



Liability of internet service providers Online Marketplaces

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Online Marketplaces

The eBay logo is displayed in its characteristic multi-colored font: 'e' in red, 'b' in blue, 'a' in yellow, and 'y' in green.The Amazon logo features the word 'amazon' in a black, lowercase, sans-serif font, with a yellow curved arrow underneath it pointing from the 'a' to the 'z'.The logo for Marktplaats.nl consists of a blue icon resembling a stylized 'M' or a set of scales, followed by the text 'MARKTPLAATS.NL' in a blue, uppercase, sans-serif font.The bol.com logo features the text 'bol.com' in a bold, black, lowercase, sans-serif font. To the right is a blue cartoon character of a person in a blue suit with their arms raised, and a blue speech bubble containing the number '60'.The Etsy logo is the word 'Etsy' written in a brown, serif font.The Craigslist logo features a purple peace symbol icon followed by the word 'craigslist' in a purple, lowercase, serif font.The DaWanda logo is a red, rounded rectangular tag with a white heart icon on the left. The text 'DaWanda' is in white, bold, uppercase letters, and 'Products with Love' is in a smaller white font below it.The ticketswap logo features a white icon of two overlapping shapes forming a stylized 'S' or ticket shape, followed by the word 'ticketswap' in a white, lowercase, sans-serif font.

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Liability of online marketplaces

- IP infringing products offered on marketplace
- NL:
 - marketplace does not infringe IP right itself
 - no joint/secondary infringement
 - marketplace may be acting unlawful

MARKTPLAATS.NL



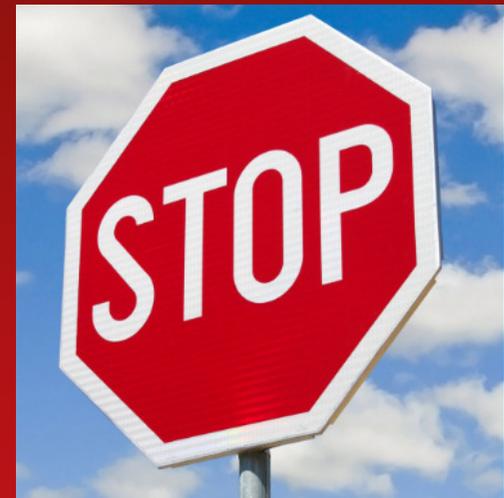
Exclusion of liability - marketplaces

- EU – Exclusion of liability for hosting providers
 - No knowledge of illegal activity
 - Removal of content / blocking of access after notice of illegal activity (Notice and TakeDown)
 - Art. 14 (1) E-Commerce Directive
- CJEU L'Oréal / eBay
 - Liability not excluded if provider plays an **active role**, allowing it to have knowledge or control of the data stored, by optimising the presentation of the offers or promoting them (para. 123).



Measures

- Regardless of exclusion of liability, courts can impose orders requiring provider to stop or prevent an infringement
 - Art. 14 (3) E-Commerce Directive
- Measures may also be required on the basis of:
 - Art. 8(3) Copyright Directive
 - Art. 11 IP Enforcement Directive



Limits to measures

- No general monitoring / active prevention
 - Art. 15 E-Commerce Directive
- Measures must be fair, effective, proportionate, dissuasive and not too complicated or costly or create barriers to legitimate trade.
 - Art. 3 IP Enforcement Directive



What measures?

- Removal
 - after court order or after notice if illegal nature of content is evident
- Block user/advertiser
- Provide identifying data
- Filter?
 - CJEU L'Oréal / eBay (end and prevent)
 - NL: Court of Appeal Leeuwarden Stokke/Marktplaats (no filtering; no obligation to register advertisers)



Developments - DSM



- Proposal for Directive on Copyright in the Digital Single Market
- Includes new obligations for intermediaries
 - Art. 13 and recital 39
 - obligation for information society service providers who store and give access to large amounts of works uploaded by their users
 - to use effective content recognition technologies
 - to prevent availability of infringing material
- Applicable to online marketplaces? Appear to be intended for value gap re online content (YouTube, etc.); not counterfeit.
- Also: Filtering? Fair balance?



Thank you!

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