

Mapping interpretations of the law in online content moderation in Germany

Wagner, Ben; Kettemann, Matthias C.; Tiedeke, Anna Sophia; Rachinger, Felicitas; Sekwenz, Marie Therese

DOI

[10.1016/j.clsr.2024.106054](https://doi.org/10.1016/j.clsr.2024.106054)

Publication date

2024

Document Version

Final published version

Published in

Computer Law and Security Review

Citation (APA)

Wagner, B., Kettemann, M. C., Tiedeke, A. S., Rachinger, F., & Sekwenz, M. T. (2024). Mapping interpretations of the law in online content moderation in Germany. *Computer Law and Security Review*, 55, Article 106054. <https://doi.org/10.1016/j.clsr.2024.106054>

Important note

To cite this publication, please use the final published version (if applicable). Please check the document version above.

Copyright

Other than for strictly personal use, it is not permitted to download, forward or distribute the text or part of it, without the consent of the author(s) and/or copyright holder(s), unless the work is under an open content license such as Creative Commons.

Takedown policy

Please contact us and provide details if you believe this document breaches copyrights. We will remove access to the work immediately and investigate your claim.



Mapping interpretations of the law in online content moderation in Germany

Ben Wagner^{a,b,f,*}, Matthias C. Kettmann^{c,d,e}, Anna Sophia Tiedeke^c, Felicitas Rachinger^e, Marie-Therese Sekwenz^{a,f}

^a Faculty of Technology, Policy and Management at TU Delft, the Netherlands

^b ARC Research Center at Inholland University of Applied Science, the Netherlands

^c Leibniz-Institute for Media Research, Hans-Bredow-Institut (HBI), Germany

^d The Humboldt Institute for Internet and Society (HIIG), Germany

^e Department of Legal Theory, Future of Law at the University of Innsbruck, Austria

^f AI Futures Lab on Rights and Justice, TU Delft, the Netherlands

ARTICLE INFO

Keywords:

Content moderation
Freedom of Expression
Social media
Germany
Illegal content
Digital services act

ABSTRACT

Content moderation is a vital condition that online platforms must facilitate, according to the law, to create suitable online environments for their users. By the law, we mean national or European laws that require the removal of content by online platforms, such as EU Regulation 2021/784, which addresses the dissemination of terrorist content online. Content moderation required by these national or European laws, summarised here as ‘the law’, is different from the moderation of pieces of content that is not directly required by law but instead is conducted voluntarily by the platforms. New regulatory requests create an additional layer of complexity of legal grounds for the moderation of content and are relevant to platforms’ daily decisions. The decisions made are either grounded in reasons stemming from different sources of law, such as international or national provisions, or can be based on contractual grounds, such as the platform’s Terms of Service and Community Standards. However, how to empirically measure these essential aspects of content moderation remains unclear. Therefore, we ask the following research question: How do online platforms interpret the law when they moderate online content?

To understand this complex interplay and empirically test the quality of a platform’s content moderation claims, this article develops a methodology that facilitates empirical evidence of the individual decisions taken per piece of content while highlighting the subjective element of content classification by human moderators. We then apply this methodology to a single empirical case, an anonymous medium-sized German platform that provided us access to their content moderation decisions. With more knowledge of how platforms interpret the law, we can better understand the complex nature of content moderation, its regulation and compliance practices, and to what degree legal moderation might differ from moderation due to contractual reasons in dimensions such as the need for context, information, and time.

Our results show considerable divergence between the platform’s interpretation of the law and ours. We believe that a significant number of platform legal interpretations are incorrect due to divergent interpretations of the law and that platforms are removing legal content that they falsely believe to be illegal (‘overblocking’) while simultaneously not moderating illegal content (‘underblocking’). In conclusion, we provide recommendations for content moderation system design that takes (legal) human content moderation into account and creates new methodological ways to test its quality and effect on speech in online platforms.

* Corresponding author at: Faculty of Technology, Policy and Management at TU Delft; ARC Research Center at Inholland University of Applied Sciences, the Netherlands.

E-mail address: ben@benwagner.org (B. Wagner).

<https://doi.org/10.1016/j.clsr.2024.106054>

1. Introduction

Understanding how online platforms interpret legal requirements to take down online content remains challenging for scholars and media regulators.¹ Although platforms publish transparency reports and other legal requirements stemming from international, national, or contractual sources for transparency and compliance of content moderation, the vast majority of decisions regarding online content moderation remain extraordinarily difficult to study in depth.² At the same time, there is an increasingly broad societal debate about the governance of social media platforms,³ of which the governance of online content moderation is a key aspect.⁴ However, this debate takes place in an empirical vacuum. For example, online platforms make statements about the extent to which they moderate content, such as Meta's claim about Facebook that the "prevalence of hate speech from July 2020 to September 2020 was 0.10–0.11 %",⁵ without backing up this statement with verifiable empirical data.

As such, it should be unsurprising that platforms have been heavily criticised for lacking transparency, accountability, and procedural safeguards in their content moderation decisions.⁶ At the same time,

¹ Ben Wagner and Lubos Kuklis, 'Disinformation, Data Verification and Social Media: Verifying Data through Auditing Intermediaries', *Dealing with Digital Dominance* (Oxford University Press 2021).

² Christopher Parsons, 'The (In)Effectiveness of Voluntarily Produced Transparency Reports' (2019) 58 *Business & Society* 103; Rebecca Zipursky, 'Nuts About NETZ: The Network Enforcement Act and Freedom of Expression' (2019) 42 *Fordham International Law Journal* 1325; Ben Wagner and others, 'Regulating Transparency? Facebook, Twitter and the German Network Enforcement Act' (ACM Conference on Fairness Accountability and Transparency (FAT* 2020) 2020).

