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**Net freedom in Germany or over-regulation of harmful content?**

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[Online Safety Bill 2022 (HC Bill 4)](https://uk.westlaw.com/Document/I3D78E6F0D26B11EC8043A215DA151128/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=PLUK1.0&contextData=(sc.Search))

***\*E.I.P.R. 270*** Abstract

*The article focusses on the*  German Network Enforcement Act 2018 *(NetzDG) and its amendment legislation (2021), and how it has fared so far. The article will make comparisons with the Online Safety Bill (formerly known as Online Harms Bill) and its slow passage through the United Kingdom (UK) Parliament. Both pieces of legislation cover mainly the regulation and punishment policies of social media platforms and we conclude with the question ‘does the regulation of net activity breach freedom of expression’?*

Rising extremist right-wing hate speech in Germany and the UK

*Germany*

In November 2017 a German court in the northern Westphalian small-town of Detmold sentenced “Holocaust denier”, 89-year-old Ursula Haverbeck to 14 months in prison. In September 2016 she had sent a letter to the town’s mayor, Rainer Heller, claiming that Auschwitz was not a concentration but a labour camp. Frau Haverbeck had several convictions for similar offences, including the handing out pamphlets repeating her beliefs to those attending court.[1](#co_footnote_1_1) Frau Haverbeck appeared in an interview on the YouTube Channel of German right-wing extremist, Nikolai NNerling, a self-styled ‘Volkslehrer’ (‘volksteacher’) in March 2018, denying the Holocaust.[2](#co_footnote_2_1)

Denying the Holocaust in Germany is a criminal offence and has now been extended to the internet by an addition to the German Penal Code (*Strafgetzbuch* —StGB) as the ‘incitement of the masses’ offence:

”Whoever publicly or in a meeting disturbs the public peace in a manner which violates the dignity of the victims by approving of, glorifying or justifying National Socialist tyranny and arbitrary rule incurs a penalty of imprisonment for a term not exceeding three years or a fine.” [3](#co_footnote_3_1)

*United Kingdom*

Whilst no such laws are yet in place, proposed by the Online Safety Bill 2022, social media providers are taking down, blocking and self-censoring offensive material on their platforms in the United Kingdom (UK) parallel to similar practices in Germany. In March 2018 Twitter suspended British right-wing activist, Tommy Robinson’s account for four months for breaching the company’s ‘hateful conduct’ policy when he had posted that ‘90% of grooming gang convictions are Muslims’ on his account @tommysnewspage. The former English Defence League leader, whose real name is Stephen Yaxley-Lennon, was permanently banned from Facebook, Google (YouTube) and Twitter in February 2019 for repeatedly breaking their policies on hate speech. Robinson broke rules that ban public calls for violence against people based on protected characteristics; rules that ban supporting or appearing with organised hate groups; and policies that prevent people from using the site to bully others.

German criminal laws against hate speech online

Germany has now criminalised all hate speech and racism online, revising the already draconian Network Enforcement Act (*Netzwerkdurchsetzungsgesetzes* —NetzDG) 2017 by an additional law, the *Gesetz zur Änderung des Netzwerkdurchsetzungsgesetzes* (NetzDGÄndG) which entered into force on 3 April 2021. The main aim by the German legislator has been to combat right-wing extremism and hate crime. When the amendment Act (NetzDGÄndG) came into force, Federal Minister of Justice, Christine Lambrecht, said:

”The aim of our legislative package is to protect all those who are exposed to threats and insults on the internet. During the pandemic the waves of hatred have become more aggressive than ever before. Very often, hate speech is right-wing extremist, racist and sexist. When people are attacked on account of their name or appearance — or are silenced because they express a political or scientific opinion or play an active role in society this poses a threat to our democratic society… We have tripled the range of sentences for online rape and death threats to up to ***\*E.I.P.R. 271*** three years’ imprisonment. We are making it clear that anti-Semitic motives will always lead to an increase in the severity of a penalty.” [4](#co_footnote_4_1)

The statutory obligations under the German Penal Code (StGB), the NetzDG and the NetzDGÄndG empower law enforcement authorities, such as the Federal Criminal Police Office (*Bundeskriminalamt* —BKA) and the foreign intelligence service of the Federal Republic of Germany (Bundesnachrichtendienst), to collect usage data from telemedia service providers if certain facts give rise to the suspicion that someone has committed a crime of significant importance as a primary or secondary perpetrator (principal or accessory) online. Providers of social media networks must now proactively report certain potentially criminal content to the BKA.

