

Notice-and-Takedown Procedure under Greek Intellectual Property Law 4481/2017

by Charis Tsigou*

Abstract: After two years of negotiations and several drafts, the provisions of the Directive 2014/26/EU on collective management of copyright and related rights were introduced into Greek legislation by the Law 4481/2017, which establishes a strict legal framework for the collective management organisations and places great emphasis on state control mechanisms. Additionally, Law 4481/2017 introduces a notice-and-takedown procedure as a sanction to the intermediaries (access providers or hosting service providers) and website owners for online violation of intellectual property and related

rights. Although it is an attempt to swiftly resolve cases of violation through the internet, the unclear relation of this sanction system to the system laid down by the Law 2121/1993 on copyright and related rights creates several inconsistencies and legal issues. At the same time, the Committee on Internet Violations of Intellectual Property (CIVIP) established to implement the notice-and-takedown procedure lacks institutional integration in the public administration structure, a situation that undermines the effectiveness of its decisions and may annul the expected benefits of the new procedure in practice.

Keywords: Directive 2014/26/EU; eCommerce Directive; copyright management; online copyright infringements; intermediaries; website owners; notice-and-takedown procedure; Greek Law 4481/2017

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A. Introduction

1 The recent Greek Law 4481/2017 transposed the provisions of the Directive 2014/26/EU on collective management of copyright and related rights in a rigorous way, creating a rather strict legal framework providing various sanctions.¹ Additionally, article 52§1 of this Law introduces, for the first time in the Greek jurisdiction, a sanction-imposing mechanism for online copyright infringements, implementing the provisions of the Directive 2000/31/EC on electronic commerce (art. 12-14) and the corresponding Presidential Decree PD 131/2003 (art. 11-13).

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1 See D. Kallinikou / P. Koriatopoulou, *Chronique de Grèce*, RIDA 254 oct. 2017, pp. 119-120.

2 The sanctions are imposed to specific categories of internet intermediaries² (internet access providers³

2 For the different types of internet intermediaries and the evolution of their concept see P. Baistrocchi, *Liability of Intermediary Service Providers in the EU Directive on Electronic Commerce*, Santa Clara High Technology Law Journal, vol. 19, 1/2003 available at <https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1315&context=chtlj>, P. A. De Miguel Asensio, *Internet Intermediaries and the Law Applicable to Intellectual Property Infringements* 3 (2012) JIPITEC 3, 350 available at <https://www.jipitec.eu/issues/jipitec-3-3-2012/3522/asensio.pdf>, B. van der Sloot, *Welcome to the Jungle: the Liability of Internet Intermediaries for Privacy Violations in Europe*, (2015) JIPITEC 211, available at <https://www.jipitec.eu/issues/jipitec-6-3-2015/4318>.

3 For the definition of the internet access providers, on the one hand Greek legal doctrine follows the framework set by the articles 12-14 of the Directive 2000/31/EC on electronic commerce, and, on the other hand, the ECJ jurisprudence. According to the Order of 19 February 2009 in the case C-557/07 LSG-Gesellschaft zur Wahrnehmung von Leistungsschutzrechten GmbH v Tele2 Telecommunication GmbH (TELE2), “access providers which merely provide

or hosting service providers⁴) and website owners (art. 52§1.5(b) of L. 4481/2017). For the imposition of such sanctions, a three-member administrative Committee on Internet Violations of Intellectual Property (CIVIP), formed by Decree of the Minister of Culture, is foreseen.

B. Brief overview of notice-and-takedown mechanisms in the USA and EU

- 3 The existing mechanisms for combating online copyright infringements are usually hinged on two different axes, either as self-regulation systems ensuring an out-of-court resolution of the dispute or as systems based on judicial or administrative sanctions.
- 4 Following the self-regulation approach, in 1998 the USA released internet service providers of any liability due to the transmission of illicit content under the condition that they warned users in advance that their connection would be suspended in the case of unauthorised exchange of protected works.⁵ After a standard-format written complaint, the provider commences the notice-and-takedown procedure, removing the illicit content or prohibiting access to it, without any prior judicial or administrative act.⁶ In Europe, analogous

users with Internet access, without offering other services such as email, FTP or filesharing services or exercising any control, whether *de iure* or *de facto*, over the services which users make use of, must be regarded as ‘intermediaries’ within the meaning of Article 8(3) of Directive 2001/29” (para. 46).