³ Blayne Haggart and Clara Iglesias Keller, 'Democratic Legitimacy in Global Platform Governance' (2021) 45 *Telecommunications Policy* 102152; Mikkel Flyverbom, 'Disclosing and Concealing: Internet Governance, Information Control and the Management of Visibility' (2016) 5 *Internet Policy Review Journal* on internet regulation; Robert Gorwa, 'Elections, Institutions, and the Regulatory Politics of Platform Governance: The Case of the German NetzDG' (2021) 45 *Telecommunications Policy* 102145; Amélie Heldt, 'Let's Meet Halfway: Sharing New Responsibilities in a Digital Age' (2019) 9 *Journal of Information Policy* 336; Michel Eeten and Milton Mueller, 'Where Is the Governance in Internet Governance' (2013) 15 *New Media & Society* 720.

⁴ Amélie Heldt and Stephan Dreyer, 'Competent Third Parties and Content Moderation on Platforms: Potentials of Independent Decision-Making Bodies From A Governance Structure Perspective' (2021) 11 *Penn State University Press* 266; Evelyn Douek, 'Content Moderation as Administration' (Social Science Research Network 2022) SSRN Scholarly Paper ID 4005326 <<https://papers.ssrn.com/abstract=4005326>> accessed 13 March 2022; Evelyn Douek, 'The Rise of Content Cartels' (Social Science Research Network 2020) SSRN Scholarly Paper ID 3572309 <<https://papers.ssrn.com/abstract=3572309>> accessed 1 August 2021; Kyle Langvardt, 'Regulating Online Content Moderation' (2017) 106 *Georgetown Law Journal* 1353; Andreas Veglis, 'Moderation Techniques for Social Media Content' in Gabriele Meiselwitz (ed), *Social Computing and Social Media* (Springer International Publishing 2014).

⁵ 'Measuring Our Progress Combating Hate Speech' (Meta, 19 November 2020) <<https://about.fb.com/news/2020/11/measuring-progress-combating-hate-speech/>> accessed 2 May 2023.

⁶ ACLU and others, 'Santa Clara Principles on Transparency and Accountability in Content Moderation' (Santa Clara Principles, 2018) <<https://santaclaraprinciples.org/images/scp-og.png>> accessed 20 August 2019; Sarah T Roberts, 'Digital Detritus: Error and the Logic of Opacity in Social Media Content Moderation' [2018] *First Monday*; Ben Wagner, 'Freedom of Expression on the Internet: Implications for Foreign Policy' [2011] *Global Information Society Watch* 18; Marjorie Heins, 'The Brave New World of Social Media Censorship' (2013) 127 *Harvard Law Review Forum* 325; Liz Woolery, Ryan Budish and Kevin Bankston, 'The Transparency Reporting Toolkit – Guide and Template' (Open Technology Institute and Harvard University Berkman Klein Center for Internet & Society 2016).

critics argue that Meta's Facebook blocks either too much⁷ or too little⁸ content. Considering these claims of overblocking and underblocking, it is argued that online platforms are doing content moderation wrong at all levels.⁹

Perhaps the first and most crucial question is this: How do online platforms interpret the law when they moderate online content?

By the law, we mean national or European laws that require the removal of content by online platforms, for example, EU Regulation 2021/784, which addresses the dissemination of terrorist content online. Content moderation required by these national or European laws, summarised here as 'the law', stands in contrast to the moderation of pieces of content that is not directly required by law but instead is conducted voluntarily by the platforms. While all online platforms claim to follow the law, whether it is of international, national, or contractual origin, when they moderate online content,¹⁰ the law is not a static object.¹¹ Differences in how platforms and their critics interpret legal rules for content removal could explain why claims of overblocking and underblocking content are so common.¹²

Content moderation can be based either on the law or on the platform's Terms of Service (ToS). Often, an overlap between the two grounds is possible. Therefore, the relationship between legally required content removal and content removal based on a platform's ToS is blurry for various reasons. To a certain degree, all platforms have integrated

⁷ Roberts (n 6).

⁸ Alex Hern, 'How Hate Speech Campaigners Found Facebook's Weak Spot' *The Guardian* (2020) <<https://www.theguardian.com/technology/2020/jun/29/how-hate-speech-campaigners-found-facebooks-weak-spot>> accessed 24 November 2020.

⁹ Ysabel Gerrard, 'Beyond the Hashtag: Circumventing Content Moderation on Social Media' (2018) 20 *New Media & Society* 4492; *Cengiz and Others v Turkey* [2015] ECHR 48226/10, 14027/11.

¹⁰ 'Legal Policies - YouTube Help' <<https://support.google.com/youtube/topic/6154211?hl=en>> accessed 6 February 2023; 'YouTube Legal Content Removals - How YouTube Works' (YouTube Legal Content Removals - How YouTube Works) <<https://www.youtube.com/howyoutubeworks/policies/legal-removals/>> accessed 6 February 2023; 'Other Legal Complaint - YouTube Help' <https://support.google.com/youtube/contact/other_legal> accessed 6 February 2023; 'Internet Regulations | Meta' (*Internet Regulations*) <<https://about.meta.com/regulations/>> accessed 6 February 2023; 'Charting a Way Forward on Online Content Regulation' (Meta, 17 February 2020) <<https://about.fb.com/news/2020/02/online-content-regulation/>> accessed 6 February 2023; 'Promoting Safety and Expression | Meta' <<https://about.meta.com/actions/promoting-safety-and-expression/>> accessed 6 February 2023; 'The Twitter Rules: Safety, Privacy, Authenticity, and More' <<https://help.twitter.com/en/rules-and-policies/twitter-rules>> accessed 6 February 2023; 'Our Policy on Illegal or Certain Regulated Goods and Services' <<https://help.twitter.com/en/rules-and-policies/regulated-goods-services>> accessed 6 February 2023.

