**LIDC Congress in Vienna, 8 – 12 October 2025**

**Question B:** What responsibility or obligations should online platforms have when it comes to eliminating infringements by their users, especially in the areas of IP and unfair competition?

**Background and Context:**

The starting point for this topic remains the long-standing liability privilege of intermediaries (‘safe harbour’): online platforms that provide pure intermediary services may remain exempt from liability for illegal third-party content and have no general obligation to monitor the content posted by their users.[[1]](#footnote-2) However, in the last years, it has become increasingly complex to state that intermediaries refrain from ‘pure intermediation’. More and more, platforms influence on user experiences via a mix of, mainly automatic, content harvesting and organisation mechanisms.

Despite these developments, the safe harbour principle has not (yet?) been completely abolished but has become accompanied by some additional obligations instead, such as in the Digital Services Act (DSA) of the European Union (EU); here, hosting providers are now required to have a mechanism in place allowing third parties to report suspected illegal content and to react immediately on such requests. In addition, trusted flaggers, as entities designated by national digital coordinators, are new players in this “notice and action” procedure, in which the operator of an online platform must immediately block offers if it becomes aware of a clear violation under the applicable law. Notices they submit are supposed to be prioritised as they are expected to be more accurate than average user reports.

Another innovation (in the EU) is the “Good Samaritan” rule in this area, which ensures that online intermediaries do not lose their liability privilege just because they voluntarily review user content. This clause is intended to give providers legal certainty when they check uploaded content to detect infringements proactively.

Interesting developments have also emerged in non-EU jurisdictions. For example, in Brazil, the Civil Framework for the Internet, a federal law enacted in 2014, is currently challenged at the Supreme Federal Court. Central to the issue are legal provisions requiring a court order before illegal content on online platforms can be removed, potentially altering the dynamics of the notice-and-takedown process.

Although these current developments represent a new basis for familiar principles, the significance of their specific details for the protection of intellectual property and unfair competition can be important. Moreover, the practical importance of special entities as experts at detecting certain types of illegal content and notifying online platforms will become apparent with the first experiences with it.

Regardless of jurisdiction, there must be a balance between the aim to tackle illegal content online and fundamental rights such as freedom of expression or the right to a fair trial.

The subject of the responsibility of platform intermediaries and their role in preventing unfair competition was already addressed at a LIDC Congress in Oxford in September 2011. 14 years later, at the LIDC Congress in Vienna in October 2025, a comprehensive reassessment, re-discussion and re-evaluation of the historical development with regard to unfair competition and intellectual property is to take place, in which the following questions are to be answered by the national rapporteurs and their reports are ultimately to be incorporated into the international report, which will allow a comprehensive discussion of recent developments regarding platform responsibility.

National groups are therefore invited to provide an account of the emerging trends and cases before courts in their respective jurisdictions from a legal and practical perspective in the online sector.

**Questions**

*This questionnaire aims to learn about the legal situation within the respective jurisdiction. Thus, the questions provided below shall be used as a guideline to allow for a comparison of online platforms’ liabilities and responsibilities in cases of possible infringements by their users in the respective national jurisdictions. We, therefore, appreciate answers guided by the questions raised but understand if an alteration of the scope according to the norms and practice of the respective jurisdiction is needed.*

**Historical perspective**

1. *Please provide us with a brief summary of substantive (legal) developments regarding the liability and responsibility of platforms in the respective jurisdiction (bearing in mind the scope of intellectual property and unfair competition) considering:*
   1. *the definition of platforms[[2]](#footnote-3) or similar*

Historically, the liability of online platforms (or their precursors) in Germany for intellectual property and unfair competition infringements has evolved significantly, moving from general tort principles to a more specific, EU-driven framework.

Before the E-Commerce Directive, German law relied on general civil liability rules (e.g., Section 823 et seq. German Civil Code) and existing IP statutes. The doctrine of liability as an interferer (Störerhaftung) was already a significant concept, though not newly established by the German Federal Court of Justice (Bundesgerichtshof) specifically for the internet. Liability as an interferer has deeper roots in German civil law, generally understood to be derived by analogy from provisions like Section 1004 German Civil Code, which addresses a property owner's right to demand removal of interference and to seek an injunction against future interferences. This principle, allowing for injunctive relief against someone who, without being a direct perpetrator, culpably contributes to a rights infringement by breaching a duty of care, was applied to intellectual property infringements even before the internet era. Therefore, the German Federal Court of Justice's role, was not to create liability as an interferer anew for online contexts but rather to adapt and apply this existing analogous legal doctrine to the novel challenges posed by online intermediaries.[[3]](#footnote-4) There was no specific legal definition of "platform" at that time, but providers of online services could be subject to these general rules and the principles of liability as an interferer.

The E-Commerce Directive[[4]](#footnote-5) , implemented in Germany primarily through the German Telemedia Act, marked a pivotal change. It introduced conditional liability exemptions ("safe harbours") for different categories of intermediary service providers. For hosting providers (Article 14 E-Commerce Directive, former Section 10 German Telemedia Act), this meant no liability for user-generated content if they lacked actual knowledge of illegal activity or, upon obtaining such knowledge, acted expeditiously to remove or disable access to the information. This essentially codified a "notice and takedown" system, while the liability as an interferer continued to define the scope of duties upon notification.

* 1. *international legal provisions*

Following the E-Commerce Directive, several EU legal instruments have profoundly shaped platform liability. The InfoSoc Directive[[5]](#footnote-6), through its Article 8 para 3, established the right to seek injunctions against intermediaries whose services are used by third parties to infringe copyright. A major shift came with the Directive on Copyright in the Digital Single Market[[6]](#footnote-7) (DSM Directive). Its Article 17 introduced a specific liability regime for "online content-sharing service providers" (“**OCSSPs**”), making them, in principle, directly liable for unauthorized communications to the public of copyrighted works by their users. They can only avoid this liability by demonstrating best efforts to obtain authorizations, ensure the unavailability of specifically notified works, and act expeditiously upon takedown notices. Most recently, the Digital Services Act[[7]](#footnote-8), which is directly applicable, has modernized the framework. It maintains and clarifies the conditional liability exemptions for intermediary services (Articles 4, 5, and 6 Digital Services Act), but simultaneously imposes comprehensive due diligence obligations, particularly on "online platforms." These include mandatory notice-and-action mechanisms (Article 16 Digital Services Act), transparency in advertising and recommender systems, and internal complaint-handling systems (Article 20 Digital Services Act). The Omnibus Directive[[8]](#footnote-9) also influenced national law, particularly by requiring amendments to unfair competition rules concerning online marketplaces and digital services.

* 1. *national legal provisions*

The legal development of platform liability in Germany has evolved from a reactive safe harbor model to a more proactive and specific regulatory framework. Initially, the legal landscape was defined by foundational intellectual property statutes like the German Copyright Act, German Trade Mark Act, German Patent Act, and German Design Act, which establish the underlying rights. With the rise of the internet, the EU E-Commerce Directive introduced a liability shield for intermediary service providers, a principle Germany transposed through its German Telemedia Act. This act, which superseded earlier laws like the German Teleservices Act, established a long-standing "notice-and-takedown" system, where platforms were generally not liable for user-generated content unless they had knowledge of its illegality.

A significant shift towards active platform responsibility began with Germany's Network Enforcement Act (Netzwerkdurchsetzungsgesetz) in 2017. Although primarily aimed at combating hate speech, the German Network Enforcement Act set a precedent by imposing strict, short deadlines for the removal of illegal content on large social networks, backed by substantial fines for noncompliance. This marked a departure from the purely reactive model.

This trend was solidified in copyright law by the EU's 2019 Directive on Copyright in the Digital Single Market. Its Article 17 fundamentally altered the liability regime for certain platforms, moving away from the safe harbor and establishing direct responsibility for user-uploaded infringing content. Germany implemented this through the German Copyright Service Provider Act (Urheberrechts-Diensteanbieter-Gesetz), which took effect in June 2021 and detailed the new obligations for online content-sharing service providers. In parallel, the German Act Against Unfair Competition was repeatedly updated, such as in 2015, to better align with EU directives and enhance consumer protection in both B2B and B2C contexts.

Most recently, the legal framework has been comprehensively modernized by the EU's Digital Services Act. In 2024, Germany passed the German DSA Implementation Act (Digitale-Dienste-Gesetz), which supersedes the German Telemedia Act and adapts national law to the new harmonized EU rules on due diligence and transparency for digital services.

