

Greetings,

Reference is made to the urgent request sent to my client, 1984 ehf., on 3 March of this year, cf. the email below.

My client, 1984 ehf., has specialized in webhosting for companies and individuals throughout the world. The company hosts thousands of websites.

1984 does not censor websites hosted by the company. When the company receives a report on material, regard is had to Article 14 on the Act on Electronic Commerce and other Electronic Services, no. 30/2002. This Article deals with under what circumstances a webhost (service provider) can be held responsible for hosted material. It states further:

*A service provider that hosts material provided by a service recipient is not responsible for its content, provided it removes such material or prevents access to it without delay after having received:*

*1. notice that a District Commissioner has issued an injunction against the hosting of such material, or a court has ruled that it shall be deleted or access to it be blocked.*

*2. [direct knowledge that this involves illegal activity or information and, as regards damage liability, it is aware of the facts or circumstances so that it should be apparent that this involves illegal activity or information],<sup>1)</sup>*

*3. knowledge that the material contains child pornography.*

*The provisions of paragraph 1 on limits to liability do not apply when the service recipient appears on behalf of or under the management of the service provider.*

No injunction has been issued against the hosting of the website and point 1 of paragraph 1 can therefore not apply. Also, the material is not child pornography as per point 3. In assessing whether point 2 can apply, regard may be had to notes to Article 1 of Act no. 54/2019 where point 2 was amended as the provision earlier specified copyright infringement. In general comments to the bill for amending the Act on Electronic Commerce and other Electronic Services, no. [30/2002](#) (149<sup>th</sup> Parliamentary Session 2018-2019, document 810 – case 494) it is, *inter alia*, stated:

*“A growing part of the protection of free expression concerns legislation related to the Internet. In this regard, the so-called intermediaries play an important role, and legislation related to them can tend to impede free expression. The main principle applying in this country is that intermediaries will not be held to account for material they host for their service recipients. This basic principle appears in Chapter V in the Act on Electronic Commerce and other Electronic Services, no. 30/2002. The Act constituted the enactment of Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'). It may be concluded that the core of the main principle means that a technical intermediary that only hosts or transmits material without knowing what it contains is generally not responsible. This is in concert with the fact that, in general, initially there has to be some kind of awareness or lack of diligence in responding where the conduct of such an entity can be held culpable and become subject to damage compensation or criminal liability.*

Moreover, it is clear that constitutional law, in particular Article 73 of the Constitution, and Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms will in general apply against the responsibility of such pure intermediaries. "

In the notes to the main content of the Bill, it is, *inter alia*, stated:

*"With this Bill, the aim is to widen the freedom of expression which is achieved by reducing the responsibility of web hosts and their duty to remove content, as there is a danger that such responsibility and duty will have a cooling effect on the freedom of expression. If the Bill passes into law, the main principle will be that such parties will not be held responsible for material hosted by them and will no longer be subject to the condition that they remove or impede material after having been notified of a willful violation of the provisions of copyright law. Instead, there must be direct knowledge by them that this concerns illegal activity or information. The provisions of point 2, paragraph 1, Article 14 of Act no. 30/2002 was adopted with the enactment of Directive 2000/31/EC without the obligation for such an exemption will be deduced from the Directive. A comparable exemption was not adopted with the enactment of the Directive elsewhere in the Nordic countries except in Finland. The Bill is in full accordance with said Directive where conditions proposed in point 2, paragraph 1, Article 14 is included in the provisions of the Directive but is missing in the Iceland provision. The Bill is also in accordance with Directive 2001/29/EC, where proposed measures against copyright violations are to be found in the Copyright Act no. 73/1972."*

On the provision itself, the following is stated in the Bill:

*"The main proposal of the Bill is contained in this Article, to the effect that the current point 2, paragraph 1 of Article 14 of Act no. 30/2002 be deleted. This means that a service provider will no longer be legally obliged to remove or impede access to material following a notice of a willful violation of the provisions of the Copyright Act. On the other hand, according to the provisions proposed as replacement for the current provision, it shall be obligated to do so if it becomes directly aware of that this involves illegal activity or information." [1]*

The law does not therefore assume that a service provider be obligated or be held responsible for removing or impeding access to material contained on a website hosted by the company. Nor is a hosting company expected to impede access to the website as a whole when the aim of the law is to widen the freedom of expression. The view of your clients on the material is therefore of no importance, as 1984 is not expected to have an opinion on the material published on websites hosted by the company. Your letter does not define "illegal activity" or "information" to which the company had to respond.

Your urgent request refers to the website mapliberation.org. It is claimed that the website contains hate speech and that people should resort to measures that cannot not be interpreted otherwise in the opinion of my client than as threats or encouragement of culpable conduct.

It is hereby requested that it will be defined more closely what your clients regard as "hate speech". It is requested that precise information be provided what culpable conduct is being encouraged, in view of your clients, with precise references to text on the website.

It needs to be noted that my client reserves the right to publish all communications in this case of the website of the company, whether in Icelandic in a foreign translation.

Regards,

Ólafur Örn Svansson  
Supreme Court Attorney

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