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**TACKLING ONLINE EXTREMISM THROUGH TAKEDOWNS: A CRITICAL ANALYSIS
OF THE NETZDG**

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REGULATING THE INTERNET

- The EU and its Member States have largely relied on a series of ‘soft’ law obligations and voluntary cooperation from hosting platforms to aid them in the fight against illegal terrorist content and hate speech – gradual shift towards ‘hard’ law instruments (Kuczerawy 2018)
- NetzDG, EU Proposal for a Regulation on preventing the dissemination of terrorist content online, UK ‘Online Harms’ White Paper
- Issues regarding freedom of expression and privatisation of law enforcement

OUTLINE

- Has the implementation of the NetzDG demonstrated signs of over-blocking with regards to *reported* content?
- What is the evidence concerning the safeguarding freedom of speech?
- The future of takedowns and content moderation

NETZWERKDURCHSETZUNGSGESETZ (NETWORK ENFORCEMENT ACT - NETZDG)

- Came into full effect on 1 January 2018
- 22 statutory offences already existing in the StGB (German Criminal Code)
 - Insult, defamation, etc. §130, §166, §185, §186 StGB, terrorist offences §86, §91, §129a StGB, and stifling the spread of fake news through laws that prohibit, ‘Treasonous forgery’, and ‘Forgery of data intended to provide proof’ (§100a and §269 StGB, respectively)
- Fines of up to €50 million for failing to ‘systematically’ delete illegal content 7 days* after a complaint is filed (§4 NetzDG)

PROCESS OF FLAGGING AND REMOVAL



EVIDENCE OF OVER-BLOCKING THROUGH THE NETZDG?

	Reported	Removed	Removal Rate
YouTube	465,124	112,941	24%
Facebook	2,752	731	27%
Twitter	521,280	51,810	10%

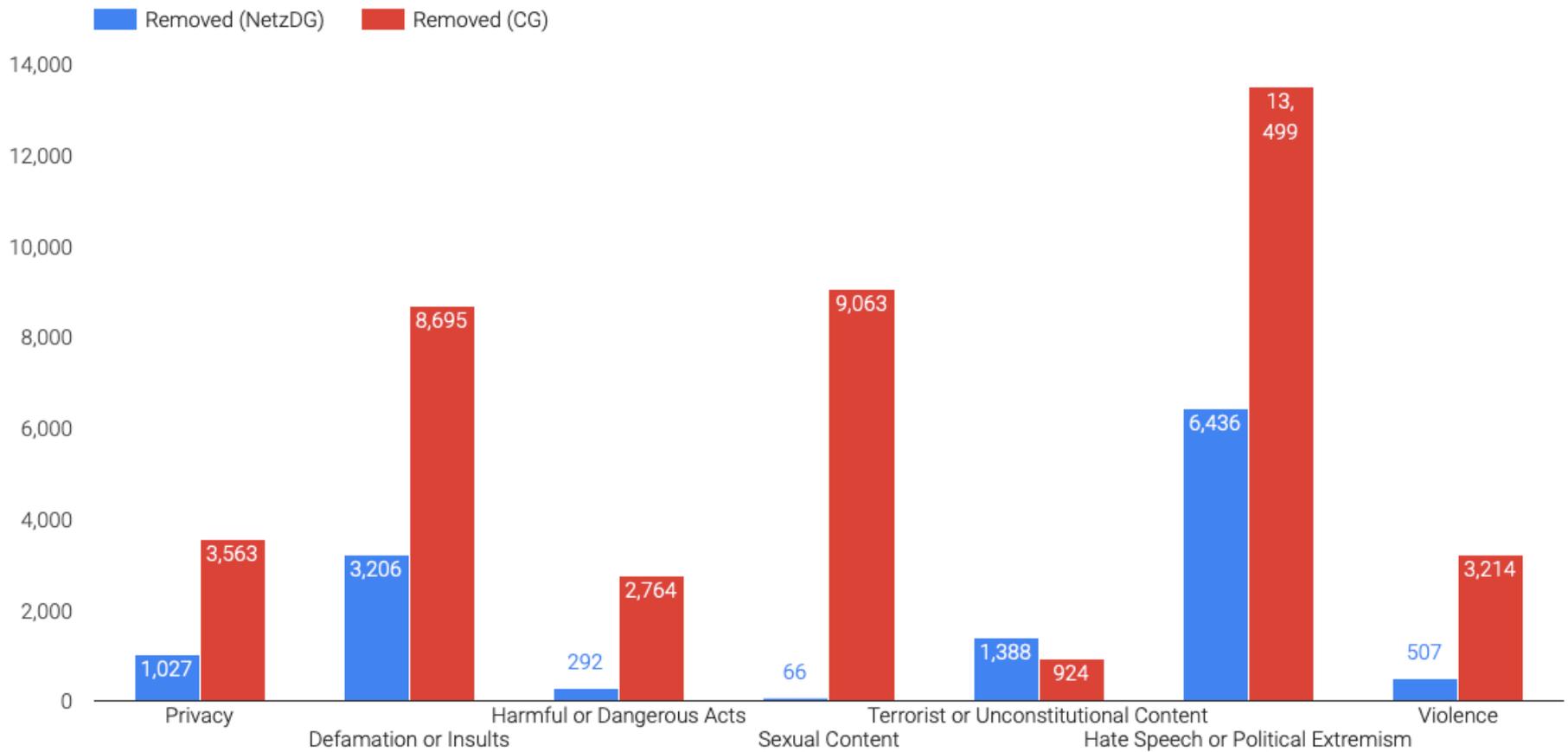
SOURCES: GOOGLE, FACEBOOK, AND TWITTER TRANSPARENCY REPORTS JAN-JUN 2018 & JUL-DEC 2018

