

Executive Summary

# Legal Responsibility of Digital Intermediaries for Content and Media Pluralism

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The central question addressed in this report is the legal responsibility of digital intermediaries – in particular online platforms and search engines – in the context of public discourse and democratic communication. We start from the premise that these services play a significant role in providing access to information, shaping political views and facilitating public debate. At the same time, they are at the intersection of fundamental rights (freedom of expression, media freedom and entrepreneurial freedom), the internal market rationality of the EU and the need to ensure national media diversity.

## Current situation and outline of the problem

Digital intermediaries operate in multi-sided markets, are characterised by strong network effects, data advantages and economies of scale, and tend towards high market concentration and even monopoly-like structures (first-mover and winner-takes-it-all effects). These structural conditions create user dependencies, make market entry difficult and pose risks to competition, innovation, user interests and the democratic public discourse. Platforms and search engines act as central ‘gatekeepers’ of public communication. At the same time, there is a high risk of disinformation and populism, particularly on platforms with a wide reach. However, phenomena such as ‘filter bubbles’ and ‘echo chambers’ do not have a clear empirical basis.

## Fundamental rights framework

Intermediaries themselves have the right to freedom of communication and enterprise, while users and those affected by content are protected by fundamental rights. Platform providers can shape the conditions of their market participation (e.g. community standards, moderation rules, algorithms, product design) on the basis of their fundamental rights, but they operate in tension with users’ freedom of communication. Platforms may set standards that restrict their users’ constitutionally protected expressions if there are objective reasons for doing so and procedural safeguards (information, opportunity to respond, complaint channels) guarantee the protection of users’ fundamental rights.

AI systems themselves do not have fundamental rights protection. However, the extent to which AI-generated content is protected by fundamental rights is a matter of controversy. The prevailing view correctly points out that AI, as a *means* of communication, is fundamentally covered by freedom of communication. This protection (only) reaches its limits if the *content* would not be covered by freedom of communication even if it had been produced by a human being, e.g. in the case of abusive criticism, formal insults or proven false factual claims.

Due to their special institutional role as ‘public watchdogs’, journalistic media enjoy special protection, but are also subject to increased due diligence requirements.

## Multi-level regulatory framework

The report systematically analyses key EU and national regulations that determine the responsibility of digital intermediaries:

- **EU Information Society Services Directive and the German Digital Services Act (DDG):** The broad concept of ‘information society services’ forms the basis for the classification of many intermediary services.
- **E-Commerce Directive (ECD):** Establishes, among other things, information obligations and the country-of-origin principle, thereby limiting the scope for national deviations to narrowly defined measures.
- **Digital Services Act (DSA):** Contains graduated liability privileges, due diligence, transparency and risk management obligations for intermediary services, with stricter obligations for very large online platforms and search engines.
- **European Media Freedom Act (EMFA):** Strengthens media freedom, editorial independence and pluralism and establishes specific procedural requirements for the removal of media content by large platforms.
- **Interstate Media Treaty (MStV):** Distinguishes between media platforms, user interfaces, media intermediaries, social networks and broadcast-like telemedia and aims to ensure diversity, transparency, and non-discrimination.
- **Platform-to-Business Regulation (P2B Regulation) and Digital Markets Act (DMA):** Create a framework for fairness and transparency towards commercial users, as well as specific obligations for businesses designated as ‘gatekeepers’ with central platform services, including data access and data use rules.
- **AI Regulation (AI Act):** Introduces transparency and labelling obligations for interactive AI and synthetic media to prevent deception and identity fraud.
- Other components of intermediary regulation include the **Political Advertising Regulation, the Act on the Copyright Liability of Online Content Sharing Service Providers (UrhDaG) and Section 19a Competition Act (GWB)** on the control of companies with significant market power.

These instruments partially pursue different objectives (creation of the internal market, consumer protection, competition, media diversity, protection of fundamental rights) and therefore interact as interlocking ‘cogs’ in a complex multi-level architecture. A key finding of the report is that full harmonisation under EU law (in particular the DSA) does not completely preclude national measures to ensure diversity, but significantly limits their scope, especially in light of the country-of-origin principle.

## Role of national media law and remaining scope for action

For Germany, the Interstate Media Treaty (MStV) and the Interstate Treaty on the Protection of Minors in the Media (JMStV) continue to fulfil important functions for diversity of opinion and media, the protection of minors in the media, visibility, and transparency. However, they are in tension with the ECD and the DSA. The DSA calls for extensive full harmonisation in the area of intermediary services; Member States may also enact regulations that pursue other legitimate objectives (such as ensuring pluralism) or that are expressly permitted. In this regard, the report concludes that the provisions of the Interstate Media Treaty on ensuring media diversity are compatible with European law.

In particular, the report takes a critical view of the CJEU's case law on the country-of-origin principle, which severely restricts the applicability of national regulations to service providers established in other Member States and creates significant practical gaps in the enforcement of national regulatory objectives. In addition, the report highlights constitutional concerns about an overly broad interpretation of the country-of-origin principle. Finally, the opinion concludes, with reference to the current case law of the CJEU, that measures to ensure pluralism are not subject to the country-of-origin principle and are therefore open to national legislation. With regard to the protection of minors in the media, the legislator is in principle free to adopt abstract, general regulations that only become binding on a provider through concrete measures taken by the respective state media authority.

## New challenges posed by AI and synthetic media

In addition to liability for illegal content, labelling obligations and transparency requirements under the AI Act and the Interstate Media Treaty (MStV) form a basis for dealing with deepfakes, social bots and chatbots. Media services that use AI tools remain fully bound by obligations of truthfulness, diligence, and transparency.

## Comparative law insights and recommendations for action

Finally, the report offers a comparative perspective on the United States, the United Kingdom and South Korea to identify alternative regulatory models and best practices. The USA rely heavily on a market- and freedom of expression-oriented approach (Sec. 230 CDA, First Amendment), while the United Kingdom has established a strongly duty-oriented supervisory framework with the Online Safety Act 2023, and South Korea focuses on self-regulation and combating disinformation.

The report provides regulatory options and recommendations with regard to the following legal acts:

- **DSA:** The extensive liability exemption for online platforms should be reconsidered in order to create a stronger incentive for a safe, predictable, and trusted online environment. The legislator should also consider not only focusing on combating disinformation and hate speech – as has been the case to date – but also making particularly reliable and trustworthy content more visible ('trusted content provider').

- **AI Act:** The applicability of the AI Act to the private production and distribution of so-called deepfakes needs to be clarified.
- **EMFA:** Online search engines should be included in the EMFA.
- **Act implementing the AI Act (federal legislation):** Media law competences of the federal states must be respected.
- **MStV:** Creation of a separate category of telemedia for AI-generated content such as ChatGPT and Google AI.
- **MStV:** Considering whether media intermediaries should be subject to requirements with regard to diversity of opinion that are as strict as those for media platforms.
- **MStV:** The obligation of social network providers to ensure that social bots and chatbots are labelled (Section 93(4) MStV) should be clarified.
- **MStV/JMStV:** The report proposes an amendment to the State Media Treaties in order to address concerns regarding the country-of-origin principle.
- **MStV:** The provisions of the EMFA on merger control in the media sector must be transposed into national law by the federal states.
- Private enforcement of platform regulations should be strengthened.



The full report can be found here:

[www.die-medienanstalten.de/service/gutachten/verantwortung-digitaler-intermediaere/](http://www.die-medienanstalten.de/service/gutachten/verantwortung-digitaler-intermediaere/)

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