

**A Due Process of Platforms as a Constitutional Requirement:
An Analysis of German NetzDG from a Constitutional Law
Perspective**

Hui-chieh Su*

Abstract

In a moment, in which numerous countries are confronted with the challenge of disinformation and struggle with a new media regulatory framework, it seems rational and even necessary to make a thorough review of German Network Enforcement Act (Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken, NetzDG). In order to understand and evaluate NetzDG correctly from the perspective of comparative law, this essay analyzes its texts and its reformed regulatory framework carefully.

German legislators reveal their following assessment clearly in the norms of NetzDG: Profit-seeking internet platforms, which enable users to share content with other users and do not bear content responsibility themselves, extend damages to certain penal coded-protected interests on the basis of their business operating models, so that a strengthened “due process of platform” is normatively legitimate and necessary to prevent these damages. Meanwhile, the compliance system NetzDG introduces triggers multilateral interest conflicts between government, social network platforms and platform users, especially the serious doubt about content overblocking, or in other words, illegitimate infringement of freedom of speech of platform users through collateral censorship of regulated platforms. To deal with this question, this essay analyzes the normative status of platforms’ actions from the aspect of dogmatics of German fundamental rights and further scrutinizes constitutionality of the current compliance system. In the

* Assistant Professor, College of Law, National Taiwan University.
E-mail: huichiehsu@ntu.edu.tw

author's opinion, the one-sided regulatory framework of NetzDG that only aims at effective enforcement of specific interests protected by German Penal Code and overlooks the right of participation of content providers, leads to an unconstitutional infringement of freedom of speech, for which the government is responsible via compliance system.

Although the current version of NetzDG is unconstitutional for overly restricting freedom of speech of platform users according to this essay, the author believes that a revised NetzDG with better procedural protection can be the outset of a shift of media regulation paradigm.

Keywords: NetzDG, social network site, social media, information bottleneck, overblocking, due process of platform, internet intermediary, legal compliance, freedom of speech, specific constellation (spezifische Konstellation)