Liability of Online Platforms in Japan: An Overview

Antonios Karaiskos[*]

I. INTRODUCTION

This paper focuses on the issue of the liability of online platforms in Japan. In this introductory section, some general information about online platforms will be presented together with some reasons why this topic is gaining importance today.

1. Overview of the Notion of the Online Platform

Online (intermediary) platforms[1] are websites which provide a virtual environment that can be used for the dissemination of goods, services and digital content.[2] Some representative examples of such platforms in Japan are

* Associate Professor, Faculty of Law/Graduate School of Law, Kyōto University.
This paper is an English version of the presentation made by the author in German on 6 July 2018, at the symposium "Schutzbedürfnisse und Gestaltungsmöglichkeiten im Recht der Society 5.0" organized by the Faculty of Law, Bochum University. Some minor additions and changes have been made to the original text used for the presentation, but the author kindly asks for understanding about the fact that this paper does not include detailed descriptions of developments in this field since the above-mentioned symposium, and includes only minimal bibliographical references. Further, the author would like to express his deepest gratitude to Bochum University (and especially its Faculty of Law) for the kind invitation to Bochum, the hospitality and the fruitful discussions before, during and after the symposium.

1 In Japan, the terms "online platform" and "digital platform" are both used to describe the platform business model. The author will use the former term in this paper.

2 In the "Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Directive 93/13/EEC of 5 April 1993, Directive

internet malls such as Rakuten, Yahoo, and Amazon; internet auction sites such as Yahoo! auction, Rakuten auction, and Mercari; and social network services (SNS) such as Facebook, internet forums, and video-sharing sites. Platforms like these are administered by platform operators. As the original meaning of the word "platform" indicates, in many cases, such operators do not themselves provide goods, services and digital content via platforms, but simply create facilities enabling users (both "suppliers" offering goods, services and digital content and "customers" interested in acquiring them[3]) to connect to each other.

The main difference between online platforms and "traditional" (offline) malls or auctions is that the capital required to establish an online store on a platform is in general lower than for traditional forms. For the same reason, it is also easier for enterprises that are not trustworthy or have highly limited financial means to participate in online malls. This means that the participation of actors with insufficient normative awareness regarding the transparency of transactions has become easier than in the past. The difficulty for the consumer to evaluate the trustworthiness of enterprises is aggravated by the lack of physical presence (physical contact) and the anonymity of transactions. As a result, unforeseeable consumer damage can easily occur. In cases

98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules", COM/2018/0185 final, an "online marketplace" is defined as a service provider which allows consumers to conclude online contracts with traders and consumers on its online interface (Art. 2 proposing the introduction of this definition to the Consumer Rights Directive 2011/83/EU). This proposal is one of two that comprise the New Deal for Consumers package, which was adopted by the European Commission on 11 April 2018, following a State of the Union address by Commission President Jean-Claude Juncker announcing the New Deal for Consumers on 13 September 2017. The New Deal aims at strengthening enforcement of EU consumer law amidst a growing risk of EU-wide infringements.

3 The terms "platform operator", "customer" and "supplier" are used in the ELI (European Law Institute) "Discussion Draft of a Directive on Online Intermediary Platforms" to describe the three actors in the online platform model. In this Discussion Draft, the platform operator is defined as a trader who operates an online intermediary platform. The customer is defined as any natural or legal person who uses an online intermediary platform for obtaining goods, services or digital content. Finally, the supplier is defined as any natural or legal person who uses an online intermediary platform for supplying goods, services or digital content. For details, see RESEARCH GROUP ON THE LAW OF DIGITAL SERVICES, Discussion Draft of a Directive on Online Intermediary Platforms, Journal of European Consumer and Market Law 5 (2016) 164–169. An updated version of the Draft is expected to be presented at this year's ELI Annual Conference and Meetings which will take place in Vienna, Austria, on 4–6 September 2019.

of such consumer damage, it is usually difficult for the consumer to obtain damage recovery. Since such consumer damage can in principle be said to be preventable through the online platform operator's construction and lawful administration of a sufficient system, the question of the operator's legal liability in such cases has been drawing attention and sparking discussion.