* 1. *cases*

The German doctrine of liability as an interferer, with its origins in general civil law principles analogous to Section 1004 German Civil Code, was for many years the principal basis for holding platforms accountable for third-party infringements, typically leading to injunctive relief rather than claims for damages. The German Federal Court of Justice role involved applying and refining this pre-existing analogous doctrine to online scenarios.[[9]](#footnote-10)

The Court of Justice of the European Union (CJEU) has delivered seminal judgments. In *L'Oréal/eBay* , it was clarified that online marketplace operators could be ordered to take measures to prevent further trademark infringements, not just react to past ones.[[10]](#footnote-11) The ruling in *YouTube/Cyando* was a landmark and established that platform operators do not, in principle, carry out an act of "communication to the public" themselves merely by providing their services, unless they play an active role that gives them knowledge of or control over the specific infringing content, or fail to take appropriate measures after notification.[[11]](#footnote-12)

The German Federal Court of Justice has adapted these principles of the Court of Justice of the European Union. In decisions like *YouTube II* and *uploaded II*, and more recently in *Manhattan Bridge*, the German Federal Court of Justice moved beyond mere liability as an interferer for hosting providers.[[12]](#footnote-13) It held that for acts of *communication to the public* (e.g., an infringing photograph in an online marketplace advertisement), the platform could be liable as a perpetrator for damages if it played an indispensable role, derived economic benefit, and culpably breached duties of care, particularly after notification. This marked a significant shift, allowing for direct damage claims under specific conditions. However, the German Federal Court of Justice in *Manhattan Bridge* also distinguished this from acts of *reproduction* (e.g., the user's initial upload of the infringing photo to the platform's server). For such reproduction acts, liability as a perpetrator for damages remains governed by stricter national criminal law principles of perpetration and participation, requiring a higher degree of control or specific intent regarding the reproduction itself.[[13]](#footnote-14)

* 1. *activities of platforms*

The legal assessment of platforms has increasingly focused on the nature and intensity of their activities. Initially, the emphasis was on whether a platform was merely a passive technical conduit, which attracted broader liability exemptions. Over time, the focus has shifted to evaluating the **active role** platforms play. This includes how they organize, promote, and profit from user-generated content. Key factors now influencing liability are:

* **Actual knowledge or awareness**: Whether the platform had specific knowledge of the illegal content or was aware of facts making its illegality apparent.
* **Control over content**: The degree to which the platform selects, modifies, or curates content.
* **Economic benefit**: Whether the platform derives direct or indirect financial gain from the infringing activity.
* **Business model**: Whether the platform's operational model, by design or effect, encourages or facilitates infringements.
* **Indispensable role**: As highlighted in *Manhattan Bridge*, if the platform's services are indispensable for the infringement to reach an audience and it fails in its duties of care, liability as a perpetrator can arise for communication to the public
  1. *others (e.g. NGOs, stakeholders)*

The evolution of platform liability in Germany has been influenced by various stakeholders. Right holder organizations have consistently advocated for stronger platform accountability and more effective enforcement mechanisms against online IP infringements. Conversely, digital rights NGOs and consumer protection groups have raised concerns about the impact of stricter liability rules on freedom of expression, the risk of "over-blocking" legitimate content, and the need for fair and transparent processes for users. Industry associations and the platforms themselves have engaged in policy discussions, developed codes of conduct, and adapted their services in response to legal and societal pressures. Academic scholarship has played a vital role in analyzing legal developments and contributing to the discourse. Finally, EU and national legislators and regulatory authorities, such as the German Federal Network Agency as the German Digital Services Coordinator, are key actors in shaping and enforcing the regulatory framework.

**Legal Basis for Liability and Responsibility**

1. *Describe the legal basis for the liability and the responsibility of platforms in the respective jurisdiction. Please structure the answer according to the following points, bearing in mind the focus on intellectual property and unfair competition:*

With the entry into force of the German DSA Implementation Act on 14 May 2024, the liability and information obligations formerly laid down in the German Telemedia Act were replaced by domestic accompanying law to the Digital Services Act; pursuant to Section 1 para 1 German DSA Implementation Act the provision now refers directly to ‘providers of digital services’ and, at the same time, repeals the Telemedia Act.[[14]](#footnote-15)

The Digital Services Act itself has applied in full since 17 February 2024 and, in Articles 4–6, establishes exhaustive EU-wide liability exemptions for mere conduit, caching and hosting. This framework is supplemented at national level by Sections 7–9 German DSA Implementation Act. In the field of intellectual property, the regime interlocks with Section 97 German Copyright Act and – for online content-sharing service providers – with the German Copyright Service Providers Act. In parallel, unfair-competition matters are governed by the German Unfair Competition Act: Section 8 para 1 opens claims for injunctive relief and Section 9 claims for damages.

The courts apply this layered body of norms in accordance with the primacy of EU law. The German Federal Court of Justice has already made clear that national legal constructs – such as the earlier liability of indirect infringers (liability as an interferer) – must be further developed in conformity with Union Law whenever Articles 4–6 Digital Services Act are engaged.[[15]](#footnote-16)

* 1. *types of platforms;*

Article 3 lit. g Digital Services Act establishes three technical baseline categories for platforms: access, caching and hosting providers. Additionally, there are further sub-groups of hosting providers: (i) online platforms, (ii) online search engines, (iii) very large online platforms (VLOPs) and very large online search engines (VLOSEs).[[16]](#footnote-17) Access providers (traditional Internet-access operators and Wi-Fi hotspot operators) enjoy the liability privilege of Article 4 Digital Services Act/Section 7 para 1 German DSA Implementation Act; according to the CJEU’s *McFadden* judgment, this privilege also extends to open Wi-Fi networks.[[17]](#footnote-18) Caching services are privileged under Article 5 Digital Services Act, provided that the intermediate storage is prompted solely by technical considerations. Hosting services within the meaning of Article 6 Digital Services Act incur liability only once they have ‘actual knowledge’ or ‘awareness of manifest illegality’ and only if they fail to act within a reasonable period; commentary underscores both the codified CJEU case law and the “Good Samaritan” privilege enshrined in Article 7 Digital Services Act.[[18]](#footnote-19)

Building on this foundation, German law differentiates further sub-groups of platforms: online marketplaces, video-sharing platforms (Section 1 para 4 nos. 8 and 9; Section 6 para 3 and 4 German DSA Implementation Act), For video-sharing platforms, the German Copyright Service Providers Act (Sections 1 et seq.) and Article 17 DSM Directive apply cumulatively, so that the platform operator is directly liable if it infringes the conduct-of-business and filtering duties laid down therein.[[19]](#footnote-20) With regard to search engines, scholarly opinion contemplates an analogous application of Articles 4–6 Digital Services Act as long as the operator does not assume an “active role”.[[20]](#footnote-21)

* 1. *civil and criminal law;*

From a civil-law perspective, primary copyright protection is governed by Section 97 para 1 German Copyright Act (injunctive relief) and Section 97 para 2 German Copyright Act (damages). While Articles 4–6 Digital Services Act privilege claims for damages, they expressly leave claims for injunctions and removal unaffected (Article 4 para 3, Article 5 para 2 and Article 6 para 4 Digital Services Act).[[21]](#footnote-22) Claims under Section 8 German Unfair Competition Act are likewise untouched, as the German Federal Court of Justice held in the case of a *hotel-review portal*; there the Senate anchored liability inter alia in Section 4 no. 8 German Unfair Competition Act but denied any appropriation of the content because the platform operator merely applied automated filtering.[[22]](#footnote-23) Disclosure claims can be based on Section 101 German Copyright Act and on Article 10 Digital Services Act.

Under criminal law, platform operators are liable pursuant to Section 106 German Copyright Act or Section 16 German Unfair Competition Act only where they themselves act (with intent) in the infringement or aid and abet it (Section 27 German Criminal Code) – this is fulfilled when the platform operator has *actual* knowledge of the infringement.[[23]](#footnote-24) The *kinox.to* decision shows that a platform operator may be convicted as a co-perpetrator for facilitating illegal content when the platform is oriented towards infringing traffic.[[24]](#footnote-25) For access providers, by contrast, criminal liability—given the privilege in Article 4 Digital Services Act and their passive role—arises only in exceptional scenarios (e.g. collusive cooperation).[[25]](#footnote-26)

* 1. *direct and accessorial liability*

German legal doctrine differentiates between (i) primary liability for direct infringement, (ii) participation (Section 830 German Civil Code; Sections 26, 27 German Criminal Code), and (iii) liability as an interferer, which is pivotal for injunctive relief. In the wake of the CJEU’s *YouTube/Cyando* judgment, the German Federal Court of Justice has refined the classical “interferer” (“Störer”) model into a “duty-of-care concept” for hosting platforms: where the operator breaches reasonable monitoring, filtering or takedown/stay-down duties, it is treated as a direct infringer.[[26]](#footnote-27)

For access providers, Section 8 German DSA Implementation Act (formerly Section 7 (4) German Telemedia Act old version) establishes an autonomous blocking claim that supplants the liability as an interferer; a blocking order may nevertheless issue only where the rightsholder can show that proceedings against the direct infringers hold no realistic prospect of success.[[27]](#footnote-28) In the sphere of open Wi-Fi networks, Section 7 (2) German DSA Implementation Act rules out any duty to identify users, thereby shielding the operator from the liability as an interferer.[[28]](#footnote-29)

For hosting providers, the decisive threshold is “knowledge” within the meaning of Article 6 para 1 lit. a and Digital Services Act. Under Article 16 Digital Services Act such knowledge is irrefutably presumed where a duly reasoned notice contains all the particulars listed in Recital 22 Digital Services Act; failure to honor stay-down duties may therefore—unlike under the former German Telemedia Act—trigger direct liability.[[29]](#footnote-30) Any “appropriation” of third-party content—e.g. through editorial pre-screening or commercial exploitation—deprives the operator of the privilege in any event.[[30]](#footnote-31)

