS TO TERMINATE INFRINGING ACTIVITIES

Even when they are not directly liable for infringement, online platforms may also become the addressees of injunctions aimed at the cessation of ongoing infringements and the prevention of future infringements of the same nature. The underlying economic

[479] Judgement of the Turkish Court of Cassation (3rd Civil Chambers), November 15, 2021, E. 2021/4000, K. 2021/11403, Lexpera. https://www.lexpera.com.tr (accessed March 17, 2026)

rationale for this is often explained by their position as “lowest cost avoiders” in relation to infringement prevention[480].

Section 32(2)(B) of the Lanham Act provides that, in cases involving “innocent infringers” or “innocent violators,” preventive measures may be sought against service providers, provided that such measures do not result in undue delay in electronic communications. However, this provision is limited to situations where the use of the mark occurs within “advertising matter published for a fee.” By contrast, Section 512(j) of the DMCA establishes a broader framework for injunctive relief against service providers compared to the Lanham Act. Under this provision, only a limited range of injunctive measures is available, and the award of monetary damages is not permitted. Courts, when issuing such injunctions, are required evaluate a range of factors, including the impact on the service provider’s infrastructure, the seriousness of harm to the copyright owner, and the technical feasibility and effectiveness of the proposed measure, together with its proportionality.

Article 11 of the Enforcement Directive obliges Member States to ensure that right holders may seek injunctive relief against intermediaries used by third parties in connection with intellectual property infringements. Furthermore, pursuant to Article 3, those measures must remain proportionate and equitable. Subject to these principles, the specific procedures for removing unlawful content or restricting access to it are determined at the national level.

In Turkish trademark infringement cases, injunctions are regulated under Article 159 of the IPL. However, this provision does not contain any explicit rules regarding interim measures imposed on ISPs. In this context, Article 8 of the Internet Law

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[480] Rosati, "The Localization of IP Infringements in the Online Environment: from Web 2.0 to Web 3.0 and the Metaverse," 29.

concerning access blocking to websites become relevant. Although this provision is formally limited to certain criminal acts, it has been argued that, due to a regulatory gap in this area[481], it also provides guidance for the approach to be followed in cases of trademark infringement[482].

It has been observed that, over time, several types of interim injunctions have emerged across different jurisdictions for application against intermediary service providers, most notably content removal, website blocking, and disclosure orders[483]. The approaches of the three jurisdictions to these injunctions exhibit certain differences.

The most extensive form of injunctive relief that US courts have generally imposed on intermediaries has been takedown obligations aimed at preventing repeat infringements[484]. The limit of this injunction is that it must not approach the prohibition of general monitoring. For example, in one case, the right holder sought a broad injunction requiring the removal of any false and/or misleading advertisements that might be uploaded to the website. The court declined to grant such relief, reasoning that it would effectively require the platform to continuously monitor millions of new listings posted to its website each day[485]. Furthermore, in US law website-blocking injunction remains

[481] Göka, "Elektronik Ticaret Platformlarının Üçüncü Kişilerin Fikri ve Sınai Hakkını İhlal Eden İçerikten Kaynaklanan Hukuki Sorumluluğu," 1021-22.

[482] Yasaman, *Türk ve Avrupa Birliği Hukukunda İnternette Marka Hakkının İhlali*, 610.

[483] Rosati, "The Localization of IP Infringements in the Online Environment: from Web 2.0 to Web 3.0 and the Metaverse," 29.

[484] Ullrich, *Unlawful Content Online: Towards a New Regulatory Framework for Online Platforms*, 206.

[485] *Hendrickson v. eBay, Inc.*, 165 F. Supp. 2d 1082, at 1095 (C.D. Cal. 2001).

unavailable[486]. This is commonly attributed to concerns regarding the potential adverse impact of such measures on freedom of expression, as well as uncertainty as to their effectiveness in preventing infringements[487]. Finally, disclosure orders may be sought by right holders in the context of John Doe actions brought against unidentified infringers, typically in the form of requests directed at third-party service providers for the disclosure of information capable of identifying the alleged infringer[488].