Principle aims of the German ‘Facebook Act’

Germany’s Parliament (*Bundestag*) introduced the *Netzwerkdurchsetzungsgesetz* (NetzDG) (The Act to Improve Enforcement of the Law in Social Networks) on 1 October 2017 (colloquially called the ‘Facebook Act). The principle aim of this legislation was to combat hate crime, criminalised fake news and other criminal content on social networking platforms more effectively. The rather controversial new law came into force on 1 January 2018. The NetzDG allows for the deletion or blocking of hate-speech, defamatory, extreme sexual content that can harm children, teenagers and vulnerable adults from TV, on-demand and paid-for services as well as social media platforms. Whilst the Network Enforcement Act covers mainly social media platforms it also applies to *all* telemedia service providers which, for profit-making purposes, operate internet platforms and pay-TV services, designed to enable users to share any content with other users or to make such content available to the public, such as social networks.[5](#co_footnote_5_1) Journalistic or editorial content remain the responsibility of the service provider and do not constitute ‘social networks’ within the meaning of the NetzDG. The new law defines binding standards for an effective, transparent and ‘easily recognisable’ complaints procedure.[6](#co_footnote_6_1) Operators of social networking sites are subject to the following statutory obligations:

1. they must offer users an easily recognisable, directly accessible and permanently available procedure for reporting criminally punishable content;
2. as soon as notification of criminal content (as per the NetzDG and/ or the German Penal Code—*Strafgesetzbuch* —StGB) has been identified by end-users, the operator of website must take note and acknowledge immediately and investigate whether the reported content violates the legislation;
3. They must take down or block access to statutory unlawful content within 24 hours of receiving a complaint;
4. other criminal content must generally be taken down or blocked within seven days of receiving a complaint. Alternatively, social networks may refer the content concerned to the regulator on the understanding that they will accept the regulator’s decision. The regulatory authority must make its decision on whether the content is unlawful within seven days.
5. All complainants and persons/organisations involved must be informed of the decision in response to the complaint, providing reasons for the decision.

The NetzDG (2017) was boosted and amended by the Gesetz zur Änderung des Netzwerkdurchsetzungsgesetzes (NetzDGÄndG) (The Act Amending the Network Enforcement Act) in 2021. Whist unlawful content is already defined by statutory offences codified in the German Penal Code (StGB), such as incitement to hatred,[7](#co_footnote_7_1) insult,[8](#co_footnote_8_1) malicious gossip (*üble Nachrede*)[9](#co_footnote_9_1) and intentional defamation,[10](#co_footnote_10_1) additionally the NetzDG and its amendment statute now include codified net offences. The German Federal Ministry of Justice is authorised to monitor the compliance of social networks with the NetzDG (as amended) with a specified catalogue of provisions on regulatory fines.[11](#co_footnote_11_1) Notably, it is a statutory offence if the social network provider fails to provide a system to handle complaints correctly, fails to monitor their website correctly, fails to rectify an organisational deficiency or to rectify it in an appropriate amount of time. The core criteria used to determine the amount of a fine are:

1. Size of the network: the legislator determines categories from A-D depending on the number of registered users in Germany.
2. Seriousness of the violation (‘slight’ to ‘exceptionally serious’).
3. Repeated violations. ***\*E.I.P.R. 272***
4. Extent of cooperation and speed of take down by the social network provider (i.e. speed of blocking or take down).[12](#co_footnote_12_1)

To encourage the social networks to process complaints more quickly and comprehensively, especially from users, about hate crime and other criminal content, the NetzDG introduced legal compliance rules for social networks. The law allows for fines against tech companies, such as Facebook (Meta), Twitter and YouTube (Google), of up to £44 million (~€50m; $58 million) if they do not remove offending posts within 24 hours of receiving a complaint relating to ‘obviously illegal’ hate speech.

Right to free speech: a constitutional right in Germany

Article 5 of the German Constitution (*Grundgesetz* —Basic Law) states:

”Every person shall have the right freely to express and disseminate his opinions in speech, writing and pictures, and to inform himself without hindrance from generally accessible sources.”

