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Third Party Intervention Submission by
European Information Society Institute (EISI)

In re *Magyar Jeti Zártkörűen Működő Részvénytársaság v Hungary* App No. 11257/16

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Executive summary

- This third party intervention is submitted on behalf of the European Information Society Institute (EISI), an independent nonprofit organization based in Slovakia, which focuses on the overlap between technology and law. EISI promotes human rights in a digital society by conducting impact litigation before the courts. It also serves as a research center for high - technology law. This intervention was written in collaboration with the The Tilburg Institute for Law, Technology, and Society (TILT), IT Law Programme of University of Tartu and TRINITY Law Firm, which specializes amongst other in media and human rights law related litigation.
- EISI welcomes the opportunity to intervene as a third party in this case on the basis of the leave of the President of the Court on 4 July 2016 (ECHR-LE14.8bP3 AT/KNY/zna) pursuant to Rule 44 (3) of the Rule of Court.
- In our submission, we address:
 - a) the importance of hyperlinks for the architecture of the Internet and new media by explaining the social value of hyperlink (see section *I. Social Value of a Hyperlink*) and development of new media generally (see section *II. New Notion of Media*);
 - b) the impact that this decision may have on the exercise of freedom of expression online (see section *III. Freedom of Expression Online*);
 - c) the ways in which the Court's existing case-law supports the interpretation that a journalist should not be held liable for hyperlinking to a third party content when exercising its right to a freedom of press in matters of public interest. More generally, any person, regardless of being a journalist, who is hyperlinking to a third party content should be clear of any liability unless there are exceptional circumstances, such as circumstances proving his/her intention to endorse the content's message (see section *IV. Conclusions*).

I. Social Value of a Hyperlink

(1) The hyperlinks are essential features of the Internet architecture. Lord Justice Pumfery has described their utility and importance as follows:

"The Web consists of a network of computers connected by means of the internet and communicating by means of the applications layer protocol, HTTP. Broadly speaking, the computers are either servers, which make 'web pages' available, or client computers, which call for them. The web pages are written in a language called HTML (Hypertext Markup Language). The browser is software on the client that interprets the web pages and displays their contents. HTML permits so-called links to other material such as images to be included in the text of a web page. Such links may be permanent, or clickable. When the browser software encounters a permanent link in the page that it is interpreting, it sends a request for the file specified by the link. If the link is clickable it does so when the link is clicked. The link may point to any item

*accessible from the internet (...). These links, so-called hypertext links, are central to the success of the Web.*¹

(2) This is because a "web" of notes with links between them is far more useful than a fixed hierarchical system.² The interlocking patterns that hyperlinks form are the reason the medium was named the Web. Thus, without hyperlinks there would be no Internet as we know it today.

(3) To explain more specifically, what a hyperlink is, we need to look into what it does and how it differs from traditional citation. Hyperlinks started as a citation, quotation or reference tool where the motivation to link to previous works or sources is to criticize, analyze, or refute that work as well as to build on top of it. Unlike traditional citation, they allow *immediate access* to other texts, thus, permitting to more directly structure documents, large collections of data and generally any media content. Today, hyperlinks are becoming a primary tool of digital *navigation*. Clicking a hyperlink may lead to a camera changing its orientation, to a book being ordered and sent through the mail, to an e-mail in-box being reorganized, or to a closer view of a satellite image.³ Thus, today's hyperlink is much more flexible and gives more possibilities and information than a traditional citation.

