

Mark D. Cole | Christina Etteldorf | Carsten Ullrich

UPDATING THE RULES FOR ONLINE CONTENT DISSEMINATION

Legislative Options of the European Union
and the Digital Services Act Proposal



LANDESANSTALT FÜR MEDIEN NRW
Der Meinungsfreiheit verpflichtet.



Nomos

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Vorwort

The European Union is based on common values with peace and freedom at the heart. In the reverse, safeguarding this freedom requires rules based on these values. The enforcement of the standards of a free media order in Europe is up to us as independent regulators.

In its study “Cross-Border Dissemination of Online Content” conducted on behalf of the State Media Authority NRW last year (Schriftenreihe Medienforschung der Landesanstalt für Medien NRW, Band 81), the Institute of European Media Law (EMR) explored the legal framework and possible future regulation of the media environment in the EU. It mainly identified areas that need an update to be able to face modern developments in the media sector as well as media regulation.

Today, one year later, the European Commission published a concrete proposal for a possible future regulation of the digital world. The proposed Digital Services Act marks a first European attempt to overhaul the current legal framework. As such, it bears the potential to reduce uncertainty and to make cross-border enforcement more effective. But has the European Commission achieved this? What are the positive aspects, what are the weak points of the proposed regulation?

This study is based on its predecessor and analyses whether the European Commission’s proposal improves the identified shortcomings of the existing legal framework. From a media law perspective, the study assesses in particular if the heart of the media market – the Country of Origin principle – is sufficiently safeguarded, if liability and responsibilities of the service providers have been improved and if the envisaged supervisory structure makes cross-border law enforcement more effective.

Down the road, the motto remains the same: Inactivity is not an option.

I want to thank Prof. Dr. Mark D. Cole and his team for their excellent work and wish you, dear readers, an inspiring lecture.

Dr. Tobias Schmid

Director of the State Media Authority of North Rhine-Westphalia

Overview

Abbreviations	13
Executive Summary – English	17
Executive Summary – Deutsch	43
A. Background of the Study	75
B. Summarising the Applicable Legal Framework	81
I. On Fundamental Rights, Fundamental Freedoms and EU Values	81
II. On the Allocation of Competences	84
III. The Network of Sectoral Regulation	90
C. Problems Identified regarding the Cross-Border Dissemination of Online Content	101
D. The Commission Proposals for a DSA and a DMA	107
I. On the Digital Services Act Proposal	107
II. On the Digital Markets Act Proposal	113
E. Legislative Options at EU Level	117
I. Regulatory Approaches	117
1. Starting Point	117
2. DSA Approach	134
3. Assessment	138
II. The Country-of-Origin Principle	143
1. Starting Point	143
2. DSA Approach	154
3. Assessment	155
III. Scope of Application	157
1. Starting point	157
2. DSA Approach	162
3. Assessment	165

IV. Liability Privilege Regime	169
1. Starting Point	169
2. DSA Approach	172
3. Assessment	175
V. Obligations of Intermediary Service Providers	180
1. Starting Point	180
2. DSA Approach	188
3. Assessment	195
VI. Design and Structure of Supervision	202
1. Starting Point	202
2. DSA Approach	211
3. Assessment	223
F. Looking Ahead	229
Bibliography	233

Table of Contents

Abbreviations	13
Executive Summary – English	17
Executive Summary – Deutsch	43
A. Background of the Study	75
B. Summarising the Applicable Legal Framework	81
I. On Fundamental Rights, Fundamental Freedoms and EU Values	81
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III. The Network of Sectoral Regulation	90
C. Problems Identified regarding the Cross-Border Dissemination of Online Content	101
D. The Commission Proposals for a DSA and a DMA	107
I. On the Digital Services Act Proposal	107
II. On the Digital Markets Act Proposal	113
E. Legislative Options at EU Level	117
I. Regulatory Approaches	117
1. Starting Point	117
a. Legal Instrument	118
b. Content Neutrality of Horizontal Approaches	124
c. Material Scope, Sectoral Exceptions and Discretion	128
d. Defining Objectives of a Regulatory Approach	133
2. DSA Approach	134
3. Assessment	138
II. The Country-of-Origin Principle	143
1. Starting Point	143
a. Key Issues for Assessment	144