Additionally, Freedom of expression under [art.10(1) European Convention on Human Rights (ECHR)](https://uk.westlaw.com/Document/IAE7756732A7B4BBC93274BDE4496FB0F/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=PLUK1.0&contextData=(sc.Search)) includes communication of opinions and arguments advanced on social media platforms and traditional broadcasts (see: [*R. (Animal Defenders International) v Secretary of State for Culture, Media and Sport (2008)*](https://uk.westlaw.com/Document/IF99845A0F0C211DC810BBB39FEDB30E7/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=PLUK1.0&contextData=(sc.Search)));[13](#co_footnote_13_1) it also includes the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative, provided it does not tend to provoke violence (see: [*Redmond-Bate v DPP (1999)*](https://uk.westlaw.com/Document/I84FB08C0E42811DA8FC2A0F0355337E9/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=PLUK1.0&contextData=(sc.Search)) [14](#co_footnote_14_1)). But in the [*Otto-Preminger-Institut v Austria (1994)*](https://uk.westlaw.com/Document/I14CC5090E42811DA8FC2A0F0355337E9/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=PLUK1.0&contextData=(sc.Search)) [15](#co_footnote_15_1) case, the European Court of Human Rights (ECtHR) concluded in relation to the obligations expressed relating to [art.10(2) ECHR](https://uk.westlaw.com/Document/IAE7756732A7B4BBC93274BDE4496FB0F/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=PLUK1.0&contextData=(sc.Search)), that expressions which are gratuitously offensive to others must be avoided wherever possible. The proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgement without any factual basis to support it may be excessive (see: *Dichand v Austria (2002)*;[16](#co_footnote_16_1) also: [*Monnat v Switzerland (2006)*](https://uk.westlaw.com/Document/IFED4CC00E15611DF921DD795AD12C4D1/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=PLUK1.0&contextData=(sc.Search)) [17](#co_footnote_17_1)). The ECtHR emphasised in the Handyside (1976)[18](#co_footnote_18_1) case, that freedom of expression embraces the right to say what one wants and how one wants, which is the ‘lifeblood’ of democracy; however, freedom of expression also carries with it responsibilities, which necessitate certain restrictions and the countries’ application of the margin of appreciation in domestic law.

Since the new law came into force in January 2018, all (largely United States (US)-based) social media companies have tried hard to avoid the harsh fines by indiscriminately blocking or taking down allegedly illegal or harmful content from their German platforms. During the first six months since the NetzDG came into force, Facebook deleted or blocked 362 posts in order to comply with Germany’s new law against online hate speech. The social network provider stated that 1,704 pieces of content were reported from January to June 2018, and roughly 21 per cent resulted in content removal. These deletions of suspensions by Facebook (now Meta) remain controversial and strengthened critics’ argument that the new network enforcement statute (as amended) impacts on free internet speech, because the German laws criminalise not only hate speech and Holocaust denial, but also insults to reputation, public incitement to commit crimes, incitement to hatred, depictions of violence, violation of human dignity, faith and conscience. The catalogue of ‘illegal content online’ now extends to dissemination of propaganda and the use of symbols of unconstitutional organisations,[19](#co_footnote_19_1) preparation of a serious violent act endangering the state,[20](#co_footnote_20_1) hate speech and depictions of violence[21](#co_footnote_21_1) and death threats.[22](#co_footnote_22_1) Anti-Semitic motives are now explicitly included as one of those motives which will lead to an increase in the penalty imposed.[23](#co_footnote_23_1)

It is now easier for victims of threats, insults and unauthorised stalking to have a block on releasing information entered in the population register. As a result, their address, for example, can no longer be disclosed to others.[24](#co_footnote_24_1)

The Network Enforcement Act (as amended) (NetzDG) has remained controversial. While it aims to tackle hate speech and combat right wing extremism online, the German Government contends that the law is human rights compliant as far as freedom of expression under [art.10 ECHR](https://uk.westlaw.com/Document/IAE7756732A7B4BBC93274BDE4496FB0F/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=PLUK1.0&contextData=(sc.Search)) is concerned.

Has the German Network Enforcement Act been a success?