¹¹ European Data Protection Board, 'Binding Decision 3/2022 on the Dispute Submitted by the Irish SA on Meta Platforms Ireland Limited and Its Facebook Service (Art. 65 GDPR)' <https://edpb.europa.eu/system/files/2023-01/edpb_bindingdecision_202203_ie_sa_meta_facebookservice_redacted_en.pdf> accessed 6 February 2023; European Data Protection Board, 'Binding Decision 4/2022 on the Dispute Submitted by the Irish SA on Meta Platforms Ireland Limited and Its Instagram Service (Art. 65 GDPR)' <https://edpb.europa.eu/system/files/2023-01/edpb_binding_decision_202204_ie_sa_meta_instagramservice_redacted_en.pdf> accessed 6 February 2023; *Frank Peterson v Google LLC and Others and Elsevier Incv Cyando AG* [2021] ECJ Joined Cases C-682/18 and C-683/18.

¹² Wolfgang Hoffmann-Riem, 'Legal Technology/Computational Law' 16; Paul B de Laat, 'Coercion or Empowerment? Moderation of Content in Wikipedia as "Essentially Contested" Bureaucratic Rules' (2012) 14 *Ethics and Information Technology* 123; Evelyn Mary Aswad, 'The Future of Freedom of Expression Online' (2018) 17 *Duke Law & Technology Review* 26.

legal norms into their ToS; some legal frameworks, such as the EU's Audiovisual Media Services Directive (AVMSD), even explicitly require platforms to change their ToS.¹³ Similarly, the Digital Services Act (DSA) has created new rules regarding ToS, which are setting the stage for future research in the content moderation domain. According to Art. 14, the Act demands that ToS "include information on any restrictions that [providers of intermediary services] impose in relation to the use of their service".¹⁴ Since at the time this research project was conducted, the DSA was not in place, we will not focus on it here. Some platforms, such as Meta's Facebook,¹⁵ have explicitly tried to keep their ToS separate from country-specific national legislation, for example, the German Network Enforcement Act (NetzDG)¹⁶ and the Austrian Communication Platform Act (KoPL-G).¹⁷ There has also been a frequent concern that platforms might implement takedown legislation overbroadly to limit the likelihood of legal liability from incorrectly interpreting the law.¹⁸ Finally, many countries have criticised large international platforms, such as Twitter (now named X), for their lack of willingness to follow 'local' laws.¹⁹ This claimed lack of willingness of large international platforms to implement legal frameworks effectively has been a critical driver of regulatory debates around the German NetzDG and Austria's KoPL-G.

This article attempts to answer this fundamental question: **How do online platforms interpret the law when they moderate online content?** In doing this, we aim to provide a much-needed empirical basis for the existing debate on content moderation online. After clarifying the scope and key definitions, we discuss our case selection. We decided to study content moderation in Germany, as we believe this is

one of the most interesting country use cases. Germany has complained the most loudly about the lack of international platforms' adherence to the law²⁰ and was among the first European Member States to craft corresponding regulations.²¹ To study content moderation in Germany, we first explain why content should be legally removed in the specific national context and how ToS typically allow for content removal. We then present our methodology and its results when applied to our dataset. We analysed the content moderation data of a medium-sized German online platform with approximately 720,000 posts of user-generated content per month. This online platform uses both paid moderation staff and community moderators to conduct its content moderation.

Based on this analysis, we attempt to make empirical claims about the relationship between ToS and legal content moderation. Additionally, we analyse how online platforms interpret the law in content moderation. This opens up discussions about legal content moderation decisions. In conclusion, we suggest that content moderators receive legal training and are provided with enough time in their work to make informed decisions. Furthermore, we see the need for new standards for legal interpretation in the content moderation domain. We also suggest more transparency about the content moderation process on online platforms. We identify the need for better insight into the reasons for making moderation decisions on platforms. At the same time, we understand the complexity of the underlying problem and the difficulty of interpreting the law in content moderation. We believe that a more misinterpretation-aware understanding of content moderation and problem-aware design solutions are central to effectively addressing the challenge. Finally, we emphasise the need for easy and reliable researcher access to validate and control online platforms' content moderation systems and processes.

1.2. Definitions, scope, and limitations

To answer our research question: **How do online platforms interpret the law when they moderate online content?**, it is first necessary to develop a research design that considers how to study the relevant legal provisions and ToS.

The research question relates to how platforms interpret the law, which shapes online environments.²² In this context, we study "the law as a behavioural system"²³ and, specifically, the role of the law in inducing behaviours by those trying to enforce legal rules. Notably, by law or legal provision, we differentiate between what is required by legal provisions that require the removal of content and what is required by contractual law, such as ToS, which is defined as all the platform rules, codes, and norms used to moderate content on an online platform that are not explicitly mandated by the law in a specific jurisdiction. An example of the contractual relationships between users and platforms is

¹³ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (codified version) (Text with EEA relevance) Text with EEA relevance 2018.

¹⁴ 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) (Text with EEA relevance) 2022 (OJ L).

¹⁵ Wagner and others (n 2).