Finally, in unfaircompetition cases liability as an interferer remains relevant where the platform’s design or advertising creates the appearance of its own responsibility. The German Federal Court of Justice, for example, affirmed the liability of a platform operator who programmed search advertisements so that trademark-infringing terms appeared in the source code.[[31]](#footnote-32)

1. *Are platforms required to monitor content generated by their users for possible infringements on intellectual property rights in the respective jurisdiction? If so*:

As the Digital Services Act applies directly in Germany, platforms are not obliged to monitor content. Article 8 Digital Services Act expressly provides those intermediary services ‘are not subject to a general obligation to monitor the information transmitted or stored by their users’. The German DSA Implementation Act gives domestic effect to this prohibition: Section 7 para 2 German DSA Implementation Act forbids public authorities from requiring platform operators, for example, to register all users or to terminate the service permanently and makes an explicit cross-reference to Articles 4–8 Digital Services Act.[[32]](#footnote-33)

The provision thereby incorporates the case law already developed by the CJEU, which holds that a blanket ‘filter order’ is impermissible.[[33]](#footnote-34)

Nor do copyright- or competitionlaw concepts of the liability as an interferer impose a duty of proactive, global monitoring on internet platform providers: the German Federal Court of Justice requires monitoring obligations only after a ‘sufficiently specific notice’ from the rightsholder; a merely abstract risk is insufficient.[[34]](#footnote-35) German case-law makes clear that, even after a takedown notice, an online-service provider is only required to examine and remove content that is “obvious and readily identifiable” as unlawful (“offenkundig und unschwer zu erkennen”).[[35]](#footnote-36)

Nevertheless, there is the possibility of liability privileges and proactively monitoring for platforms.

* 1. *Are there liability privileges available to platforms for intellectual property infringements by their users?*

For all digital intermediary services, the graduated liability exemptions in Articles 4–6 Digital Services Act (mere conduit, caching, hosting) apply. Articles 4–6 Digital Services Act perpetuate the former Sections 8–10 German Telemedia Act and confer privileges in both civil and criminal law; Section 7 para 1 German DSA Implementation Act even extends the exemption to providers of gratuitous Wi-Fi access.[[36]](#footnote-37)

The CJEU has confirmed these privileges in numerous decisions like *Google France* and *McFadden*.[[37]](#footnote-38) Under German law, they likewise govern claims under Section 97 German Copyright Act and under German Unfair Competition Act, so long as the platform operator does not assume an “active role” or appropriate third-party content. If the operator does appropriate such content—for example, by carrying out editorial review prior to publication—the privilege no longer applies.[[38]](#footnote-39)

* 1. *Describe whether platforms are allowed and/or encouraged to proactively monitor and/or remove user content possibly infringing intellectual property rights without losing their liability privileges (e.g. Good Samaritan rule under the DSA).*

Article 7 Digital Services Act codifies a *Good Samaritan* rule: platforms will not be deemed ineligible for the exemptions from liability solely because they, in good faith and in a diligent manner, voluntarily search for or remove unlawful content. Thus, this article allows service providers to carry out voluntary investigations to detect and remove unlawful content without losing their protection, provided they take expeditious action once they become aware of any infringement.[[39]](#footnote-40)

1. *Are there rules in your jurisdiction clarifying in how far and how platforms need to refrain from algorithmic content monitoring or other measures influencing user experience?*

German law contains no blanket prohibition on automated content processing; rather, it imposes limits and transparency duties wherever algorithmic systems are liable to affect pluralism of opinion or the rights of third parties.

Article 8 Digital Services Act prohibits public authorities from requiring platforms to engage in general, unconditional monitoring of content; every measure must be proportionate and may not undermine the core architecture of the liability exemptions.[[40]](#footnote-41) Conversely, the Digital Services Act establishes a tiered risk-management regime for algorithmic systems: online platforms must disclose the operating logic of their recommender systems under Article 27 Digital Services Act, while *very large online platforms* (Art. 38 Digital Services Act) must submit annual risk assessments (Art. 34) and external audits (Art. 37) that expressly address the impact of ranking and recommendation systems on fundamental rights.[[41]](#footnote-42)

In addition, the German State Media Treaty (Medienstaatsvertrag) applies. Under Section 93 German State Media Treaty, “media intermediaries” (e.g. social networks, search engines) must keep easily accessible information on the criteria by which content is aggregated, weighted and presented; Section 94 forbids arbitrary discrimination against journalistic offerings and obliges providers to identify third-party influence. Compliance is overseen administratively by the regional media authorities.

Accordingly, platforms may optimize their recommender systems, but:

* they must always disclose the criteria that shape ranking results;
* they may not engineer systematic distortion to the detriment of certain providers or viewpoints; and
* they may not operate comprehensive prior filtering of all user contributions, as this would violate Art. 8 Digital Services Act/Section 7 German DSA Implementation Act.

At the same time, Article 7 Digital Services Act (*good-Samaritan* rule) expressly permits voluntary, targeted review; operators who remove unlawful content *expeditiously* after self-detection retain the privileges of Article 6 Digital Services Act—provided their action does not degenerate into permanent general monitoring​.[[42]](#footnote-43)

For *online content-sharing service providers*, however, the German Copyright Service Providers Act mandates proactive upload filters (Sections 7 et seq. German Copyright Service Provider Act); in this sector the classical privileges do not apply, because the legislature attributes primary liability to the platform itself.[[43]](#footnote-44)

1. *Are liability privileges different in cases of IP infringements and/or unfair competition cases on the one hand and other possible infringements on the other hand?*

The liability exemptions in Articles 4 to 6 of the Digital Services Act (and, consequently, in Section 7 of the German DSA Implementation Act) are, in principle, neutral as regards both content and area of law; they apply equally to copyright and trademark infringements, unfair commercial practices, and violations of personality or data-protection rights. Divergences arise only through special statutes that either impose more far-reaching duties of care or removal obligations, or, conversely, grant additional safeguards.

**Mechanisms in cases of infringement**

1. *Are platforms required to provide mechanisms to report content that may be violating intellectual property rights in the respective jurisdiction? If yes, are there any requirements for such processes or mechanisms regarding the following points:*

In Germany, platforms are required to provide mechanisms for reporting content that may violate intellectual property rights, with specific obligations established by case law and the Digital Services Act.

Platforms, particularly hosting service providers, must implement mechanisms for reporting illegal content, including IP infringements. Article 16 para 1 Digital Services Act mandates that providers of hosting services put in place easily accessible and user-friendly electronic mechanisms for any individual or entity to notify them of allegedly illegal content. These mechanisms must facilitate the submission of "sufficiently precise and adequately substantiated notices," as detailed in Article 16 para 2 Digital Services Act, requiring elements such as an explanation of illegality, the exact location (URL), and the notifier's identity and bona fide belief. In addition, online platforms need ensure that notices from trusted flaggers are given priority and are processed and decided without undue delay.[[44]](#footnote-45)

As noted before, German case law, developed by the German Federal Court of Justice under the principles of liability as an interferer, has long established that platforms must react to clear notifications of IP infringements to avoid liability for third-party violations.[[45]](#footnote-46) The German Copyright Act also provides for a formal warning letter system in Section 97a German Copyright Act, which is a prerequisite for court action and encourages removal of infringing content.

* 1. *detection of possible IP infringements*

Platforms are generally not under a proactive, general obligation to monitor all user-generated content for IP infringements prior to notification. Article 8 para 1 Digital Services Act explicitly states that providers of intermediary services shall not be subject to general monitoring obligations.

However, a duty to act and thus to detect is triggered once a platform receives a *specific and clear notification* of an IP infringement. A notice meeting the requirements of Article 16 para 2 Digital Services Act is considered to give rise to actual knowledge or awareness for the purposes of Article 6 Digital Services Act if it allows a diligent provider to identify illegality without detailed legal examination (Article 16 para 3 Digital Services Act).

According to German Federal Court of Justice case law, upon receiving such a specific notification, a duty arises to immediately address the flagged content and to prevent future identical infringements ("takedown" and "staydown").[[46]](#footnote-47) If a platform operator has general knowledge that its service is being substantially used for copyright infringements, it must implement reasonable technological measures to counter such infringements, even without specific notifications for each instance (German Federal Court of Justice, principles established in cases following CJEU *YouTube/Cyando*, and applied in cases like *uploaded II*).[[47]](#footnote-48) However, for online marketplaces, which are excluded from the scope of the German Copyright Service Provider Act (see Section 3 no. 5 German Copyright Service Provider Act and Article 2 no. 6 DSM Directive), their stay-down obligation in copyright matters, such as an infringing photograph in an advertisement, extends to similarly presented listings but not necessarily all uses of the content (*Manhattan Bridge*).[[48]](#footnote-49)

* 1. *further processing procedure*

Upon receiving a notice, providers of hosting services must:

1. Send a confirmation of receipt to the notifier (if contact information is provided) without undue delay (Article 16 para 4 Digital Services Act).
2. Process notices and make decisions in a timely, diligent, non-arbitrary, and objective manner (Article 16 para 6 Digital Services Act).
3. Notify the notifier of its decision and any redress options without undue delay (Article 16 para 5 Digital Services Act).
4. If action is taken against content (e.g., removal), inform the user whose content is affected, providing reasons and redress options (Article 17 Digital Services Act).
5. Offer an internal complaint-handling system for users affected by such decisions for at least six months (Article 20 Digital Services Act).