Yes and no. The first signs are that during 2018, when the NetzDG act came into force, there were few complaints. During the first half of 2019 the German Federal Ministry of Justice recorded 470,000 complaints against Twitter, and they deleted 45,000 Tweets. There were 300,000 complaints against YouTube, one third of the complaints concerned youth protection measures. The ***\*E.I.P.R. 273*** Google owned YouTube subsequently deleted a quarter of the contents complained of. There were only 1,050 complaints against Facebook during the same period, of which 349 posts were deleted and/or taken down by the social media provider.[25](#co_footnote_25_1)

Looking at the relatively small number of complaints it might be questionable whether the NetzDG network enforcement legislation was necessary in the first place, especially since social network providers can already be sued in German civil courts by individuals in their capacity as intermediary (*Störerhaftung*).[26](#co_footnote_26_1) Section 1004 of the German Civil Law Code (*Bürgerliches Gesetzbuch* —BGB) reads as follows:

”If the ownership is interfered with by means other than removal or retention of possession, the owner may require the disturber to remove the interference. If further interferences are to be feared, the owner may seek a prohibitory injunction.”

Section 1004 BGB has also been frequently used to ‘injunct’ copyright and intellectual property (IP) violations in respect of peer-to-peer file sharing for example. Though s.3 of the Network Enforcement Act describes the complaints and complaints handling procedure as ‘user friendly’ and ‘easily accessible’, this requirement has not been uniformly implemented by social media providers, and some forms to submit complaints are hidden or available only after several clicks. To improve the user-friendliness of the complaint’s procedure, the amendment Act (*Netzwerkdurchsetzungsgesetz* —NetzDGÄndG) 2021 has added language requiring that the complaint procedure be ‘even easier to use’.

That said, even the amendment has not established a more user-friendly procedure for either complainants or social media providers and the mechanism for review and final decision remains cumbersome and ‘clunky’. Furthermore, an appeals procedure has been introduced which must be submitted within two weeks of the final decision.[27](#co_footnote_27_1) Furthermore, the amendment authorises the Federal Office of Justice to approve arbitration bodies organised under private law for out-of-court settlements of disputes between complainants/users and social media providers. Participation in arbitration is voluntary.[28](#co_footnote_28_1)

Under the old version of the Network Enforcement Act 2017, the Federal Office of Justice was able to issue fines only for non-compliance with the provisions of the Network Enforcement Act. The 2021 amendment gives the Federal Office of Justice powers to supervise compliance with the act. Once it has determined that an infringement has occurred, the office can require the social media provider to remedy the infringement. It can also request information about implementation measures, the number of registered users in Germany, and the number of complaints received in the past calendar year. Witnesses are obligated to testify in the administrative procedure.[29](#co_footnote_29_1)

For fear of being fined by the German courts, Meta, Google and Twitter are now relentlessly removing unlawful and harmful content at first instance on their German platforms, thereby providing their own online censorship which leads us to conclude that freedom of speech and communication via social media is curtailed by the companies’ blocking or removing content on their German platforms.

Regulating online safety: a UK government response

On the face of it, the Online Safety Bill before the UK Parliament since 2019, appears to propose the same content and punitive fines for social media providers as its German counterpart. The bill (formerly known as the Online Harms Bill) has not really made much progress since it was first introduced as the *White Paper, Online Harms* [30](#co_footnote_30_1) by then Culture Secretaries in April 2019, Margot James and The Rt Hon Jeremy Wright. The ministers presented the Online Harms Bill a supportive of a ‘free, open and secure internet’, adhering to online freedom of expression, and that the proposed legislation would only apply to social media companies that allowed the sharing of user-generated content—for example, through comments, forums or video sharing; that citizens would challenge unacceptable behaviours online and that everyone should have a responsibility to protect children and the vulnerable online, thereby renewing public confidence and trust in online companies and services.[31](#co_footnote_31_1)

In February 2020, Oliver Dowden, the next Culture Secretary announced further amendments to the Online Safety Bill, that the Office of Communications (Ofcom) would become the new internet regulator, with executives at internet firms potentially facing substantial fines or even prison sentences if they failed to protect users from harmful and illegal content online. The next Secretary of State for Digital, Culture, Media and Sport, The Rt Hon Nadine Dorries, announced in September 2021 that Ofcom would have the power to remove specific posts from social media platforms after notifying the social media operators. Ofcom would then require social media giants such as Meta and Google to publish explicit statements setting out which content and behaviour they deem to be acceptable on their sites. Dorries proposed legislation included (to date): ***\*E.I.P.R. 274***

