

To the District Commissioner of Greater Reykjavik

Subject: Comments from the complainant in injunction case no. 2023-026291

Anti Defamation-League

against

1984 ehf

Demands: The complainant, 1984 Ltd., requests that the plaintiffs claim for injunction be rejected.

As a precaution, the complainant requests that the plaintiff be required to provide a guarantee in the amount of ISK 3,000,000.

Legal interest, grounds for the case, and legal arguments:

The complainant, 1984 Ltd., specializes in web hosting for companies and individuals worldwide. The company hosts thousands of websites.

The plaintiff's request for a restraining order arose due to content referenced on the website www.mapliberation.org, which is hosted by the defendant.

According to the website, its advocates aim to promote a deeper understanding of the Palestinians' situation and support the causes they stand for. It is mentioned that the advocates of the website believe that opponents of Palestinian sovereignty collectively work against the interests of Palestine and collaborate in undermining Palestinian struggles by aligning their methods of operation. The website's supporters seek to shed light on these connections. The activists behind the site aim to consolidate the efforts of those who share common interests to increase pressure on those working against Palestinian interests. The website includes a map showing those individuals whom the advocates of the website believe are involved. It specifically lists how each person works against the interests of the causes supported by the website's advocates, including referencing the settlements, among other things. It discusses how support for the colonial policy is organized and the intended relationships between specific parties and the Israeli colonial policy.

It has come to attention that some individuals are owners of land in disputed territories. The advocates of the website believe that certain individuals mentioned there support the process of colonization. In the translation provided by the plaintiff in document no. 9, the purpose of the website is described, stating, among other things:

" This map is intended first and foremost to cultivate relationships between organizers across movements and deepen our political analyses as we build community power. Building community power, for us, has meant seeking the knowledge of those organizing in community with us and highlighting the radical analyses and resistance of earlier generations which have been suppressed.

Our goal in pursuing this collective mapping was to reveal the local entities and networks that enact devastation, so we can dismantle them. Every entity has an address, every network can be disrupted."

On the map, several hundred organizations are specified. Only one requests a legal injunction, namely the defendant of this case which is known as the Anti-Defamation League and has its legal domicile in New York according to the injunction application."

On the website's discussion about the organization, it is stated that the members of the plaintiff (ADL) hide under the umbrella of 'civil rights' but it is argued that ADL is actually an association aimed at protecting the mutual interests of US and Israeli governments and preventing unity among the oppressed, especially with regard to Palestine. They spy on activists and use their connections with authorities, police, schools, and businesses while undermining their activities by maintaining their own conditional propaganda in support of Israel. The website also states that while ADL claims to support Jews, the organization has supported violence against Jews and Nazis. It says that the organization cannot be reformed, but must be dismantled.

In a historical context, it should be noted that after World War II, the United Nations (UN) decided to partition the area known today as Israel and Palestine between Jews and Arabs. The partition was approved by the UN General Assembly in 1947. The partition was accepted by Israelis but not by Arabs. Since the Six Day War in 1967, the West Bank has been under Israeli military occupation, as is well known.

Today, the majority of countries recognize Palestine's sovereignty. Thus, more than 70% of all countries that are members of the UN recognize Palestine as an independent and sovereign state or 136 countries, including Iceland which was the first country in Western and Northern Europe to recognize the sovereignty.

The country that has most opposed the sovereignty of Palestine is the United States, which has often used its power on behalf of Israel when matters related to Palestine and Israel have been discussed in the Security Council. The US is one of five countries that have veto power in the Security Council. Some of the issues that have been brought to the Security Council's attention concern Israeli settlements, which the international community has deemed illegal considering international laws. The settlements have long been one of the main points of contention and according to scholars' writings, they generally agree that they are the main obstacle to reaching an agreement.

On the website www.mapliberation.org, the client has listed the parties that the client believes are working against the interests that the client is protecting and/or that they are openly and covertly working within the US political system to deny Palestinian rights.

II.

The Respondent objects to the Applicant's demand for an injunction against hosting the disputed website or making it inaccessible to the public.

The Respondent believes that the freedom of expression of the service recipient outweighs the intended interests of the Applicant. The Respondent points out that the claim is not based on the website content violating the main rules of privacy but solely on the website content

having obvious characteristics of hate speech and anti-Semitism. The Applicant is specifically arguing that comments on the website that the domain refers to and is hosted by the Respondent fall under Art. 233 of the general penal code. The Respondent points out that the Applicant has already reported the alleged offense to the police. It is up to the police or the prosecutor's office to prosecute for offenses against the provision. The police have already examined the case and do not see a reason to react.

