



*
New Copyright
Law Amendment

*
Indirect Liability
for Extending
Access to
Infringements

*
Content Blocking
Injunctions

*
Infringer
Identification

*
Exclusion of
Statutory
Damages

Please visit us:

www.fbclawyers.com

Follow us:



Dear Clients and Colleagues,

On January 1, 2019, the Knesset approved a significant new amendment to the Israeli Copyright Law (“**Amendment**”) that focuses on the online use of protected works. We will review the main provisions of the Amendment below.

Indirect Liability for Communication to the Public:

The Amendment provides a new indirect liability for copyright infringement by way of using works that were made available to the public. The Amendment sets forth that a person or entity that, as part of a business, facilitates or extends the access to protected works that were made available to the public over the internet by copyright infringement, for the purpose of making revenue both from the extension of access and from the existence of an infringement, will be liable to copyright infringement if it knew or should have known of the infringement. It further determines that operating an ongoing infringement monitoring technology will not create a presumption of knowledge.

This arrangement is meant to tackle the phenomenon of online copyright infringements by websites that allow the downloading and direct viewing of infringing contents by linking to the sources of such infringing contents. In these cases, the direct infringers are the websites storing the infringing contents, but under previous law the mere facilitation of access to such contents did not constitute an infringement.

During the legislative process, concerns were raised that this new indirect liability will also apply to legitimate entities such as ISPs, online platforms and other intermediaries. It should be noted that the explanatory text to the Amendment explicitly states, as was reiterated by the Ministry of Justice, that this arrangement is not meant to apply

to online platforms and intermediaries, to which the common law contributory liability doctrine will continue to apply.

Content Blocking Injunctions:

The Amendment authorizes courts to order ISPs to take reasonable measure to restrict access to infringing content, if the court is convinced of a copyright infringement and after weighing the adverse effects such restriction may have on the public and on the access to non-infringing content. Thus, courts will have to consider the necessity of the access restriction to prevent infringement, the efficiency of other available remedies, and the magnitude of the effect on non-infringing contents and on the privacy of internet users. The Amendment adds that if the infringing content is stored on a server in Israel or on a non-Israeli server controlled by an Israeli person or entity, the court will order the hosting service provider to remove the content instead of restricting access thereto.

Moreover, the Amendment requires ISPs to publish notices on their websites regarding each content restriction request, so that the public will be informed of the request and will be able to object to it. Any person will have standing to object to a content restriction request, and the court will have to weigh all consideration even in the absent of any objections.

We note that on the technological level, and based on experience from other jurisdictions, such content blocking injunctions prove to be inefficient due to the relatively easy ways to transfer infringing content between servers and domains, especially outside of Israel.

Anonymous User Identification:

The Amendment allows copyright owners to request the court to order any person or entity to disclose information it may have on anonymous copyright infringers.

The court will only so order after it is convinced of the existence of copyright infringement and the availability of sufficient information to identify the infringer, and after granting the anonymous infringer an opportunity to object to the identification. Thus, the Amendment sets forth that the identifying information will only be disclosed to the court and not to the copyright owner. Only after the court is convinced that the identification request is not frivolous and that it has merits, and only after ensuring that sufficient information exists to identify the alleged infringer, it may bring the request to the attention of the alleged infringer and allow it to respond. Finally, after a sub-procedure regarding the identification, the court may disclose the identifying information to the copyright owner if there is a material concern that the copyright was infringed and if there is likelihood that the copyright claim will succeed.

The respondent in such a request will have to disclose any information it may have that could identify the alleged infringer as well as if it knows of any other party that may have such information. This allows courts to order any person or entity that may have identifying information to disclose such information to the court and join the procedure, and in this sense, it

creates a very broad mechanism that may affect many entities involved in the online sphere.

Exclusion of Statutory Damages:

The Amendment determines that educational institutions, libraries, archives and museums (and other such entities that the Minister of Justice may add) will be exempt from the duty to pay statutory damages for copyright infringements performed as part of their regular activities. We note that many such statutory damages claims were brought against such entities, including various claims defended by our practice.

In addition, the use of artistic works (including photos) not for a commercial purpose or by non-profit organizations with an annual turnaround of under NIS 1,200,000 will be exempted from statutory damages for copyright infringements if the use was ceased immediately following a notification by the copyright owner and provided that the work was not copied from an online catalogue allowing the acquisition of licenses.

This provision is intended to prevent the phenomenon of copyright enforcement by means of threats of statutory damages of up to NIS 100,000 per infringement, when the infringement is of non-commercial nature.

*

The Amendment will enter into force upon its official publication (expected within days). We are at your service for any matter involving the Amendment and preparation for its entry into force.

This update was written by Adv. Dr. Omri Rachum-Twaig

We would be happy to answer any questions that you might have.

Sincerely,

**Intellectual Property Department
Fischer Behar Chen Well Orion & Co**

For further information please contact:

Adv Amit Dat adat@fbclawyers.com +972.3.6941320

Adv Yael Riemer yriemer@fbclawyers.com +972.3.6944290

.....
The information provided herein is solely for informational purposes and shall not be construed as a legal opinion or legal advice of any sort.
All rights reserved to Fischer Behar Chen Well Orion & Co.
In order to subscribe to or be removed from the distribution list please e-mail: news@fbclawyers.com