b. Options: COO Principle or Market Location Principle	148
c. Key Points for Design	150
2. DSA Approach	154
3. Assessment	155
III. Scope of Application	157
1. Starting point	157
2. DSA Approach	162
3. Assessment	165
IV. Liability Privilege Regime	169
1. Starting Point	169
2. DSA Approach	172
3. Assessment	175
V. Obligations of Intermediary Service Providers	180
1. Starting Point	180
a. Reactive Obligations: Notice and Takedown and Dispute Settlement	182
b. Reactive Obligations: Trusted Flaggers and Law Enforcement Cooperation	183
c. Proactive Obligations: User Empowerment	184
d. Proactive Obligations: Stay down, Know Your Customer and Sanctions	184
e. Proactive Obligations: Content Management	185
f. Transparency, Reporting and Information Obligations	187
2. DSA Approach	188
a. All Intermediary Service Providers (Art. 10–13)	189
b. Hosting Service Providers (Art. 14–15)	190
c. Online Platforms (Art. 16–24)	191
d. Very Large Online Platforms (Art. 25–33)	193
e. Additional Obligations (Art. 34–37)	194
3. Assessment	195
VI. Design and Structure of Supervision	202
1. Starting Point	202
a. Overall Structure of Supervision	202
b. Regulatory Powers and Sanctions	206
c. Supranational Coordination and Cooperation	208
2. DSA Approach	211
a. Overall Structure of Supervision	211
b. Regulatory Powers and Sanctions	216

c. Supranational Coordination and Cooperation	220
3. Assessment	223
F. Looking Ahead	229
Bibliography	233

Abbreviations

ADR	alternative dispute resolution
AfP	Zeitschrift für Medien- und Kommunikationsrecht
AG	Advocate General
Art.	Article
AVMS	audiovisual media service(s)
AVMSD	Audiovisual Media Services Directive
BEREC	Body of European Regulators for Electronic Communication
B2B	business-to-business
B2C	business-to-consumer
cf.	confer/conferatur (Latin) / compare
CFR	Charter of Fundamental Rights of the EU
CJEU	Court of Justice of the European Union
CLR	California Law Review
CMA	Competition and Markets Authority
COM	Communication
COO	country of origin
CPC	Consumer Protection Cooperation
CYELP	Croatian Yearbook of European Law and Policy
C-	Case-
DMA	Digital Markets Act
DNS	Domain Name System
DSA	Digital Services Act
DSC(s)	Digital Services Coordinator(s)
DSGVO	Datenschutz-Grundverordnung
DSMD	Digital Single Market Directive
EBDS	European Board of Digital Services
EC	European Commission
ECD	e-Commerce Directive
ECN	European Competition Network
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ed(s).	editor(s)
EDPB	European Data Protection Board

Abbreviations

e.g.	exempli gratia (Latin) /for example, for instance
EJLT	European Journal of Law and Technology
EMR	Institute of European Media Law
EP	European Parliament
EPRS	European Parliamentary Research Service
ERGA	European Regulators Group for Audiovisual Media Services
et al.	et alia (Latin) / and others
et seq.	et sequens/sequentes (Latin) / and the following
EU	European Union
EuR	Europarecht (Zeitschrift)
Europol	European Union Agency of Law Enforcement Cooperation
EUV	Vertrag über die Europäische Union
EuZW	Europäische Zeitschrift für Wirtschaftsrecht
GDPR	General Data Protection Regulation
GmbH	Gesellschaft mit beschränkter Haftung
HBI	Hans Bredow Institut
HLEG	High Level Expert Group
IAP	Internet Access Provider
i.e.	that is
IJLIT	International Journal of Law and Information Technology
IMCO	Committee on the Internal Market and Consumer Protection
IMI	Internal Market Information System
INHOPE	International Association of Internet Hotlines
IPR	Internet Policy Review
ISS	Information Society Services
ISSP	Information Society Services Provider
IT	Information Technology
JIL	Journal of Internet Law
JIPITEC	Journal of Intellectual Property, Information Technology and Electronic Commerce Law
KYC	know your customer
lit.	litera (Latin) / letter
MJ	Maastricht Journal of European and Comparative Law
NetzDG	Netzwerkdurchsetzungsgesetz
no.	number
NRA(s)	National Regulatory Authority(ies)
NTD	notice and take down
OCSSP(s)	online content-sharing service provider(s)

OECD	Organisation for Economic Co-operation and Development
OJ/OJEU	Official Journal of the European Union
OJ C	Official Journal – Information and Notices
OJ L	Official Journal – Legislation
p.	page(s)
para.	paragraph
P2B	platform-to-business
REC	Recommendation
SME	small and medium-sized enterprises
SPoC	Single Point of Contact
S.R.L.	Société à Responsabilité Limitée / limited liability company
supra	ut supra / as above
subpara.	subparagraph
SWD	staff and joint staff working documents
TEC	Treaty establishing the European Community
TERREG	Regulation on preventing the dissemination of terrorist content online
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TRIS	Technical Regulation Information System
TV	television
UCPD	Unfair Commercial Practices Directive
UFITA	Archiv für Medienrecht und Medienwissenschaft
URL	Uniform Resource Locator
US	United States
v.	versus
VLOP(s)	very large online platform(s)
VoD	Video on Demand
Vol.	Volume
VSP(s)	video-sharing platform(s)
WTO	World Trade Organization
WP	Working Paper

