

The Government of Sweden has been given the opportunity to comment and make fact-based amendment proposals on the parts of the “Comparative study on blocking, filtering and take-down of illegal Internet content” that pertains to Sweden.

The Government of Sweden wishes to make the following comments and proposals.

- 1) In section 2.2.2 there are reasons to mention that a Committee of Inquiry has proposed to broaden the criminal liability under the Act on Responsibility for Electronic Bulletin Boards. This can be done through a new final paragraph, which could read:

“A Committee of Inquiry has proposed that the criminal liability under the Act on Responsibility for Electronic Bulletin Boards should be broadened to cover unlawful threats and unlawful violation of privacy. The report, *Integritet och straffskydd* (SOU 2016:7), has been circulated for comments to relevant consultation bodies. A Government Bill dealing with these issues is expected to be put before Parliament in the spring of 2017.”

- 2) On p. 653, third paragraph, the directives of the Public Inquiry are mentioned together with the information that the results of the Public Inquiry will be presented in January 2016. It should be added that “The results of the Public Inquiry were presented in February in the report, *Integritet och straffskydd* (SOU 2016:7).”

- 3) On p. 652, under section 2.2.3 it is mentioned that the Swedish Data Protection Authority can “[...] render decisions stating that the content of a website is offensive [...]”. It should be clarified that this refers to processing of personal data that is in violation of the Personal Data Act. The sentence should therefore read: “However, it may render decisions stating that the processing of personal data on a website is offensive according to the Personal Data Act and therefore order the person responsible to remove the content.”

As a consequence of the just stated it is also necessary to amend section 2.2.1, second paragraph, in the following way. “The Swedish Data Protection Authority [...] that the processing of personal data on a website is offensive according to the Personal Data Act and therefore order the person responsible to remove the content.”

- 4) On p. 655, under section 4, there is a translation error as “Datainspektionen” is translated as “The Swedish Data Inspection Board”. The correct translation is “The Swedish Data Protection Authority”, see <http://www.datainspektionen.se/in-english/>. Furthermore, on the same page the Swedish word “personuppgifter” is erroneously translated as “private data”. The commonly used English translation is “personal data”.
- 5) On p. 647 and 650, respectively, it is mentioned that the Government-appointed Public Inquiry’s proposal has not led to legislation, principally because of criticism that the proposal violates the freedom of expression and other freedoms guaranteed in the constitution.

In fact, no part of the Public Inquiry’s proposal has led to legislation. The proposal was referred to different bodies for consideration. The comments from these bodies concerning the proposal on IP blocks are mixed. While some bodies have noted that the proposal on IP blocks would violate rights and freedoms guaranteed in the constitution, other bodies have criticized the proposal on IP blocks as outdated. Furthermore, some bodies have noted that while the proposal on IP blocks may in principle be compatible with the freedom of expression, a closer analysis of the question is warranted. After the Public Inquiry’s proposal had been presented, the then responsible

Government Minister promptly decided that proposed IP blocks would not be introduced, as such introduction was not perceived to be politically feasible.

The current report's conclusion that IP blocks were not introduced because of rights and freedoms guaranteed in the constitution is, in view of the facts just mentioned, not entirely correct. In this context, it should be mentioned that in the joint preparation (Sw. gemensambredning") concerning directive 2015:95 no objections were raised to the effect that it would be completely impossible to introduce such IP blocks. Please see the directive at <http://www.regeringen.se/rattsdokument/kommittedirektiv/2015/09/dir.-201595/>

6) On a couple of places in the report, there is a need to update the references to the case in Stockholm District Court, as this case is currently handled by Svea Court of Appeals.

6.1) Because of the above mentioned fact, it is proposed that a sentence on p. 646, fourth paragraph, is amended.

*Previous wording:* "The question of whether intellectual property owners may also benefit from an injunction from a court to force an access ISP to block all their customers from accessing websites found to infringe copyright or trademarks is currently being examined in a pending case at the Stockholm District Court."

*Proposed new wording:* "The question of whether intellectual property owners may also benefit from an injunction from a court to force an access ISP to block access to websites found to infringe copyright is currently being examined in a pending case at Svea Court of Appeal."

Also footnote 5 is in need of the following amendment: "Case T 11706-15 at Svea Court of Appeal. In the Stockholm District Court T 15142-14."

6.2) On p. 647 two sentences should be reformulated so as to correctly reflect the key legal questions in the civil disputes referred.

*Previous wording in the third paragraph:* "The question of an internet service provider's responsibility for its customers communication has been subject to [...]"

*Proposed new wording:* "The question of an internet service provider's contribution (from a civil point of view) in its customers infringement of the protected copyright has been subject to [...]"

*Previous wording in the sixth paragraph:* "[...] concerning the responsibility of ISPs for their customers access to websites containing illegal material [...]"

*Proposed new wording:* "[...]concerning the ISPs contribution (from a civil point of view) to infringements of the protected copyright on websites, accessed by their customers [...]"

6.3) On p. 647, final paragraph, the following new wording is proposed: "There is currently a case pending in the Svea Court of appeal concerning [...]"

Also footnote 11 is in need of the following amendment: "Case T 11706-15 at the Svea Court of appeal. T 15142-14 at the District Court of Stockholm."

- 6.4) The references in the report to the Black-Internet case should be corrected, and the right matter/reference number should be inserted.

On p. 647 the references to the Black-Internet case have been linked to the wrong matter/reference number. The correct matter/reference number in Svea Court of Appeals is Ö 7131-09 (not Ö 8773-09, which refers to the private individuals behind Pirate Bay, and which admittedly was also handled in the same decision). This needs to be corrected in, for instance, footnotes 8, 9 and 55.