

## SOCIAL MEDIA REGULATION AND HUMAN RIGHTS: THE IMPACT OF GERMANY'S NETWORK ENFORCEMENT ACT

Germany's Network Enforcement Act (NetzDG), holds social network platforms responsible for moderating content. NetzDG mandates several changes to the way that social media companies respond to complaints, including requiring platforms appoint points of contact to monitor complaints of unlawful conduct, and remove them within 24 hours to 7 days. Platforms which fail to comply could be fined up to 50 million euros by the Ministry of Justice.



It also requires platforms appoint an intermediary in Germany to respond to any complaints, remove content, and assist the authorities with responding to illegal content. The Act covers a very broad definition of 'social network', covering any platform which enables individuals to share content with each other, but specifically excludes websites offering journalistic or editorial content. The German government expects this to cover around 10 companies, which seems low considering the broad definition.

NetzDG does have noble intentions. It allows the disclosure of subscribers' personal information with a court order, "insofar as this is necessary for the enforcement of civil law claims arising from the violation of absolutely protected rights by unlawful content." The more transparent processes sanction police to quickly track and prosecute those making threats online. While terrorist organizations are unlikely to use public platforms to coordinate attacks, the German government clearly feels NetzDG will enable them to better preempt lone wolf attacks, as well as targeting users who incite others to violence. The Act also requires platforms to remove manifestly illegal content within 24 hours and all illegal content within 7 days.

### Nonetheless NetzDG is controversial

By allowing platforms to disclose subscribers' personal information with a court order, the German Parliament **significantly undermines citizens' rights to privacy**. Websites previously considered bastions of free speech are now expected to monitor users' speech. By following such court orders, platforms essentially become a back door for governments to access every citizen's private information. As considerable information is already publicly available, and the metadata provided by public posts is likely more useful in determining the habits of a user, it is not clear how access to users' IP addresses and their privately held information would be necessary to find and charge individuals for criminal acts. Clearer authorizations for police to access user data may at first glance seem beneficial to the rule of law, but the risk of unnecessary infringements on citizens' privacy overrides the benefits of an efficient police force. That easier processes for police are in any way balanced against privacy rights is in itself problematic, particularly when the Act provides no further guidance on what would constitute adequate justification for a court order.

Similarly, **requirements to remove all illegal content within seven days effectively gives control of online content to the government**. Platforms like Facebook already remove undesirable content, particularly if the content results in complaints. In fact, despite not necessarily wanting to be held legally or criminally liable for what is uploaded to their websites, social media platforms do certainly feel the pressure to better regulate content. German laws on hate speech are already stricter than in most other countries, prohibiting defamation of religions and dissemination of depictions of violence. NetzDG places the onus of monitoring and preventing such acts on the platforms, forcing them to limit free speech at the Parliament's direction or face massive fines. While this may not impact companies like Facebook, who are likely able to afford to pay the fines, or to employ legal counsel to challenge governmental interference, smaller platforms may not have the capacity to contest overregulation.

Germany's NetzDG is not the only recent change to how speech is regulated online. But while democratic governments like Germany are perhaps less likely to take advantage of broad new regulations on online content, a lack of strong rule of law or governmental transparency make the potential for massive violations of private data and restrictions on free speech permitted by such legislation much more problematic.

Nonetheless, regulation of some form is likely necessary to counteract terrorism and the propagation of hate speech. It would be naïve to assume that online platforms can be functionally self-regulating by users, considering how easily users can isolate themselves in a bubble of pre-approved opinions. The debate centers more around who should be held responsible for that regulation. Governments have an equally strong responsibility to monitor hate speech and illegal content online as they do offline, and just like the proprietor of any other space, social media platforms have some responsibility for the conduct of their patrons, and for ensuring they do not implicitly allow illegal content. At the same time, individual users hold responsibility for reporting illicit content the same way that duty to report laws function for issues like child abuse or sexual assault in the real world. Failure to report a crime should, and in many cases does, constitute a crime of itself, whether online or not; In the United States, failure to report a felony is itself a felony offence. Illegal content is illegal both offline and online, but regulations of the digital realm, with its borderless and seemingly endless niches, result in their own problems for governments. How governments, online platforms, and even individual users deal with abuse of the system will likely impact human rights at the very least indirectly. Nonetheless, it is the responsibility of governments to consider impacts to human rights in the creation of new digital regulation.

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