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DISSERTATION

**COPYRIGHT LAW IN RELATION TO INSTAGRAM IN AN
ERA OF DIGITALISATION**

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Copyright law in relation to Instagram in an era of digitalisation

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Abstract

Copyright is essentially connected with the technology evolution and sharing technologies. Nowadays, social media have turned into one of the greatest and most recent conflicts for the copyright legislation and policy. This thesis builds on the analysis of the conflict among copyright and the photos uploaded and shared on social media and especially on a specific platform, called Instagram. The thesis emphasises in analysing the importance of protecting personal images and its connection with the right of personality. Following, it examines the European Copyright Law, and especially the recently adopted Directive 2019/790 and particularly article 17 which is connected to the transfer in intermediary liability and platforms online in relation to copyright safeguarded content which is hosted on online platforms via their users. As mentioned the thesis examines the difference among the rules of copying under the European Copyright Law and communication to the public and the supporting of sharing on online platforms and specifically Instagram. Furthermore, it examines Instagram as a platform, the Terms of Use and Conditions of the platforms, Who owns the photos uploaded on the platform and what rights does the platform gain after accepting its terms and conditions. Finally, it examines copyright infringement and what users of the platform can do in order to be protected when sharing a photo against copyright.

Introduction

In the contemporary digital world, *'the internet is teeming with personal websites and social media posts'*¹. The internet has become a home of open communication as well as an idea of sharing². Specifically, social media permitted the contact of an enormous number of internet users in a way that was impossible in the past³. In modern times more and more individuals worldwide are using the Internet and remain connected via the so called social networking⁴. The rise and expansion of social networking sites, the so-called platforms, in the contemporary world has promoted the capability of users equally to organisations to share data. Social network platforms empower individuals and/or associations to communicate, market themselves, share and also extend to broader audiences⁵. Furthermore, online platforms persuade users to share content, either original works or third parties' works. An increased number of photos and individual's stories are 'posted' through different social media. In order to achieve these, online platforms offer different instruments like retweet, re-post and share. Online platforms are profitable digital enterprises, principally making their income via advertising⁶. This theory of sharing and posting on online platforms opposites with the implications of copyright law, that governs the practice of literary, aesthetic(artistic) and dramatic materials⁷. Especially online, the regulation restrains the actions of communicating and also copying copyright material to all the internet users without the authorisations of the right holders⁸. Intrinsically, the growth of internet and more specifically platforms and the sharing culture had a meaningful influence on the power of copyright to satisfy its administrative objective. The efficiency and significance of copyright law is questioned in the light of social networking. Attributable to the aforementioned, remarkable amount of photos published on social media sites, a great amount of copyrightable photos are certainly accessible and available for unlawful copying by other individual's using Internet.

This essay, however, will focused primarily to one of the most significant social media platforms of the 21st century, Instagram, which 'residence' over 40 billion photos⁹. Instagram was created in October 2010, and from that point, Instagram users have the ability to upload , post and share photographs as well as videos¹⁰.The significance of online platforms in reference to copyright law has been acknowledged in the political 'speech'. The UK Intellectual Property Office (hereinafter IPO) issued a report concerning the effect of online platforms

¹ Elizabeth J. Tao, 'A Picture's Worth: The Future of Copyright Protection of User-Generated Images on Social Media' (2017) 24 Ind.J.GlobalLegalStud. 617

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ L. Lundell, 'Copyright and Social Media : A legal Analysis of Terms for Use of Photo Sharing Sites', 2015

⁶ OECD (2021), *The Digital Transformation of SMEs*, OECD Studies on SMEs and Entrepreneurship, OECD Publishing, Paris, <https://doi.org/10.1787/bdb9256a-en>- Chapter 3 : 'SMEs in the online platform economy'.

⁷ Alok Kumar Yeadav, 'Copyright in Digital Era- Chapter I'

⁸ S. 17, 20 CDPA 1988 U.S.

⁹ SMPERTH, 'Facts & Figures// Instagram Statistics for 2022', 2021

¹⁰ Geoff Desreumaux, 'The Complete History of Insagram', 2014

on Intellectual Property violation¹¹. Instagram was also selected for the case study since it has turned into one of the top famous online platforms for image posting and sharing. More than 95 million photos and videos are uploaded, posted and shared on Instagram in a daily basis and also more than 40 billion photos and videos are uploaded and shared on Instagram from the time of its conception¹². Nevertheless, in contrast to Facebook, Instagram users can not 'build' complete online profile containing personal details or even write small brief bursts of texts like Twitter¹³. The photos which are uploaded and posted on Instagram often are filled with brief comments that explained the photo, despite the fact that these comments are voluntary and not compulsory. Nonetheless, Instagram has been described as owing remarkably vague and unclear user-agreements and users are commonly oblivious of the copyright ramifications. As arising case law shows, Instagram is rapidly developing into an online platform that leaves platform's users exposed to third-party acts for copyright violation¹⁴. At this point it is essential to underline that Instagram's content contains images, short video clips and also 'stories' that are considered to be momentary short video clips. Video clip contents are limited to less than 60 seconds and 'stories' to not more than 15 seconds, yet, Instagram is primarily used to upload and share images. The images that are found on Instagram create 36% more participation than video clips¹⁵.

Prior proceeding to the main part of the examination it is crucial to explore what User Generated Content is and what it includes¹⁶. User Generated Content (hereinafter UGC), is any type of content, including images, text, video and audio that has been uploaded and posted by online platforms' users¹⁷. In addition, it is a good consumers produce in order to spread information concerning online goods or even the enterprises which market them.

This thesis describes and examines the copyright law in relation to images posted and uploaded on social media platforms and more specifically on Instagram. It starts by giving an overview of the significance of protecting personal images and emphasises on the right of personality. Following the thesis examines the copyright law that implements to social media under the authorities of the European Union and particularly Directive 2019/790. Then it emphasises on analysing Article 17 of the Directive 2019/790 one of the most debatable articles of these New Directive. On the third section of the main part the thesis will examine Instagram in general, as to its terms and conditions and copyright infringement.

¹¹ Intellectual Property Office, 'Share and Share Alike – The Challenges from Social Media for Intellectual Property Rights', 2017

¹² Ibid.

¹³ Lauren Myers, 'A Picture is Worth a Thousand Material-Connection Disclosure: Endorsers, Instagram and the Federal Trade Commission's Endorsement Guides', 2017

¹⁴ Blake Brittain, 'Instagram dodges photogs' copyright lawsuit over embedding feature', 2021

¹⁵ Ibid.

¹⁶ Senftleben, Martin. "Bermuda Triangle—Licensing, Filtering and Privileging User-Generated Content Under the New Directive on Copyright in the Digital Single Market." *Filtering and Privileging User-Generated Content Under the New Directive on Copyright in the Digital Single Market (April 4, 2019)* (2019).

¹⁷ Ibid.

1. Personal Images and the Importance of Protecting them

1.1. The Significance of Protecting Personal Photos

Albeit there are several conditions within the online environment where photos could be abused, the pure reason that a photo has been 'abused' is not fundamentally a basis for why it must be safeguarded¹⁸. This part of the thesis tries to answer the question as to why it is crucial to safeguard photos uploaded online on different platforms and especially on Instagram. Prior starting the analysis of the reason why it is essential to safeguard personal images, it is prerequisite to count if the entire of the images must be deal with in the same extent or if the law must distinguish among nonidentical classifications of photos. It is vital to underline this distinction since there are several distinct classes of photos uploaded online, like personal, ordinary and trivial , all and every one of them could guarantee distinct safeguarding. In certain circumstances, UK and Australia , have handled personal photos dissimilarly, subject to the character and type of the photo, for instance regulation of breach of confidence handled photos in a different way, based on the data which is defined as photograph¹⁹. Although images, which concerning have sexual or intimate character could be safeguarded, an image of an individual simply walking on a street might not be protected or guarantee safeguarding²⁰. In the judgment of the case of *Campbell v MGN Ltd*²¹ it was held by B. Hale that '*We have not so far concluded that the plain fact of concealed photography is adequate to produce the data classified among the photograph private. The action photographed should be confidential. If that had been, and had been introduced as, an image of Naomi Campbell going about her business in a public secret, there may have been no ailment. She produced a significant piece of her living out of being photographed being stunning in a piece of clothing by a designer. Audience will certainly be curious to see how Naomi Campbell looks if and at the time she comes out to the market for a bottle of milk. There is not a thing fundamentally confidential about that data or could be anticipated to damage he private life*'²². By other causes, still, the law is not that determined to transfer decision over the characteristic of the image and this is the challenge with the copyright legislation that has commonly deny to transfer judgment over the certain quality of artistic materials, once a subject is categorised a material of artistic nature, like photographs, is not given any attention to the quality of the image²³. It appears from what mentioned, that there are multiple distinct categories of photos images on the internet, several including sensitive as well as vital knowledge and others are frivolous and of temporary interest²⁴. Albeit the first type stated is worthy of safeguarding, the second one is not that much. Nevertheless, this does not conclude that we must produce a two-tier system that simply safeguards specific categories of images. Whilst

¹⁸ NITHYA, K., and N. VENKATESWARULU. "A Two-Level Framework for Protecting the Privacy of User Uploaded images on Content Sharing Sites." (2016).

¹⁹ Tatiana Synodinou, 'Image Right and Copyright Law in Europe: Divergences and Convergences', 2014

²⁰ *Wilson v Ferguson* [2015] WASC 15 , (indicating privacy where the photos are of intimate character and contrary denying safeguarding for an image captured of an individual walking on the street publicly)

²¹ *Campbell v MGN Ltd.* [2004] UKHL 22

²² *Ibid.*

²³ *Douglas v Hello! Ltd* [2005] EWCA Civ 595

²⁴ Sara Hawkins, 'Copyright Fair Use and How it Works for Online Images', 23rd November 2011

copyright legislation has continue to be recognised, it is frequently challenging or even hazardous to ‘pass judgement’ on materials of artistic character, like photographs, and this is notably the situation with personal photos, where a number of individuals might be extremely delicate to exposure, contrary to other individuals who might flourish²⁵. Bearing in mind, the variety of photos found on the internet and the innumerable of distinct interests conceivably impacted, it is not unexpected that there is no individual basis for why personal photographs must not be guarded²⁶. Alternatively, there is a jumble of numerous judgments as to why photos may be guarded that probably vary subject to the category of photographs at issue²⁷.

At this point, the thesis will examined the reasons behind the need to protect personal images. Initially, the reason why we must guard images is because they are ‘intangible assets’²⁸. As it was underlined by an author, *‘the growing commercialisation of the human photos requests that any modern categorisation of interests in personality must consider that the name of a person or features are as well beneficial economic capitals’*²⁹. Generally, this arises where photos of celebrities, sportsmen and sportswomen and artists are taken concomitantly with advertising and trading reasons. Furthermore, an additional reason lies on the guarding of personality³⁰, thereby, is based on the idea of Lockean, where he highlighted that *‘Each man has a property in his own individual. This no one has any right to except himself. The work of his body, and the labour of his hands, we might stated, are adequately his. No matter what, then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property’*³¹. Therefore, based on what is stated by Lackean, every individual has ‘a property in his own person’³², which leads us to the conclusion that an image of an individual is their own property. However the right of personality will be described and examined in the next section as it is a crucial point as to why we must protect personal images. Following and based on the aforementioned theory, Nimmer mentioned that *‘it might appeared to be a first rule of the Anglo American legislation, a dictum of the greater crucial nature, which everyone have the right to ‘the fruit of his work except where there are vital compensating public policy remunerations’*³³. In a case which is fundamentally important, it was held that *‘If the name of a man be his personal property ... it is challenging to comprehend why the odd cast of one’s features is not equally someone’s property, and why it is a pecuniary worth, if it has one, does not appertain*

²⁵ Bleistein v Donaldson Lithographic Co, 188 U.S. 239 (1903)

²⁶ European Court of Human Rights, ‘Right to the protection of one’s image’, 2020, Press Unit

²⁷ Synodinou T., supra note 126, - mentioning ‘Safeguarding of the photo of an individual frequently takes a double shape in accordance with the privacy/property duality which does not succeed in pronouncing in lawful terms the autonomy and the specific characteristics of an individual’s image and as described an individual’s image seems to be a legal property with different identity as well as an undetectable essence’)

²⁸ Ibid. at 196

²⁹ Beverley – Smith Huw, ‘The Commercial Appropriation of Personality’, Cambridge University Press, 2002

³⁰ Synodinou, supra note 126

³¹ Locke John, ‘Second Treatise of Government’, 1980

³² Ibid.

³³ David Nimmer, ‘Copyright in the Dead Sea Scrolls- Authorship and Originality’, 2001, Houston Law Review Address

to its holder, instead of to the individual aiming to make non permitted use of it'³⁴. As regards celebrities, who spends a lot of time before posting a photo, the judges in the case of *Uhlander v Henricksen*³⁵ stated that, '*a celebrity has a lawful ownership interest in the open personality. A celebrity should be regarded to have arrayed his years of exercise and competition in a public personality that ultimately might achieve marketable levels. That identity, incorporated in his name, likeness, statistics and other characteristics, is the fruit of his works and is a category of property*³⁶'. Additionally, another principle basis as to why we must guard personal photos is being the misuse of personal photos which possible may infringes on the primary human values of pride and independence³⁷. Moreover, the necessity to guard pride and independence is founded in the International Convention on Human Rights, Article 1, that stipulates that '*the entire of individuals are born free and equivalent to pride and independence*³⁸'. Permitting the abuse of personal photos in the internet has the ability to encroach on dignity and autonomy. In *Inc v Aubry*, a Canadian case, held that '*The camera lens grabs a person's moment as its most intense, and the snapshot 'defiles' that moment... An individual surprised in his or her private life through a roving photographer is stripped of his or her transcendence and human dignity, since he or she is reduced to the status of a 'spectacle', for others.... The 'indecenty of the image' deprives those photographed of their most secret substance*³⁹'. Additionally, '*several breaches of human personality are of a non-pecuniary nature, not simply since they are not able to be evaluated in financial terms with any arithmetical veracity, and additionally since they are commonly of naturally non-financial value*⁴⁰. This is since there is the so called, 'organic connection' among the nonphysical value of a photo and the center of personality, individual pride⁴¹. Since a photo of an individual is a component of personality which is 'intricately connected to the self', the financial views are not able to be separated from the virtuous aspects of personality which contain person's pride⁴². Although, there might not be a lucid idea of a person's pride by way of legitimate value, however, dignitary interests regarding private photos usually indicate an extensive range of elements containing fame, privacy and freedom⁴³. Jeffrey Rosen underlined in his article that abuse of a photo of an individual forms an essential offense opposed to human pride⁴⁴ and as stated in *Inc v Aubry*⁴⁵, it is vital to guard personal photos to guard a person's autonomy and the controls of every individual upon their personality and privacy. Guarding pride and autonomy are really associated and by definition autonomy '*is a complicated theory concerning the abilities built up or built down of individuals that assist them to*

³⁴ Edison v Edison Polyform Mfg. Co 67 A. 392, 394

³⁵ Uhlander v Henricksen, 316 F. Supp. 1277, 1282 (1970)

³⁶ George M Armstrong Jr., 'The Reification of Celebrity: Persona as Property', 1991, Louisiana Law Review

³⁷ Dominika Bychawska – Siniarska, 'Protecting the Right to Freedom of Expression Under the European Convention on Human Rights', a handbook for legal practitioners

³⁸ Article 1 International Convention of Human Rights

³⁹ Les Editions Vice - Versa Inc v Audry, [1998] S.C.R. 591 (Can.)

⁴⁰ Ibid.

⁴¹ Synodinou, supra note 126, at 197

⁴² Ibid.

⁴³ Tatiana Synodinou, 'Image Right and Copyright Law in Europe: Divergences an Convergences', 2014

⁴⁴ Jeffrey Rosen, 'The unwanted gaze: The Destruction of Privacy in America', 2000

⁴⁵ Les Editions Vice - Versa Inc v Audry, [1998] S.C.R. 591 (Can.)

*improve, desire to follow up on and act on superior order schedules of act that consider as their own critical object individual's life and the manner it is existed*⁴⁶. Further to this, autonomy is the liberty that a person has to rule what is exposed on behalf of their name and it has been proposed that 'both autonomy and division of personal as well as public are governed by the rule'⁴⁷. These freedoms, contemplate the superiority of the person above community and this is extremely substantial as '*privacy idea is centred on humans liberty and not simply shows the humans as the locus of individual rights, just as well regards the guarding of human liberty as the supreme aim of confidentiality and privacy*'⁴⁸. Autonomy, 'gives' an individual the ability and liberty to decide on for them what is consider to be personal and not⁴⁹. Despite the aforementioned reasons, another reason behind the necessity to guard images is the abuse of personal photos which might improperly interfere over the personal life of a person and as it was noted '*not a thing is superior of legal guarding than a person's private life and the ability to choose for themselves to what degree they can be the topic of open attention conversation by the public*'⁵⁰.

