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Controlling online content

Editorial



Online content governance is the focus of the last issue of 2017.

Content and services online are undeniably getting more and more attention in the public debate. How to implement responsibility on online content is a priority for the regulated EU online gambling industry, online platforms as well as regulators.

We are delighted in this issue to feature an article with **Birgitte Sand** from the **Danish Gambling Authority** (DGA), who shares her country's views on how to ensure Danish consumers play on regulated websites. While some Member States seem to put their faith wholly in blocking measures, Sand's article on the successful Danish regulation shows blocking measures can't substitute a well-regulated offer that allows consumers to access attractive and regulated gambling services and locally licensed operators to be competitive.

Our second article is from one of the key stakeholders in this debate, namely online intermediaries. Online intermediaries are increasingly being asked to play the judge, jury and executioner with regard to the taking down of illegal content, a challenge further compounded by the fact that what is considered to be legal or illegal might vary strongly from one country to another. Through the voice of their umbrella organization **EuroISPA**, **Malcolm Hutty**, warns us about the recent European Commission guidelines.

Merry Christmas and see you in 2018

Maarten Haijer,
Secretary General, EGBA

The Danish approach to tackling unlicensed gambling in Denmark

Birgitte Sand, Director, Danish Gambling Authority, talks to the EGBA about her country's approach to treating unlicensed gambling in Denmark

One of the important tasks of the Danish Gambling Authority (DGA) is to monitor gambling activities unlicensed in Denmark. We search for gambling providers targeting the Danish market without a Danish licence, act on what we find and thereby protect the players in Denmark and ensure an attractive market for those who play by the rules and provide gambling in Denmark with a Danish licence.

The DGA cooperates with the Anti-fraud Unit run by the Danish Tax Administration. The Anti-fraud Unit provides DGA with findings based on an automatic web search providing unique search possibilities and covering a large number of websites. We started using the search robot back in 2012, when the Danish gambling market was partly liberalised and ever since it has been continuously improved by its findings. Since 2012 the search robot has presented us with approx. 1100 websites related to gambling and potential unlicensed marketing or gambling activities. We have sent out approx. 175 petitions and we are in the



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Birgitte Sand, Director, Danish Gambling Authority

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The Danish approach to tackling unlicensed gambling in Denmark (Cont from the page 1)

Consequently, the robot remains an important tool in our fight against unlicensed gambling in Denmark and helps DGA identifying suspicious websites and the number of websites targeting the Danish market and wrongly offering gambling activities without a licence. Besides the web searches we receive reports from players sharing their gambling experiences from unlicensed Danish websites and less often we may also receive input about such websites from our online licensees.

When DGA becomes aware of an unlicensed website offering their services or marketing in Denmark, we start by sending the owner of the website a petition with a notice of a violation of the Danish Gambling Act, and an order to stop their gambling or marketing.

In most cases, this is sufficient for the violation to cease. If the violation does not cease or we do not get any (positive) reaction following our letter, or if we cannot find any contact information regarding the owner of the website, it is possible to get the Danish telecommunication providers to block the website.

According to our legislation, only websites not licensed in Denmark and offering gambling activities in Denmark are blocked - not websites only marketing unlicensed gambling. The Danish Gambling Authority uses DNS blocking. We ask the telecommunication

providers to block the entire domain for instance “illegalgambling.com”. Some of the telecommunication providers in Denmark do not wish to block websites at our request alone but ask for a legal order regarding the blocking. Taking the blocking process through the Danish court can be time consuming and ultimately we may need approximately 3-4 months to prepare and finalize a blocking. When discussing the usefulness of website blocking it is often suggested that a blocking could easily be bypassed, but DGA has actually

not had the experience that blocked websites reappeared under a slightly different name.

As an alternative to the blocking of websites, DGA may choose to submit a police report regarding the violation and leave further investigations to the Danish police.

Having said that, we experience an increasingly low number of websites without a Danish license targeting the Danish market – it is more about marketing of unlicensed gambling in Denmark where our website blocking does not apply. Our legislation also provide us with payment blocking as a tool to prevent unlicensed gambling. However, it takes more than just a few blocking instruments to keep away unlicensed gambling

activities from a market. And based on our experiences in Denmark, the use of our website blocking is definitely valuable and effective, but only if it is supplemented by a number of measures allowing for the industry to create a sustainable business model and attract players using all legal methods to do so, including high payout ratios and their right to marketing their games and constantly bring forward new games to satisfy players’ wish for new challenging and amusing gambling activities.

