

Updated Statement of the Amadeu Antonio Foundation, April 27th, 2017
Missing the mark and irreparable: the draft of the *Netzwerkdurchsetzungsgesetz* (“Network Enforcement Act”)

The April 5th draft of the Network Enforcement Act (*Netzwerkdurchsetzungsgesetz*, or *NetzDG*) aims to improve enforcement of federal hate speech laws online. The problem of hate speech on the Internet would be met with government regulations for social networks. These include the introduction of mandatory reports on user-reported, potentially-illegal content (§2); proscriptions on when content identified as illegal (and any copies thereof) must be deleted/locked (“Complaint Management”, §1 (3) in conjunction with §3); the organization of a nationwide point of contact for the purpose of simplifying the enforcement of the law (§5) and the threat of fines for social media platforms violating these regulations.

The Amadeu Antonio Foundation welcomes the engagement of the federal government against illegal hate speech online. Content which belittles others on grounds of heritage, skin color, gender, sexual orientation, disability or religion, as well as the normalization or defense of such content, represents a growing problem in social media.

Nevertheless, the *NetzDG* draft in no way an adequate or just response to the need for the enforcement of anti-hate-speech laws. It not only endangers the foundation of democracy—that is, the freedom of speech and freedom of information—without adequate possibility of appeal in the case of a mistake or abuse. With the current draft, the federal government casually shrugs off the onus of persecution: the possibility of proper persecution is not improved, and the status quo, that is voluntary cooperation between investigatory agencies and social media platforms, remains. We can assume that the deletion of evidence will only make persecution harder.

The point of the act was to strike against hate speech and more successfully persecute crimes. Its enactment, however, would only endanger the persecution of hate crimes. The act, as drafted, is irreparably broken and can only be rejected.

No improvement in persecution of criminal hate speech

The drafted act aims to improve enforcement of federal hate speech laws online, which – based on existing German law – primarily means the improvement of cooperation between state

investigators and social media administrators, as well as the expansion of state entities equipped to handle such crimes. This would involve a state attorney's office emphasizing digital hate crimes, as well as comprehensive sensitization and training for police on digital crime and violence. The latter has been completely left out of this draft.

In the context of criminal prosecution, the obligation of social media platform administrators to create a nationwide point of contact ("*Zustellungsbevollmächtigten*", "Service representatives", §5) has been hailed as a great step forward for public relations. Such claims do not withstand a closer examination of the draft. For civil complaints, it is not the national (i.e. German) service representatives who are responsible, but rather the legal team of the corporation running the platform, which in almost all cases operates in another country—for example, the United States. In this way, the well-known, widely-reported problems with civil complaints will simply remain. The draft also fails to mandate the release of additional information (for example, IP addresses) in the case of criminal complaints, and instead underlines the continued existence of the "possibilities of voluntary cooperation between law enforcement agencies and social media providers". This is how the status quo remains in place.

Moreover, the draft threatens to damage criminal prosecutions through its regulations proscribing evidence deletion—violating the rights of potential victims.

Privatization of Law Enforcement

Instead of an improvement of law enforcement, the drafted legislation represents a privatization of law enforcement. The core of the draft is the legal standards imposed upon social media platforms for handling user reports of hateful content. The social networks would be obligated to offer user-friendly complaint mechanisms, attend to complaints immediately and check them for potential illegality. "Clearly illegal content" (as well as all copies thereof) shall be deleted or blocked within 24 hours; mere "illegal content" within 7 days (§1 (3) in connection with §3). This presumes the use of automated content ID processes, increasing the reach of content limitations. Failure to abide by the regulations would lead to fines. The draft also fails to mandate that complaint reports indicate whether content was deleted rightfully or not—hindering an adequate evaluation of the process.

The drafted legislation provides no possibilities for appeal (or corresponding state entities) against the social media platform administrators' obligation to quickly delete reported content. Indeed, this obligation is enforced with heavy fines. Users who feel their content was wrongfully deleted must go straight to the courts, with all the costs and time investment that involves. Here is where the risk of private law enforcement emerges: a foundational right like the freedom of speech is principally designed to protect against overreach by the state. Yet in this case, the danger to freedom of speech and expression stems from private corporations.

The *NetzDG* draft casually gives up its responsibility of prosecution. Not only that: it gives up its right to intervene, its right to enforce laws, to interpret those laws and to guarantee the accused a proper hearing—and it gives all these rights to private firms.

In its present form, the drafted legislation fails to improve law enforcement. Instead, it endangers the planned approach to freedom of expression and rule of law. An accurate and fair organization of content into “illegal hate speech” and “legal speech” is extremely difficult—it must be assumed that many problematic statements are legal. Handing this decision over to the employees of social networks means the transfer of legal responsibility over potential violations of constitutional rights into private hands—something which must be seen in an extremely critical light. It would prevent an adequate evaluation of content and opens the door to the abuse of the complaint system. The pressure of short deadlines and heavy fines can only lead to preemptory deletion of content—an existential danger for a democratic culture of debate only compounded by the mandatory reliance on Content-ID software.

