

Decision No. 151/2008

On Service Provider Liability, and Limitations on Liability for Online Material

Pursuant to the Telecom Regulatory Act issued by Royal Decree No. 30/2002 and;
The copyright and related rights law issued by Royal Decree No. 65/2008 and;
The industrial property rights law issued by Royal Decree No. 67/2008 and;
The TRA approval dated 18.11.2008.

It is resolved:

Article 1:	Definitions: 1.Service provider: a. A provider of online services or network access, or the operator of facilities thereof. b. For transitory communications: an entity offering the transmission, routing, or providing of connections for digital online communications, between or among points specified by the user, for material of the user's choosing, without modification to the content of the material as sent or received. 2. Intellectual and industrial property rights: Rights regulated by the provisions of copyright and related rights law and the industrial property rights law referred to.
Article 2:	Cooperation with Intellectual and industrial property rights Owners: Without prejudice to the provisions of the Telecom regulatory Act, the copyright and related rights law, industrial property rights law and the civil responsibility rules, a service provider shall be liable for infringement of the above mentioned rights if: a. With knowledge of, or having valid reason to know of, another's rights infringement, the service provider induces, encourages, causes, or materially contributes to that infringement; or b. The service provider has the ability to control the infringement material, and the service provider has a direct financial interest in that infringing activity.

<p>Article 3:</p>	<p>Eligibility for Transitory Communications:</p> <p>A service provider shall not be liable for infringement of intellectual and industrial property rights for transmitting, routing, or providing connections to material through a system or network controlled or operated by or for the service provider, or by reason of the intermediate and transient storage of that material in the course of performing those acts, subject to the following conditions:</p> <ol style="list-style-type: none"> 1. The transmission of the material was initiated by or at the direction of a person other than the service provider; 2. The transmission, routing, provision of connections, or storage is carried out through an automatic technical process without selection of the material by the service provider; 3. The service provider does not select the recipients of the material except as an automatic response to the request of another person; 4. No copy of the material made by the service provider in the course of such intermediate or transient storage is maintained on the system or network in a manner ordinarily accessible to anyone other than anticipated recipients, and no such copy is maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary for the transmission, routing, or provision of connections; and 5. The material is transmitted through the system or network without modification of its content.
<p>Article 4:</p>	<p>The limitations mentioned in Articles 3, 5 & 6 are subject to the following conditions:</p> <ol style="list-style-type: none"> (a) The Service Provider adopts, and reasonably implements, a policy for termination of accounts of intellectual and industrial property rights repeat infringers. (b) The Service Provider complies with technical measures related to identifying and protecting materials of copyright and related rights and the intellectual and industrial property rights, provided that such technical measures:

	<ul style="list-style-type: none"> i. are developed through an open, voluntary process by a broad consensus of intellectual and industrial property right owners and service providers ii. are available on reasonable and nondiscriminatory terms, and iii. Do not impose substantial costs on service providers or substantial burdens on their systems of networks. <p>In all cases, the Service Provider is not obligated to create, or to supervise others in creating, any technical measures that satisfy (i) through (iii) above. If, however, technical measures are created by others, in a way that satisfies (i) through (iii) above, then the Service Provider must accommodate them in order to be eligible for the limitations of liability explained in Articles 3, 5 & 6 of this resolution.</p> <ul style="list-style-type: none"> (c) The Service Provider publicly designates a representative to receive notifications of infringing activities. (d) The Service Provider does not initiate the chain of transmission of the infringing material. (e) The Service Provider does not select the infringing material, except to the extent described in Article 6 of this resolution. (f) The Service Provider does not select the recipients of the infringing material.
Article 5:	<p>Limitation on Liability for System Caching</p> <p>A service provider shall not be liable for infringement of intellectual and industrial property rights by reason of the intermediate and temporary storage of material on a system or network controlled or operated by or for the service provider subject to the following conditions:</p> <ul style="list-style-type: none"> 1. The material is made available online by a person other than the service provider; 2. The material is transmitted from the person described in 5.1 through the system or network to another person at the direction of that other person without the involvement of the service provider; 3. The storage is carried out through an automatic technical process for the purpose of making the material available to users of the system or network who, after the material is transmitted as described in 5.2, request access to the material from the person described in 4.1, subject

	<p>to the following conditions:</p> <ul style="list-style-type: none"> (a) The material described in 5.1 is transmitted to the subsequent users described in 5.3 without modification to its content from the manner in which the material was transmitted from the person described in 5.1; (b) The service provider complies with rules concerning the refreshing, reloading, or other updating of the material when specified by the person making the material available online in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available; (c) The service provider does not interfere with the ability of technology associated with the material to return to the person described in 5.1 the information that would have been available to that person if the material had been obtained by the subsequent users described in 5.3 directly. <p>4. If the person described in 5.1 making the material available online has in effect a condition that a user shall meet prior to having access to the material, the service provider shall permit access to the stored material in significant part only to users of its system or network that have met those conditions.</p> <p>5. If the person described in 5.1 makes material available online without the authorization of the intellectual and industrial rights owner of the material, the service provider shall respond expeditiously to remove, or disable access to the material that is claimed to be infringing upon notification of claimed infringement pursuant to Article 8, if the material has been removed or access to it has been disabled at the originating site.</p>
<p>Article 6:</p>	<p>Limitation on Liability for Information Residing on Systems or Networks at Direction of Users and Limitation on liability for Information Location Tools</p> <p>A service provider shall not be liable for infringement of intellectual and industrial property rights by reason of the storage at the direction of a user of material that resides on a system or network controlled or operated by or for the service provider, or by reason of referring or linking users to an online</p>