¹⁶ Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken – Network Enforcement Act 2017 3352 ff.

¹⁷ Bundesgesetz über Maßnahmen zum Schutz der Nutzer auf Kommunikationsplattformen (Kommunikationsplattformen-Gesetz – KoPL-G – Communication Platforms Act) 2020 [BGBl. I Nr. 151/2020].

¹⁸ Rebecca Zipursky, 'Nuts About NETZ: The Network Enforcement Act and Freedom of Expression' (2019) 42 Fordham International Law Journal 1325; Céline Castets-Renard, 'Algorithmic Content Moderation on Social Media in EU Law: Illusion of Perfect Enforcement' (Social Science Research Network 2020) SSRN Scholarly Paper ID 3535107 <<https://papers.ssrn.com/abstract=3535107>> accessed 17 May 2021; Jennifer Cobbe, 'Algorithmic Censorship by Social Platforms: Power and Resistance' (2021) 34 Philosophy & Technology 739.

¹⁹ Barbara Wimmer, 'Twitter ignoriert Hass-im-Netz-Gesetz' (22 November 2021) <<https://futurezone.at/netzpolitik/hass-im-netz-gesetz-twitter-meldepflicht-klage/401814856>> accessed 9 February 2023; 'Germany Fines Facebook for Under-Reporting Complaints' *Reuters* (2 July 2019) <<https://www.reuters.com/article/us-facebook-germany-fine-idUSKCN1TX11C>> accessed 9 February 2023; Ben Wagner and others, 'Regulating Transparency? Facebook, Twitter and the German Network Enforcement Act', *Proceedings of the 2020 Conference on Fairness, Accountability, and Transparency* (Association for Computing Machinery 2020) <<https://doi.org/10.1145/3351095.3372856>> accessed 9 February 2023.

²⁰ 'Germany Fines Facebook for Under-Reporting Complaints' *Reuters* (2019) <<https://www.reuters.com/article/us-facebook-germany-fine-idUSKCN1TX11C>> accessed 22 July 2019; William Echikson and Olivia Knodt, 'Germany's NetzDG: A Key Test for Combatting Online Hate' (Social Science Research Network 2018) SSRN Scholarly Paper ID 3300636 <<https://papers.ssrn.com/abstract=3300636>> accessed 17 July 2019.

²¹ Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken – Network Enforcement Act (n 17); Loi du 29 juillet 1881 sur la liberté de la presse - Légifrance 1881; Bundesgesetz über Maßnahmen zum Schutz der Nutzer auf Kommunikationsplattformen (Kommunikationsplattformen-Gesetz – KoPL-G – Communication Platforms Act) (n 18).

²² John Sutton, *Law/Society: Origins, Interactions, and Change*, vol 474 (Pine Forge Press 2001).

²³ Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken – Network Enforcement Act (n 17); Loi du 29 juillet 1881 sur la liberté de la presse - Légifrance 1881; Bundesgesetz über Maßnahmen zum Schutz der Nutzer auf Kommunikationsplattformen (Kommunikationsplattformen-Gesetz – KoPL-G – Communication Platforms Act) (n 18).

an online platform's Community Standards (CS), which are included in the ToS. The CS describe undesired behaviour within the online platform and the consequences for violating such rules, for example, deplatforming, applying warning labels, etc. The use of CS can be challenging, however, as some laws, such as the AVMSD,²⁴ mandate changes to online platforms' ToS.²⁵ We assume that such legal passages would fall under the category of "mandated by law", as well as ToS.

Perhaps most importantly, this applied legal-socio-technical research cannot be conducted without an empirical baseline. Unless we can measure platforms' interpretations of the law against some other ground truth,²⁶ we cannot measure how they interpret the law beyond very small qualitative samples, often selected to highlight a specific point or follow a specific agenda. In our case study, ground truth is represented by a legally annotated dataset evaluated by experts to compare the platform's real content moderation decisions. Because we wanted to conduct this analysis in a manner that could be considered representative, we decided to use ground truth as a baseline that we developed and coded as a team of researchers. To this end, we used the codebook provided in Annex I, containing all the relevant legal norms for the specific country context we were studying, to our knowledge, as well as a category for the ToS used by large online platforms in this country representatively.²⁷ This codebook was then used as a baseline to assess the platform's divergent interpretation of the law.

We believe that the most illuminating analysis of this research question can be provided by an in-depth case study that looks at a single platform in detail to understand its content moderation decisions. Such decisions are highly context specific, depending on the content being analysed and the platform conducting the analysis. Importantly, a study by the World Association of Newspapers and News Publishers (WAN-IFRA) of over a hundred medium-sized online news platforms found that an average of 10–11 % of all user-generated online content is deleted by moderators, with most studies of online forums hovering around this level of moderation.²⁸ This study provides a useful empirical baseline for future analysis while integrating the results into a broader academic context.

At the same time, we acknowledge the limitations of this approach. A single case study's empirical results will necessarily be limited to one platform. This restricts the possibility of comparisons with other platforms; therefore, generalisations are only possible insofar as this platform represents a set of similar platforms. We will discuss this issue in Sections 5 and 6, which provide policy recommendations.

Moreover, the results of the case study are dependent on our socio-

legal interpretations of the law. Insofar as these contain significant bias or other systematic misinterpretations of the law, this could pose a considerable challenge to the representativeness of the results. Rather than hide from this challenge, we prefer to foreground it as a valuable part of the analysis. By acknowledging the degree of subjectivity in our own coding method, which included two coders, and the underlying process, we measure intercoder reliability for the content moderation decisions representatively.²⁹ To reduce disagreement among the coding team regarding content moderation decisions, we choose to discuss the socio-legal nature of our legal categories. The subjective uncertainty of the coders per decision is documented, and we include this detail in the analysis and discussion of our results.