1.2. Right of Personality – 'Protecting Their Own Image'

Following, at this point of the thesis, it is essential to examined in detailed the right of personality as mentioned in the previous part and 'necessity of protecting someone's image' as it is tightly linked with the images uploaded by users on their personal accounts on Instagram.

The safeguarding of the image of an individual is by no means close to being consistent or harmonised in the European Union. Traditionally, in the tort law, the legal safeguarding of the own image of an individual is contingent on the right of privacy or otherwise on the right of personality, subject to whether the ultimate is acknowledged or not. Additionally the European Court of Human Rights, in 2012, underlined that '*An individual's image represents one of the primary characteristics of someone's personality, since it discloses the unique features of an individual and tells apart the individual from his/her equals. Therefore, the right to the guarding of the image of an individual is a key component of the advancement of personality and it centrally assumes the right of a person to control the use of that specific image containing the right to deny the publication of that image*'⁵¹.

As reported in a study, one of the most vital measures in the field of creating a powerful safeguarding for both personal and private details was adjusting image rights to the civil law and more specifically, the clarification and usage of the violation of civil law of confidence⁵². As opposed to the initiation of a new right or otherwise

⁴⁶ David A. J. Richards 'Rights and Autonomy', 1981

⁴⁷ Ibid.

⁴⁸ Ari Ezra Waldman, 'Privacy as Trust: Sharing Personal Information in a Networked World, 2015

⁴⁹ Ibid.

⁵⁰ Benjamin Ely Marks, 'Copyright Protection, Privacy Rights and the Fair Use Doctrine: The Post Salinger Decade Recognised', 1997

⁵¹ Von Hannover v Germany (no 2), Grand Chamber, 2012

⁵² Tatiana Synodinou, 'Image Right and Copyright Law in Europe: Divergences an Convergences', 2014

a recent tort, the UK courts determined that violation of confidence acts were an appropriate instrument through which to handle privacy, in light of its pliant and developing character. From this perspective, *Campbell case* is regarded to be one of the principal judgments in the legislative development⁵³. The central of the case was a popular model whose personal life was ripped apart at the time a journal published a number of images of her departing from a Narcotic Anonymous gathering⁵⁴. In agreement with the recent utilisation of the ‘tort of breach of confidence’, the case in reality regarded the creation of a genesis of details to be asserted a ‘private’, known as ‘logical expectation of privacy’. In a distinct case⁵⁵, with equal basis to the one explained the High Court concluded that the volatiles to ascertain what privacy and image right an individual can await are *‘the characteristics of the claimant, the essence of the act in which the applicant was involved, the place at which it was performing, the essence and the aim of the trespass, the lack of consent and if it was acknowledged or can be implied, the impact upon the applicant and lastly both the conditions and the objective for which the details fall within the hands of the journal’s publisher’*⁵⁶. Furthermore, in Douglas case, it was held that *‘There is from my perspective no issue of producing an ‘image right’ or any other unconventional type of IP’*⁵⁷. The details in this case can be safeguarded, not because it regarded the image of Douglases any longer than since it regarded their private and personal life, but merely since it was data of commercial sense over which the Douglases had adequate management to allow them to enforce a duty of confidence⁵⁸. Moving outside the UK, the Italian Court has stated its personal advanced opinions of ‘an individual’s personal image rights’, shaping these as ‘unilateral operation’ although before was distributed though a bilateral regulated agreement, *‘The permission to the publication of the image of an individual composes a unilateral transaction, having as its purpose not the very personal and intrinsic right to the image, that by its own nature cannot be handled, but merely the performance of this right. Even though, it might sometimes be incorporated in an agreement, the consent however stays different and independent from the contract which included it. Therefore, it is constantly revocable, in spite of the compensation, that does not permit a transaction, in light of the nature of an inalienable right and, consequently not susceptible of evaluation in financial terms’*⁵⁹. The judges continue by explaining that a prior first-instance judgement was wrong for regarding that the revealing of images of the plaintiff in prior agreement, stating that *‘it must in fact be underlined that (having stated consent to the publication of an image of an individual repealed by on 2007), the permission agreement in dispute it to be regarded completely inefficient’*⁶⁰. Therefore, summarising the aforementioned, despite of

⁵³ Campbell v MGN Ltd [2004] UKHL 22

⁵⁴ Ibid.

⁵⁵ Murray v Express Newspapers Plc (2008) ECDR

⁵⁶ Ibid.

⁵⁷ Douglas v Hello! Ltd [2005] EWCA Civ 595

⁵⁸ Ibid. Lord Hoffman (124) [2007] UKHL 21

⁵⁹ Case :Cass Civ 1748, 29 January 2016 See Bugnion SpA, ‘The rights to the image: when we are the product’, 2021

⁶⁰ Ibid.

consent, the image is continuing to be an inalienable, valuable right beyond which management is not able to and never should be able to be gone from the owner.

This linked with a further challenge which is the republication of images online in the absence of consent from the owner where the photos have prior been published on the site of a distinct platform lacking limitations and with the permission of the right holder⁶¹. Certainly, while social media depends on the bulk sharing of materials, including images, a great number of posts in different platforms comprises of the images on another individual⁶². The ECJ in 2018⁶³, furnished a wide explanation of ‘online republication of images’, that imposes to rights’ of images. In this specific case, the problem of analysis emphasis on ‘communication to the public’ inferior to EU Information Society Directive, Article 3(1)⁶⁴, and if this should be widely interpreted as including the sharing and posting on a platform of an image which had prior been published in the absence of limitation and with the permission of the right holder on a distinct platform⁶⁵. Additionally, the pertinence of the Directive regarding communication to the public appears prima facie apparent, yet, based on the case law, in order for a republication of a photo to be consider an addition activity of communication, it should be arise in support of a ‘new public’ and not the one which initially regarded by the consent of the owner of the content⁶⁶. This means that if the audience seeing the online photo is the one that the owner gave his/her consent to view the photo (‘permitted audience’) then the communication is authorised. Nevertheless, the EU position is still not apparent around this topic. In 2019, the EU Parliament, voted for the sake of a New Directive, that its main purpose is to *‘harmonise the EU legislation that is relevant to copyright and connected rights in the context of internal market in order to guarantee an effective market place for the utilisation of materials and additional content’*⁶⁷, as stated in Article 1. Despite that, when talking about digital issues, image rights do not go through the class of ‘other’ as explained in Article 1 of the New Directive⁶⁸. This means, that the EU should still depend on national law. Following, the European Court of Human Rights prior look kindly upon freedom of expression referring to the satirical painting named ‘Apocalypse’, that represents different Austrian legislators and public characters, considering (except from images of identifiable faces) the illustration was justly theoretical⁶⁹. Notably, it was held that *‘As guaranteed in Article 10 paragraph 1, freedom of expression composes one of the most vital basics of a democratic nation, actually one of the main elements for its development and for the personal development of a person. Contingent to paragraph 2, it is relevant not*

⁶¹ Stephen R. Barnett, ‘The Right to One’s Image: Publicity and Privacy Rights in the United States and Spain’, 1999, The American Journal of Comparative Law Vol.47, No.4 pp. 555-581

⁶² Ibid.

⁶³ C- 161/17, Land Nordrhein-Westfalen v. Dirk Renckhoff, 2018

⁶⁴ Article 3(1) of Information Society Directive 2001/29/EC

⁶⁵ C- 161/17, Land Nordrhein-Westfalen v. Dirk Renckhoff, 2018

⁶⁶ Eleonora Rosati, ‘When does a communication to the public under EU copyright Law need to be to a ‘new public?’, 2020, Stockholm University

⁶⁷ Article 1 of the Directive 2019/790

⁶⁸ Ibid.

⁶⁹ Vereinigung Bildender Künstler v Austria, ECHR 25 January 2007

merely to 'details' or 'ideas' which are positively obtained or defined as innocuous or as an issue of indifference, but also to those which insult, stun or upset the State or any part of the community'⁷⁰. Such are the requirements of pluralism, patience and open mindedness in the absence of which there is no democratic community. Following in the case of *Reklos and Davourlis v Greece*⁷¹, the focused was on image rights with reference to an image of a baby capture lacking the permission in a private hospital that the baby was born, with the purpose to be traded back to the baby's guardians. At this case, the judges faced the issue of whether this infringed the safeguarding of the privacy of a person, albeit the images of the baby were by no means published anywhere. It was concluded that '*Based on the case law around the topic of 'private life', this is an extensive idea not vulnerable to extensive meaning. The concept comprises the right to identity and the right to self-progress, as regards both personality and personal independence and freedom, that is an essential rule regarding the interpretation of securities under Article 8. Although in the majority of case law the right to handle this type of use implies the chance of a person to deny publication of his/her image, it additionally veils the person's right to object to the recording, protection and reproduction of the image from a distinct individual*'⁷². Concluding all the aforementioned about the protection of a person's most unique property on the internet, which is their personal image, there is an growing demand for lawful structures to restrict misuse and notably online and on social platforms, like Instagram, that infringes the highly vulnerable and unalterable feature of an individuals which is his/her image.

2. Copyright Law

2.1. The Objective of Copyright and the Rule of Content

The principal aim of the copyright through the years is to 'cheer' imagination and originality via awarding creators and authors for their own work⁷³. Copyright grants creators the capacity to limit the work of other individuals and therefore, copyright violation appears at the time an individual does a limited act which is unpermitted from the owner of the copyright. Mr Clarke, at the time of the second reading of the CDPA 1988 Bill , underlined about the limited act of copying that 'the most fundamental is.... The right to prevent copying'⁷⁴. Moreover in 1999, Lessig mentioned that '*fundamental functions such as copying and admission are inexpertly be adjustable in an all-or-nothing fashion. You commonly have the right to copy or not, to obtain access or not*'⁷⁵. Within the framework of sharing subject on social sites, a copy of a photograph is

⁷⁰ Vereinigung Bildender Künstler v Austria ,ECHR 25 January 2007

⁷¹ Reklos and Davourlis v Greece – 1234/05 [2009] ECHR 200, 15 January 2009

⁷² Ibid. & Bart Van Der Sloot, 'Privacy as Personality Right: Why the ECtHR's focus on Ulterior Interest Might Pt=rove Indispensable in the Age of 'Big Data'', Utrecht Journal of International and European Law, 2015

⁷³ Simone Schroff, 'The purpose of copyright- moving beyond the theory', 2021, Journal of Intellectual Property Law & Practice

⁷⁴ H. Boshier , 'The legal implications of sharing images on Instag', 2019

⁷⁵ Jim Parsons, 'Review Article by L. Lessig 'Remix: Making Art and Commerce Thrive in the Hybrid Economy', 2010, Journal of Teaching and Learning

created whenever an image is uploaded, posted, shared, or even posted again by someone else⁷⁶. Violation as a consequence of ‘communicating to the public’ is regarded amongst the most debatable and quarrelsome evolutions in copyright law. The aforementioned right illustrates the utilization of copyright law upon online action and ‘constitutes the basis of the modern copyright law’. In 1996, Dixon and Hansen, acknowledged that the right is extensive and also advantageous for right owners and stated that ‘*Irrespective of the means or medium in which a guarded material is accessed, right-holders will remain to appreciate the right to manage financially significant utilization of their content in the digital era*’⁷⁷. Consequently, using platform instruments to share, upload, post or even repost unpermitted images of other individuals may possibly formed ‘communication to the public’ and in essence violation of copyright guarded content is able to be simply arise at the time users share and post content owned by third-parties on the platform.

2.2 Copyright and the Evolution of Sharing Technology

Copyright law and technology are interlaced and linked as a ‘close and inevitable relationship’ as stated by Jones in his Article⁷⁸. In 1991, Groves underlined that ‘*every significant step ahead in the history of copyright legislation is connected to a step ahead in the technology environment*’⁷⁹. In essence, the advancement of copyright legislation is capable to be interpreted as reactions to alterations in the area to enclose developed technologies. Furthermore, alterations in the copyright legislation could be ‘*seen as efforts to modernise the legislation, to bring into line along with the culture and alterations in technology*’⁸⁰. As a result, every evolution in the law of copyright is linked together with the evolution of new technologies⁸¹. This means that copyright law is a result of its time and while modernised technologies have developed, copyright has and must adjusted⁸². The network and the evolution of sharing and posting technologies have been especially tricky for the copyright rule because of the accelerated pace of developments in technology. As demonstrated in a Law forecast, the value of technological strength expands over double around every 2 years and therefore, decreases in cost⁸³. Technological alterations have before been made gradually and empowering of affordable and simpler copying has been justly though degrees, and also, for a long period of time⁸⁴. Which means, that this permitted the regulation some period in order to respond via gradually changing its securities and expanding them in cases that technology appeared to be wore them away slowly. It is claimed that with all the recent difficulties to copyright regulation, the internet as well as online technologies for sharing, such as

⁷⁶ Li Y, Xie Y. Is a Picture Worth a Thousand Words? An Empirical Study of Image Content and Social Media Engagement. *Journal of Marketing Research*. 2020

⁷⁷ A. N. Dixon & M.F. Hansen, ‘The Berne Convention Enters the Digital Age’, *European Intellectual Property Review*

⁷⁸ Jones R., ‘Intellectual Property Reform for the Internet Generation: An Accident Waiting to Happen’, 2010, *European Journal of Law and Technology*.

⁷⁹ Groves P., ‘Copyright and Designs Law: A Question of Balance, London: Graham and Trotman Ltd.

⁸⁰ Sherman B. & Bentley L., ‘The making of Modern Intellectual Property’, 1999, University of Cambridge Press.

⁸¹ George Thuronyi, ‘Copyright Law and New Technologies: A Long and Complex Relationship’, 2017

⁸² Bracha, O. C., ‘Copyright History as History of Technology’, 2013, *The world Intellectual Property Journal*

⁸³ E. Mollick, ‘Establishing Moore’s Law, 2006

⁸⁴ L. Lessig, ‘Code and Other Laws of Cyberspace’, 1999

platforms like Instagram, has extended at so much level the availability. In view of the evolution of online technologies and especially online sharing technologies, using conducts changed, modifying the manner in which copyright guarded content is used, appreciated and priced⁸⁵. In addition, online technologies facilitated users in order to share and communicate with an enormous number of individuals who are users as well across borders. Technology permits boundless distribution and along with the motivation of social media platforms, posting and sharing has rapidly turned into a widely-accepted class of the culture nowadays, as we can see from different statistics that Instagram receives millions of photos in the platform every month. This turns sharing into a total practicality of internet and more specific social platforms, like Instagram⁸⁶. This leads to the conclusion that it is extremely difficult to control the dissemination of information on social networks and once materials are shared online, it means that it is available and sharable to the whole of the users worldwide.

