

**Internet Service Providers Responsibility for Illegal Content -
An Algerian Legislative Perspective**

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Abstract: The accountability of Internet Service Providers (ISPs) involves holding them legally responsible for all unlawful actions they commit, whether these are positive acts or negative omissions that violate their established legal obligations. These violations result in legal sanctions issued by the competent authorities and applied by the judiciary, making their responsibility a complex legal nature that includes the elements of fault and penalty. Depending on the nature and type of the violation, this responsibility can take a civil, administrative, or penal (criminal) character.

Keywords: Internet service providers – technical intermediaries – hosting providers – criminal liability.

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Introduction

The **Internet** and the websites it encompasses have a special character that distinguishes them from other traditional means of communication. Therefore, it became necessary for the Internet to be governed by its own unique system. This system must stem from an evolving legislative perspective on determining **criminal liability** for crimes committed across the network and electronic sites, in a way that prevents the perpetrators of these crimes from escaping punishment, and without hindering the specific technical nature of this technology.

In this context, the Supreme Council for Audiovisual Media of the Union of Francophone Countries, meeting in Belgium in March 1998, recommended that criminal liability across information networks and electronic sites should involve the **strict application of the Penal Code** and its complementary laws, in a manner consistent with the specificity of the violations that occur through them.

Given that electronic interaction relies primarily on the operation of technical means, foremost among which is the Internet, which represents an integrated system of intertwined activities in the operation, storage, transmission, and display of information, this necessarily requires the presence of specialized personnel to operate these services. These individuals are known as "**Internet Service Intermediaries**" or, as some comparative legislations call them, "**Internet Service Providers**" (ISPs).

With the significant development witnessed in Internet technology over recent years and the accompanying expansion of electronic content in various transactions, an important legal problem has emerged concerning the **type of liability borne by electronic service providers** regarding the information circulated across the network, especially if this content includes abuses or violations that constitute **cybercrimes** affecting users or public order.

The **criminal liability of hosting providers and Internet Service Providers (ISPs)**, as professional actors in the field of information services, is one of the most prominent topics that has aroused wide controversy in jurisprudence and the judiciary. Judicial positions have varied, and rulings have differed regarding the extent of their responsibility for the illegal content displayed on the network. This liability is also considered one of the novel concepts within the scope of "**Informatics Criminal Law**," where it occupies a pivotal position in modern legal studies due to its paramount importance in protecting the digital space and ensuring the security of electronic transactions.

Despite this importance, many national and comparative legislations have not subjected this liability to precise regulation, merely referencing some of its provisions in scattered texts related to the controls for providing information services. The determination of the **conditions for the establishment of criminal liability** for service providers and intermediaries has been left to the diligence of jurisprudence and the judiciary, which have undertaken the task of deducing its elements and outlining its general features. Hence, the scope of jurisprudential debate expanded regarding the nature, limits, and extent of this liability's connection to the electronic content circulated across the network.

Undoubtedly, determining the criminal liability of Internet service providers will necessarily lead to a form of **criminal protection for electronic transactions** on the one hand, and on the other hand, it will contribute to **securing them**, which encourages users to engage in transactions with complete ease through the Internet.

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This raises the question: **To what extent is criminal liability established for Internet service providers? And what are the most important obligations incumbent upon them?**

To answer this question and clarify the provisions upon which the criminal liability of Internet service providers is based, we will first address the **concept of Internet service providers**, and then proceed to the **establishment of criminal liability for Internet service providers**.

I. The Concept of Internet Service Providers (ISPs)

Internet Service Providers are among the most prominent actors in the electronic space and the most important interveners on the network's sites, given the **pivotal role** they play in storing the content and data of electronic websites. They constitute the technical intermediary and the essential communication channel between various electronic users, regardless of their nature or legal status.

As the main engine of electronic content, any failure on their part to perform the entrusted tasks could lead to the disruption of communication channels and the obstruction of exchange, negotiation, and conclusion processes between the parties to electronic transactions.

Service intermediaries of various types are related, one way or another, to the mechanism of electronic transactions, because each of them performs a part of the "**Information Process (Processus informationnel)**" system concerning the content of these transactions across the network¹. Consequently, ISPs have a **positive and vital role** in protecting the systems and websites operating on the network from illicit electronic content and all other acts that violate the law or contravene public morals and decency in society.

To further understand the concept of ISPs, it is necessary to identify the most important definitions related to these intermediaries, and then clarify the legal nature of their technical function and their most important legal obligations.

A. Definition of Internet Service Providers (ISPs)

Electronic transactions hold paramount importance, where the primary and ultimate concern is **trust and security**. These two elements are the most critical guarantees required for the prosperity of electronic dealings. To more precisely identify these individuals as technical intermediaries, it is necessary to address their definition, starting with the jurisprudential (doctrinal) definition, followed by the legal definition.

1) The Jurisprudential (Doctrinal) Definition:

Among the most important definitions addressed by modern criminal jurisprudence regarding service providers on the Internet, we find the following:

- The Internet Service Provider is defined by the term **Access Provider**, who is any natural or legal person that plays a **technical role** in connecting the user to the Internet network,

¹ R. Bouker, *Al-Himaya Al-Jaza'iyya li-al-Ta'amulat Al-Iliktruniyya* (Criminal Protection for Electronic Transactions), Halabi Human Rights Publications, Beirut, Lebanon, 2019, p. 122.

through subscription contracts that ensure the client's connection to the electronic sites they desire².

- Others have defined them as:

"Every **natural or legal person** who undertakes the task of **storing the informatics applications and data** specific to their clients (network users) and supplies them with the necessary **technical and informational means** that enable them to access that stored content via the Internet network"³.