In conclusion, although we acknowledge the limitations of our approach, we believe in the value of our analysis. It is well known that large online platforms conduct these kinds of analyses frequently without sharing their results with the public. By increasing the amount of research in this area with this analysis and shedding light on the socio-technical process of content moderation, we aim to strengthen the empirical foundations for a broader debate about governing online content moderation.

2. Legal grounds for German platforms to moderate online content

This section provides an overview of the norms relevant to the German context of content moderation, including the perspectives of human rights and European, international, and national provisions.

2.1. Overview of human rights, European provisions, and international provisions in the scope of content moderation in Germany

Platforms located in Germany must follow German law, and Germany has its own national provisions that apply to online platforms. Furthermore, Germany is a Member State of the EU. The EU protects human rights³⁰ as a primary law in its Charter of Fundamental Rights, which is applicable in the context of EU law. Moreover, the European Convention on Human Rights (ECHR) protects cases that are not limited to application within the context of EU law.³¹ Additionally, the national constitutional norms addressing freedom of information and expression can be found in Art. 4 and Art. 5 of German Basic Law.³²

The Audiovisual Media Service Directive (AVMSD)³³ harmonises the audiovisual media landscape by proposing rules that are within the scope of traditional forms of media, which include broadcast TV³⁴ and

²⁴ See Art 6, Art 8-10 AVMSD, Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (codified version) (Text with EEA relevance)Text with EEA relevance.

²⁵ Art 3 lit u DSA defines terms and conditions (which can be seen as a synonym for ToS) as, [...] means all clauses, irrespective of their name or form, which govern the contractual relationship between the provider of intermediary services and the recipients of the service“.

²⁶ Michael Muller and others, 'Designing Ground Truth and the Social Life of Labels', *Proceedings of the 2021 CHI Conference on Human Factors in Computing Systems* (Association for Computing Machinery 2021) <<https://doi.org/10.1145/3411764.3445402>> accessed 9 February 2023.

²⁷ Anna-Sophia Tiedeke and others, 'What Can Be Said Online in Germany and Austria? A Legal and Terms of Service Taxonomy' (Social Science Research Network 2020) SSRN Scholarly Paper ID 3735932 <<https://papers.ssrn.com/abstract=3735932>> accessed 22 August 2021.

²⁸ Emma Goodman, 'Online Comment Moderation: Emerging Best Practices' 14.

²⁹ Louis M Hsu and Ronald Field, 'Interrater Agreement Measures: Comments on Kappa, Cohen's Kappa, Scott's π , and Aickin's α ' (2003) 2 *Understanding Statistics* 205.

³⁰ Which, for example, is relevant for audits for systemic risks according to Art. 34 para. 1 lit b DSA, 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) (Text with EEA relevance).

³¹ Council of Europe, 'Convention for the Protection of Human Rights and Fundamental Freedoms'.

³² Basic Law for the Federal Republic of Germany 1949.

³³ 'Directive (EU) 2018/1808 of the European Parliament and the Council of 14 November 2018 amending Directive 2010/13/EU on the Coordination of Certain Provisions Laid down by Law, Regulation or Administrative Action in Member States Concerning the Provision of Audiovisual Media Services (Audiovisual Media Services Directive) in View of Changing Market Realities'.

³⁴ See Art. 1 (1) lit e ibid.

on-demand services.³⁵ In its definition of “services”, the AVMSD includes linear and nonlinear services.³⁶ The AVMSD addresses the rules for video-sharing platform services (VSPs)³⁷ in Art. 28a and 28b.

The obligations for VSPs include taking “appropriate measures” to protect minors from content that might “impair their physical, mental or moral development”,³⁸ such as content that contains incitement to violence or “hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter”,³⁹ or content that constitutes a criminal offence “under Union law, namely public provocation to commit a terrorist offence [...] offences concerning child pornography [...] and offences concerning racism and xenophobia”.⁴⁰ According to Art. 28b (3) of the AVMSD, whether a measure of a VSP is classified as “appropriate” or not shall recognise the content in question. Furthermore, the factor of “appropriateness” weighs the potential harm of the content, the characteristics of the protected group, and the rights and legitimate interests of the case. Those interests may include the VSP, the creators of the content, and the general public.

The AVMSD prohibits the inclusion of ex-ante moderation measures (such as upload filters). However, it foresees specific rules for the protection of minors under Art. 6a and Art. 28b (1) lit a to avoid the risk posed to minors, for example, through Child Sexual Abuse Material, also referred to as CSAM.⁴¹ While we acknowledge the risk that CSAM content poses to online platforms, our analysis does not specifically focus on CSAM content on online platforms due to the specific use case and legal uncertainty about the proposed regulation. The “appropriative measures” to be taken by VSPs are further described in Art. 28b, para. 3, of AVMSD as actions involving ToS, notice-action mechanisms, information about the flagging process, age verification, parental control systems, content-rating functionality, or media literacy measures and tools.⁴²

Additionally, international norms in the domain of online platforms are primarily binding regulatory instruments for states. They might also be relevant to platforms in specific contexts (e.g., consumer protection) connected to the services provided.