(4) The hyperlink and its impact is omnipresent. It is behind simple entertainments, our social interactions and it forms a backbone of quickly spreading social movements. In particular, the "Arab spring" is an example of the level of impact and of the value that hyperlinks have reached in our society. People organized themselves through social media sharing hyperlinks to Facebook groups where information and calls for participation were posted. Amr Bassiouny a young activist in Cairo wrote on his Twitter feed on May 26 following: "*Starting points for tomorrow's Rallies! All Head to Tahrir! <http://on.fb.me/mgez1d> SPREAD SPREAD SPREAD RT PLZ #Egypt #jan25 #tahrir*" (the link refers to a Facebook page to promote the protests on 27 May 2011). This tweet was broadcast directly to his more than 3000 followers and indirectly to a larger audience when 26 of his followers forwarded it to their own followers.⁴ It is not difficult to imagine repression responsibilities from governments if a simple link could be suppressed by strict liability.

II. New Notion of Media

(5) In 2011 the Committee of Ministers adopted a Recommendation CM/Rec (2011)7 on a new notion of media.⁵ Recommendation turns the attention to the new features of new media and on the different levels of responsibility for using those features. It emphasized that:

¹ Reserach in Motion UK Limited and INPRO Licensing SARL and Others, (2006) England and Wales High Court of Justice Case No. HC05 C01175. Para 15 <<http://www.bailii.org/ew/cases/EWHC/Patents/2006/70.html>> accessed 25 July, 2016

² Berners-Lee, T. 'Information Management: A Proposal' <<https://www.w3.org/History/1989/proposal.html>> accessed 15th July 2016

³ Halavais Alexander, The Hyperlink as Organizing Principle, in Joseph Turow and Lokman Tsui, The Hyperlinked Society (University of Michigan Press 2008). P.41

⁴ Xiaolin Zhuo, Barry Wellman and Justin Yu, 'Egypt: The First Internet Revolt?' (2016) 2, Boletim do Tempo Presente. p 1-13 <<http://www.seer.ufs.br/index.php/tempopresente/article/viewFile/4224/3490>> accessed July 26, 2016

⁵ Recommendation to Member States on a New Notion of Media. Committee of Ministers. 21.09.2011. – CM/Rec(2011)7.

*“Attention should in particular be paid to the risk of excluding certain activities from consideration as media because of their innovative modalities rather than their essential features. Arranging, aggregating, selecting or, on occasion, even promoting content for its broad dissemination are relevant. Depending on the degree to which criteria are met, the notion of producer may need to be distinguished from media (for example in respect of content-sharing platforms subject to light touch editorial control or ex post moderation).”*⁶

(6) Hyperlinks have an important role in the development of new media and more specifically of online journalism as such. Journalism has always evolved in response to *innovation*, e.g. television transformed reporting by allowing people to see images being broadcast from around the world. Likewise, people now have the ability to access news applications, real time alerts, and social media updates from their mobile devices.⁷

(7) Journalists have made use of hyperlinks to provide references and links to information as footnotes to their work.⁸ The benefits of the use of hyperlinks for the journalistic activities EW hard to miss. *Hyperlinks allow journalism to develop the qualities that 21st century media desperately need to champion in order to regain the citizens trust.* They allows them to be more transparent, comprehensive and interactive.⁹ These opportunities opened by hyperlinks include improved: (i) *interactivity* with the readers, offering them the possibility to surf the web to access additional information and research on their own; (ii) *credibility*, by providing context, facts and sources to support the information that is being presented; (iii) *transparency* by allowing readers to trace back the reporting and news gathering process; and (iv) *critical reading* by allowing journalists to refer to and subsequently readers to compare contrasting sources.¹⁰

(8) However, hyperlinks are not only an important vehicle for innovative journalism. They also allow ordinary citizens to find, identify, share, comment and criticize it on their own. Thanks to technology, anyone can today record his/her firsthand experience, add his/her own commentary, and share the content at a scale that was once unimaginable. These citizen journalists can circumvent government censorship, whether it is imposed directly or not, while imparting important information about matters of public interest.¹¹ The power of citizen journalism has been

⁶ Recommendation to Member States on a New Notion of Media. Committee of Ministers. 21.09.2011. – CM/Rec(2011)7, para 26.

