

CHALLENGES TO COPYRIGHT ON THE INTERNET – COLLECTIVE MANAGEMENT OF COPYRIGHT AND BITTORRENT PLATFORMS

ABSTRACT: The development of information and communication technologies and the Internet has fundamentally changed the traditional concept of copyright and related rights, causing a crisis in its functioning. Forms of copyright inefficiency on the Internet are reflected in the fact that there is a factual impossibility for the author to effectively exercise and protect their copyright or related rights. The search for potential solutions is demanding and complex, ranging from the following efforts: to maintain the traditional concept of copyright and related rights, to implement a reform of the traditional system, to change it from the ground up, to the approach that copyright has no practical reach in the digital environment. BitTorrent platforms have recently become one of the most recognizable forms of copyright infringement in the Internet environment. Although we have witnessed many court proceedings aimed at preventing the activities of BitTorrent platforms on which unauthorized direct sharing of copyrighted content takes place, the expected results have not yet been achieved. In search of a potential solution, the research directed us towards collective management organizations, specialized entities that have the capacity

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to overcome certain challenges in the context of copyright inefficiency, particularly in relation to the unauthorized distribution of copyrighted content via BitTorrent platforms. The basic aim of this scientific research is to offer concrete proposals which, in the future, if implemented, could potentially represent a solution to part of the problem of the most common and widespread form of copyright inefficiency on the Internet.

Keywords: *collective management, copyright, BitTorrent platforms, Internet, judicial practice.*

1. Introduction

Collective management of copyright is a key legal mechanism for the functioning of the copyright system, especially in the creative industries. In the context of the information age and the development of data exchange technologies, the widespread use of BitTorrent platforms has raised complex issues related to copyright protection. Although the protocol of these technologies is not illegal, their use for direct sharing of copyrighted content without proper permission poses a significant problem for authors/copyright holders. One of the fundamental questions that requires research is whether collective management organizations (hereinafter referred to as CMOs) have the appropriate capacity to overcome the challenges posed by the widespread occurrence of unauthorized direct sharing of copyrighted works via the Internet.

BitTorrent platforms use a direct data exchange architecture, the so-called peer to peer file sharing (abbreviated: P2P), which allows users to directly exchange a wide variety of content located in the memories of their computers, with or without the limited service of a dedicated server. What sets them apart from other platforms is their superiority because they are based on a specific BitTorrent communication protocol. Content is exchanged at high speed, between multiple users, and the exchange is carried out in a way that could be compared to putting together a puzzle, because files are exchanged in parts, for easier transfer. The goal of content exchange is for each user to download all parts of the file to the memory of their computer. This concept of sharing allows hundreds, even thousands of users to participate simultaneously in the exchange of just one piece of content, and the speed of sharing increases with the number of users on the network. Also, one of the characteristics of these platforms is their ease of use (Vujičić, 2016).

The problems of individual management of copyright and related rights are overcome through CMOs. The point of the functioning of CMOs is as follows: Authors or copyright holders of certain types of copyrighted works, who in fact cannot or cannot, under economically viable principles, individually manage their rights, join together in organizations. They assign their rights to the organization for certain forms of use of their works, with the order that the organization assigns these rights to interested users, collects the agreed remuneration and distributes it to the authors, i.e. copyright holders (Marković, 2000). With the advent of modern technologies, mass media, and the Internet, a multitude of different forms of exploitation of copyrighted works have emerged. Over time, the role of the organization evolved to become a carrier of activities in controlling the lawful enforcement of copyright and related rights, taking action against unauthorized exploitation of copyrighted works, and performing various socio-cultural functions (Gervais, 2010).

The exchange of copyrighted content online, obtained without authorization, via BitTorrent platforms is one of the most common forms of threatening the property rights of authors or holders of related rights in the online environment. Although this type of technology is not illegal in itself, it is mostly used for illegal activities and is a kind of synonym for internet piracy. The complexity of finding effective copyright protection mechanisms is caused by the characteristics of the aforementioned technology (Vujičić, 2016). Attempts to stop the unauthorized use of copyrighted content via the Internet have focused on legal mechanisms, technological protection measures, and even proposals to remove individual participants in the global computer network who use this type of exchange from it. It should not be forgotten that overly radical requirements can have negative consequences, primarily in the form of a reduction in Internet traffic, online commerce, but also a violation of the right to privacy of online participants. We take the position that the primary focus should not be directed at the uncompromising suppression of unauthorized use of works, but rather it is necessary to strive towards achieving the goal that would lead to the maximum increase in the legal use of works. In the implementation of the complex undertaking of the use of multi-territorial licenses or extended licenses for the use of musical works and other types of content on the Internet, CMOs could be positioned as leading entities. In essence, it is almost unthinkable that such a system could function without their participation (Gervais, 2010).