German case law requires platforms to remove or disable access to clearly infringing content ("takedown") and take reasonable measures to prevent the re-upload of identical or "core-identical" infringing material ("staydown").[[49]](#footnote-50)

* 1. *timeframe*

The Digital Services Act requires processing of notices and decision-making to be "timely" and notifications to be sent "without undue delay" (Article 16 para 4, 16 para 5, 16 para 6 Digital Services Act). German Federal Court of Justice case law has emphasized that action must be "expeditious." For instance, the German Federal Court of Justice has ruled that allowing infringing content to remain accessible for two days after receipt of a proper notification may not be considered sufficiently expeditious.[[50]](#footnote-51)

* 1. *consequences in case of failure to adhere to aforementioned requirements*

Failure to comply can lead to:

1. **Liability for Injunctive Relief:** Under German law, if a platform fails to act upon a clear notification of an IP infringement, it can be held liable as an “interferer” and be subject to claims for injunctive relief (*Unterlassungsanspruch*) under provisions like Section 97 para 1 German Copyright Act for copyright infringements.
2. **Liability for Damages:** Platforms may be liable for damages (e.g., under Section 97 para 2 German Copyright Act for copyright) if they have breached their duties of care. This can occur if they fail to act upon notification or if they play an indispensable role in the infringement and have knowledge or should have known of the infringement, as per principles derived from CJEU jurisprudence (e.g., *YouTube/Cyando*) and applied by the German Federal Court of Justice (e.g., in *Manhattan Bridge* for online marketplaces, which found liability as a perpetrator for communication to the public could apply). For reproduction of copyrighted works on a platform's servers, the German Federal Court of Justice in *Manhattan Bridge* indicated that liability as a perpetrator is governed by national criminal law principles of perpetration and participation, rather than the *YouTube/Cyando* principles for communication to the public.[[51]](#footnote-52)
3. **Reimbursement of Legal Costs:** A rights holder who issues a justified warning letter (Section 97a German Copyright Act) can claim reimbursement of legal fees from the infringer; platform liability might extend to these costs if its inaction contributed.[[52]](#footnote-53)
4. **Administrative Fines:** Non-compliance with Digital Services Act obligations, including those under Articles 16, 17, and 20, can lead to significant administrative fines imposed by national Digital Services Coordinators under the framework of the Digital Services Act (Articles 52 and 74 Digital Services Act) and national implementing laws like the German DSA Implementation Act.
5. *Are there remedies, compensations or other legal requirements that can be directed against platforms in the case of infringement of intellectual property rights or unfair competition? If yes, please describe them and in what circumstances.*

**Out-of-Court and Court Actions**

In Germany, remedies against platforms for IP infringement or unfair competition involve both out-of-court and court procedures. Out-of-court actions, such as "notice and action" or formal warning letters (e.g., Section 97a German Copyright Act for copyright), initiate the process by alerting platforms to infringements and triggering their duties of care. If platforms fail to act, court procedures are necessary to secure binding remedies.

**Injunctive Relief (Unterlassungsanspruch)**

A primary remedy is injunctive relief (e.g., under Section 97 para 1 German Copyright Act; Section 8 para 1 German Act Against Unfair Competition; Section 14 para 5 German Trade Mark Act; Section 42 para 1 German Act on the Legal Protection of Designs, Section 139 para 1 German Patent Act, compelling a platform to cease and desist from the infringing activity and to prevent its recurrence. Such claims may arise if the platform is deemed a direct perpetrator or a participant in the infringement. More commonly, however, platforms become subject to injunctions under the principles of liability as an interferer, which applies, as discussed previously, when a platform breaches a duty of care, typically by failing to act expeditiously upon receiving a clear and substantiated notification of an infringement. For copyright violations, Section 97 para1 of the German Copyright Act provides the basis for such claims. In the context of unfair competition, Section 8 para 1 of the German Act Against Unfair Competition, in conjunction with the general clause of Section 3 German Act Against Unfair Competition or specific unfair practices outlined in Section 4 German Act Against Unfair Competition (such as misleading omissions or imitations causing avoidable confusion regarding commercial origin under Section 4 No. 3 German Act Against Unfair Competition), forms the foundation for injunctive relief. For trademark infringements, Section 14 para 5 of the German Trade Mark Act is the relevant provision. In design law, Article 19 para 1 of the Community Design Regulation[[53]](#footnote-54) (CDR) or Section 42 para 1 of the German Design Act (Designgesetz) applies. For access providers, the German Federal Court of Justice has held that injunctive relief in the form of blocking measures is an ultima ratio, available only under stringent conditions.[[54]](#footnote-55)

**Damages (Schadensersatz)**

Damages can be sought from platforms, only if culpable conduct (intent or negligence) is established. Under copyright law, Section 97 para 2 German Copyright Act allows for damage claims. The German Federal Court of Justice, influenced by CJEU jurisprudence (e.g., *Peterson v Google and Others and Elsevier v Cyando*), has evolved its stance, holding in cases like *YouTube II* and *uploaded II* that hosting providers can be liable for damages as indirect infringers if they breach duties of care and play an indispensable role in the infringement. This principle was extended to online marketplaces for acts of communication to the public in *Manhattan Bridge*, where the court considered perpetrator liability if the platform played an indispensable role.[[55]](#footnote-56) However, for acts of reproduction on a platform's servers, liability is assessed under national criminal law principles of perpetration and participation.[[56]](#footnote-57) For unfair competition, Section 9 German Act Against Unfair Competition provides for damages; notably, Section 9 para 2 German Act Against Unfair Competition allows consumers to claim damages if an unfair commercial practice induced a transactional decision they would not otherwise have made. For trademark infringements, damages are recoverable under Section 14 para 6 German Trade Mark Act. Similarly, in design law, Article 19 para 2 CDR or Section 42 para 2 of the German Design Act provides for damage claims. The CJEU's reasoning in *Louboutin*, concerning liability for platform operators who create a link between their own services and infringing goods, has influenced lower courts, such as the Regional Court Düsseldorf, to consider similar perpetrator liability for platforms in design infringement cases involving Community designs.[[57]](#footnote-58)

**Destruction or Recall (Vernichtungs- oder Rückrufanspruch)**

Claims for the destruction or recall of infringing goods are established in intellectual property law. Section 98 German Copyright Act provides this remedy for copyright infringements. For trademark infringements, Section 18 German Trade Mark Act allows for such measures, and Section 43 German Design Act provides equivalent rights for design infringements. These can be directed at platforms if they are in possession or control of the infringing items.

**Provision of Information (Auskunftsanspruch)**Rights holders may also demand information from infringers, including platforms under certain conditions, regarding the origin and distribution channels of infringing goods or services. This is provided for by Section 101 German Copyright Act in copyright law, Section 19 German Trade Mark Act in trademark law, and Section 46 German Design Act in design law. In unfair competition cases, such a claim can derive from general civil law principles (Section 242 German Civil Code) if necessary to substantiate other claims.

**Pecuniary Compensation for Non-Pecuniary Damage**In specific instances of copyright infringement affecting moral rights, Section 97 para 2 sentence 4 German Copyright Act allows authors and certain other rights holders to claim pecuniary compensation for non-pecuniary damages where equitable.

1. *Is the use of so-called ‘trusted flaggers’[[58]](#footnote-59) (or equivalents) established in the respective jurisdiction to identify and/or report possible infringements of intellectual property rights? If yes:*

The system of "trusted flaggers" is formally established in Germany through Article 22 of the Digital Services Act, enabling designated entities to identify and report illegal content, including intellectual property infringements, with their notices receiving prioritized handling by online platforms. The German Digital Services Coordinator, the Federal Network Agency (Bundesnetzagentur), is responsible for awarding this status in Germany.

* 1. *What criteria are applied?*

Regarding the criteria for appointment, Article 22 para 2 Digital Services Act stipulates that an applicant entity must demonstrate particular expertise and competence in detecting, identifying, and notifying illegal content (Article 22 para 2 lit. a Digital Services Act); operate independently from any provider of online platforms (Article 22 para 2 lit. b Digital Services Act); and conduct its activities for submitting notices diligently, accurately, and objectively (Article 22 para 2 lit. c Digital Services Act). Only entities, not individuals (Recital 61 Digital Services Act), established in the Union can apply. Trusted flaggers are also obligated under Article 22 para 3 Digital Services Act to publish annual reports on their activities.

