**Question B: What responsibility or obligations should online platforms have when it comes to eliminating infringements by their users, especially in the areas of IP and unfair competition?**

The growth of online platforms such as auction portals, marketplaces, and social media services has created new opportunities for trade and content exchange, while at the same time generating risks of abuse related to infringements of intellectual property rights and the rules of fair competition. The question of what role and responsibility platforms themselves should have in eliminating such infringements remains a key regulatory and legal issue.

In Poland, constitutional guarantees protect freedom of expression (Article 54 of the Constitution of the Republic of Poland), the right to privacy (Article 47), and the right to a court (Article 45). Enforcement of intellectual property rights must be proportionate and must not result in excessive interference with fundamental rights. Poland has seen cases where copyright protection came into conflict with freedom of expression and artistic creativity. Courts have emphasized the need to apply copyright exceptions and limitations for example, permitted use, quotation, and parody.

Polish law does not contain a uniform statutory definition of an “online platform.” EU legislation applies alongside domestic rules found in the Civil Code and the Act of 18 July 2002 on the Provision of Services by Electronic Means (UŚUDE). In practice, platforms are treated as “providers of services by electronic means.”

It is also worth noting the role of non-governmental and industry organizations (e.g., ZAiKS, ZPAV), which support the enforcement of copyright, as well as institutions such as CERT Poland, which receive reports concerning websites that violate the law (e.g., phishing, piracy). These bodies do not replace platform responsibility, but they support platforms by blocking sites at the infrastructure level and passing information to domain operators and law-enforcement authorities.

Under civil law, platforms may bear liability for infringements of intellectual property rights (e.g., under the Copyright Act, the Industrial Property Law, and the Unfair Competition Act). Available claims include injunctive relief, removal of the effects of the infringement, damages, and disgorgement of profits.

Direct platform liability is limited by the safe-harbour regime: a service provider is not liable for user-generated data if it is unaware of their unlawful nature, or, upon obtaining reliable knowledge, promptly removes or disables access. Platforms may be liable where they knowingly facilitate infringements or derive benefits from them.

In practice, Polish online platforms, especially large hosting providers and auction services, have implemented internal procedures for reporting infringements of intellectual property rights. These mechanisms typically take the form of online forms or dedicated email addresses through which rightsholders or users can report unlawful content (e.g., sales of counterfeit goods, copyright infringements). Upon receiving a report, the platform verifies it and, where justified, promptly removes or blocks access to the content. Such procedures implement the “notice-and-action” principle under UŚUDE, now further detailed by the Digital Services Act (DSA), and are a standard element of compliance for entities operating on the Polish digital market.

In criminal law, liability rests primarily with the direct perpetrators of infringements (e.g., Articles 116 et seq. of the Copyright Act). A platform may be liable only in exceptional cases, for instance under the regime governing collective entities.

Polish law does not contain detailed regulations dedicated solely to algorithmic content monitoring by platforms. The applicable rules derive primarily from EU law, in particular the E-Commerce Directive (2000/31/EC) and the DSA. Both instruments prohibit imposing a general monitoring obligation on service providers, meaning platforms cannot be required to pre-emptively and universally filter all user-uploaded materials. Only specific obligations are permissible e.g., responding to concrete notices (notice-and-action) or using proportionate measures to curb repeat infringements.

At the same time, under Article 14 DSA, platforms may apply content-moderation mechanisms, including algorithmic tools, provided this is done transparently and in line with their declared moderation policies. They are subject to information duties toward users, including disclosure of criteria used by recommender systems and options for user control. In Poland as an EU Member State the boundaries of algorithmic monitoring are thus defined chiefly by the EU-level prohibition of general filtering and the principle of proportionality, which protects users against excessive interference with their digital experience and fundamental rights.

In the Polish legal system there are legal remedies that can be pursued against platforms in cases of IP infringements or unfair competition. The primary bases are the Civil Code, the Industrial Property Law, and the Copyright Act. If a platform, despite receiving a credible notice, fails to remove or block unlawful content, it may be liable for damages on general principles (Article 415 of the Civil Code) or incur secondary (accessory) liability as a facilitator of the infringement. In the area of unfair competition, the Unfair Competition Act provides claims such as injunctive relief, removal of effects, damages, disgorgement of unjust enrichment, and publication of a statement. In certain cases it is also possible to pursue criminal proceedings (e.g., in matters involving trade in counterfeit goods). In practice, platform liability is largely subsidiary it is triggered when the operator fails to act within a reasonable time upon notice, or knowingly tolerates unlawful user activity.

Before the DSA entered into force, Polish law did not recognize a distinct category of “trusted flaggers” for IP infringements. In practice, however, analogous arrangements existed, such as cooperation between platforms and collective management organizations or public bodies (UOKiK, CERT Polska). It is the DSA (Articles 22–23) that introduces a formal “trusted flagger” mechanism, providing that such status is to be granted by the Digital Services Coordinator (in Poland, the President of UKE). To obtain trusted-flagger status, an organization must satisfy criteria such as sectoral representativeness, expert knowledge, and the capacity to act objectively and transparently. In Poland, this process is still taking shape, with practical procedures for identifying and appointing such entities in the implementation phase. Reports submitted by trusted flaggers must be handled with priority and processed faster than standard user notices. Consequently, platforms in Poland, operating within the EU’s single digital market, are obliged to differentiate their notice-handling procedures based on the source, which marks a departure from prior voluntary practices.

