[RO] Legislative Initiatives Concerning Website Blocking

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Two different legislative initiatives with regard to blocking websites with harmful or inappropriate content are under debate in Romania.

Firstly, though rejected by the Romanian Senate on 26 April 2011, a draft law on preventing and fighting pornography, aimed at a review of the legislation on pornography (Law no. 196/2003 modified by Law no. 496/2004), proposed by the Government, will be sent to the Chamber of Deputies (lower chamber of Romania's Parliament), which will have the final decision. Secondly, the Government adopted Decision no. 150/2011 (Official Journal of Romania no. 179 of 1 March 2011) with regard to the Fiscal Code but also to the organisation and operation of gambling websites.

The Government intended, through the draft law on fighting pornography, to fill the gaps in the 2003 law in the field of online content and to restrict the access of minors to pornographic websites (and to completely ban websites with zoophilia, paedophile and necrophiliac contents) by obliging authors of such websites to introduce a password-protected access system. Access shall be granted only after having paid a fee per minute and the number of visits has to be clearly accountable. At the same time, the draft introduces the responsibility of ISPs for links to pornographic content, under the provisions of Law no. 365/2002 on electronic commerce.

The Government also tried to define more strictly and widely the term of pornography. Owners of a domain name, who intend to use this for a pornographic website only, have to notify the Ministry of Communications and Information Society of their intention. The draft law provides the obligation for such operators to place a warning on their website with regard to the content. The draft proposes such restrictions for pornographic websites only, whilst websites which include not only pornographic content, could allow access to their offer with an age verification system. One Senator had proposed a more strict text, agreed on in the Senate's Culture Committee, extending the restrictions to all websites which include pornographic content, irrespective of the percentage of these.

The draft law gives more competencies to the Ministry of Communications and Information Society to control the enforcement of the obligations imposed by law, and, in case of non-compliance, to require service providers to block access to the

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websites or content for a period of up to 30 days. Providers would have to implement the blocking measure within two days following the request of the Authority. Providers which do not observe the blocking requests can be fined with Lei 10,000-50,000 (EUR 2,440-12,200).

The provisions of the draft law are considered by NGOs to be unclear and giving room to limit freedom of expression, to endanger the right to privacy and possibly to transform ISPs into a „digital police".

Furthermore, the Government adopted Decision no. 15/2011, to implement the Government Emergency Decree no. 77/2009 with regard to the organisation and operation of gambling websites. According to the Decision, the competent bodies would be able to require ISPs to block websites identified as being used to provide access to unlicensed gambling sites or to market activities with regard to gambling sites or related activities and services that are not authorised under Romanian law. The law does not provide any obligation or sanction for the ISPs to comply with that Decision.

The main criticism of the NGOs with regard to the two legal documents is that the latter consider blocking of websites to be the only and/or most efficient solution to solve the problems related to illegal online activities. The NGOs warn that blocking websites will not stop such activities because the holders and potential users will be able to easily avoid the ban and, because of the decentralised nature of the Internet, the blocked content could be accessible on other locations, probably outside the authorities' control.

Comunicat de presă - Şedinţa plenului Senatului - 26 aprilie 2011

https://www.senat.ro/StiriSenatDetaliu.aspx?ID=2A368838-FCA7-412D-BD32-F7A52034074C

Press release on the Senate's plenum of 26 April 2011

Proiect de lege pentru modificarea şi completarea Legii nr.196/2003 privind prevenirea şi combaterea pornografiei

http://www.senat.ro/Legis/Lista.aspx?cod=15777

Draft law on the modification and completion of Law no. 196/2003 on pornography

Hotărârea Guvernului nr. 150/2011 din 23.02.2011 pentru modificarea si completarea Normelor metodologice de aplicare a Legii nr. 571/2003

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privind Codul fiscal precum si pentru modificarea si completarea HG 870/2009 pentru aprobarea Normelor metodologice de aplicare a OUG 77/2009 privind organizarea si exploatarea jocurilor de noroc, publicată în Monitorul Oficial, nr. 179, Partea I din 1 martie 2011

http://www.dreptonline.ro/legislatie/hg_150_2011_modificare_norme_metodologice_codul_fiscal_hotarare_modificare_norme_jocuri_noroc.php

Government Decision no. 150/2011 of 23 February 2011 concerning the Fiscal Code and the Government Emergency Decree no. 77/2009 concerning the organisation and operation of gambling sites, Official Journal of Romania no. 179, Part I, of 1 March 2011

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