1. Rules reducing online harms for social media businesses and internet service providers (ISPs): any business that enables the sharing of user-generated content—such as online comments or video uploads—is likely to be affected by the new rules on reducing online harms, with hundreds of thousands of companies affected.
2. Annual transparency reports: internet and social media providers are required to publish annual transparency reports explaining what harmful content they have removed and how they are meeting their standards.
3. Age verification online: (re) introduction of age verification for certain websites, such as access restriction to online pornography (this attempt previously failed).

The Online Safety Bill has had its critics particularly at committee stage 2021/22. Some tech start-up groups expressed concern that this new form of regulation would place an enormous burden on smaller businesses to police content that is potentially harmful but not illegal on their sites. Campaign group ‘Big Brother Watch’ called these plans ‘dangerous and wrong’, suggesting that they are ‘a direct attack on the fundamental right to freedom of expression’, that the new rules and regulations could stifle free speech and give the government unprecedented powers to decide what is posted and available on the internet thereby introducing internet censorship.

Conclusion: self or statutory regulation of online harms or net neutrality?

Where should the line be drawn between regulating hate speech, indecency, obscenity, online libel and racism on one hand by legislation and still adhering to freedom of expression on the other hand, i.e. ‘freedom to view’ and ‘freedom to blog and tweet’? Ultimately should this not be left to the autonomy of and freedom to choose of the end-user? While the international community is fast promoting the transfer of technology and information, there appear to be a number of different policies and laws in place across Europe, involving largely United States (US) social media companies, governed by US laws, such as The Digital Millennium Copyright Act (DMCA),[32](#co_footnote_32_1) each attempting to regulate, control and curtail the internet and digital media technology.

The [EU Digital Services Act](https://uk.westlaw.com/Document/I67497F4155CD11EDBB23C6AE78B90E18/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=PLUK1.0&contextData=(sc.Search)) (DSA) came into force in October 2022.[33](#co_footnote_33_1) This legislation introduces due diligence requirements and content moderation rules for all online intermediaries providing services in the EU. Key measures in the [DSA](https://uk.westlaw.com/Document/I67497F4155CD11EDBB23C6AE78B90E18/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=PLUK1.0&contextData=(sc.Search)) include the following:

*Online platforms*

1. Swift removal of illegal content online, including products, services: a clearer ‘notice and action’ procedure where users will be empowered to report illegal content online and online platforms will have to act quickly;
2. More responsible online marketplaces: strengthening checks to prove that the information provided by traders is reliable (the ‘Know Your Business Customer’ principle);

*Transparency for users*

1. New transparency obligations for platforms will allow users to be better informed about how content is recommended to them (‘recommender systems’) and to choose at least one option not based on profiling;
2. Online advertising: users will have better control over how their personal data are used. Targeted advertising is banned when it comes to sensitive data (e.g. based on sexual orientation, religion, ethnicity);
3. Protection of minors: platforms accessible to minors will have to take specific measures to protect them, including by fully banning targeted advertising;
4. Dark patterns: online platforms and marketplaces will be prohibited from manipulating users’ choices.

*Harmful content and disinformation*

1. Very large online platforms (more than 45m monthly users) to mitigate systemic risks and be subject to independent audits each year;
2. Special measures in times of crisis: during a public security or health emergency, the Commission may require very large platforms to limit any urgent threats on its platforms for up to three months.

Online platforms and search engines failing to comply with the [DSA](https://uk.westlaw.com/Document/I67497F4155CD11EDBB23C6AE78B90E18/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=PLUK1.0&contextData=(sc.Search)) can be fined up to 6 per cent of their worldwide turnover.

