



Institut suisse de droit comparé  
Schweizerisches Institut für Rechtsvergleichung  
Istituto svizzero di diritto comparato  
Swiss Institute of Comparative Law

## COMPARATIVE STUDY

ON

### BLOCKING, FILTERING AND TAKE-DOWN OF ILLEGAL INTERNET CONTENT

*Excerpt, pages 401-409*

*This document is part of the Comparative Study on blocking, filtering and take-down of illegal Internet content in the 47 member States of the Council of Europe, which was prepared by the Swiss Institute of Comparative Law upon an invitation by the Secretary General. The opinions expressed in this document do not engage the responsibility of the Council of Europe. They should not be regarded as placing upon the legal instruments mentioned in it any official interpretation capable of binding the governments of Council of Europe member States, the Council of Europe's statutory organs or the European Court of Human Rights.*

#### **Avis 14-067**

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National reports current at the date indicated at the end of each report.

## **I. INTRODUCTION**

On 24<sup>th</sup> November 2014, the Council of Europe formally mandated the Swiss Institute of Comparative Law (“SICL”) to provide a comparative study on the laws and practice in respect of filtering, blocking and takedown of illegal content on the internet in the 47 Council of Europe member States.

As agreed between the SICL and the Council of Europe, the study presents the laws and, in so far as information is easily available, the practices concerning the filtering, blocking and takedown of illegal content on the internet in several contexts. It considers the possibility of such action in cases where public order or internal security concerns are at stake as well as in cases of violation of personality rights and intellectual property rights. In each case, the study will examine the legal framework underpinning decisions to filter, block and takedown illegal content on the internet, the competent authority to take such decisions and the conditions of their enforcement. The scope of the study also includes consideration of the potential for existing extra-judicial scrutiny of online content as well as a brief description of relevant and important case law.

The study consists, essentially, of two main parts. The first part represents a compilation of country reports for each of the Council of Europe Member States. It presents a more detailed analysis of the laws and practices in respect of filtering, blocking and takedown of illegal content on the internet in each Member State. For ease of reading and comparison, each country report follows a similar structure (see below, questions). The second part contains comparative considerations on the laws and practices in the member States in respect of filtering, blocking and takedown of illegal online content. The purpose is to identify and to attempt to explain possible convergences and divergences between the Member States’ approaches to the issues included in the scope of the study.

## **II. METHODOLOGY AND QUESTIONS**

### **1. Methodology**

The present study was developed in three main stages. In the first, preliminary phase, the SICL formulated a detailed questionnaire, in cooperation with the Council of Europe. After approval by the Council of Europe, this questionnaire (see below, 2.) represented the basis for the country reports.

The second phase consisted of the production of country reports for each Member State of the Council of Europe. Country reports were drafted by staff members of SICL, or external correspondents for those member States that could not be covered internally. The principal sources underpinning the country reports are the relevant legislation as well as, where available, academic writing on the relevant issues. In addition, in some cases, depending on the situation, interviews were conducted with stakeholders in order to get a clearer picture of the situation. However, the reports are not based on empirical and statistical data, as their main aim consists of an analysis of the legal framework in place.

In a subsequent phase, the SICL and the Council of Europe reviewed all country reports and provided feedback to the different authors of the country reports. In conjunction with this, SICL drafted the comparative reflections on the basis of the different country reports as well as on the basis of academic writing and other available material, especially within the Council of Europe. This phase was finalized in December 2015.

The Council of Europe subsequently sent the finalised national reports to the representatives of the respective Member States for comment. Comments on some of the national reports were received back from some Member States and submitted to the respective national reporters. The national reports were amended as a result only where the national reporters deemed it appropriate to make amendments. Furthermore, no attempt was made to generally incorporate new developments occurring after the effective date of the study.

All through the process, SICL coordinated its activities closely with the Council of Europe. However, the contents of the study are the exclusive responsibility of the authors and SICL. SICL can however not assume responsibility for the completeness, correctness and exhaustiveness of the information submitted in all country reports.

### **2. Questions**

In agreement with the Council of Europe, all country reports are as far as possible structured around the following lines:

#### **1. What are the legal sources for measures of blocking, filtering and take-down of illegal internet content?**

Indicative list of what this section should address:

- Is the area regulated?
- Have international standards, notably conventions related to illegal internet content (such as child protection, cybercrime and fight against terrorism) been transposed into the domestic regulatory framework?

- Is such regulation fragmented over various areas of law, or, rather, governed by specific legislation on the internet?
- Provide a short overview of the legal sources in which the activities of blocking, filtering and take-down of illegal internet content are regulated (more detailed analysis will be included under question 2).