We believe the unlicensed market in Denmark to be very moderate and experience a strong will among the DK licensees to support the fight against unlicensed gambling in Denmark and unfair competition. In my view, it is very much about creating a compliant gambling market that balances business opportunities with the necessary

“In my view, it is very much about creating a compliant gambling market that balances business opportunities with the necessary safeguards for players, players demand for exciting (legal) games and a realistic model for taxes and license fees.”

safeguards for players, players demand for exciting (legal) games and a realistic model for taxes and license fees. My simple conclusion would be – it is complicated – and it takes a holistic approach to create a framework that facilitates the most effective cooperation between the many different stakeholders from both industry and public sector in order to come down hard and effectively on unlicensed gambling providers in Denmark. Not making use of blocking instruments might put players at a higher risk to experience unfair and unregulated gambling – protection comes at a price. ■

Rule of law must not be sacrificed in the fight against illegal content online

Malcom Hutty, Chair of the Intermediary Liability Committee of EuroISPA, talks to the EGBA about the recent European Commission guidelines on tackling illegal content.

What is your main concern about the recent European Commission initiative?

The European Commission initiative is intended to lay down a set of guidelines for online platforms to prevent, detect, and remove effectively illegal content and services online in cooperation with national authorities, as well as other stakeholders such as online intermediaries.

In that content, it is crucial for us that EU lawmakers don't sacrifice the rule of law to advance the fight against illegal content online. The European Commission September 2017 guidelines endorse that trend that has seen policymakers across Europe force online intermediaries to play judge, jury and executioner with regard to online content control.

As EuroISPA has consistently argued for 20 years, such enforcement undermines due process and natural justice under the Charter of Fundamental Rights of the European Union as well as the European Convention on Human Rights.

If such enforcement measures have been taken, national authorities must guarantee a sufficient period of time for companies, including EU online gambling companies, to be heard and to have the opportunity to make known their views effectively during an administrative procedure and before the adoption of any decision affecting their interests adversely.



Malcolm Hutty, Chair of the Intermediary Liability Committee of EuroISPA

Such core values would be further frustrated by any move towards a notice & takedown regime (a possibility the guidelines leaves open), whereby Internet intermediaries would be forced to undertake ex ante monitoring and filtering third-party content upload on their networks.

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How do you see the European Commission's guideline fit with the way the Internet is evolving?

First, the guidelines fail to appreciate the reality that while the Internet is a global public sphere that empowers citizens and grows economies, standards of illegality are defined on a country-by-country basis.

This creates a major dilemma for Internet service providers (ISPs), as they are simply unable to properly assess the context-dependent legality of content. The need for clear and specific judicial guidance on whether a piece of content is illegal is particularly important in the context of so-called 'controversial content'. For instance, certain online gambling services, are considered legal

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and others illegal depending on whether the provider is local or from another EU member state. This lack of consistency has been addressed by the Court of Justice of the European Union in a number of preliminary rulings.

Without this judicial clarity, ISPs are trapped between the risk of failing to properly identify illegal content and the risk of engaging in excessive censorship, thus undermining the fundamental rights of their users. The overwhelming majority of citizens use the Internet for its inherently empowering characteristics. And in that context, we must ensure that

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Rule of law must not be sacrificed in the fight against illegal content online (Cont from the page 3)

structures are in place such that ISPs' efforts to remove illegal content do just that, and not more.

Second, it is highly questionable whether the blocking of illegal content and services can achieve the desired target of protecting consumers. Since the Internet was designed to provide an open flow of communication, a user can access content blocked by an access provider in its country via other means such as using foreign proxy-servers to bypass the local block; using tunneling software that encrypts online searches and prevents blocking software from seeing the web request; or by simply switching to another name server. IP blocking and hybrid blocking can also be circumvented by changing the website configuration to a different address.

In addition to be easily circumvented, blocking technologies always bring about risks of over-blocking (unintentionally preventing legal material from being distributed) or under-blocking (not preventing illegal

material from being distributed) and have varying associated costs. The different possibilities to circumvent blocking measures have unintended consequences such as administrative and operational costs for ISPs.

How do you see the policy debate moving forward on this?

We are particularly concerned about the European Commission's support for "trusted flagger" schemes, in which the entity making the complaint is also the entity that determines whether the complaint is well-founded.

Linked to the issues noted above, the guidelines' suggestion that law enforcement authorities could submit content takedown requests without any mechanism to ensure due process is deeply worrying.

EuroISPA members have consistently led the way in the fight against illegal content online, from their stewardship of industry hotlines dedicated to fighting child sexual abuse online, to anti-spam

and anti-malware initiatives across Europe. In that context, we reiterate our call for policy action to ensure that illegal content on the Internet is properly policed within the framework of due process. It is essential that effective content control is underpinned by court authority, to ensure that the fundamental freedoms of European citizens are protected from those who would wish to undermine them. ■

"The different possibilities to circumvent blocking measures have unintended consequences such as administrative and operational costs for ISPs."



The EU and online content in 2018:

- **Q1 2018:** Legislative proposal on fairness in platform-to-business relations
- **Q1-Q2 2018:** Possible legislative initiative on the "notice-and-action" procedures with the aim of ensuring quicker takedown of illegal content and services
- **Q1-Q2 2018:** A guidance document addressing online platform challenges as regards the spreading of fake information
- **Q2-Q3 2018:** Legislative proposal establishing rules at EU level allowing taxation of profits generated by multinational digital companies

