

# Notice and Takedown Procedure from BWO Systems AG

(Version 1.0, September 2015)

## 1. DEFINITIONS

- 1.1 Illegal content: content that infringes the rights of third parties, particularly intellectual property rights in the broad sense (e.g. copyright or trademark rights), or personality rights, or that constitutes a criminal offence (particularly in the areas of pornography, the portrayal of violence, racism and libel).
- 1.2 Customer: customer of BWO Systems AG or its hosting partners, who has signed a contract concerning hosting services.
- 1.3 Notice: communication from a person affected by allegedly illegal content made publicly available by the customer. The sender must be affected by the alleged infringement to a greater extent than a third party or the general public: for personality right infringements and offences that must be reported, this must be the injured party (or their representative), while for intellectual property right infringements it must be the holder of ownership or licensing rights for the content concerned (or their representative). For offences for which proceedings are brought directly by the public prosecutor's office, the sender does not need to be particularly affected. A notice must at least meet the following formal and content-related requirements:
  - a. name and address of the sender;
  - b. explanation of why the sender is particularly affected (except offences for which proceedings are brought directly by the public prosecutor's office);
  - c. URL of the offending web page or sub-page;
  - d. Precise description of the allegedly illegal content; (e) reason why the content is illegal.

## 2. NOTICE-AND-NOTICE

- 2.1 Die BWO Systems AG checks that any notices received meet the formal and content related requirements laid down in paragraph 1.3. When assessing these requirements, the hosting provider applies the benchmark of a legal layman.
- 2.2 If a received notice does not meet, or only partly meets, the formal and/or content related requirements of paragraph 1.3, the BWO Systems AG asks the sender of the notice to provide the missing information within two working days of receiving such request. If the sender fails to respond before the deadline or if the additional information supplied also does not meet, or only partly meets, the formal and/or content-related requirements of paragraph 1.3, the BWO Systems AG pays no further attention to the notice.
- 2.3 If a received notice fully meets the formal and content-related requirements of paragraph 1.3, the BWO Systems AG writes to the customer and to the sender of the notice, generally within two working days of receiving the notice.

- a. In the letter to the customer, the BWO Systems AG informs the customer that the notice has been received and forwards a copy of the said notice. The BWO Systems AG reminds the customer that the latter bears sole responsibility for content that it stores, processes or makes accessible to third parties using the hosting services. It asks the customer to remove the offending content or to explain why the content is lawful in a letter to the sender of the notice. The BWO Systems AG also informs the customer that it is liable to compensate the hosting provider for expenditure relating to the defense of third-party claims and for any other damage suffered. The BWO Systems AG can demand a surety from the customer as a precautionary payment to cover such damage. In clear cases, the BWO Systems AG can also take direct action in accordance with paragraph 3.
- b. In the letter to the sender of the notice, the BWO Systems AG confirms receipt of the notice and informs him that it has written to the customer. It informs the sender of the notice that the customer bears sole responsibility for content that it stores, processes or makes accessible to third parties using the hosting services. The BWO Systems AG also tells the sender that the BWO Systems AG is not allowed to disclose customer data. Instead, it informs the sender of possible ways in which it can find the identity of the owner of an Internet domain (e.g. via Whois databases available on the Internet) and which state authorities it can contact in order to assert its claims. In clear cases, the BWO Systems AG can also take direct action in accordance with paragraph 3.

### 3. NOTICE-AND-TAKEDOWN

- 3.1 If a received notice fully meets the formal and content-related requirements of paragraph 1.3 and if it appears very likely that it concerns illegal content, or if the BWO Systems AG itself could be criminally responsible or liable under civil law, the BWO Systems AG can partially or completely block access to the website at its own discretion until the matter has been resolved between the parties concerned or by a court or other authority.
- 3.2 Immediately before or after blocking a website, the BWO Systems AG informs the customer that a notice has been received, forwards the notice to it and informs it of the reason for the block. At the same time, the BWO Systems AG informs the sender of the notice about the block and the letter to the customer. The BWO Systems AG decides, at its own discretion, whether to report any criminal offence to the KOBİK (national body coordinating the fight against cybercrime) or to the criminal prosecution authorities.
- 3.3 When assessing whether the notice is complete, whether a website should be blocked and whether legal proceedings should be instigated, the BWO Systems AG applies the benchmark of a legal layman.