Despite that, research has showed that platforms' users are conscious as to if their presents and performance on the internet is lawful as disclosed through a study made in 2009⁸⁷ to students, where 84% of them when asked if they are familiar with the meaning of copyright law answered yes, but then when they have been asked to give a specification of copyright their answers were entirely or somewhat false. Back in 2003⁸⁸, different studies reported that a considerable amount of individuals most of them of younger age, considered that digital music sharing was virtuously allowable and later on, in 2009, the SABIP, mentioned that *'additionally there is a considerable evidence that a great number of people do not regard software copying to be a moral issue whatsoever'*⁸⁹. The above view of the SABIP, a year later was verified through a survey, in which young individuals participated, that have *'moderately great levels of anti-copyright standards'* and the survey concluded that *'the younger demographic are certain that the technology of content sharing has a high number of advantageous uses and therefore, copyright regulation is obsolete or biased to music administrators'*⁹⁰. Also, another survey in 2012, supported what it was found in the previous surveys and demonstrated that individuals of younger age did not have either ethical or moral worries in relation to the exercise of copyright violation on the internet⁹¹. Noted that in 2015 an examination concluded that knowledge of copyright violation is something which still be puzzling for platforms' users and stated that 40% of those users declare to be 'not extremely assured' or even not at all around the topic what is consider to be lawful

⁸⁵ M. Peitz & J. Waldfoegel, 'The Oxford Handbook of the Digital Economy', 2012, Oxford University Press

⁸⁶ Simeon O. Edosomwan, S.K. Prakasan, D. Kouame, J. Watson & T. Seymour, 'The history of social media an its impact on business', 2011

⁸⁷ Rosalie Fay Barnes, Miriam Simun, Urs Gasser & John Palfrey, 'Youth, Creativity and Copyright in the Digital Age, 2009, International Journal of Learning and Media

⁸⁸ S. Hanway & L. Lyons, 'Teens OK with Letting Music Downloads Play Gallup Poll', 2003

⁸⁹ Strategic Advisory Board for Intellectual Property Policy, 2009

⁹⁰ Depoorte, Van Hiel & Vanneste 2010 pg. 1278 See Janna Anderson and Lee Rainie 'The Future of Truth and Nisinformation Online, 2017

⁹¹ Raphael Nowak & Andy Bennett, 'Music Consumption and Technological: Investigating Generation Y's Adoption and Uses of Music Technologies', 2020

and not in the internet⁹². Summarising all the above studies mentioned, it is accepted that the evolution of modernise technology has had a consequential effect in the way that copyright content are used. The new technology brought both advantages and difficulties and as it was underline *'the digital radical change has cause tremendous advantages and chances for countries worldwide that are creative, innovative and adaptable, yet, such a quick alteration brings also difficulties. The prevailing difficulty to underline is that of holding the legislative basis which implements to our digital and original areas contemporary in a rapidly growing and changing planet.'*⁹³

The Internet has been regarded to promote the sharing idea via modern technologies which permit immediate communication and interplay of a non restricted extent of materials worldwide. Hence, the internet, produced a spread and expansion to communication as a notion. Eventually, it is highlighted that the essence of the internet was aimed to be an accessible sharing internet site, yet, this is opposite to the confined acts of copying, that their main goal is to prevent unpermitted sharing of copyright safeguarded content. This dissimilarity has grow extremely with the evolution of social networks and platforms nowadays.

2.3. Originality under European Law

The standard of originality in the EU is the criterion for copyright safeguarding in distinct legal administrations all over the European Union⁹⁴. It performs as a 'door' and consequently determines the extent of safeguarding. It could indeed consider the philosophical basics of the individual copyright schemes. It hinges on an essential strategy argument between law experts and as to which 'place' to set the limit among safeguarded and not content⁹⁵. Nevertheless, copyright rules in the European Union hardly specify the vital element of originality and additionally, misses an encoded common explanation of 'work'. Usually, countries of the European Union mainly give safeguarding inferior to their respective rules that can be vary considerably. Moreover, Directives in the European Union solely explain originality for photographs, computer programs and databases and stating that originality is the 'author's own intellectual creation'⁹⁶. Around 2009 – 2012, the ECJ seized the occasion to develop on the exact forms of the EU originality criterion in five milestone judgements. Subordinate to EU copyright legislation the essential originality criterion is as mentioned earlier 'the author's own intellectual creation', and this criterion practises horizontally to the entire content veiled by the Directives found in the EU⁹⁷. As demonstrated in the case of *Infopaq*,⁹⁸ the 'author's own intellectual standard is found at the time the authors are able to perform free and original options and add their own special mark on the

⁹² Testino, Darla. "Stream Ripping: A Copyright Infringement Epidemic." *Backstage Pass* 2.1 (2019): 17.

⁹³ Hansard, 'Second Reading of the Digital Economy Bills: as per the Secretary of State for Culture, Media and Sport Mr. Ben Bradshaw', 2010

⁹⁴ Margoni, Thomas. "The harmonisation of EU copyright law: the originality standard." *Global governance of intellectual property in the 21st century*. Springer, Cham, 2016. 85-105.

⁹⁵ Ibid.

⁹⁶ Thomas Margoni, 'The Harmonisation of the EU Copyright Law: The Originality Standard', 2016, Electronic Journal

⁹⁷ Ibid.

⁹⁸ *Infopaq International A/S V Danske Dagblades Forening* (C-5/08), 2009

work⁹⁹. Another point arises from the ECJ cases, is that it suffices to attain the needed degree of originality that authors perform various free as well as creative options and thus adding their personal mark on the work¹⁰⁰. Contrary, ability and work, even in consequential numbers, are not favouring free and creative options and consequently do not give rise to the creation of a material owning the needed originality.

In the case of *Infopaq*¹⁰¹ which concerned ‘originality’, the Court highlighted that it is obvious from the common system of Article 2(5) and 2(8) of the Berne Convention¹⁰², that the safeguarding of a definite content like artistic and academic materials implies that they are intellectual productions. Equally, distinct works such as databases and photographs, are guarded through copyright solely where they are original in the way that they are ‘the own intellectual creation of the author’. Copyright under the definition of Art. 2(a) is responsible to be implemented solely in connection to a content that is regarded as original based on the definition given that it is ‘the own intellectual creation of the author’¹⁰³.

2.4 Directive 2019/790

In April 2019, following a period of legislative procedures Digital Single Market Directive 2019/790¹⁰⁴ (hereinafter ‘New Directive’) was approved. The centre of the New Directive is found on the following three principal targets : (a) more cross border admission for nationals to copyright guarded content online, (b) producing right terms for digital networks as well as services in order to thrive and (c) create fair terms of the game for greater operating copyright ‘marketplace’, that specifies production of great quality content material and increasing rise of possibility of digital economy¹⁰⁵. The objective is to permit for broader online access to materials through attempting to decrease the dissimilarities among copyright law in national level¹⁰⁶. Furthermore, the Commission stressed the significance of online platforms and the intense place they have, that they asserted might conceivably influence other individuals in the marketplace¹⁰⁷. Arise from the aforementioned power is the necessity to warrant that platforms’ users, particularly the little ones, are safeguarded from hate speech and the damaging content posted online¹⁰⁸. Also, with the New Directive, the Commission attempts to strengthens the place of the right holders. One of the most significant characteristics is that it bestows a chance to the creators, authors and right holders of content to deal with Online Content Sharing Service Provider (hereinafter OCSSP) on the way their work is uploaded, shared, posted and used on the online platform in order to receive preferred compensation for their work and could exercise greater control

⁹⁹ Andreas Rahmatian, ‘Originality in the UK Copyright Law: the Old Skills and Labour Doctrine Under Pressure’, 2013

¹⁰⁰ Ibid.

¹⁰¹ *Infopaq International A/S V Danske Dagblades Forening (C-5/08)*, 2009

¹⁰² Article 2(5) & 2(8) Berne Convention for the Protection of Literary and Artistic Works, 1886

¹⁰³ Andreas Rahmatian, ‘Originality in UK Copyright law: the Old skills and labour Doctrine under Pressure’, 2013

¹⁰⁴ Directive 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directive 96/9/EC and 2001/29/EC (DSMD)

¹⁰⁵ Federico Ferri, ‘The dark side(s) of the EU Directive on copyright and related rights in the Digital Single Market, 2020

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ European Parliament, ‘Liability of online platforms’, 2021

on it¹⁰⁹. The new duty as mentioned above, regards to a great extent platforms which benefit financially from hosting copyright guarded content on their online platform, frequently without the approval of the right owner. The New Directive, gives an active character to OCSSP to avert and compel copyright violation¹¹⁰. Through the introduction of a duty on OCSSP to attain licenses or otherwise obtain permission from right owners to look for the content they permit to be shared and post on their platform and consequently make it available to the public. Alternatively, where any content which is not authorised is uploaded and posted in the site of the platform they will be held accountable for that specific content, since the 'safe harbour' safeguard¹¹¹ subordinate to Article 14 of E-Commerce Directive¹¹² does not implemented any more. Notwithstanding, the stipulation that caused content supervision compulsory was extracted from the final and authorised version of the New Directive, there is even now a duty on platforms to preclude uploads and posts of unapproved content, that appears improbable without enacting a filtering process¹¹³.

One of the most debatable articles of the New Directive is Article 17¹¹⁴ which have received a lot of criticism equally from platforms, users of the internet as well as human rights lawyers, as it furnishes the basis for content filtering and also causes mediators accountable for the content uploaded on their platforms by users. With the internet developing into extremely popular in the end of nineties, legislators were present new and additional challenges concerning law as well as regulations on the internet, and more specifically in the area of Intellectual Property¹¹⁵. Furthermore, there was a motive to emphasis on the position of intermediaries to work out legal problems such as IP rights and user privacy. A crucial question was presented as to who actually is responsible for infringing content that posted/uploaded or even stored on the systems hosted from intermediaries.

2.4.1 Article 17 of the New Directive

The new Directive was the consequence of an urgently needed renovation in order to upgrade and modernise the entire Copyright Law in the European Union. The key alteration to Article 17 of the New Directive is the fact that responsibility for violating material online has now been inverted among right holds and online content service providers. Article 17 of the New Directive has impacted platforms that permit their users to share their content with different users around the world, this contains platforms such as Youtube, Facebook

¹⁰⁹ Giancarlo Frosio, 'Reforming the CDSM Reform: A User-Based Copyright Theory for Commonplace Creativity', 2020

¹¹⁰ Miquel Peguera, 'The New Copyright Directive: Online Content – Sharing Service Providers lose eCommerce Directive immunity and are forced to monitor content uploaded by users (Article 17)', 2019

¹¹¹ Ibid.

¹¹² Article 14 E- Commerce Directive (Directive 2000/31/EC)

¹¹³ European Parliament, 'Liability of online platforms', 2021

¹¹⁴ Article 17 of Directive 2019/790

¹¹⁵ Nedim Malovic, 'Presumed Innocent: Should the Law on Online Copyright Enforcement and ISP Liability Change?', 2017

and Instagram, which host User Generated Content (hereinafter UGC)¹¹⁶. The principal aim of platforms – like the ones mentioned above- is to ‘*store and grant permission to the public of copyright safeguarded content*’ and additionally , that content ought to be uploaded and posted by users¹¹⁷. In addition, it is crucial to underline that the wording includes that online platforms have a significant part in ‘profit making purposes’, that rules out it from the liability restriction found under Article 14 of the E-Commerce Directive¹¹⁸. Platforms, which store or else allow their users to upload or post copyrighted content for different grounds like non-profit or online marketplace, that solely provide retail and not admission to copyrighted content, are expelled from the OCSSP’s meaning given under the New Directive¹¹⁹. It is essential to mentioned that under the New Directive there can be found a number of unclear and vague terms that can resulted in doubtfulness as to which platforms are incorporated pursuant to OCSSP, in the meaning itself ‘*large amount of copyright- protected content*¹²⁰’ together with recitals 62 which stated that ‘*should target only services that play an important role*¹²¹’. Therefore, it is up to the translators or decoders to determine what composes as ‘large amount’ and what is an ‘important role’¹²².

Furthermore, Article 17¹²³ underlines that OCSSP, is regarded to be any service that executes an ‘*act of communication to the public*’ and is thus accountable for their content. Article 17 of the New Directive clearly declares that when an OCSSP accomplishes an act of ‘*communicating to the public*’ or else an act of ‘*making available to the public*’ based on the requirements specified in the New Directive, the restriction of accountability fixed in Article 14 does not implement¹²⁴. The above mentioned no more implement to platforms and they should license the entire of copyrighted protected content that is uploaded and posted on their platforms in order to evade accountability for copyright infringement. On platforms which posts and uploads user generated content the harms for copyright violations might be burly. As an illustration, in 2017 Youtube, that was considered to be a relatively new site, was accused by Viacom¹²⁵, for posting and uploading copyright protected content to the platform for lawful damages more that 1 billion¹²⁶. Besides, Internet giants

¹¹⁶ Alexandre De Stree, Elise Defreyne, Herve Jacquemin, Michele Ledger, Alejandra Michel, Alessandra Innessi, Marion Goubet & Dawid Ustowski, ‘Online Platforms’ Moderation of Illegal Content Online’, Law, Practices and options for Reform, 2020, European Parliament

¹¹⁷ Ibid.

¹¹⁸ Article 14 E-Commerce Directive (2000/31/EC) – na grapsv to article 14

¹¹⁹ Tobias Kempas, ‘The New Copyright Directive: Are OCSSPs Now Required to Carry Certain Content?’, 2019 – Article 17 Directive 2019/790 defined an OCSSP as ‘*a service provider of which the principal or one of the principal objectives is to store and permit the public access to a large amount of copyright safeguarded materials or any other guarded content uploaded by it users, that it organises and promotes for profit-making purposes*’.

¹²⁰ Ibid.

¹²¹ Recital 62 Directive 2019/790

¹²² Karina Grisse, ‘After the Storm – Examining the Final Version of Article 17 of the New Directive (EU) 2019/790, 2019, Journal of Intellectual Property Law & Practice 14

¹²³ Article 17 Directive 2019/790

¹²⁴ Hassanabadi, Amir. “*Viacom v. YouTube*—All Eyes Blind: The Limits of the DMCA in a Web 2.0 World.” *Berkeley Technology Law Journal*, vol. 26, no. 1, [University of California, Berkeley, University of California, Berkeley, School of Law], 2011, pp. 405–40

¹²⁵ Viacom International Inc. v Youtube, Inc. No. 07 Civ.2013 (2010)

¹²⁶ Ibid.

such as Facebook and Instagram are able to meet the expense of an enormous amount in damages, yet for small corporations this will be extremely harmful. Lately, there are many fresh corporations that are presented on the social media scenery, they promote originality as well as variety and difference and also bring individuals close from all around the world.

2.4.2 Duties of Service Providers and the Requirement of Best Efforts

A debatable and extremely vital provision of the New Directive for this thesis is the ‘upload filter’ warrant consecrate from the New Directive’s Article 17¹²⁷. The Infosoc Directive¹²⁸ does not satisfactorily protects right owners from unlawful online exercises on guarded content. This is especially the case when guarded works are shared through wide extent market participants. On account of that, Article 17 of the New Directive was created for the purpose of protecting the earnings of right owners in cases they create original materials to be distributed on the internet¹²⁹. Contrary, Art.17 aims to limit the strength of important players on the market to benefit from the original and creative effects of right owners. In order to achieve that, the term at hand upsets the former responsibility system at the cost of online service providers. The so called, ‘upload filter’ warrant, is a substantial indication of a movement supporting the New Directive’s approaches and is an appealing to be an advancement in the fields of copyright, because of the fact that its very substances is to turn those subjects immediately and ‘straight’ accountable for the uploaded content of their users¹³⁰. Article 17 of the New Directive indicates online content-sharing service providers. At this point it is crucial to underline the definition of OCSSPs as given in the New Directive. An OCSSP is consider to be *‘a provider of an information society service of which the central or one of the principal aims is to save and permit access to the public of a significant quantity of copyright-guarded materials or else guarded content uploaded and shared by the platform’s users, that it arranges and encourages for profit making objectives*¹³¹’. It is apparent from the Article 17 that it aims to ‘capture’ extensive class of service providers, yet, it principally aims universal range online sites¹³². Subordinate to Art.17(1)&(2)¹³³, and the new legislative requirements that fixed by it, OCSSPs communicate or create public materials in cases they grant the public access to the copyrighted materials shared on the platforms from the users. Furthermore, OCSSPs may later be permitted to communicate or make accessible to the public contents or distinct materials solely upon permission by the owners of the right. Permissions must conceal actions performed from the services’ users be placed inside the extent of Article 3 Directive 2001/29/EC in case they are not performing on an economic ground or in case

¹²⁷ Directive 2019/790

¹²⁸ Directive 2001/29/EC

¹²⁹ European Commission, ‘New EU Copyright rules, that will benefit creators, businesses and consumers start to apply’, 2021

¹³⁰ Frosio, Giancarlo, and Sunimal Mendis. "Monitoring and Filtering: European Reform or Global Trend?." *The Oxford Handbook of Online Intermediary Liability (OUP, 2019 Forthcoming)*, Centre for International Intellectual Property Studies (CEIPI) Research Paper 2019-05 (2019).

¹³¹ Article 17(1) Directive 2019/790 and Tobias Kempas, ‘The New Copyright Directive: Are OCSSPs Now Required to Carry Certain Content?’, 2019

¹³² Ibid.

¹³³ Article 17(1) and Article 17(2) Directive 2019/790

their performance do not create substantial incomes. Article 17(2)¹³⁴ sets higher focus on licensing contracts, though permissions may also grab a distinct form. Notwithstanding, Member States must strengthen legal actions in order to assist the completion of agreements among the participants and especially licensing contracts. The issue is that if the permission is not issued, the OCSSPs can be accountable for actions of communicating and making accessible to the public copyrighted guarded materials and distinct contents and goes along with the arguments that this condition composes nearly an insuperable barrier for OCSSPs, that are being inconceivable to acquire innumerable amount of permissions¹³⁵. In comparison to the suggestion of the Commission, in the Directive the responsibilities on OCSSPs were rather eased. Additionally, Art.17(8)¹³⁶, rules out that OCSSPs can be forced to honour monitoring responsibilities subordinate to the New Directive. However, because of experiential and legitimate issues impacting new duties, DSM Directive is insufficient in protecting OCSSPs' privileges in this regard, to the extent that Art.17(8) declines a class of 'political declaration'. The latest administration will probably be in accordance to complicate algorithms and make OCSSPs ineffective 'internet police officers'¹³⁷.