Considering the above, the paper is dedicated to the analysis of the characteristics of unauthorized, direct exchange of copyrighted material via the Internet, research about individual models of functioning of platforms based

on BitTorrent technology which operate in accordance with legal regulations, and finally to solutions for overcoming perhaps the greatest form of non-functionality of copyright and related rights in the Internet environment. In the relevant sections, through scientific research, we place emphasis on potential possibilities of collective management of copyright in the activities of exploiting copyrighted material within BitTorrent platforms.

2. Bit torrent platforms as a paradigm for the unauthorized exchange of author's work

When considering the legal aspects, it is important to note that the largest number of copyright infringements is related to BitTorrent platforms. One of the most important reasons lies in the fact that copyright and related rights are violated by the Internet intermediary, i.e. the owner of the BitTorrent file exchange site, but also by the huge number of users who participate in the exchange. The actions of users of BitTorrent platforms during the unauthorized exchange of copyright works are carried out both in the preparation phase for online file exchange and during the direct exchange of copyrighted work. In this regard, the ruling of the Higher Court in Grankenthal in Germany is illustrative, which concluded that downloading a part of a file that cannot be uploaded does not constitute a violation of the exclusive right to make a author's work available (Vujičić, 2016).

The Court of Justice of the European Union made a major contribution to the interpretation of the concept of making a work available to the public in its judgment in the case of *Stichting Brein v. Ziggo BV*, which concerns a legal dispute between Stichting Brein, a Dutch CMO, and Ziggo BV, one of the largest internet service providers in the Netherlands. Thus, in response to a previous question from the Supreme Court of the Netherlands, the Court of Justice of the EU found that the actions of the operator of The Pirate Bay platform constituted an unauthorised communication to the public of the subject matter of copyright protection within the meaning of Article 3(1) of Directive 2001/29. The Court of Justice of the EU assessed, referring to previous practice, that the act of communication to the public of a copyright work exists when a person, fully aware of the fact, enables his clients to access the protected works. Another important fact related to the aforementioned dispute is the court's position on the operator's actions in connection with the administration of the platform. Namely, the platform operator indexed the dot torrent files, so that the copyrighted works could be more easily located and downloaded. In addition, the works were also categorized according to

type of work, genre and other criteria. Taking everything into account, the Court of Justice of the EU pointed out that the operators of these files could not be unaware of the fact that the platform was being used to access works communicated without the consent of the copyright holder or related right holder. Finally, the Court of Justice found that the fact that the administration of the platform brought income to the operators was not legally irrelevant (Popović & Jovanović, 2017).

Also, the use of BitTorrent platforms causes another effect that is observed in the context of the principle of territoriality of copyright and related rights. Therefore, activities aimed at suppression this type of copyright infringement complicate issues of national legislation, because BitTorrent files can be accessed from different geographical locations, from several different countries that have different ways of regulating copyright matters. In other words, users who participate in the direct exchange of unauthorized content that is the subject of copyright or related rights protection are located in different countries, often on different continents. An Internet intermediary, i.e. the owner of a BitTorrent platform, can also place its servers in different countries, which complicates the choice of applicable law and the jurisdiction of the courts, taking into account the territorial validity of copyright and related rights (Damjanović 2020). Therefore, the conflict between the principle of territoriality, which is based on territorial, i.e. national states, and the virtual (unlimited) cyberspace that does not know state borders, further complicates legal actions in the event of unauthorized exploitation of protected content carried out through these platforms.

One of the first music sharing services was Napster, which enabled millions of users to share music. On February 12, 2001, the U.S. Court of Appeals for the Second Circuit issued a landmark decision in the case of A&M Records Inc., et al. vs Napster, Inc. The court ruled that Napster's defenses, which were based on the fair use doctrine and permissible distribution, were inadmissible. Napster received legal notice of the illegal nature of its activities, but subsequently failed to take any action to prevent further infringement (Idris, 2003). It also failed to regulate its system, which the court found feasible because it had the ability to track files on the platform. Finally, Napster was also found liable for the infringement of its users' rights.¹ A interesting

¹ Judgment in the case A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004 (9th Cir. 2001), Apelacioni sud SAD od 5 februara 2023. godine Downloaded 2025, May 15 from <https://law.justia.com/cases/federal/appellate-courts/F3/239/1004/636120/>

fact was that the Napster service went bankrupt, but the number of such and similar services in cyberspace increased to unimaginable proportions.