Currently, platform responsibility in Poland is anchored in the “notice-and-action” mechanism and the DSA framework. This system is relatively effective but still requires practical harmonization. Persistent challenges include the lack of clear procedures among smaller platforms and the risk of over-removal. Over the next few years, the priorities will be full DSA implementation, the development of CJEU case law on fundamental rights, and operationalizing the trusted-flagger mechanism. Continued cooperation among regulators, NGOs, and industry stakeholders is anticipated in the enforcement of copyright and the fight against unfair competition.

As a rule, Polish law does not require a prior court order before removing content that potentially infringes intellectual property rights. Online platforms rely on “notice-and-takedown” mechanisms under which they respond to reports from rightsholders. One example is Allegro’s “Współpraca w Ochronie Praw” (WOP, Cooperation in Rights Protection) procedure, which enables owners of copyrights and trademarks to report listings that infringe their rights often resulting in rapid blocking of auctions, sometimes within hours. Similar solutions are used by other Polish platforms; for instance, Chomikuj.pl provides a reporting system after which administrators may block or remove access to files. These procedures significantly improve responsiveness to infringements (notice-and-action), though they also create a risk of excessive takedowns (over-blocking), where operators prefer to pre-emptively block disputed material rather than risk liability. On OLX, users can report suspicious or non-compliant listings using a “Report infringement” button available on each offer. This mechanism also covers reports of potential IP infringements, such as the sale of counterfeit goods or the use of unauthorized copyrighted materials. Reports go to a dedicated OLX team that verifies them and takes appropriate action from editing content, through suspension, to removal of the listing. OLX also provides a process for contesting actions (a complaint/appeal), and if the appeal is upheld, the content is restored together with a refund of any promotion fees. This is a practical implementation of the notice-and-action principle, enhancing transparency and protecting the rights of both rightsholders and users.

There is no uniform statutory appeal procedure in Poland against platform decisions to remove content for alleged IP infringement. Appeals are primarily available under individual platform terms, which typically provide mechanisms for objections or re-review. Independently, users may bring claims in the ordinary courts, challenging the lawfulness of the removal based on, inter alia, the protection of personality rights, contractual liability, or the Unfair Competition Act. In practice, however, litigation is rare due to time and cost, so user protection currently depends largely on internal platform systems. Notably, with the DSA entering into force in 2024, platforms must implement transparent and effective complaint-handling mechanisms and provide access to out-of-court dispute settlement, which should significantly bolster appeal guarantees for users in Poland.

Polish law does not provide a single comprehensive procedure for balancing IP protection with individual rights and freedoms; rather, that balance flows from constitutional principles and judicial mechanisms. Under Articles 31 and 54 of the Constitution, restrictions on freedom of expression and the right to information may be introduced only in a proportionate manner and where necessary to protect other values, including property rights. Ordinary courts, the Constitutional Tribunal, and administrative courts apply a proportionality test when assessing whether interference with free speech or access to online content is justified by IP protection. Consequently, the balancing mechanism is not a separate procedure but is implemented through the obligation to apply the law proportionately, judicial review of platform actions, and the possibility of challenging decisions limiting access to content.

One of the most publicized examples of tension between protection of rights and artistic freedom in Poland was the case concerning Dorota Nieznalska and her installation “Pasja” (2002). The artist was charged with offending religious feelings and initially sentenced to a restriction of liberty, but after several years of proceedings, higher-instance courts acquitted her (2009). The case became a symbol of the debate on the limits of artistic freedom in the context of protecting religious and moral values. It also showed that, despite social pressure and controversy, courts are able to apply constitutional and international standards (including Article 10 ECHR) to protect artistic expression. The takeaway is that even where religious sensibilities clash with artistic freedom, Polish courts ultimately aim to ensure proportionality and to recognize the primacy of the right to artistic expression as part of broader freedom of speech.

Under the current Polish framework, the responsibilities and obligations of online platforms are largely defined by EU law (the DSA, and the E-Commerce and DSM Directives) together with domestic rules on electronic services and competition protection. Platforms must act expeditiously upon receiving notices of infringement but are not subject to a general monitoring obligation. This “notice-and-action” model provides a relative balance between IP protection and freedom of expression, though in practice it is often criticized for risks of over-removal. In the author’s view, the present Polish model is pragmatic yet fragmented without a unified national regulation of platforms, the practical burden of rights protection shifts to businesses and the courts. Further clarification is needed, particularly around proportionality and the protection of users’ fundamental rights. In the near term, Poland can be expected to focus on implementing and applying the DSA and further aligning national law with EU standards. Legislatively, one may anticipate supplementary domestic rules on platform duties, including principles of proportionality in moderation and possible “Good Samaritan”-style provisions. With the growing importance of AI and algorithmic content governance, legislative initiatives linked to AI regulation are also possible. From a public-policy perspective, it would be beneficial to refine national rules on platform liability to reduce interpretive uncertainty and increase user transparency. It is also worth considering oversight mechanisms for notice-and-action practices to strengthen public trust and safeguard fundamental rights. Finally, the increasing use of automated filtering entails a risk of unwarranted blocking of content that is lawful under exceptions such as permitted use, criticism, review, quotation, parody, pastiche, or caricature. While Poland lacks detailed rules to minimize such errors, the DSA is expected to enhance user rights to challenge automated blocks and to improve transparency around algorithmic criteria. Expert debate also includes proposals for risk-assessment standards addressing over-blocking and tools to help platforms balance copyright enforcement with freedom of expression and artistic creativity.