

BLOCKING, FILTERING AND TAKE-DOWN OF ILLEGAL INTERNET CONTENT

ROMANIA

(29/03/2016)

Legal framework

p. 545 (ref. to child pornography): Art. 18 of *Law 678/2001 on preventing and fighting the trafficking of persons* was repealed by Law 187/2012 for the implementation of *Law 286/2009 on the Criminal Code*. Child pornography is dealt with in art. 374 of the *Criminal Code*, which reads as follows [*unofficial translation*]:

Art. 374

Child pornography

- (1) *Producing, possessing with the scope of exposure or distribution, purchasing, storing, exposing, promoting, distributing, and offering any form of pornographic materials featuring minors is punishable by 1 to 5 years' imprisonment.*
- (2) *If the deeds mentioned in para (1) were perpetrated by means of information technology or any other electronic communications means, they are punishable by 2 to 7 years' imprisonment.*
- (3) *Accessing unlawfully pornographic materials featuring minors by means of information technology or any other electronic communications means is punishable by 3 months to 3 years' imprisonment or fine.*
- (4) *Pornographic materials featuring minors are all materials that present a minor with an explicit sexual behavior or, which, although not presenting a real person, simulate in a credible manner a minor with such a behavior.*
- (5) *Attempt is also punishable.*

p. 547 (ref. to art. 6 of *Emergency Ordinance no. 31/2002 banning organizations and symbols with fascist, racist or xenophobe character*): The information on art. 6 of the said Emergency Ordinance is incorrect. The correct form of art. 6 para (1) is the following [*unofficial translation*]:

Art. 6

- (1) *Denying, contesting, approving, justifying or evidently minimizing in public, through any means, of the Holocaust or of its effects is punishable by 6 months to 3 years' imprisonment or fine.*
- (2) *Denying, contesting, approving, justifying or evidently minimizing in public, through any means, of genocide, crimes against humanity, and war crimes, as defined by international law, in the Statutes of the International Criminal Court, and in the Charter of the International Military Tribunal created through the London Agreement on 8 August 1945, and recognized as such by a final decision of the International Criminal Court, the International Military Court created*

through the London Agreement on 8 August 1945, the International Criminal Court for the former Yugoslavia, the International Criminal Court for Rwanda or any other international criminal tribunal created through relevant international instruments and whose competence is recognized by the Romanian State, or of its effects is punishable by 6 months to 3 years' imprisonment or fine.

(3) The perpetration of the deeds mentioned at para (1) and (2) by means of information technology is a crime and is punishable by 6 months to 5 years' imprisonment.

Art. 7 and 8 of the same law, to which reference is being made by the authors of the study, were repealed by *Law no. 255/2013 for the implementation of Law no. 135/2010 on the Code of Criminal Procedure.*

Procedural aspects

According to the Romanian national legislation, the administrative authority on electronic commerce is the Ministry of Communications and Information Society, not ANCOM. This is stipulated in art. 22 a) and art. 23 para (1) of *Law 365/2002*, corroborated with art. 4 para (1) of *Government Decision no. 548/2013 on the organization and functioning of the Ministry of Communications and Information Society*. Consequently, para 2 of section 3 and paras 1 and 2 of section 3A must be modified accordingly.

In the text of section 3A para 4, '*article 16 para 3*' will be replaced by '*article 16 para 1*'.

In the first line of the last paragraph of section 3A the word '*also*' will be deleted.

The above-mentioned remarks regarding the competences of the Ministry of Communications and Information Society are also applicable in section 4 *General Monitoring of Internet* and section 5, *Assessment as to the case law of the European Court of Human Rights*.

We would also suggest an addition to section 2.1 *Blocking and/or filtering of illegal internet content* referring to the fact that the Romanian authorities intend to initiate a new draft law on cyber security taking into consideration the Constitutional Court's decision no. 17 of 21 January 2015.