

Alexander Mollan, Associate Partner at Braekhus: Norway to DNS block websites; the nail in the coffin or a toothless measure?

Gambling Lawyer Alexander Mollan explores the eventful year in Norwegian gambling law, discussing the proposed DNS blocking amendments and their potential impact on foreign-based gambling operators

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What a year it's been!

From the enactment of the new Norwegian Gambling Scheme Act on 1 January and the ramped-up enforcement of the Norwegian Gaming and Foundation Authority (NO: “Lotteritilsynet” or the “Authority”) by way of cease-and-desist orders and other resolutions, to the gambling operators’ embroilment in legal proceedings and their voluntary and involuntary withdrawals from the Norwegian market; the year of 2023 will go down as an eventful year within the field of Norwegian gambling law.

To top the year off, the Norwegian Government is working to enact changes to the Gambling Scheme Act that will expand the Authority’s regulatory toolbox by enabling them to issue resolutions to Norwegian internet service providers (or “ISP’s”), ordering them to use the Domain Name System (“DNS”) to block specific gambling-related websites. Once blocked, prospective visitors to such websites will be redirected to a landing page of their ISP containing information about the illegality of the services offered on or through the website.

The efforts bear fruit

The availability of foreign-based gambling websites to Norwegians has been a longstanding thorn in the side of the Authority, which naturally considers the operators behind such websites to be a threat both to the Norwegian gambling monopoly and to vulnerable gamblers. According to a 2020 report by SPILLFORSK, a gambling-focused research environment at the University of Bergen, an estimated 55 000 Norwegians were addicted to gambling, with an additional 122 000 considered at risk. These numbers have since dropped to 23 000 and 93 000 respectively, according to a 2023 report by the same researchers. The reduction must be viewed in light of the heavy-handed enforcement of the Authority in recent years, which has succeeded in hampering foreign-based gambling operators in their quest for Norwegian customers.

While the news of the reduction in gambling addiction and at-risk gambling was enthusiastically received by the Authority and its parent ministry: the Norwegian Ministry of Culture and Equality, neither party is showing signs of slowing down. In the past, we have seen the 2018 purge of gambling-related apps on App Store, the ban on gambling-related television advertisement, and the prohibition against Norwegian banks and financial institutions to facilitate payments between Norwegian players and gambling operators. As a legislative measure, DNS blocking is the latest attempt of the Norwegian Government to preserve its monopoly by making it more difficult for foreign-based gambling operators to reach Norwegian players.

The work continues

When originally envisioned back in June 2020, the Gambling Scheme Act included provisions that would enable the Authority

to order to ISP's to issue DNS notifications to Norwegians, warning them that a specific website of a foreign-based gambling operator is contrary to Norwegian law and not supervised by the Authority. In the initial version of the travaux préparatoires to the proposed Gambling Scheme Act, the Norwegian Government left the door open to investigate the use of DNS blocking.

At some point, the Government shifted course by scrapping its plans for DNS notifications, opting for DNS blocking instead. While the Gambling Scheme Act had yet to be enacted at that point, the change from DNS notifications to DNS blocking still necessitated a new public hearing and a separate proposal for amendments to the Gambling Scheme Act.

A public hearing for the DNS blocking amendment was initiated on 21 September 2021. Several stakeholders were critical of the proposal. Chief among them was the Norwegian Data Protection Authority, which made a compelling case that the legislator had not sufficiently evaluated privacy-related concerns. Due to this criticism, the Government went back to the drawing table and revised the proposal.

After a legislative road that has been fraught with speed bumps, the DNS blocking amendment is now approaching the finishing line. On 20 October 2023, the Ministry of Culture and Equality recommended the proposal to the Norwegian Cabinet, which approved it the same day. Four days later, the Norwegian Parliamentary Committee on Culture and Family Affairs was tasked with evaluating the proposed amendments. The proposal will by all likelihood be presented to the Norwegian Parliament in the fall of 2023 and the date of entry into force of the proposal will likely be set at 1 January 2024.

Will it work?

DNS blocking is currently used in twelve EEA countries, and an additional six EEA countries are working on implementing similar blocking measures as Norway. From a comparative viewpoint, DNS blocking has proven ineffective as a measure to combat unlicensed gambling. A commonality between them all, DNS blocking is easily circumvented. To that end, tech savvy internet users have a number of options at their disposal. Virtual Private Networks (“VPN”), which encrypts the internet connection of its user and routes it through a server in another country, can be used to effectively mask user’s IP addresses and DNS requests. Another option is to change the DNS settings of the device used to access the blocked website, using alternative servers as opposed to the ones belonging to the ISP.

No one can doubt the legislative vigour of the Norwegian Government within the field of gambling law, or the effectiveness of the Authority’s enforcement practices in recent years. However, as a standalone measure, DNS blocking will likely prove ineffective in reducing the Norwegian market share of foreign-based gambling operators.