- Another perspective in jurisprudence defined them as:

"A technical service provider is defined as any natural or legal person, whether public or private, who undertakes to provide communication services to the public, or carries out the processing or storage of electronic data and information, with the commitment to retain data that allows the identification of the website owner or the entity responsible for the informational content"⁴.

- It has also been defined as:

"Every person, whether natural or legal, who stores web pages and electronic sites through their informatics systems for a fee or free of charge, provided they adhere to the rules of safety and connectivity sufficient to protect the Internet and ensure the continuity of access to these pages and sites"⁵.

- Some authors tended to define them as:

"A group of informational suppliers who secure the storage, management, and retrieval of electronic contents and materials, which the content providers wish to make available to the public via the Internet"⁶.

- They were also defined as:

"The service provider is the one who enables subscribers to access the Internet network by providing them with the necessary technical means to access the network under a service delivery contract"⁷.

² H. Boukhalfa, Al-Mas'uliyya Al-Jaza'iyya li-Muta'ahhid Al-Dukhul 'abr Al-Internet (Criminal Liability of the Internet Access Provider), Journal of Legal Studies, University of Medea, Vol. 6, Issue 1, p. 2.

³ M. H. Mansour, Al-Mas'uliyya Al-Ilktruniyya (Electronic Liability), Dar Al-Jami'a Al-Jadida, Alexandria, Egypt, 2007, p. 202.

⁴ D. A. Fahmy, Al-Himaya Al-Jina'iyya min Isaa'at Istikhdam Mawaqi' Al-Tawasul Al-Ijtima'i (Criminal Protection from the Misuse of Social Media Sites), Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2018, p. 104

⁵ A. Bouzida, Al-Mas'uliyya Al-Jaza'iyya li-Muta'ahhidiyy Iiwa' Al-Mawaqi' Al-Ilktruniyya (Criminal Liability of Electronic Website Hosting Contractors), Academic Center for Publishing, Cairo, Egypt, 2019, p. 26.

⁶ O. S. Al-Hayek, Mas'uliyat Muzawwidi Khadamat Al-Internet Al-Taqniyya (The Technical Responsibility of Internet Service Providers), Modern Institution for the Book, Tripoli, Lebanon, 2009, p. 42.

⁷ M. Nasr, Al-Mas'uliyya Al-Jina'iyya li-Wusataa' Taqdim Khadamat Shabakat Al-Internet (The Criminal Liability of Internet Service Intermediaries), The National Criminal Journal, Vol. 59, Issue 1, Dar Al-Manzuma, Amman, Jordan, 2016, p. 119.

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- **From our perspective, we define Internet Service Providers as:**

"Every natural or legal person who supplies network users with the capacity to communicate via informatics systems, and provides their clients with the service of storing informational content across websites and electronic pages for a fee or free of charge, or who processes and stores data on behalf of these users by providing informational spaces via their host accounts to accommodate this material or content, with the possibility of referring the names of the hosting sites via the Internet's search engines."

2) The Legal Definition:

Both international conventions and national laws have addressed the definition of Internet Service Providers. We find examples as follows:

2.1) In International Conventions:

Here we find, for example, the European Convention and the Arab Convention, respectively:

- **Article 1(3) of the 2001 Budapest Convention** defined it as:

"Service provider means any public or private entity that provides to users of its service the ability to communicate by means of a computer system, and any other entity that processes or stores computer data on behalf of the communication service provider or users of that service"⁸.

- **The Arab Convention on Combating Information Technology Crimes of 2010** defined it in **Article 2(3)** as:

"Service Provider means any natural or legal person, public or private, who provides subscribers with services for communication by means of information technology, or processes or stores information on behalf of the communication service or its users"⁹.

2.2) In National Laws:

Among the most important laws that have defined Internet Service Providers, we find the following:

- **Article 6-1-2 of the French Law No. 575-2004** concerning Confidence in the Digital Economy defined it as:

"Any natural or legal person who provides, even gratuitously, services by means of communication over the network, by storing symbols, writings, images, sounds or messages of any nature for the benefit of the users of these services"¹⁰.

⁸ The International Convention on Cybercrime, concluded in Budapest, Hungary, on 08/11/2001 under the supervision of the European Council and opened for signature since 23/11/2001.

⁹ 278 - The Arab Convention on Combating Information Technology Crimes, concluded in Cairo, Arab Republic of Egypt, on December 21, 2010, ratified by Algeria on September 08, 2014, pursuant to Presidential Decree No. 14-252, Official Gazette No. 57, dated September 28, 2014

¹⁰ French Law No. 575-2004 concerning Confidence in the Digital Economy, dated June 21, 2004

- **The Egyptian Legislator, in Article 1(8) of Law No. 175 of 2018**, defined it as:

"Service Provider means any natural or legal person who provides users with information and communication technology services, and this includes whoever processes or stores information either themselves or on their behalf in any of those services or information technology"¹¹.

- **The Algerian Legislator** defined it in both **Article 3(19) of Law No. 18/07** concerning the protection of natural persons with regard to the processing of personal data¹², and also in **Article 2(4) of Law No. 09-04** concerning the specific rules for the prevention and combating of crimes related to information and communication technologies, stating:

"Service Providers mean any public or private entity that provides to the users of its services the ability to communicate by means of an informatics system and/or a communication system, and any other entity that processes or stores informatics data for the benefit of the said communication service or its users"¹³.

B. The Legal Nature of the Function of Internet Service Providers (ISPs)

Internet Service Providers (ISPs) hold a **special function** across the network; without them, the network's content cannot be accessed. This is in addition to the authority granted to them by law over the content of the electronic sites they host.

It is generally established that the role of ISPs, as information intermediaries on the Internet, is primarily limited to performing a **purely technical function**. This function involves the physical contribution to the transmission and broadcasting of content via electronic sites by providing technical support and assistance to the owners of these sites, enabling them to connect to their network. Their role in this context does not exceed the technical aspect of connecting the user to the Internet under an agreement, **without any intervention in the substance of the information or the content of the electronic sites**¹⁴. Their work nature, therefore, closely resembles that of a **distributor in the field of written press**, whose role is limited to conveying and distributing content without participating in its drafting or being responsible for it.