The case law in cases against BitTorrent platforms has reached its peak in the last fifteen years. Disputes against their owners receive great media attention and the public has every right to expect an epilogue that would somehow lead to a reduction in tensions in the future. In this regard, we look back at the court case related to one of the more influential BitTorrent platforms – IsoHunt which enabled the unauthorized direct exchange of copyrighted content. In October 2013, the owner of the platform, Gary Fung, concluded a court settlement in the amount of \$ 110 million with the Motion Picture Artists Association of America. The platform was shut down, and the defendant was ordered to pay damages and cease unauthorized sharing of copyrighted content (Mullin, 2023). The second case involved the TorrentSpy platform, a popular BitTorrent indexing site that allowed users to search for and download content. In 2008, the platform was also sued by the Motion Picture Association of America. The court ruled in favor of the MPAA and ordered the closure of the TorrentSpy platform due to massive copyright infringement (Statz, 2023).

There are several common features that we can identify when looking at the case law in cases against BitTorrent platforms. As we have already mentioned, most of the aforementioned disputes are accompanied by great publicity and media attention. Much is expected of the outcome of the proceedings, but there are no major breakthroughs in the area of solving the key problems. In the practice of the US courts, there is significant activity by author associations, which often appear in the role of prosecutors to represent members who have been harmed by acts of unauthorized sharing of content via BitTorrent platforms. This is a positive trend because it is noticeable that the level of vitality of guild artistic associations that recognize their role in newly emerging social relations is increasing. In a large number of cases, the proceedings end with a settlement, with the platform owner paying multi-million dollar amounts to the plaintiff, so the question of how much is the real income from illegal actions is quite justified.

Finally, the phenomenon is the fact that most BitTorrent platforms, after a formal shutdown lasting a certain period, continue their work with a changed graphic design, but with the same operating system. We should not lose sight of the fact that the subject matter is relatively new and that it takes time to harmonize certain positions of legal theory and practice and to see the entire context of the problem. We can also state that the greatest inefficiency

of copyright and related rights protection on the Internet is reflected in the functioning of certain BitTorrent platforms.

3. Bit torrents platforms for authorized content exchange

Although over time, the image of BitTorrent platforms as a paradigm for copyright infringement has emerged, it is important to note that there are many Internet platforms based on this technology that operate within legal frameworks. This essentially means that the content that is exchanged is copyrighted works or objects of related rights protection that are suitable for this type of interaction. Namely, as we have already stated, BitTorrent or P2P technology has shown superiority in terms of speed and availability of a large number of contents in one place. In other words, this type of technology is not illegal or unethical in itself, and if it is used as a means of distributing content that meets legal requirements, it can be of exceptional benefit to all participants on the network. Therefore, the main difference is reflected in the legality of the content that is the subject of exchange via the same technology.

A large number of BitTorrent platforms direct users to content that is under the Creative Commons license regime, to which the author/rights holder grants general permission to use his work. Files marked with these licenses are safe for copying and distribution, and these actions do not constitute an infringement of copyright. On the other hand, there are also a number of copyrighted works that have become part of the public domain over time, which as such can be freely exchanged.

In the above context, it is illustrative to mention several such platforms that operate on the Internet in order to gain a broader picture of the functioning of BitTorrent platforms. We will refer to the Internet Archive, which constitutes a digital library of Internet sites and other cultural content in digital form. This platform provides free access to researchers, historians, scientists, people with disabilities and the general public to content from a wide range of creative fields with the mission of enabling universal access to knowledge (Internet Archive, 2025). The Vuze platform contains a legal selection of P2P sources that are used to download media using a free BitTorrent client. This platform requires all its users to have permission from the copyright holder to upload or post content to the platform. It also contains a special music section that includes a large selection of musical genres (Vuze Copyright Policies, 2025). The Legit torrents platform has more than five thousand legal links that cover a wide variety of content: music, film, literary works, computer programs and other content. This file sharing platform also has a selection of legal software

that covers not only Microsoft Windows, but also Mac and Linux operating systems (Legit torrents, 2025). Finally, Public Domain Torrents is a platform whose content is in the public domain (in the public domain). The site is primarily dedicated to filmmaking and offers a significant selection of film industry classics and films of lower production categories (Public domain torrents, 2025).