Article 17(4) of the New Directive¹³⁸ provides that OCSSPs are able to evade responsibility for unlicensed behaviours if they show that they have completed three accumulative encumbrance duties. Initially, they have done 'best efforts to guarantee, in relation to great industry morals of professional application, the inaccessibility of the materials or other content for which the owner of the right have given appropriate and essential details'¹³⁹. This means that OCSSPs can launch technological tools to acknowledge and discover photos, music and videos and any type of content that is guarded by copyright. Secondly, they have made 'best efforts' to acquire permission from the right owner and lastly following the acceptance of an adequately confirmed notice by the right owners, they have performed promptly to cripple access to, or wither to eliminate from their platforms, the informed materials or any content and 'made best efforts', to hinder their uploads in the future in relation to the first duty described¹⁴⁰. Nevertheless, if the OCSSPs fail to satisfy one or even more of the conditions explained above this does not imply immediate and automatic accountability of an OCSSP¹⁴¹. On the fifth paragraph of Article 17 of the New Directive stipulates that the evaluation of the OCSSPs' general

¹³⁴ Article 17(2) Directive 2019/790

¹³⁵ Grisse, Karina. "After the storm—examining the final version of Article 17 of the new Directive (EU) 2019/790." *Journal of Intellectual Property Law & Practice* (2019).

¹³⁶ Article 17(8) Directive 2019/790

¹³⁷ Dr. Maxime Lambrecht, 'Free Speech by Design- Algorithmic protection of exceptions and limitations in the Copyright DSM Directive'

¹³⁸ Article 17(4) of the Directive 2019/790

¹³⁹ Miquel Peguera, 'The New Copyright Directive: Online Content- Sharing Service Providers lose e Commerce Directive immunity and are forced to monitor content uploaded by users (Article 17), 2019

¹⁴⁰ Ibid.

¹⁴¹ Christiane Stutzle, 'Mitigating User Content risk After EU Copyright Directive', 2021

conduct should be performed by considering the principal components of the case involved and in view of the doctrine of proportionality¹⁴².

Ultimately, Article 17(7)¹⁴³ states that OCSSP's encumbrance duties must not hinder that material shared by users is accessible if that conduct does not violate copyright and also presents a unique rule for a number of limitations and exceptions confirmed by given users in case they share and make accessible work created by another users on the site of OCSSPs. Moreover, the previous can be permitted by Member States to depend on derogations, for instance review, critique, caricature, parody or pastiche. Exceptions and limitations included in Art. 17(7) of the New Directive are compulsory¹⁴⁴. This provision is of great significance, in accordance with what proposed in Recital 70, it will have principal part in the adequate balance to be struck, in cases that different interests cause conflicts among elementary right to property, containing IP and 'freedom of expression'¹⁴⁵. Subordinate to Art. 17(9)¹⁴⁶, national provisions must force OCSSPs to establish efficient and quick complaint and remedy tools that users are able to activate in order to question the deactivating of access to, or the deleting of works or any other content shared by the users. In order to avoid any ambiguities, Art.17(9)¹⁴⁷ does not preclude users from carrying activities prior national justices, as it offers for a compulsory tool to be in a voluntary method.

2.4.3 Pastiche, Satire and Comedy

With the purpose of handling the difficulties to freedom of speech that may arise because of the automated implementation of Article 17, it states that preventive/encumbrance actions '*shall not result in the prohibition of the accessibility of operations or else content uploaded and posted from users, that do not violate copyright*¹⁴⁸'. Additionally, there was dispute concerning the '*death of meme culture*' as was examined by Bashar in his article, at the time that Article 17 arose, as platforms would be compelled to remove copyrighted content¹⁴⁹. Memes as well as gifs, a very essential piece of social media, are considered to be user generated photos of most copyright material¹⁵⁰. Users, might use copyrighted protected works for different reasons such as quotation, criticism, review and also for the use and role of pastiche, comedy and caricature in the subject matter they are creating/generating¹⁵¹. From a practical point of view, this may not remarkably direct, as what

¹⁴² Article 17(5) Directive 2019/790

¹⁴³ Article 17(7) Directive 2019/790

¹⁴⁴ Article 17(7) Directive 2019/790

¹⁴⁵ Sebastian Schwemer & Jens Schovsbo, 'What is Left of User Rights? – Algorithmic Copyright Enforcement and Free Speech in the Light of the Article 17 Regime, 2019

¹⁴⁶ Article 17(9) Directive 2019/790

¹⁴⁷ Ibid.

¹⁴⁸ Article 17(7), supra note 1, Directive 2019/790

¹⁴⁹ A. I. Bashar 'Death of Meme Culture in EU', 2018

¹⁵⁰ Judith Busse & Frances Caudron, 'European Copyright: Memes, GIFs and other Images on the Internet', 2019

¹⁵¹ Rosati, Eleonora. "Five considerations for the transposition and application of Article 17 of the DSM Directive." *Journal of Intellectual Property Law & Practice, Forthcoming* (2021).

means is applied to remove copyright protected content to preclude it from being posted and uploaded will not be able to interpret the circumstances in which they were utilised.

2.4.4. Protecting Users

Following the examination of the duties of service providers, it is vital to analyse the protection that Article 17 gives to users of online platform. Paragraph 2 of Article 17 declares permissions to use works gained from the OCSSPs as well expands to non-commercial activities from service users¹⁵². Essentially, this regulations holds the ‘weight’ of concern regarding authorisation on the platforms of the ordinary platform user. Additionally, paragraph 7 prohibits ‘collaboration among OCSSPs and right holders’ from averting platform’s users from sharing and uploading materials that does not either violate copyright or is guarded by copyright exclusion¹⁵³. Remarkably, paragraph 7 does not merely signify that service providers and owners of the right are not able to combine or cooperate in order to avoid users to upload and share lawful subject matter, but conversely, ‘collaboration speaks about the measures that platforms bring in completing their responsibilities towards the right holders¹⁵⁴. Paragraph 7 necessitates the whole of the Member States to acknowledge a class of copyright limitations as well as exceptions, such as quotation, caricature, review, parody and pastiche as explain prior¹⁵⁵. Furthermore, service providers should inform copyright limitations and exceptions’ users within their conditions of service. Concluding, paragraph 9 attempts to avert right holders from misusing the copyright legislation¹⁵⁶. It demands right holders to give reasons for demanding service providers to delete works. In addition, needs OCSSPs to give an ‘efficient and quick complaint and redress mechanism’ with reviews by different individuals for users that quarrel the disposal of or deactivate of subject matter they shared, containing out of court solutions and remedies as well as in court, in order to figure out these arguments¹⁵⁷.

2.4.5. Avoiding Accountability under Article 17 (Licensing & Filtering)

Under Article 17, there are two instruments through which online platforms can prevent copyright infringement liability¹⁵⁸. Initially, they may attempt to acquire a license from the right owners to hide the acts of the platform’s users. In case they will not obtain a permission or license from the holders of the right they will be accountable for their users sharing copyright guarded material on their online platform. The other

¹⁵² Article 17 paragraph 2 Directive 2019/790

¹⁵³ Article 17 paragraph 7 Directive 2019/790

¹⁵⁴ Prof. Dr. Gerald Spindler, ‘The Liability of Art.17 DSMD and the national implementation- contravening prohibition of general monitoring duties?’, 2019

¹⁵⁵ Alan Hui & Frederic Dohl, ‘Collateral Damage: Reuse in the Arts and the New Role of Quotation Provisions in Countries with Free Use Provisions After the ECJ’s *Pelham*, *Funke Medien* and *Spiegel Online* Judgments’, 2021

¹⁵⁶ Article 17 paragraph 9 Directive 2019/790

¹⁵⁷ Giannis Chatsios, ‘Designing an effective copyright enforcement strategy for online content-sharing service providers in light of the Directive (EU) 2019/790 - Algorithmic enforcement, effective preventive measures for OCSSPs and the balance between copyright and human rights’, 2020

¹⁵⁸ Latham & Watkins LLP, ‘Filter Future? Updates on the Copyright Directive and Platform Liability’, 2021

mechanism, is to filter the subject matter which is being posted and uploaded to the online platform, and ensure the copyright protected content is automatically postponed from the online platforms.

Licensing

Moving on, this part of the thesis will examine the first mechanism by which online platforms have the possibility to duck copyright infringement accountability. Licensing and obtaining permission for content material has its barriers, online platforms which host user generated content and daily new content is posted and uploaded all over the world by millions of users, as well as the copyright safeguarded material is able to vary from images and videos. This means that it will demand online platforms, which in our case are considered to be the intermediaries, to foresee every little thing that the platform's users can upload and/or post and obtain licenses from countless rightholders. This means that, for start-ups and small online platforms it would be extremely costly to gain licenses in order to host subject matter on their platforms¹⁵⁹. Recital 61, Article 17(7) of the New Directive¹⁶⁰, declares that '*right holders must not be compelled to grant permission to conclude licensing contracts*'. Nevertheless, an OCSSP who communicates or express to the public is obliged to acquire a license, and this may cause an 'asymmetry' among the parties¹⁶¹.

Further to the above, a platform pursuing a license for UGC is experiencing a complex licensing duty, as the platforms are accessible almost all over the world, yet a huge participatory crowd it's unpredictable the type of content that will be uploaded and posted on the site, preferably the license must incorporate the entire scope¹⁶². It is essential to underline that Umbrella Licensing is not accessible in the majority of the European Union Member States, although an online platform is in a position to find a joint community determined to enter license for UGC¹⁶³ with 'umbrella effect' submitted in Article 17(2) of the New Directive¹⁶⁴, it will still meet an extremely crucial issue of absence of harmonisation. As Martin Sentfleben, highlighted, the joint society scenery is considerably disunited and broken and an UGC deal obtainable in a Member State could be restricted to that area¹⁶⁵. An additional alternative is a mandatory licensing system, that appears like a productive system in order to rule copyright guarded materials and is able to be given through the government that can compel right holders to license their content to copyright guarded materials to platforms that wishes

¹⁵⁹ Grisse, Karina. "After the storm—examining the final version of Article 17 of the new Directive (EU) 2019/790." *Journal of Intellectual Property Law & Practice* (2019).

¹⁶⁰ Article 17(7) Recital 61 and Recital 62 of the Directive 2019/790

¹⁶¹ Lari-Williams, Seun. "Bridging the Value Gap Between Content Creators and Digital Media Platforms: A Case Study of YouTube." *MIPLC Master Thesis Series (2019/20)* (2020).

¹⁶² Ibid.

¹⁶³ Husovec, Martin, and João Quintais. "How to License Article 17? Exploring the Implementation Options for the New EU Rules on Content-Sharing Platforms." *Exploring the Implementation Options for the New EU Rules on Content-Sharing Platforms (January 2021)*. *GRUR International* 4 (2021).

¹⁶⁴ Article 17(2) Directive 2019/790

¹⁶⁵ Martin Sentfleben, 'Bermuda Triangle – Licensing, Filtering and Privileging User-Generated Content Under the New Directive on Copyright in the Digital Single Market', electronic journal, 2019

to use those contents¹⁶⁶. By doing this it will be decreased the chance of monopoly costs while at the same time rising consumer excesses but contrary will result in a growth in executive price¹⁶⁷.

Filtering

At this part of the thesis it will be analysed the second mechanism, the so called filtering. As it was made obvious in a number of previous judgments of the CJEU, both enterprising and proactive monitoring as well as filtering are considered to be versus to the law in the EU¹⁶⁸. In the definitive version of the New Directive, there is no referral to efficient technologies to ensure the withdrawal of copyright guarded content. Additionally, the aforementioned referrals to technical actions that emerged initially have been substituted with 'hazy' and 'unclear' terminology, for instance 'best efforts' and 'relevant and necessary information'. These 'hazy' and 'unclear' terms are able to be unfurled to explication, and even though there is not a widespread monitoring duty it does not preclude OCCSP from willingly engrossing in overall monitoring to elude obligation subordinate to Article 17¹⁶⁹.

Further to the above, an additional issue with filtering is that it will demand subject monitoring, which previously was forbidden by Article 15 of the E-Commerce Directive¹⁷⁰. By referring to 'specific works', Article 17¹⁷¹, attempted to discover a notice that require to be monitored. Nonetheless, it is not conceivable without general monitoring. Consequently, this will result to dispute among the E-Commerce Directive and the New Directive, as averting future posts and uploads of copyright guarded work will give rise to general monitoring of the entire subject that is uploaded and posted to that specific platform. Filtering as well as blocking 'by hand' in order to extract copyright protected content might set a logistical and economical barrier on online platform and also, it is probable to bring up automated blocking and filtering implements¹⁷². However, as Giancarlo Frosio wrote in his article, these automated blocking and filtering instruments could threaten the freedom of expression, since algorithmic procedures are not able to restore 'human judgment'¹⁷³.

3. Instagram

Nowadays, Instagram is considered to be one of the most famous online platforms which permits users to upload, post and share image-associated content in three distinct forms : picture, story or video. Instagram provides its users with the possibility to retain and also share their everyday life occasions with friends, family

¹⁶⁶ Giancarlo Frosio, 'Reforming the C-DSM Reform: A User Based Copyright Theory for Commonplace Creativity', 2019

¹⁶⁷ Ibid.

¹⁶⁸ Kuczerawy, Aleksandra. "EU proposal for a Directive on Copyright in the Digital Single Market: Compatibility of Article 13 with the EU intermediary liability regime." *Fundamental Rights Protection Online: The Future Regulation of Intermediaries* (2019).

¹⁶⁹ Article 17 Directive 2019/790

¹⁷⁰ Article 15 Directive 2000/31/EC

¹⁷¹ Article 17 Directive 2019/790

¹⁷² Giancarlo Frosio, 'Reforming the C-DSM Reform: A User Based Copyright Theory for Commonplace Creativity', 2019

¹⁷³ Ibid.

and other platform's users via videos, impermanent photo shares as well as posts with filters¹⁷⁴. Furthermore, photos and videos have turned into a principal piece of online social network attendance. Based on a survey which carried out in 2013 by the Pew Research Center, 54% of users older than the age of 18 share images equally to videos that are made through them, meanwhile 52% of social media users share photos and 26% of the users share videos that are created by them¹⁷⁵. In 2017, according to Instagram Press, users share around 80 million images everyday and the 67% of the posts that are shared on the Instagram platform are videos. Moreover, Instagram, that was obtained in 2012 by Facebook, had been initiated in 2010 and until 2017 had achieved 500 million day-to-day dynamic users. As mentioned above, Facebook purchased Instagram in 2012 and since then it has turned into the quickest developing online platform globally. In a research in 2017 Instagram showed that users upload 95 billion images and videos on a daily basis on the platform¹⁷⁶. That triumph of the Instagram platform was reinforced from the Pew Report that underlined that photo connected content has turned into pivotal social legal tenders online. The 'characteristics' of that specific platform have furnished comparable social media chances like Twitter offers to its users. Instagram platform, causes visual sharing appealing and charming to its users who wish to share photos and videos instantly, for instance, a platform's user has a number of followers that are able to view any photos that the user shares, without the need for the user to follow his followers back¹⁷⁷. Through privacy settings the users have the opportunity to select if they want their photos to be openly accessible to all the users and not solely his followers. This means that if the user choose to allow his images to be available to the public, any user of the platform could be able to view his photos. Also, users of that specific platform can see the accounts of Instagram users on Google search. It is crucial to underline at this point that, via the aforementioned setting, when platform's users permit else users to view as well as bestow to the shared images by likes or comments or in any other way, they thus diminish the 'tete-a-tete' chat. Consequently, this sharing-producing circumstances the legitimate problems, especially in connection to copyright are rapidly turning more visible. Generally, platforms were produced in order to assist Internet users to associate with other users around the world effortlessly via producing, posting, sharing, examining distinct works containing videos equally to photos. Exceptionally, the platform of Instagram is recognised to be a platform which provides characteristics that permit its users to share photo connected content. Despite that, all online platforms and Instagram as well, give a chance to violate copyright content, especially in cases where the users allow their shared works to be available to the whole users of the platform. Additionally, Instagram authorise its users to put hashtags, which in one way permits photographers to classify their own works in particular area and therefore aid platform's users to discover particular photos and images they want¹⁷⁸. Instagram permits its users to 'hold' a rare 'post one – share many' notion which is

¹⁷⁴ A. Christie & R. Wright, 'A Comparative Analysis of the Three – Step Tests in International Treaties', 2014

¹⁷⁵ MARY MADDEN, AMANDA LENHART, SANDRA CORTESI, URS GASSER, MAEVE DUGGAN, AARON SMITH AND MEREDITH BEATON, 'Teens, Social Media and Privacy', 2013, Pew Research Center

¹⁷⁶ Bernard Marr & Co, 'How Much Data Do we Create Every Day? The Mind- Blowing Stats Everyone Should Read', 2016

¹⁷⁷ 'Photo Taking, Editing and Sharing', Instagram Help Center

¹⁷⁸ A. Christie & R. Wright, 'A Comparative Analysis of the Three – Step Tests in International Treaties', 2014

not usually applied from users on distinct platforms. Nonetheless, several debate that even though right owners copyright might be violated, there can be some favourable effects from users posting and sharing their subject matter.