- 4 For the integration of the concept of “hosting service providers” to the broad notion of internet intermediaries see the definition proposed by OECD according to which “internet intermediaries bring together or facilitate transactions between third parties on the Internet. They give access to, host, transmit and index content, products and services originated by third parties on the Internet or provide Internet-based services to third parties”. See OECD, *Report on the Economic and Social Role of Internet Intermediaries (2010)*, available at <<https://www.oecd.org/internet/ieconomy/44949023.pdf>>. See also Prof. Dr G. Sartor, *EU In-Depth Analysis. Providers Liability: From the eCommerce Directive to the Future (2017)*, available at <[http://www.europarl.europa.eu/RegData/etudes/IDAN/2017/614179/IPOL_IDA\(2017\)614179_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2017/614179/IPOL_IDA(2017)614179_EN.pdf)>.
- 5 See Digital Millennium Copyright Act (DMCA), Sec. 512 (C) (3)-Limitations on liability relating to material online.
- 6 For the functioning and the impact of the US notice-and-takedown procedure see M. Peguera, *The DMCA Safe Harbors and Their European Counterparts: A Comparative Analysis of Some Common Problems*, Columbia Journal of Law Arts, vol. 32, 4/2009, L. Trapman, *American and European safe harbours*, Kluwer Copyright Blog December 14, 2016 available at <<http://copyrightblog.kluweriplaw.com/2016/12/14/american-european-safe-harbours/?print=pdf>>, E. M.

procedures were adopted in Ireland⁷ and Hungary, while in Finland a notice-and-takedown procedure was established for intellectual property violations. Similarly, the British Digital Economy Act 2010/2017 contains a procedure of notice of the users by the provider, following a complaint by the rightholder.⁸

- 5 Contrary to the above, other jurisdictions consider it necessary to interject an administrative act or a court judgment affirming that an online copyright infringement has occurred, in order to ensure that the rule of law principle is observed. In its Law on digital economy⁹ and as early as 2004, France introduced the three-strike mechanism, which is activated following the complaint of the rightholder by the competent independent authority (HADOPI) itself established in 2009.¹⁰ The authority warns the user about the complaint and simultaneously notifies the provider; if there is a second violation, it sends a registered letter and, in case of non-compliance by the user, it obliges the provider (by means of a resolution of a special judicial board) to terminate the internet connection. The provision about a judicial resolution was included in the law following the reaction of the French Constitutional Court to the police powers of the independent authority HADOPI. It was found that the power to terminate a particular internet connection limits the right to information to an excessive degree and, as such, may not be yielded by an administrative authority, but must be subject to the safeguards of the judicial process.¹¹

Asp, *Section 512 of the Digital Millennium Copyright Act: User Experience and User Frustration*, 103 IOWA L. REV. 751 (2018).

- 7 Art. 40(4) of the Copyright and Related Rights Act 2000 provides for a notification and take down procedure to the ISP, which informs the user requesting retraction of the content.
- 8 A. Giannopoulou, *Copyright enforcement measures: the role of the ISPs and the respect of the principle of proportionality*, European Journal of Law and Technology (EJLT), Vol. 3, 1/2012, available at <<http://ejlt.org/article/view/122/204>>.
- 9 Loi n° 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique available at <www.wipo.int/wipolex/en/details.jsp?id=12761>.
- 10 HADOPI was established by the French Law 2009-669 on Dissemination and Protection of Intellectual Property on the Internet (Loi n° 2009-669 du 12 juin 2009 favorisant la diffusion et la protection de la création sur internet), which was later amended by the Law HADOPI II on the Criminal Protection of Intellectual Property on the Internet (Loi n°2009-1311 du 28 octobre 2009 relative à la protection pénale de la propriété littéraire et artistique sur internet). Both texts available at <www.wipo.int/wipolex/fr/details.jsp?id=5615>.
- 11 Décision n° 2009-580 DC du 10 juin 2009, considérant 16: “les pouvoirs de sanction institués par les dispositions critiquées habilite la commission de protection des droits, qui n'est pas une juridiction, à restreindre ou à empêcher l'accès à internet de titulaires d'abonnement ainsi que des personnes qu'ils en font bénéficier; que la compétence reconnue à cette autorité administrative n'est pas limitée à une catégorie particulière

