

Markt/2006/09/E
Service Contract ETD/2006/IM/E2/69

**STUDY ON THE LIABILITY OF
INTERNET INTERMEDIARIES**

COUNTRY REPORT – Malta

Executive summary

November 12th, 2007

By Giovanni Maria Riccio, University of Salerno (Italy)

Part 1: Legislation

ECD has been implemented by the Electronic Commerce Act (CAP426), ACT III of 2001, as amended by Acts XXVII of 2002, IV of 2004 and XIII of 2005 (hereinafter referred to as ECA)¹.

Part VI (Intermediary service providers) is specifically devoted to ISP liability (articles 19-22) and represents the implementation of articles 12-15 ECD.

Article 19 (mere conduit) has implemented almost verbatim article 12 ECD. We can notice, however, that courts may order a prohibitory injunction.

Even article 20 (caching) has implemented almost verbatim article 13 ECD, but:

- paragraph 1, letter c) omits the sentence “specified in a manner widely recognised and used by industry” contained in ECD;
- paragraph 1, letter d) omits the sentence “widely recognised and used by industry” contained in ECD.

If compared with article 14 ECD, the most remarkable difference contained in article 21 is represented by the fact that it covers exclusively liability for damages.

Finally, ECA does not require any monitoring obligation on ISPs. Article 22, par. 2, states that “nothing in this Part of the Act shall be interpreted as imposing an obligation on information society service providers to monitor the information which they transmit or store or to actively seek facts or circumstances indicating illegal activity in connection with the activities described in articles 19 to 21”.

Part 2: National Case Law

According to the information collected by stakeholders, there is no case-law in Malta concerning ISP liability.

¹ <http://www.mca.org.mt/filesystem/pushdocmgmtfile.asp?id=986&source=3&pin=>

Part 3: Notice and take down procedures

A. Regulation

There are no specific notice and take down (hereinafter: NTD) procedures in place in the Maltese legal system and, for the time being, there are no official bills for the introduction of NTD procedures.

B. Self-regulation

C. Co-regulation

Code of Practice for Internet Service Provider² was published on March 26, 2002, but it does not contain any provision on notice and take down.

This code has not been adopted by all the 19 Maltese ISPs, but exclusively by the following ones, which are thus demonstrating their willingness to abide by its provisions: Video on Line; Telemail; Waldonet; Kemmunet; Keyworld; Webwaves; maltaNET; Euroweb; Camline; NextGen.

The Code is not specifically devoted to ISPs liability (nor to e-commerce), but it is of some relevance to the subject.

In fact, among the goals of the code, the following one is reported: “to provide a transparent mechanism for complaint handling for the Internet industry and ensure that complaints against ISPs are handled in a fair and efficient manner” (article 1 Scope and Objective).

According to article 2 (Terminology and Interpretation): “Service or services’ means online access to Public Internet and associated services”.

The Code does not contain a definition of an internet service provider.

However, its provisions only regulate the relationship between ISPs and their customers. So, ISPs (i.e. intermediary operators) conduct is not regulated in case of wrongful activities committed by third parties.

Only article 11 can be of some interest (Illegal and Harmful Content) which states:

“ISPs shall inform customers about safeguards against harmful content.

11.1 ISPs shall publish information about how customers may take adequate precautions to protect themselves from computer misuse and illegal and harmful content on the Internet.

² <http://www.mca.org.mt/filesystem/pushfile.asp?id=64&source=3&pin=>

11.2 ISPs shall publish adequate warnings to customers on virus attacks and threats of a similar nature of which they are sufficiently aware.

11.3 ISPs shall take such reasonable steps as are necessary to provide customers with information regarding supervision and control of minors' access to Internet content, and the procedures which customers may implement to control this.

11.4. The onus for implementing any such safeguards rests solely to the customer.”

According to stakeholders, the Code has achieved remarkable results.