⁷ Gwen Teckel, 'Traditional Journalism: Is it Old News?' (*WorldWideLearn*, 5 June 2013) <<http://www.worldwidelearn.com/education-articles/traditional-journalism-is-it-old-news.html>> accessed 17 February 2016, also available at <http://goo.gl/pYTPvw>.

⁸ Chang Tsan-Kuo, et al. 'Jurisdictional protectionism in online news: American journalists and their perception of hyperlinks' *New Media & Society* June 2012 vol. 14 no. 4 684-700 <<http://nms.sagepub.com/content/14/4/684.full.pdf+html>>accessed July 26, 2016

⁹David Domingo, 'Interactivity in the daily routines of online newsrooms: dealing with an uncomfortable myth' (April 2008) V. 13 Issue 3, *Journal of Computer-Mediated Communication*. Pp. 680-704 <<http://onlinelibrary.wiley.com/doi/10.1111/j.1083-6101.2008.00415.x/full>> Accessed July 26, 2016

¹⁰ Juliette de Mayer, 'Mapping the hyperlinked environment of online news: issues and challenges for the French news sites' Paper presented at the IAMCR 2010 Conference (July 18-22, Braga Portugal

¹¹ Human Rights Watch, *World Report 2015: Mexico, Events of 2014*, <<https://www.hrw.org/world-report/2015/country-chapters/mexico>>, accessed the 15^h of July 2016

recognized by the State Parties to the Convention¹² as well as by countries such as Mexico. All this would not have been possible without the use of hyperlinks.

(9) This decentralized speech enabled by hyperlinks supplements and supports the ‘watchdog role’ that is traditionally associated only with the mainstream media. It may even become a driving force behind the public debate in situations when such media are failing, whether for political or market reasons, to perform its societal function. The fertile environment for a public discussion outside of the centralized media therefore needs to be preserved. Watchdog role of media is strongly advanced by this court in his case-law.¹³ Art. 10 of the Convention already protects not only authorship, but also its publication and dissemination by third parties such as publishers, which as long as they provide “authors with a medium, they participate in the exercise of the freedom of expression” (*Öztürk v. Turkey*)¹⁴. *Any restriction on the dissemination of the information in a form of liability, also inevitably diminishes the value of initial authorship.*

(10) Hyperlinks are lifeblood of *non-editorial decentralized speech* known from platforms such as Twitter. They amplify citizen’s impact of authorship. The immense value of a decentralized speech is best seen in the countries, where the (centralized) mainstream media are not sufficiently free, like in China. Scholar Ya-Wen Lei, in a book “*Political Communication in China*”, notes in the support of this¹⁵:

“.. despite the competent authoritarian state, a more decentralized media system enabled by technology has contributed to a more critical and politicized citizenry in China's cyberspace. The

¹² Charlotte Alfred, ‘Why Turkey Bans News About Terror Bombings’ (*The World Post*, updated 17 February 2016) <http://www.huffingtonpost.com/entry/turkey-media-blackout-istanbul-bombing_us_56957080e4b086bc1cd5a364> accessed 15th July 2016

¹³ *Jersild v. Denmark*, Application Number 15890/89; *Bladet Tromsø & Stensaas v. Norway*, Application Number 21980/93; *Dalban v. Romania*, Application Number 28114/95; *Bergens Tidende v. Norway*, Application Number 26132/95; *Thoma v. Luxembourg*, Application Number 38432/97; *Colombani & others v. France*, Application Number 51279/99; *Karakoç & others v. Turkey*, Application Number 27692/95, 28138/95 and 28498/95; *Cumpana & Mazare v. Romania*, Application Number 33348/96; *Grinberg v. Russia*, Application Number 23472/03; *Dammann v. Switzerland*, Application Number 77551/01; *Dupuis & others v. France*, Application Number 1914/02; *TASZ v. Hungary*, Application Number 37374/05; *Ürper & others v. Turkey*, Application Number 14526/07, 14747/07, 15022/07, 15737/07, 36137/07, 47245/07, 50371/07, 50372/07 and 54637/07; *Youth Initiative for Human Rights v. Serbia*, Application Number 48135/06; and other cases;