- 6 Similarly, on 12 December 2013 the independent authority for communication industries (AGCOM) in Italy issued a Regulation containing a detailed notice-and-takedown procedure for the sanctioning of online copyright infringements. Such procedure targets only the internet service providers (ISPs), while excluding peer-to-peer networks and end users. The extended powers of AGCOM on the basis of this Regulation were strongly criticized; the Regulation's validity was challenged before the Italian Courts, but it was finally ratified by a TAR Lazio decision on 30 March 2017.¹²
- 7 In Spain, the competence for proceeding to a notice-and-takedown sanctioning mechanism for online copyright infringements was given to the Spanish Copyright Commission (SCC), which is formed as an administrative commission subject to the oversight of the Ministry of Culture.¹³ The notice-and-takedown procedure was established by the Royal Decree 1889/2011, implementing the provisions of the Spanish Sustainable Economy Act 2/2011 of 4 March 2011 (the "Sinde Act", as amended by Law 2/2010 of 29 June 2012). According to the Royal Decree, the role of the Spanish Copyright Commission (SCC) was enhanced by the attribution of a notice-and-takedown competence.¹⁴ In the

de personnes mais s'étend à la totalité de la population ; que ses pouvoirs peuvent conduire à restreindre l'exercice, par toute personne, de son droit de s'exprimer et de communiquer librement, notamment depuis son domicile ; que, dans ces conditions, eu égard à la nature de la liberté garantie par l'article 11 de la Déclaration de 1789, le législateur ne pouvait, quelles que soient les garanties encadrant le prononcé des sanctions, confier de tels pouvoirs à une autorité administrative dans le but de protéger les droits des titulaires du droit d'auteur et de droits voisins" available at <http://www.conseil-constitutionnel.fr/decision/2009/2009-580-dc/decision-n-2009-580-dc-du-10-juin-2009.42666.html>. See also E. Derieux, *France: la loi «création et internet» dite Hadopi 2*, La Revue Européenne des Médias et du Numérique, 12/2009, available at <http://la-rem.eu/2009/09/22/france-la-loi-creation-et-internet-dite-hadopi-2>; E. Derieux, *La loi française création et Internet*, La Revue Européenne des Médias et du Numérique, 10-11/2009, available at <http://la-rem.eu/2009/03/20/la-loi-franc%CC%A7aise-creation-et-internet>. For the criticism towards HADOPI see J-A Fines-Schlumberger, *La Hadopi: totem et tabou*, La Revue Européenne des Médias et du Numérique, 36/2015, available at <http://la-rem.eu/2015/11/12/la-hadopi-totem-et-tabou>; N. Lucchi, *Regulation and Control of Communication: The French Online Copyright Infringement Law (HADOPI)*, Cardozo Journal of International and Comparative Law (JICL), Vol. 19 2011, at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1816287.

- 12 G. Campus, *Italian public enforcement on online copyright infringements: AGCOM Regulation held valid by the Regional Administrative Court of Lazio*, Kluwer Copyright Blog, June 16 2017, available at <http://copyrightblog.kluweriplaw.com/2017/06/16>.
- 13 G. Gallego, *New procedure against Internet copyright infringement in Spain*, available at <http://ehoganlovells.com/cv/d225836c375411d30c0b90695b966cfda822f0d8>.
- 14 On notice-and-takedown procedure in Spain and the SCC competences see G. Gallego, *New procedure*

case that SCC issues a resolution confirming online copyright infringement, the information society service provider (ISSP) in question has to remove the illicit content, otherwise ISPs may be required by the SCC to suspend their service. It is worthy to note that the SCC's request for suspension of the service or blocking of access has to be previously authorized by a judge.

