

SCHRIFTENREIHE  
MEDIENFORSCHUNG

BAND 81

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

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

*List of Abbreviations*

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

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



*List of Abbreviations*

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