¹⁴ *Öztürk v. Turkey*, App. No 22479/93, notes in full that „providing authors with a medium they participate in the exercise of the freedom of expression, just as they are vicariously subject to the “duties and responsibilities” which authors take on when they disseminate their opinions to the public“; Similar opinion is also presented by the Advocate General before the CJEU in *UPC Telekabel C-314/12* who notes „So far as concerns the ISP, against which a measure under Article 8(3) of the directive is being adopted, a restriction of freedom of expression and information (Article 11 of the Charter) must first be examined. Although it is true that, in substance, the expressions of opinion and information in question are those of the ISP’s customers, the ISP can nevertheless rely on that fundamental right by virtue of its function of publishing its customers’ expressions of opinion and providing them with information. “; See for a similar development in the US the case of *Smith v. California*, 361 U. S. 147 („The free publication and dissemination of books obviously are within the constitutionally protected freedom of the press, and a retail bookseller plays a most significant role in the distribution of books.“).

¹⁵ Wenfang Tang, Shanto Iyengar (ed.) *Political Communication in China: Convergence or Divergence Between the Media and Political System?* Routledge, 2013.

Internet had made it possible for China's media system to undertake a new, albeit restricted and contingent role as communication institution of the society.” (emphasis ours)

(11) In our view, if the strict liability is accepted as permissible under Art. 10 of the Convention, this would mean that national courts and legislators are allowed to push against the less mainstream non-editorial public discussion by simply imposing high liability standards in the name of protecting rights of others or public policy. This can be then used by states either directly to prosecute individuals, or indirectly to manipulate their incentives to disseminate authorship. Allowing this would especially worrying in the states and in times, when the mainstream media are controlled by people with ties to the highest politics.

(12) A strict rule regarding liability for hyperlinking will inevitably lead to self-censorship, over-compliance and their overall underuse. It strongly encourages *the collateral censorship*, which this court repeatedly tried to outlaw as inadmissible in its case-law (*Yildirim v. Turkey*¹⁶ [over-blocking of a website with legitimate content]; *Ürper and Others v. Turkey*¹⁷ [suspension of the entire newspapers]). The collateral censorship is more latent, because it does not happen directly upon an act of state, but *indirectly* by imposing wrong incentives on private individuals.

III. Application of these principles to the case at hand

(13) The restrictions on freedom of expression must be prescribed by law, have a legitimate aim, be necessary in a democratic society corresponding to a “pressing social need”, and must be justified by judicial decisions that give relevant and sufficient reasoning. Whilst the national authorities have a certain margin of appreciation, it is not unlimited as it goes hand in hand with the Court’s supervision.¹⁸ The margin of appreciation is particularly narrow regarding comments on matters of general interest or political issues which generally enjoy a high level of protection of freedom of expression.¹⁹ The restrictions on freedom of expression must be interpreted restrictively.²⁰ These principles have been expressly recognized at an international level specifically for the online context in the “*Joint Declaration on Freedom of Expression and the Internet*”.²¹ In this submission, we will specifically focus on the last of the requirements - necessity in a democratic society.

(14) According to the Court’s case-law:

“the press plays an essential role in a democratic society. [...] it must not overstep certain bounds, in particular in respect of the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent

¹⁶Application Number 3111/10.

¹⁷Application Number 14526/07, 14747/07, 15022/07, 15737/07, 36137/07, 47245/07, 50371/07, 50372/07 and 54637/07

¹⁸*Aleksey Ovchinnikov v. Russia*, (2010) App no. 24061/04, Para. 51

¹⁹*Axel Springer AG v. Germany* [GC] (2012), App no. 39954/08, Para 90, , and *Morice v. France* [GC], (2015)App no. 29369/10, para 125,

²⁰*Sunday Times v. the United Kingdom*, (1979) App no. 6538/74. Para.