- 8 In Germany, where the three-strike French system is viewed with reservation, art. 101§9 of the Law on Intellectual Property (1965/2017)¹⁵ requires a court order in the case where the information on the violation of an intellectual property right may be accessed only through the transfer data of a particular IP address.

C. The notice-and-takedown procedure under Greek Law 4481/2017

- 9 Greek Law eschews the self-regulation approach and seems inspired by the abovementioned procedures already adopted in other EU member states, which require the intervention of a judicial or administrative body.
- 10 The recent Greek L. 4481/2017 chose to establish a voluntary out-of-court procedure for the resolution of disputes concerning online copyright infringements, initiated by a complaint of the right holder before a special administrative Committee on Internet Violations of Intellectual Property (CIVIP). The Committee has a three-year term of office and consists of the Chairman of the Hellenic Copyright Organisation (OPI), a representative of the Hellenic Telecommunications and Post Commission and a representative of the Hellenic Data Protection Authority (art. 52§1.2).
- 11 This arrangement aims to reduce court workload and to facilitate rightholders by inaugurating a notice-and-takedown procedure. According to

against Internet copyright infringement in Spain, available at <http://ehoganlovells.com/cv/d225836c375411d30c0b90695b966cfda822f0d8>; also Hogan Lovells Global Media and Communications Quarterly 2015, *Is 2015 the year of the website-blocking injunction?*, <http://www.hoganlovells.com/files/upload/Is%202015%20the%20year%20of%20the%20website-blocking%20injunction.%20pdf.pdf>. For ISPs liability in Spain under eCommerce Directive see M. Peguera, *Internet Service Providers' Liability in Spain: Recent Case Law and Future Perspectives*, 1 (2010) JIPITEC 151, available at <https://www.jipitec.eu/issues/jipitec-1-3-2010/2823/peguera-isp-liability-spain.pdf>.

- 15 Act on Copyright and Related Rights 1965/2017 (Urheberrechtsgesetz) available at https://www.gesetze-im-internet.de/englisch_urhg/englisch_urhg.html.

article 52§§1.1 and 1.5(b) of L. 4481/2017 this procedure includes only specific categories of internet intermediaries (internet access providers or hosting service providers) and website owners while excluding the end users (i.e. the persons who perform acts of reproduction, uploading, downloading, peer-to-peer, streaming or cloud computing). Moreover, it is provided that the initiation of this procedure or even the adoption of a decision by the Committee on Internet Violations of Intellectual Property (CIVIP); it does not preclude the rightholder from filing a lawsuit (art. 52§1.8). In addition to the rightholder, the collective management organisations and the collective protection organisations¹⁶ are expressly allowed to bring a request before the Committee (art. 52§1.1). The lack of any reference to the independent management entities is not explained in the explanatory memorandum of the Law; consequently, this gap must be filled by means of a *mutatis mutandis* interpretation, so that all groups of secondary rightholders may enjoy equal protection.

I. Legal nature of the Committee on Internet Violations of Intellectual Property

- 12 The explanatory memorandum of the Law clearly demonstrates the administrative nature of the Committee on Internet Violations of Intellectual Property (CIVIP). Nevertheless, article 52§1 of the L. 4481/2017 and its implementing Ministerial Decree 196/2018¹⁷ form a fragile regime, which does not guarantee the institutional integrity of the Committee, as it does not achieve its organic and functional integration within the body of public administration, due to formal and substantive reasons.
- 13 According to Greek Administrative Law, the inclusion of a specific body in the public sector requires the fulfilment of either the formal or the functional criterion. The formal criterion¹⁸ is met if the body is hierarchically subject to the control of another, higher administrative organ. The functional

criterion¹⁹ is satisfied if the body is exercising public powers in pursuit of a direct public interest.