## **2. What is the legal framework regulating:**

### **2.1. Blocking and/or filtering of illegal internet content?**

Indicative list of what this section should address:

- On which grounds is internet content blocked or filtered? This part should cover all the following grounds, wherever applicable:
  - the protection of national security, territorial integrity or public safety (e.g. terrorism),
  - the prevention of disorder or crime (e.g. child pornography),
  - the protection of health or morals,
  - the protection of the reputation or rights of others (e.g. defamation, invasion of privacy, intellectual property rights),
  - preventing the disclosure of information received in confidence.
- What requirements and safeguards does the legal framework set for such blocking or filtering?
- What is the role of Internet **Access** Providers to implement these blocking and filtering measures?
- Are there soft law instruments (best practices, codes of conduct, guidelines, etc.) in this field?
- A brief description of relevant case-law.

### **2.2. Take-down/removal of illegal internet content?**

Indicative list of what this section should address:

- On which grounds is internet content taken-down/ removed? This part should cover all the following grounds, wherever applicable:
  - the protection of national security, territorial integrity or public safety (e.g. terrorism),
  - the prevention of disorder or crime (e.g. child pornography),
  - the protection of health or morals,
  - the protection of the reputation or rights of others (e.g. defamation, invasion of privacy, intellectual property rights),
  - preventing the disclosure of information received in confidence.
- What is the role of Internet Host Providers and Social Media and other Platforms (social networks, search engines, forums, blogs, etc.) to implement these content take down/removal measures?
- What requirements and safeguards does the legal framework set for such removal?
- Are there soft law instruments (best practices, code of conduct, guidelines, etc.) in this field?
- A brief description of relevant case-law.

**3. Procedural Aspects: What bodies are competent to decide to block, filter and take down internet content? How is the implementation of such decisions organized? Are there possibilities for review?**

Indicative list of what this section should address:

- What are the competent bodies for deciding on blocking, filtering and take-down of illegal internet content (judiciary or administrative)?
- How is such decision implemented? Describe the procedural steps up to the actual blocking, filtering or take-down of internet content.
- What are the notification requirements of the decision to concerned individuals or parties?
- Which possibilities do the concerned parties have to request and obtain a review of such a decision by an independent body?

**4. General monitoring of internet: Does your country have an entity in charge of monitoring internet content? If yes, on what basis is this monitoring activity exercised?**

Indicative list of what this section should address:

- The entities referred to are entities in charge of reviewing internet content and assessing the compliance with legal requirements, including human rights – they can be specific entities in charge of such review as well as Internet Service Providers. Do such entities exist?
- What are the criteria of their assessment of internet content?
- What are their competencies to tackle illegal internet content?

**5. Assessment as to the case law of the European Court of Human Rights**

Indicative list of what this section should address:

- Does the law (or laws) to block, filter and take down content of the internet meet the requirements of quality (foreseeability, accessibility, clarity and precision) as developed by the European Court of Human Rights? Are there any safeguards for the protection of human rights (notably freedom of expression)?
- Does the law provide for the necessary safeguards to prevent abuse of power and arbitrariness in line with the principles established in the case-law of the European Court of Human Rights (for example in respect of ensuring that a blocking or filtering decision is as targeted as possible and is not used as a means of wholesale blocking)?
- Are the legal requirements implemented in practice, notably with regard to the assessment of necessity and proportionality of the interference with Freedom of Expression?
- In the case of the existence of self-regulatory frameworks in the field, are there any safeguards for the protection of freedom of expression in place?
- Is the relevant case-law in line with the pertinent case-law of the European Court of Human Rights?

For some country reports, this section mainly reflects national or international academic writing on these issues in a given State. In other reports, authors carry out a more independent assessment.

## LIECHTENSTEIN

Liechtenstein law provides the possibility to order the **blocking** of websites in its Police Act (*Polizeigesetz-PolG*) in the case of dissemination of propaganda material and in its Media Act (*Mediengesetz-MedienG*) in the case of media content-related offenses.

In addition, there are several statutory bases allowing a person whose rights are infringed to ask for injunctive relief. Whether this injunctive relief can be addressed directly against providers could not be answered by our research.<sup>1</sup> Only the Police Act (*Polizeigesetz-PolG*) provides measures for **take-down** of illegal Internet content that constitutes the dissemination of propaganda material.

Liechtenstein has furthermore regulated the liability of host providers through its E-Commerce Act (*E-Commerce Gesetz-ECG*). According to this act, host providers are **not liable insofar as they are not aware of illegal content**. This does not affect provisions by which the termination of an infringement can be ordered by a court or another authority, or the right to ask for injunctive relief.

As to general monitoring of the Internet, there is **no specific monitoring entity** in Liechtenstein. There are, however, several foreign initiatives and entities that may also apply in Liechtenstein.

The provisions of the Liechtenstein Police Act (*Polizeigesetz-PolG*) as well as the Media Act (*Mediengesetz-MedienG*) seem to **comply with Article 10 of the European Convention on Human Rights**, although there is only very little information available regarding this question.

