



Danish response to the Commission’s consultation “A Clean and Open Internet: Public consultation on the procedures for notifying and acting on illegal content hosted by online intermediaries”

The Danish Government welcomes the Commission’s initiatives on e-commerce and the consultation of all stakeholders on specific issues related to the functioning of N&A procedures in Europe in the context of Article 14 of the E-commerce Directive.

The Danish Government supports that N&A procedures and principles are clarified and applied in a harmonised manner across Europe in order to strengthen their effectiveness and the legal certainty of businesses, content providers and individuals, thus strengthening the digital single market.

When considering the clarification of the scope and application of N&A procedures across Europe the Danish Government would bring focus to the central challenge of striking a balance between promoting economic, social and technological innovation and growth in the digital single market while also providing for effective procedures and measures addressing illegal or infringing content such as N&A.

In that light the Danish Government stresses that illegal or infringing content is not acceptable while at the same time it must be avoided that legal content is affected or removed as a result of such procedures, including N&A procedures. Further to this point the Danish Government stresses that all aspects of N&A procedures should respect the unique open nature of the internet and the fundamental rights and civil liberties of enterprises and individuals in Europe.

In some cases it may be apparent that notified content is illegal or infringing. In other cases notification may be unjustified or the legality of the content may be unclear or contested. To this end the Danish Government recommends that allegations of infringement or illegality of content made by a notifying party should be sufficiently precise and adequately substantiated. It should not be left to the discretion of a hosting provider to decide whether content is legal or not. The Danish Government invites

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the Commission to consider and give guidance on how this burden of proof could be lifted in a simple and expeditious way.

The Danish Government invites the Commission to give attention and caution to the proportionality of potential burdens that N&A procedures could imply for hosting providers and related businesses in Europe in order not to hinder innovation or impede the evolution of new businesses and business models. The roles and responsibilities of the parties involved should be reasonable and proportionate. Issues of legality of content is not a responsibility of the hosting service provider but rather an issue between the notifying party and if possible the content provider.

Furthermore, it is the position of the Danish Government that hosting providers should not be held accountable or liable for actions or lack of action in cases where the legality of content is contested or undocumented. To this end the principles of liability limitation as expressed in the E-commerce Directive should be extended so hosting providers are not held liable for unconfirmed, undocumented or falsely confirmed or documented notifications or errors beyond the hosting providers' control in that regard.

Finally the Danish Government recommends that N&A requirements should be flexible, balanced and proportionate to the infringements and the services in question. Actions should be specific and should not in any way affect or impede the provision of access to legal or un-notified and therefore presumably legal content.