European Commission: Communication on tackling illegal content online

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On 28 September 2017, the European Commission issued a Communication entitled “Tackling Illegal Content Online - Towards an enhanced responsibility of online platforms”. The Communication follows the Commission’s Communication on a Digital Single Market Strategy for Europe, which included creating a fit-for-purpose regulatory environment for platforms (see IRIS 2015-6/3, 2015-10/4, and 2017-7). This new Communication aims to provide guidelines and principles for online platforms in the fight against illegal content, including incitement to terrorism, illegal hate speech, child sexual abuse material, and infringements of intellectual property rights. The Communication provides guidance on detecting and notifying, removing, and preventing the reappearance of such illegal content.

Firstly, the Communication suggests ways that illegal content can be detected efficiently. Online platforms should act swiftly upon binding orders or administrative decisions issued by the relevant authorities, and cooperate closely with law enforcement officials, while providing adequate safeguards for their users. This cooperation with law enforcement authorities should enable the effective enforcement of takedown requests and establish an alert system to be accessed by the authorities. To achieve this effective cooperation, online platforms should have the necessary resources to understand the legal field in which they operate, establish points of contact in the EU, and technical interfaces that facilitate such cooperation. Notices issued by trusted flaggers should be fast-tracked by platforms. A trusted flagger is a specialised entity, ideally subjected to criteria based on respect for fundamental rights, which could be part of an EU-wide standardisation framework. Users should have access to a notification system that is user-friendly, enabling sufficiently precise reports.

Concerning the adoption of proactive measures by online platforms and the benefit of the liability exemption provided for in Article 14 of the E-Commerce Directive (2000/31/EC), the Communication clarifies that the proactive measures themselves may not lead to the loss of the liability exemption. Any knowledge obtained from such measures of illegal activities or illegal information, however, may lead to a loss of the liability exemption. It may be recovered, however, if the platform acts expeditiously to remove the content upon obtaining such knowledge. Furthermore, the use and further development of automatic detection technologies is encouraged.

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Section 4 of the Communication provides guidelines on the removal of illegal content, which should generally happen as speedily as possible and without impediment to prosecution. Again, there should be robust safeguards concerning the removal of legal content. The meaning of “expeditious” removal, as defined by the E-Commerce Directive, should depend on a case-by-case examination, together with factors such as the contextual information required to determine the legality of content. The Communication suggests that in cases where serious harm is at stake, speedy removal can be subject to specific time frames. Removal times and procedures should be clearly reported in transparency reports, and evidence for criminal offences should be transmitted to law enforcement authorities. Furthermore, the content policy should be explained in the terms of service of the online platform, including information on the procedure for contesting removal decisions. The possibility of contesting such a decision should generally be available to any user whose content has been deleted, with few exceptions. The resolution of disputes by dispute settlement bodies is encouraged. Section 5 concerns preventing the reappearance of illegal content. Measures to prevent such reappearance include the suspension of repeat infringers, a database of reappearing illegal content accessible by all online platforms, and the introduction and further development of automatic re-upload filters. The latter should be subject to a reversibility safeguard and be made transparent in the platform’s terms of service.

In its conclusion, the Commission states that this Communication constitutes a “first element” of measures tackling illegal content online. The Commission will monitor progress and assess whether additional measures are needed, including possible legislative measures, which will be completed by May 2018.

European Commission, Communication on Tackling Illegal Content Online - Towards an enhanced responsibility of online platforms, 28 September 2017

https://ec.europa.eu/transparency/regdoc/rep/1/2017/EN/COM-2017-555-F1-EN-MAIN-PART-1.PDF

European Commission, Digital Single Market, Illegal Content Online, 28 September 2017

https://ec.europa.eu/digital-single-market/en/illegal-content-online-platforms

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