Platforms operating in Germany take into account several provisions from the corpus of international law for the regulation of speech. This corpus can include sources such as the Security Council resolution 1566,⁴³ the General Assembly’s Declaration on Measures to Eliminate International Terrorism, the 1999 International Convention for the

Suppression of the Financing of Terrorism,⁴⁴ the International Covenant on Civil and Political Rights⁴⁵ (ICCPR),⁴⁶ the Declaration of the Rights of the Child,⁴⁷ the United Nations Convention against Transnational Organized Crime and the Protocols,⁴⁸ Article III of the Convention on the Prevention and Punishment of the Crime of Genocide,⁴⁹ the Rome Statute of the International Criminal Court,⁵⁰ with the corresponding Articles 25 (3) and 6 focusing on the prevention of the incitement to or promotion of genocide.

2.2. National provisions in Germany relevant to content moderation

Within national law, the German NetzDG has regulated aspects of content moderation since 2017.⁵¹ The NetzDG provides a list of norms that shall be qualified under its definition of “unlawful content”, according to Art. 1 (3).⁵² Furthermore, the national regulation includes a biannual reporting obligation that provides insight into the complaint management of unlawful content from platforms. Additionally, NetzDG’s Art. 2 requires platforms to report on their mitigation efforts around “criminally punishable activity”, information on the mechanisms intended to flag unlawful content, and details about how the decisions in the process of setting content moderation actions (e.g., to delete the content in question or to block access to it) are made. Also included in the required information are the quantity of unlawful content, the details about the flagging of users (complaint body or “normal” platform user), and the reason for flagging the content in the first place. In addition, the NetzDG asks for detailed information regarding the human content moderation teams and their organisations. Since the recent revision of the law (NetzDGÄndG), the concrete link between Art. 3d, the AVMSD, and the NetzDGÄndG has become even clearer and stresses the importance of holistic compliance and auditing approaches

⁴⁴ *ibid*; United Nations, ‘Security Council Resolution 2178 (2014) No 881/2002 of 27 May SC Res 2178’ <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/547/98/PDF/N1454798.pdf?OpenElement>> accessed 9 February 2023; United Nations, ‘Security Council Resolution 2331 (2016)’ <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/451/58/PDF/N1645158.pdf?OpenElement>> accessed 9 February 2023; United Nations, ‘Security Council Resolutions 2388 (2017)’ <https://www.un.org/en/ga/sea/rch/view_doc.asp?symbol=S/RES/2388%282017%29> accessed 9 February 2023; FATF, ‘Financial Action Task Force (FATF) Terrorist Financing’ (2023) <<https://www.fatf-gafi.org/en/topics/Terrorist-Financing.html>> accessed 9 February 2023; EUR-Lex - 32016D1693 - EN - EUR-Lex.

⁴⁵ Of which Art. 24 focuses on provisions regulating the sexual exploitation of children, child abuse material, or anything objectionable involving minors, such as grooming or predation.

⁴⁶ General Assembly, ‘International Covenant on Civil and Political Rights’ <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>> accessed 9 February 2023.

⁴⁷ General Assembly, ‘Convention on the Rights of the Child’ <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>> accessed 9 February 2023.

⁴⁸ General Assembly, ‘Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime’ <<https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>> accessed 9 February 2023.

⁴⁹ ‘General Assembly Resolution 260 A (III) Convention on the Prevention and Punishment of the Crime of Genocide’ <<https://www.un.org/en/genocideprevention/genocide-convention.shtml>> accessed 9 February 2023.

⁵⁰ International Criminal Court, Rome Statute of the International Criminal Court 2002.

⁵¹ Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken – Network Enforcement Act (n 17).

⁵² The NetzDG refers to “sections 86, 86a, 89a, 91, 100a, 111, 126, 129 to 129b, 130, 131, 140, 166, 184b in connection with 184d, 185 to 187, 241 or 269 of the Criminal Code”.

³⁵ See Art. 1 (1) lit g, *ibid*.

³⁶ See Art. 1 (1) lit a, *ibid*.

³⁷ See Art. 1 (1) lit aa AVMSD, *ibid*.

³⁸ See Art. 28 (1) lit a AVMSD *ibid*.

³⁹ Art. 28b (1) lit b AVMSD, *ibid*.

⁴⁰ See Art. 28b (1) lit c AVMSD, *ibid*.

⁴¹ Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse 2022.

⁴² See Art. 28b (3) lit a-j AVMSD, ‘Directive (EU) 2018/1808 of the European Parliament and the Council of 14 November 2018 amending Directive 2010/13/ EU on the Coordination of Certain Provisions Laid down by Law, Regulation or Administrative Action in Member States Concerning the Provision of Audiovisual Media Services (Audiovisual Media Services Directive) in View of Changing Market Realities’ (n 52).

⁴³ United Nations, ‘Security Council Resolution 1566 (2004)’ <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/542/82/PDF/N0454282.pdf?OpenElement>> accessed 9 February 2023.

across legal norms.⁵³

Information about how the human staff is educated, their linguistic expertise, and how these teams are supported must also be provided. German law demands information about the external parties consulted in the decision-making process. Such a report must include information about the time of action the platform requires after being informed about a violation. In addition, the flagging user and the user who uploaded or generated the content must be informed of the decision taken. Art. 3 para. 2 of NetzDG defines the specifics of the system design for the notice and action mechanism. Paragraph 2 gives platforms a general time span of 24 h to act upon unlawful content after they receive the notice, unless the platforms have agreed upon longer reaction time spans with competent law enforcement. Art. 4 of the NetzDG includes provisions on fines of up to 5 million euros.