2. Recent Developments in Japan and the EU

The need for reflection about the regulation of online platforms, including the regulation of their liability, has led to the establishment of study groups within governmental bodies in Japan. More concretely, an "Expert Committee on the Ideal State of Transactions in Online Platforms" was established in the Consumer Committee of the Cabinet Office in April 2018, a "Discussion Group on the Development of a Transaction Environment for Digital Platform Operators" was established by the Ministry of Economy, Trade and Industry, the Japan Fair Trade Commission and the Ministry of Internal Affairs and Communications in July 2018, and a "Study Group on Platform Services" was established in the Ministry of Internal Affairs and Communications in October 2018.[4] The Expert Committee published a Final Report in April 2019 and the Discussion Group published an Option for the development of rules to deal with the emergence of platform-type businesses in May 2019. Further, the Consumer Committee, considering the above-mentioned Final Report, issued a proposal for the ideal state of transactions with the intermediation of platforms in April 2019.[5]

The fact that various governmental authorities are deliberating about platforms concurrently, rather than one authority assuming this task comprehensively, might seem odd from a Western viewpoint. This has mainly to do with the different competences of each of the authorities. Deliberations at different authorities are carried out from different standpoints. For example, deliberations at the Consumer Committee focus on consumer protection, whereas those at the Ministry of Economy, Trade and Industry focus on competition. These proposals and reports are expected to lead to legislative action soon.

In the EU, the issue of platforms is being officially dealt with in two directions. The first is that of regulation of the relations between platforms

4 Further, deliberations are also being made by the Cabinet Secretariat and the Personal Information Protection Commission.

5 For an analysis of such recent developments, see M. SAITŌ, *Nihon ni okeru puratto fōmu eigyō-sha no hōteki kiritsu no genjō to kadai: Sono go no jōkyō no henka o fumaeta hōron* [Current State of and Issues in the Legal Regulation of Platform Operators in Japan: An Addendum Taking Recent Changes into Consideration], Shōhisha-hō Nyūsu [Consumer Law News] 119 (2019) 70 ff.

and businesses, which is dealt with in Regulation (EU) 2019/1150.[6] Secondly, consumer protection perspectives are included in the proposal to amend Directive 93/13/EEC on unfair terms in consumer contracts, directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers, directive 2005/29/EC concerning unfair business-to-consumer commercial practices, and directive 2011/83/EU on consumer rights,[7] which forms part of the New Deals for Consumers package adopted 11 April 2018.[8] Further, there are private initiatives by the European Law Institute (ELI) in the form of a Discussion Draft of a Directive on Online Intermediary Platforms.[9]

II. Online Platform Categories: The Scope of Analysis of this Paper

In Japan, online platforms in general are classified in the following two categories:[10]

The first consists of platforms which provide so-called "matching" functions. One example are online malls, which are composed of multiple online stores. Online stores participate in such malls in order to be able to

6 Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on Promoting Fairness and Transparency for Business Users of Online Intermediation Services.

7 Proposal for a Directive of the European Parliament and of the Council Amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as Regards Better Enforcement and Modernisation of EU Consumer Protection Rules, COM(2018) 185 final.

8 Regarding the New Deal for Consumers, see Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, A New Deal for Consumers, COM(2018) 183 final.

9 See *supra* note 3. Regarding the developments and discussions in the EU, see for example C. Busch, European Model Rules for Online Intermediary Platforms, in: Blaurock/Schmidt-Kessel/Erler (eds.), Plattformen: Geschäftsmodell und Verträge (Baden-Baden 2018) 55 ff.

10 Regarding this classification, see for example the material "Legal Issues of Platforms and Consumer Protection" (in Japanese) submitted by the member of the above-mentioned Expert Committee, Ryōji Mori, during its second meeting on 15 June 2018, downloadable at the website of the Cabinet Office, *https://www.cao.go.jp/consumer/kabusoshiki/online_pf/002/shiryou/index.html*. See also E. Chiba, *Denshi shō-torihiki o meguru torihiki kankyō no henka to kongo no shōhi-sha hōsei no kadai* [Changes in the Transactions Environment Surrounding Electronic Commercial Transactions and Future Issues of the Consumer Law System], Shōhi-sha-hō Kenkyū [Review of Consumer Law] 5 (2018) 77 ff.

open and maintain a store where they can offer goods, services and digital content to customers. When consumer demand meets supply, transactions are performed through contracts concluded between customers and suppliers. Platforms are not formally a party to such contracts. However, platforms support such transactions in various ways, for example by enabling the stores to be set up and advertised, receiving orders from customers, delivering purchased goods or even receiving payments, depending on the platform type. The suppliers' incentive for participating in platforms is that they will be able to establish a web shop and perform online transactions more easily than if they were doing so on an individual basis. On the other hand, the main advantage for customers is that they can easily find the goods that interest them, since platforms usually attract many suppliers for the reasons mentioned above, and customers make use of the platforms' search function and other similar functions. Apart from the individual transaction contracts between customers and suppliers, a usage contract is also concluded between the suppliers and the platform operators as well as between the customers and the platform operators.

