

Dutch Approach to online child abuse

Policies connected to Removal and blocking of web pages containing or disseminating child sexual abuse material (CSAM)

Intro

- After taking office at the end of 2017, minister Grapperhaus of Justice and Security, immediately made the political priority to fight CSAM also his own priority. Minister Grapperhaus voiced his loathing of the heinous crimes connected to child sexual abuse and initiated a new strategy to combat online child sexual abuse.
- The new strategy focuses on the removal – preferably permanent and complete – of child sexual abuse material. Criminal investigations alone fall short here. Society at large and specifically private businesses have to activated to join the efforts for taking down such material in a public private partnership. Next to this the strategy aims at enhancing prevention measures targeted at downloaders, at youth and their parents. While reinforcing the existing tough criminal justice approach by police and prosecution the new strategy also aims at improving investigation techniques and filtration methods.
- The new strategy does not include blacklisting and blocking of URL's in the Netherlands. Based on the experiences in a pilot years ago the ministry, the police and the business community do not see an effect of such measures that outweighs the efforts and costs thereof of police and business actions. Furthermore such an approach is likely to lead to overblocking and needless intrusions of the right to free speech. And as technology innovates as it does it is very easy to circumvent such blockades, for example by using VPN.

Big role of Dutch hosting providers

- The Netherlands is aware that various reports indicate the huge amount of CSAM stored on servers in or attributed to locations in the Netherlands. All in all: It does feel very uncomfortable to be singled out as a big facilitator of CSAM no matter what the exact numbers are. Using the new strategy the Netherlands takes responsibility and does it utmost to combat this. As said, especially by working together with the internet industry. An industry that thrives in the Netherlands, also in the hosting industry (*I mean providing for technical infra, not so much image hosting*). We are the place in Europe where the transatlantic cables come ashore in the AMS-IX, we have a national "high end" infrastructure which provides for speed and connectivity. Next to the sunny side of this, this is complemented by the dark side of internet, which is illegal activity like CSAM.
- Seen from the side of businesses hosting is a perfectly normal business case supported by the e commerce directive. An EU directive that exempts mere conduit behavior from liability for the content hosted, unless the provider is or becomes actually aware of illegal content on their servers.

Public Private partnership

- Inspired by the EU framework The Netherlands has already in 2007 initiated a Notice and takedown procedure in which subscribing companies agree to prescribed evaluation of a complaint of illegal content on their servers which may lead to a taking down. Over the years this

procedure worked well. The vast majority of ICT companies in the Netherlands actively remove child pornography after receiving an alert from the Police or the Child Pornography Hotline run by the EOKM.

- As part of the new strategy minister Grapperhaus and private sector organizations signed on December, 13, 2018 amendments to this code-of-conduct. Very important is that Dutch hotline EOKM is now recognized by all parties a 'trusted flagger' to report child sexual abuse material to the online service company and/or law enforcement requesting its removal from access and circulation within 24 hours.
- Next to this the Ministry and the hotline EOKM introduced in the last months a new instrument to help providers to keep their servers clean! Hashcheck is a free service that allows ICT companies to scan its servers for CSAM. By using hash signatures of the data they store they may identify and remove the material from their networks. The EOKM will distribute a so-called application programming interface to the providers which allows them to check on a 'hit/no hit' basis their own hashed data against a database of 1,4 mln hashes of already checked CSAM which is set up and maintained by Dutch Law Enforcement. The Police identified 1.4 million unique digital fingerprints, or 'hash values', from their child abuse image database.
- Despite the good practice of the NTD procedure we are confronted with a small group of ICT companies only cooperate to a lesser extent, and some do not even cooperate at all.
- Criminal prosecution of the small group of non-cooperating actors is possible; but there are two reasons why criminal law is not the ideal tool for the job. Criminal law is less suitable for setting standards of behaviour for ICT companies, because there is a broad gap between their activities and hard criminal acts.
- The second reason is that the primary focus of the Public Prosecution Service and the Police on dealing with the actual perpetrators of acute abuse and reducing the numbers of their victims is of critical importance.
- The Netherlands therefore started a new legislative process to tackle companies that fail to cooperate. In the near future, non-cooperating actors have to deal with a governing body who has the authority to impose regulatory reparative sanctions on a company as a legal person. In addition to criminal law and EOKM, this procedure specifically aims to eradicate child pornography fast and efficient.
- Another instrument we develop is special monitoring software to trace Dutch notifications of child pornographic content. This tool can accurately identify who, where, how long, and how many CSAM is circulating online. The first results are expected this summer.

Ending

- The Netherlands realize that in the nowadays borderless digital era one country cannot solve the CSA problem. International cooperation is of the essence. That is why we like to share our practices with other states and within the EU also with the Commission. We hope to inspire and stand ready to be inspired. Please get in contact with us.