* 1. *How are these entities identified, nominated, and/or appointed?*

The identification and appointment process involves an entity applying to the Digital Services Coordinator (“DSC”) of its Member State of establishment—in Germany, the Federal Network Agency. The DSC then assesses the application against the criteria outlined in Article 22 para 2 Digital Services Act. If the conditions are met, the DSC awards the trusted flagger status, which is then recognized across the EU for any online platform within the scope of Article 22 Digital Services Act. The European Commission maintains a publicly accessible database of entities awarded this status, based on information provided by national DSCs as per Article 22 para 4 Digital Services Act. The Federal Network Agency has outlined guidelines and has begun awarding this status, for example, to the REspect! reporting centre.

* 1. *If a possible infringement is reported by such an entity, are platforms to deviate from procedures regarding possible user reported by non-trusted flaggers (e.g. prioritised treatment of notices by trusted flaggers under the DSA)?*

When a possible infringement is reported by a designated trusted flagger, Article 22 para 1 Digital Services Act mandates that providers of online platforms must take the necessary technical and organizational measures to ensure that notices submitted by trusted flaggers, acting within their designated area of expertise and through the mechanisms referred to in Article 16 Digital Services Act, are given priority and are processed and decided upon without undue delay. This prioritized treatment is a deviation from the standard procedure for notices from non-trusted flaggers, reflecting the expectation that notices from trusted flaggers are more accurate due to their verified expertise and competence.

1. *Are there any requirements to be met in the respective jurisdiction before the removal of content that could possibly infringe on intellectual property rights (e.g. court orders)? If yes, does this affect the efficiency of “notice and action” procedures?*

In Germany, there is generally no overarching legal requirement for a court order before content that could possibly infringe on intellectual property rights is removed by a platform, particularly in the context of "notice and action" procedures initiated by rights holders. The system largely operates based on platforms responding to notifications of alleged infringements.[[59]](#footnote-60)

This "notice and action" mechanism does not presuppose a court order. Section 97a German Copyright Act establishes a system of issuing warning letters as a mandatory preliminary step before initiating court proceedings for an injunction, encouraging out-of-court removal by the infringer or the platform.

Therefore, the absence of a general requirement for a court order prior to removal in the context of notice and action procedures is fundamental to the efficiency of these systems. Requiring a court order for every instance of reported IP infringement before a platform could act would significantly delay the removal of illegal content, contrary to the principle of acting "expeditiously" established in both EU and German law.

1. *Are there measures in place to appeal content removal decisions based on infringement on intellectual property rights in the respective jurisdiction?*

Yes, in Germany, measures are in place to appeal content removal decisions based on alleged infringements of intellectual property rights, primarily structured by the Digital Services Act.

The Digital Services Act establishes a multi-tiered approach for users to contest content moderation decisions made by online platforms. Firstly, Article 20 para 1 Digital Services Act mandates that providers of hosting services provide recipients of their service, whose content has been removed or access to which has been restricted, with access to an effective internal complaint-handling system. This system allows users to lodge complaints electronically and free of charge against the platform's decision for a period of at least six months following the decision (Article 20 para 5 Digital Services Act). Platforms are required to make decisions on these complaints in a timely, non-discriminatory, non-arbitrary, and diligent manner (Article 20 para 4 Digital Services Act). If a complaint contains sufficient grounds, the platform must reverse its original decision without undue delay (Article 20 para 4 Digital Services Act), which could involve reinstating content deemed not to be illegal or incompatible with terms and conditions after review.

Secondly, beyond the internal complaint mechanism, Article 21 para 1 Digital Services Act grants recipients of the service, including those whose content was removed due to alleged IP infringements, the right to select any out-of-court dispute settlement body certified by a Digital Services Coordinator to resolve disputes relating to decisions taken by the platform. In Germany, the Digital Services Coordinator at the Federal Network Agency certifies these bodies. Users can turn to these certified organizations to request a review of an online platform's decision to delete content. These bodies mediate independently and impartially between the user and the online platform, with the costs generally borne by the platforms. The User Rights GmbH, for example, has been certified in Germany and focuses on dispute resolution on social media platforms like TikTok, Instagram, and LinkedIn.[[60]](#footnote-61)

**Fundamental Rights**

1. *In the respective jurisdiction, is there a safeguard in place to balance the enforcement of intellectual property rights and fundamental rights? If yes, describe the procedure(s) applicable.*

In Germany, the legislature and the courts have established safeguards to balance the enforcement of intellectual property (IP) rights with fundamental rights, particularly those enshrined in the German Basic Law (Grundgesetz) and the Charter of Fundamental Rights of the European Union.

The German legal system recognizes intellectual property as a fundamental right protected under Article 14 para 1 German Basic Law, which covers property rights, including copyright and related rights. However, this protection is not absolute. The conferral of IP rights and the definition of their scope and limitations are designed to balance the interests of right holders with other fundamental rights, such as freedom of expression (Art. 5 German Basic Law) and artistic freedom (Art. 5 para 3 German Basic Law). The German Federal Constitutional Court has clarified that these are not unilateral state interventions but rather a reconciliation of the freedoms of different parties, requiring a careful balancing of conflicting fundamental rights positions in each case.[[61]](#footnote-62)

Procedurally, this balancing is conducted by the courts when deciding on enforcement measures such as injunctions. The courts must assess whether the enforcement of an IP right would disproportionately interfere with other fundamental rights. This is particularly relevant in cases involving *inter alia* press publications (freedom of expression) or artistic works (artistic freedom). The German Federal Court of Justice has addressed this issue in cases such as “Afghanistan Papiere” and “Reformistischer Aufbruch”. In these cases, the German Federal Court of Justice, following preliminary rulings by the CJEU, acknowledged that fundamental rights such as freedom of the press and information must be considered even beyond the written exceptions in copyright law. The courts are thus required to conduct a case-by-case weighing of interests when examining copyright injunctions.[[62]](#footnote-63)

At EU level, the CJEU has reinforced the need for such balancing acts, emphasizing that measures, procedures, and remedies for IP enforcement must be effective, proportionate, as well as fair, and must not unduly infringe other fundamental rights (see CJEU, *Bastei Lübbe*).[[63]](#footnote-64) The German courts, when applying both national and EU law, are thus obliged to interpret and apply IP law in a manner that respects the EU Charter, particularly Article 17 para 2 (protection of intellectual property) and Articles 11 and 13 (freedom of expression and the arts).[[64]](#footnote-65)

Overall, the safeguards in Germany consist of a judicially mandated, case-by-case balancing of interests (“Interessenabwägung”), grounded in both national constitutional law and EU law. Courts must weigh the enforcement of IP rights against conflicting fundamental rights, especially in sensitive areas such as press and artistic freedom.[[65]](#footnote-66)

1. *In the past and within the respective jurisdiction, have there been cases of challenging the enforcement of intellectual property rights related to:*
   1. *freedom of expression*

In *Funke Medien NRW v. Federal Republic of Germany*, the Federal Republic of Germany sought to block the publication of classified military reports ("Afghanistan Papers") under copyright law.[[66]](#footnote-67) Funke Medien, a newspaper, argued that the publication served public interest. The CJEU ruled that EU member states must balance copyright enforcement with freedom of the press under Article 11 of the EU Charter. The German Federal Court of Justice subsequently held that press freedom outweighed copyright in this case, allowing publication as it addressed matters of significant public concern. Similarly, in *Spiegel Online v. Volker Beck* the CJEU confirmed that hyperlinking can fall under copyright exceptions for quotation and reporting, following this the German Federal Court of Justice permitted the use of hyperlinks to disputed political texts, emphasizing that copyright cannot suppress critical journalism aligned with democratic discourse.[[67]](#footnote-68)

* 1. *right to a fair trial*

In *Bastei Lübbe v. Strotzer* , the CJEU addressed the enforcement of copyright and the right to a fair trial.[[68]](#footnote-69) The case arose in front of German courts, after Bastei Lübbe sued Michael Strotzer for making an audiobook available via a peer-to-peer network (Section97 German Copyright Act). Strotzer denied responsibility, stating that his parents, who shared his internet connection, could have been the infringers. Under German law, based on the jurisprudence of the Bundesgerichtshof, the owner of the internet access satisfies their secondary burden of substantiation by stating whether and which other persons had independent access to their internet connection and could be considered as the infringer. If a family member had access, the owner of the internet access, due to the protection of marriage and family (Art. 6 German Basic Law and Art. 7 EU Charter), is not required to provide further details regarding the time or nature of the use.[[69]](#footnote-70) The German courts, following these national rules, accepted this defense without requiring further evidence.

The CJEU found this approach incompatible with the requirements of the Enforcement Directive[[70]](#footnote-71), particularly Article 3 para 1, which obliges Member States to ensure effective, proportionate, and dissuasive remedies for intellectual property enforcement. The Court also referenced Article 6 para 1 of the Enforcement Directive, which allows courts to order the disclosure of necessary evidence, and Article 8 para 1 of the InfoSoc Directive, which requires appropriate remedies against infringers.

The Court held that while the right to respect for private and family life (Article 7 EU Charter) must be considered, it cannot be given such weight that it renders copyright enforcement ineffective. The CJEU emphasized the need for a fair balance between the right to intellectual property (Article 17 para 2 EU Charter) and the rights of defendants, as well as the right to an effective remedy and a fair trial (Article 47 EU Charter). By allowing defendants to evade liability with only vague references to family members, German law failed to provide rights holders with a fair opportunity to enforce their rights and undermined the principle of equality of arms essential to a fair trial.