Moreover, the Applicant and others referred to on the website have directed demands at public entities in the United States, including the police, who have not seen a reason to react to the website's content.

The Respondent particularly notes that the domain itself is hosted by the company GoDaddy, an American company that specializes in domain registration, with its headquarters in Tempe, Arizona. The company employs nearly 7,000 people. The Applicant has already made demands to that company. In a news article published in The Times of Israel last summer under the headline: "ADL organizing forum to address 'danger' of pro-Palestine 'mapping' project," the following is stated

Internet company GoDaddy, where the website's domain name is registered, reviewed the website and concluded it didn't violate its domain name registration agreement, spokesperson Nick Fuller said in a statement.

GoDaddy, a giant in this market, thus took the Applicant's claims under serious review, concluding that the content of the website does not violate the company's policies, which stipulate that the content of a website that a domain refers to must not break the law. The company thus came to the same conclusion as the Respondent.

The Applicant's claims thus appear to have foundered wherever they have been directed. The last straw seems to be an attempt to direct the claim to the sheriff of the capital area, expecting that the office will agree to an injunction on the basis of exactly the same viewpoints that have not been granted elsewhere, including by authorities in the United States where the domain is registered and where the subjects of the content are located. The Respondent is pushing the envelope here.

Whatever the case, it is proposed to reject the Applicant's demands that an injunction be imposed on the Respondent hosting the content of the said website, whether under the said domain or another domain, or that an injunction be imposed on making the website available to the public.

It is clear that an injunction against hosting or access goes too far given the large amount of information on the website. It is based on the fact that the Respondent's demands are far too broad. At the same time, it is based on the fact that the demands entail an obvious infringement of freedom of expression, as they involve a demand to close an entire communication page. Thus, there could never be an injunction against hosting the entire website or its content, as is the underlying assumption in the Applicant's demands. As no other basis is marked for the injunction claim, it is ruled out to agree to the injunction claim. More specifically, no demands for an injunction against specific comments are maintained, at least as a precaution. The Respondent points out that the Respondent has specifically

requested to specify exactly which comments the Applicant considers hate speech. It has also been requested to clarify to what alleged punishable behavior the Applicant believes the website is inciting. More specifically, in an email sent to the Applicant's attorney on March 10, 2023, it states:

"In your request, a reference is made to the website mapliberation.org. It is stated that the website contains hate speech and suggests that individuals are incited to take actions that are not interpreted in any other way by your client than as threats or encouragement to reprehensible behavior.

It is hereby requested that further clarification be provided on what your clients specifically consider to fall under "hate speech." Additionally, it is requested that precise details be provided regarding the specific behavior being encouraged, with specific references to the text on the website."

This request was not answered. Therefore, it was not possible to convey the message to the service recipient regarding the intended content of hate speech.

According to Article 24 of Act No. 31/1990 on Peaceful Assembly and Prohibition, it is stated in Paragraph 1 that a prohibition may be imposed on an ongoing or imminent action of an individual or representative of a society or institution if the claimant proves or makes it plausible that the action violates or will violate their legal rights, that the claimant has already taken action against the action or will do so, and that their rights will be jeopardized or subject to significant harm if they are forced to await a court decision.

The service provider believes that the content of the website cannot be considered an action that violates the legal rights of the claimant in such a way that a prohibition should be imposed. The claimant has not demonstrated that their interests will suffer significant harm, even if they have to await a court decision to protect those interests. Thus, it is based on the fact that the conditions of Paragraph 1 of Article 24 of the Act are not fulfilled. It should be noted that the website has been hosted by the service provider since June 18, 2022. The claimant has not demonstrated that their alleged interests justify the imposition of an injunction, as the claim must demonstrate clear interests of the claimant that are being violated. Therefore, the service provider believes it is evident that the matter belongs before the courts if the claimant considers their interests to be legally protected and deserving of safeguarding. Thus, under these circumstances, it is not the role of the service provider to assess whether the website contains "hate speech" that would warrant the imposition of an injunction.

Here, among other things, one must consider the interests of the service user who, during the handling of the case by the Commissioner, has no opportunity to defend their interests and present their points of view. One must also consider the interests of the action subject, which hosts thousands of foreign websites. If it were possible to obtain a legal prohibition on the basis of allegations that the content involves hate speech without any authorities having deemed reasons for reaction, it could lead to a situation where a large number of customers find reason to direct their business elsewhere and away from Iceland, even though legislation has been put in place here to ensure a broad right to freedom of expression on the internet.

