



MAX PLANCK INSTITUTE

FOR COMPARATIVE PUBLIC LAW
AND INTERNATIONAL LAW

Case Law on Content Moderation and Freedom of Expression

hosted by the Escola Paulista da Magistratura (São Paulo School of
Judges)
in cooperation with Columbia Global Freedom of Expression

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Overview

- I. User vs. Platform
- II. User vs. Public Official
- III. Government vs. Platform
- IV. The European Perspective: Digital Services Act



I. User vs. Platform



Reinstating Content – The German Way





Reinstating Content – The German Way

Procedural Obligations (Federal Court, III ZR 192/20 [...], July 29, 2021)

- Objective reasons for sanctions (non-arbitrariness)
- Information about reasons
- Fair hearing
- Appeal mechanism



Removing (Illegal) Content (EU/Germany)

- Notice-and-Takedown as general principle (Art. 14 eCommerce-Directive; Art. 6 DSA)
- No general monitoring obligation (no “independent assessment” of legality) but obligations to filter content which was declared illegal (and equivalent content) (Art. 15 eCommerce-Directive; Art. 8 DSA; ECJ, Glawischnig-Piesczek)



Removing (Illegal) Content (Europe)

Newest Developments

- Monitoring obligations for politicians
(2023, ECtHR, [Sanchez v. France](#))
- Automatic filter systems are „desirable“ (2023,
ECtHR, [Zöchling v. Austria](#))



Political Parties and Elections

- Casa Pound (2020, Italy)
 - *Italian law does not prohibit neo-fascist organizations*
 - *Freedom of thought must also be guaranteed on Facebook*
- Der III. Weg (2019, Germany)
 - *Complex legal issues could not be resolved in a preliminary proceeding*
 - *The political disadvantages of not being able to use Facebook as political party are very high*



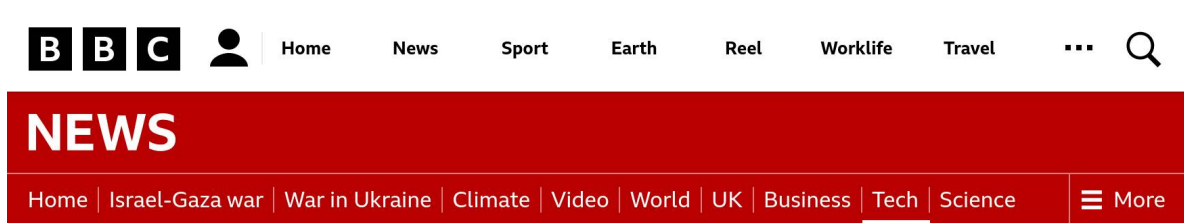
Section 230 as Absolute Answer (USA)

“Through this provision, Congress granted most Internet services immunity from liability for publishing false or defamatory material so long as the information was provided by another party.”

[Carafano v. Metrosplash.com, Inc. \(9th Cir. 2003\)](#)



Infrastructural Content Moderation



Tech

Parler: Amazon to remove site from web hosting service

© 10 January 2021





II. User vs. Public Official



Private or Public Account?