The second category consists of social media such as internet forums and social networking services (SNS). Platforms belonging to this category are also called consumer-generated media (CGM) because the users participating in these platforms mutually make information available and consume it. In these platforms, users can easily upload and share information such as posts, photos and videos without having to create their own websites. The other users can easily access such information, and access is facilitated by the search function and other functions provided by the platforms. In this platform category too, usage contracts are concluded between the users and the platform operators.[11]

The first category, namely platforms with "matching" functions, will be the object of analysis in this paper. The main characteristic of this category is that a contract is also to be concluded between the users (suppliers and customers), and that the conclusion of such contracts is one of the main reasons why users participate in these platforms.[12] This nature of these platforms is also the main reason why problems occur in practice, which are related to platforms' liability towards users as well as towards third parties. In the following, an attempt will be made to analyze the current state of regulation on these issues in Japan.

---

11 Regarding the characteristics of platforms providing and not providing "matching" functions, see the material submitted by MORI, *supra* note 10, 5 ff.

12 Thus creating a "triangular" relationship, see C. BUSCH/H. SCHULTE-NÖLKE/A. WIEWIÓROWSKA/F. ZOLL, The Rise of the Platform Economy: A New Challenge for EU Consumer Law?, Journal of European Consumer and Market Law 5 (2016) 3 ff.

III. Liability of Online Platforms

The topic of liability of online platforms is broad and can include various aspects of the legal responsibility of platforms towards various persons. The following analysis will concentrate on two aspects of civil law liability: liability towards users and liability towards third parties.

1. Liability towards Users

a) Introduction

In relation to the civil law liability of online platforms, it must be said that in general, platform operators and users can freely form their contractual relations under the basic principle of freedom of contracts. If the user is a "consumer" as defined in the Consumer Contract Act[13] (Art. 2 para. 3), the provisions of the same Act apply. This means that the consumer has the right to rescind the contract when the business operator conveys something about a piece of material information which diverges from the truth (Art. 4 para. 1 no. 1), provides a conclusive assessment of future matters which are uncertain in connection with the object of a consumer contract (Art. 4 para. 1 no. 2), or conveys only the pieces of material information which are advantageous to the consumer, and intentionally fails to convey material information which would be disadvantageous to the consumer (Art. 4 para. 2). Further, contract terms which are in breach of Articles 8, 8-2, 9 or 10 of the Consumer Contract Act are unfair and therefore void.

b) Contractual Liability

The liability of platforms towards their users would in most cases be classified as contractual liability. The central issue here is how the content of the obligations arising from the contract between platforms and their users is to be conceived. One of the basic questions is whether the obligation to prevent or remove risks which can occur for users can be classified as being an accessory contractual obligation and, if so, whether a breach of such obligation can be established in concrete cases. It needs to be noted here that in most cases, the standard terms applying to the contract between platform and users contain clauses according to which the content of the services offered by platforms is limited to providing a system which can be used for transactions.

---

13 Act No. 61 of 12 May 2000. An English translation of this act as well as the others mentioned in this paper can be found at the Japanese Law Translation website *(http://www.japaneselawtranslation.go.jp/)* prepared by the Japanese Ministry of Justice and containing unofficial translations of major laws.

In relation to the liability of platforms towards users, the Yahoo auction site decision (Nagoya District Court Decision of 28 March 2008,[14] Nagoya High Court Decision of 11 November 2008,[15] Supreme Court Decision of 27 October 2009[16]) is of fundamental importance. This case concerns a plaintiff-victim of a fraud on the Yahoo auction site who filed a lawsuit against Yahoo to claim damages. The plaintiff was a user of this website, ordered goods via the website and paid for them, but never received the goods ordered, since this offer was a fraud. The standard contract terms of the website contained a clause according to which the website bore no liability for acts of suppliers.

