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European Commission

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Düsseldorf, 14. November 2019

INITIATION OF LEGAL PROCEEDINGS AGAINST MEDIA CONTENT PROVIDERS TARGETING GERMAN AUDIENCES WITH ILLEGAL CONTENT

Dear [REDACTED]

We would like to inform you that the Media Authority of North Rhine-Westphalia intends to initiate legal proceedings against Cypriot media content providers targeting German audiences with illegal content. In Germany, the Media Authority of NRW is the competent authority for violations of law in the field of protection of minors according to the Interstate Treaty on the Protection of Minors from Harmful Media (Jugendmedienschutzstaatsvertrag/JMStV) and the Interstate Broadcasting Treaty (Rundfunkstaatsvertrag/RStV).

In the opinion of the Media Authority of NRW, the services described below make content freely accessible that is pornographic according to the criteria developed by the jurisprudence to § 184 of the German Criminal Code (Strafgesetzbuch/StGB). The media content providers do not ensure, e.g. by the use of an age verification system, that this content is accessible only to adults. Therefore, the providers violate § 4 para. 2 sentence 1 no. 1 in conjunction with sentence 2 JMStV. As they cannot present a youth protection officer, they also violate § 7 para. 1 JMStV.

According to our assessment, the providers are primarily to be classified as video-sharing platforms. The revised AVMS Directive (Directive 2018/1808/EU) widens its scope by including certain obligations for video-sharing platforms, inter alia in the area of protection of minors. Art. 28b para. 1 letter a), para 3 subpara. 3 letter f) in conjunction with Art. 6a Directive 2018/1808/EU prohibits the distribution of freely accessible pornography and obliges video-sharing platforms to implement measures to prevent the accessibility of such harmful content to children or adolescents, e.g. by age verifications systems.

As these new provisions of the revised AVMS Directive are currently being implemented in national law, the aforementioned Articles are – strictly speaking – not yet applicable. Hence, we have carried out the relevant notification procedure in accordance with Art. 3 para. 4 letter b) Directive 2000/31/EC. However, under Art. 28a para. 5 Directive 2018/1808/EU the same procedure will be applicable after the implementation of the revised AVMS Directive.

The Media Authority of NRW initiated the notification procedure by providing the *Cyprus Radiotelevision Authority (CRTA)* with all the case information at its disposal along with the request to consider own measures. The *CRTA* informed us that it will not take any measures against the abovementioned services as it lacks material jurisdiction. This opens up the possibility for the German media regulator to take its own measures in accordance with the conditions described in Art. 3 para. 4 Directive 2000/31/EC.

These measures concern the following services:

- 1) **<https://de.mydirtyhobby.com/>**
a video-sharing platform provided by *MG Social Ltd.*, established in Cyprus.
- 2) **<https://de.xhamster.com/>**
a video-sharing platform provided by *Hammy Media Ltd.*, established in Cyprus. This service is offered in German language and makes accessible content that is evidently suited to seriously impair the development of children and young people or their education into self-responsible and socially competent personalities (§ 4(2) No. 3 JMStV; § 5(1, 3, 4) JMStV).
- 3) **<https://de.pornhub.com/>**
a video-sharing platform provided by *MG Freesites Ltd.*, established in Cyprus. The service in German language additionally offers content suited to impair the development of children or adolescents into self-responsible and socially competent personalities (§ 5(1, 3, 4) JMStV)
- 4) **<https://de.youporn.com/>**
a video-sharing platform also provided by *MG Freesites Ltd.*, established in Cyprus. The service in German language additionally offers content suited to impair the development of children or adolescents into self-responsible and socially competent personalities (§ 5(1, 3, 4) JMStV).

Anticipating the companies' right of defence, we intend to give the abovementioned providers the opportunity to express their views by hearing the providers. If these hearings do not lead to an adjustment of the services, we will continue the administrative procedure.



We also inform the State Chancellery of North Rhine-Westphalia about our intentions pursuant to Art. 3 para. 4 letter b e-Commerce Directive 2000/31/EC and Art. 3 para. 4 Directive 2010/13/EU (respectively Art. 3(2), Art. 4(2 to 4) Directive 2018/1808/EU).

If you have any further questions in this regard, please do not hesitate to contact us.

Sincerely,

