

## **CLARIFICATION OF NOTICE OF ALLEGED ILLEGAL CONTENT**

The words in this Clarification of Notice of Alleged Illegal Content written with a capital letter are defined in the Terms of Use <http://www.mindz.com/files/termsfuse.pdf> of MINDZ.com (.pdf).

### **Question 1**

Indicate the requestor of this Notice. Any correspondence concerning the Notice is sent to this person.

### **Question 2**

Clearly state the location of the illegal content, providing MINDZ.com with the opportunity to clearly find the content. (Examples of (indications of) locations are a URL, IP address, Username of the person who submitted the content or the Plaza or Circle where the illegal content has been placed).

### **Question 3**

State exactly when you first Noticed the illegal content and, if possible, indicate when the content was published on the Internet, or was sent to you by e-mail.

### **Question 4**

Indicate the type of illegal content concerned. A short explanation of a number of terms is stated below to serve as a clarification.

#### *Clarification of certain terms*

The term “**child pornography**” is understood to mean a picture of any sexual behavior involving, in any way, a person who has apparently not yet reached the age of eighteen (also see article 240b Penal Code).

The term “**discrimination**” is understood to mean any form of distinction, any exclusion, limitation, or preference, with the objective or consequence that the recognition, enjoyment, or execution of human rights on terms of equality and the fundamental political, economical, social, or cultural freedoms or freedoms in the area of social life are lost or affected (article 90 quater Penal Code and article 137c up to and including g and 429 quater Penal Code).

The term “**defamation**” is understood to mean the intentional attacking of someone’s honor or good name by charging a certain fact, such as the distribution of images and documents (also see 261 Penal Code). The term “**Slander**” is used if someone is aware of the fact that the fact charged is in defiance of the truth (also see article 262 Penal Code).

The meaning of the term “**breach of trade secrets**” is obvious.

The term “**intellectual property rights**” includes such rights as copyrights, trademark rights, and patent rights. A more extensive explanation of these rights is found under the explanation of question 11.

The term “**other illegal content**” includes for instance the illegal provision of medicines; the offering of strong liquor to persons under 18, and any illegal content that does not fall under one of the other categories.

### *Noticing centers*

In the event of illegal content concerning child porn, discriminating expressions, spam, and other illegal content, MINDZ.com also advises noticing this to one of the noticing centers designated for this purpose.

### *Several expressions*

If the requestor considers several expressions to be illegal, these can only be treated in one and the same Notice if they show a clear interconnection.

### **Question 5**

Describe the content you came across and which you consider illegal.

### **Question 6**

In the case of child pornography or discrimination, in most cases, it will soon become clear to MINDZ.com whether there is a matter of illegal content. In order to prevent any discussion, MINDZ.com requires a limited explanation. For this explanation you may refer to the explanation of the terms child pornography and discrimination in the clarification to question 4. Further content and the relevant articles of law can be found on the [www.meldpunt.org](http://www.meldpunt.org) (in cases of child pornography) and [www.meldpunt.nl](http://www.meldpunt.nl) (in cases of discrimination) websites.

### **Question 7**

Describe the content you came across and which you consider illegal.

### **Question 8**

It will not be immediately clear to MINDZ.com in each case whether the content concerned is illegal. In the case of a breach of trade secrets by an employee, it may, for instance, be advisable to attach a copy of a contract stating the obligation of secrecy, if present. In the case of defamation or slander, illegal content has possibly been published on the Internet on earlier occasions, which is no longer present. It is advisable to Notice this earlier content and send it along if possible.

### **Question 9**

State the company which you think is harmed as a result of the illegal content.

### **Question 10**

In the consideration whether the illegal content will be blocked/removed, the interest of the person who published the content on the Internet also plays an important role (in connection to the freedom of expression, for instance). It is therefore important to demonstrate that by not blocking/removing the content, the requestor suffers serious damage that is difficult to repair.

### **Question 11**

Following is a short explanation of what is to be understood by the different intellectual property rights.

**“Copyright”:** Copyright is the exclusive right of an author, scholar, or artist, for instance, to publish and multiply his or her own original work. If someone else wishes to use this work, they are required to obtain the copyright owner’s permission.

**“Trademark rights”:** A trademark enables a company to distinguish their services and goods from other companies. A trademark right is only obtained if filing for that trademark has taken place at the

authority concerned. In principle, the use of someone else's trademark is not allowed without permission.