The CJEU required German courts to demand more concrete and specific evidence from defendants claiming third-party access and ensuring that procedural rules do not create unjust barriers for copyright holders and that the right to a fair trial is genuinely upheld in line with EU law.

* 1. *freedom of art*

The Metall auf Metall legal saga centered on a dispute between hip-hop producer Moses Pelham and Kraftwerk over Pelham’s unauthorized use of a two-second rhythm loop from Kraftwerk’s 1977 track in Sabrina Setlur’s 1997 song *Nur Mir*. In its 2016 ruling, the German Federal Constitutional Court prioritized artistic freedom (Article 5 para 3 German Basic Law) over copyright, allowing transformative sampling if it caused minimal harm to the original work’s commercial exploitation. The court criticized lower courts for imposing strict “self-production” requirements, arguing this stifled innovation in genres like hip-hop, where sampling is integral.[[71]](#footnote-72)

However, the CJEU in *Pelham v. Hütter, 2019* restricted this approach under EU law. It ruled that the InfoSoc Directive requires authorization for *any* sampling of phonograms, regardless of length or transformative intent, unless the sample is unrecognizable or qualifies for exceptions like parody or pastiche (Art. 5 para 3 lit. d and k InfoSoc Directive). The CJEU emphasized the primacy of phonogram producers’ rights (Art. 2 lit. c Rental and Lending Rights Directive[[72]](#footnote-73)) and rejected Germany’s broader “free use” doctrine (then-Section 24 German Copyright Act), which had allowed unlicensed transformative use.[[73]](#footnote-74)

This approach created a conflict between the German Federal Constitutional Court’s constitutional balancing test and EU harmonization. After the judgment of the CJEU, the German Federal Court of Justice applied the stricter standard in *Metall auf Metall IV*, requiring authorization for recognizable samples.[[74]](#footnote-75) However, in 2023, the German Federal Court of Justice referred questions to the CJEU again with its decision of 14. September (*Metall auf Metall V*) to clarify whether Germany’s new pastiche exception (Section 51a German Copyright Act) could justify unlicensed sampling under EU law.[[75]](#footnote-76)

* 1. *others?*

As mentioned above, in *Bastei Lübbe*, the defendant invoked family privacy rights to avoid liability for copyright infringement. However, the CJEU rejected this, stressing that privacy cannot circumvent effective IP enforcement.[[76]](#footnote-77)

Conversely, in a 2025 ruling, the German Federal Court of Justice allowed data protection breaches under the GDPR to be prosecuted as unfair competition violations. This enabled consumer associations to sue companies for inadequate data transparency, expanding remedies beyond administrative penalties.[[77]](#footnote-78)

* 1. *What was the outcome of these cases?*

The specific outcomes of the cases are already discussed above to better illustrate how this balancing is handled in practice. Generally, German courts seek to balance the enforcement of intellectual property rights with the protection of fundamental rights, applying the principle of proportionality.

**Reflection**

1. *Please state your assessment regarding the current responsibilities and/or obligations of online platforms in your jurisdiction, considering the questions raised above.*

The current responsibilities and obligations for online platforms in Germany reflect a period of significant transition and heightened accountability, driven largely by the direct application of the EU's Digital Services Act and its interaction with national legislation such as the German DSA Implementation Act, the German Copyright Act, and the German Act Against Unfair Competition. There is a notable jurisprudential shift, particularly concerning hosting providers, from the traditional, more circumscribed liability as an interferer primarily leading to injunctive relief, towards potential direct liability for damages. This evolution, influenced by Court of Justice of the European Union (CJEU) decisions like *YouTube/Cyando* and adopted by the German Federal Court of Justice in cases such as *Manhattan Bridge* and *uploaded II*, arises especially when platforms breach duties of care regarding notified illegal content.[[78]](#footnote-79)

While platforms continue to benefit from liability exemptions for passive intermediary conduct under Articles 4-6 Digital Services Act and are not subjected to general monitoring obligations as per Article 8 Digital Services Act and Section 7 para 2 German DSA Implementation Act, the Digital Services Act imposes substantial procedural duties. These include the establishment of robust notice and action mechanisms (Article 16 Digital Services Act), the prioritisation of notices from trusted flaggers (Article 22 Digital Services Act), and the provision of internal complaint-handling systems (Article 20 Digital Services Act). The "Good Samaritan" clause in Article 7 Digital Services Act encourages voluntary proactive content moderation without automatic loss of liability privileges, yet this is carefully balanced against the prohibition of general monitoring.

A central characteristic of the German legal landscape is the continuous judicial and legislative effort to reconcile effective IP and unfair competition enforcement with fundamental rights, such as freedom of expression and information, requiring nuanced, case-by-case evaluations by the courts. The framework thus aims for EU-wide harmonization while accommodating specific national measures, like the proactive obligations for online content-sharing service providers under the German Copyright Service Provider Act, which transposes Article 17 of the DSM Directive.

Overall, the regulatory environment in Germany imposes increased diligence and transparency obligations on platforms, endeavoring to maintain a sophisticated approach to liability that differentiates based on the platform's specific role and its actual knowledge of infringements.

1. *In the foreseeable future, are there developments with regard to legislation, case law, or policy initiatives to be expected? Provide us with your view and suggestions to enhance the legal landscape.*

The legal framework governing platform liability in Germany is anticipated to undergo further refinement, primarily through the ongoing interpretation and practical application of the Digital Services Act, alongside related national statutes such as the German DSA Implementation Act and the German Copyright Service Provider Act. Judicial pronouncements from German courts, especially the German Federal Court of Justice, and the CJEU will be pivotal in delineating the precise scope of platform responsibilities.

Key areas for clarification will likely include the exact contours of duties of care, the threshold for establishing "actual knowledge" of illegal content under Article 6 Digital Services Act, and the operational effectiveness of new mechanisms like "trusted flaggers" (Article 22 Digital Services Act) and out-of-court dispute settlement bodies (Article 21 Digital Services Act).

Policy initiatives may concentrate on enhancing the enforcement capabilities of the German Digital Services Coordinator, the Federal Network Agency, and ensuring the robust implementation of the Digital Service Act's risk assessment and mitigation obligations for Very Large Online Platforms (VLOPs) as mandated by Articles 34 and 35 Digital Services Act, with particular attention to their impact on fundamental rights and the dissemination of illegal content.

On a similar note,

* draft bill to transpose the EU Data Act entered consultation in February 2025 and, if adopted, will force large platforms to open data interfaces—raising fresh questions about trade-secret and copyright leakage.
* In parallel, the Bundesnetzagentur is road-testing its enforcement tools (January 2025 “stress test”) and expanding staff, so 2025-26 should see the first high-profile Digital Services Act investigations.
* At EU level the Court of Justice is still seized of *Metall auf Metall V* on the reach of the new pastiche exception; a judgment could oblige the German legislature to revisit Section 51a UrhG and the UrhDaG “bagatell-schranke”.
* The Article 17 DSM/UrhDaG regime will itself be evaluated by the Commission in 2026, leaving room for adjustments if filtering proves disproportionate.
* Meanwhile the forthcoming AI Act, already criticized for a copyright loophole, is likely to spark an implementing bill in Berlin; whether it closes or codifies that gap will shape the liability of generative-AI-driven platforms.

To enhance the existing legal landscape.

1. *To what extent might the increasing use of automated content filtering systems risk the capture of content that is lawful according to fair dealing (criticism / review / quotation) and the exception for parody, pastiche, and caricature? Are there developments in legislation, case law or policy initiatives in your jurisdiction that (attempt to) deal with this?*

The increasing deployment of automated content filtering systems by online platforms in Germany poses a tangible risk of erroneously identifying and removing lawful content, especially material protected by copyright exceptions and limitations such as those for criticism, review, quotation, parody, pastiche, and caricature. This risk stems from the inherent limitations of automated technologies in interpreting nuanced legal doctrines like transformative use or satirical intent, which frequently necessitate contextual human assessment. While Article 8 Digital Services Act, implemented by Section 7 para 2 German DSA Implementation Act, prohibits imposing general monitoring obligations on most platforms, thereby offering a safeguard against excessively broad preemptive filtering mandates, specific regulations for "online content-sharing service providers" under the German Copyright Service Providers Act, which transposes Article 17 of the DSM Directive, do impose duties that often lead to the use of upload filters (Section 7 et seq. German Copyright Service Provider Act). This consequently elevates the risk of "over-blocking" legitimate content on these platforms.

Several mechanisms and legal developments in Germany aim to mitigate this risk. The Digital Services Act itself furnishes users with remedies against wrongful content removal: Article 20 Digital Services Act mandates that platforms provide effective internal complaint-handling systems, and Article 21 Digital Services Act establishes access to out-of-court dispute settlement bodies. These avenues allow users to challenge decisions to remove their content. Moreover, the "Good Samaritan" principle codified in Article 7 Digital Services Act, while encouraging proactive content review, does not shield platforms from liability if their voluntary filtering results in unjustified removals that are not subsequently rectified.