### 1. Legal Sources

Legal sources for measures of blocking, removal and take-down of illegal Internet content are fragmented over various areas of law. Only two of them deal specifically with Internet content, namely the Police Act (*Polizeigesetz-PolG*) and the Media Act (*Mediengesetz-MedienG*).

The liability of providers in a case of infringement is limited by the **E-Commerce-Act** (*E-Commerce-Gesetz-ECG*), the law transposing the E-Commerce Directive 2000/31/EC into Liechtenstein national law. The E-Commerce Act (*E-Commerce-Gesetz-ECG*) considerably restricts the responsibility of host and access providers. Briefly summarised, they are not liable if they did not know about the illegal content or if they took measures in order to remove the illegal content immediately after gaining knowledge of the concrete content. This limitation of liability does not apply on prohibitive injunctions or orders of Liechtenstein authorities regarding the termination of infringements.

The Liechtenstein **Police Act** (*Polizeigesetz-PolG*) and the **Media Act** (*Mediengesetz-MedienG*) are the only laws expressly providing measures of blocking or removal of illegal Internet content. Pursuant to Article 25d paragraph 4 (b) of the Liechtenstein Police Act (*Polizeigesetz-PolG*), the police can recommend the blocking of illegal content that consists of the **dissemination of propaganda material**. In the case of **media content-related offenses**, Article 47 paragraph 1 Media Act (*Mediengesetz-MedienG*) gives the Court the possibility to order the removal of illegal contents of online media from the Internet Service Provider (ISP) concerned. Furthermore, Liechtenstein law protects specific individual rights: copyright and similar property rights in its **Copyright Act** (*Urheberrechtsgesetz-URG*), trademarks in its **Trademarks Protection Act** (*Markenschutzgesetz-*

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<sup>1</sup> The research covered the analysis of accessible material of the SICL library, Liechtenstein law ([www.gesetze.li](http://www.gesetze.li)), Liechtenstein databases ("Recht Portal für Liechtenstein") and requests addressed directly to Liechtenstein authorities.

MSchG), entrepreneur's rights against unfair competition in its **Unfair Competition Act** (*Gesetz gegen den unlauteren Wettbewerb-UWG*) and personal rights in its **Person and Company Law** (*Personen- und Gesellschaftsrecht-PGR*). If one of those rights is infringed, the person concerned can ask for injunctive relief. Whether these general claims can also be brought against providers could not be determined by our research due to lack of relevant case law and commentary.

Furthermore, Liechtenstein has signed several **international conventions**, like the Convention on Cybercrime,<sup>2</sup> the Additional Protocol to the Convention of Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems,<sup>3</sup> the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse<sup>4</sup> and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.<sup>5</sup> The last two conventions have been ratified.<sup>6</sup>

## 2. Legal Framework

The Liechtenstein E-Commerce Act (*E-Commerce-Gesetz-ECG*) limits the liability of intermediary service providers. In its Article 16, it stipulates that **host providers** are not liable for the information stored, if the provider did not have any knowledge of that illegal content or if the provider took immediate measures in order to remove the content in question after gaining knowledge of it.<sup>7</sup>

Article 13 E-Commerce Act (*E-Commerce-Gesetz-ECG*)<sup>8</sup> limits the liability of **access providers**. Article 18 of the E-Commerce Act (*E-Commerce-Gesetz-ECG*)<sup>9</sup> determines the scope of the providers' obligations. Pursuant to this provision, providers have no obligation to monitor information or to seek facts or circumstances indicating illegal activity. This means that liability for contents can be

<sup>2</sup> Available at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=185&CM=&DF=&CL=ENG> (24.08.2015).

<sup>3</sup> Available at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=189&CM=&DF=&CL=ENG>

<sup>4</sup> Available at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=201&CM=&DF=&CL=ENG> (24.08.2015).

<sup>5</sup> Available at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=108&CM=&DF=&CL=ENG> (24.08.2015).

<sup>6</sup> Available at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=108&CM=&DF=&CL=ENG> (24.08.2015).

<sup>7</sup> Art. 16 para. 1 (a) and (b) E-Commerce-Act (*E-Commerce-Gesetz-ECG*): "Where an information society service is provided that consists of the storage of information provided by a recipient of the service, the provider is not liable for the information stored at the request of a recipient of the service, on condition that:

(a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the activity or information is apparent; (b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information."

<sup>8</sup> Art. 13 para. 1 (a),(b) and (c) E-Commerce Act (*E-Commerce-Gesetz-ECG*): "Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, the provider cannot be held liable for third party illegal content if they:

(a) do not initiate the transmission,  
(b) do not select the receiver of the transmission and  
(c) do not select or modify the information transmitted."