2.3. Terms of service of online platforms in Germany

Platforms seem to “prefer” violations of the ToS over illegal content violations.⁵⁴ ToS violations are, per se, of a contractual nature (e.g., breach of contract) and, therefore, not necessarily illegal. A ToS violation is also easier to enforce due to platforms’ greater discretion in enforcing the ToS rules they have drafted themselves.⁵⁵ Enforcing Community Standards (CS), however, must be automated to handle the sheer amount and velocity of user-generated content. Each platform creates ToS and CS individually, shaping the notion of allowed and inappropriate behaviour.⁵⁶ Several advantages and insights into the content moderation process shaped by the CS are only inside the platforms; such advantages might include a rich, internally labelled training dataset (internal ground truth dataset) that, for example, can be used for algorithms and machine learning (ML) purposes, the possibility of changes in the interpretation of CS,⁵⁷ the wording or the consequences of a violation of the CS that build an understanding, the examples or training data sources of AI tools to enforce content moderation, and so on. Therefore, more advantages result in a focus on moderation-harmonisation and standardisation. Because of the economically favourable concept of enforcing ToS violations,⁵⁸ large online platforms have prioritised reporting mechanisms through design features, such as dark patterns.⁵⁹ Dark patterns refer to design choices that should nudge

the user to a specific desired behaviour.⁶⁰ One example of such a design nudge is to allow easy reporting of ToS violations for users and cumbersome reporting features for reporting illegal content online.⁶¹

Furthermore, platforms can customize rules and reasons for moderating content within their ToS for specific reasons. Such detailed rules of online behaviour are often referred to in the appendices of the existing CS (for instance, including COVID-19 moderation reasons).⁶² To better understand the ToS rules in Germany, we decided to take a close look at Meta’s (then Facebook’s) Community Standards. As one of the largest online social networks and the largest social network in Germany, it seemed like an obvious choice to better understand ToS and online content moderation. When looking closely at Meta’s CS, we identified 24 categories specifying behaviour that constitutes different categories for moderation. Additionally, we added the CS of a smaller German platform to our categories.

3. Research design and coding methodology

The empirical analysis of the content moderation data relied on an anonymised German-language dataset containing all posts by online forum users from 1 January 2019 to 30 April 2019, regardless of whether they had been deleted by moderators or flagged by users. The dataset covered 2,887,228 user-generated posts.

All information about the users who made the posts was removed in a previous step towards the anonymisation of the dataset. However, there was always the theoretical possibility of re-identifying users using their expressions and specific content, as their posts with usernames attached were publicly available online. As such, the anonymisation process did not provide full anonymity for the users, as it was possible to reverse it. As a research team, we agreed that we would not take any steps to identify users to ensure their anonymity.

Importantly, the second dataset also included the reasons for the deletion of the content. This allowed us to interpret the reasons for the platform’s deletion of content. However, we only looked in detail at whether the platform deleted the posts for ‘legal’ reasons, i.e., that they believed they were compelled to remove these posts under German law, or whether they removed the posts for ‘other’ reasons, which we categorised as platform ToS violations.

Additionally, because of the ToS and the high degree of contractual freedom in creating the CS, the granularity of such provisions varies from platform to platform. Those variations might address the clauses as such (e.g., including specific rules for moderating content addressing COVID-19 in specific ways),⁶³ the detail of the definition per category (for example, how far the description of “nudity” could be drawn), the level of granularity of the explanation for a definition (for instance, how could “nudity” be understood in the context of the platform), the number of examples given (e.g., what emojis could be moderated in the context of unsolicited online behaviour), or the act followed by the violation of such rules (such as the deletion of the content, visibility reduction, warning labels, strikes to the user’s account, etc.). Because creating and designing ToS is complex and costly, large online platforms, such as Meta/Facebook CS, provide a rich example of more “sophisticated” rules upon which to base an analysis. In our study, we used

⁵³ Revised version of the German Network Enforcement Act (NetzDGÄndG) 2021.

⁵⁴ Wagner and others (n 20).

⁵⁵ See Art. 3 lit b DSA ‘recipient of the service’, 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) (Text with EEA relevance).

⁵⁶ TikTok, ‘Community Guidelines’ (2023) <<https://www.tiktok.com/community-guidelines?lang=en>> accessed 10 February 2023; YouTube, ‘YouTube Community Guidelines & Policies – How YouTube Works’ (*YouTube Community Guidelines & Policies – How YouTube Works*, 2023) <<https://www.youtube.com/howyoutubeworks/policies/community-guidelines/>> accessed 10 February 2023; Facebook, ‘Facebook Community Standards’ (2023) <<https://transparency.fb.com/en-gb/policies/community-standards/>> accessed 10 February 2023; ‘The Twitter Rules: Safety, Privacy, Authenticity, and More’ (n 10).

⁵⁷ See recital 45 and Art. 14 (2) DSA, 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) (Text with EEA relevance).

⁵⁸ Lenka Fiala and Martin Husovec, ‘Using Experimental Evidence to Design Optimal Notice and Takedown Process’ [2018] SSRN Electronic Journal.

⁵⁹ See recital 67 DSA 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) (Text with EEA relevance).

⁶⁰ Harry Brignull, ‘Dark Patterns’ (*Dark Patterns*, 2019) <<https://www.darkpatterns.org/>> accessed 23 July 2019.

⁶¹ Wagner and others (n 20).

⁶² Meta, ‘Community Standard on Misinformation’ (2023) <<https://transparency.fb.com/en-gb/policies/community-standards/misinformation/>> accessed 1 May 2023.