ISPs also undertake the **storage of electronic sites** and the hosting of their data across the Internet. They also manage the information and private messages on these sites after providing access to **Information Resources (Ressource d'information)**¹⁵. ISPs provide the

¹¹ Egyptian Law No. 175-2018 concerning the Combating of Information Technology Crimes, dated 2018.

¹² Law No. 18/07 concerning the protection of natural persons with regard to the processing of personal data, dated June 10, 2018, Official Gazette No. 34, dated June 10, 2018.

¹³ Law No. 09-04 containing the specific rules for the prevention and combating of crimes related to information and communication technologies, dated August 05, 2009.

¹⁴ A. Y. Al-Sa'id Youssef, Al-Mas'uliyya Al-Jina'iyya li-Muqaddimi Al-Mawad Al-Ibahiyya lil-Atfal 'abr Al-Internet (Criminal Liability of Providers of Child Pornography via the Internet), Journal of Legal and Economic Research, Faculty of Law, Mansoura University, Egypt, 2011, p. 32.

¹⁵ Information Resource (Ressource d'information): Also referred to as the Content Information Resource (Ressource de contenu d'information), this is the person who feeds the network with information. They are the most important person on the Internet, whether they are the producer, source, or author of the information, or merely the rights holder for its publication and broadcasting via the Internet. They may be an ordinary person or a professional specializing in collecting information and supplying networks with it. They bear the burden of creating and collecting information related to a specific topic, making them the primary party responsible for the information broadcast through the network. As a professional in producing and broadcasting information, their liability can be raised, as appropriate, for counterfeit, incomplete, scandalous, or explicit information they collect, prepare, and publish on their electronic site. (See: A. R. Al-Khalayleh, Al-Mas'uliyya Al-Taqsiriyya Al-

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opportunity to publish information and content across electronic sites, making it available to all those who wish to view it¹⁶.

Their role in this framework is **not limited to the technical aspect** as mere carriers of information; it extends to **managing the informational activity** on these sites. On the one hand, they secure their operation and technical maintenance, and on the other hand, they provide content providers with the technical means that enable them to access their data and information storage locations¹⁷.

In reality, an ISP can undertake several overlapping technical functions. Its role is not limited to its essential task as a storer and monitor of information, but extends to the **management and processing of data** through the devices and systems it possesses for storing the applications and informational records belonging to the owners of electronic sites. These systems enable them to **easily delete or modify the contents** of the sites when needed.

Furthermore, service providers enjoy high technical capabilities due to the advanced technological means and tools they possess, which allow them access to electronic contents. They also have the ability to link other parties and enable them to access that data across the network, making their role transcend the purely technical framework to a level of **control and partial supervision** over the flow of electronic information¹⁸. These are **exceptional authorities** exercised by the service providers, which may expose them to accountability when these authorities are characterized by illegality¹⁹.

The work of the contractor, intermediary, or service provider, as previously explained, closely resembles the work of the **Editor-in-Chief in written—paper or electronic—newspapers**, who allocates advertising space for a specific company's advertisements, for example²⁰. Therefore, they are referred to as the **Hosting Contractor** or the **Host**.

Some jurists go so far as to consider the contract linking the electronic host provider and the subscriber as a **lease contract**, termed the **"Informational Lease Contract"** (*Contrat de location à titre informatif*)²¹. Under this contract, the electronic host provider rents out certain spaces on their electronic server or host accounts ("**Server**"), relying on the **prior**

Iliktruniyya (Electronic Tort Liability), Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 2009, p. 58).

¹⁶ A. Faraj, Al-Nizam Al-Qanuni li-Muqaddimi Khadamat Al-Internet (The Legal System of Internet Service Providers), Al-Manara Journal, Vol. 13, Issue 9, 2007, p. 325.

¹⁷ A. Bouzida, Op. Cit., p. 24.

¹⁸ A. J. Sayyed, Mas'uliyat Muqaddimi Khadamat Al-Internet 'an Al-Madmun Al-Iliktruni Ghayr Al-Mashru' (The Responsibility of Internet Service Providers for Illicit Electronic Content), Special Study on the Liability of Hosting Contractors, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2010, p. 92 et seq.

¹⁹ A. Bouzida, Op. Cit., p. 25.

²⁰ R. Bouker, Op. Cit., p. 136.

²¹ A. R. Al-Loumi, Al-Mas'uliyat Al-Taqsiriyya 'ala Shabakat Al-Internet (Tort Liability on the Internet), Tunisian Legal Journal, University Publishing Center, Tunis, 2007, p. 66.

programming of the device or system²², in exchange for a specified fee for anyone who wishes to store information therein or publish it on the network²³.

It is a contract by which the service provider places certain capabilities of its devices or informational tools on the Internet at the disposal of the subscriber for the purpose of **hosting specific pages of the "Web"**²⁴. The client, who acts as a lessee of the electronic spaces or pages provided by the service provider, creates and writes their own content or material directly onto those pages. The published informational material is then stored on the servers, making it available for any other user to access easily at any time via the Internet.

C. The Legal Obligations of Internet Service Providers (ISPs)

Among the most important obligations of Internet Service Providers, particularly in **Algerian legislation**, is a set of duties stipulated in **Law No. 09-04** (previously mentioned) under **Chapter IV, titled "Obligations of Service Providers,"** specifically in **Articles 10, 11, and 12:**

- **Article 10: "Assistance to Authorities"**

1. "In the framework of applying the provisions of this law, service providers must provide assistance to the authorities in charge of **judicial investigations** to collect and record communications-related data in a timely manner and to make the data that they are obligated to retain, in accordance with Article 11 below, available to the aforementioned authorities.
2. Service providers must maintain the **confidentiality** of the operations they carry out at the request of the investigators, as well as the related information, under penalty of the sanctions prescribed for the disclosure of investigation and inquiry secrets."