<sup>9</sup> Art. 18 para. 1 E-Commerce-Act (*E-Commerce-Gesetz-ECG*): „Providers, when providing services covered by articles 13 – 17, to monitor the information which they transmit, store or make accessible, nor a general obligation actively to seek facts or circumstances indicating illegal activity."



considered only if the provider is informed about the illegal content. This provision releases providers from criminal liability and the obligation to pay compensation.<sup>10</sup> In accordance with this provision, Article 8 paragraph 3 and Article 82 paragraph 1 Media Act (*Mediengesetz-MedienG*) refers to the E-Commerce Act (*E-Commerce-Gesetz-ECG*) regarding the liability of online media.

Article 14 E-Commerce Act (*E-Commerce-Gesetz-ECG*)<sup>11</sup> limits the responsibility of service providers offering **search engines**. Pursuant to Article 17 E-Commerce Act (*E-Commerce-Gesetz-ECG*),<sup>12</sup> such a service provider is not responsible for supplying links to information of third parties.

This limitation of liability is **not applicable in relation to injunctive relief**, nor on any other order of an authority regarding the termination of infringements.<sup>13</sup> This follows from Article 19 paragraph 1 of the E-Commerce Act (*E-Commerce-Gesetz-ECG*),<sup>14</sup> which expressly specifies that the right to demand injunctive relief or termination of the infringement remains unaffected. This is also clarified in Number 45 of the introduction of the E-Commerce Directive.<sup>15</sup> Article 19 E-Commerce Act (*E-Commerce-Gesetz-ECG*) itself does not contain the right to ask for injunctive relief. The application of that provision requires another statutory basis for a claim.<sup>16</sup>

## 2.1. Blocking and/or filtering of illegal Internet content

Pursuant to **Article 25d paragraph 4 (b) of the Police Act (*Polizeigesetz-PolG*)**,<sup>17</sup> the police can recommend to Liechtenstein providers that websites containing **propaganda material**<sup>18</sup> shall be

<sup>10</sup> Report of the Government regarding the drafting of the E-Commerce Act, Vaduz, 19.11.2002, Art. 19, p. 42, available at <http://bua.gmg.biz/BuA/default.aspx?nr=121&year=2002&content=ges> (07.08.2015).

<sup>11</sup> Art. 14 para. 1 E-Commerce Act (*E-Commerce-Gesetz-ECG*): "Where an information society service is provided that consists of supplying a search engine or other electronic means to allow searching for information of third parties, the providers cannot be held liable for the requested information if they (a) do not initiate the transmission of the requested information, (b) do not select the receiver of the transmission of the requested information and (c) do not select or modify the information transmitted."

<sup>12</sup> Art. 17 para. 1 E-Commerce Act (*E-Commerce-Gesetz-ECG*): "A service provider supplying links to information of third parties cannot be held liable for that information (a) if he does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or (b) if he acts expeditiously upon obtaining such knowledge or awareness to remove or to disable access to the information."

<sup>13</sup> Report of the Government regarding the drafting of the E-Commerce Act, Vaduz, 19.11.2002, Art. 19, p. 40, available at <http://bua.gmg.biz/BuA/default.aspx?nr=121&year=2002&content=ges> (07.08.2015).

<sup>14</sup> Art. 19 para. 1 E-Commerce Act (*E-Commerce-Gesetz-ECG*): "Art. 13 to 18 do not affect provisions by which a court or an authority can order the service provider to cease, remove and prevent an infringement."

<sup>15</sup> Nr. (45) of the introduction of the E-Commerce-Directive 2000/31/EC: "The limitations of the liability of intermediary service providers established in this Directive do not affect the possibility of injunctions of different kinds; such injunctions can in particular consist of orders by courts or administrative authorities requiring the termination or prevention of any infringement, including the removal of illegal information or the disabling of access to it."

<sup>16</sup> Report of the Government concerning the drafting of the E-Commerce Act, Vaduz, 19.11.2002, Art. 19, p. 46, available at <http://bua.gmg.biz/BuA/default.aspx?nr=121&year=2002&content=ges> (07.08.2015).

<sup>17</sup> Art. 25d para. 4 (b) of the Liechtenstein Police Act (*Polizeigesetz-PolG*): „Subject to paragraph 2, in the case of dissemination of propaganda material as defined in paragraph 1 via internet, the police can:

blocked. This provision only applies where the material in question is not stored on a computer located in Liechtenstein. Furthermore, the recommendation of the police is non-binding and without obligation so that it cannot be compulsorily enforced. According to our research, a case falling within the scope of that provision has not yet occurred.<sup>19</sup> As this provision is identical with Article 13e paragraph 5b Federal Act on Measures for Safeguarding National Security (*Bundesgesetz über Massnahmen zur Wahrung der inneren Sicherheit-BWIS*) of Switzerland, it is likely that the Liechtenstein police would contact Swiss authorities for further questions of concrete application, if such a situation arises.<sup>20</sup>

Regarding **TV-like online media**,<sup>21</sup> Article 82 paragraph 3 Media Act (*Mediengesetz-MedienG*) provides that regulations concerning blocking or access limitations are to be defined by the issuance of a decree. However, such a decree does not appear to exist.<sup>22</sup> Regarding the protection of children and adolescents, the government planned to integrate a provision into the Media Decree of Protection of Children and Adolescents (*Kinder- und Jugenschutz-Medien-Verordnung-KJMV*).<sup>23</sup> This does not appear to have happened yet, as the scope of this decree, pursuant to its Article 1 paragraph 1, does not comprise online media but only analogue and digital media.