4. Some proposals for solving the problem of unauthorized P2P exchange of copyright works

In previous sections, we have seen that direct data exchange, so-called peer to peer file sharing, offers significant technological capabilities, and that over time it has become recognizable by platforms that abuse the potential of this computer architecture. Copyright infringement are of a significant scale, regardless of the fact that the technology itself is not illegal and can undoubtedly be effectively used in many areas. Rejecting or even ignoring the possibility of using this type of technology because it is subject to potential copyright infringement would be wrong and would produce far-reaching negative consequences. The fight against a kind of symbol of unauthorized use of protected content on the Internet, so-called pirated BitTorrent platforms, using conventional legal means, does not give the expected results. Based on the above theses, the research is aimed at finding a solution that would find an appropriate model by which the aforementioned technology could be applied to the legal exchange of copyrighted works, with the consent of the author and adequate material compensation. It is not impossible to imagine a situation in the near future in which some of the proposals would be implemented, which would partially put an end to the most pronounced form of copyright dysfunction on the Internet.

Proposals in which P2P file sharing would be established on a different basis – by providing compensation to authors for the legal use of their copyrighted works, are advocated by representatives of the academic community and experts in the field around the world. In the US, one proposal that has gained widespread support is the concept of Harvard professor William Fisher outlined in his 2004 publication *Promises We Must Keep: Technology, Law, and the Future of Entertainment*. Fisher essentially proposes a separate administrative royalty collection system in which the author/copyright holder of a musical or film work can register the subject matter of protection with a government agency – the Copyright Office (Copyright Office, 2025) in order to obtain a unique registration number that would be used to track the

distribution and use of the digital file. This approach involves governments levying a fee in the form of a tax on electronic devices and services used to access digital content. Once the tax is collected, they would direct it to the authors/copyright holders in proportion to the extent of use of their works, which would be assessed using the digital identification of the file. With this model, non-commercial file sharing would be systematically covered and incorporated into the US tax system. In the above proposal, the author would be able to claim compensation for the use (exchange) of the subject matter of protection only for works registered with the competent authority (Dusollier & Colin, 2011).

Another proposal that attracted attention during the research is the model of the law professor at the University of California, Los Angeles, Neil Netanel who similarly proposed to approve the non-commercial sharing of copyrighted works by providing compensation for authors that would be collected in the form of a mandatory contribution. The use of works in P2P networks would be allowed within the framework of mandatory (compulsory) licensing. Authors and copyright holders would then manage the right to compensation through a tax, the burden of which would be borne by suppliers of products or providers of services whose value is increased by file sharing. For example, entities that provide Internet access services, P2P software sales services, and electronic devices used to store, copy, and reproduce files downloaded from a P2P network would be additionally taxed. Determining the amount of the tax would be the subject of negotiations with representative associations of authors, and in the event that negotiations fail, the final say would be given to a state body – the Copyright Office, which would determine the amount of the fee. The third proposal comes from French scientist, humanist, and researcher Egren, in his work *Internet and Creation* proposes a different system (Aigran, 2008). In Egren's proposal, users would be required to pay a monthly fee for licensing the exchange of copyrighted works via a P2P platform. The collected material fees would subsequently be directed to the authors/rights holders whose works were the subject of the exchange, while a portion would be allocated to a special fund for financing creativity. Finally, the Union of Artists in France and the Songwriters Association of Canada are promoting the establishment of a new property right – the right to remuneration for P2P sharing of musical work (Dusollier & Colin, 2011).

5. Conclusion

The dysfunctionality of copyright on the Internet is perhaps most evident in the ineffective system of copyright and related rights protection online. BitTorrent platforms, which are characterized by high speed in content exchange and specific computer architecture, are most often mentioned as a paradigm for copyright infringement. Although we have witnessed many court proceedings at the global level as part of the society's efforts to prevent such actions, there have been no significant breakthroughs so far. The reason should definitely be sought in the fact that it takes time to understand such systems and establish case law that would have a positive effect on suppressing this type of unauthorized use of content.

We should not lose sight of the fact that there are platforms based on BitTorrent technology that operate legally and enable users to exchange copyrighted works. Therefore, this type of technology is more than desirable, if its activities do not violate copyright and related rights, or if its activity is directed towards free access to licensed content. On the other hand, if we assume that it is in the individual's interest to use legal content and to avoid any action that uses copyrighted work without authorization, we should pay attention to large companies that are engaged in streaming licensed content. It is to be expected that over time, when the services of legal entities that perform the activity of "streaming", that is, provide access to licensed content in the field of film and series production, are lower, more economically acceptable to the majority, it will lead to the fact that the use of BitTorrent platform services that are used for unauthorized content exchange will not be as widespread as it is now. In the current situation we can conclude that online piracy remains a major issue in copyright enforcement. Anyway, CMOs play a crucial role in protecting creative works. The digital age requires innovative solutions, such as improved licensing models to ensure fair compensation for creators while making content accessible to consumers legally.