Unlike the US, the EU adopts a more extensive approach to addressing repeat infringements. Within this framework, so-called "stay-down" measures aim not only at the removal of infringing content but also at preventing the re-uploading of identical or substantially similar infringing material in the future[489]. In this context, dynamic injunctions—understood as measures capable of extending beyond a specific domain name or IP address to also cover "mirror sites" that replicate the same infringing content across different domains or IP addresses—have become particularly prominent[490]. Although no longer an EU Member State, the United Kingdom is widely regarded as the

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[486] Rosati, "The Localization of IP Infringements in the Online Environment: from Web 2.0 to Web 3.0 and the Metaverse," 30.

[487] U.S. Copyright Office, *Section 512 of Title 17 – A Report of the Register of Copyrights* (2020), 193-96, https://www.copyright.gov/policy/section512/section-512-full-report.pdf.

[488] Rosati, "The Localization of IP Infringements in the Online Environment: from Web 2.0 to Web 3.0 and the Metaverse," 29.

[489] Ullrich, *Unlawful Content Online: Towards a New Regulatory Framework for Online Platforms*, 197.

[490] Rosati, "The Localization of IP Infringements in the Online Environment: from Web 2.0 to Web 3.0 and the Metaverse," 30.

first jurisdiction to apply dynamic website blocking measures in the most extensive manner[491]. Initially developed in the field of copyright law[492], website blocking orders were subsequently extended to trademark law as well[493]. Within the EU framework, right holders may also request injunctive relief compelling the disclosure of the identity of infringers[494].

Lastly, in the Turkish legal system, courts may also issue injunctive measures directed at online service providers, including content removal[495] and access blocking orders[496]. However, the proportionality of such access blocking measures, particularly in relation to platforms, has occasionally been subject to constitutional review. For instance,

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[491] Rosati, "The Localization of IP Infringements in the Online Environment: from Web 2.0 to Web 3.0 and the Metaverse," 29.

[492] *Twentieth Century Fox Film Corp & Ors v British Telecommunications Plc* [2011] EWHC 1981 (Ch) (28 July 2011).

[493] *Cartier International AG and Others v British Sky Broadcasting Ltd and Others,* [2014] EWHC 3354 (Ch).

[494] Thomas Riis et al., *Study on Legislative Measures Related to Onlıne IPR Infringements* (EUIPO, 2018), 36-42.

[495] Judgement of the Turkish Court of Cassation (11th Civil Chambers), March 28, 2024, E. 2022/6207, K. 2024/2541, Lexpera. https://www.lexpera.com.tr (accessed April 17, 2026)

[496] Judgement of the Turkish Court of Cassation (11th Civil Chambers), March 5, 2025, E. 2025/856, K. 2025/1526, Lexpera. https://www.lexpera.com.tr (accessed April 17, 2026)

in cases involving platforms such as YouTube[497] and Twitter[498], access blocking orders were imposed on entire platforms on the grounds that it was technically impossible to block only the infringing content or that content-specific removal was insufficient to prevent the infringement. The Constitutional Court held that such measures constituted a serious interference with the freedom of expression of all users of the platform and therefore violated freedom of expression. On the other hand, under Turkish law, right holders may also request the disclosure of the identity of infringers. In this regard, pursuant to Article 5 of the Internet Law, service providers are expected to retain certain information relating to the services they provide for a specified period of time. Hosting providers who fail to comply with these obligations may face administrative fines as well as potential liability risks[499].

D. COMPARISION OF PLATFORM LIABILITY FOR ONLINE TRADEMARK INFRINGEMENTS IN THE US, THE EU, AND TÜRKİYE

As examined in detail above, platform liability for online trademark infringements is founded on different legal bases under the laws of the US, the EU, and Türkiye. These differences primarily stem from the regulatory approaches and legal traditions adopted by the respective jurisdictions. While a case-law-based approach has developed in the US under the influence of the common law tradition, the EU has established a normative

[497] Constitutional Court of the Republic of Türkiye, *YouTube LLC Corporation Service Company and Others*, Application No.2014/4705, May 29, 2014.

[498] Constitutional Court of the Republic of Türkiye, *Yaman Akdeniz and Others*, Application No.2014/3986, April 2, 2014.