This part of the thesis has presented Instagram in general and the characteristics of the social sites. Following it will be analysed the terms of use and the legal consequences of producing and sharing photos on the platform called Instagram.

3.1. Instagram Terms of Use and Basics

Instagram is a famous online platform that permits as mentioned above its users to share and post their images within the platform's site. Summarising the most interesting features of Instagram as described aforementioned, the photos on Instagram are able to be shared and posted with reference to the location and add as explained above hashtags, following the usage of distinct filters and alterations¹⁷⁹. With the feature of hashtag users worldwide can search and directed quickly to the images related to their fascinate. Individuals have the opportunity to communicate through following other users and screening one another's accounts and additionally through leaving a comment or a like on someone's else shared photograph¹⁸⁰. Similar, to other social media platforms, Instagram accompanies with its individual group of terms and conditions that are separated into diverse parts. Instantly, after individuals sign up for been users of the platform and make a profile, they are right away 'tied' by the terms and conditions of Instagram¹⁸¹.

The initial term that Instagram's users must obey with is the age condition, particularly not be under thirteen years old at the moment of enrolment¹⁸². Subsequent, to the overall requirements, it is confirmed that the platform's users that choose to erase and delete their profile on Instagram, they will not be permitted to see or even communicate and interact via their erased profile/account. Nevertheless, the uploaded content of the account that has been deleted is able to be still accessible by the Service Provider, yet, solely in case where the information has been posted and shared once more prior the 'ending' and closure of the profile/account¹⁸³. Also, by deleting the profile/account from the platform, has as a consequence the rights and permissions granted to the platform's user not to be established any longer¹⁸⁴.

Subordinate to the terms and conditions of that specific platform, there is a division called 'Rights' that declares that Instagram is not authorised to assert possession of the works that had been shared by the users in the platform that has posted in its service¹⁸⁵. At the same time, by exercising Instagram and accepting the

¹⁷⁹ Ibid.

¹⁸⁰ 'Photo Taking, Editing and Sharing', Instagram Help Center

¹⁸¹ 'Terms of Use – Basic Terms', Instagram Help Center

¹⁸² 'Terms of Use – Basic Terms', Instagram Help Center

¹⁸³ Ibid.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

terms and conditions of use, a platform user is constrained to the platform among a license which *'bestows to Instagram a non-exclusive, fully paid and royalty-free, transferable, sub-licensed, globally license to use the Content that you post and share on or through the Service'*¹⁸⁶. Aside from the above, the part of terms and conditions does not clarify properly the specific licenses and does not as a matter of fact allude to substitute licensing similar to Creative Commons¹⁸⁷.

For the purpose of the use of the Service, an active individual who uses the platform, is required to verify that the shared content by him are actually owned solely through him, or otherwise, or that he in some way acquires the rights and licenses in order to post and share specific subject, which he does not violate copyrights though distributing posts and additionally that he is qualified to join the conditions and terms of the platform in relation to his jurisdiction and power¹⁸⁸. In addition, users allow Instagram to deduct posts in the absence of giving a notice and subsequently to retain it in the event of any legal conditions that the platform possibly have to pursue¹⁸⁹. Considering that Instagram is 'located' and managed in the United States of America (US), US legislative basis is that which governs the platform¹⁹⁰.

Besides, a substantial part found in the terms and conditions of Instagram is that which concerns the infringement of Copyright and Intellectual Property. It merely asserts that users of that specific platform are obliged to appreciate and obey copyright and that persistent violation of rights under Intellectual Property are able to achieve cancellation of an account on Instagram¹⁹¹. Further to this, Instagram guides its users towards a site which describes the fundamentals concerning both trademarks and copyright¹⁹². Users might be directed to the so-called 'Help Center' site at which users are capable of reporting a forceable infringement of copyright, and acquire responses to any asked question that might arise in relation to copyrights¹⁹³. If an individual wishes to report an infringe which took place on the platform, there exist an application-form, that could be fulfilled online by users of the platform or else by individuals that do not hold a profile on Instagram¹⁹⁴. The objection or complaint have the chance to be raised by either the author or by others that are given permission by the author of the content. Furthermore, an objection that contains 'a complete copyright claim' according to the 'Help Center' may be delivered through different means, for instance letter, email or fax.

3.2. Who Owns Photos Shared On Instagram

¹⁸⁶ 'Rights', Instagram Help Center

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¹⁸⁹ 'Rights', Instagram Help Center

¹⁹⁰ *Ibid.*

¹⁹¹ *Ibid.*

¹⁹² 'Intellectual Property', Instagram Help Center

¹⁹³ 'Welcome to the Instagram Help Center', Instagram Help Center

¹⁹⁴ 'About Copyright', Instagram Help Center

The fundamental copyright licence a user gives to Instagram when he/she share and post content on the site of the platform is highlighted below ‘Your Commitments in Instagram’s Terms of Use’ below the subheading ‘Permissions You Give to Us’¹⁹⁵. It is key to quote the text exactly as is presented under ‘Permissions You Give to Us’¹⁹⁶ *‘We do not claim ownership of your content, but you grant us a license to use it. Nothing is changing about your rights in your content. We do not claim ownership of your content that you post on or through the Service and you are free to share your content with anyone else, wherever you want. Notwithstanding, we need certain legal) permission from you (Known as a ‘License) to provide the Service’¹⁹⁷. When you share, post, or upload content which is covered by Intellectual Property rights (for instance photos or videos on or in connection with our Service, you hereby grant to Instagram a non-exclusive, royalty-free, transferable, sub-licensable, worldwide license to host, use, distribute, modify, run, copy, publicly perform or display, translate, and create derivative works of your content (consistent with your privacy and application settings)¹⁹⁸. This license will end when your content is deleted from our systems. You can delete content individually or all at once by deleting your account.’¹⁹⁹*

Copyright regulation supplies that the holder of the copyright in any work is the creator of that work and therefore, initially, the copyright owner of a photo is the one who took the photo, which means the photographer. As presented above, in the terms of use of Instagram it mentioned that Instagram does not ‘claim ownership of user’s content, yet, the user gives Instagram a non-exclusive, fully paid, and royalty free, transferable, sub-licensable, worldwide license to use their works. To clarify it, it implies that the user have the opportunity to license their content to third parties (non-exclusive), and by using royalty-free it signifies that Instagram has liberal usage of the content that the users post and share on the platform. Additionally, Instagram is able to pass the rights that has been given to it to use the work/content, to a third party in the absence of the authorisation from the creators – transferable which Instagram used, means that the platform is able to openly allocate or transfer the rights given to the platform from the users to someone else, a third party, frequently with respect to the task). Instagram is capable to license the ‘use of the users works to another individual , sub-license signifying Instagram is able to license the work licensed to the platform to someone else, a third party and also Instagram have the ability to this in any place , world-wide. Lastly, Instagram have the opportunity to edit or copy or share or communicate the works of his users that had been shared on the platform to the public. Intrinsically, whereas Instagram does not possess the work per se, it has practically the entire rights of an individual that is the right-owner, excluding the actuality that it is not an ‘exclusive license’, which means that a holder of a photo will hold minor alternative opposed Instagram or its associates who they

¹⁹⁵ Terms of Use, Instagram Help Center

¹⁹⁶ Mohamed Thaver, ‘ Explained: The Instagram ‘copyright infringement’ scam many have fallen prey to’, January 6, 2021

¹⁹⁷ ‘Instagram and Copyright – What are the terms of use?’, January 11, 2021

¹⁹⁸ Instagram Terms of Use

¹⁹⁹ Ibid.

sub-licensed to²⁰⁰. Regrettably, Instagram's users and in general the users of social media platforms do not read analogous agreements²⁰¹. Even supposing that the users study the license, this is improbable to delay them from using Instagram, by virtue of its reputation and fame²⁰². Regardless, it will be necessary for especially a photographer to know and understand the terms and conditions of Instagram, specifically in case they licenced a photograph to another individual, a third party, pursuant to an exclusive licence, sharing and posting the photograph on their own Instagram profile will infringe that licence²⁰³. Wherefore, 'the terms and conditions of use' have not been cordially greeted and as many stated '*Individuals have the right to be distressed and bothered as this is still a further case of an agreement which is not regarded as user-friendly*'²⁰⁴. In 2012, and as a reply to the above statement, Instagram mentioned that '*Instagram users own their own content and Instagram does not claim any ownership rights over your photos. Nothing about this has changed. We respect that there are creative artists and hobbyists alike that pour their heart into creating beautiful photos, and we respect that your photos are your photos. Period. I always want you to feel comfortable sharing your photos on Instagram and we will always work hard to foster and respect our community and go out of our way to support its rights*'²⁰⁵.

Nonetheless, the terms of the arrangement continue as mentioned above, that the platform's users give a 'non exclusive, free, worldwide licence' in order to use the photos by any means and along with the untouched fame of the platform, indicates that although there was a fallout, social satisfaction that the Instagram's users gain of the service outweighs their worries regarding copyright²⁰⁶. Furthermore, from the point of view of Instagram, possibly it is required for Instagram, which is regarded as a private enterprise, to safeguard the enterprise and have 'entrance' to the users uploaded works and in general content for both marketing and advertising' targets²⁰⁷.

At this point it is essential to underline that, equal rules do not implement to the content of the Platform, Instagram. The terms explicitly present that content which is hold by the platform itself is guarded via Intellectual Property law, thus, users have no authorisation to eliminate or delete, change or hide either copyright or trademark subject, replicate, alter, adjust, produce evolved subjects, exhibit, distribute and publish, send , license, transmit or alternatively use and leverage Instagram's subject matter. The

²⁰⁰ Georgiades, E. 2018. 'The Limitation of Copyright: Sharing Personal Images on Social Networks', European Intellectual Property Review

²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ Ioanna Mesimeri, 'Cyprus: Copyright Infringement of Instagram Pictures and the Legal Gaps In their Copyright Protection, November 2, 2020

²⁰⁴ Alison Frankel, 'Photographers' new Instagram class action wants to upend online publishing', May 25, 2021

²⁰⁵ H. Boshier & S. Yesiloglu, 'An analysis of the fundamental tensions between copyright and social media: The legal implications of sharing images on Instahram, 2018

²⁰⁶ Adam Remsen, 'A Lawyer Digs Into Instagram's Terms of Use', December 07, 2016

²⁰⁷ The Digital Dilemma: Intellectual Property in the Information Age, Chapter 5: Protecting Digital Intellectual Property Means and Meas+urements', 2000

aforementioned, might give the impression to be insincere from the viewpoint of the platform's users, though, from the viewpoint of intellectual property it appears to be a typical policy in order to give protection to the benevolence of a label. In spite of this, this is difficult and raise numerous issues for distinct platform-app creators. An essential point to underline is the fact that there are several apps which in reality are not produced by Instagram, yet they are performing in connection with Instagram and are produced by third-parties, like Insta Save and Repost for that exact platforms²⁰⁸. Furthermore, there are several apps, like Insta Save which tolerate users to post again, the so called re-post, or observe the 'behaviour' and actions of the followers, something which is not given by the platform itself.

Moving on, there are distinct methods which a user is able to produce content on its Instagram account, like uploading and sharing images, videos and stories, which are non-permanent videos that last 24 hours. Moreover, Instagram users have the ability to share and publish their photos via 'putting' a number of dissimilar filters to operate photos as well as videos and every component gives the choice to put a filter. Filter by definition is an editing and/or alteration implement that modifies the features and looks the photo or even the video. Complementary, Instagram gives the opportunity to its users to edit their work by cropping it, modifying shadows, lights and colours and also aids its users to upload and share their works via putting # mark. An important feature of Instagram is that it permits its users to 'mention' other users followers (put their name on the post or comment) or not via adding @ mark. All these technical components are the basis of these type of platforms where you can share content, still, they ultimately caused for copyright guarded content to be unprotected and exposed to be copied, edited and communicate to the public by other users. In the event that an Instagram user, uploads their personal work they are certainly the possessor of copyright of their own creative content²⁰⁹. Nevertheless, it is standard practice for the individuals who use the platform to screen capture photographs from their 'newsfeed and repost following the application of a recent filter. The question is if that composes an imitative subject and therefore a fresh copyright safeguarded content²¹⁰. The position is vague and indefinite where an individual adds image improving instruments wrap or otherwise alter a photograph. As Lewis and Jessica²¹¹ stated in their article that originality and creativity does not occur in 'a vacuum, it is a contemplative of the 'societal climate' at that moment²¹². Thus, as community and art evolves, alters and moves so requires for the copyright law²¹³.

²⁰⁸ Instagram page, 'Control the data you share with third Party Apps', 2019

²⁰⁹ Graci Chen, 'How to Avoid Copyright Infringement on Instagram', 2021

²¹⁰ Ibid.

²¹¹ Lewis & Jessica, 'With Love and Kisses: Nothing Lasts Forever: An examination of the Social and Artistic Antiquation of Moral Rights', 2016, International Journal Cultural Property

²¹² Lewis & Jessica, 'With Love and Kisses: Nothing Lasts Forever: An examination of the Social and Artistic Antiquation of Moral Rights', 2016, International Journal Cultural Property

²¹³ Kim Treiger Bar Am, 'Copyright, Creativity and Transformative Use', 2015

Furthermore, creative and inventive photos and images are guarded via copyright like artistic subject matter. The 'door' for inventiveness demands the originators to use their exclusive knowledge, work and exertion²¹⁴ or intellectual origination²¹⁵. The variance among these two meanings has been extensively argued. Several underlined that it emerges to have had restricted realistic consequences²¹⁶, whereas some asserted that it has altered the creativity examination to a definite degree²¹⁷. For that reason, CJEU and UK case law equally, are reviewed. Initially, the CJEU offered an explanation on the basis of the aforementioned and stated that photographers may satisfy this characteristic through creating original options in arranging, photographing and improving the photograph, and therefore as mentioned in a case '*the creator of a portrait photograph is able to stamp the work created with his own – personal touch*'²¹⁸. In the case of Painer²¹⁹, it stated by the judges that not a single thing in EU Directive, agreed with the idea that the degree of guarding must rely on feasible dissimilarities in the extent of original freedom as concerns the creation of multiple classifications of contents. On account of that, the Court stated that the safeguarding 'relished' by a booking photo is not able to be subordinate to that relished from distinct materials, containing additional photo materials. With reference to Instagram platform, users hold the choice to include a filter which alters the characteristics and the way the photo looks, or otherwise edit the image with alternative choices, in particular, decreasing shades and rising light level or opposing. Moreover, this degree of alterations and edits on the photo is restrained to the Instagram's system and possibly can not be performed that easily. Regardless, in view of the foregoing, it remains feasible that these content probably encounters creativity and inventiveness 'door' of copyright. In essence, the growth and the development of the idea of origination equally to creation, notably with respect to technological improvements, has led to the adjustment of creative activity. In the case of the so called Naruto case²²⁰, the photographer claimed that he was the possessor of copyright of an image captured via a Monkey. He supported his dispute based on the event that he was the one that created the original options in the photo and he included his own individual originality by editing the photo. Another crucial case is the one of Red Bus²²¹ where the Court regarded the extent of copyright on photographs in the light of three components that might a photo be regarded as creative and original. The initial one lies in the specialities of perspective of the photo, the brightness as well as the shadows, the results accomplished by using the filters. The second aspect, lies in the formation of the background and the scene to be captured and arising from being in the appropriate spot on time. Nevertheless, the judgment of these case raised a lot of controversy and many stated that it must

²¹⁴ Musonera, Etienne. "Instagram: A photo sharing application." *Journal of the International Academy for Case Studies* 24.4 (2018): 1-9. See *University of London Press Ltd v University Tutorial Press Ltd*, 1916

²¹⁵ Ibid. see *Infopaq International A/S case v Danske Dagblades Forening* 2009

²¹⁶ A. Rahmatian 'European Copyright Inside or Outside the European Union: Pluralism of Copyright Laws and the Herderian Paradox', 2016

²¹⁷ D. Liu, 'Of Originality : Originality in English Copyright Law: Past and Present', 2014

²¹⁸ *Painer v Standard Verlags GmbH (C-145/10)* [2011] ECDR 13

²¹⁹ Ibid.

