

Updated: Mai 2010

Many see impeding access to Internet pages as an option to remove illegal contents from the Internet. The supporters of blocking claim that with little effort a large amount of access to illegal content can be prevented. Skeptics counterclaim that access impediment raises a multitude of technical and legal issues and is not sustainable and efficient. They further say it has a negative impact on the Internet as a whole at the latest when it targets a broad amount of websites and therefore also impacts the use of the most important global source of information. That is the reason why after parliamentary elections the German government suspended a law pertaining to impeding the access to child pornography Internet contents for the period of a year for the time being in order to test increased efforts to delete contents as an alternative. First experiences confirm that deleting also works when the contents are stored in other countries. Regardless of this discussion, EU-Commissioner Cecilia Malmström has presented a guideline proposal which would entail a complete harmonization of the access impediment.

Internet access providers offer their users merely Internet access, similar to phone companies selling their customers access to the telephone network. Just as phone companies, access providers have neither knowledge nor influence on the contents of the communication for which they provide their networks. They are neither responsible for law violations on the Internet nor are they part of them. The responsible parties, namely the providers of illegal contents often operate in foreign countries and are hard to prosecute there. That is where the idea originated to make access providers responsible and to obligate them to access impediment measures even though they have nothing to do with the actual law violation.

However, just by impeding the access on the Internet side, the perpetrators are not investigated nor is the content removed from the Internet. Nor is the access to the contents prevented. Every one of the different methods to impede access has limitations and is easily circumvented. That is another reason why access impediment should in no case lead to losing sight of the actual goal: to remove child pornography contents in the country of origin, to take consistent action against the providers thereof and to ensure the prosecution of the perpetrators. Only this is efficient and sustainable.

Trying to prevent the access to illegal contents on the Internet side, however, has a number of serious technical disadvantages. Depending on what method is used, legal

services or offers can be inadvertently affected by the access impediment; services and offers that were not supposed to be impeded. Some methods would only be feasible by deeply interfering into the Internet infrastructure which would have negative repercussions for the Internet connection performance, for the Internet industry, and for the European economy which depends on an efficient infrastructure.

The access impediment on the Internet side also means an interference with the fundamental rights of the European citizens. The European Union Treaty of Lisbon declares in article 6 section 1 EUV the rights, freedoms, and fundamentals laid down in the Charter of Fundamental Rights of the European Union to be equal to the treaties. Pertinent here are article 7 (respect for private and family life), article 8 section 1 (protection of personal data), and article 11 (freedom of expression and information). The Convention for the Protection of Human Rights and Fundamental Freedoms protects the right for respect for private and family life in article 8, and the freedom of expression in article 10.

The question is whether such an intrusion would be justified in view of the fact that deleting illegal content works well. Statistics of the hotline managed by eco in collaboration with the Voluntary Self Regulation Multimedia e.V. under the portal www.internet-beschwerdestelle.de updated since May 2009 show a success rate of 100 percent in regards to child pornography Internet pages hosted in Germany. The pages are taken offline within hours or minutes. Fifty percent of the content stored in foreign countries is offline within 5 days, 93 percent within two weeks, and the rest after that.

The critics of the access impediment method fear that this tool would also be used for other illegal content (e.g. illegal gambling or copy right infringements) once the infrastructure and the framework regulations are created. This would intensify the legal and technical problems.