The plaintiff asserted that the reason why he suffered damage was that the platform operator did not create a system which would prevent fraud damage from occurring. Nagoya District Court judged that the usage contract between the user and the platform operator presupposed the usage of the website system. This means that the platform operator bears the responsibility towards all users to create a website system that is free from defects. Although neither Nagoya District Court nor Nagoya High Court recognized the existence of any such defect in the concrete case, they both drew attention to this issue.

In general, it can be said that the position of the Japanese courts is as follows: Platform operators can bear responsibility when damage occurs because of a defective function of the platform system, for example when a transaction cannot be completed, cancellation cannot be performed normally, or a false transaction takes place on the platform. As is clear from the Nagoya District and High Court Decisions presented above, such responsibility on the part of platform operators also includes warning users about possible frauds.[17]

On the other hand, platform operators bear no duty to care regarding the conclusion or performance of each individual transaction. Such a duty on the part of platform operators, which would arise from the contract or from good faith to prevent the occurrence of damage for each individual transaction, would be admitted only for exceptional cases. The same applies to non-performances or defects of goods sold by each store.

---

14 Hanrei Jihō [Case Reports], No. 2029, 89 ff.

15 Available (in Japanese) at *http://www.courts.go.jp/app/files/hanrei_jp/035/037035_hanrei.pdf.*

16 Unpublished, dismissed the final appeal against the High Court Decision.

17 For details, see M. SAITŌ, *Tsūshin hanbai-chū kaisha (puratto fōmu gyōsha) no hōteki kisei ni kakaru nihon-hō no genjō to kadai* [The Current State of and Issues in Japanese Law on Legal Regulation of Mail Order Sales Intermediaries (Platform Operators)], Shōhi-sha-hō Kenkyū [Review of Consumer Law] 4 (2017) 131 ff.

c) Tort Liability

As already mentioned, under Japanese law and practice it is difficult to admit a contractual obligation of the platform operator to prevent the occurrence of damage to users. It is therefore worth considering whether platform operators must be held liable for non-permissible acts committed on platforms that cause damage to users. It could be said in general that platform operators do not bear a general obligation under Japanese case-law to verify the trustworthiness of enterprises acting on their platforms.[18] However, when a platform operator is or could be aware that a user is performing illegal acts or that a user lacks the creditworthiness required for the transactions concluded on the platform, the situation is assessed differently. In such cases, the platform operator is obliged to take measures to prevent the user in question from continuing to use the platform. When the platform operator does not fulfill this obligation, he bears liability to compensate for damage to other users that occurs through the acts of the user in question.

2. Liability towards Third Parties

a) Tort Liability in General

There are cases where acts of a platform user infringe on rights or interests of third parties not participating in the platform. Typical examples are cases where the disseminated products or information infringe upon copyrights, patents or trademark rights. In such cases, persons whose intangible property rights have been infringed upon can pursue the platform operator's liability.

The Tōkyō District Court Decision of 31 August 2010[19] and the Intellectual Property High Court Decision of 14 February 2012[20] dealt with a case where the responsibility of the Rakuten Ichiba platform towards third parties was in question. In this case, a store participating in the said platform was selling products that infringed upon trademark rights via the platform. Following an inquiry by the company owning the trademark rights, the platform operator removed these products from the platform. The company filed a lawsuit against the platform operator, claiming damages.

The Intellectual Property High Court judged that a platform operator who has become or could have become aware that a store is committing a trademark infringement bears the obligation to remove such infringing content from the website within a reasonable period. If the platform operator does not do so, the trademark owner is entitled to claim damages against the platform

18 For details, see *ibid.*, 137 ff.
19 Hanrei Jihō [Case Reports], No. 2127, 87 ff.
20 Hanrei Jihō [Case Reports], No. 2161, 86 ff.

operator too, on the same basis as against the store. Under these considerations, the Court admitted that the platform operator, after having been notified about an infringement, bears the obligation to examine whether an infringement actually exists. In the concrete case mentioned above, the Court denied the claim for damages on the grounds that the platform operator removed the information infringing upon the intellectual property of the plaintiff within a short period after being notified about the infringement.