It is then asserted that the subject of the action does not, in the documents in question, invade the supposed private life of the subject or others more than what they should endure in public

discourse in a democratic society, in addition to which it must be noted that the claim is not based on this on the part of the plaintiff. It appears that the service user heavily criticizes the plaintiff and accuses them, covertly and openly, of working against the interests of, among others, Palestine and indeed the interests of Jews. It is obvious from the service users' discourse about the plaintiff that the service user considers the purpose of the plaintiff to be suppression of speech, and alleges that the plaintiff engages in espionage and criminalization of activism. The service user believes that the plaintiff exploits in this regard connections with various parties that are also mentioned on the website.

The subject of the action considers it unreasonable to assume that the requirement of Article 24 of Law No. 31/1990 has been met. When assessing whether the criteria specified in paragraph 3 of Article 24 of the law are considered met, including point 2, the interests of the authors of the content and/or the service user must be considered, not the subject of the action. It is ruled out, in the subject's view, to only look at their interests from the injunction and not the owner of the website or the authors of the content. Otherwise, the interests of the service users of hosting providers would be thrown overboard.

The subject of the action emphasizes that authors of content on the website enjoy freedom of expression in accordance with international treaties and Article 73 of the Constitution. From the case law, it is clear that all restrictions on this freedom must be narrowly interpreted. Then, recent case law shows that the trend is even further towards protecting freedom of expression. Here, reference is made, among other things, to the decision of the district commissioner in the capital area in the injunction case No. 2022-24417, where an injunction was rejected due to hosting a website on this basis. Exactly the same arguments apply in this case.

It is apparent that a large part of the content found on the website is not directed at the plaintiff at all. Here, the purpose of the site as stated at the beginning must also be reasserted. Such comments can be unavoidable and can go far. This does not mean that there are conditions to ban the hosting of the site or its publication.

If an injunction were imposed on the hosting of the site, it would be directly against the comments in the general observations on the bill for the amendment of the law on electronic commerce and other electronic services, No. 30/2002, (149th legislative session 2018–2019, Parliamentary Document 810 — Case 494), which states verbatim:

"The bill aims to expand freedom of expression, which is achieved by reducing the responsibility of hosting providers and their obligation to remove data, as there is a risk that such responsibility and obligation could have a chilling effect on freedom of expression."

The content of the website is thus protected due to freedom of expression. The same applies to comments that the plaintiff considers may have ambiguous meaning, but the subject of the action objects to the notion that comments on the website constitute an incitement to violence. As previously mentioned, the plaintiff has been asked to specify exactly which comments he considers to be against the law.

In the request for injunction under item 19, it is referred to that the website encourages actions against certain parties and especially in this connection the words "dismantled" and "disturbed" are pointed out. It can be assumed that these are the words that the plaintiff thinks justify the imposition of an injunction on the entire website and all content closed to the

public. The plaintiff chooses to translate the word "dismantled" as "uprooted". The subject of the action believes this is a wrong translation as the word refers to taking apart, e.g. a company being dissolved. Whether the translation "uprooted" or "dissolved" is used, in no way does it involve an incitement to violence or hate speech. Not to mention that the comments justify a ban, which is an especially significant action against the freedom of expression of the service user. The same applies to the word "disturbed", or disruption, which simply implies that the operation is disturbed. Neither form implies a violation of criminal law.

Next, reference is made to comments under item 24 in the request for a ban that the plaintiff believes justify the prohibition. In the plaintiff's translation, the comments are as follows:

"We have shown real addresses, names of representatives and leaders, and mapped connections. These associations are real and can be disrupted. We hope that people use our map to see how they can respond in impactful ways."

The plaintiff believes that the aforementioned words imply an "incitement or call for actions against Jews." The presentation suggests that readers are "left to decide for themselves what such actions should entail." The plaintiff seems to be tacitly acknowledging that there is no incitement to violence. It therefore appears to be based on the idea that readers may interpret the appropriate response to be violence. The defendant objects to this interpretation. The same interpretation could be applied, for example, to numerous statements in the Bible. It is completely irrelevant to refer to acts of violence in recent years that are in no way related to this website. It is also irrelevant to refer to the alleged concerns of Jews in the Boston area due to the website.

The defendant believes it is necessary to point out that the website does not contain criticism of Jews. For example, educational institutions such as Harvard and MIT are on the list. Specific public institutions are also mentioned. Thus, it is inappropriate to assert that the discussion is directed at Jews, but the plaintiff is primarily aiming to support the assertion that the website contains anti-Semitism. Here, specific companies, organizations, and institutions are simply being pointed out that, according to the perception of the service user, are openly or covertly opposing the interests of certain activists that appear to be behind the website when viewed. It is particularly worth noting that the plaintiff is criticized on the website, among other things, for opposing the interests of Jews. The translation of exhibit 9, page 2 says, *"While the ADL claims to support Jews and fight against 'anti-Semitism' on their behalf, the organization has supported violence against Jews..."*. From this, it can be inferred that the service user is criticizing the plaintiff for practicing violence against Jews. It is impossible to come to the conclusion that the service user is inciting violence or engaging in hate speech.