[499] Judgement of the Turkish Court of Cassation (11th Civil Chambers), October 2, 2013, E. 2012/3593, K. 2013/17284, Lexpera. https://www.lexpera.com.tr (accessed April 17, 2026)

model based on detailed regulatory instruments. With regard to Turkish law, although certain legislative instruments have been aligned with the EU framework as part of the harmonisation process, it has nevertheless developed its own distinctive regulatory approach in practice.

First, it can be stated that the three legal systems adopt different approaches regarding the definition and classification of platforms. Under EU law, the DSA explicitly defines the concept of an "online platform" and systematically regulates it as a specific category of hosting service. In contrast, neither the Lanham Act nor the DMCA provides a general definition of online platforms under US law. Instead, the concept of "service provider" is used, and the liability of platforms is assessed by courts based on the nature and characteristics of their activities. Similarly, Turkish law does not contain a direct definition of the concept of "online platform". However, the Electronic Commerce Law defines ECISPs, which are associated with online platforms, while the Internet Law includes definitions concerning different types of platforms, such as gaming platforms and social network providers.

Significant differences also exist with regard to the scope of safe harbour regimes and notice-and-takedown mechanisms. Under EU law, the safe harbour provisions have been preserved under the DSA; however, the conditions governing the application of this regime have been substantially elaborated. In particular, additional obligations, such as the requirement that notices submitted by rights holders be sufficiently precise and adequately substantiated, as well as the establishment of internal complaint-handling mechanisms, have been introduced with the aim of ensuring the protection of both rights holders and users. Similarly, Turkish law has introduced certain procedural rules concerning notice-and-takedown mechanisms through amendments to the Electronic Commerce Law and related Regulation. By contrast, US law does not provide for a statutory notice-and-takedown mechanism specifically applicable to trademark infringements. Accordingly, platforms have developed their own internal policies and procedures by taking into account the criteria established through judicial decisions. However, due to the absence of clearly defined minimum standards for such mechanisms, significant variations have emerged among platforms in terms of their implementation.

Another significant difference among the three legal systems concerns the basis upon which platform liability is determined. Under US law, courts adopt a positive approach by directly assessing whether platform activities give rise to secondary liability through the doctrines of contributory liability and vicarious liability. In contrast, EU law follows a negative approach, whereby the initial assessment focuses on whether the platform falls outside the scope of safe harbour protection. A platform that falls outside the boundaries of safe harbour protection is not automatically considered liable; rather, the legal characterisation of such liability is left to the national laws of the Member States. This may result in different legal outcomes concerning similar platform activities across different Member States. Under Turkish law, since there are no specific provisions governing platform liability for online trademark infringements, assessments are generally conducted within the framework of safe harbour provisions and the general principles of liability under the Turkish Code of Obligations. Consequently, Turkish judicial decisions appear to focus primarily on whether a platform qualifies for safe harbour protection rather than on the substantive elements of liability itself.

All in all, it can be argued that none of the three legal systems adopts an approach under which platforms are entirely exempt from liability for online trademark infringements. Nevertheless, significant differences arise in the scope and application of platform liability due to the flexible and case-law-driven structure of US law, the systematic approach of EU law, which establishes the boundaries of the safe harbour regime through Union-level legal instruments while leaving the determination of liability to Member State assessment, and the Turkish legal system, which has adopted its own distinctive regulatory approach. Consequently, this divergence may lead to uncertainty regarding legal predictability for rights holders, platforms, and legal practitioners in practice.

CONCLUSION

Since the late twentieth century, the rapid and transformative developments in information and communication technologies have fundamentally reshaped both the forms of trademark use and the typology of trademark infringements.

The manifestation of trademarks in the online environment has become particularly pronounced with the expansion of e-commerce, especially within different types of digital platforms. This development has given rise to platform-specific forms of trademark infringement. In this context, domain name disputes, search engine–related infringements, and infringements occurring within online marketplaces, social media platforms, and more recently NFT platforms have become particularly salient. Rights holders and courts have faced significant challenges in preventing such infringements and ensuring their recurrence is avoided. Among these challenges are issues such as the determination of personal jurisdiction, the incompatibility of traditional enforcement mechanisms with decentralized architectures, the difficulty of identifying infringers due to anonymity, the rapid dissemination of infringing content, and the fact that, due to low barriers to entry, infringers are often unable to compensate for damages even when identified. These difficulties have led rights holders to shift their focus from solely pursuing individual infringers to also questioning the liability of online platforms.