PRIORITISING COMMUNITY STANDARDS

- Companies are prioritising Community Standards to assess content
- Facebook – more difficult to report compared to YouTube and Twitter (Echikson and Knodt 2018, Heldt 2019)

Community Guideline enforcement versus NetzDG statutes

GOOGLE TRANSPARENCY REPORT JUN – DEC 2018



FREEDOM OF SPEECH

- Indirect application of fundamental rights between private individuals and private companies
- Limits to Freedom of Speech - Article 5(2) Basic Law
- Outsourcing decisions to private companies

COURT CASES AGAINST FACEBOOK

Facebook ordered to reinstate content	Court ruled in favour of Facebook
LG Berlin v.23.03.2018 - 31 O 21/18	OLG Dresden v. 8.8.2018 - 4 W 577/18
LG Frankfurt v. 14.05.2018 - 2-03 O 182/18	OLG Stuttgart v. 6.9.2018 - 4 W 63/18
LG Köln v. 27.07.2018 - 24 O 187/18	OLG Karlsruhe v. 28.2.2019 - 6 W 81/18
OLG München v. 24.08.2018 – 18 W 1294/18	
BVerfG v. 22.05.2019 - 1 BvQ 42/19 (III Weg)	

LG KÖLN 27.07.2018 - 24 O 187/18

“And the German taxpayer gets up at half six in the morning in order to go to work and pay for these shameless freeloaders”

“I can no longer bear these vermin in our country...Everything that our country urgently needs remains undone, because all resources are concentrated on the riots of Merkel's guests! Just recently an attack involving a poisonous substance in Cologne was prevented thanks to the intelligence service[...] Get these people out of the country, they don't belong here!”

LG KÖLN 27.07.2018 - 24 O 187/18 – DECISION

- The LG ruled that there is no criminal offence in the two comments of the claimant
- Since their statements were not directed at **individuals**, but referred in general to persons who apply for asylum or recognition as refugees, thus an insult according to § 185 of the Criminal Code is out of the question
- There is also no incitement of the people within the meaning of § 130 of the Criminal Code
- Nor can Facebook successfully invoke its so-called Community Standards

THE FUTURE OF TAKEDOWNS AND CONTENT MODERATION

NetzDG	EU Proposal for a Regulation on terrorist content	UK Online Harms White Paper
German Criminal Law	Terrorist content as defined in Article 3(1)(a) to (i) of the Directive 2017/541	Illegal and 'unacceptable' or 'harmful' content
User and Agency Flagging	Judicial or functionally independent administrative authority (EP amendment)	Enforce a statutory duty of care, overseen by an independent regulator
24 Hours 'obviously illegal content' and 7 days for questionable content	Remove content within one hour	N/A
Platforms with at least 2 million users that receive more than 200 complaints in a calendar year	Hosting Service Providers	All hosting platforms

CONCLUSIONS

- Hard to draw conclusions from transparency reports alone, but no strong evidence re. over-blocking of content specifically reported via the NetzDG
- Primacy of Community Standards – ‘nudging’ as a result of the NetzDG or power struggle?
- Courts are upholding freedom of speech to a certain extent – BUT costly and time consuming
- Future points to increased hard laws and the removal of illegal and potentially legal content on all hosting platforms with stricter time limits
- Relying on formal laws in isolation, rather than a variety of Community Standards from different platforms, would add clarity and transparency to the process of takedowns – extremists are actually exploiting these inconsistencies in governance (see Ganesh 2018)



THANK YOU!

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