- **Article 11: "Retention of Traffic Data"**

1. "Subject to the nature and quality of the services, service providers are obliged to retain:
 - a. Data that allows the **identification of service users**.
 - b. Data related to the **terminal equipment** used for communication.
 - c. Technical characteristics, as well as the **date, time, and duration of each communication**.
 - d. Data related to requested or used **supplementary services** and their providers.

²² Note on "Prior Programming": This refers to programs capable of acting in place of an ordinary person using Artificial Intelligence (AI) programs. These programs have specific characteristics that distinguish them from many other programs, allowing AI programs to operate without direct human control or intervention. Such a program is characterized by autonomy and a superior capacity for processing, storage, and retrieval. It also has the ability to interact with other programs, computer devices, informatics systems, or even with ordinary people, and has the capacity for reaction and initiative. (See more: A. Y. Al-Nuaimi, Al-Wakil Al-Iliktruni, Mafhumuhu wa Tabi'atuhu Al-Qanuniyya (The Electronic Agent: Its Concept and Legal Nature), University of Sharjah Journal of Sharia and Legal Sciences, Vol. 7, Issue 2, UAE, 2010, p. 153).

²³ M. N. Muhammad, Al-Wasit fi Al-Jara'im Al-Ma'lumatiyya (The Intermediary in Informatics Crimes), 1st ed., Arab Studies Center for Publishing and Distribution, Cairo, Egypt, 2015, p. 121.

²⁴ A. M. K. Nasser, H. O. Shiwaat, 'Aqd Al-Iiwa' Al-Ma'lumati (The Informatics Hosting Contract), Kufa Journal for Legal and Political Sciences, Issue 21, University of Kufa, Iraq, 2014, p. 55.

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e. Data that allows the **identification of the communication recipient(s)**, as well as the **addresses of the websites visited**.

2. For telephone activities, the operator retains the data mentioned in paragraph (a) of this Article, as well as those that allow the **identification of the communication source and its location**.

3. The retention period for the data mentioned in this Article is fixed at **one year** from the date of registration.

4. Without prejudice to the administrative penalties resulting from non-compliance with the obligations stipulated in this Article, **criminal liability** shall arise for natural and legal persons when such non-compliance hinders the proper conduct of judicial investigations... The modalities for applying paragraphs (1, 2, 3) of this Article shall be determined, if necessary, by regulation."

• Article 12: "Specific Obligations of Internet Service Providers"

1. "In addition to the obligations stipulated in Article 11 above, Internet service providers must:

a. **Intervene immediately** to withdraw content they allow access to, upon direct or indirect knowledge that it violates the laws, and to store it or make access to it impossible.

b. Establish **technical arrangements** that allow restricting access to servers containing information that violates **public order or public morals**, and inform their subscribers of its existence."

II. Establishing the Criminal Liability of Internet Service Providers

One of the most important and prominent crimes involving a breach by Internet Service Providers is the **non-fulfillment of the legal obligations** incumbent upon them by virtue of the law's provisions. This is referred to as "**Crimes related to the Informatics Hosting of Electronic Sites**."

To discuss this crime and the resulting determination of criminal accountability, we must address the **elements (pillars) of this crime** and then mention the most important **sanctions** prescribed for it.

A. Elements of the Crime of Breaching the Legal Obligations of Internet Service Providers

The general elements of this crime, which many jurists refer to as the **Informatics Hosting Crime**, rest upon a set of necessary legal components that must be present in the illegal hosting incident to qualify it as a crime. These elements relate to the legal classification of the incident, encompassing both its **material (objective) and moral (subjective) aspects**.

This means that establishing the service provider's liability is rooted in the **illegality of the hosting service** in its criminal aspect, in addition to the **non-observance of the duties and obligations** incumbent upon them in the commission of this crime, whether as a primary perpetrator or as an accomplice. This is conditional on the existence of a **guilty intention** at the moment of the illegal broadcast or even its attempt, provided that there is a **criminalizing legal text**.

1) The Legal Element of the Crime (Rukn Al-Shar'i):

To discuss the legal element in the crime related to informatics hosting, or what some call "**Internet Service Provider Crimes**," the criminalizing legal texts relevant to these incidents in Algerian legislation must be mentioned.

Previously, the texts referring to the liability of ISPs were **general and very few**. The reason for this was the lack of a clear conception for establishing legal principles for these intermediaries unless there were clear and specific obligations upon which their responsibility could be based. Previously, reference was made to **Executive Decree No. 98-257**, dated August 25, 1998, regarding the regulation of the conditions and modalities for establishing and exploiting Internet services, as amended by Executive Decree No. 2000-307, dated October 14, 2000²⁵.

Executive Decree No. 98-257, in its **Article 14**, stipulated a set of general obligations incumbent upon the technical intermediary. However, it **did not impose any penalty** for the breach of these obligations, even a mere fine²⁶.

In contrast, **Law No. 09-04, Article 12**, imposed two specific obligations on the technical intermediary, the non-compliance with which would constitute two distinct crimes: the **crime of disclosing investigation and inquiry secrets** and the **crime of failing to retain traffic data**, as will be further clarified.

