

Mark D. Cole | Christina Etteldorf | Carsten Ullrich

CROSS-BORDER DISSEMINATION OF ONLINE CONTENT

Current and Possible Future Regulation
of the Online Environment with a Focus
on the EU E-Commerce Directive



LANDESANSTALT FÜR MEDIEN NRW
Der Meinungsfreiheit verpflichtet.



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Preface

Europe ensures both – peace and freedom. Protecting this freedom at the same time means respecting rules based on European core values. It is up to us as independent regulators to enforce our standards of a free media order in Europe.

However, there are currently significant challenges in cross-border enforcement on the Internet. These include, in particular, the enormous duration of the legal procedures and the question of accountability for the cross-border dissemination of illegal and problematic online content. In addition, the uncertainty concerning the jurisdiction between national regulators and the increasing dominance of platforms such as Google, Facebook and Co. as well are part of this complex situation.

Given the obligation to protect fundamental European democratic values, even difficulties in the effective enforcement of rules do not justify not trying to do so. In a nutshell – inactivity is not an option.

In order to ensure a free media order, it is our duty now to define clear responsibilities of all players in this market and to agree on fast and effective procedures between Member States.

The study conducted by the Institute of European Media Law (EMR) on behalf of the State Media Authority NRW is a constructive framework for this – it provides a comprehensive analysis of the EU legal framework as well as the concrete indication of the need for a reform of the E-Commerce Directive.

I 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

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List of Abbreviations

AG	Advocate General
Art.	Article
AVMS	audiovisual media services
AVMSD	Audiovisual Media Services Directive
AVMS-RADAR	AudioVisual Media Services – Regulatory Authorities’ Independence and Efficiency Review (study)
BeckOK	Beck Online Kommentar
BEREC	Body of European Regulators for Electronic Communication
B2B	business-to-business
B2C	business-to-consumer
CCHSO	Code of conduct on countering illegal hate speech online
CFR	Charter of Fundamental Rights of the EU
CJEU	Court of Justice of the EU
COD	Ordinary Legislative Procedure and former Co-decision procedure
COM	Communication
CPD	Code of Practice on Disinformation (EU)
C-	Case-
DCMA	Digital Millenium Copyright Act (US)
DG	Directorate-General
DOS	Denial of Service
DPA	Data Protection Authority
DSL	Digital Subscriber Line
DSM Directive	Directive on copyright and related rights in the Digital Single Market
DVBl.	Deutsches Verwaltungsblatt
DöV	Zeitschrift für Öffentliches Recht und Verwaltungswissenschaften
EC	European Community
ECD	e-Commerce Directive

List of Abbreviations

ECHO	Report of the Commission on Ending Childhood Obesity
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECU	European Currency Unit
EDPB	European Data Protection Board
EDPL	European Data Protection Law Review
EDPS	European Data Protection Supervisor
EEA	European Economic Area
EEC	European Economic Community
EECC	European Electronic Communications Code
ELJ	European Law Journal
EJIL	European Journal of International Law
EMR	Institute of European Media Law/ Institut für Europäisches Medienrecht
EP	European Parliament
ERGA	European Regulators Group for Audiovisual Media Services
et seq.	et sequens (Latin) / and the following
EU	European Union
EuGRZ	Europäische Grundrechte-Zeitschrift
EuR	Zeitschrift für Europarecht
EuZW	Europäische Zeitschrift für Wirtschaftsrecht
FTC	US Federal Trade Commission
GDPR	General Data Protection Regulation
GewArch	Gewerbearchiv
GRUR	Gewerblicher Rechtsschutz und Urheberrecht
HLEG	High Level Expert Group
ICT	Information and Communications Technology
IMCO	Committee on the Internal Market and Consumer Protection
InfoSoc Directive	Directive on the harmonisation of certain aspects of copyright and related rights in the information society
IP	Intellectual Property
IPRED	Intellectual Property Enforcement Directive
IPRs	Intellectual Property Rights
ISDN	Integrated Services Digital Network
ISO	International Organization for Standardization

ISS	Information Society Services
ISSP	Information Society Service Provider
IT	Information Technology
JHA	Justice and Home Affairs
JIPITEC	Journal of Intellectual Property, Information Technology and Electronic Commerce Law
JuS	Juristische Schulung
K&R	Kommunikation & Recht
lit.	litera (Latin) / letter
LRTK	Lithuanian Radio and Television Commission
MMR	Multimedia und Recht
M&K	Zeitschrift für Medien & Kommunikationswissenschaft
NetzDG	Netzwerkdurchsetzungsgesetz
NJW	Neue Juristische Wochenschrift
NRA(s)	national regulatory authority(ies)
OJEU	Official Journal of the European Union
OJ C	Official Journal – Information and Notices
OJ L	Official Journal - Legislation
para.	paragraph
P1ECHR	Protocol No. 1 to the ECHR
P2B	Platform-to-Business
SEC	Single European Code
Slg.	Sammlung der Rechtsprechung
SME	small and medium-sized enterprises
SSRN	Social Science Research Network
supra	ut supra / as above
subpara.	subparagraph
SWD	Commission Staff Working Document
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
TV	Television
TwFD	Television without Frontiers Directive
URL	Uniform Resource Locator

List of Abbreviations

UWG	Gesetz gegen den unlauteren Wettbewerb
VAT	value added tax
VoD	Video on Demand
VSP(s)	video-sharing platform(s)
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Organization
WP	Working Paper
WTO	World Trade Organization
ZaöRV	Zeitschrift für ausländisches öffentliches Recht und Völkerrecht
ZAW	Zentralverband der deutschen Werbewirtschaft
ZöR	Zeitschrift für öffentliches Recht
ZPEU	Zeitschrift für das Privatrecht der Europäischen Union
ZUM	Zeitschrift für Urheber- und Medienrecht
5G	5 th Generation