In October 2022, UK regulator Ofcom published a discussion paper on net neutrality, also referred to as the ‘open internet’, the principle that internet users (both consumers and those making and distributing content) should be in control of what they see and do online and not the broadband or mobile providers that connect people ***\*E.I.P.R. 275*** and businesses to the internet, i.e. internet service providers (ISP). The Ofcom discussion paper on net neutrality proposes a post-Brexit version of the EU net neutrality regulation that will be somewhat more liberal for the telcos, but also side steps ‘bigger asks’ of the content providers demanded by the telcos.[34](#co_footnote_34_1) Ofcom’s net neutrality consultation also addresses rules imposed on ISPs by prohibiting them from blocking, throttling, or applying differential treatment of on-net vs off-net traffic. The EU net neutrality rule requires ISPs to treat all traffic equally, when providing internet access services, without discrimination, restriction or interference, and irrespective of the sender and receiver, the content accessed or distributed, the applications or services used or provided, or the terminal equipment used. Currently the largest social network providers, such as Google, Meta and Twitter are self-regulating content on their platforms across all EU countries by blocking and deleting offensive posts, which arguably amounts to online censorship.

Should a democratic society tolerate extreme opinions, such as those by British right-wing activist Tommy Robinson or Ursula Haverbeck in Germany, who may well feel misunderstood and complain about online censorship and their freedom to tweet? Germany has introduced ‘net laws’, criminalising a long catalogue of wide-ranging criminal offences dealt with by federal law enforcement agencies and heavy financial penalties on the social network providers. We are then left with the age-old question: can and should the internet be regulated at all?

