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**STUDY ON THE LIABILITY OF
INTERNET INTERMEDIARIES**

COUNTRY REPORT – Poland

Executive summary

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Part 1: Legislation

The E-Commerce Directive was incorporated into Polish law by the Act of July 18, 2002 on provision of services by electronic means (APSEM). The APSEM is currently under revision. Polish law contains no special regulation for search engines or hyperlinks.

Legislative steps are being taken in Poland to amend of the Act on Gambling and Bets. In case of suspicion of gambling or betting on the internet the competent authority may order intermediaries to block the relevant website

Obligations of intermediaries to inform public authorities on request follow from the Code of Criminal Procedure, the Police Act and other regulations that are directly linked to the E-Commerce Directive. The Polish Code of Criminal Procedure obliges intermediaries that provide telecommunication services to safeguard/store data related to telecommunication for a certain period of time.

In implementing Enforcement Directive 2004/48/EC, Poland is about to amend the Copyright Act to enable rightholders to demand information on wrongdoers from intermediaries that were “found providing services used for activities that infringe the right holder’s copyrights”.

Part 2: National Case Law

Currently there is hardly any case law concerning the liability of internet intermediaries. In particular, courts have not yet had to decide on the notion of “actual knowledge”.

In a case dealing with the monitoring obligations of a host provider the trial court applied press law and held that the operator was obliged to control the comments before publication. The decision has not yet become legally binding and has been largely criticized as conflicting with Art. 14 APSEM.

In a linking case concerning a claim for damages, the court found that the defendant had knowledge of the unlawful content of the websites to which he led the users by hyperlink, since he recommended those websites. The court concluded that by placing the hyperlink the defendant had published the photo without the plaintiff’s permission. As this decision could result in a monitoring obligation for hyperlinkers it has been widely criticized in the Polish legal literature.

Part 3: Notice and Take-Down Procedures

Poland has introduced a special regulation on the contractual liability of the host provider towards the recipient of the hosting service for take-down of notified illegal

information (Art. 14 (2) and (3) APSEM). However, Poland has not implemented any “notice and take-down procedure” dealing with the formal and procedural requirements of a notice on illicit content to the intermediary. There is no self-regulation procedure in place at the level of associations of intermediaries. Regardless of the statutory notice and take-down procedure some providers have developed their own standards like Allegro’s “Cooperation for the Protection of Trademarks”.