German jurisprudence and legislative actions also strive to balance IP enforcement with the protection of fundamental rights. The *Metall auf Metall* litigation is a notable example, where the German Federal Constitutional Court ( initially underscored artistic freedom in the context of music sampling, a stance later refined by CJEU rulings that emphasized phonogram producers' rights.[[79]](#footnote-80) The subsequent enactment of a specific German copyright exception for caricature, parody, and pastiche (Section 51a German Copyright Act) represents a legislative effort to safeguard such expressive uses. The German Federal Court of Justice’s referral of further questions to the CJEU in *Metall auf Metall V* concerning this Section 51a German Copyright Act demonstrates an ongoing judicial endeavor to clarify the boundaries of lawful use under EU law, thereby addressing the challenges posed by automated filtering.[[80]](#footnote-81) Courts are also consistently required to ensure that any filtering obligations imposed are proportionate and accord with fundamental rights, a principle reiterated in CJEU case law (e.g., *Scarlet Extended*) and acknowledged by the German Federal Court of Justice.[[81]](#footnote-82)

1. The LIDC has addressed this issue, albeit from a di6erent perspective, in the reports for Question B from 2011. [↑](#footnote-ref-2)
2. e.g., Art. 3 (i) DSA. [↑](#footnote-ref-3)
3. See for example: German Federal Court of Justice, Judgment of 09. June 1983 I ZR 70/81 - *Kopierläden*, German Federal Court of Justice, Judgment of 15. October 1998 – I ZR 120 / 96 - *Möbelklassiker*, and German Federal Court of Justice, Judgment of 18. October 2001 – I ZR 22/99 – *Meißner Dekor*; for an overview see German Federal Court of Justice, Judgment of 15. October 2020 – I ZR 13/19 – *Störerhaftung des Registrars*. [↑](#footnote-ref-4)
4. Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) [2000] OJ L178/1. [↑](#footnote-ref-5)
5. Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society [2001] OJ L167/10. [↑](#footnote-ref-6)
6. Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market [2019] OJ L130/92. [↑](#footnote-ref-7)
7. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) [2022] OJ L277/1. [↑](#footnote-ref-8)
8. Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU as regards the better enforcement and modernisation of Union consumer protection rules [2019] OJ L328/7. [↑](#footnote-ref-9)
9. German Federal Court of Justice, Judgment of 09. June 1983 – I ZR 70/81 – *Kopierläden*, German Federal Court of Justice, Judgment of 15. October 1998 – I ZR 120 / 96 – *Möbelklassiker*, and German Federal Court of Justice, Judgment of 18. October 2001 – I ZR 22/99 – *Meißner Dekor*; for an overview see German Federal Court of Justice, Judgment of 15. October2020 – I ZR 13/19 – *Störerhaftung des Registrars*. [↑](#footnote-ref-10)
10. Court of Justice of the European Union, Case C‑324/09 *L’Oréal SA and Others v eBay International AG and Others* [ECLI:EU:C:2011:474]. [↑](#footnote-ref-11)
11. Court of Justice of the European Union, Joined Cases C‑682/18 *Frank Peterson v Google LLC and Others* and Case C‑683/18 *Elsevier Inc v Cyando* [ECLI:EU:C:2021:503]. [↑](#footnote-ref-12)
12. German Federal Court of Justice, Judgment of 2. September 2021 – I ZR 140/15 – *YouTube II*; German Federal Court of Justice, Judgment of 2. September 2021 – I ZR 153/17 – *Uploaded II*; German Federal Court of Justice, Judgment of 23. October 2024 – I ZR 112/23 – *Manhattan Bridge*. [↑](#footnote-ref-13)
13. Jan Bernd Nordemann, ‘German news on the EU liability concept for indirect infringers of copyright: A push forward by the BGH for communication to the public – and a step back for reproduction’ (Kluwer Copyright Blog, 13 January 2025) [https://copyrightblog.kluweriplaw.com/2025/01/13/german-news-on-the-eu-liability-concept-for-indirect-infringers-of-copyright-a-push-forward-by-the-bgh-for-communication-to-the-public-and-a-step-back-for-reproduction/](https://copyrightblog.kluweriplaw.com/2025/01/13/german-news-on-the-eu-liability-concept-for-indirect-infringers-of-copyright-a-push-forward-by-the-bgh-for-communication-to-the-public-and-a-step-back-for-reproduction/" \t "_new) accessed 24 June 2025; German Federal Court of Justice, Judgment of 14. March 2024 – I ZR 112/23 – *Manhattan Bridge*, headnotes point c. [↑](#footnote-ref-14)
14. Hoeren/Sieber/Holznagel MMR-HdB/Schmittmann, 62. EL June 2024, Teil 9 paras 134-162;; [Digitale-Dienste-Gesetz: Mehr Sicherheit online | Bundesregierung](https://www.bundesregierung.de/breg-de/aktuelles/digitale-dienste-gesetz-2250526?utm_source=chatgpt.com). [↑](#footnote-ref-15)
15. On former Section 7 para 4 German Telemedia Act: German Federal Court of Justice, Judgment of 26. July 2018 – I ZR 64/17 – *Dead Island*, headnotes point a. [↑](#footnote-ref-16)
16. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) [2022] OJ L277/1, Article 3 lit. i, Article 3 lit. j and Recital 28, and Article 33. [↑](#footnote-ref-17)
17. Dreier/Schulze/Specht-Riemenschneider/Raue, 8. Aufl. 2025, UrhG, Section 97 German Copyright Act paras 38-45; Court of Justice of the European Union, Case C‑484/14 *Tobias McFadden v Sony Music Entertainment Germany GmbH* [ECLI:EU:C:2016:689], para 44 ff. [↑](#footnote-ref-18)
18. Dreier/Schulze/Specht-Riemenschneider/Raue, 8. Aufl. 2025, UrhG, Section 97 German Copyright Act paras 38-45. [↑](#footnote-ref-19)
19. Dreier/Schulze/Specht-Riemenschneider/Raue, 8. Aufl. 2025, UrhG, Section 97 German Copyright Act para 46a. [↑](#footnote-ref-20)
20. Dreier/Schulze/Specht-Riemenschneider/Raue, 8. Aufl. 2025, UrhG, Section 97 German Copyright Act para 43a; similarly,  NK-DSA/Hofmann, DSA Art. 3, para 63 ff.; Raue/Heesen NJW 2022, [3537](https://beck-online.beck.de/?typ=reference&y=300&z=NJW&b=2022&s=3537) ([3538](https://beck-online.beck.de/?typ=reference&y=300&z=NJW&b=2022&sx=3538)); Dregelies MMR 2022, [1033](https://beck-online.beck.de/?typ=reference&y=300&z=MMR&b=2022&s=1033); Sesing-Wagenpfeil CR 2023, [113](https://beck-online.beck.de/?typ=reference&y=300&z=CR&b=2023&s=113). [↑](#footnote-ref-21)
21. Dreier/Schulze/Specht-Riemenschneider/Raue, 8. Aufl. 2025, UrhG, Section 97 German Copyright Act para 40. [↑](#footnote-ref-22)
22. Hoeren/Sieber/Holznagel MMR-HdB/Schmittmann, 62. EL June 2024, Teil 9 paras 134-162; German Federal Court of Justice, Judgment of25. March 2015 – I ZR 94/13 – *Hotelbewertungsportal*. [↑](#footnote-ref-23)
23. German Federal Court of Justice, Decision of  11. January2017 – 5 StR 164/16 – *Kinox.to*; Decision of the Higher Regional Court of Frankfurt am Main of 20. August 2013 – 2 Ws 103/12; Decision of the Kammergericht (Higher Regional Court of Berlin) of 25. August 2014 – 4 Ws 71/14 - 141 AR 363/14; Decision of the Higher Regional Court of Köln of 28. March 2017 – 1 RVs 281/16, MMR 2018, 400; Ohly/Sosnitza/Sosnitza, 8. Aufl. 2023, UWG, Section 16 German Unfair Competition Act; Dreier/Schulze/Specht-Riemenschneider/Raue, 8. Aufl. 2025, UrhG, Section 97 German Copyright Act paras 46-55. [↑](#footnote-ref-24)
24. Dreier/Schulze/Specht-Riemenschneider/Raue, 8. Aufl. 2025, UrhG, Section 97 German Copyright Act paras 46-55; German Federal Court of Justice, Decision of 26 November 2015 – 5 StR 164/16 – *Kinox.to*. [↑](#footnote-ref-25)
25. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act)[2022] OJ L 277/1, recital 20; Dreier/Schulze/Specht-Riemenschneider/Raue, 8. Aufl. 2025, UrhG, Section 97 German Copyright Act paras 46-55. [↑](#footnote-ref-26)
26. Dreier/Schulze/Specht-Riemenschneider/Raue, 8. Aufl. 2025, UrhG, Section 97 German Copyright Act paras 35b and 41; see for reference: Court of Justice of the European Union, Joined Cases C‑682/18 *Frank Peterson v Google LLC and Others* and Case C‑683/18 *Elsevier Inc v Cyando* [ECLI:EU:C:2021:503]. [↑](#footnote-ref-27)
