

Kluwer Copyright Blog

Switzerland: No special law for social networks

Yaniv Benhamou (Lenz & Staehelin, Geneva) · Thursday, October 31st, 2013



“The report reflects the general tendency of Swiss legislative authorities to avoid legislative process and to favor a flexible approach of existing regulations.”

The Swiss Federal Council [reported](#) a few weeks ago, in response to a postulate referred by the National Council in 2011 related to the legal situation of social media, that Social networks such as Twitter, Facebook and blogs present legislation with new challenges but cannot be overcome by a separate special law. However a detailed examination will be carried out to determine whether new regulations are needed. This relates to the enforcement of the law, the liability of service providers and some aspects of data protection.

Problematic enforcement of the law

The Federal Council report, entitled “Legal Basis for Social Media”, indicates that there appear to be no major gaps in Swiss law. The general rules of existing legislation (e.g. the Data Protection Act or the Civil Code) apply to social networks and provide a reasonable solution to most problems the platforms create. However, it’s uncertain whether the existing provisions will work in practice. This applies primarily to the enforcement of existing legal claims, mainly because of the international nature of the disputes, the often anonymous communication and occasional difficulty of allocating the responsibility of the different parties involved (users, platform operators, providers).

Liability of service providers

Unlike most European countries, Switzerland has not made the liability of service providers that provide access to a network (e.g. operators of social media platforms and internet providers) subject to specific legislation (such as the European E-Commerce Directive). The general provisions for criminal and civil responsibility apply and the matter of liability appears to be less clear and there are several unanswered questions, as the Federal Court also noted. The Federal Council therefore wants the Federal Department of Justice and Police (FDJP) to clarify whether

legislative action is required. The FDJP will draw up a draft consultation paper by the end of 2015.

“The Federal Council is aware that not only providers, customers and authorities, but also the judiciary benefit from clear legal rules. However, given the large number of players and their different needs and problems, every conceivable bill on the responsibility of internet providers and the prosecution of infringements on the internet presents the challenge of finding a solution to satisfy everyone’s requirements. This presents a danger not only of overregulation, but also of underregulation.”

Data protection legislations

The Federal Council reports identifies other problems in relation to data protection legislation. They concern users’ lack of control over their data, such as the creation of personality profiles or the ‘right to be forgotten’ on the internet. The Federal Council instructs the FDJP to analyze the data protection legislation related to the social networks. This will take place within the framework of the on-going legislative project related to the [Data Protection Act](#).

Copyright infringement

Copyright infringement is one of the legal issues that is not covered in depth in this report. Measures to combat copyright infringement on the internet are currently being discussed within the [framework of another working group](#). “At meetings held to date, the members agreed that business models based on the infringement of Swiss or foreign copyright must be combated effectively. Here, the infrastructure operators (providers) which operate such business models must provide assistance in terms of what is reasonable, technically feasible and legally permitted. In addition, since 2012 the State Secretariat for Economic Affairs has initiated a round table which is intended to examine, in the framework of the existing legislation, how copyright infringements on the internet can be identified and prosecuted.”

Personal comment

The report of the Federal Council reflects the general tendency of Swiss legislative authorities to avoid legislative process and to favor a flexible approach of existing regulations. Compared to the legal systems in neighbouring countries, Switzerland has always been reluctant to provide new regulations related to new problems on the internet (e.g. to date, there is still no specific regulations such as the European Directive on electronic commerce).

The report covers most problems related to social media (e.g. infringement of intellectual property rights, of personal rights and reputation, users’ lack of control, right to be forgotten, cyberbullying, misused identity, censorship, content with criminal nature, misleading advertising) and systematically identifies the situation at the international level, in the legal systems in neighbouring countries and in Switzerland. However, neither the role of different parties involved (users, platform operators, providers), nor the questions of copyright infringement are covered in depth.

Finally, one can indicate that, despite the reluctance of legislative process and due to this report and the on-going Copyright act and Data Protection Act’s revisions, Swiss legislation related to Copyright infringement and other rights on the internet might move soon.

YB

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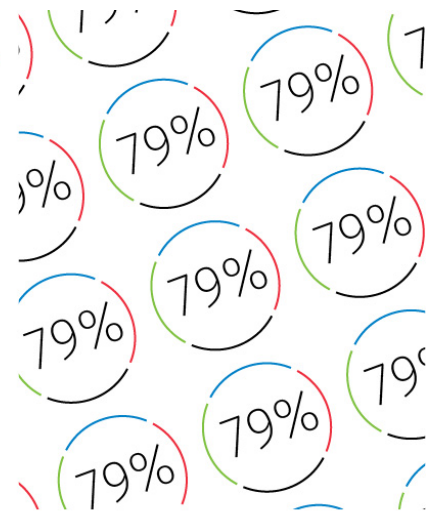
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