Subsequently, **Law No. 04-15** concerning the infringement of automated data processing systems was issued in 2004, which introduced **Articles 394 bis to 394 septies**. Nevertheless, the legislator at the time did not establish the service provider's liability. This situation remained unchanged until the issuance of **Law No. 16-02** dated June 19, 2016, which amended and supplemented the Penal Code. This law saw its latest amendment with **Law No. 24-06** dated April 28, 2024. This law added **Article 394 octies**, which stipulates:

²⁵ Executive Decree No. 98-257, dated August 25, 1998, concerning the regulation of the conditions and modalities for establishing and exploiting Internet services, Official Gazette, No. 63, issued August 26, 1998, and amended by Executive Decree No. 2000-307, dated October 14, 2000, which regulates the conditions and modalities for establishing and exploiting Internet services, Official Gazette, No. 60, issued October 15, 2000.

²⁶ The text of Article 14 was as follows: "The Internet Service Provider is obligated, during the exercise of its activities, to:

- Facilitate access to Internet services, according to the available possibilities, to all those wishing to do so using the most effective technical means.
- Maintain the confidentiality of all information related to the private lives of its subscribers and not disclose it except in cases stipulated by law.
- Provide its subscribers with clear and accurate information about accessing 'Internet' services and the form of assistance whenever requested.
- Submit any project concerning the use of coding systems to the Committee.
- Respect the rules of good conduct by refraining specifically from using any unlawful method, whether toward users or toward other 'Internet' service providers.
- Bear responsibility for the content of the pages and data servers it extracts and hosts, in accordance with the legislative provisions in force.
- Inform its subscribers of their responsibility regarding the content of the pages they extract, in accordance with the legislative provisions in force.
- Take all necessary measures to ensure continuous monitoring of the content of the servers open to its subscribers, with the aim of preventing access to servers containing information that contradicts **public order or morals**."

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"Without prejudice to the administrative sanctions stipulated in the legislation and regulations in force, the Internet service provider, as defined in Article 02 of Law No. 09-04 concerning the specific rules for the prevention and combating of crimes related to information and communication technologies, who fails, despite being duly notified by the National Authority stipulated in the aforementioned law or the issuance of a judicial order or judgment obliging them to do so, shall be punished by **imprisonment for one to three (3) years** and by a **fine of 2,000,000 DZD to 10,000,000 DZD**, or by one of these two penalties only, for:

- **Failing to immediately intervene** to withdraw or store the contents they allow access to or make access to them impossible when such contents constitute legally prescribed crimes.

- **Failing to establish technical arrangements** that allow the withdrawal or storage of contents related to the crimes stipulated in paragraph (a) of this Article or to make access to them impossible."

With this last text, the Algerian legislator was able to establish the **criminal liability of Internet Service Providers**. This liability is triggered **if the service provider fails to comply** with an order or judgment issued by the judicial authorities, or a notification addressed to them by the National Authority for the Prevention and Combating of Crimes Related to Information and Communication Technologies, requiring them to take the necessary measures to withdraw or block access to the illicit and disputed information. The service provider's responsibility is established upon non-compliance with this notification, judgment, or order.

Furthermore, **Law No. 09-04**, in the context of assisting authorities in judicial investigations, obligated ISPs to **retain traffic data** for a period of **one year** from the date of registration. These are the data specified in **Article 11** (e.g., data identifying service users or communication recipients). If the service provider breaches this obligation, thereby **hindering the proper conduct of judicial investigations and inquiries**, the last paragraph of **Article 11** of this law stipulates that:

"The **natural person** shall be punished by **imprisonment from six (6) months to five (5) years**, and by a **fine of 50,000 DZD to 500,000 DZD**, while the **legal person** shall be punished according to the rules prescribed in the Penal Code."

2) The Material Element of the Crime (Rukn Al-Maddi):

The material element represents one of the main pillars upon which informatics hosting crimes and the resulting criminal liability are based. Its absence constitutes an obstacle to the establishment of the crime and a negation of accountability²⁷. The material element is the physical form through which the criminalized **informatics hosting incident** appears on the Internet, embodied in the **actual illegality of this activity**.

The material element in this crime is based on the **assumed condition**, the **criminal activity (Actus Reus)**, the **subject matter of this activity**, and finally, the **criminal result** arising from this activity.

²⁷ A. Bouzida, Op. Cit., p. 136.

2) The Material Element of the Crime :

2.1) The Assumed Condition:

This is fundamentally a **legal element** that is separate and distinct from the pillars of the crime. It is called the **assumed condition for the existence of the crime**, meaning its presence is presumed as a **legal status** protected by the penal rule against any violation or aggression²⁸.

In this specific crime, the assumed condition is represented by the **status of the perpetrator or the accused**, which must be an **"Internet Service Provider"** as previously explained. Hence, one of the most important characteristics of this crime is that it falls under the category of **"Crimes of the Specific Actor"**, requiring the perpetrator to possess the specific capacity of being an Information Technology Service Provider or equivalent.

2.2) The Criminal Activity:

The criminal activity or prohibited conduct in this crime takes **two forms**: the **"Positive Conduct"** and the **"Negative Conduct."**

- **Positive Conduct** is realized by the **act of broadcasting illicit informational content** and making it available across the network and electronic sites²⁹, and by providing the technical and functional capabilities to facilitate that broadcast.

- **Negative Conduct** is realized by the **act of refraining** from performing the legal duties imposed on them regarding the hosted informational activities. This mainly consists of the ISP's failure to implement the stipulated obligations. This activity is a negative behavior, which is the **omission** to perform a specific act required by the legislator in the given situation, whether by taking a contradictory action or by a complete halt of the required conduct [3]. More precisely, it is the service provider's refusal or abstention from carrying out a specific duty mandated by law, primarily the failure to execute the decisions and orders issued by competent authorities to **withdraw or block** a site, link, or content, as referenced in **Article 394 octies** of the Penal Code. The source of this obligation is the legal text itself, because the material element of this crime is not the failure of a specific conduct on the part of the service provider, but rather the **failure of a specific event** that the law commands to be realized³⁰.