Democracy needs freedom of expression, not escalating deletion

The German constitution has always contained provisions to restrict freedom of speech (and other basic rights): in the case of racial incitement (including Nazi glorification and Holocaust denial §130 StGB) or of propaganda of unconstitutional organizations (§186 StGB).

The original draft (dating to the 24th of March) labeled a diverse array of acts as criminally hateful content, beyond what the known definition of “hate speech”, that is the belittlement and disparagement of specific population groups, or the incitement to hatred, originally covered. Such acts include “insults” and “propaganda offenses”, but also the “disparagement of the President and the State and its Symbols” and the “reward and endorsement of crimes.” This would only discredit the fight against hate speech.

The current (third) draft goes further in expanding its purview. It includes “treasonous falsification”, “acts of violence dangerous to the state”, and “establishment of terroristic groups”. This carries with it further risks. More speech is being criminalized under the aegis of the fight against hate speech, speech which not only has no connection to actual hate speech, but also involves topics far too complex to be sufficiently analyzed under immense time pressure by non-lawyers.

A look back at hate speech: why we, as a society, must take action

The Amadeu Antonio Foundation has engaged in the fight against right-wing extremism, racism and anti-Semitism since 1998, and has always stood for the strengthening of a democratic culture of debate. The problem of hate speech is well-known to the Foundation through its work with its victims: That which we call hate speech, that is, speech which attacks people on

the grounds of their heritage, skin color, gender identity, sexual orientation, disabilities or religion or encourage speech that does, represents a growing problem in social networks. This is a phenomenon the Foundation labels “*gruppenbezogene Menschenfeindlichkeit*”, or “group-focused enmity.” Beyond this general definition, however, distinguishing intentional digital violence from unintentional is often quite difficult and context-dependent. In Germany, illegal expression (for example, incitement to hatred, or *Volksverhetzung*) can be differentiated from legal forms of hate speech: cyberbullying, defamation, harassment or coercion of victims or, simply summarized, toxic communication.

A look forward for hate speech: political and societal solutions

The current legislative draft aims to improve enforcement of laws against illegal hate speech, and in doing so only targets a tiny part of the phenomenon. A legal focus on deletion will not do justice to the actual victims of hate speech. They primarily need protection and support against attacks and the possibility of a fair prosecution. That prosecution contributes to the fight against right-wing extremism by giving a clear view of right-wing extremist activities.

It must be recognized that hate speech is a problem encompassing our entire society, which manifests itself in a concentrated form on Facebook and other social media. The fight against hate speech must mean a fight against the basic hateful ideologies that form its foundation. The improvement to law enforcement against hate speech will only address a fraction of the problem: the majority of the problem cannot be dealt with with laws.

Prevention must take political priority

Deleting discriminatory, illegal hate speech does not “delete” the problems of right-wing extremism, sexism, anti-Semitism or racism. It only serves to give up responsibility of the problem to social media platforms, where law enforcement will only become more difficult than it currently appears. Moreover, the observations of the Amadeu Antonio Foundation and Jugendschutz.net show that right-wing extremist activity has increased steadily on platforms like the Russian VKontakte. It does not appear as though the *NetzDG* draft addresses this problem at all.

A comprehensive conceptual approach is necessary

In order to effectively counter digital hate—which expresses, yet simultaneously supports and strengthens real-world hateful attitudes—the Amadeu Antonio Foundation calls for the following alongside an actual, effective improvement to enforcement of hate speech laws:

- The organization of a long-term working group concerning hate speech online, bringing together representatives from politics, civil society and social media platforms and developing strategies against digital violence.
- Studies and monitoring: whether legal, political or civil-societal: the Foundation demands a return to research and monitoring of the different forms of digital violence, developing strategies subsequent to this research and in concern with the previously-mentioned working groups.
- Strengthening civil-societal engagement and media competence. The problem of hate speech can only be partly dealt with through deletion; the Foundation demands a collective confrontation with discriminatory speech online. To this end, a general familiarization with various forms of digital violence and hate speech is just as important as the strengthening of media competencies. Approaches could include the organization of contact centers for education, the development of educational strategies and their use in information brochures and innovative campaigns.
- The formation of counseling centers for victims of digital violence (in cooperation with counseling centers for victims of right-wing violence): Victims of hate speech have, until now, had little access to support. It is particularly important to organize and strengthen such counseling centers, which would help process painful experiences, protect individual rights, learn about possibilities of self-protection and allow for solidarity and exchange of experiences.