**“Trade name right”**: A trade name right is understood to be the name under which a company is conducted.

**“Patent right”**: Patent right is the exclusive right that is provided by the competent authority for a new invention that can be applied in the area of industry.

**“Database right”**: In short, a database is understood to be a collection of works or data which are arranged and accessible systematically or methodically. Database right means that the “producer” of a databank is also entitled to grant permission for requesting or re-using the entire or part of his/her database.

#### **Question 12**

Provide a description of the content you came across and which you consider to be illegal.

#### **Question 13**

Indicate why you consider the content to be illegal; attach evidence to substantiate your opinion, proof of registration of a trademark, for instance.

#### **Question 14**

The entitled party is understood to be the person and/or company entitled to execute certain actions with intellectual property rights and from whom permission must be requested if someone else wishes to use these rights.

#### **Question 15**

In the consideration whether the illegal content will be blocked/removed, the interest of the person who published the content on the Internet also plays an important role (freedom of expression, for instance). It is therefore important to demonstrate that by not blocking/removing the content, the requestor suffers serious damage that is difficult to repair.

#### **Question 16**

In many cases, it will not be immediately clear to MINDZ.com whether there is a case of illegal content. After all, MINDZ.com is not aware of any possible property rights a company or person owns; it is therefore important to attach items of evidence in the case of:

- copyrights, if an item of evidence is in one's possession proving that the work on which infringement of copyright was committed has been previously thought of, designed, worked out, drawn and/or written;
- trademark rights, a copy of an official trademark registration;
- trade name rights, a copy of the Chamber of Commerce extract stating the trade name (or another item of evidence proving that the trade name is already used);
- patent rights, a copy of the official patent rights registration;
- database rights, if there is proof that there is a database (see clarification in question 11).

#### **Question 17**

Often, the person noticing the illegal content is the same person whose interests are damaged, or the entitled party. This question needs to be answered in order to verify whether the requestor is entitled to make this statement.

**Question 17a**

A person cannot act as, or on behalf, an entitled party without having the entitled party's permission. Evidence can be produced by a copy of a letter or an authorization in which this permission is granted, or, if the entitled party is a company, an extract from the Chamber of Commerce.

**Question 18**

In many cases, the provider of illegal content can be identified since his or her name is usually stated on the website concerned, or the person who registered the domain name can be found on the Netherlands Foundation for Internet Domain Registration ([www.sidn.nl](http://www.sidn.nl)) website.

**Question 18a**

Provide the personal details of the person providing illegal content.

**Question 19**

Some people prefer to directly approach the provider with the request to remove the illegal content, for personal or economic reasons, for instance.

Relating to the possible removal/blocking of illegal content, it may be important for MINDZ.com to know whether the provider of the illegal content has previously received a request to this end as well as the reply to this request.

**Question 19a**

State the way in which you have previously approached the provider of the content.

**Question 19b**

Provide evidence regarding the way in which you approached the provider of illegal content by including a copy of an e-mail or letter, for instance. Also include any reply received from the provider of illegal content as evidence.

**Question 19c**

These documents include for instance the summons, the statement of defense, the statement of claim, and the judgment.

**Question 20**

Indicate whether you wish to request MINDZ.com to disclose the name, address and residence of the provider of the content.

**Question 21a**

In many cases, it will not be immediately clear to MINDZ.com whether there is a case of illegal content. You therefore need to indicate why you consider the content to be illegal and if possible, attach evidence to substantiate your opinion. In the event you have already answered this question earlier in the Notice, you may repeat your answer here.

**Question 21b**

State the company or person which or whom you think is harmed as a result of the illegal content. In the event you have already answered this question earlier in the Notice, you may repeat your answer here.

**Question 21c**

In the consideration whether the name, address and residence of the provider of the content will be disclosed, the interest of the person of whom the content is requested also plays an important role (privacy, for instance). It is therefore important to demonstrate that by not having the personal data, the requestor suffers serious damage that is difficult to repair.

**Question 22**

Indicate whether you have a genuine interest in the disclosure of the name, address and residence of the provider of the content. Such a genuine interest may be found in the fact that you wish to sue the provider of the content at law.

**Question 23**

Indicate whether there are no other, less-intrusive means of obtaining the personal data. In many cases, the provider of the illegal content can be identified since his or her name is usually stated on the website concerned, or the person who registered the domain name can be found on the Netherlands Foundation of Internet Domain Registration ([www.sidn.nl](http://www.sidn.nl)) website. Approaching the provider of the content by an e-mail address that may be found on the internet is also considered less-intrusive.

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