- 14 First of all, the formal requirement of Greek administrative law for the inclusion of the Committee in the public administration corpus is not met. The Committee may be formed as a body of administrative nature, but it is not organically integrated to the public administration structure since it is subject neither to a hierarchical higher authority, nor to the oversight of the Ministry of Culture. On the contrary, the apparatus of the Committee is blatantly absorbed by a private legal entity: the Committee meets at the offices of the Hellenic Copyright Organisation (OPI), it uses the website of the OPI to publish its resolutions, and the fee for the review of requests by the Committee is payable to the OPI (art. 11§2 of MD 196/2018).
- 15 It should be mentioned that, according to art. 69§4 of the Greek L. 2121/1993 on copyright and related rights, the Hellenic Copyright Organisation (OPI), is a state-controlled²⁰ legal entity which does not belong to the public sector but “works in the public interest under the rules of the private economy and is governed by private law”. Furthermore, both legal theory and jurisprudence accept that the OPI’s main duty consists “in assisting the Minister of Culture, in order for the latter to exercise administrative control”²¹ on collective management societies and does not extend to administrative decision-making. Hence, the functioning of the CIVIP under the structure of a private legal entity, such as the OPI, clearly prevents its integration into the public administration hierarchy.
- 16 Such a setup, far from incorporating CIVIP in the administrative mechanism structure, places it instead under the purview of a private legal entity whose stated mission is to assist the Minister of Culture in his exercising administrative control over collective management societies.
- 17 Furthermore, the substantive test of the *de facto* exercise of public dominion similarly fails, as the Committee does not regulate administrative law issues, nor does it pursue a public objective in service of public interest. On the contrary, it addresses

16 L. 4481/2017 provides more categories of collective management organisations than Directive 2014/26/EE, as for instance the collective protection organisations. On this subject see P. Koriatopoulou / Ch. Tsigou, *The Law 4481/2017 on collective management organisations and the relevant amendments in Greek copyright law (in Greek)*, Synigoros, 122/2017, p. 28.

17 The Committee on Internet Violations of Intellectual Property (CIVIP) was established by the Ministerial Decision 196/2018.

18 See P. Dagtoglou, *Administrative Law (in Greek)*, 1992 (3rd ed.), p. 33.

19 See P. Dagtoglou, *Administrative Law (in Greek)*, 1992 (3rd ed.), pp. 34 and 230-231.

20 See T. Synodinou, *The adventures and misadventures of the implementation of the Directive on collective management of copyright in Greece and Cyprus (Part I)*, March 27 2018, available at <http://copyrightblog.kluweriplaw.com/2018/03/27/adventures-misadventures-implementation-directive-collective-management-copyright-greece-cyprus-part/>.

21 See the decisions Council of State 949/2000 (in Greek), NOMOS Database, Council of State 1058/2010 (in Greek), NOMOS Database. Also D. Kallinikou, *Copyright and Related Rights (in Greek)*, 2005 (2nd ed.), pp. 274-275.

disputes of a purely private nature between rightholders and intermediaries (internet access providers, hosting service providers) or website owners.

- 18 The legal paradox of establishing an administrative committee without formal or substantive relation to the administrative structure of the state may undermine the legal validity and enforceability of CIVIP's decisions, by making them vulnerable to annulment by the administrative courts. For that reason, it would have been preferable either to have CIVIP integrated into the public administration corpus and the subsequent oversight by the Ministry of Culture, or to have established it as an independent regulatory authority with larger staffing and institutional safeguards similar to the other regulatory authorities. Independent regulatory authorities are integrated in the public administration structure whilst retaining their functional independence vis-à-vis the executive branch, since they are subject neither to hierarchical control nor to oversight by a superior state organ.²² They are only subject to the legislature, since their members are obliged to observe the law, and to the judiciary, since their decisions may be reviewed by the courts.²³ The parliamentary control exercised by the Institutions and Transparency Commission of the Parliament is not a form of administrative control, because it does not aim to control the legality of their activities, but to safeguard transparency and administrative unity within