²¹*Joint Declaration on Freedom of Expression and the Internet*, signed by the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. (2011) <<http://www.osce.org/fom/78309>> accessed 18 July 2016.

with its obligations and responsibilities – information and ideas on all matters of public interest.”²²

i) Necessary in democratic society

(15) We are of the opinion that no liability should be imposed for a dissemination via hyperlink in the present case because such a rule is not necessary in a democratic society.

(16) The Grand Chamber of the Court held in *Jersild v. Denmark*²³ that “unless there are particularly strong reasons for doing so”, the punishment²⁴ for assisting in the dissemination of statements made by another person should not be accepted under Art. 10 of the Convention, because it would seriously hamper the contribution to the public debate.²⁵ In *Thoma v. Luxemburg* this Court was of opinion that requirement for journalists to distance themselves systematically and formally, from the content of a quotation that might defame or harm a third party is *not* reconcilable with the role of the press in providing information on current events, opinions and ideas.²⁶

(17) The present case is about disseminating third party content via hyperlink in a newspaper article. The journalist did not act with an intention to defame but to fulfil its role as a public watchdog. The article was written on matters of general interest and related to political issues. There are no strong and not even weak reasons why a journalist exercising its freedom of press in this situation should be held liable for speech of others.

(18) In *Editorial Board of Pravoye Delo and Shtekel v. Ukraine*²⁷, this court has recognized a positive obligation of the States to create an appropriate regulatory framework to ensure effective protection of journalists’ freedom of expression on the internet when the journalists are re-publishing third-party content. According to facts, Pravoye Delo published an anonymous letter, allegedly written by an employee of the Security Service of Ukraine, which was downloaded from a news website accompanied by a statement that the material is copied from internet. The Court has considered that:

*‘the absence of a sufficient legal framework at the domestic level allowing journalists to use information obtained from the internet without fear of incurring sanctions seriously hinders the exercise of the vital function of the press as a “public watchdog”’.*²⁸

(19) In the referred cases the court has dealt with citations of statements made by another person. The present case should justify even more favorable treatment and even broader exclusion of liability. A hyperlink by itself *cannot be understood as a tacit expression of approval*. A hyperlink can be an expression of criticism, disguise, endorsement, indifference or even of pure curiosity. Even *knowingly hyperlinking to unlawful content* can be justified on the freedom of expression

²²*Fressoz and Roire v France* (1999) App no. 29183/95. Para 45 (iii)

²³ Application Number 15890/89.

²⁴ The court noted in this case: „ In this regard the Court does not accept the Government’s argument that the limited nature of the fine is relevant; what matters is that the journalist was convicted.“

²⁵ The court reiterated the latter also in *Thoma v. Luxemburg* (2001) App no. 38432/97 Para 62.

²⁶ *Thoma v. Luxemburg* (2001) App no. 38432/97. Para 64

²⁷ *Editorial Board of Pravoye Delo and Shtekel v. Ukraine*. (2011) App No. 33014/05

²⁸*ibid*. Para. 64

grounds (see below). Inferring an instance of endorsement, therefore, requires more than a mere knowledge of unlawfulness, it requires intent to endorse the unlawful message. Linking by itself cannot be understood as a tacit expression of approval, additional elements being necessary to evidence the deliberate *mens rea* of the hyper-linker.²⁹

This view - that hyperlinks are content-neutral - is supported also by authoritative holdings in other jurisdictions. In *Crookes v. Newton*³⁰ decided by the Supreme Court of Canada (SCC), the question arose whether a publisher of a newsletter should be held liable for defamation for merely posting hyperlinks to websites containing defamatory material. The SCC considered the special nature of hyperlinks. It opined that they are similar to references, as they communicate that something exists and where it can be found, but do not, by themselves, communicate the referred content. Although the access to the referred content is made easier with hyperlinks, according to the SCC, this does not change the assessment that a hyperlink, by itself, is content-neutral and thus expresses no opinion.³¹

