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**STUDY ON THE LIABILITY OF
INTERNET INTERMEDIARIES**

COUNTRY REPORT – Sweden

Executive summary

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Part 1: Legislation

The E-Commerce Directive was incorporated into Swedish law by a number of Acts. The limitations of liability are regulated in the Act on Electronic Commerce and Information Society Services (2002:562). Swedish law does not provide for limitations of liability for search engine operators or providers of hyperlinks.

Issues regarding the liability of internet intermediaries are also dealt with in the Act on Responsibility for Electronic Bulletin Boards (1998:112). According to section 4 of this Act, the supplier of an electronic bulletin board is obliged to monitor the service regularly and in a fashion and to an extent that may reasonably be required taking into account the scope and nature of the service. He is not obliged to check every single message, but should conduct periodical controls. Where the number of messages exceeds the host provider's capacity to supervise the bulletin board, the host is given an opportunity to comply with his obligation to supervise by way of a complaints page where users can report any irregularities. In practice, the monitoring obligation is usually fulfilled by the provision of a complaints page of this kind. Under section 5 of the Act on Responsibility for Electronic Bulletin Boards, the host is obliged to erase unlawful messages as defined in the Act. An intentional or grossly negligent violation of the obligation to remove illegal content is a criminal offence.

Communication and cooperation obligations on the part of intermediaries may arise from the general rules of criminal law. No case law dealing with claims for information has yet been reported. The major providers cooperate with the police authorities in blocking web pages containing child pornography. In this connection many intermediaries have undertaken to block out commercial web sites containing this kind of pornography. Information on the sites to be blocked is given by the police authorities.

Part 2: National Case Law

In the "online guestbook" case the operator was found guilty of complicity in incitement to hatred of sexual minorities. The court found that by failing to remove and by commenting on the message he was aiding and abetting the crime of the user. On 7 November 2007 the Swedish Supreme Court however decided that the defendant, under general criminal law, did not have any obligation to delete a user's illegal message. In addition it had not been "obvious" that the message was illegal; so the operator did not therefore have any obligation to erase them under the Act on the Responsibility for Bulletin Boards.

In an earlier Supreme Court case dealing with a Bulletin Board System (BBS), the users of the service uploaded infringing copies of computer programmes to the BBS. The

operator of the BBS was prosecuted for making the infringing copies available to the public without the right-holder's consent. The Supreme Court found that a mere failure to act could not be the basis for punishable copyright infringement: the prosecutor was obliged to show that the defendant had committed an infringing *activity*.

There are few decisions dealing with hyperlinks. The Supreme Court found that a person who had posted hyperlinks to illegal copies of music to download on a webpage was only making illegal copies of the music available to the general public, and not copying these music pieces (or helping to make copies of them). In a linking case the market court found that it was not contrary to the Marketing Practices Act for a market place to link directly to the classified ads of another market place, and consequently rejected the application for an injunction.

At the moment there is a discussion as to whether internet service providers can be forced to block information on the basis of Section 53 b of the Copyright Act depending on whether the provider actually contributes to the infringement by merely providing normal provider services. There is however no case law dealing with the issue.

Part 3: Notice and Take-Down Procedures

There is no statutory notice and take-down procedure in place in Sweden, nor are there currently any proposals to introduce such procedures in Sweden. Likewise no co- or self-regulation with regard to notice and take-down procedures has been reported.