the framework of the rule of law.²⁴ The ECJ in the case C-518/07 concerning state oversight on the authorities monitoring personal data processing, found that the principle of democracy, which imposes the subjugation of the public administration to the instructions of the government “does not preclude the existence of public authorities outside the classic hierarchical administration and more or less independent of the government”.²⁵ It affirmed, therefore, the functional independence²⁶ of such authorities, noting, however, that “the absence of any parliamentary influence over those authorities is inconceivable” and that they may be subject to reporting obligations towards the parliament.²⁷

- 19 In any case, it would be for the legislator to decide the appropriate mechanism for the inclusion of the Committee on Internet Violations of Intellectual Property (CIVIP) in the public administration corpus once it becomes clear that the current structure could undermine the validity of the Committee's decisions.

II. Formal requirements of the application and resolution procedure

- 20 According to express provisions of the L. 4481/2017, before filing an application, a previous unsuccessful attempt at an out-of-court settlement through a procedure offered by the provider (art. 52§1.4, al. c) and the payment of a review charge to the OPI²⁸ (art. 52§1.3, al. d) must have taken place. Additional implicit formal requirements are the use by the claimant of the standard application form (art. 52§1.4, al. b), as well as the statement of non-existence of a pending court case or final court judgment over the same issue (art. 52§1.5, al. a). If a pending court case or final court judgment exist, the case file is mandatorily closed by the Committee.
- 21 A serious issue is the requirement of payment of the review fee to the OPI. First, the OPI does not participate as such in the Committee (its Chairman

22 On the status and role of independent regulatory authorities in Europe see OECD, *Designing Independent and Accountable Regulatory Authorities for High Quality Regulation*, London, 10-11 January 2005, available at <<https://www.oecd.org/unitedkingdom/35028836.pdf>>; see also ERGA, *Report on the Independence of NRAs*, 15 December 2015, available at <<https://ec.europa.eu/digital-single-market/en/news/erga-report-independence-national-regulatory-authorities>>.

23 On the questions of legitimacy and accountability of independent regulatory authorities see G. Majone, *The Regulatory State and its Legitimacy Problems*, Archive of European Integration, Political Science Series, 56/1998, at <http://aei.pitt.edu/32416/1/1208943461_pw_56.pdf>; M. Thatcher, *Regulation after delegation: independent regulatory agencies in Europe*, Journal of European Public Policy, December 2002, at <<https://eclass.uoa.gr/modules/document/file.php/PSPA113/THATCHER%201.pdf>>; F. Gilardi, *Policy credibility and delegation to independent regulatory agencies: a comparative empirical analysis*, Journal of European Public Policy (JEPP), December 2002, available at <<https://www.fabriziogilardi.org/resources/papers/Gilardi-JEPP-2002.pdf>>; M. Maggetti, *Legitimacy and Accountability of Independent Regulatory Agencies: A Critical Review*, Living Reviews in Democracy, November 2010 at <https://www.ethz.ch/content/dam/ethz/special-interest/gess/cis-am/CIS_DAM_2015/WorkingPapers/Living_Reviews_Democracy/Maggetti.pdf>; M. Maggetti/K. Ingold/F. Varone, *Having Your Cake and Eating It, Too: Can Regulatory Agencies Be Both Independent and Accountable?*, Swiss Political Science Review, 19(1)/2013, available at <<https://onlinelibrary.wiley.com/doi/pdf/10.1111/spsr.12015>>.

24 Article 2§1 of Greek L. 3051/2002 on Independent Regulatory Authorities.

25 CJEU Case C-518/07 of 9 March 2010, *European Commission v Federal Republic of Germany*, ECLI:EU:C:2010:125, paras. 40-42.

26 For the tendency to strengthen the role of independent authorities in the public sphere see article 30 of the Proposal for the Amendment of Directive 2010/13/EU [COM(2016) 287final], available at <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0287&from=EN>>.