27. Dreier/Schulze/Specht-Riemenschneider/Raue, 8. Aufl. 2025, UrhG, Section 97 German Copyright Act paras 38-45; German Federal Court of Justice, Judgment of 13. October 2022 – I ZR 111/21 – *DNS Sperre*. [↑](#footnote-ref-28)
28. Hoeren/Sieber/Holznagel MMR-HdB/Schmittmann, 62. EL June 2024, Teil 9 paras 134-162; See German Federal Court of Justice, Judgment of 17. December 2010 – Störerhaftung für rechtswidrige Verwertung von Fotos auf einer Internet-Plattform, para 17. [↑](#footnote-ref-29)
29. Dreier/Schulze/Specht-Riemenschneider/Raue, 8. Aufl. 2025, UrhG, Section 97 German Copyright Act para 42. [↑](#footnote-ref-30)
30. Dreier/Schulze/Specht-Riemenschneider/Raue, 8. Aufl. 2025, UrhG, Section 97 German Copyright Act paras 38-45; German Federal Court of Justice, Judgment of 12. November 2009 – I ZR 166/07 – marions-kochbuch.de, para 24. [↑](#footnote-ref-31)
31. Hoeren/Sieber/Holznagel MMR-HdB/Schmittmann, 62. EL June 2024, Teil 9 paras 134-162; So German Federal Court of Justice, Judgment of 30. July 2015 – I ZR 104/14 – Posterlounge. [↑](#footnote-ref-32)
32. Hoeren/Sieber/Holznagel MMR-HdB/Schmittmann, 62. EL June 2024, Teil 9 paras 134-162. [↑](#footnote-ref-33)
33. Dreier/Schulze/Specht-Riemenschneider/Raue, 8. Aufl. 2025, UrhG, Section 97 German Copyright Act para 44; Court of Justice of the European Union, Case C-70/10 *Scarlet Extended* [ECLI:EU:C:2011:771]. [↑](#footnote-ref-34)
34. German Federal Court of Justice, Judgment of 17. August 2011 – I ZR 57/09 – *Stiftparfüm*, paras 26 and 28. [↑](#footnote-ref-35)
35. German Federal Court of Justice, Judgment of 16. May 2013 – I ZR 216/11 – *Kinderhochstühle im Internet II*, para 34; See, for example, German Federal Court of Justice, Judgment of 17. May 2001 – I ZR 251/99 – *ambiente.de*; German Federal Court of Justice, Judgment of 19. April 2007 – I ZR 35/04 – *Internet-Versteigerung II*; German Federal Court of Justice, Judgment of 22. July 2010 – I ZR 139/08 – *Kinderhochstühle im Internet I*. [↑](#footnote-ref-36)
36. Dreier/Schulze/Specht-Riemenschneider/Raue, 8. Aufl. 2025, UrhG, Section 97 German Copyright Act paras 38-45. [↑](#footnote-ref-37)
37. Court of Justice of the European Union, Joined Cases C-236/08 to C-238/08 *Google France SARL and Google Inc v Louis Vuitton Malletier SA and Others* [ECLI:EU:C:2010:159]; Court of Justice of the European Union, Case C‑484/14 *Tobias McFadden v Sony Music Entertainment Germany GmbH* [ECLI:EU:C:2016:689]. [↑](#footnote-ref-38)
38. Hoeren/Sieber/Holznagel MMR-HdB/Schmittmann, 62. EL June 2024, Teil 9 paras 134-162; See German Federal Court of Justice, Judgment of 12. November 2009 – I ZR 166/07 – marions-kochbuch.de, para 31. [↑](#footnote-ref-39)
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42. Dreier/Schulze/Specht-Riemenschneider/Raue, 8. Aufl. 2025, UrhG, Section 97 German Copyright Act paras 38-45. [↑](#footnote-ref-43)
43. Dreier/Schulze/Specht-Riemenschneider/Raue, 8. Aufl. 2025, UrhG, Section 97 German Copyright Act paras 46-55. [↑](#footnote-ref-44)
44. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) [2022] OJ L277/1, Article 22. [↑](#footnote-ref-45)
45. German Federal Court of Justice, Judgment of 17. August 2011 – I ZR 57/09 - *Stiftparfüm*, paras 26 and 28; German Federal Court of Justice, Judgment of 16. May 2013 – I ZR 216/11 – *Kinderhochstühle im Internet II*, para 34. [↑](#footnote-ref-46)
46. German Federal Court of Justice, Judgment of 2. June 2022 - I ZR 140/15 – *YouTube II*; German Federal Court of Justice, Judgment of 2. June 2022 - I ZR 53/17 – *uploaded II*; German Federal Court of Justice, Judgment of 2. June 2022 - I ZR 135/18 – *uploaded III*; implementation of CJEU Judgement from 22. June 2021 - C-682/18 und C-683/18 – *YouTube/Cyando*. [↑](#footnote-ref-47)
47. Court of Justice of the European Union, Joined Cases C‑682/18 *Frank Peterson v Google LLC and Others* and Case C‑683/18 *Elsevier Inc v Cyando* [ECLI:EU:C:2021:503], paras 84, 85 and 102; German Federal Court of Justice, Judgment of 2. September 2021 – I ZR 153/17 – *uploaded II*, paras 33 and 34. [↑](#footnote-ref-48)
48. German Federal Court of Justice, Judgment of 23. October 2024 – I ZR 112/23 – *Manhattan Bridge*. [↑](#footnote-ref-49)
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55. German Federal Court of Justice, Judgment of 23. October 2024 – I ZR 112/23 – *Manhattan Bridge*, headnote a. [↑](#footnote-ref-56)
56. German Federal Court of Justice, Judgment of 2. September 2021 – I ZR 153/17 – *uploaded II*; German Federal Court of Justice, Judgment of 23. October 2024 – I ZR 112/23 – *Manhattan Bridge*, headnote c. [↑](#footnote-ref-57)
57. Court of Justice of the European Union, Case C-163/16 *Christian Louboutin and Christian Louboutin SAS v Van Haren Schoenen BV* ECLI:EU:C:2018:423; Regional Court Düsseldorf, Judgment of 22. August 2023 – 14c O 67/23. [↑](#footnote-ref-58)
58. Under the DSA, trusted flaggers have been introduced as special entities specialised in detecting and reporting illegal online content on platforms. Notices submitted by these entities are to be prioritised by the online platforms. For more information, see Art 22 DSA. [↑](#footnote-ref-59)
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62. <https://copyrightblog.kluweriplaw.com/2020/05/28/does-copyright-law-have-to-balance-fundamental-rights-beyond-the-written-exceptions-unfortunately-the-german-federal-supreme-court-has-recently-left-this-question-open/>; Court of Justice of the European Union, Case C-469/17 *Funke Medien NRW GmbH v Bundesrepublik Deutschland* [ECLI:EU:C:2019:623]; Court of Justice of the European Union, Case C-516/17 *Spiegel Online GmbH v Volker Beck* [ECLI:EU:C:2019:625]; German Federal Court of Justice, Judgment of 30. April 2020 – I ZR 139/15 – *Afghanistan Papiere II*; German Federal Court of Justice, Judgment of 30. April 2020 – I ZR 228/15 *Reformischer Aufbruch II*. [↑](#footnote-ref-63)
63. Court of Justice of the European Union, Case C-149/17 *Bastei Lübbe GmbH & Co. KG v Michael Strotzer* [ECLI:EU:C:2018:841]. [↑](#footnote-ref-64)
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65. Federal Constitutional Court, Judgment of 31. May 2016 – 1 BvR 1585/13 – *Metall auf Metall*;, German Federal Court of Justice, Judgment of 30. April 2020 – I ZR 139/15 – *Afghanistan Papiere II*; German Federal Court of Justice, Judgment of 30. April 2020 – I ZR 228/15 *Reformischer Aufbruch II*; Court of Justice of the European Union, Case C-469/17 – *Funke Medien NRW GmbH v Bundesrepublik Deutschland* [ECLI:EU:C:2019:623]; Court of Justice of the European Union, Case C-516/17 *Spiegel Online GmbH v Volker Beck* [ECLI:EU:C:2019:625] and Court of Justice of the European Union, Case C-149/17 *Bastei Lübbe GmbH & Co. KG v Michael Strotzer* [ECLI:EU:C:2018:841]. . [↑](#footnote-ref-66)
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67. Court of Justice of the European Union, Case C-516/17 *Spiegel Online GmbH v Volker Beck* [ECLI:EU:C:2019:625]; German Federal Court of Justice, Judgment of 30. April 2020 – I ZR 228/15 – *Reformischer Aufbruch II.* [↑](#footnote-ref-68)
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70. Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights [2004] OJ L157/45. [↑](#footnote-ref-71)
71. German Federal Constitutional Court, Judgment of 31. May 2016 – 1 BvR 1585/13 – *Metall auf Metall*. [↑](#footnote-ref-72)
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74. German Federal Court of Justice, Judgment of 30. April 2020 – I ZR 115/16 – *Metall auf Metall IV*. [↑](#footnote-ref-75)
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