



Enforcement of the Interstate Treaty on Gambling in Germany – killer or a toothless tiger?

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Only a few days before the Interstate Treaty on Gambling (Glücksspielstaatsvertrag – GlüStV), with its total ban on internet gambling in Germany became effective, one of Germany's leading internet security experts, Rolf vom Stein, put it in a nutshell.

He described the technical limits of internet censorship (keyword: ban on internet gambling) during an IT and banking expert panel in Cologne as follows: "The attempt to block the internet contradicts technical reality. The internet treats any form of censorship as an error and will find ways to bypass it."

"All established methods for the blocking of websites are complex and technically fragmentary. Also, blocking measures can be prevented or bypassed very easily by new technical developments (Web 2.0), through simple modifications by the providers or sometimes even through unaware steps taken by the users."

However, from January 1, 2008, internet gambling offers are prohibited by law.

Consequently the German Federal Government's statement in the infringement proceedings (No. 2007/4866) against the ITG dated May 20, 2008 (par. 64) says with regard to gambling offers: "Germany assumes that the internet providers, the banks and the banks' associations whose support will be necessary for the implementation of this prohibition will, of their own accord, accept the prohibition as justified and will support the German states in the implementation of their policies."

What has been said so far sounds indeed as if the GlüStV and its enforcement tools (ISP and financial blocking) are indeed a killer for the private e-gambling industry.

Now to the crucial question: do the legal and technical experts see these enforcement tools also as a killer for the private e-gambling industry or more as a toothless tiger?

Blocking orders or voluntary self commitment by access providers

From 2009 onwards, the intention is to strictly monitor the internet prohibition. Recent press releases show that foreign internet offers are now meant to be blocked by corresponding orders against the access providers. In some cases, access to the offers could already be blocked by taking action against the Admin-C or the registrar.

Apart from this demand the discussion about website blocking is dominated by the Federal Ministry for Family Affairs, as Mrs von der Leyen started her initiative "to block the data highway of child pornography" last November and hustles the German access providers into a "voluntary" self commitment. The access providers fear that this voluntary self commitment could give rise to a host of new demands - and with regard to the previous discussions with the gambling supervisory authorities they do have cause for concern.

Especially as neither the Federal Ministry for Family Affairs nor the gambling supervisory authorities have taken into account the existing expert opinions:

First of all, the Commission for the Protection of Minors in the Media (KJM) has commissioned two studies dealing with the feasibility of website blocking from the technical and legal side.

Expert opinions: legal and technical difficulties

Professor Sieber (legal expert) came to the following conclusion: "The present legal situation does not allow any blocking measures which would interfere with the secrecy of telecommunications as provided for in Art. 10 GG (German Constitution), section 88 TKG (German Telecommunications Act)."

Professor Pfitzmann examined the



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technical side for KJM and came to the result: "Summing up, one can state that blocking on the internet is feasible in principle. However, it is often connected with considerable (and usually unforeseeable) side-effects."

Second, also the BVDW (Federal Association Digital Industry) published an expert opinion that comes to the conclusion that due to the legal requirements of the German Telecommunication Act there is no legal basis for voluntary website blocking by access providers.

This result is also - last but not least - supported by the scientific service of the German Bundestag, but Mrs von der Leyen remains unimpressed. In her opinion the signal effect is worth all costs and administrative efforts (for the access providers) and considering child pornography all legal or technical arguments are negligible. In fact, some critical arguments of the Ministry of the Interior seem to have been lost in the heat of the battle and were not adopted in the common position of the Ministries of the Interior, Economics and Family Affairs.

Access provider: neutral gateway to the internet or deputy sheriff?

In the middle of this political discussion the access providers are desperately referring to their neutral role as providers of the entrance to the internet without being responsible for the information transmitted. It remains to be seen if the gambling supervisory authorities will enforce GlüStV by blocking orders in case the initiative of Mrs von der Leyen grinds to a halt and the gambling supervisory authorities cannot profit from any "voluntary" agreement.

But assistance is rendered by the Regional Court of Hamburg. In a recent decision the Regional Court of Hamburg decided about the question whether an

access provider can be obliged to block a website with content that is infringing a copyright (disturbance liability). The court elaborates on the complex of technical and legal problems of website blocking and states that even though the technical feasibility is questionable as every DNS blocking is easy to circumvent, it is - in the opinion of the court - only necessary that the access of the user is blocked on its path that the website blocking is disrupting.

However, the court comes to the conclusion that considering the low level of effectiveness (remarkably the judge tried himself to find information in the internet how to circumvent DNS blocking and succeeded in a few minutes) and considering the costs arising from this measure for the access provider, the claim was dismissed as being not reasonable and unfounded.

Conclusion

The internet prohibition of gambling raises many questions. First of all, a conflict of generations becomes apparent, as the internet prohibition is only justified by an unwarranted and diffuse fear of the medium. "The player's anonymity and the lack of any kind of social control make it seem necessary, under the aspect of preventing gambling addiction, to question the sales channel 'internet', for the area beyond sports betting."

Contrary to this, today's generation is well aware of the fact that the average internet user is not anonymous and that addiction prevention can be realised much more effectively by the provider of internet games than, for instance, on location at a casino where an individual's playing behaviour cannot be recorded in a traceable way. Furthermore, the implementation of the prohibition beyond Germany's borders requires censorship measures which usually are applied by countries such as



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China and North Korea, but are alien to a democratic and free society.

State supervision of gambling takes the easy way out in this context: by delegating its task of enforcing an internet prohibition to the internet providers, without providing them with feasible and effective action proposals for the implementation. The risk of hitting legal internet services as well due to imprecise blocking measures, and of thus exposing oneself to incalculable risks of damage claims, is simultaneously passed on to the internet providers in an inadmissible way.

It is alarming that the political discussions driven by understandable (child pornography) or doubtful (protection of problem gamblers or fiscal income?) reasons simply ignore all concerns that are outlined by legal and technical experts.

The toothless tiger is trying to threaten banks, access providers and the e-gambling industry. Once the blocking orders are issued and the legality is examined in court the toothless tiger will realise its weakness.