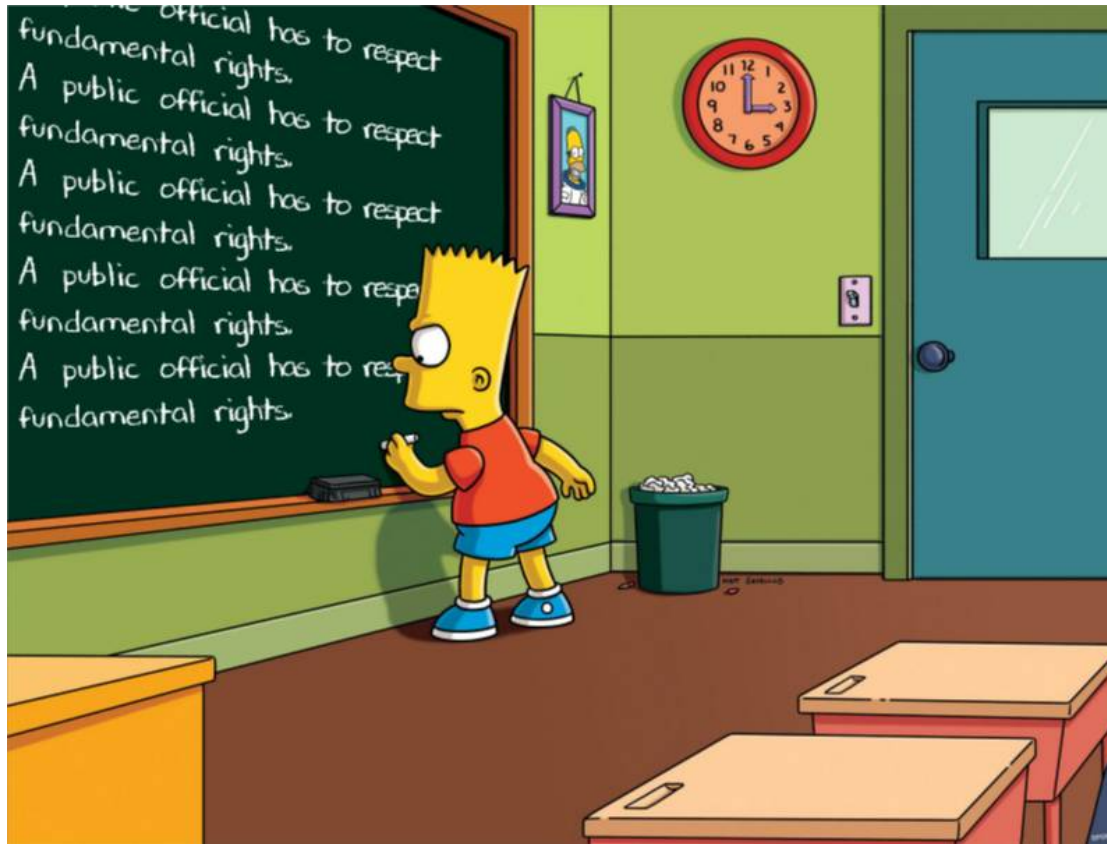
Indicators (e.g. [Knight First Amendment Institute v. Trump, 2019](#))

- Use of official contact details (Title, E-Mail-Address etc.)
- Distribution of official information („government speech“)
- Possibility of interaction

Not sufficient: Mere election of a person



Public Town-squares on Private Property





III. Government vs. Platform



Administrative Proceedings



IN FOCUS Israel at war Argentina Ukraine

Live TV



TECHNOLOGY

Russia fines Google, Facebook over banned content

12/24/2021

Moscow has accused Google and Facebook's parent company Meta of failing to remove illegal content from their platforms. It's the latest blow against tech giants in the Eastern European country.





Administrative Proceedings

The screenshot shows a news article from DW (Deutsche Welle) with the following elements:

- Header:** DW logo, navigation links for 'IN FOCUS', 'Israel at war', 'Argentina', and 'Ukraine', and a 'Live TV' button.
- Category:** SOCIETY | GLOBAL ISSUES
- Title:** Brazil court bans global access to social media accounts
- Date:** 08/05/2020
- Text:** Brazilian Supreme Court ordered Facebook and Twitter to block global access to several social media accounts. Facebook is appealing the order.
- Share icons:** Facebook (f), X (Twitter), and a dropdown arrow.
- Image:** A blurred image of the Twitter and Facebook logos.



Bans of Services



Nigeria bans Twitter after company deletes President Buhari's tweet

By [Nimi Princewill](#), and [Stephanie Busari](#), CNN

🕒 5 minute read · Updated 9:11 AM EDT, Sat June 5, 2021





IV. The European Perspective: Digital Services Act



Digital Services Act

Article 14

Terms and conditions

4. Providers of intermediary services shall act in a diligent, objective and proportionate manner in applying and enforcing the restrictions referred to in paragraph 1, with due regard to the rights and legitimate interests of all parties involved, including the fundamental rights of the recipients of the service, such as the freedom of expression, freedom and pluralism of the media, and other fundamental rights and freedoms as enshrined in the Charter.



Digital Services Act

Article 17

Statement of reasons

1. Providers of hosting services shall provide a clear and specific statement of reasons to any affected recipients of the service for any of the following restrictions imposed on the ground that the information provided by the recipient of the service is illegal content or incompatible with their terms and conditions:
 - (a) any restrictions of the visibility of specific items of information provided by the recipient of the service, including removal of content, disabling access to content, or demoting content;
 - (b) suspension, termination or other restriction of monetary payments;



Digital Services Act

Article 20

Internal complaint-handling system

1. Providers of online platforms shall provide recipients of the service, including individuals or entities that have submitted a notice, for a period of at least six months following the decision referred to in this paragraph, with access to an effective internal complaint-handling system that enables them to lodge complaints, electronically and free of charge, against the decision taken by the provider of the online platform upon the receipt of a notice or against the following decisions taken by the provider of the online platform on the grounds that the information provided by the recipients constitutes illegal content or is incompatible with its terms and conditions:

(a) decisions whether or not to remove or disable access to or restrict visibility of the information;



Thanks a lot for your attention!