(20) SCC also broadly outlined the chilling effects that might ensue if liability is imposed:

'The Internet cannot, in short, provide access to information without hyperlinks. Limiting their usefulness by subjecting them to the traditional publication rule would have the effect of seriously restricting the flow of information and, as a result, freedom of expression. The potential "chill" in how the Internet functions could be devastating, since primary article authors would unlikely want to risk liability for linking to another article over whose changeable content they have no control. Given the core significance of the role of hyperlinking to the Internet, we risk impairing its whole functioning. Strict application of the publication rule in these circumstances would be like trying to fit a square archaic peg into the hexagonal hole of modernity' (emphasis ours)

(21) Recently, the German Federal Supreme Court (BGH) in *AnyDVD* case³² also supported this reading when it held, in a copyright dispute, that a hyperlink set by a journalist who wanted to alert its readers to a content, with full knowledge of its unlawfulness, shall not face any liability because his freedom of expression has a (situational) precedence:

'The legal assessment of the appellate court, which was limited to technical function of hyperlinks, ignores that the contributions of the defendant clearly indicated unlawfulness of SlySoft's offers. The appellate court accurately established that, as regards the contribution from 19 January 2005, the unlawfulness of AnyDVD was unambiguously communicated to the reader there. (...) Even taking into account this knowledge, freedom of expression and press of the defendant, as presented, prevails over the copyright protected interests of the plaintiff.' (emphasis mine)

²⁹ *Ibid.* Dissenting opinion of Judge Pinto de Albuquerque, The form of the speech

³⁰ *Crookes v. Newton* (2011) Supreme Court of Canada 47

³¹ *Ibid.* Para 27-30.

³² BGH (2010) *AnyDVD*, Case No. I ZR 191/08; confirmed by the Federal Constitutional Court in BVerfG (2011) *AnyDVD*, Case No. 1 BvR 1248/11

(22) In yet another case,³³ BGH recently held that: ‘Moreover, an internet user who is averagely informed, reasonable and adequately attentive will understand the defendant’s link as an offered possibility to inform himself further, in case of interest, about the topic of Implant Acupuncture through information offered by an independent third party.

(23) Furthermore, the question of the knowledge requires an additional specific consideration because the content of linked webpages is not static, but subject to constant change. A website operator who inserts a link cannot foresee what content will be on the linked site at any given point in time.³⁴ In its separate opinion, Judge Pinto de Albuquerque warned that ‘hyperlinks to web pages that are not under the de facto or de iure control of the hyperlinker.’³⁵ Imposing liability thus can be particularly dangerous in this context.

IV. Conclusions:

(24) We urge this Court to take into consideration the *special content-neutral nature* of a hyperlink and of their *importance* for innovative journalism and decentralized non-editorial speech. In line with *Thoma v. Luxemburg*, hyper-linkers should not be subject to unnecessary obligations to distance themselves systematically and formally from the referred content. The hyperlinks are already understood by general public, as also evidenced in this brief, as opinion-neutral references.

(25) Any restriction on the dissemination of the information in a form of liability, also inevitably diminishes the value of initial authorship. A strict rule regarding liability for hyperlinking will inevitably lead to self-censorship and over-restriction of legitimate content which this court already outlawed as impermissible forms of collateral censorship. We urge the court to rely on its Grand Chamber ruling in *Jersild v. Denmark* by holding that “unless there are particularly strong reasons for doing so”, imposing civil liability for assisting in the dissemination of statements made by another person by means of hyperlinks is a breach Art. 10 of the Convention. *The states should bear a heavy burden to justify why a democratic society necessitates a rule that sanctions its own citizens, let alone its journalists, for merely referring to what other people say.*