27 CJEU Case C-518/07 of 9 March 2010, paras. 43-45.

28 See article 52§1, al. 3 of L. 4481/2017 and article 11§2 of MD 196/2018.

does, but in a personal capacity), and second, it is possible that objections of incompatibility may be raised because the private legal entity to which the fee is payable is concurrently receiving income from the activities of the claimant, in the case where the latter is a collective management organisation, according to article 69§2 of L. 2121/1993 on copyright and related rights.

- 22 The review procedure is flexible and swift, responding to the requirements of the online environment. The Committee, within ten working days from the receipt of the application, may decide either to close the case on the grounds of formal or substantive reasons enumerated in the Law (art. 52§1.5) or to continue the proceedings. The CIVIP informs intermediary (internet access provider or hosting service provider) and, if possible, other involved parties (website owner) about the filing of the application (summary of the facts, the contested rights and the Committee's findings). The Committee also notifies the abovementioned parties of their option either to comply with the rightholder's request (usually to withdraw the protected work from the internet) or obtain a license for the use of the work in question within a short deadline of ten working days. At this stage, the case closes with a Committee's decision in the event of voluntary removal of the illicit content or is terminated if a license is authorized by the beneficiary.
- 23 If the review continues, the Committee, by a reasoned and justified resolution, issued within forty working days from the submission of the application, either closes the case if no violation is found or invites the respondent to comply within three working days from the service of the resolution (art. 52§1.6, al. b). The provision in article 8, al. a, of the MD 196/2018, which reduces the aforementioned compliance deadline to two working days is contrary to the Law and subsequently voidable.²⁹ Considering that all the aforementioned deadlines may be doubled by means of a Committee decision, the maximum total duration of the review procedure is around four months.
- 24 With its resolution³⁰ the Committee orders either the hosting providers to proceed to the permanent removal (takedown) of the illicit content (art. 9 of MD 196/2018) or the access providers to suspend access to said content for a specific time (art. 10§3 of MD 196/2018). When the violation is committed through a server located outside the territory of Greece, the suspension of access is obligatory by

the Law (art. 52§1.6, al. g). Furthermore, if a large-scale violation is found, particularly violation of a large number of works or violation of a commercial scale,³¹ the Committee has the discretionary power to immediately impose the suspension of access to specific content "in the most appropriate and technically efficient manner" (art. 10§1 of MD 196/2018).

- 25 The allowance of such a degree of discretion must be offset by the requirement of sufficient and adequate justification of such a decision in relation to the severity of the violation, in order to maintain the proportionality of the sanction, as dictated by article 36§3 of Directive 2014/26/EU.³² In any case, the Committee's resolution needs to reflect an ad hoc balance between the protection of intellectual property, the protection of the personal data of the users, and the right to information, in accordance with EU law³³ and jurisprudence.³⁴
- 26 After the service of the resolution to impose such administrative sanctions, a fine of 500 to 1,000 Euros per day of non-compliance may be imposed on the offender following a new decision of the Committee.³⁵ The Law indicatively provides several criteria for the determination of the fine, such as the severity of the violation and repeated offenses. Article 8, al. d of MD 196/2018 adds to these criteria the duration of the violation, but such addition lies beyond the legal mandate provided to the issuing Minister. The legal service of the Committee's resolution, which impose the sanctions of content removal or suspension of access, is provided by article 7 of MD 196/2018, whereas, according to art. 5§5, their publication lies at the discretion of the Committee.

31 See Explanatory Memorandum, 24; article 10§2 MD 196/2018.

32 "Member States shall ensure that the competent authorities designated for that purpose have the power to impose appropriate sanctions or to take appropriate measures where the provisions of national law adopted in implementation of this Directive have not been complied with. Those sanctions and measures shall be effective, proportionate and dissuasive".

33 According to article 2§4 of General Data Protection Regulation 679/2016 "This Regulation shall be without prejudice to the application of Directive 2000/31/EC, in particular of the liability rules of intermediary service providers in Articles 12 to 15 of that Directive".

