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## **Response from the Danish Ministry of Justice with regard to the questionnaire on social media, search, and freedom of expression**

The Danish Ministry of Justice presents its compliments to the Special Rapporteur on the promotion of the right to freedom of opinion and expression.

The Ministry welcomes the Special Rapporteur's comprehensive and inclusive work on freedom of expression and thanks him for the opportunity to provide a submission for the study on social media, search, and freedom of expression. The Ministry can provide the following information on the subjects set out by the Special Rapporteur:

### *Ad. Legislative measures and administrative regulations*

In Denmark, there are currently no legislative measures or administrative regulations aimed directly at or imposing obligations on social media platforms, search platforms and/or platform users to remove, restrict, or otherwise regulate online content.

The Danish Media Liability Act regulates the norms for the exertion of mass media. The main purpose of the Act is to secure the freedom of expression and the freedom of information. The Act stipulates that the content and conduct of the media shall be in accordance with sound press ethics and sets out a system of liability with regard to media content. The rules only apply to the media's editorial content and edited online discussions. Thus, unedited discussions, e.g. comments from users on social media platforms, are not encompassed by these rules.

It cannot be ruled out that a social media platform or search platform can be held responsible for the content on its platform under the general rules on

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contributory liability. In that case, it is assumed that the platform must have acted in a way, which can be criticized. For example if the platform allows unlawful content to remain on its platform, after having been notified of it.

As to the users of the platforms, there are no legislative measures or administrative regulations directly imposing obligations on them to remove, restrict, or otherwise regulate online content. However, general penal rules also apply to online behavior. For example persons who threaten, defame, express racist views, encourage crimes via social media platforms can be prosecuted and convicted under the generally applicable rules set out in the Danish Criminal Code.

#### *Ad. Judicial decisions*

There are no examples of judiciary decisions holding social media platforms or search platforms contributory liable for the information presented on their platforms. Conversely, there are examples of persons being convicted under the generally applicable rules in the Criminal Code for having expressed racist views etc. on social media platforms.

#### *Ad. Other policies and measures*

The Danish authorities have not set out policies or measures imposing obligations on social media platforms and search platforms and/or platform users to remove, restrict, or otherwise regulate online content. However, there are examples of Danish platform users, who have set out policies and measures themselves regulating the online content on their Facebook pages etc.

This is the case with two of the largest Danish news companies, DR (Danish Broadcasting Corporation, a government-owned radio and television public broadcasting company) and TV2 (TV 2 Danmark is owned by the Danish state and the public service channel TV 2 is operated on a commercial basis). The guidelines on debates on their Facebook pages state as follows; *“hateful comments, condescending comments or gross personal attacks are not welcome”* (DR) and *“we do not allow offensive language, personal attacks, harassment and calls for violence”* (TV2).

#### *Ad. Requests or demands*

There are a number of different ways of making requests or demands, informal or formal, to social media platforms to voluntarily remove, restrict, or otherwise regulate content.

An example in Denmark regards situations where pictures of a sexual content are being spread through social media platforms without the consent of the depicted person. In recent years, the Danish National Police have strengthened the efforts in this area, and they take different steps to remove such content. One of them is to seize the web page, on which such material has been spread. In order to do so the police can ask foreign authorities to aid in the investigation via a rogatory letter. However, such a request often requires that the police obtains a court order from the Danish courts in advance, and the processing of a rogatory letter by the foreign authorities can take up to 6-10 months, which can be a long time for a victim to wait.

Thus, another step to remove such content is to provide the victim with information on how to request a web page to remove such material. The police have made a guide containing guidelines for helping victims in such situations. An appendix to the guide contains a draft of a request in English that the victim can send to the relevant platform. It also contains contact information on a number of internet platforms, which can be handed out to the victim.

#### *Danish initiatives in this area*

In order to assess and evaluate the latest developments in technology and the new “social media-reality”, where anyone can publish any statement at any time without being subject to the scrutiny of an editor, the Danish government has appointed a committee to look into and describe this subject along with other freedom of expression-related subjects in a Danish context.

One of the tasks of the committee – in accordance with its mandate – is to look into and describe the role of social media, as the media can determine which ideas, messages, thoughts etc., should be spread through their platforms. This technological development raises considerations as to the power of social media to decide which views and opinions should be exchanged. The committee will also assess the concept of fake news from a freedom of expression point of view.

In its final report, the committee will give general recommendations in – amongst others – these areas. The purpose of the work of the committee is to give way for broad political discussions regarding the status of the freedom of expression in the present Danish society. According to the preliminary timetable, the committee shall deliver its report before the end of 2018.