The prominent role of platforms in the digital environment began with the emergence of Web 2.0. This era transformed platforms into the primary arena of economic and social interaction for users. Nowadays, although Web 3.0 technologies characterized by decentralization, such as NFTs, have begun to emerge, the necessary infrastructural ecosystem for their full operation has not yet been fully established. As a result, these applications continue to operate largely on existing platform infrastructures. Accordingly, platforms remain structurally central within the current digital order.

Due to the inherently evolving and adaptable nature of platform structures, difficulties have arisen in the scholarly literature regarding the formulation of a clear conceptual definition of platforms. Nevertheless, platforms are generally characterized as undertakings operating within two-sided or multi-sided market structures that, throughthe use of internet-based systems, intermediate interactions between distinct yet interdependent groups of users and generate value for at least one of these groups.

Within this framework, the legal liability of platforms arising from trademark infringements has been subject to different approaches across the three jurisdictions The US approach, which has adopted a rights-based immunity regime established through statutory provisions such as the CDA and the DMCA, has not introduced a specific immunity or exemption framework for trademark infringements. This has resulted in certain practical consequences. Since the issue has largely been assessed on a case-by-case basis before courts, uncertainties have emerged regarding the minimum requirements and determining criteria applicable to the assessment of platform liability.

In my view, in order to ensure legal predictability, the establishment of minimum statutory requirements concerning online trademark infringements, similar to those existing in the field of copyright law, would provide a more beneficial framework for both rights holders and platforms. However, such a framework should not be based on highly casuistic rules targeting specific technologies or forms of use, as the rapid evolution of digital environments may quickly render technology-specific regulations obsolete. Instead, a technology-neutral and principle-based model, focusing on factors such as whether the platform satisfies the conditions for safe harbour protection, its awareness of infringements, and the requirements of notice-and-action mechanisms, would provide a more sustainable and foreseeable approach for both trademark proprietors and platforms.

Compared to the US, the EU has adopted a more regulatory and structured framework, particularly with regard to the scope and application of immunity regimes. However, the fact that the E-Commerce Directive and the more recent DSA and DMA regulations primarily define the boundaries of immunity while leaving the determination of liability to the Member States has resulted in divergent approaches within the Union. This divergence has raised concerns regarding legal predictability for both rights holders and platforms, particularly in the context of online trademark infringements. Therefore, especially with regard to online trademark infringements, establishing a minimum level of harmonisation concerning the determination of secondary liability would contribute to the development of a more consistent and balanced practice across the Union. In this regard, a Regulation-level instrument, such as the DSA, establishing the minimum conditions required for the attribution of liability could facilitate a more effective harmonisation process among Member States in this area. On the other hand, as previously noted, due to the inherently international nature of platform services, the determination of the legal liability of platforms for trademark infringements also carries an international dimension. Accordingly, achieving a certain degree of uniformity, even to a limited extent, at the regional level regarding the determination of platform liability could serve as a potential model for a future international regulatory framework specifically addressing this issue.

Under Turkish law, the existing framework generally reflects a safe harbour–based approach established through statutory provisions, similar to the approach adopted by the EU. However, unlike the EU approach, which operates within a multi-state legal structure, regulating primarily the conditions of immunity rather than the conditions giving rise to liability does not appear to constitute an appropriate legislative choice for Türkiye. A regulatory model structured predominantly around immunity provisions leaves a fundamental question unanswered: under which conditions platforms should be held liable and what legal consequences should attach to such liability.

In this regard, introducing an explicit provision into IPL establishing minimum standards concerning platform liability specifically in the context of online trademark infringements, or alternatively, reinterpreting the notice-and-takedown obligations imposed on ECISPs under Article 9 of the Electronic Commerce Law not as a basis for safe harbour immunity but as obligations whose non-compliance may give rise to liability, could constitute an effective initial step towards addressing the existing legislative gap in this field.