This judgment indicated that a platform operator, even when it can be assumed that he is simply providing the users with a space where they can perform transactions, still bears the obligation to verify whether illegal acts are taking place on the platform after having been notified about them. If, when doing so, the platform operator comes to know or could have known that the rights or interests of third parties are being infringed upon, the operator bears the obligation to take measures to defend third parties from damage within a reasonable period. An example of such measures would be excluding the infringing user from the platform. If the platform operator does not take such measures, he bears tort liability.

b) Liability for Assisting Illegal Acts

In many cases, the platform operator is in a position that enables him to facilitate or support illegal acts on his platforms. Even if the acts of the platform cannot be evaluated as illegal in themselves or as falling under the category of joint tortious acts (Art. 719 para. 1 Japanese Civil Code,[21] hereinafter "CivC"), they can still be assessed as being accessory to illegal acts by users (Art. 719 para. 2 CivC).

The platform acts as an accessory to an illegal act when there is a contribution to an illegal act by another person. In order to establish that the platform has acted as an accessory, fault, namely intent or negligence on the part of the person who performs the accessorial act, is required. The requirements for such fault are as follows: (1) awareness about the fact that the illegal act of the person performing the main act infringes on the rights or legally protected interests of others, and (2) knowledge or foreseeability that the accessory's act will facilitate the main act. In the case of platform operators, this means that the platform operator can know or foresee that the user's illegal act will cause damage to another user, and that this will be facilitated by the online platform system. Although the existence of such knowledge or foreseeability (the second requirement) can normally be established easily, it is on the contrary difficult in most cases to do so for the first requirement. Cases where such awareness occurs specifically as a

21 Act No. 89 of 1896.

result of the victim's or third party's notifications or of the platform operator's inquiries constitute an exception to this.[22]

3. Systemic Liability as a Third Way?

a) Overview of Systemic Liability Doctrine

When damage has occurred through a direct act of the platform operator, it is in most cases possible to establish the intent or negligence of the platform operator. On the contrary, when assessing the question whether the obligation to construct a defect-free system has been breached, Japanese courts tend to grant platform operators some leeway in fulfilling such obligation.[23] Therefore, although it is often easy to establish that the platform operator is obliged to ensure the existence of a defect-free system in the abstract, the existence of a breach of such obligation cannot be established in all concrete cases.

When damage has not occurred due to a direct act of the platform operator, the question of whether the operator is liable to compensate for damage caused by the user arises. The main problem in most cases is whether an accessorial act has occurred through negligence. Since it is difficult to prove intent or negligence on the part of the platform operator, cases where the platform operator's liability is established are extremely limited.[24] The main reason for this reluctance of Japanese courts to impose on platform operators the obligation to investigate and verify the acts of all platform users is that it would be extremely difficult for the platform operator to do so in practice. This difficulty is also related to the large number of users as well as the fact that artificial intelligence (AI) technologies are not yet developed to an extent that would make such thorough investigation and verification possible.

Against this backdrop, the "systemic liability doctrine" has recently been suggested as a means to achieve an appropriate attribution of damage occurring on platforms. This doctrine captures entities such as platforms in their totality as "systems". In view of the content and nature of such systems as well as the dangers they pose, this doctrine asserts that their conceptualization, construction, management and operation should be performed in a manner which is appropriate for avoiding inherent risks and damage. According to this doctrine, liability for a defect in the function, construction, provision, management or operation of such systems is to be allocated to the person who constructs, manages or operates them.[25]

---

22 *Ibid.*, 143 ff.
23 CHIBA, *supra* note 10, 83 ff.
24 SAITŌ, *supra* note 17, 145 ff.
25 *Ibid.*, 147 ff.

Contrary to the other currently existing legal constructions, which require intent or negligence on the part of the platform operator, the main ground for liability in this doctrine lies in the fact that the platform operator has constructed or made available a system which does not fulfill objective criteria such as security or does not possess functions normally required for such systems. To this extent, it could be said that this doctrine objectivizes the grounds for liability, similarly to cases of product liability.[26]

b) Evaluations of System Liability Doctrine

It would be difficult to describe the systemic liability doctrine as widely recognized in case-law and doctrine. What could perhaps be said is that some court decisions demonstrate elements which show similarities to its content.[27] In this current situation, the meaning of this doctrine could be evaluated as lying mainly in its attempt to approach the issue of the platform operator's liability from the viewpoint of the possibility of the occurrence of a platform risk in itself, the construction and management of the system, and the social position of the platform operator. The platform operator earns profit through the platform system that he himself constructs, manages and operates. It can be therefore be said that it is worth attempting to consider an obligation on the part of the platform operator to prevent damage or remove it from such a system.