According to our research, Liechtenstein law does **not provide any legal sources for measures of filtering**. The filtering of websites is a measure that can be taken on a **voluntary basis** by Internet providers. The Coordination Unit Switzerland (CYCO) publishes lists of websites it considers illegal or at least suspicious. On the basis of a police cooperation agreement between Switzerland, Austria and Liechtenstein,<sup>24</sup> those lists can then be consulted by Liechtenstein Internet access providers, who are entitled to react by installing filters.<sup>25</sup>

## 2.2. Take-down/removal of illegal Internet content

Rights to ask for deleting the illegal data or at least for injunctive relief are provided by different laws.

**Article 25d paragraph 4 (a) of the Liechtenstein Police Act (*Polizeigesetz-PolG*)<sup>26</sup>** enables the police to demand the deletion of a website containing **propaganda material**, if the material is stored on a computer located in Liechtenstein. This provision is identical to Article 13e paragraph 5 (a) Federal

(b) recommend to Liechtenstein providers to block the website in question, if the propaganda material is not stored on a computer in Liechtenstein.”

<sup>18</sup> According to the report and motion to the Liechtenstein parliament no. 27/2007 regarding the drafting of the amendment to the Police Act, Art. 25d, p. 33, “propaganda material” within the meaning of the provision shall only be material that incites to violence, irrespective of whether or not it for racist, political or other reasons. Available at <http://bua.gmg.biz/BuA/default.aspx?year=2007&nr=27&content=1590898361> (11.11.2015).

<sup>19</sup> According to Bruno Gstöhl, legal assistant of the Liechtenstein police.

<sup>20</sup> According to Bruno Gstöhl, legal assistant of the Liechtenstein police.

<sup>21</sup> Art. 2 para. 1 (4a) Media Act (*Mediengesetz-MedienG*): “TV-like online media: online media that is TV-like through its form and content and is offered as an on-demand audiovisual media service pursuant to Art. 1 para. 1 let. B of the 2010/13/EU directive.”

<sup>22</sup> The absence of such decrees is also confirmed by the Liechtenstein Office for Communications.

<sup>23</sup> Report of the Government regarding the amendment of Media Law, Vaduz, 21.09.2012, p. 42, available at <http://bua.gmg.biz/BuA/default.aspx?nr=83&year=2012&content=ges> (21.08.2015).

<sup>24</sup> Available at <https://www.admin.ch/opc/de/classified-compilation/19995950/index.html> (16.11.2015).

<sup>25</sup> According to Bruno Gstöhl, legal assistant of the Liechtenstein police.

<sup>26</sup> Art. 25d para. 4 (a) of the Liechtenstein Police Act (*Polizeigesetz-PolG*): „Subject to paragraph 2, in the case of dissemination of propaganda material via internet as defined in paragraph 1, the police can: (a) demand the deletion of the website in question, if the material is stored on a computer located in Liechtenstein“.

Act on Measures for Safeguarding National Security (*Bundesgesetz über Massnahmen zur Wahrung der inneren Sicherheit-BWIS*) of Switzerland. Such a case has not yet occurred in practice.<sup>27</sup>

Furthermore, **Article 47 paragraph 1 Media Act (*Mediengesetz-Medieng*)**<sup>28</sup> gives the court the possibility to order the removal of illegal content of online media, if such content constitute a **media content-related offense**. Media content-related offenses consist of the dissemination of incriminated contents.<sup>29</sup> That includes not only crimes under the Media Act but also any other action punishable by a court of law that can be committed by means of media content, such as defamation<sup>30</sup> or racial discrimination<sup>31, 32</sup>. However, the provision **does not allow the court to order the blocking of an entire website** because of incriminated content but only to order the removal of the particular incriminated part of the website. Whereas paragraph 1 is linked to a concrete criminal proceeding, paragraph 2<sup>33</sup> of the provision allows a recovery procedure consisting of ordering the removal of the content in question even if the concrete perpetrator cannot be found because of the anonymity of the Internet.<sup>34</sup> In practice, this will be carried out by giving such an order to the ISP.<sup>35</sup>

If publishing any other illegal content constitutes a criminal act, it is not possible to obtain removal or take-down of such a content. In practice, the only measure available to the relevant authorities is **confiscating the concrete computer** that contains the illegal data published online.<sup>36</sup> To avoid the limitation of conflicting rights (such as the freedom of expression) the authorities must take into account the **principle of proportionality**.<sup>37</sup>

<sup>27</sup> According to Bruno Gstöhl, legal assistant of the Liechtenstein police.

