KOVÁCS RÉTI SZEGHEŐ
ÜGYVÉDI IRODA

The Liability of Webshops for Illegal Content –-
Based on the Opinion of the Advocate General of the European Court of Justice

The role of online marketplaces has significantly increased in recent years, drawing growing attention to their legal responsibilities. A recent opinion from the Advocate General in case C-492/23, currently pending before the Court of Justice of the European Union (CJEU), provides important guidance on the extent to which an online marketplace operator is responsible for content posted by users, particularly concerning the protection of personal data. Below, we explore this issue in detail, presenting the background of the case, relevant legal provisions, and their practical implications.

At the center of the case is an advertisement published on Publi24.ro, an online marketplace operated by Russmedia. The ad was posted in the name of a private individual, referred to as "X," using their personal data and allegedly offering sexual services. The photos and phone number in the ad were taken from X's social media accounts without their consent.

After discovering the ad, Russmedia quickly removed it; however, other websites had already copied and republished it. As a result, X initiated legal proceedings against Russmedia, and the Cluj Court of Appeal in Romania referred the case to the CJEU for a preliminary ruling. The key question is to what extent an online marketplace operator is responsible for handling such data and preventing misuse.

At the time of the events, the 2000/31/EC Directive (the "E-Commerce Directive") was the applicable legal framework. One of its core elements is the liability exemption for hosting providers, meaning that if an online marketplace acts merely as a neutral, technical intermediary and does not interfere with the content posted on its platform, it may, under certain conditions, be exempt from liability.

However, this exemption does not apply if the marketplace operator:

- Actively participates in editing, modifying, or highlighting the content.
- Pre-screens or filters content, especially concerning its legality.
- Encourages or facilitates the appearance of illegal content, for example, through algorithmic promotion.

In his opinion, Advocate General Szpunar confirmed that Russmedia could benefit from liability exemption if it is proven that it acted purely as a technical intermediary and did not interfere with the content of the advertisement in question.

The General Data Protection Regulation (EU) 2016/679 (GDPR) defines the role an organization plays in data processing. In the case of online marketplaces, two main categories apply:

1. Data Processor: If the marketplace only provides technical services and has no substantive control over the user-uploaded content.

2. Data Controller: If the marketplace determines the purposes and means of data processing, such as by creating user profiles, moderating content, or actively collecting data.

According to Advocate General Szpunar, the operator of a marketplace qualifies as a data processor regarding personal data included in user advertisements, meaning it is not required to pre-screen the legality of content. However, when handling the data of registered users, the operator acts as a data controller, meaning it must implement appropriate identification and protection measures.

This implies that Russmedia's liability may be limited regarding the specific advertisement's content. However, from a data protection perspective, the company is still obliged to implement adequate technical and organizational measures to safeguard personal data.

Key Takeaways for Online Marketplaces and Webshops

- Pre-screening is not mandatory, but rapid intervention is essential to remove illegal content.
- Webshops that process personal data during user registration must implement effective identification and data protection measures.
- A clear internal operational policy and data management policy is necessary to ensure users understand the platform’s responsibilities and service conditions.

If you require legal assistance or guidance on webshop operations and regulatory compliance, feel free to contact our specialized legal team!