

Law Enforcement Online –

Updating the Legal Framework and Enforcement Concerning Cross-Border Dissemination of Online Content



Institut für Europäisches Medienrecht
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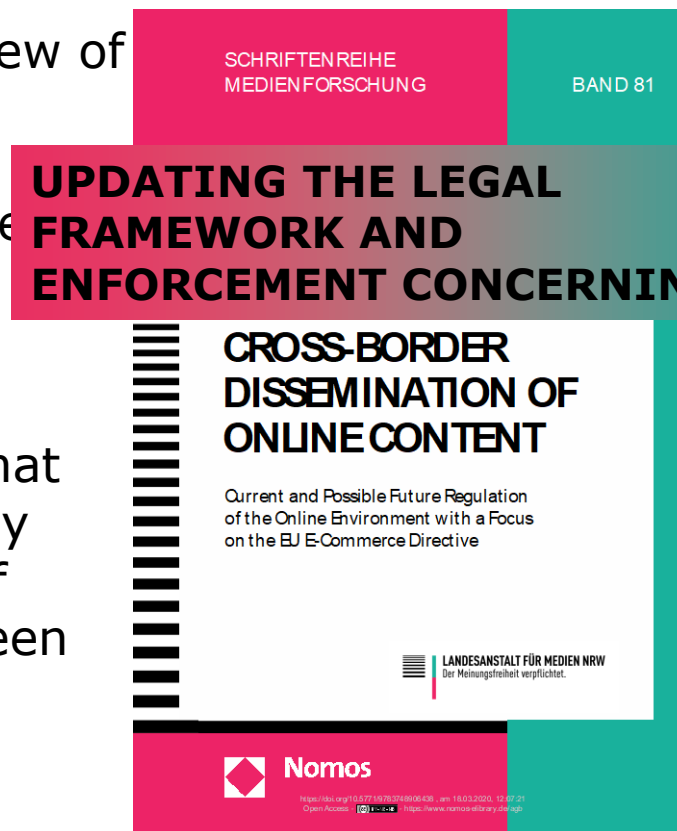
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Setting the Scene

In 2019 ...

- EMR conducted a study presenting a detailed overview of the overall legal framework concerning cross-border dissemination of online content with a special focus on the question of liability for such content.
- The study identified areas that need to be resolved either by legislative action or forms of increased cooperation between Member States and the competent authorities.



Now ...

- Based on these approaches for an improved enforcement of legal standards in the online environment, the EMR conducted a study aimed at analysing the legislative options on EU level to update the legal framework and its enforcement regarding the cross-border dissemination of online content.
- The study focusses on possible solutions for the future shape of the COO, the scope of application of the framework for "ISS", the liability privilege regime, obligations and duties for service providers including user rights, and on the institutional setup for monitoring of compliance and for enforcement.

Background and Issues identified

The media environment has changed. New risky phenomena are (a)rising.

Fundamental rights and values of the EU require (the EU) to take action.

There is an increasing fragmentation of the rules applicable to ISS.

There are difficulties and uncertainties about the enforcement of rules.

Definitions and categories of providers established 20 years ago no longer fit the changed and changing market realities.

... on the clarification of the country of origin principle as basis and its exceptions

- COO remains basis, but derogation cases and possibility to rely on market location principle for content originating/disseminated by non-domestic providers need to be addressed more clearly (procedures streamlined, binding results, reporting obligations of Member States/NRAs, dispute settlement in cooperation procedure)
- General interest objectives to derogate should be re-assessed and expanded accordingly in light of current threats; emergency derogation responding to level of risk of content or infringement, taking into account responsiveness level of enforcement in COO

... on defining the scope of application of the framework for ISS

- Definition of hosting provider should be replaced by a broader (reviewable) definition which does not rely on the distinction of active/passive nature of the service open to encompass future new types of services
- Beyond that room for more specific categories such as “content platforms/intermediaries” for more specific rules taking into account different levels of organisational involvement in the “content dissemination”

... on reforming the liability regime

- Liability privilege can be upheld in principle, but needs to be shaped so that it does not hinder or limit efficient enforcement
- Therefore: clearer definition of criteria such as “knowledge” (accompanied by obligation of introducing specific procedures establishing it), “no general monitoring obligation” (clearly stating that this does not hinder per se proactive duties of content intermediaries)

... on introducing obligations and duties for (specific) service providers

- Introduce obligations and duties in a more specific way (“duty of care”-standards irrespective of question of liability) taking into consideration type and position of provider as well as level of harm and risk (proportionality approach)
- Measures as reaction to notification can be varied (taking down content (failure → actual liability), ensuring non-reappearance (“staying down”), information obligations/transparency) and guidance concerning the procedures needed

... on the institutional setup for monitoring of compliance and enforcement

- Monitoring and enforcement of rules by designated bodies must be ensured by specific types of enforcement bodies (notably here: independence; adequate equipment by assigning relevant competence and providing sufficient means)
- Enforcement concerning media-/content-related providers should continue to rely on Member State level but cooperation at EU level should be enhanced
- Cooperation mechanisms can be established comparable to the model of the EDPB (as included in GDPR), considering media related specificities and building on existing bodies such as ERGA

Overall Conclusions

- Relevance of “**content intermediaries**” for dissemination and availability of media and communication content, justifies **specific approach** to this category when reforming horizontally applicable framework for ISS/platforms which can include special rules only for these while ensure interconnection with existing acts and possible supplementary rules of EU and MS are taken into account.
- Based on principles of fundamental rights and freedoms as well as core European values, additional burdens for intermediaries are not meant to hamper the ability of **platforms** to act as economic operators in the single market but **integrate them** in a clearly defined manner **in the safeguarding of a functioning public communication sphere**.
- The **new ruleset does not necessarily have to be very detailed**, but has to at least lay down certain common regulatory goals (such as fairness, transparency and accountability) and enable on that basis the involvement of supervisory authorities or other bodies charged with the oversight and enforcement of such standards in the **further detailing of requirements**.



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