

## New e-commerce regulation sets out details of takedown procedure for infringing content

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19 January 2023



### TURKEY

Legal updates: case law analysis and intelligence

- A new regulation complementing Law No 7416 on e-commerce came into effect on 1 January 2023
- The regulation clarifies the takedown procedure upon receipt of a legitimate complaint by an IP rights holder

- While this will help rights holders to take down infringing products quickly, ambiguities regarding the procedure may still create problems in practice

## Background

A new law on e-commerce (No 7416), which was published in the *Official Gazette* dated 7 July 2022, came into effect as of 1 January 2023. The new law obliges e-commerce platforms to take down a product if they receive a legitimate complaint alleging that a violation of intellectual and industrial property rights has occurred on their platform.

As discussed [here](#), according to Law No 7416, the general principle is that the intermediary service provider (ie, the platform) is not responsible for the illegality of the content offered by the service provider. Nevertheless, it is obliged to take down a product upon a complaint by the rights owner based on information and documents regarding the violation of IP rights. If the illegal content is not removed upon receipt of the complaint, or if the content is not republished despite being proven to be legal, the platform will incur heavy fines.

## New regulation

A new regulation complementing Law No 7416 was issued on 29 December 2022 and also came into effect as of 1 January 2023. According to this regulation:

- Complaints alleging IP rights infringement shall be made to the intermediary service provider through its internal communication system - which the intermediary service provider will establish - or via a notary public or registered electronic mail, and shall include:
  - a registration certificate demonstrating the complainant's ownership of that IP right;
  - the identification and communication information of the complainant;
  - a power of attorney (if the complaint is filed by proxy);
  - explanations and evidence to prove that the product complained of infringes the complainant's rights;
  - the internet address hosting the product complained of; and
  - a statement that the complainant will be responsible for any damages that may arise if the information and documents submitted within the complaint are incorrect.
- If the complaint does not meet the above conditions, the intermediary service provider shall not process the complaint and shall inform the complainant of the deficiencies.
- The intermediary service provider shall remove the product complained of within 48 hours of receiving the complaint and shall inform the complainant, as well as the service provider.
- An objection against the complaint shall be made to the intermediary service provider through its internal communication system, or via a notary public or registered electronic mail, and shall include:
  - the identification and communication information of the objecting party;
  - a power of attorney (if the objection is filed by proxy);
  - explanations and evidence to prove that the product complained of does not infringe the complainant's rights;
  - documents, such as invoices and licence agreements, demonstrating that the products complained of is an original and/or has been placed on the market with the authorisation of the IP rights holder; and
  - a statement that the objecting party would be responsible for any damages that may arise if the information and documents submitted within the objection are incorrect.
- If an objection does not meet the above conditions, the intermediary service provider shall not process the objection and shall inform the objecting party of the deficiencies.
- If it is clear that the objection is rightful based on the information and evidence provided, the intermediary service provider shall republish the product complained of within 24 hours of receiving the objection and shall inform the objecting party, as well as

the IP rights holder. The intermediary service provider shall not process repeat complaints regarding the same product, unless new documents proving the infringement are submitted by the complainant.

## Comment

The new regulation clarifies how IP rights holders may file complaints with e-commerce platforms, as well as how objections to such complaints may be filed in return. It aims to provide a balanced, predictable and speedy procedure to protect IP rights against infringement on e-commerce platforms.

However, ambiguities regarding the procedure may still create problems in practice. For instance, while the internal communication system to be established by intermediary service providers would create a simple and functional tool to file complaints and objections, it remains to be seen whether such a system would fulfil the burden of proof.

On the other hand, intermediary service providers have a very limited period of time to take action upon receiving complaints and objections. Although these limits seek to ensure that complaints and objections are examined quickly, they will probably prove to be very challenging for intermediary service providers, and may call into question the depth and accuracy of the platforms' analysis on the merits of issues.

Finally, it should be noted that this procedure does not prevent parties from resorting to administrative and judicial bodies. Nevertheless, it seems that the complaint procedure would enable fast solutions and help rights holders to take down infringing products very quickly.

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