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▲ Lvl. 2

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Germany

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## Germany: Draft Bill on Social Networks Raises Serious Free Expression Concerns

SOURCE OF THREAT ▶ State

CATEGORY  ▶ Other acts having chilling effects on media freedom

**PARTNER: Article 19, CPJ, EFJ/IFJ, IPI**

On 5 April 2017, the German Cabinet approved the Draft Bill on the Improvement of Enforcement of Rights in Social Networks. The stated aim of the bill is to combat hate speech and disinformation online; however, human rights and internet freedom organisations have expressed concern that it would enable disproportionate censorship online. The Bill is now due to be debated by Parliament.

The Draft Bill proposes a system, whereby 'Social Networks' would face severe administrative penalties (fines) for failing to remove content that violates 24 already-existing provisions of the German Criminal Code – including offences as varied as “defamation of religions” (blasphemy), defamation of the President of the Federation, criminal defamation and insult, and denial of National Socialist-era crimes, among others.

This obligation applies without a determination of the legality of the content at issue by a court, and with no guidance to Social Networks on respecting the right to freedom of expression. Critics of the Bill argue that intermediaries are not competent to make these complex factual and legal determinations, and that the Draft Bill provides no recourse to redress for users whose content is blocked or deleted unfairly pursuant to the Draft Bill.

Critics further argue that there is a high likelihood of Social Networks over-vigorously deleting or blocking content, due to the legal uncertainty pervading the Draft Bill. This includes ambiguities in the term 'Social Network', meaning a number of online media could be affected; and an unclear threshold for determining whether a social network's response to illegal content is “inadequate” and therefore should incur penalties.

### UPDATES

**05 Oct 2017:** The Network Enforcement Act entered in force on 1 October after having been approved by the Parliament in June.

- ➔ Reuters dispatch : "Post-election, critics hope Germany's hate speech law can be revised"

## ADDITIONAL INFORMATION

- ➔ CPJ Statement: "Proposed German legislation threatens broad internet censorship"
- ➔ EFJ Statement: "Germany: A draft law to counter hate speech would threaten freedom of expression"
- ➔ Declaration on Freedom of Expression In response to the adoption of the Network Enforcement Law ("Netzwerkdurchsetzungsgesetz") by the Federal Cabinet on April 5, 2017
- ➔ Article 19: "Germany: Draft Bill on the Improvement of Enforcement of Rights in Social Networks"


## STATE REPLIES



29 Aug 2017 | Reply by the German authorities

- ➔ Letter by the Permanent Representation of Germany to the Council of Europe

## FOLLOW-UPS

 05 Oct 2017 | OSCE Representative on Freedom of the Media warns Germany social networks law could have disproportionate effect.

- ➔ Statement by Harlem Désir



26 Sep 2017 | The CoE Commissioner for Human Rights recalls that any restrictions on access to Internet content should be based on a clear and predictable framework affording guarantee of judicial oversight to prevent possible abuses.

- ➔ Comment by the Commissioner for Human Rights: "Arbitrary Internet blocking jeopardises freedom of expression"