



NOTE

13. juli 2018

The Danish Government's response to the Consultation on measures to further improve the effectiveness of the fight against illegal content online

The Danish government agrees that it is necessary to ensure effective procedures for notification and action on illegal content on the internet inter alia through stronger cooperation between the involved parties. The Danish Government stresses that illegal content is not acceptable. When illegal content is identified, effective action should be taken to remove it and prevent it from being uploaded again.

The Danish Government has a strong focus on fighting terrorist content and enhancing consumer safety through protection against dangerous products. Moreover the effective enforcement of intellectual property rights on the internet is an important task, as the increasing numbers of infringements have negative consequences for innovation and growth.

The Danish Government would like to highlight the following central aspects which should be taken into account when fighting illegal content online:

- A clear, simple and coherent framework is needed. Obligations in existing regulation should be taken into account when considering new measures in order to limit overlapping regulation.
- The free and open internet as well as the fundamental rights and civil liberties of enterprises, rights holders and individuals in Europe should be respected.
- Procedures for notice and action should be effective, and at the same time proportionate to the violation in question. They should not create unnecessary burdens or unduly hinder the development of new businesses and business models.
- Effective safeguards are needed to prevent the misuse of notifications and the removal of legal content.
- In the continuous work focus should be on the voluntary collaboration practices in the different sectors in the internet value chain.

The Danish Government's perspectives on these aspects are elaborated in the following.

Clear and simple procedures and rules

The Danish Government supports clarifying and applying existing procedures and principles for tackling illegal content in a harmonized and non-discriminatory manner across Europe, in order to strengthen their effectiveness and the legal certainty of businesses, hosting service providers and consumers.

A clear, coherent and simple framework is important for the effectiveness of all efforts made to tackle illegal content.

Effective and proportional safeguards

The Danish Government emphasises that stronger requirements on hosting service providers should not create unnecessary burdens and barriers for especially small and medium-sized enterprises. Notice and action procedures and other obligation related hereto should be proportionate to the violation in question and should not unduly hinder the development of new businesses and business models.

It should be avoided that legal content is affected or removed as a result of notice and action procedures. In some cases, it is apparent that notified content is illegal. In other cases, notifications may be unjustified or the legality of the content may be unclear or contested. In such cases, the content owner will have to rely on the hosting service provider's judicial competences. Effective safeguards such as counter-notice procedures and transparency are needed to prevent the misuse of notifications and the removal of legal content. This is especially relevant when automated tools are applied as proactive measures.

Further to this point, the Danish Government recalls the need to respect the free and open internet and the fundamental rights and civil liberties of enterprises, rights holders and individuals in Europe. The respect for these fundamental rights should be included in the proportionality test, and the Commission should ensure concrete measures to protect these rights when considering further steps.

Further measures

The Danish Government favours increased coordination and cooperation between authorities, relevant organisations and hosting service providers and among hosting service providers themselves in order to improve the tackling of illegal content. We see the promotion of the cooperation mechanisms such as appointments of point of contact, technical interfaces and use of trusted flaggers as well as voluntary enforcement measures such as Code of Conducts, Memorandum of Understandings e.g. as effective and flexible tools in this regard.

Considering that the Commission has issued both a communication (COM(2017) 555) and a recommendation (C(2018) 1177 final) in less than a year, the Danish Government would prefer if the effects of these recent initiatives materialise before deciding on new horizontal measures. As noted in the communication and the recommendation, the fight against illegal content is improving continuously and it will be fruitful to allow these positive developments to unfold first.

In this regard the Danish Government notes that the revised Audiovisual Media Services Directive will introduce new sector-specific legislation with regard to illegal and harmful content on video-sharing platforms.

Relevant Danish progress since the Recommendation

The Danish Government is currently identifying and assessing possible further steps to take in line with the Recommendation on further measures to tackle illegal content online (C(2018) 1177 final) in order to effectively tackle illegal content on the internet.

As of May 2018, the Danish Government's taskforce for criminal investigation on Intellectual Property Rights is established as a permanent structure. The taskforce investigates existing and new infringements of copyright, trademark, design rights etc. focusing particularly on the organized criminal activities.

In the following we will give a brief description of which mechanisms are already in place regarding illegal content. First of all it should be stressed that there is no separate statutory scheme for notice and action procedures in place in Denmark. In addition to the general rules in Act No. 227 of 22 April 2002 on certain legal aspects of information society services, in particular electronic commerce, there are a number of procedures in specific areas in place. These procedures as well as other initiatives will be described in the following.

Child pornography blocking filter

A measure in order to combat sexual abuse of children is the so-called "child-pornography-blocking-filter". The filter has been developed by Danish National Police in co-operation with the majority of Danish internet suppliers and the Danish division of Save the Children. The filter blocks the access to websites with allegedly child pornographic material.