Finally, any regulatory proposals concerning platform liability across the three legal systems should take into account the distinctive technical and structural characteristics of platforms operating in the field of emerging technologies. Indeed, legal scholarship suggests that, in the case of blockchain-based platforms such as NFT marketplaces, the notice-and-takedown model traditionally applied under online liability regimes in trademark law may not, by itself, be sufficient. Even where access to the relevant content is restricted by the platform or the content is removed from the user interface, the underlying data may continue to exist on the blockchain. This not only reveals the technical limitations of conventional takedown mechanisms but also gives rise to new legal questions concerning the scope of platform obligations and the conditions under which liability may arise.

For this reason, potential forms of infringement that may emerge in the future should be addressed not through solutions tied exclusively to existing technological structures, but through general principles capable of adapting to technological change. The regulatory approach to be adopted should therefore be functional, flexible, and technology-sensitive, while ensuring the effective protection of rights without unnecessarily restricting the development of innovative technologies. Such an approach could help prevent regulatory rules from becoming rapidly ineffective in the face of incremental technical changes and could also contribute to the establishment of a more predictable and sustainable liability regime for rights holders, platforms, and legal practitioners.

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ÖZET

Bu tezde, online marka ihlalleri bağlamında platformların hukuki sorumluluğu gelişen teknolojiler ışığında incelenmiştir. Çalışma kapsamında Amerika Birleşik Devletleri, Avrupa Birliği ve Türk hukuk sistemleri karşılaştırmalı olarak ele alınmıştır.

İki ana bölümden oluşan tezin ilk bölümünde marka kavramı ile marka korumasının kapsamının belirlenmesinde esas alınan temel ölçütler incelenmiştir. Ayrıca dijitalleşme süreciyle birlikte ortaya çıkan marka ihlali türleri ve bu kapsamda hak sahiplerinin karşılaştığı zorluklar değerlendirilmiştir.

Tezin ikinci bölümünde ise platformların internet ekosistemindeki gelişimi ele alınarak platform kavramı açıklanmıştır. Ardından üç hukuk sistemi bakımından platformların online marka ihlallerinden doğan sorumluluğuna ilişkin temel yasal düzenlemeler ve sorumluluğun belirlenmesinde önem taşıyan kavramlar incelenmiştir. Bu çerçevede platformların hukuki sorumluluğu birincil ve ikincil sorumluluk ayrımı temelinde değerlendirilmiş; ayrıca marka ihlallerinin önlenmesi amacıyla platformlara yönelik uygulanan başlıca tedbirler ele alınmıştır.

Sonuç olarak elde edilen bulgular karşılaştırmalı hukuk metodu çerçevesinde değerlendirilmiştir.

Anahtar Kelimeler: Platform Sorumluluğu, Marka Hakkı, Çevrimiçi Marka İhlalleri, Uyar-Kaldır Sistemi, Güvenli Liman Muafiyeti, NFT.

ABSTRACT

This thesis examines the civil liability of platforms in the context of online trademark infringements in light of emerging technologies. Within the scope of the study, the legal systems of the US, the EU, and Türkiye are analyzed comparatively.

In the first part of the thesis, which consists of two main sections, the concept of trademarks and the fundamental criteria used in determining the scope of trademark protection are examined. In addition, the types of trademark infringements that have emerged as a result of digitalization, as well as the challenges encountered by rights holders in this context, are evaluated.

The second part of the thesis addresses the development of platforms within the internet ecosystem and explains the concept of platforms. Subsequently, the principal legal regulations concerning the liability of platforms for online trademark infringements, together with the key concepts relevant to the determination of such liability under the three legal systems, are analyzed. In this framework, the civil liability of platforms is assessed on the basis of the distinction between primary and secondary liability. Furthermore, the principal injunctions imposed on platforms for the prevention of trademark infringements are also examined.

Finally, the findings obtained are evaluated within the framework of the comparative law method.

Keywords: Platform Liability, Trademark Rights, Online Trademark Infringements, Notice-and-Takedown System, Safe Harbour, NFTs.