



Telecommunications Newsletter Switzerland

Criminal Liability of Hosting Providers under Revised Draft of Swiss Penal Code

The Swiss Federal Council has released two new proposals for a bill regarding the criminal liability of providers for legal contents on the internet and for the improvement of the cooperation between Swiss Federal and Cantonal authorities in the field of "criminal prosecution of cyber-crimes". Under applicable law the content provider is already liable to criminal prosecution - as an author - for illegal content provided by the content provider himself. In a nutshell, the proposed regulations can be summarized as follows:

The hosting provider which provides storage capacity to the content provider will be liable to criminal prosecution as an accomplice, instigator or abettor respectively, if the hosting provider intentionally permits the content provider to put illegal information on the hosting provider's data processors. If the Hosting Provider is not aware of any (illegal) content which the content provider intends to put on the internet at the point in time when the hosting provider provides the respective storage capacity, the hosting provider will not be subject to criminal prosecution.

However, should the hosting provider become aware of any illegal contents, the hosting provider has to prevent the further use of the illegal content if such prevention is "technically feasible and reasonable". Furthermore, the hosting provider will be subject to criminal prosecution, if he fails to pass on to the criminal prosecution authorities hints received from third parties regarding illegal content. The duty to pass on respective information is limited to such content actually hosted by the hosting provider itself and is limited to specific hints received by the hosting provider, not including generally available information on TV or radio. The penalty is imprisonment or fine (Art. 322bis draft of the Swiss Penal Code).

The Access Provider which only technically enables the access to the internet will be exempt from criminal liability (Art. 27 para 4 draft of the Swiss Penal Code).

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David Känzig
Marc Wenger

For further information, please contact:

David Känzig (d.kaenzig@thouvenin.com)

Marc Wenger (m.wenger@thouvenin.com)