<sup>28</sup> Art. 47 para. 1 Media Act (*Mediengesetz-Medieng*): “In a criminal sentence regarding a media content-related offense, the Court has to order on application of the applicant [...] the deletion of the parts of the online medium constituting the criminal offense.”

<sup>29</sup> Consultation Report of the government regarding the creation of a media act and the amendment of other laws, Vaduz, 06.07.2004, p. 69, available at [http://www.llv.li/files/srk/pdf-llv-rk-vernehml\\_2004\\_mediengesetz.pdf](http://www.llv.li/files/srk/pdf-llv-rk-vernehml_2004_mediengesetz.pdf) (21.08.2015).

<sup>30</sup> Section 111 of the Penal Code.

<sup>31</sup> Section 283 of the Penal Code.

<sup>32</sup> Consultation Report of the government regarding the creation of a media act and the amendment of other laws, Vaduz, 06.07.2004, p. 46, available at <http://bua.gmg.biz/BuA/default.aspx?year=2004&nr=82&content=1111580653> (11.11.2015) with reference to HEINDL, L., in W. Berka et al. (eds.), *Mediengesetz Praxiskommentar*, 3<sup>rd</sup> ed., Vienna: LexisNexis 2012, § 28 Medieng, p. 334.

<sup>33</sup> Art. 47 para. 2 Media Act (*Mediengesetz-Medieng*): “Upon request of the prosecutor [...] confiscation has to be ordered in an independent proceeding, if in a medium a criminal offense has been committed and the persecution of a certain person is not possible or has not been requested [...] or if a condemnation is not possible [...]”

<sup>34</sup> Consultation Report of the government regarding the creation of a media act and the amendment of other laws, Vaduz, 06.07.2004, p. 69 and 70, available at [http://www.llv.li/files/srk/pdf-llv-rk-vernehml\\_2004\\_mediengesetz.pdf](http://www.llv.li/files/srk/pdf-llv-rk-vernehml_2004_mediengesetz.pdf) (21.08.2015).

<sup>35</sup> Consultation Report of the government regarding the creation of a media act and the amendment of other laws, Vaduz, 06.07.2004, p. 69, available at [http://www.llv.li/files/srk/pdf-llv-rk-vernehml\\_2004\\_mediengesetz.pdf](http://www.llv.li/files/srk/pdf-llv-rk-vernehml_2004_mediengesetz.pdf) (21.08.2015).

<sup>36</sup> § 26 para. 1 Penal Code (*Strafgesetzbuch-StGB*):

“Objects, which the perpetrator has used to commit the punishable act, or which had been appointed by him to be used in the commission of this act, or which have been brought about by this action are to collect, if these endanger the safety of people or morality or public order.”

<sup>37</sup> WILLE, H., *Liechtensteinisches Verwaltungsrecht*, 1<sup>st</sup> ed., Schaan 2004, p. 542.

Article 19 of the E-Commerce Act (*E-Commerce-Gesetz-ECG*) also includes **civil proceedings**.<sup>38</sup> In the event of infringements of individual rights, protection is provided by different laws, depending on the specific right that has been violated. If rights such as copyright,<sup>39</sup> trademarks<sup>40</sup> or entrepreneurs' rights<sup>41</sup> are concerned, the person whose rights are violated can ask for injunctive relief. The Liechtenstein District Court will order termination of an existing infringement and prohibit any imminent violation. If personal rights as notably a person's honour are at issue, the person concerned may also demand the termination of the infringement and injunctive relief.<sup>42</sup> The right to ask for injunctive relief is not linked to any knowledge of the infringer of the existence of illegal contents.<sup>43</sup> Our research did not lead to any conclusion on the question of whether these actions can be brought directly against host providers.

In the field of **intellectual property**, the Directive 2001/29/EC<sup>44</sup> provides in its Article 8 paragraph 3 that the member states shall ensure the possibility of rightholders "[...] to apply for an injunction against intermediaries, whose services are used by a third party to infringe a copyright or related right". Not only host providers, but also access providers are intermediaries pursuant to the Directive.<sup>45</sup> Liechtenstein has implemented some of the Directive's requirements into its Copyright Act, but a provision as in Article 8 paragraph 3 of the Directive has not been adopted.<sup>46</sup> Furthermore, the aim of the amendment was to align the Liechtenstein Copyright Act with the Swiss Copyright Act,<sup>47</sup> which does not provide such a provision either.

### 3. Procedural Aspects

In Liechtenstein, the police are the competent body to recommend that certain Internet content is blocked and to make an order to delete a website containing propaganda material. This is set out

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<sup>38</sup> Report of the Government regarding the drafting of the E-Commerce Act, Vaduz, 19.11. 2002, Art. 19, p. 46, available at <http://bua.gmg.biz/BuA/default.aspx?nr=121&year=2002&content=ges> (24.08.2015).