(26) As recognized by this court in *Editorial Board of Pravoye Delo and Shtekel v. Ukraine*, the states should even underlie a positive obligation to create an appropriate regulatory framework to ensure effective protection of journalists’ freedom of expression when the journalists are engaging with third party speech online. This obligation is in line with the explicit legislative approach of some of the states which created clear liability exemptions to prevent imposition of liability for referring to third party content in their *own* hyperlinks. Although European Union decided not to address this topic under the E-Commerce Directive, it left the possibility open to its Member States to decide whether or not to regulate hyperlinks in the context of commercial activities on internet.³⁶

³³ BGH (2015) Case No. I ZR 74/14, para 20.

³⁴ *Mouvement Raëlien Suisse v. Switzerland* (2012) App No. 16354/06, Joint dissenting opinion of Judges Sajó, Lazarova Trajkovska and Vučinić, Section III

³⁵ *Ibid* - Dissenting opinion of Judge Pinto de Albuquerque.

³⁶ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), Article 21(2)

Austria,³⁷ Liechtenstein,³⁸ Portugal³⁹ and Spain⁴⁰ have developed unambiguous liability exemptions for the provision of links to third party content. In other countries this is a standard outcome based on their national tort laws.⁴¹ It is therefore usual to prevent any liability to be imposed on the person who sets a link as long as he/she has no actual knowledge that the information is unlawful,⁴² and has no control over the content to which it refers.

(27) The ‘particularly strong reasons’ for holding a hyper-linker liable should depend on ‘all the circumstances of the (..) case, in particular *the nature of the information* contained in the shared material and the *weighty reasons for the interference* with the applicants’ freedom of expression⁴³, but also his/her privileged position (e.g. being a journalist). This court has already accepted that criminal liability can be imposed for a specific type of hyperlinks in case the person concerned (1) acts with the intent, (2) is not a journalist, and (3) the information that he links affords lower protection than political expressions (*Neij and Sunde Kolmisoppi v. Sweden*). Such circumstances should in any case remain exceptional in their nature.

(28) Therefore, the rule accepted by the Hungarian court, imposing strict liability on the mere sharing of information, cannot be considered as a necessary interference with freedom of expression in a democratic society.

EISi suggests that the Court:

- *holds* that, unless there are exceptionally strong reasons, imposing liability on a person who merely sets a hyperlink to a third party content constitutes a disproportionate interference with freedom of expression of such person.
- *recognizes* that the Member States have to ensure media plurality by implementing the rules that do not discourage dissemination of third party speech by means of hyperlinks.

³⁷See Austria: Bundesgesetz, mit dem bestimmte rechtliche Aspekte des elektronischen Geschäfts- und Rechtsverkehrs geregelt werden (E-Commerce-Gesetz- ECG) Para 17

³⁸See Liechtenstein: ber den elektronischen Geschäftsverkehr (E-Commerce-Gesetz; ECG) Article 17

³⁹See Portugal: Decreto-Lei n.º 7/2004 de 7 de Janeiro (Electronic Commerce) Article 17

⁴⁰See Spain:Ley 34/2002, de 11 de julio, de servicios de la sociedad de la información y de comercio el. Article. 17

⁴¹ The principle that liability should not be imposed without establishing knowledge of the unlawful material is also well-established principle in English common law (see *Bunt v Tilley* [2006] EWHC 407 Q.B.). In Germany, the relevant doctrine is liability as a participant, which always requires so called double intent, in both general civil and criminal law. Link providers are treated as own-content providers only provided that they adopt the content of the inserted link as their own (BGH (2015) Case No. I ZR 74/14; Higher Regional Court Munich (2001), Case No. 21 U 4864/00).

⁴²Spain considers actual knowledge when the content to which the link refers to has been declared unlawful by a competent authority and the provider had acknowledged it.

⁴³ See *Neij and Sunde Kolmisoppi v. Sweden*, App no. 40397/12