Both the positive and negative forms in this crime fall under the category of **"Interchangeable Forms"**, meaning the material element is satisfied by the commission of just one of the criminalizing acts. The crime is established upon the commission of any one of these acts without it being considered a physical multiplicity of crimes³¹. Furthermore, this type of crime includes acts classified as **instantaneous crimes**, which determines that the statute of limitations for the criminal action begins to be calculated from the day following the commission of the criminal act³².

²⁸ A. M. Wazir, *Sharḥ Qanūn Al-'Uqūbāt, Al-Qism Al-'Āmm, Al-Juz' Al-Awwal, Al-Naẓariyya Al-'Āmma lil-Jarīma* (Commentary on the Penal Code, General Section, Part One, General Theory of Crime), Dar Al-Nahda Al-'Arabiyya, Cairo, Egypt, 2006, p. 202.

²⁹ A. Bouzida, *Op. Cit.*, p. 136.

³⁰ R. Behnam, *Al-Naẓariyya Al-'Āmma lil-Qānūn Al-Jinā'ī* (The General Theory of Criminal Law), Munsha'at Al-Ma'arif, Alexandria, Egypt, 1997, p. 324.

³¹ M. A. Suwailam, *Sharḥ Qanūn Jarā'im Tiqniyyat Al-Ma'lūmāt Al-Miṣrī* (Commentary on the Egyptian Information Technology Crimes Law), Dar Al-Matbu'at Al-Jami'iyya, Alexandria, Egypt, 2019, p. 448.

³² R. Behnam, *Al-Naẓariyya Al-'Āmma lil-Qānūn Al-Jinā'ī*, *Op. Cit.*, p. 374.

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2.3) The Subject Matter of the Criminal Activit:

The subject matter of the criminal activity is the **informational system record** available across the network. This is defined as a collection of programs whose data and information have been managed and processed by any means of information technology, along with all electronic and technical capabilities that can provide an information service. In essence, the subject matter of the criminal activity in this crime includes **any medium or group of interconnected or non-interconnected media** used for storing, retrieving, arranging, organizing, processing, developing, and exchanging information and data, including everything related to the informational material or content placed on the network or site using wired or wireless means.

2.4) The Criminal Result:

For the criminal result to be achieved in this type of crime, the **non-compliance or non-execution** by the service provider of their previously mentioned obligations is sufficient. It is **not required** that a specific or defined result occurs from this behavior, nor that a specific harm is realized³³.

The **omission** by the service provider to execute the decision issued by the competent authorities to withdraw or block the sites, links, or electronic contents referred to in the law is sufficient. It is not required that a specific crime occurs as a result of this negative behavior or that another result is achieved. The basis for this is that this crime is considered a "**Crime of Omitted Event**"³⁴. If another, unexpected result occurs, we would then be dealing with a "**Crime of Prohibited Event**"³⁵ as an aggravating circumstance, the existence of which the law does not condition the existence of the crime upon, and in which case there is no room for the continued obligation to work to prevent the event³⁶.

The meaning of the criminal result refers to the **effect caused by the storage of the content** across the network and electronic sites as a **legal consequence of the criminal behavior** as recognized by the legislator in the criminalizing texts³⁷.

The **causal link** here lies in the connection between the criminal informational act and the criminal result achieved through it³⁸. However, determining this causal link in informatics hosting crimes is difficult, as the process of hosting criminal content across the network and electronic sites passes through numerous technical stages and highly complex devices and systems. This necessarily impedes the easy determination of the causal link between the criminal informatics hosting behavior and the result achieved via Internet sites³⁹.

³³ H. Al-Jundi, *Al-Wajīz fī Sharḥ Qanūn Al-'Uqūbāt, Al-Qism Al-'Āmm* (The Concise Guide to the Commentary on the Penal Code, General Section), 1st ed., Dar Al-Nahda Al-'Arabiyya, Cairo, Egypt, 2007, p. 190

³⁴ H. Al-Jundi, *Al-Wajīz fī Sharḥ Qanūn Al-'Uqūbāt, Al-Qism Al-'Āmm* (The Concise Guide to the Commentary on the Penal Code, General Section), 1st ed., Dar Al-Nahda Al-'Arabiyya, Cairo, Egypt, 2007, p. 190

³⁵ M. A. Suwailem, *Op. Cit.*, p. 476.

³⁶ R. Behnam, *Nazāriyyat Al-Tajrīm fī Al-Qānūn Al-Jinā'ī* (Theory of Criminalization in Criminal Law), Munsha'at Al-Ma'arif, Alexandria, Egypt, 1996, p. 58.

³⁷ A. Bouzida, *Op. Cit.*, p. 137.

³⁸ Obeid, *Al-Sababiyya fī Al-Qānūn Al-Jinā'ī* (Causality in Criminal Law), Nahḍat Miṣr Press, 2nd ed., Cairo, Egypt, 1966, p. 8 et seq.

³⁹ M. A. Al-Muttalib, *Jarā'im Istikhdām Al-Kumbiyūtar wa Shabakat Al-Ma'lūmāt Al-'Ālamiyya* (Crimes of Using Computers and the World Information Network), Dar Al-Fath for Printing and Publishing, 1st ed., Sharjah, UAE, 2000, p. 56.

3) The Moral Element (Mens Rea) of the Crime:

The **moral element (mens rea)** is of paramount importance in criminalizing information activities via the internet and websites. No crime exists without a moral element, as it is an essential prerequisite for examining **criminal liability** for this type of crime and for the initial completion of its legal structure. This supports the view that the moral element of the crime is simultaneously the element of liability within it.

This offense is considered an **intentional crime** in which the moral element takes the form of **criminal intent (dolus)**. This intent, in turn, is composed of two elements: "**knowledge and will (or intent)**." Knowledge requires the service provider to be aware of the criminal nature of the activity stemming from their actions, specifically their failure to fulfill their stipulated legal obligations, which primarily consist of the set of obligations previously explained.