	<p>location containing infringing material or infringing activity, by using information location tools, including a directory, index, reference, pointer, or hypertext link provided that the service provider:</p> <ol style="list-style-type: none"> 1. In a case in which the service provider has the right and ability to control such activity, does not receive a financial benefit directly attributable to the infringing activity. 2. Upon obtaining actual knowledge that the material or an activity using the material on the system or network is infringing, or upon becoming aware of facts and circumstances from which the infringement was apparent, such as through a notification of claimed infringement pursuant to Article 8, acts expeditiously to remove or disable access to the material.
Article 7:	<p>Injunctive Reliefs:</p> <p>(A) Without prejudice to the provisions of the Telecom Act, the copyright and related rights law and the industrial property rights law referred to, if a service provider has satisfied the requirements in Articles 3 and 4, a court may order the service provider to terminate specified accounts; and to take reasonable steps to block access to a specific, non-domestic online location.</p> <p>(B) Without prejudice to the provisions of the Telecom Act, the copyright and related rights law and the industrial property rights law referred to, if a service provider has satisfied the requirements in Articles 4 and 5 or 4 and 6, a court may order the service provider to remove or disable access to the infringing material, terminate specified accounts and effect other remedies that a court may find necessary, provided that such remedies are the least burdensome to the service provider among comparably effective forms of relief.</p>
Article 8:	<p>Elements of Notification of Claimed Infringement</p> <p>A notification of claimed infringement must be a written communication, which may be provided electronically, provided to the service provider including the following:</p> <ol style="list-style-type: none"> 1. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

	<ol style="list-style-type: none"> 2. Identification of the copyrighted work claimed to have been infringed. 3. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit the service provider to locate the material. 4. Information reasonably sufficient to permit the service provider to contact the complaining party, or its authorized agent, including an address, telephone number, and an electronic mail address at which the complaining party may be contacted. 5. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law. 6. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is the owner of, or is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
<p>Article 9:</p>	<p>Replacement of Removed or Disabled Material</p> <p>A service provider shall not be liable to any person for any claim based on the service provider's good faith disabling of access to, or removal of, material or activity claimed to be infringing or based on facts or circumstances from which infringing activity is apparent, regardless of whether the material or activity is ultimately determined to be infringing. When disabling access or removing the material or activity in the manner described, then the service provider must satisfy the following conditions:</p> <ol style="list-style-type: none"> 1. The service provider takes reasonable steps promptly to notify the subscriber that it has removed or disabled access to the material; 2. The service provider promptly provides the person who provided the notification with a copy of the counter notification, and informs that person that it will replace the removed material or cease disabling access to it in not less than ten days nor more than fourteen business days following receipt of the counter notice, unless it receives notice from the person who submitted the notification that such person has

	<p>filed an action seeking a court order to restrain the subscriber from engaging in infringing activity relating to the material on the service provider's system or network.</p>
Article 10:	<p>Elements of Counter Notification</p> <p>A counter notification must be a written communication, which may be provided electronically, provided to the service provider that includes substantially the following:</p> <ol style="list-style-type: none"> 1. A physical or electronic signature of the subscriber. 2. Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled. 3. A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled. 4. The subscriber's name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of a judicial authority at the location of its address and if the service provider's address is outside Oman, the subscriber shall accept service of process from the person who provided notification or his agent and the Omani court shall have the exclusive jurisdiction.
Article 11:	<p>Misrepresentations</p> <p>Any person who knowingly materially misrepresents under this section that the material or activity is infringing, or that the material or activity was removed or disabled by mistake or misidentification, shall be liable for any damages incurred by the intellectual and industrial property rights owners, or by any person authorized by owner of such rights or any service provider.</p>
Article 12:	<p>Court Order to Identify Infringer</p> <p>Without prejudice to the provisions of the Telecom Act, the copyright and related rights law, industrial property rights law referred to:</p> <ol style="list-style-type: none"> 1. An intellectual and industrial property rights owner or a person authorized to act on the owner's behalf may request the court to issue

	<p>an order to a service provider for identification of an alleged infringer.</p> <p>2. Upon receipt of the issued court order, the service provider shall expeditiously disclose to the intellectual and industrial property rights owner or person authorized by the copyright owner the information sufficient to identify the alleged infringer to the extent such information is available to the service provider.</p>
Article 13:	This resolution shall be published in the Official Gazette and shall become operative from the day following its publication.

Mohammed Bin Nasser Al-Khasibi
Chairman, TRA

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