One of the potential solutions to overcome the problem of unauthorized direct exchange of copyright works via the Internet is the use of collective management of copyright and related rights. Considering that collective management of copyright is acceptable in situations where individual management is difficult or even impossible, this type of management could be appropriate for a new type of property law authorization, if it is provided for by a legal act in the future. Also, CMOs represent specialized entities that possess the technical and professional capacity for the efficient management

of rights, which would significantly reduce the transaction costs for the author/rights holder.

In some future situation, if the law provides for a new property right, as proposed by a French and Canadian association – the right to non-commercial P2P sharing of musical works, the organization could, based on the obtained authorization of the right holder and the adopted tariff, collect a fee from users on the above basis. It seems reasonable to suggest that the greatest burden should be borne by economic entities that would potentially generate the most income from the aforementioned activity – internet providers, legal or natural persons engaged in the sale of P2P software and electronic devices used for storing, copying and reproducing files downloaded via a P2P network, etc. A platform whose activity is P2P content exchange could be conditioned by fulfilling the legally prescribed conditions for obtaining a work permit from the competent state authority. The above conditions would be designed in such a way as to ensure appropriate capacities that would be a kind of guarantee that the above service would be provided at the required level that meets technical and other necessary standards. Platforms, following the example of CMOs, could be specialized (and conditioned by a legal act) for sharing certain types of authors work. Platforms engaged in non-commercial P2P sharing of music content would periodically report to the organization with accurate and verifiable data on the scope of exploitation of the work, as proposed by Professor Fischer, and on this basis the CMOs would make payments to authors/rights holders. The described solution could have a positive effect on, at least partially, suppressing mass piracy of music content on the Internet via bit torrent platforms. On the other hand, authors/rights holders would be provided with a certain form of remuneration for works that are exploited in cyberspace, to which they have not been entitled until now.

Conflicts of interest

The author declares no conflicts of interest.

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IZAZOVI AUTORSKOG PRAVA NA INTERNETU – KOLEKTIVNO OSTVARIVANJE AUTORSKOG PRAVA I BITTORRENT PLATFORME

APSTRAKT: Razvoj informaciono-komunikacionih tehnologija i pojava interneta suštinski su poremetili tradicionalni koncept autorskog i srodnih prava, uzrokujući krizu u njegovom funkcionisanju. Oblici neefikasnosti autorskog prava na internetu se ogledaju u činjenici da postoji faktička nemogućnost da autor efikasno ostvari i zaštiti svoje subjektivno autorsko ili srodno pravo. Potraga za potencijalnim rešenjima je zahtevna i kompleksna, a kreće se oko sledećih nastojanja: da se održi tradicionalni koncept autorskog i srodnih prava, da se sprovede reforma tradicionalnog sistema, da se isti promeni iz temelja, do pristupa da autorsko pravo nema praktičan domet u digitalnom okruženju. BitTorrent platforme su nedavno postale sinonim za masovne povrede autorskog prava u internet okruženju. Iako smo bili svedoci mnogih sudskih postupaka sa ciljem sprečavanja delovanja BitTorrent platformi na kojima se vrši neovlašćeno direktno deljenje predmeta autorskopravne zaštite, očekivani rezultati još nisu postignuti. U potrazi za potencijalnim rešenjem, istraživanje nas je usmerilo na organizacije za kolektivno ostvarivanje autorskog prava, specijalizovane pravne subjekte koji imaju kapacitet da prevaziđu određene izazove u kontekstu nefunkcionalnosti autorskog prava na internetu u smislu neovlašćene razmene sadržaja putem BitTorrent platformi. Osnovno nastojanje u naučnom istraživanju jeste da se ponude konkretni predlozi, koji bi u budućem periodu, ukoliko budu implementirani, mogli da budu potencijalno rešenje jednog dela problema najčešćeg i u velikoj meri prisutnog, oblika neefikasnosti autorskog prava na internetu.

Ključne reči: kolektivno ostvarivanje, autorsko pravo, BitTorrent platforme, internet, sudska praksa.

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