<sup>39</sup> Art. 57 para. 1 Copyright Act (*Urheberrechtsgesetz-UWG*): „A person violated in his copyright or a similar property right can ask the court to: (a) prohibit an imminent infringement; (b) eliminate an existing infringement”.

<sup>40</sup> With the same wording Art. 53 para. 1 a and b Trademarks Protection Act (*Markenschutzgesetz-MSchG*)

<sup>41</sup> With the same wording Art. 9 para. 1 a and b Unfair Competition Act (*Gesetz gegen den unlauteren Wettbewerb-UWG*).

<sup>42</sup> „Art. 39 para. 1 Person and Company Law (*Personen- und Gesellschaftsrecht-PGR*): „A person infringed or threatened in his personal rights [...] can demand [...] the termination of the infringement [...] and the prohibition of imminent infringements.”

<sup>43</sup> M. H. Wanger, Liechtensteinisches Markenschutzgesetz, Wanger Consulting Anstalt, Vaduz 2002, p. 207.

<sup>44</sup> Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society.

<sup>45</sup> Court of Justice of the European Union, UPC Telekabel Wien GmbH v. Constantin Film Verleih GmbH and Wega Filmproduktionsgesellschaft mbH judgement of 27.03.2014 – C-314/12.

<sup>46</sup> Report of the Government regarding the amendment of the Copyright Act, Vaduz, 30.05.2006, where Art. 8 para. 3 of the Directive is not even mentioned; available at <http://bua.gmg.biz/BuA/default.aspx?nr=62&year=2006&content=ges> (07.08.2015).

<sup>47</sup> Report of the Government regarding the amendment of the Copyright Act, Vaduz, 30.05.2006, p. 9; available at <http://bua.gmg.biz/BuA/default.aspx?nr=62&year=2006&content=ges> (07.08.2015).

under Article 25d paragraph 4 (b)<sup>48</sup> and Article 25d paragraph 4 (a)<sup>49</sup> of the Police Act, respectively. Insofar as the police measures are enforceable, in particular the order to delete a website, the enforcement follows the Articles 110 et seq. of the State Administration Act.<sup>50</sup>

The enforcement of injunctive relief follows the Execution Act<sup>51</sup>. In the event that the perpetrator does not comply with the court order, he will have to pay an administrative fine for each violation of this order with a total maximum of 10'000 Swiss francs.<sup>52</sup>

The enforcement of the order to remove illegal content of online media subject to Article 47 paragraph 1 Media Act, which is expressed in a sentence by a penal court,<sup>53</sup> follows the Execution Act. Its Article 1 (a) stipulates that every final judgement by a Liechtenstein court of law is an executory title subject to the Execution Act. The corresponding sentence can be appealed<sup>54</sup> or reviewed.<sup>55</sup>

#### 4. General Monitoring of Internet

There are **no Liechtenstein entities in charge of reviewing Internet content.**<sup>56</sup>

The Coordination Unit Switzerland (CYCO) is in charge of monitoring Internet content in search of **child-pornography**. Should the CYCO discover illegal Liechtenstein websites, either by independent search or upon notification from a person, it will inform the Liechtenstein police.<sup>57</sup>

Regarding the **protection of minors**, there are several foreign private initiatives whose standards also apply in Liechtenstein. The Liechtenstein Office of Social Services is in charge of youth protection but does not monitor websites itself to make sure the standards of these private initiatives are respected.<sup>58</sup> Such initiatives are, for instance, the German Voluntary Self-control for Multimedia Service Providers (FSM), the Swiss Criminal Prevention Association (SKP) and the EU-initiative [saferinternet.org](http://saferinternet.org).<sup>59</sup>

<sup>48</sup> Art. 25d para. 4 (b) of the Liechtenstein Police Act (*Polizeigesetz-PolG*): „Subject to paragraph 2, in the case of dissemination of propaganda material as defined in paragraph 1 via internet, the police can: (b) recommend to Liechtenstein providers to block the website in question, if the propaganda material is not stored on a computer in Liechtenstein.”

<sup>49</sup> Art. 25d para. 4 (a) of the Liechtenstein Police Act (*Polizeigesetz-PolG*): „Subject to paragraph 2, in the case of dissemination of propaganda material via internet as defined in paragraph 1, the police can: (a) demand the deletion of the website in question, if the material is stored on a computer located in Liechtenstein”.

<sup>50</sup> Gesetz über die allgemeine Landesverwaltungspflege (*Landesverwaltungsgesetz-LVG*).

<sup>51</sup> Gesetz über das Exekutions- und Rechtssicherungsverfahren (*Exekutionsordnung-EO*).