Furthermore, the **will (intent)** of the perpetrator must be directed towards that criminalized activity. If this will is absent, the criminal intent is negated. The motives behind the criminal behavior are irrelevant, as the law does not take any of them into account. In this context, the will must originate from an actor who is accountable for it and bears the consequences of the prescribed penalty, with the **intention and will to commit the crime of information hosting**. Although the will is composed of cognitive and psychological elements, the requirements of justice dictate that punishment should only be inflicted upon a person who has **extended control** over all its parts. If punishment is inflicted upon a person who lacks full control over their psychologically-rooted will, then criminal liability does not exist in the first place.

This means that the nature of the moral element and criminal intent in crimes committed via the network—specifically the hosting activity—is determined by the extent of the perpetrator's psychological control over the information material subject to the criminal activity. If the perpetrator's psyche was directed towards committing a **fault (wrong)** in its general sense, then this fault is the essential element upon which their criminal liability rests. A person cannot be held accountable for the consequences of the act attributed to them unless it is proven that they committed that act due to a fault stemming from their **free and conscious will**⁴⁰.

B- Penalties Prescribed for the Crime Committed by an Internet Service Provider:

For the penalties prescribed for this crime, we must mention both the **principal penalties** and the **supplementary penalties**, followed by the penalty for **attempted crime** and the penalty for **complicity and criminal contribution (participation)**.

⁴⁰ Ali Ahmad Rashid: *Al-Mabadi' Al-'Aamah fi Al-Qanun Al-Jina'i* (General Principles in Criminal Law), Dar Al-Nahda Al-Arabia, Cairo, Egypt, 1974, p. 353.

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1) Principal Penalties for the Crime:

Here, we distinguish between the principal penalties prescribed for the **natural person** and the principal penalties prescribed for the **legal person**.

1.1) For the Natural Person:

The Algerian legislator, in turn, penalized this crime under **Article (394 bis 8)** of the **(Algerian Penal Code - Q. A. J.)**, which states: "Without prejudice to the administrative penalties stipulated in the legislation and regulations in force, the internet service provider... shall be punished with **imprisonment for one (1) to three (3) years** and a **fine of 2,000,000 DZD to 10,000,000 DZD**, or with only one of these two penalties."

Furthermore, **Article (11)** of the aforementioned Law No. (09-04) mentioned the penalty for the service provider, stating: "Without prejudice to the administrative penalties resulting from non-compliance with the obligations stipulated in this article, the criminal liability of **natural and legal persons** shall be established when such non-compliance leads to the obstruction of the proper conduct of judicial investigations. The **natural person** shall be punished with **imprisonment from six (6) months to five (5) years** and a **fine from 50,000 DZD to 500,000 DZD**, and the **legal person** shall be punished with a fine in accordance with the rules prescribed in the Penal Code."

Article (10/2) of Law No. (09-04) also stipulated: "...Service providers must maintain the **confidentiality** of the operations they carry out at the request of investigators, as well as the related information, under penalty of the sanctions prescribed for **divulging investigation and inquiry secrets**."⁴¹

1.2) For the Legal Person:

If the internet service provider is a **legal person** and is convicted of this crime, the provisions of **Article (394 bis 4)** of the **(Q. A. J.)** shall apply, which states: "The legal person who commits one of the crimes stipulated in this section shall be punished with a **fine equivalent to five (5) times the maximum fine prescribed for the natural person**."

In addition to the fine, the court may also impose the penalty of "**dissolution of the legal person**." Dissolution is considered a penalty that affects the very existence of the legal person, involving procedures related to its liquidation and termination from political, economic, or

⁴¹ This is what Article (19) of the new Code of Criminal Procedure No. (25-14) stipulated, stating: "Investigation, inquiry, and prosecution procedures shall be confidential, unless otherwise stipulated by law, and without prejudice to the rights of the defense. Every person involved in these procedures is obligated to maintain professional secrecy under the conditions set out in the Penal Code and under the threat of the penalties stipulated therein. However, to avoid the spread of incomplete or incorrect information or to put an end to a breach of public order, the representative of the Public Prosecution or the Judicial Police Officer, after obtaining written permission from the Public Prosecutor, may inform the public of objective elements extracted from the procedures, provided that they do not include any assessment of the charges held against the persons involved. The representative of the Public Prosecution may also, in serious crimes and without prejudice to the provisions of the last paragraph of Article (26) of this Law, publish photographs or other elements of the identity of persons sought or subject to preliminary investigation or criminal prosecution if this is necessary to maintain public security and order, or to prevent the recurrence of the crime, or if required by the necessity of identifying victims in the event that the facts were committed in more than one location or in the digital space. In all cases, the presumption of innocence and the sanctity of private life must be observed."

social life. The penalty of dissolution is thus equivalent to the death penalty for a natural person⁴², as it is one of the principal penalties consisting of the dissolution of the legal person⁴³.

2. The Crime of the Internet Service Provider (Continued)

The Penalty of Dissolution and Its Constraints

Given the **severity of the dissolution penalty**, the applicable laws have surrounded it with a number of **controls and guarantees** that narrow its scope. The penalty of dissolution poses specific practical difficulties, primarily that it **does not allow** any opportunity for **rehabilitation**, unlike the penalty of cancellation from practicing a certain activity or the temporary or permanent withdrawal of a license to practice a certain activity⁴⁴.

Moreover, the penalty of dissolution **cannot be applied** to **foreign legal persons** unless the principle of **reciprocity** exists in the law of the foreign legal person's state. This issue also raises many difficulties during the liquidation period regarding the applicable law and the person appointed by the judiciary as the liquidator, among other challenges.