²²⁰ *Naruto v. Slater*, No. 16-15469 (9th Cir. 2018)

²²¹ *Temple Island Collections Ltd v New English Teas Ltd & Anor*, [2012] EWPC 1

elevate warning and that the notion polarity must be considered as the standpoint of rule. In addition, they stated that copyright must rather be extra liberal in permitting adoption for reasons of encouraging creation. A sample of materials inferring from Instagram photos is the popular satirical photo that Kanye West posted on his Instagram account where he kisses himself²²². In reality this was a photo of Kanye West kissing his wife and not himself which was captured by a famous photographer. Later, Jen Lewis, altered and edited the photo, removing his wife and adding himself again in order to form a satirical material before sharing it on his Instagram account. Afterwards, an artist converted the photo in a street wall painting in the city of Sydney and then sold a copy of the wall painting for a huge amount of money. In such case, the subject matter would be regarded as a parody and thus, be placed inside the copyright exclusions as stated foregoing. However, it indicates the extraordinary, switch in modern practice of copyright photos as regards Instagram.

Additionally, a quarrel was raised with reference to 'selfie' photo that was captured by a famous presenter at the Academy in 2014, which was sponsored via the brand Samsung²²³. The video camera was provided to the presenter by the brand Samsung though its advertising contract with the Academy. Broadly, whether the camera was leased from the photographer, he owns the copyright²²⁴. Conversely, in a number of instances, copyright possessor is able to be the individual who appoints the copyright. Following, the shared of the selfie in a number of platforms, like Instagram and Facebook, this case was studied a Los Angeles Entertainment Lawyer, proposed that *'the presenter brought about the notion for the selfie and pursued to carry it out'*²²⁵. Moreover, in the method of creating the selfie, it turned obvious that the presenter required a crew, and thus a popular actor has claimed responsibility to be the one who took the photograph. It is important to underline at this point that obviously the presenter inherited the participation of the actor. At that point, the action made by the actor was utilised from the presenter for a certain non- financial remuneration. Commonly, when a person's original and inventive 'donation' turns into a piece of a 'operation done for hire', that is certainly clarified in a written agreement. In the aforementioned case, the presenter and the actor did not adequate period to enter into a written contract, yet, the actor has been part of the Hollywood industry for a long time to recognise that in the cases where he is engaged in the creation of a picture, it's all the time a 'work for hire' case. On the creation of all the movies the actors as well as the entire of the crew who adds anything original and creative to a movies signs a contract with all the details in it. Bearing that in mind, that specific actor was knowledgeable of the normal commercial activity of this type of business and could be sensibly supposed to perform likewise in the lack of a written agreement. In contrast, based to the opinion of an entertainment lawyer, photos copyright is the actor's who pushed the curtain. It highlights the situation as 'it's constantly

²²² 'Copyright and Kanye Kissing Kanye', 2016, MC Daniels Law

²²³ Michael Reed, 'Who owns Ellen's Oscar Selfie? Deciphering Rights of Attribution Concerning User Generated Content on Social Media', the John Marshall – Review of Intellectual Property Law

²²⁴ Ibid.

²²⁵ Michael Reed, 'Who owns Ellen's Oscar Selfie? Deciphering Rights of Attribution Concerning User Generated Content on Social Media', the John Marshall – Review of Intellectual Property Law

been the individual who pushed the curtain who's technically the individual that holds copyright²²⁶. After concluding who holds the copyright '*... they grant it to the individual that precisely pushed the pins*²²⁷'. Contrary, there is an disagreement concerning that Samsung may hold the copyright of the photo, though, it was argued that Samsung is not able to hold the copyright. The questioned raised is around who owns the 'selfie', the actor who captured the selfie or the presenter who is the possessor of the camera. It was underlined that 'if the brand – Samsung had signed a written contract with the presenter that they would entirely hold the rights to the image, which then may not possibly implement to the actor'.

Concluding, the creative subject material shared on the platforms by the users is possessed by them, yet, they bestow to Instagram a charitable licence, which permits them broad use of the photos²²⁸. Furthermore, via the exercise of editing instruments it is probable that platform's users are able to produce imitative content, however, there is to be a utilisation of the regulation around this topic. It is noteworthy, that users most of the times do not study or comprehend the terms of use. As regards photographers licencing their content, it is exceptionally crucial to acknowledged that in the event they share their photo on the platform, it go through a generous licence that contains sub-licence privileges²²⁹. Whereas, not being conscious of this restrictions their ability to licence their content somewhere else or otherwise cause them to be in violation of that licence, user-contract and copyright legislations.

3.3. Requirements for Re-use and Re-production of images

It is standard that social media platforms supply tasks that permit images to be uploaded, shared and reposted and those acts are able to give rise to copyright violation, which means that it is significant as a platform user to consider prior performing this type of act. Several platforms supply for information with respect to copyright violation, yet, as the platforms commonly renounce any type of responsibility for violation of a user falls with the user to evade these acts. Provided that the aim of the platform as mentioned prior, is for users to upload, share and post images and any type of content, the action of re-using and re-posting images usually arise on those type of platforms. The platforms, commonly have tools of sharing images through others in the platforms in the service or otherwise to a third-party and it is able to be an issue of the platform's users, exercising a different app to reshare an image²³⁰. The aim of resharing an image actually is up to the user and there may be a number of different reasons for such an act²³¹. In a prior study around the platforms of Flickr,

²²⁶ Ibid.

²²⁷ Ibid.

²²⁸ Boshier, Hayleigh, and Sevil Yeşiloğlu. "An analysis of the fundamental tensions between copyright and social media: The legal implications of sharing images on Instagram." *International Review of Law, Computers & Technology* 33.2 (2019): 164-186.

²²⁹ Michael Reed, 'Who owns Ellen's Oscar Selfie? Deciphering Rights of Attribution Concerning User Generated Content on Social Media', the John Marshall – Review of Intellectual Property Law

²³⁰ Marciszewski, Mark. "The Problem of Modern Monetization of Memes: How Copyright Law Can Give Protection to Meme Creators." *Pace Intell. Prop. Sports & Ent. LF* 9 (2020): lxxv.

²³¹ Ekstrand, Victoria Smith, and Derigan Silver. "Remixing, reposting, and reblogging: Digital media, theories of the image, and copyright law." *Visual Communication Quarterly* 21.2 (2014): 96-105.

it has been demonstrated that there are a lot of different purposes and intentions that the users have when uploading and sharing to the platform. Where not the whole number of the platform's users have the mentality or interest to share images, this can probably assist the consideration that several users are highly possible to violate copyright. Users which personally do not have an in sharing images are capable to not contemplate the will for subject matter holders to obtain appreciation for their work. Moreover, it may probably be of greater importance for the platform that appreciation of an extent diversity in the use of the platform to give information concerning copyright and lucidity in demonstrating that the images shared are guarded²³². The manner in which the images are re-shared on the platforms are different and it is able to merely be a repost of an image, which leads to be in relation with the user resharing the image in an equal form like the first and original one²³³. Otherwise, it may be shared after is being edited, with filters on the photo, several effects and any other 'imputations' which may turned it into more eminent in relation to the first and original one. A notion of law which may probably be relevant to the use of images on these platforms is that of restriction and limitation on specific right which the copyright owner has²³⁴. This would be as concerns the US law the 'fair use'²³⁵ law and for the EU the exceptions and limitations as described above on these thesis.

3.4. Copyright Infringement on Instagram

It is crucial prior starting the examination of Copyright Infringement to summarise what exactly is stated in the terms and conditions of Instagram about copyright violation. According to Instagram's latest terms and conditions, there are three ways in which a user is able to Report a Copyright Infringement²³⁶. Initially, if a user supposes that content uploaded on the platform by him is violating his copyright, then he/she can adopt on of the following acts: (a) the user can report the violation to the Instagram through filling out a specific form provided by the platform (b) is able to report it via using Brand Rights Protection, that allows a right owner to determine and report infringing materials for copyright, trademark and/or sham, (c) have the opportunity to contact Instagram's Designated Agent pursuant the notice and counter-notice actions of the US Digital Milleniym Copyright Act²³⁷ (hereinafter DMCA), and if do so the user must be certain to contain a full copyright request in his/her report²³⁸. Under the mention of these three ways Instagram state that *'solely the copyright holder or otherwise their licensed agent have the ability to file a report concerning copyright violation and in case where there is a belief that something else on the platform violates another's individuals copyright, then he must let the holder of the right to know'*²³⁹. In addition, Instagram informs his/her users that

²³² Ibid.

²³³ Litman, Jessica. "Sharing and stealing." *Hastings Comm. & Ent. LJ* 27 (2004): 1.

²³⁴ Sawyer, Michael S. "Filters, Fair Use & Feedback: User-Generated Content Principles and the DMCA." *Berkeley Tech. LJ* 24 (2009): 363.

²³⁵ Ibid.

²³⁶ 'Copyright Report Form', Instagram Help Center

²³⁷ Digital Milleniym Copyright Act 1998

²³⁸ Terms of Use, Instagram Help Center

²³⁹ Ibid.

submitting a report for IP violation is considered to be a critical issue with possible legal impact and when purposely submitting deceptive or false reports regarding copyright or trademark violation is feasible to cause Facebook to adopt measures, containing the deleting of his/her account and by deliberately submitting deceptive or fraudulent report can result in accountability for damages based on DMCA or equal legislations in distinct countries. Another essential mention that Instagram made is the information that the platform will need in order to proceed with the report²⁴⁰. Despite contact information and an explanation of the content that asserts that violates copyright, the user must complete a declaration presenting his/her good faith belief that application of the copyrighted material which claims that infringes copyright, is not permitted by the holder of the copyright or his/her representative or the legislation²⁴¹. Moreover, that the data found in the notice is precise and under penalty of falsehood, the one submitted the report is the holder or licensed for the sake of the possessor of an exclusive copyright which supposedly violated.

Despite the fact that numerous authors stated that Instagram does not provide its users with proper legal information and advices, that is legitimate considering that it is an online platform and not a service for instructions in the context of copyright guarding, it could be discussed that an infringement is of a higher degree to occur on a service which has been totally dodged to contain certain obvious and beneficial data in connection with copyright violation²⁴². A virtuous quarrel is that misconceptions continue to take place where online platforms supply sufficient details²⁴³. This was demonstrated in the case of *Drauglis v Kappa Map Grp*²⁴⁴, where the copyright holder misunderstood an authorisation for which there was data in the internet page. Accordingly, it is fairly noted that though the defensive measures ‘captured’ from social network to alleviate the subject matters, infringements continue to occur because it is an issue of the users that do not noticed the data given in the platforms²⁴⁵. It is generally known that platforms includes ‘instruments’ which allow images to be shared, posted and reposted. Those types of actions could result in copyright violation and therefore it is vital for users to evaluate the impacts of their activities prior performing. Also, a platform user might desire to share once more or repost an image for various grounds, such as because he/she thinks that an image is fascinating and appealing or he/she may desire to demonstrate his gratitude to the work of another individual or otherwise he/she just desires to take an image hoping that nobody will notice²⁴⁶. A pertinent legal idea at this point, is the one that in accordance to the limitation of the sole rights possessed from the copyright holder. This means that the appropriate legislation which might be appropriate at this moment is the ‘fair use’ in the law of the US, and limitations and exceptions found in the law of the EU as well as in the international. Furthermore, ‘fair use’ is appeared as a debatable and complicate area in copyright

²⁴⁰ ‘Copyright’, Instagram Help Center

²⁴¹ ‘Copyright’, Instagram Help Center

²⁴² Increasing copyright protection for social media users by expanding social media platforms' rights

²⁴³ Leistner, Matthias, and Axel Metzger. "The EU copyright package: a way out of the Dilemma in two stages." (2017): 381-384.

²⁴⁴ *Drauglis v Kappa Map Group, LLC* 2010

²⁴⁵ Alexandre De Streel, ‘Online Platforms’ Moderation of Illegal Content Online’, 2020, European Parliament

²⁴⁶ *Ibid.*

legislation and therefore, it is worth arguable if it must be taken into consideration from the platform's users as system of legal use of another individual's image²⁴⁷. As it was underlined 'the circumstances when use is able to be regarded fair is restricted and confined subordinate to the initial factor that needs special cases'²⁴⁸. Specifically, the calls for the utilisation to be a thing distinct to daily use, that can signify that reposting of images does not meet the requirements as use that can be described as fair under the meaning of whatever of the articles governing restrictions and exceptions.

As analysed earlier in the thesis and at this point in regards to photographers, it considers a violation of copyright when an individual copy or communicate to the public when lacking the authorisation of the right owner or when in the absence of anyone of the copyright exclusions. Legislation around copyright hugged photography and stressed on the photographer instead of the matter, to be regarded the author²⁴⁹. Nevertheless, the expert photographer producing a studio image or portrait henceforward does not portrays the production of the greater number of photos uploaded on social media and specifically on Instagram. Nowadays, photographs are captured using phones and different platforms like Instagram and as a result, by virtue of platform's users uploading content owning by a third-party on the site of the platform, violation of copyright content is widespread²⁵⁰. As appears from the terms of use of Instagram underlines that users guarantee that they are the possessors of the material uploaded and posted and that the work does not infringe, breach or embezzle on the rights of third-parties, containing, yet not restricted to, publicity freedoms, copyrights, trademarks and else IP rights²⁵¹. Additionally, as mentioned in the terms of use, Instagram's users are assuring that third party materials that

are posted in the site of the platform has permission or an authorisation- licence from the owner of the copyright²⁵². Edw emeina sti vivliografia

Social Platforms persuade users to post and share their personal content as well as the content of distinct users, via different sharing means and 'linking'. The posting and sharing of different images either their own or content which is not them, advantages the social network and therefore rises the social networks' advertising income²⁵³. Despite that, this comes against the terms and conditions of Instagram. The terms of use and conditions of Instagram state that users are not able to share content that belong to third-parties in the absence of their agreement or violate copyright²⁵⁴. Contrary, the platforms in general, are encouraging the posting and

²⁴⁷ Francione, Gary L. "Facing the Nation: The standards for copyright, infringement, and fair use of factual works." *U. Pa. L. Rev.* 134 (1985): 519.

²⁴⁸ Senftleben, Martin. "User generated content: towards a new use privilege in EU copyright law." *Research Handbook on Intellectual Property and Digital Technologies*. Edward Elgar Publishing, 2020.

²⁴⁹ M. Rose, 'Authors and Owners: The Invention of Copyright, London: Harvard University Press, 1993

²⁵⁰ Serafinelli, E. and Cox, A. orcid.org/0000-0002-2587-245X (2019) 'Privacy does not interest me'. A comparative analysis of photo sharing on Instagram and Blipfoto. *Visual Studies*, 34 (1). pp. 67-78. ISSN 1472-586X

²⁵¹ Instagram Terms and Conditions

²⁵² Instagram Terms and Conditions

²⁵³ Leistner, Matthias, and Axel Metzger. "The EU copyright package: a way out of the Dilemma in two stages." (2017): 381-384.

²⁵⁴ Terms and Conditions, Instagram Help Center

sharing of works that belong to third-parties. Hence, these situation creates a confusion to the users regarding what can do and what not. The standards of behaviour of how to use a platform come against the terms of use of Instagram and the fundamentals of copyright guarding. It is well known that the users of the Instagram platform contradict with the moral and legitimate practice of photographs²⁵⁵. Moreover, in a civilisation 'remix' background which discovers unpermitted uses of copyright content a cultural norm, it is challenging to grasp the lawfulness of the legal regime which restrains the practice of photos on the different platforms²⁵⁶. It is indicated that the lawfulness of photo use on online platforms is complicate and badly communicated and as stated by Sarvas and Frohlich '*Even though images have constantly been handled and edited, the numerical and electronic ways made simple to use in image editing software have substantially modified our insight of what photo editing can accomplish... Where snapshots are regarded, simple and automatic editing tools have turn into ordinary means for editing , improving and cropping photos*'²⁵⁷. Additionally, the online platforms promoting sharing, still, oppose this in the terms of use and conditions of the platforms. The online domain is one that advances the capacity to obtain, mix and handle media and surprisingly accuses the equivalent action '*a universe in which technology pleads all of the users to produce and extend creative material variously from the way it was created and extended previously?*'²⁵⁸.