<sup>52</sup> Cf. Sec. 258 para. 1, 259 para. 1 of the civil procedure Code (*Zivilprozessordnung-ZPO*).

<sup>53</sup> Cf. Art. 47 para. 1 Media Act (*Mediengesetz-MedienG*): “In a criminal sentence regarding a media content-related offense, the Court has to order on application of the applicant [...] the deletion of the parts of the online medium constituting the criminal offense.”

<sup>54</sup> Sec. 218 para. 1 of the Criminal Procedure Code (*Strafprozessordnung-StPO*).

<sup>55</sup> Sec. 234 of the Criminal Procedure Code (*Strafprozessordnung-StPO*).

<sup>56</sup> According to the Liechtenstein Police and the Liechtenstein Office for Communications.

<sup>57</sup> According to Bruno Gstöhl, legal assistant of the Liechtenstein police; according to Myriam Stucki, information officer of the Swiss Federal Department of Justice and Police.

<sup>58</sup> According to Karlheinz Sturn, Youth Protection Officer of the Liechtenstein Office of Social Services.

<sup>59</sup> Office of Social services, [www.jugendschutz.li](http://www.jugendschutz.li) (07.08.2015).

## 5. Assessment as to the case law of the European Court of Human Rights

We could not find any information concerning this question. Neither did our research, comprising the analysis of accessible material at the SICL library, Liechtenstein law ([www.gesetze.li](http://www.gesetze.li)), Liechtenstein databases (“Recht Portal für Liechtenstein”) and requests directly addressed to Liechtenstein authorities, produce any result. Nor does the information explained above suffice for producing a reliable assessment on our own.

According to the jurisprudence of the European Court of Human Rights,<sup>60</sup> an interference with freedom of expression pursuant to Article 10 of the European Convention on Human Rights has to be **prescribed by law**. This legal provision needs to be **accessible and foreseeable** so that individuals can foresee the consequences that a given action may entail. Furthermore, the regulation has to pursue a **legitimate goal** as the protection of national and public security, the maintenance of public order, the prevention of criminal offences, the protection of health and the protection of the rights and freedoms of others. Finally the regulation needs to be **necessary** in a democratic society and has to be **proportionate**.

**Article 25d Police Act (Polizeigesetz-PolG)** and **Article 47 paragraph 1 and 2 Media Act (Mediengesetz-MedienG)** that allow the removal of illegal content seem to meet these requirements. They are both enacted and published laws and are thus freely accessible and foreseeable by the public. As regards the criteria of a legitimate goal, Article 25d Police Act (*Polizeigesetz-PolG*) aims at blocking and removing disseminated “propaganda material”, whereas Article 47 Media Act (*Mediengesetz-MedienG*) concerns media-related criminal offences. As a consequence, in both cases illegal Internet content shall be blocked or removed in order to maintain the public order, namely to remove criminal content (provided the relevant “propaganda” is forbidden according to penal law; however, the consequence would only be a “recommendation” for blocking; the blocking is executed by the providers on a voluntary basis). With regard to every sovereign act, however, the authorities have to take into account the principle of proportionality to avoid the limitation of conflicting rights such as the freedom of expression.<sup>61</sup> The regulations hence both pursue a legitimate goal within the scope of Article 10 of the European Convention on Human Rights. Finally, there does not seem to be a reason for doubting that these provisions are necessary in a democratic society and that they are proportionate, as their respective scopes are very narrow and only apply to very specific offences.

The remedies also seem clear since every official letter has to contain an instruction on the right to appeal.<sup>62</sup> The same applies to every sentence by a court of law.<sup>63</sup>

We would assess that the legal situation in Liechtenstein is rather comparable to the Austrian and German system. A resemblance to Austria can particularly be seen in the fact that it is rather unclear how the Media Act and the E-Commerce Act interact in practice. However, this is to say that freedom of expression is given a rather broad space (compared to other systems). This could explain the nonexistence of any explicit safeguards or any discussion in relation to such measures.

Silvia Deuring

<sup>60</sup> European Court of Human Rights, *DELFI AS v. ESTONIA*, judgement of 10.10.2013 – 64569/09.

<sup>61</sup> WILLE, H., *Liechtensteinisches Verwaltungsrecht*, 1<sup>st</sup> ed., Schaan 2004, p. 544.

<sup>62</sup> Cf. Art. 85 of the State Administration Act (*Landesverwaltungspflegegesetz-LVG*).

<sup>63</sup> For a civil law court cf. Sec. 416a of the Civil Procedure Code (*Zivilprozessordnung-ZPO*), for a criminal court cf. Sec. 215 para. 2 (6) of the Criminal Procedure Code (*Strafprozessordnung-StPO*), for an administration court cf. Art. 88 of the State Administration Act (*Landesverwaltungspflegegesetz-LVG*) in conjunction with Sec. 416a of the Civil Procedure Code (*Zivilprozessordnung-ZPO*).

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