

SCHRIFTENREIHE
MEDIENFORSCHUNG

BAND 83

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.



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Landesanstalt für Medien NRW

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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 |

Overview

| | |
|--|-----|
| 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 |
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| 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 |

Table of Contents

| | |
|---|-----|
| 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 |

Table of Contents

| | |
|---|-----|
| 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 |