Whereas there have not been any judicial actions in relation to copyright violation of photos on Instagram across UK, there have been several prominent challenges. For instance, a famous model posted an image of herself on her Instagram account, that was taken by a photographer and as the photographer, was the copyright owner of the photo, the use of the photo in the end by the famous model was a performance of violation²⁵⁹. It was claimed that the aforementioned act '*was headstrong and deliberate, in negligence of and with indifference to the photographer's rights*'²⁶⁰. In defiance of the fact that the photographer made several requests to the model as well as her crew to delete the violating image from the platform, they denied to delete it (the photo obtained 1.2 million likes). Then the photographer reported the image the United States Copyright Office, since he authorised the usage of the photo only to Daily Mail and TMZ and not to the model and the image has not been deleted by the model or her crew. Also, the photo did not contain copyright tidemark by the photographer and therefore, countless famous, commercia and advertisement, online publications take and re post the image, lacking authorisation from the owner and crediting the model and the platform. The photographer is searching for restitution for damages, along with any gains acquired by the

²⁵⁵ Hetcher, Steven A. "Using social norms to regulate fan fiction and remix culture." *University of Pennsylvania Law Review* 157.6 (2009): 1869-1935.

²⁵⁶ Ibid.

²⁵⁷ R. Sarvas & D. M. Frohlich, 'From snapshots to social media – The changing picture of domestic photography', 2011

²⁵⁸ Jim Parsons, ' review Article of L. Lessig, 2008, 'Remix: Making Art and Commerce Thrive in the Hybrid Economy', 2010, *Journal of Teaching and Learning*

²⁵⁹ Wagner, Maddie. "Set Your Settings on Private: Copyright in Era of Social Media Usage." *Cybaris Intell. Prop. L. Rev.* 9 (2018): 57.

²⁶⁰ Ibid.

model and/or IMG referable to the image and because of the fact that in this situation no exception implements, the use of copyright guarded material in the absence of authorisation by the copyright owner can form a violation of the material²⁶¹. In addition, as the photographer claimed, the image had economic value that was reduced by virtue of it being shared in Instagram.

This argument illustrates a latest trend with reference to copyright and photo posting and sharing on online platforms, at which point users obtaining income via their accounts. Khloe Kardashian, a famous influencer, has met legal proceedings in connection with an image shared in her account by her²⁶². Xposure Photos, a popular photo office which acts for more than 40 photographer across the world, was the possessor of the image and report it in the United States District Court. Xposure declares that Khloe shared and posted the image in conjunction with a caption stating 'going for a meal at ... restaurant' in 2014, lacking permission from the copyright owner²⁶³. The image was made by an author called Manual Munoz and authorised for restricted use to Daily Mail, that issued it in 2016 along with a copyright note and 'watermark' and the next day the image was shared on the account of Khloe on Instagram but with the watermark cropped. The plaintiff claimed that the image was of great value and therefore the use of the photo from the appellant on the platform has ruined the image's commercial price. Furthermore, the ailment points out the fact that Khloe extracts income via her Instagram account like a commercial instrument. Consequently, the complaint aims an act for cease and desist, legal damages, financial damages and demands a jury trial²⁶⁴. In connection with the previous case explained, this issue appears to displays an obvious violation of the rights of the copyright owner.

3.5. Guidance for Posting and Re- Posting Content on Instagram

As it is well known, Instagram permits its users to share links to the posts of distinct users across the world. A user of the platform of Instagram that has admission to a post is able to share it and post it either on their Instagram story or profile on the platform in case the owner of that image gave authorisation through his/her privacy settings to do so. In spite of this, there is no fundamental repost service on the platform, yet, there are several apps accessible which permit users to repost photos on their account that owned by other users²⁶⁵. Whilst those apps facilitate as user to share the posted image of another individual on his/her personal account on Instagram, still, those apps does not turn such an action into a lawful act. Therefore, users that wish to share a photo which are not there own , they should take some steps in order to grant permission from the right

²⁶¹ Ibid.

²⁶² Joseph, Austin. "Feeling Cute, Might [Have To] Delete Later: Defending Against the Modern Day Copyright Troll." *J. Intell. Prop. L.* 27 (2019): 329.

²⁶³ Joseph, Austin. "Feeling Cute, Might [Have To] Delete Later: Defending Against the Modern Day Copyright Troll." *J. Intell. Prop. L.* 27 (2019): 329.

²⁶⁴ Azriel, Joshua. "Paparazzi Lawsuits Against Celebrities: Ongoing Litigation." *Copyright 3 Message from the Chair 4 Letter from the Editor 5 Music Rates And Royalties In Today's And Tomorrow's World 6* 37.1 (2021): 13.

²⁶⁵ Kim, Caroline E. "Insta-Fringement: What is a Fair Use on Social Media?," 18 *J. Marshall Rev. Intell. Prop. L.* 102 (2018)." *UIC Review of Intellectual Property Law* 18.1 (2018): 5.

holder²⁶⁶. Firstly, they should write under the image, on the comment section, requesting the authorisation to share that specific image on his/her personal account or send a direct message requesting the owner to post their image. By obtaining authorisation users protect themselves against copyright.

On the other hand, users must also take some steps in order to protect their own original and creative content that they share and post on Instagram. Together with the understanding of the Terms of Use of Instagram, user must consider a number of guidance which must pursue when posting images on the platform. The protection of images that posted online might be sound a simple task however it is more challenging than users recognise. It is of special importance to underline that for all the 179 countries that are parts of the Berne Convention²⁶⁷, copyright guarding starts immediately after an individual capture a photo and it does not matter if the image was taken through an iPad, a camera or a smartphone. '*On the time an individual saves the photo on their phone, or otherwise, it's automatically guarded through copyright in both U.S and all the countries that are members in the Berne Convention*'²⁶⁸, one of them in Cyprus too. Classified among the easiest ways to guard a user's own photo is to add a copyright symbol (©) on the image²⁶⁹. Adding a copyright symbol is essential when a user is sharing photos online in public platforms, either on a personal blog, or on a website where individuals are able to send their photos or sharing and posting images on distinct social media platforms like Instagram. Various individuals fallaciously have the belief that they can freely take what is found online or posted on social platforms. By adding the copyright symbol, it nicely instructs the followers of a user on Instagram that they can not freely repost the image²⁷⁰. An additional way that it is proposed to authors of a photo in order to sign their images posted online, is watermarking²⁷¹ which means to mark their images with their name and contact details. In 2018 it was stated that '*The growing reputation of digital multimedia has created new disputes in protection problems. Authentication and morality confirmation in the photos figure out some of these difficulties...*'²⁷². Likewise, in another piece it was described that '*Digital Photo Watermarking is consider to be a crucial approach in the field of details protection. It is regarded one of the most essential methods that are performed in order to protect the roots of the photo via guarding it in opposition to Piracy*'²⁷³. However, difficulties with watermarking might emerge if the watermarking on the photo is apparent or not. In the event that, watermarking is apparent, it will be a more obvious notification to the individual who is sharing or posting the photo, even so many underlined that by adding watermarking it makes the photo not as much fascinating as without the watermarking in order to be shared. Furthermore,

²⁶⁶ BARBARIA, JESSICA. "DEFINING COPYRIGHT PROTECTIONS ON SOCIAL MEDIA IN THE AGE OF INSTAGRAM# REPOSTS."

²⁶⁷ Berne Convention

²⁶⁸ 'How to protect photos you post online', 2021, <https://www.copyrightlaws.com/how-to-protect-photos-you-post-online/#>

²⁶⁹ Yezril, Florina. "Somewhere beyond the (Copyright Symbol): Copyright and Design." *NYU J. Intell. Prop. & Ent. L.* 5 (2015): 43.

²⁷⁰ Ibid.

²⁷¹ Hassanien, Abou Ella. "A copyright protection using watermarking algorithm." *Informatica* 17.2 (2006): 187-198.

²⁷² A. Vijayalakshmi Venugopal, 'Copyright concerns of digital images in social media', 2020, Taylor's Law School, Taylor's University, Malaysia

²⁷³ Ibid.

provided that the creator might desiring the photo to be shared as much as conceivable, possibly because he/she desires to grow the account of the creator or even honour the content of the creator, the noticeable watermark could take away from that aim. Conversely, in case the watermark is not noticeable, but instead 'implanted' into the photo, the plain image could be posted and shared further²⁷⁴. Anyhow, this probably could not increase and grow the account on the platform of the author of the photo since individuals and especially the ones that do not have the technical abilities to consider the inserted details, might not recognise the author of the material and similarly, if those details despite the fact that are noticeable, might not be helpful and beneficial in case the details are obsolete and not up to date. There are numerous watermarking approaches, either apparent or embedded. Although, individuals that aimed to intentionally execute copyright violation might additionally have the ability to control or alter the watermark details. The affirmation that authors of creation might be restrained. Noted that watermarking is not imperative through legislation and the absence of a mark like that does not signify that the author has abandon his/her rights to be acknowledged as the author or declare copyright in the photo²⁷⁵.

Conclusion

This thesis has examines the evolution of online platforms and specifically the platform of Instagram in accordance with copyright law and especially Directive 2019/790. There is no question that presently, social media form a vital piece of our daily lives and in the essence in which we communicate with millions of individuals worldwide²⁷⁶. Significant amounts of information, including countless user generated images that are communicated on social network²⁷⁷. Furthermore, despite the fact that an enormous amount of images are shared and posted on the internet on a daily basis, copyright supplies safeguarding to them in an equal way that traditional photos are guarded²⁷⁸. Copyright regulation on the other is based on the view that it aims on the production, creation and distribution of information equally to culture, yet online platforms like Instagram have got another motivation. Online platforms encourage the sharing of works as mentioned from their users and by that they can produce earnings through advertisement. This creates a huge problem, since as long as the online platforms might profiting economically, the content owners are not inevitably gaining equal profits. In other words while Online platforms have been confirmed to authorise users to post and share images with other users, yet, these available structured platforms lead to violation, allocation and utilisation of personal images for financial purposes. Platforms, especially the massive ones, for instance Instagram, impose excessive management upon social media and periodically they enforce their power to order online users to move aside their image rights posted and shared by them. In the event that users have access or share an image

²⁷⁴ O'Ruanaidh, J. J. K., W. J. Dowling, and F. M. Boland. "Watermarking digital images for copyright protection." *IEE Proceedings-Vision, Image and Signal Processing* 143.4 (1996): 250-256.

²⁷⁵ Ibid.

²⁷⁶ A. May Wyatt and S. E. Hahn, 'Copyright Concerns Triggered by Web 2.0 Uses', 2011, Reference Service Review 306

²⁷⁷ Ibid.

²⁷⁸ Ibid.

on the Instagram platform, they accept immediately all the terms of use and conditions and this means that move of the rights has been fulfilled²⁷⁹. This thesis has highlighted the terms and conditions of Instagram and emphasis on the fact that are debatable as to whether they grant a benevolent licence from the users to the platform. However, on the other hand lies on the users, that most of them are not aware or fully understand the terms and conditions of the platform prior continuing to create an account. Furthermore, in the legal scenery there was no major alteration in relation to copyright for approximately two decades and Art.17 Directive 2019/790 came to set a new model of rule of the difficulties determined through the movement advancement in online content sharing platforms. It strengthens the guarding bestowed to right holders in regard to copyright guarded content and on distinct guarded materials in the online landscape through presenting new regulations of liability and of limitation from accountability of a new class of information service providers, for instance OCSSPs. On the contrary, it comprises legal steps which guard the legal place of the users that share and upload content on the online platforms. It still a recent Directive and copyright still remains a highly complicate area with distinct interests on the contrary. Since it is a newly adopted Directive and Member States recently adopted it, the future will clear the area as to whether Directive 2019/790 achieved its objectives and clarified the copyright landscape around online content sharing service providers.

Bibliography

Primary Sources

Cases

1. Bleistein v Donaldson Lithographic Co
2. Campbell v MGN Ltd. [2004] UKHL 22

²⁷⁹ Lexology, 'Who Owns the Copyright in an Instagram Image?', 2017

3. C- 161/17, Land Nordrhein-Westfalen v. Dirk Renckhoff, 2018
4. C- 324/09 L' Oreal SA v eBay International AG (2011)
5. Douglas v Hello! Ltd [2005] EWCA Civ 595
6. Drauglis v Kappa Map Group, LLC 2010
7. Edison v Edison Polyform Mfg. Co 67 A. 392, 394
8. Infopaq International A/S case v Danske Dagblades Forening 2009
9. Les Editions Vice - Versa Inc v Audry, [1998] S.C.R. 591 (Can.)
10. Murray v Express Newspapers Plc (2008) ECDR
11. Naruto v. Slater, No. 16-15469 (9th Cir. 2018)
12. Painer v Standard Verlags GmbH (C-145/10) [2011] ECDR 13
13. Reklos and Davourlis v Greece – 1234/05 [2009] ECHR 200, 15 January 2009
14. Temple Island Collections Ltd v New English Teas Ltd & Anor , [2012] EWPC
15. Uhlander v Henricksen, 316 F. Supp. 1277, 1282 (1970)
16. University of London Press Ltd v University Tutorial Press Ltd, 1916
17. Vereinigung Bildender Künstler v Austria ,ECHR 25 January 2007
18. Viacom International Inc. v Youtube, Inc. No. 07 Civ.2013 (2010)
19. Von Hannover v Germany (no 2), Grand Chamber, 2012
20. Wilson v Ferguson [2015] WASC 15

Acts:

1. Article 2(5) & 2(8) Berne Convention for the Protection of Literary and Artistic Works, 1886
2. Digital Millennium Copyright Act 1998
3. Directive (EU) 2019/790 of the European Parliament and of the Council , Article 17
4. E-Commerce Directive 2000/31/EC
5. Information Society Directive 2001/29/EC
6. S. 17, 20 of Copyright, Design and Patents 1988 U.S.