34 See namely Case C160/15, GS Media BV v. Sanoma Media, ECLI:EU:C:2016:644, para. 31; Case C314/12, UPC Telekabel, ECLI:EU:C:2014:192, paras. 55-56; Case C70/10, Scarlet Extended SA, ECLI:EU:C:2011:771, para. 46.

35 See Ministerial Decision 240/2018.

29 P. Dagoglou, *Administrative Law (in Greek)*, 1992 (3rd ed.), p. 98 and p. 296.

30 As mentioned, in Spain SCC's request towards an ISP for the suspension of the service or blocking of access imposed as a sanction to an ISSP because of online copyright infringement has to be previously authorized by a judge.

III. Recourse against the sanctions by the Committee and relation to the sanctions system of Law 2121/1993

- 27 In view of the silence of the Law regarding recourses against the sanctions imposed by the CIVIP, it should be accepted that they can be appealed by means of a request for annulment before the Council of the State on the basis of article 95§1 of the Greek Constitution.³⁶ Alternatively, due to the private nature of the disputes falling under the purview of the Committee, it could be argued that the parties could resort to the civil courts, similarly to the procedure set out in article 18§11 of L. 2121/1993 on copyright and related rights governing disputes between collective management organisations and the Hellenic Copyright Organisation (OPI) concerning the method of payment of the portion of the reasonable fees which correspond to each organisation.³⁷ In any case, it is desirable that a legislative arrangement of this gap is made, allowing recourse against the Committee's decisions before the administrative courts, as provided in article 69§13 of an earlier draft of L. 4481/2017.
- 28 The procedure before the Committee and the issuance of a relevant decision does not preclude the parties from referring their dispute to the courts (art. 52§1.8, al. c). Additionally, based on article 64A of L. 2121/1993 on copyright and related rights, it is possible to seek injunctive relief against the intermediaries whose services are used by a third party to violate the author's rights and related rights.³⁸ In these cases, it is obvious that an opposite judgment by the court would prevail over the decision of the Committee, thereby annulling in practice the basic objective of this procedure, which is the alleviation of the courts' workload.

D. Conclusion

- 29 The attempt to resolve cases of online copyright infringements and of the liability of the providers quickly by out-of-court procedures is surely a positive step, following the initiatives of various other countries on establishing notice-and-takedown procedures. It is also consistent with the tendency

of EU law to recognize the pivotal role of internet access providers and hosting service providers, which dictates the limitation of the immunity they have enjoyed to this date.³⁹ However, the lack of institutional integration of the Committee on Internet Violations of Intellectual Property (CIVIP) in the public administration structure undermines the effectiveness of its decisions and may reverse the expected benefits of the new procedure in practice. A single contrary court judgment which would adopt the aforementioned reservations and observations about the legality and enforceability of the CIVIP resolutions in general, would bring this new procedure down, causing significant insecurity and further delay in the adoption of a truly effective and solid system.

36 See P. Koriatopoulou / Ch. Tsigou, *The Law 4481/2017 on collective management organisations and the relevant amendments in Greek copyright law (in Greek)*, Synigoros, 122/2017, p. 30.

37 D. Kallinikou, *Copyright and Related Rights (in Greek)*, 2005 (2nd ed.), pp. 220-221.

38 The scope of article 64A of L. 2121/1993, that only covers internet intermediaries, is narrower than that of article 52§1 of L. 4481/2017 that covers also website owners.

39 According to article 10 of the Proposal for a Directive on Copyright in the Digital Single Market [COM (2016) 593 final] the providers of internet access to copyright-protected content are required to conclude agreements with the rightholders in order to facilitate the licensing of rights process. Similarly, in the new article 28a of the Proposal for amending Directive 2010/13/EU [COM(2016) 287 final] Member States are encouraged to take co-regulation measures with the video-sharing platforms providers in order to ensure the protection of minors and avoid hate speech incitement.