The defendant points out that it is well-known that individuals or companies are encouraged to react towards various parties. In this context, Amnesty International can be cited as an organization that repeatedly uses the method of encouraging individuals to take action against specific parties or countries. Labor unions have encouraged their members not to do business with certain companies, listing them and their locations. Israelis have been subjected to pressure in this country with calls to boycott Israeli products. In this connection, a news article published on mbl.is on September 12, 2002, with the headline *"Calls for Boycott of Israeli Products"* can be referred to. It can also be mentioned that since 2014, animal protection organizations have maintained the campaign "Don't buy from Icelandic whalers,"

in which they call for companies associated with Hvalur hf., including HB Grandi and Brim, to be boycotted.

The service recipient simply believes that certain companies, interest groups, and institutions are acting against interests that the service recipient is protecting. These parties seem to have been listed, and it is left to each person to decide their reactions. This could involve not doing business with these parties. It could involve buying up the operation and shutting it down, it could involve regularly, even daily, challenging them. The crux of the matter is that nowhere is there an incitement to violence, less so. The mere fact that Jews might be behind some of the operation does not justify a ban on hosting the website on the grounds that it involves hate speech or anti-Semitism. It can be reasonably argued that the plaintiff's demands involve suppression of speech.

It is also necessary to consider how courts have interpreted freedom of expression each time. It was clear from the content of the page that certain groups are critically reviewed with reasoning, and stakeholders are encouraged to respond. Nowhere is there an incitement to violence, less so. Here, it seems two poles meet where one wants to silence the other by shutting down the service recipient's information and/or news supply.

The crux of the matter is that the content of the website does not constitute hate speech or anti-Semitism, and the plaintiff's legal basis has not received support anywhere, including in the United States where demands have been made. Then the condition for a legal ban is not met. Then the claim process leads to the fact that it is impossible to agree with the claim as it is too drastic as it is presented. It is to be assumed that the plaintiff has deliberately presented the demands in such a way that they are not directed at specific comments as the plaintiff's intention is to close the website entirely as it does not seem satisfactory to the plaintiff regardless of which comments are directed at the plaintiff. This is based on the fact that the comments are not beyond what the plaintiff has to endure.

In the request for an injunction, the plaintiff refers to specific Supreme Court rulings. These judgments have no relevance to the case as they concern violations against copyrighted material. Their precedent is therefore non-existent in this case.

III

The plaintiff demands that the defendant provide information on the defendant's income from the service to the service recipient. The defendant has no authority to disclose business agreements with the service recipient. The defendant points out that the defendant's loss is not only determined by the loss of income from the service recipient if an injunction is imposed. It can be assumed that a number of customers would find reason to move their service from Iceland if it is possible to obtain an injunction on this basis, i.e., on the basis of assumptions alone, in addition to being able to shut down a website in its entirety, which is only marginally directed at the one who has raised the claim.

It should also be noted that security for an injunction is intended to cover the defendant's cost of defending against the injunction, including the cost of litigation before the courts. Reference is made here to Article 30, Paragraph 4, of Act No. 31/1991.

"When deciding on the amount of an injunction security, the Commissioner should primarily consider the direct and indirect damage and the cost that the defendant could incur from

stopping their activities, whether the defendant has raised objections about the legitimacy of the plaintiff's claim and injunction, and the cost the defendant could later have from litigation in connection with the injunction."

The defendant believes, with reference to the above, that it is not correct to determine a security lower than ISK 3,000,000 if applicable.

The plaintiff calls on the defendant to disclose who is behind the website. The defendant does not have the authority to provide that information. Furthermore, there is no legal obligation to provide that information.

IV

With reference to the above, the plaintiff's demands are rejected.

The defendant refers to Act No. 31/1991, Act No. especially Article 24. Furthermore, the defendant refers to the Act on Electronic Commerce and Other Electronic Services No. 30/2002. In addition, the defendant refers to the Constitution, especially Article 73 of it, and Article 10 of the European Convention on Human Rights Act No. 62/1994."

IV.

The defendant now submits:

- Information about the company GoDaddy
- Registration information of the Domain.

The right is reserved to submit data at a later stage, further substantiate the case, and further justify the demands of the defendant.

Respectfully, on behalf of the defendant

Ólafur Örn Svansson, Attorney at Law.