2.1) Aggravated Penalty

This involves **doubling the prescribed penalty** if the crime targets **public-law bodies or institutions**. This is stated in **Article (394 bis 3)**: "The crimes stipulated in this section shall be punished with **imprisonment from two (2) to ten (10) years** and a **fine from 700,000 DZD to 2,000,000 DZD** if they target **National Defense** or **bodies or institutions subject to public law**, without prejudice to the application of heavier penalties."

2) Supplementary Penalties for the Crime

This is stipulated in **Article (394 bis 6)** of the **(Algerian Penal Code - Q. A. J.)**, which states: "While reserving the rights of a good-faith third party, a judgment shall be rendered for the **confiscation of the devices, software, and means used**, along with the **closure of the sites** that are the subject of a crime punishable under this section, in addition to the **closure of the premises or place of exploitation** if the crime was committed with the knowledge of its owner."

3) Penalty for Attempt and Participation in the Crime

It was previously stated that the crime of **information hosting** takes its usual form when all its elements are met and all its legal components are realized, through the action of a single person. However, this crime can be committed by **more than one person**, thus taking the description of a **criminal contribution** through **participation** in it. It may also be punishable by law when some elements of the material element are present, and others are absent due to reasons beyond the perpetrator's will, which is referred to as **attempted crime**⁴⁵.

⁴² Muhammad Ali Sweilem: *Al-Marji' Al-Sabiq* (The Previous Reference), p. 456.

⁴³ See Article (18 bis) of the (Q. A. J.) under the title "Penalties Applicable to Legal Persons," particularly the penalties applied to a legal person in matters of felonies and misdemeanors.

⁴⁴ This is stated in Article (9) of the (Algerian Penal Code - Q. A. J.) in its sixth paragraph: "Temporary prohibition from practicing a profession or activity."

⁴⁵ **Adel Bouzida**: *Al-Marji' Al-Sabiq* (The Previous Reference), p. 139.

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3.1) Attempted Crime

Article (394 bis 7) of the (Q. A. J.) states: "**Attempted** commission of the misdemeanors stipulated in this section shall be punished with the **penalties prescribed for the misdemeanor itself.**"

The punishment for attempt in such crimes expresses the legislator's interest in the legal consequences resulting from violating the penal rules concerned with protecting and maintaining certain interests against any aggression. The attempt in the crime of information hosting via the network represents one of the specific forms or shapes taken by the criminalized behavior of internet service providers. An example is when these intermediaries exploit the seriousness of an information activity, or an informational content, and then decide to carry out a criminalized activity in order to achieve a criminal result, provided that **criminal intent (dolus)** is present in the service provider. This initiation and resolve are characterized as being **intentional** and based on a specific intent⁴⁶ due to its direct connection with the results the perpetrator intended to achieve by committing the illegal information hosting acts. This leads to the **exclusion of the idea of attempt from non-intentional hosting crimes**, because it is inconceivable for an attempt to exist in **crimes of fault (negligence)** related to the web-hosting service via the internet, even if the harmful result occurred due to a reason beyond the will of the perpetrator⁴⁷.

3.2) Participation in the Crime

Article (394 bis 5) of the (Q. A. J.) states: "**Anyone who participates in a group or in an agreement** formed for the purpose of preparing for one or more of the crimes stipulated in this section, and this preparation is embodied by one or more material acts, shall be punished with the **penalties prescribed for the crime itself.**"

The implication is that the general rule is that information hosting crimes, like other crimes, are committed by one actor or person. The exception is when these crimes are sometimes committed by **multiple perpetrators**. In other cases, this plurality is necessary and inevitable for the completion of the legal structure of the criminalized behavior, as defined by the text of criminalization.

The internet service provider takes the description of an **original contributor** in the crime of information hosting if they directly contributed to its commission, or if they **incited (abetted)** others to commit it, by driving them to commit the illegal behavior via the network or websites, through creating the criminal idea in them or encouraging them to do so, using one of the legally prescribed means of incitement⁴⁸.

Therefore, **criminal participation** in the context of information hosting services refers to the **cooperation of more than one person** in committing the information hosting act via internet pages and sites. This represents the specific form that this crime takes, based on the **unity of the crime** on the one hand and the **plurality of perpetrators** on the other. One view in criminal jurisprudence considers the person responsible for operating the website (the hosting provider) as an **original perpetrator** of the crime because they realize the publicity, while the user or tenant of the site is considered an **accomplice** in the crime.

⁴⁶ Abdullah Ouahibia: Sharh Qanun Al-Uqubat (Explanation of the Penal Code), The Previous Reference, p. 142.

⁴⁷ Adel Bouzida: Al-Marji' Al-Sabiq (The Previous Reference), p. 140.

⁴⁸ Adel Bouzida: Al-Marji' Nafsu (The Same Reference), p. 142.

The **French Court of Cassation** confirmed this concept in a famous ruling, where it held that the crime of **information hosting providers** is only realized with the availability of the **element of publicity (public disclosure)**, as is the case in crimes based on incitement to debauchery and immorality.

The Court considered the **original perpetrator** in this crime to be the **hosting provider** or **operator (*L'exploitant*)**, while the **website lessee** or **page designer (*Le Créateur*)** is considered only an **accomplice** in its commission.

Based on this, the Court held that, according to the general rules of penal law, the **perpetrator of a crime** is the one who performs one of the constituent acts of that crime. Since **publicity** represents an essential element in this type of offense, the **hosting provider** who enables the publication of the content is considered an **original perpetrator**, whereas the casual browser or user who merely views these sites does not contribute to the formation of the crime and is therefore **not criminally liable** for it.

Conclusion

The **Algerian legislator** has obligated internet service providers to **obtain a prior license** from the relevant authorities to practice this activity. It has also required them to follow legally stipulated rules and obligations, both when providing the contracted service to the client and when **hosting electronic information** on their devices. All of this is enforced under the penalty of **criminal liability**, which reflects the illegality of their actions and their electronic content.