On the other hand, it would be difficult in the current situation to impose on the platform operator a general obligation to investigate and verify illegal acts by users. Further, it could be said that the platform operator still only knows about or could have foreseen illegal acts performed on the platform in a limited number of cases. It is therefore unclear whether and to what extent this doctrine should be adopted in future legal reforms related to the liability of online platforms. Therefore, it might be more proper to say that this doctrine provides an opportunity for reconsidering the currently existing liability rules and their ideal future state.

IV. Closing Remarks

This paper has sought to give an overview of the problems and current state of platform operators' liability in Japan, while in principle avoiding description and analysis of details (which are undeniably important too). Especially regarding the systematization and assessment of the currently ex-

26 Regarding product liability, for example, the Product Liability Act provides for the strict liability of the manufacturer of products.

27 SAITŌ, *supra* note 17, 149 ff.

isting liability system in Japan, the author kindly asks the readers to refer to the comment paper by the author's colleague Professor Tomohiro Yoshimasa, which follows.

SUMMARY

The article provides an overview of current issues surrounding platform operators' liability in Japan. It focuses on one subset of online platforms, which provide "matching" functions between two different types of users: consumers and suppliers. The operators of such platforms, which include online malls and auction sites, can potentially bear civil law liability when users or third parties suffer damage due to the fraudulent behavior of suppliers who use the platforms. The article examines recent Japanese case-law regarding the circumstances under which platform operators bear liability towards consumers defrauded through transactions on their platforms. Potential liability can also arise towards third parties, for example, when purveyors of products sold on the platform infringe upon copyrights, patents or trademark rights. Here, too, the article presents recent Japanese case-law regarding the extent of platform operators' liability, while also examining the circumstances under which the platform can be considered to have acted as an accessory to an illegal act. Finally, the system liability doctrine has recently been proposed as a solution to the difficulty Japanese courts face in determining intent or negligence on the part of the platform operator – and thus also in establishing the platform operator's liability.

(The Editors)

ZUSAMMENFASSUNG

Der Beitrag gibt einen Überblick über die aktuelle Diskussion zur rechtlichen Verantwortlichkeit der Betreiber von Online-Plattformen in Japan. Er konzentrieren auf eine spezielle Art von Plattformen, nämlich auf diejenigen, die Geschäftsabschlüsse zwischen zwei verschiedenen Gruppen von Nutzern ermöglichen: zwischen Anbietern und Verbrauchern. Die Betreiber solcher Plattformen, die sowohl unmittelbar bilaterale Geschäftsabschlüsse als auch solcher über Auktionen ermöglichen, können zivilrechtlich haften, wenn Nutzer oder Dritte durch ein betrügerisches Verhalten eines Anbieters unter Nutzung der Plattform einen Schaden erleiden. Der Beitrag stellt die jüngere japanische Rechtsprechung vor, die sich mit den Voraussetzungen auseinandersetzt, unter denen ein Plattform-Betreiber gegenüber Verbrauchern ersatzpflichtig wird, die durch über dessen Plattform getätigte Transaktionen geschädigt wurden. Eine zivilrechtliche Haftung der Betreiber kann ferner auch gegenüber dritten Nicht-

Nutzern bestehen, wenn etwa über die Plattform Produkte unter Verletzung von Warenzeichen vertrieben werden, welche den Dritten zustehen. Weiterhin analysiert der Beitrag die aktuelle Rechtsprechung zu den möglichen Haftungsvoraussetzungen, wobei ein besonderes Augenmerk auf die Umstände gelegt wird, unter welchen Plattform-Betreiber als Unterstützer einer unerlaubten Handlung angesehen werden kann. Abschließend wird die Frage diskutiert, ob der Weg über eine Gefährdungshaftung, die aus der Errichtung der Plattform folgt, eine Lösung für das Problem bietet, dass Vorsatz oder Fahrlässigkeit eines Plattform-Betreibers im Einzelfall oft nur schwer zu beweisen sind.

(Die Redaktion)