The blocking-filter is put into place based on a specific agreement between the Danish National Police and each individual internet supplier. From the agreement follows – among others – that the Danish National Police regularly pass on information to the respective internet supplier about websites which, according to the Danish National Police, may con-

tain child pornographic material criminalized pursuant to the Danish Criminal Code. At the same time the police encourage the internet supplier to block access to the website in question.

In so far as the respective internet supplier decides to block access to the website in question, the internet user who may try to access the website, can be met with an official page (made available by the Danish National Police) explaining that the person is trying to access a page that has been blocked, because it has been identified as containing allegedly illegal material.

Danish rules relating to the “.dk” domain

DIFO (Danish Internet Forum), who owns DK Hostmaster, is in charge of the administration of the domain “.dk” and the rules relating to the domain.

DIFO’s rules for suspension, blocking or deletion of domain names are based on Act No. 164 of 26 February 2014 on Internet Domains <https://www.retsinformation.dk/forms/r0710.aspx?id=161869> and DK Hostmaster’s terms and conditions for the right of use to a .dk domain name version 09 of 19 December 2017 <https://www.dk-hostmaster.dk/en/general-conditions>.

Complaints/requests for suspension, blocking or deletion may address:

- Obviously illegal action infringing significant safety considerations and societal considerations.
- Obvious risk for economic crime, compromise of IT equipment (phishing and malware distribution) and grossly insulting content.
- Typosquatting

DIFO’s/DK Hostmaster’s decisions under the general conditions may be appealed to an independent Appeal Board established under the Act on Internet Domains, cf. sections 26-27.

In any event, all cases concerning registration etc. of domain names may be brought before a court of law.

IPR and voluntary cooperation schemes

Danish right holders and most internet service providers have entered into a specific agreement concerning blocking of websites. The agreement primarily relates to copyright and related rights. Blocking of websites can also affect other type of rights, e.g. trademarks. The code of conduct means that when an ISP by a Danish court has been ordered to block the access to an illegal website other ISPs will voluntarily block the access to the same website.

<http://www.teleindu.dk/wp-content/uploads/2013/01/TI-code-of-conduct-revideret-december-2016-public-1.pdf>

The District Court of Frederiksberg has recently (5 December 2017) established that so-called “dynamic blocking injunctions” can be allowed under Danish law. In this case the court referred to the agreement mentioned above.

The Danish Ministry of Culture is engaged in several voluntary cooperation schemes such as a Dialogue-Forum, where a wide range of private companies (such as Google, MasterCard, Microsoft, ISPs, CMOs etc.) have agreed on a set of principles to promote a more lawful internet. The work has among others things lead to a code of conduct in the advertising sector, which aims at stopping advertisement on illegal websites. Another initiative is the ShareWithCare-campaign, which focuses on guiding the consumers from illegal to legal by using the text on blocked webpages to guide consumers to legal content and at the same time informing them about copyright etc.

The Danish Patent and Trademark Office offer a ‘Hotline on Enforcement and Counterfeiting’. Consumers and small and medium-sized businesses can obtain initial guidance in specific cases of counterfeiting which will provide them with a better basis for deciding whether to pursue their case or not and possible lines of action through civil and criminal enforcement measures. The hotline will provide guidance to its users, but will not perform notification/reporting to intermediaries or the police on behalf of its users.

Measures to counter terror content online

The Danish Security and Intelligence Service (DSIS) has recently established an Internet Referral Unit (IRU). The unit is tasked with identifying extremist content online and is currently working on establishing the legal framework and working arrangements with online service providers, internet service providers and the EU IRU to ensure efficient removal of terrorist content and illegal hate speech online.

The Danish National Police is also working on establishing cooperation with the telecommunications providers in Denmark in order to implement an internet blocking filter that will enable blocking of the access from Denmark to websites that contain terrorist content etc. It is expected that the blocking filter will be operational by the end of 2018.

Furthermore, The Danish Administration of Justice Act was recently amended, to enables the Danish police by court order to block foreign websites if the website is used for actions that are covered by the Danish Penal Code’s provisions on terrorism, including the explicit condoning of terrorist actions, the promotion of terrorism, financing of terrorism etc.

Finally, the DSIS is launching a digital mapping project that will ensure a more systematic mapping of extremists' activities on open social media networks. The purpose of the project is to give the Danish authorities a more comprehensive, exact and updated picture on the role that social media plays particularly in relation to radicalisation and hate crimes in Denmark. The knowledge gathered in this project will e.g. be used for adapting and strengthening the prevention efforts carried out by ministries, agencies, municipalities, the police, civil society participants and others. The project is expected to be completed in the course of 2018.