

## NOTICE-AND-TAKE-DOWN CODE OF CONDUCT

### 1. Scope

- a. This code establishes a procedure for intermediaries to deal with reports of unlawful content on the Internet.
- b. The code is provided for intermediaries that provide a public (telecommunications) service on the Internet in the Netherlands.
- c. This code is not applicable to situations in which other statutory obligations or liabilities apply for intermediaries on the basis of legislation and jurisprudence.

### 2. Definitions

- a. A report concerns the reporting by a notifier of (alleged) unlawful content on the Internet to an intermediary with the objective of having this content removed from the Internet.
- b. The notifier is a person or organization that makes a report.
- c. The content provider is the person (or organization) that has placed (contested) content on the Internet.
- d. An intermediary is the provider of a (telecommunications) service on the Internet.
- e. An inspection or investigation service is a legally appointed governmental service that has general or particular powers of investigation.

### 3. Intermediary's own Notice-and-TakeDown policy

Intermediaries have their own Notice-and-TakeDown procedure that the public must be able to consult and that is consistent with this code. This procedure describes how intermediaries deal with reports of unlawful content on the Internet. By means of this procedure, intermediaries wish to ensure that a report is always dealt with and that unlawful content is removed from the Internet.

- a. An intermediary publishes a procedure in which the manner and within which time limits reports are dealt with by the intermediary. Distinctions can be made between various different forms of service provision within this procedure.
- b. An intermediary can publish conditions of use within its service provision agreement in which criteria state what constitutes undesirable content in the view of the intermediary.

### 4. Reports

It is preferable that a report is only made once it is likely that the notifier and the content provider will be unable to reach an agreement. The notifier is responsible for ensuring reports are correct and complete.

- a. The intermediary must be able to verify that reports as part of an investigation regarding a criminal offence have originated from an inspection or investigation service, or – in the case of a formal legal order – from the Public Prosecutor's Office.
- b. For reports other than those stated in Article 4a, the notifier in any case provides the following information:
  - the contact details of the notifier;
  - the information that the intermediary needs to be able to evaluate the content, at least including the location (URL);
  - a description of why the content is unlawful according to the notifier, or why it is in conflict with the criteria published by the intermediary governing undesirable content;
  - a statement of the reason why this intermediary is being approached as the most appropriate intermediary to deal with the matter.
- c. A notifier can request that the intermediary deals with the report as a matter of urgency. The reasons for this should be fully explained by the notifier. The intermediary determines whether the report is dealt with as a matter of urgency on the basis of the explanation of the reasons.
- d. An intermediary can request an explicit indemnity from a notifier against claims from the content provider as a result of taking measures in the context of dealing with the report.

## 5. Evaluation

On receipt of a report it is dealt with by the intermediary according to the intermediary's own procedure.

- a.** Reports as referred to in Article 4a concern punishable content.
- b.** An intermediary evaluates reports as referred to in Article 4b to determine whether they are unequivocally unlawful and/or punishable.

## 6. Measures to be taken

The intermediary takes action on the basis of the results of the evaluation process.

- a.** In the event that the intermediary determines that the content concerned is not unequivocally unlawful, the intermediary informs the notifier accordingly, together with the reasons for this.
- b.** In the event that the intermediary determines that the content concerned is unequivocally unlawful, the intermediary ensures that the content concerned is immediately removed.
- c.** In the event that it has not been possible to come to an unequivocal judgement as to whether the content concerned is unlawful, the intermediary informs the content provider about the report with the request to remove the content or to contact the notifier. If the notifier and the content provider are unable to reach an agreement, the notifier can choose to make an official report to the police if in his or her opinion it concerns a criminal offence. If it concerns content that is alleged to be unlawful under civil law, it is preferable that the notifier is able to bring his or her dispute with the content provider before the courts. Should the content provider be unwilling to make him or herself known to the notifier, the intermediary can decide to provide the notifier with the content provider's name and contact details or to remove the content concerned.
- d.** The intermediary exercises due caution in the execution of the measures that have to be taken to ensure that the removal of any more content than that to which the report refers is avoided.

## 7. Final provisions

- a.** Those who subscribe to and make use of this code make this known.
- b.** Those who make use of an alternative NTD procedure make this known.
- c.** Notifiers and intermediaries can come to a mutually acceptable agreement to make use of (shortened) procedures that differ from or that are supplementary to this code of conduct.
- d.** Amendments to this code are made on the instigation of the initiators of this code.

## Introduction

This NTD code is one of the items of an initiative of organizations that are doing their best to combat the presence of unlawful information ('content') on (the Dutch component of) the Internet. The initiative has originated from the desire of governmental and private sector organizations to establish agreements in the field of Notice-and-Take-Down (NTD). A description of the form and substance that these organizations have given to these agreements is presented in this code. Use has been made of both expertise in the field and best practices in the drawing up of the NTD code.

The code establishes no new statutory obligations, but is intended to help organizations to operate with care within the existing legislative framework in the removal of information from the Internet at the request of third parties. A procedure is described for this. Complying with the code is voluntary, and there can be no formal enforcement in the case of noncompliance. The benefits of complying with the code lie in the achievement of more efficient procedures and in the reduction of liability risks. The organizations that endorse the code operate according to the procedures described here. It is therefore a code of conduct that lays down the conditions for the interactions between the parties involved.

The NTD code addresses the way reports concerning (alleged) unlawful content on the Internet are dealt with. In addition, the code can also be employed with respect to content that intermediaries consider to be undesirable or damaging. The code should contribute to the ability of private individuals and organizations to deal effectively with these types of reports between themselves as far as possible. The possibility always remains for them to bring the matter before the courts or to make an official report to the police.