Secondary Sources

Books:

1. Annette Kur, Thomas Dreier, 'European Intellectual Property Law, Text, Cases & Materials', Edward Elgar, 2013
2. Blair, Roger D.; Cotter, Thomas F. New York : Cambridge University Press. 2005
3. Chothani, Poorvi. In: Managing Intellectual Property, Vol. No. 171, Number 171 (July-August 2007), pp. 81-84
4. T. Synodinou, 'Codification of European Copyright Law, Challenges and Perspectives', Kluwer Law International, 2011
5. T. Synodinou, Ph. Jougoux, Chr. Markou, Th. Prastitou , 'EU Internet Law in the Digital Era', Springer, 2019
6. Wherry, Timothy Lee. Chicago : ALA Editions of the American Library Association. 2008

Articles and Online Journals:

1. A. Christie & R. Wright, 'A Comparative Analysis of the Three – Step Tests in International Treaties', 2014
2. Adam Remsen, 'A Lawyer Digs Into Instagram's Terms of Use', December 07, 2016
3. A. I. Bashar 'Death of Meme Culture in EU', 2018
4. Alan Hui & Frederic Dohl, 'Collateral Damage: Reuse in the Arts and the New Role of Quotation Provisions in Countries with Free Use Provisions After the ECJ's Pelham, Funke Medien and Spiegel Online Judgments', 2021
5. Alexandre De Streel, Elise Defreyne, Herve Jacquemin, Michele Ledger, Alejandra Michel, Alessandra Innessi, Marion Goubet & Dawid Ustowski, 'Online Platforms' Moderation of Illegal Content Online', Law, Practices and options for Reform, 2020, European Parliament
6. Alisa M. Weisman, 'Publicity as an Aspect of Privacy and Personal Autonomy', 55 Cal. L. Rev. 1982
7. Alison Frankel, 'Photographers' new Instagram class action wants to upend online publishing', May 25, 2021
8. Alok Kumar Yeadav, 'Copyright in Digital Era- Chapter I'
9. A. May Wyatt and S. E. Hahn, 'Copyright Concerns Triggered by Web 2.0 Uses', 2011, Reference Service Review 306

10. A. N . Dixon & M.F. Hansen, 'The Berne Convention Enters the Digital Age', European Intellectual Property Review
11. Andreas Rahmatian, 'Originality in the UK Copyright Law: the Old Skills and Labour Doctrine Under Pressure', 2013
12. A. Rahmatian 'European Copyright Inside or Outside the European Union: Pluralism of Copyright Laws and the Herderian Paradox', 2016
13. Ari Ezra Waldman, 'Privacy as Trust: Sharing Personal Information in a Networked World, 2015
14. A. Vijayalakshmi Venugopal, 'Copyright concerns of digital images in social media', 2020, Taylor's Law School, Taylor's University, Malaysia
15. Azriel, Joshua. "Paparazzi Lawsuits Against Celebrities: Ongoing Litigation." Copyright 3 Message from the Chair 4 Letter from the Editor 5 Music Rates And Royalties In Today's And Tomorrow's World 6 37.1 (2021): 13.
16. BARBARIA, JESSICA. "DEFINING COPYRIGHT PROTECTIONS ON SOCIAL MEDIA IN THE AGE OF INSTAGRAM# REPOSTS."
17. Bart Van Der Sloot, 'Privacy as Personality Right: Why the ECtHR's focus on Ulterior Interest Might Prove Indispensable in the Age of 'Big Data'', Utrecht Journal of International and European Law, 2015
18. Benjamin Ely Marks, 'Copyright Protection, Privacy Rights and the Fair Use Doctrine: The Post Salinger Decade Recognised', 1997
19. Bernard Marr & Co, 'How Much Data Do we Create Every Day? The Mind- Blowing Stats Everyone Should Read', 2016
20. Blake Brittain, 'Instagram dodges photogs' copyright lawsuit over embedding feature', 2021
21. Boehm, Kristina. "Article 17 (7) of Directive 2019/790 on Copyright and Related Rights in the Digital Single Market." (2021).
22. Boshier, Hayleigh, and Sevil Yeşiloğlu. "An analysis of the fundamental tensions between copyright and social media: The legal implications of sharing images on Instagram." International Review of Law, Computers & Technology 33.2 (2019): 164-186.
23. Bracha, O. C., 'Copyright History as History of Technology', 2013, The world Intellectual Property Journal
24. Christiane Stutzle, 'Mitigating User Content risk After EU Copyright Directive', 2021
25. 'Copyright and Kanye Kissing Kanye', 2016, MC Daniels Law

26. David A. J. Richards 'Rights and Autonomy', 1981
27. David Nimmer, 'Copyright in the Dead Sea Scrolls- Authorship and Originality', 2001, Houston Law Review Address
28. Depoorte, Van Hiel & Vanneste 2010 pg. 1278 See Janna Anderson and Lee Rainie 'The Future of Truth and Nisinformation Online, 2017
29. D. Liu, 'Of Originality : Originality in English Copyright Law: Past and Present', 2014
30. Dominika Bychawska – Siniarska, 'Protecting the Right to Freedom of Expression Under the European Convention on Human Rights', a handbook for legal practitioners
31. Dr. Maxime Lambrecht, 'Free Speech by Design- Algorithmic protection of exceptions and limitations in the Copyright DSM Directive'
32. Ekstrand, Victoria Smith, and Derigan Silver. "Remixing, reposting, and reblogging: Digital media, theories of the image, and copyright law." *Visual Communication Quarterly* 21.2 (2014)
33. Eleonora Rosati, 'When does a communication to the public under EU copyright Law need to be to a 'new public?', 2020, Stockholm University
34. Elizabeth J. Tao, 'A Picture's Worth: The Future of Copyright Protection of User-Generated Images on Social Media' (2017) 24 *Ind.J.GlobalLegalStud.* 617
35. E. Mollick, 'Establishing Moore's Law, 2006
36. European Commission, 'New EU Copyright rules, that will benefit creators, businesses and consumers start to apply', 2021
37. European Court of Human Rights, 'Right to the protection of one's image', 2020, Press Unit
38. European Parliament, 'Liability of online platforms', 2021
39. Federico Ferri, 'The dark side(s) of the EU Directive on copyright and related rights in the Digital Single Market, 2020
40. Francione, Gary L. "Facing the Nation: The standards for copyright, infringement, and fair use of factual works." *U. Pa. L. Rev.* 134 (1985): 519.
41. Frosio, Giancarlo, and Sunimal Mendis. "Monitoring and Filtering: European Reform or Global Trend?." *The Oxford Handbook of Online Intermediary Liability* (OUP, 2019 Forthcoming), Centre for International Intellectual Property Studies (CEIPI) Research Paper 2019-05 (2019).
42. Geoff Desreumaux, 'The Complete History of Insagram', 2014

43. George M Armstrong Jr., ‘ The Reification of Celebrity: Persona as Property’, 1991, Louisiana Law Review
44. George Thuronyi, ‘Copyright Law and New Technologies: A Long and Complex Relationship’, 2017
45. Georgiades, E. 2018. ‘The Limitation of Copyright: Sharing Personal Images on Social Networks’, European Intellectual Property Review
46. Giancarlo Frosio, ‘Reforming the C-DSM Reform: A User Based Copyright Theory for Commonplace Creativity’, 2019
47. Giannis Chatsios, ‘Designing an effective copyright enforcement strategy for online content-sharing service providers in light of the Directive (EU) 2019/790 - Algorithmic enforcement, effective preventive measures for OCSSPs and the balance between copyright and human rights’, 2020
48. Graci Chen, ‘How to Avoid Copyright Infringement on Instagram’, 2021
49. Graham Smith, ‘Notice and stay down orders and impact on online platforms’, 2019
50. Grisse, Karina. "After the storm—examining the final version of Article 17 of the new Directive (EU) 2019/790." *Journal of Intellectual Property Law & Practice* (2019)
51. Groves P., ‘Copyright and Designs Law: A Question of Balance, London: Graham and Trotman Ltd.
52. Hassanabadi, Amir. “Viacom v. YouTube—All Eyes Blind: The Limits of the DMCA in a Web 2.0 World.” *Berkeley Technology Law Journal*, vol. 26, no. 1, [University of California, Berkeley, University of California, Berkeley, School of Law], 2011, pp. 405–40
53. Hassanién, Abou Ella. "A copyright protection using watermarking algorithm." *Informatica* 17.2 (2006): 187-198.
54. H. Boshier & S. Yesiloglu, ‘An analysis of the fundamental tensions between copyright and social media: The legal implications of sharing images on Instahram, 2018
55. Hetcher, Steven A. "Using social norms to regulate fan fiction and remix culture." *University of Pennsylvania Law Review* 157.6 (2009): 1869-1935.
56. Husovec, Martin, and João Quintais. "How to License Article 17? Exploring the Implementation Options for the New EU Rules on Content-Sharing Platforms." *Exploring the Implementation Options for the New EU Rules on Content-Sharing Platforms* (January 2021). *GRUR International* 4 (2021).
57. ‘Instagram and Copyright – What are the terms of use?’, January 11, 2021
58. Intellectual Property Office, ‘Share and Share Alike – The Challenges from Social Media for Intellectual Property Rights’, 2017

59. Ioanna Mesimeri, 'Cyprus: Copyright Infringement of Instagram Pictures and the Legal Gaps In their Copyright Protection, November 2, 2020
60. Jeffrey Rosen, 'The unwanted gaze: The Destruction of Privacy in America', 2000
61. Jim Parsons, 'Review Article by L. Lessig 'Remix: Making Art and Commerce Thrive in the Hybrid Economy', 2010, Journal of Teaching and Learning
62. Jones R., 'Intellectual Property Reform for the Internet Generation: An Accident Waiting to Happen', 2010, European Journal of Law and Technology.
63. Joseph, Austin. "Feeling Cute, Might [Have To] Delete Later: Defending Against the Modern Day Copyright Troll." *J. Intell. Prop. L.* 27 (2019): 329.
64. Judith Busse & Frances Caudron, 'European Copyright: Memes, GIFs and other Images on the Internet', 2019
65. Karina Grisse, 'After the Storm – Examining the Final Version of Article 17 of the New Directive (EU) 2019/790, 2019, Journal of Intellectual Property Law & Practice 14
66. Kim, Caroline E. "Insta-Fringement: What is a Fair Use on Social Media?, 18 *J. Marshall Rev. Intell. Prop. L.* 102 (2018)." *UIC Review of Intellectual Property Law* 18.1 (2018): 5.
67. Kim Treiger Bar Am, 'Copyright, Creativity and Transformative Use', 2015
68. Kuczerawy, Aleksandra. "EU proposal for a Directive on Copyright in the Digital Single Market: Compatibility of Article 13 with the EU intermediary liability regime." *Fundamental Rights Protection Online: The Future Regulation of Intermediaries* (2019).
69. Lari-Williams, Seun. "Bridging the Value Gap Between Content Creators and Digital Media Platforms: A Case Study of YouTube." *MIPLC Master Thesis Series (2019/20)* (2020).
70. Latham & Watkins LLP, 'Filter Future? Updates on the Copyright Directive and Platform Liability', 2021
71. Lauren Myers, 'A Picture is Worth a Thousand Material-Connection Disclosure: Endorsers, Instagram and the Federal Trade Commission's Endorsement Guides', 2017
72. Leistner, Matthias, and Axel Metzger. "The EU copyright package: a way out of the Dilemma in two stages." (2017): 381-384.
73. Lewis & Jessica, 'With Love and Kisses: Nothing Lasts Forever: An examination of the Social and Artistic Antiquation of Moral Rights', 2016, *International Journal Cultural Property*
74. Litman, Jessica. "Sharing and stealing." *Hastings Comm. & Ent. LJ* 27 (2004)

75. Li Y, Xie Y. Is a Picture Worth a Thousand Words? An Empirical Study of Image Content and Social Media Engagement. *Journal of Marketing Research*. 2020
76. L. Lessig , ‘Code and Other Laws of Cyberspace’, 1999
77. L. Lundell, ‘Copyright and Social Media : A legal Analysis of Terms for Use of Photo Sharing Sites’, 2015
78. Locke John, ‘Second Treatise of Government’, 1980
79. Marciszewski, Mark. "The Problem of Modern Monetization of Memes: How Copyright Law Can Give Protection to Meme Creators." *Pace Intell. Prop. Sports & Ent. LF 9* (2020): lxxv.
80. Martin Senftleben, ‘Bermuda Triangle – Licensing, Filtering and Privileging User-Generated Content Under the New Directive on Copyright in the Digital Single Market’, electronic journal, 2019
81. MARY MADDEN, AMANDA LENHART, SANDRA CORTESI, URS GASSER, MAEVE DUGGAN, AARON SMITH AND MEREDITH BEATON, ‘Teens, Social Media and Privacy’, 2013, Pew Research Center
82. Michael Reed, ‘ Who owns Ellen’s Oscar Selfie? Deciphering Rights of Attribution Concerning User Generated Content on Social Media’, the John Marshall – Review of Intellectual Property Law
83. Miquel Peguera, ‘The New Copyright Directive: Online Content – Sharing Service Providers lose eCommerce Directive immunity and are forced to monitor content uploaded by users (Article 17), 2019
84. Mohamed Thaver, ‘ Explained: The Instagram ‘copyright infringement’ scam many have fallen prey to’, January 6, 2021
85. M. Rose, ‘Authors and Owners: The Invention of Copyright, London: Harvard University Press, 1993
86. Musonera, Etienne. "Instagram: A photo sharing application." *Journal of the International Academy for Case Studies* 24.4 (2018)
87. Nedim Malovic, ‘Presumed Innocent: Should the Law on Online Copyright Enforcement and ISP Liability Change?’, 2017
88. NITHYA, K., and N. VENKATESWARULU. "A Two-Level Framework for Protecting the Privacy of User Uploaded images on Content Sharing Sites." (2016).
89. OECD (2021), The Digital Transformation of SMEs, OECD Studies on SMEs and Entrepreneurship, OECD Publishing, Paris, <https://doi.org/10.1787/bdb9256a-en>.- Chapter 3 : ‘SMEs in the online platform economy’

90. O'Ruanaidh, J. J. K., W. J. Dowling, and F. M. Boland. "Watermarking digital images for copyright protection." *IEE Proceedings-Vision, Image and Signal Processing* 143.4 (1996): 250-256
91. Prof. Dr. Gerald Spindler, 'The Liability of Art.17 DSMD and the national implementation- contravening prohibition of general monitoring duties?', 2019
92. Raphael Nowak & Andy Bennett, 'Music Consumption and Technological: Investigating Generation Y's Adoption and Uses of Music Technologies', 2020
93. Rosalie Fay Barnes, Miriam Simun, Urs Gasser & John Palfrey, 'Youth, Creativity and Copyright in the Digital Age, 2009, *International Journal of Learning and Media*
94. Rosati, Eleonora. "Five considerations for the transposition and application of Article 17 of the DSM Directive." *Journal of Intellectual Property Law & Practice*, Forthcoming (2021).
95. R. Sarvas & D. M. Frohlich, 'From snapshots to social media – The changing picture of domestic photography', 2011
96. Sara Hawkins, 'Copyright Fair Use and How it Works for Online Images', 23rd November 2011
97. Sawyer, Michael S. "Filters, Fair Use & Feedback: User-Generated Content Principles and the DMCA." *Berkeley Tech. LJ* 24 (2009)
98. Sebastian Schwemer & Jens Schovsbo, 'What is Left of User Rights? – Algorithmic Copyright Enforcement and Free Speech in the Light of the Article 17 Regime, 2019
99. Senftleben, Martin. "Bermuda Triangle–Licensing, Filtering and Privileging User-Generated Content Under the New Directive on Copyright in the Digital Single Market." *Filtering and Privileging User-Generated Content Under the New Directive on Copyright in the Digital Single Market (April 4, 2019)* (2019).
100. Senftleben, Martin. "User generated content: towards a new use privilege in EU copyright law." *Research Handbook on Intellectual Property and Digital Technologies*. Edward Elgar Publishing, 2020.
101. Serafinelli, E. and Cox, A. 'Privacy does not interest me'. A comparative analysis of photo sharing on Instagram and Blipfoto. *Visual Studies*, 2019. pp. 67-78.
102. S. Hanway & L. Lyons, 'Teens OK with Letting Music Downloads Play Gallup Poll', 2003
103. Sherman B. & Bentley L., 'The making of Modern Intellectual Property', 1999 , University of Cambridge Press.
104. Simeon O. Edosomwan, S.K. Prakasan, D. Kouame, J.Watson & T.Seymour , 'The history of social media an its impact on business', 2011

105. Simone Schroff, 'The purpose of copyright- moving beyond the theory', 2021, Journal of Intellectual Property Law & Practice
106. SMPERTH, 'Facts & Figures// Instagram Statistics for 2022', 2021
107. Stephen R. Barnett, 'The Right to One's Image: Publicity and Privacy Rights in the United States and Spain', 1999, The American Journal of Comparative Law Vol.47, No.4 pp. 555-581
108. Strategic Advisory Board for Intellectual Property Policy, 2009
109. Tatiana Synodinou, 'Image Right and Copyright Law in Europe: Divergences and Convergences', 2014
110. Testino, Darla. "Stream Ripping: A Copyright Infringement Epidemic." Backstage Pass 2.1 (2019)
111. The Digital Dilemma: Intellectual Property in the Information Age, Chapter 5: Protecting Digital Intellectual Property Means and Measurements', 2000
112. Tobias Kempas, 'The New Copyright Directive: Are OCSSPs Now Required to Carry Certain Content?', 2019
113. Wagner, Maddie. "Set Your Settings on Private: Copyright in Era of Social Media Usage." Cybaris Intell. Prop. L. Rev. 9 (2018): 57.
114. Yezril, Florina. "Somewhere beyond the (Copyright Symbol): Copyright and Design." NYU J. Intell. Prop. & Ent. L. 5 (2015): 43.

Websites:

1. 'Copyright', Instagram Help Center
<https://www.facebook.com/help/instagram/126382350847838>
2. 'Copyright Report Form', Instagram Help Center
<https://www.facebook.com/help/instagram/contact/552695131608132>
3. How do I report potential copyright violations on Instagram? , Instagram Help Center
<https://help.instagram.com/144663955711336>
4. 'How to protect photos you post online', 2021, <https://www.copyrightlaws.com/how-to-protect-photos-you-post-online/#>
5. Instagram page , 'Control the data you share with third Party Apps', 2019
<https://about.instagram.com/blog/announcements/increasing-personal-user-data-control>

6. Instagram Terms of Use , Instagram Help Center

<https://help.instagram.com/581066165581870>

7. ‘Intellectual Property’, Instagram Help Center

<https://help.instagram.com/535503073130320/>

8. ‘Photo Taking, Editing and Sharing’, Instagram Help Center

<https://help.instagram.com/365080703569355/>

9. ‘Welcome to the Instagram Help Center’, Instagram Help Center

<https://help.instagram.com/>

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