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| **Footnotes** |
| [1](#co_fnRef_1_1) | See *Bild*, “Nazi Oma muss 8 Monate in Haft”, “Die notorische Holocaust-Leugnerin Ursula Haverbeck (93) aus Vlotho muss ins Gefängnis” (”the notorious Holocaust-denier, Ursula Haverbeck (93), from Vlotho, must go to prison” (2 September 2016) available at: <https://bit.ly/3TiaBoQ> [Accessed 6 November 2022]. See Deutsche Welle, “93-year-old Holocaust denier sent back to jail. The so-called “Nazi Grandma,” Ursula Haverbeck has been handed another prison sentence. The notorious Holocaust denier will serve a one-year sentence” (4 January 2022) available at: <https://bit.ly/3nyV7CI>. |
| [2](#co_fnRef_2_1) | *”Rechtsextremistin Ursula Haverbeck: 92-jährige Holocaust-Leugnerin in Berlin erneut zu Haft verurteilt” [right-wing extremist Ursula Haverback: 92-year-old Holocaust denier has been sentenced once again to prison in Berlin] (4 December 2020), Tagesspiegel* available at: <https://bit.ly/3Zr8Vwd>. |
| [3](#co_fnRef_3_1) | Section 130(4) of the StGB (‘Incitement of the Masses’). |
| [4](#co_fnRef_4_1) | Bundesministerium der Justiz, “Legislative package to combat hate and hate speech has entered into force” available at: <https://www.bmj.de/EN/FocusTopics/Legislative-package-combat-hate-hate-speech.html?nn=6427850> [Accessed 6 November 2022]. |
| [5](#co_fnRef_5_1) | Section 1(1) of the NetzDG. |
| [6](#co_fnRef_6_1) | Section 3 of the NetzDG. |
| [7](#co_fnRef_7_1) | Chapters 14 and 15 of the StGB. |
| [8](#co_fnRef_8_1) | Section 185 of the StGB. |
| [9](#co_fnRef_9_1) | Section 186 of the StGB |
| [10](#co_fnRef_10_1) | Section 187 of the StGB. |
| [11](#co_fnRef_11_1) | Section 4(4) of the NetzDG (‘Provisions on regulatory fines’). The German Federal Ministry of Justice and Consumer Protection, in agreement with the Federal Ministry of the Interior and the Federal Ministry for Economic Affairs and Energy, has issued general administrative guidelines on the exercise of discretion by the regulatory fine authority in initiating regulatory fine proceedings and in calculating the fine. |
| [12](#co_fnRef_12_1) | Section 4(4) of the NetzDG (‘Provisions on regulatory fines’). |
| [13](#co_fnRef_13_1) | [*R. (on the application of Animal Defenders International) v Secretary of State for Culture, Media and Sport [2008] UKHL 15; [2008] 1 A.C. 1312*](https://uk.westlaw.com/Document/IF99845A0F0C211DC810BBB39FEDB30E7/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=PLUK1.0&contextData=(sc.Search)). |
| [14](#co_fnRef_14_1) | [*Redmond-Bate v DPP [2000] H.R.L.R. 249*](https://uk.westlaw.com/Document/I84FB08C0E42811DA8FC2A0F0355337E9/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=PLUK1.0&contextData=(sc.Search)). |
| [15](#co_fnRef_15_1) | [*Otto-Preminger Institute v Austria (1995) 19 E.H.R.R. 34; (1994) ECHR 26 (ECtHR)*](https://uk.westlaw.com/Document/I14CC5090E42811DA8FC2A0F0355337E9/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=PLUK1.0&contextData=(sc.Search)). |
| [16](#co_fnRef_16_1) | *Dichand v Austria (2002) (Application No 29271/95) of 26 February 2002 (ECtHR)*. |
| [17](#co_fnRef_17_1) | [*Monnat v Switzerland (2010) 51 E.H.R.R. 34*](https://uk.westlaw.com/Document/IFED4CC00E15611DF921DD795AD12C4D1/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=PLUK1.0&contextData=(sc.Search)). |
| [18](#co_fnRef_18_1) | *Handyside v UK (1976) 1 E.H.R.R. 737*. |
| [19](#co_fnRef_19_1) | Sections 86 and 86a of the StGB. |
| [20](#co_fnRef_20_1) | Sections 89a, 91 of the StGB. |
| [21](#co_fnRef_21_1) | Sections 130, 131 of the StGB. |
| [22](#co_fnRef_22_1) | Section 241 of the StGB. |
| [23](#co_fnRef_23_1) | Section 46(2) of the StGB. |
| [24](#co_fnRef_24_1) | Section 51 of the *Bundesmeldegesetz* (BMG) (Federal Act on Registration). |
| [25](#co_fnRef_25_1) | *Wolf Wiedmann-Schmidt, “Soziale Medien müssen Hasspostings künftig dem BKA melden”, Spiegel Netzwelt (6 December 2019)* available at: <https://bit.ly/2VBIhU4>. |
| [26](#co_fnRef_26_1) | Section 1004 of the BGB (German Civil Code). |
| [27](#co_fnRef_27_1) | Section 3(b) of the NetzDG (*Gegenvorstellungsverfahren*). |
| [28](#co_fnRef_28_1) | Section 3(c) of the NetzDG (*Schlichtungsverfahren*). |
| [29](#co_fnRef_29_1) | Section 4(a) of the NetzDG (*Bußgeldvorschriften*). |
| [30](#co_fnRef_30_1) | *House of Commons Department of Culture, Digital Media and Sport, Online Harms White Paper (2019)*. Presented to Parliament by the Secretary of State for Digital, Culture, Media & Sport and the Secretary of State for the Home Department by Command of Her Majesty (April 2019), CP 57. |
| [31](#co_fnRef_31_1) | *Online Harms White Paper (2019), p.6*. |
| [32](#co_fnRef_32_1) | The Digital Millennium Copyright Act Title 17, to provide in part certain limitations on the liability of online service providers (OSPs) for copyright infringement. Section 512(c) DMCA provides limitations on service provider liability for storage, at the direction of a user, of copyrighted material residing on a system or network controlled or operated by or for the service provider, if, among other things, the service provider has designated an agent to receive notifications of claimed infringement by providing contact information to the Copyright Office and by posting such information on the service provider’s website in a location accessible to the public. |
| [33](#co_fnRef_33_1) | [Regulation 2022/2065 on a single market for digital services](https://uk.westlaw.com/Document/I67497F4155CD11EDBB23C6AE78B90E18/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=PLUK1.0&contextData=(sc.Search)) and amending [Directive 2000/31 (Digital Services Act) [2022] OJ L277/1](https://uk.westlaw.com/Document/ID5B9BF0AD0174688A00650D5FCB98483/View/FullText.html?originationContext=document&transitionType=DocumentItem&vr=3.0&rs=PLUK1.0&contextData=(sc.Search)). The regulation shall apply from 17 February 2024 (although rules specific to ‘very large online platforms’ are expected to come into effect earlier). |
| [34](#co_fnRef_34_1) | Ofcom, “Net neutrality review: Consultation” (21 October 2022), closing date for responses: 13 January 2023 available at: <https://bit.ly/3fOIbVz>. |