⁶³ Matthias C Kettmann and Marie-Therese Sekwenz, *Pandemocracy in Europe: Power, Parliaments and People in Times of COVID-19* (Matthias C Kettmann and Konrad Lachmayer eds, Hart Publishing 2022) 267–278 <<http://www.bloomsburycollections.com/book/pandemocracy-in-europe-power-parliaments-and-people-in-times-of-covid-19>> accessed 27 December 2021.

five leading categories in the code book provided in Annex I: Violence and criminal behaviour, Safety, Objectionable Content, Integrity and Authenticity, and Respecting Intellectual Property. We included five subcategories for the class referring to Violence and Criminal Behaviour, six for Safety, five for Objectionable Content, seven for Integrity and Authenticity, and one for Respecting Intellectual Property, totalling 24 distinguishable CS.

To code the data, we first generated two samples of the dataset from the online platform, with 800 randomly selected items of all content deleted by the forum moderators (0001) and 800 randomly selected items of all content posted on the platform (0002), out of a total dataset of 2,887,228 items. For the sample of 800 randomly selected items of all content, we expected a response distribution of approximately 0.5 %, giving us a margin of error of 0.32 %, with a confidence level of 80 %.⁶⁴ For the sample of 800 randomly selected items of deleted content, we expected a response distribution of approximately 5 %, giving us a margin of error of 0.99 %, with a confidence level of 80 %.

While we appreciate that using a confidence level of 80 % is lower than would typically be used and that the margin of error with a sample of this size is quite large, the goal of this study was not to achieve a perfect quantification of problematic content but instead to establish broadly accurate estimates for how platforms interpret the law. The margin of error is thus believed to be acceptable, as long as it is clearly communicated to the reader and the details are made transparent at every stage of the research process.

3.1. Coding German law

Once the data were reduced to a representative sample, they were coded based on a previously developed taxonomy of international and German law,⁶⁵ including categories for Meta's/Facebook's CS, which, to our knowledge, represent one of the most detailed CS available. This was combined with the CS from a representative of a small/medium-sized platform from a Member State, as mentioned above in Section 2 and which is provided in Annex I.⁶⁶ In addition, to address the need for content not falling into a contractual or legal category, the research team created two new categories: 4-1- and 4-2- under the class "otherwise sensitive content", which addressed the possibilities of the annotators classifying presumed problematic content without a legal reason (4-1) and to form legal analogies (4-2) that cover judicial gaps or very intense content. Notably, additional data that we received from the platform about how the moderators had categorised the data was not shared with the coders at any time during the coding process. The coders only knew that they had two datasets to code but not that one of them consisted of deleted content. They were unaware of the platform's categorisation of the data points or even that all the content in one sample had been deleted and that the other constituted a sample of all platform content. They were only provided with two representative samples of content from a medium-sized German platform and asked to code this content with the codebook at hand. This step was taken to ensure that the coders were not biased by the platform's pre-existing decisions about content moderation, as they were not aware of them.

⁶⁴ According to Glantz and Kissell 'response distribution' is "[...] used to measure and predict probabilities, and to estimate the likelihood of achieving certain outcomes. They are also used to determine confidence intervals around estimated values." Morton Glantz and Robert Kissell, 'Chapter 2 - A Primer on Risk Mathematics' in Morton Glantz and Robert Kissell (eds), *Multi-Asset Risk Modeling* (Academic Press 2014) 37 <<https://www.sciencedirect.com/science/article/pii/B9780124016903000020>> accessed 30 April 2024.

⁶⁵ The taxonomy also includes a taxonomy for Austria to cover both German-speaking Member States that had decided to create national laws addressing content moderation on online platforms. The analysis in this article, however, only uses the categories relevant in the German context because of the use case under study.

⁶⁶ Tiedeke and others (n 30) 9-132.

The core coding team consisted of two advanced law students who, at the time, had studied law for at least three years. They were supported by three senior colleagues who comprised the Moderation Decision Supervisory Team, two of whom had an extensive legal background, and one of whom had received a German habilitation in law and was recently appointed as a law professor in Austria. The two advanced law students coded the dataset independently before discussing their results in a meeting with the Moderation Decision Supervisory Team to make a final determination of all the diverging decisions of the two legal coders. This process ensured the sophisticated legal qualification of all the moderation decisions within both samples.

At the beginning of the coding process, a test run with a smaller representative sample of 90 posts from each dataset was conducted to ensure that the taxonomy could be applied effectively to the dataset. This test run led to some clarifications of the taxonomy, as well as a wider debate among the team about how different legal categories could be meaningfully interpreted. The initial analysis produced an intercoder reliability rate on the question of the legality of the content of 83.15 % for Test_Dataset_0001 (all deleted content) and 96.55% for Test_Dataset_0002 (all content), which we hoped to improve in the main analysis.⁶⁷

Importantly, the coders also had access to contextual information about the post, should it be required. This contextual information consisted of other posts in the same thread of conversation, with two levels of granularity in the context (main thread and sub-thread). In the case of the German platform we were studying, to our knowledge, the content moderators employed by the platform also had access to contextual information in the main thread. Only for some pieces of content was the context unavailable. Such cases of unavailable context were documented by the coders. The coders also recorded the number of situations in which they required additional contextual information to decide whether the context was needed for the main thread or the corresponding sub-thread.

In addition, the coding team kept track of the time needed to make the coding decision for each comment and inserted the coding decision into the template used.⁶⁸ Coding time was tracked separately for the additional time needed to interpret additional contextual information without separating the level of necessary context (inclusive time measurement for the main thread and sub-thread). This time tracking helped provide a deeper understanding of the time it takes to code legal information and how much additional time was needed for decisions that demanded a deeper context. The time measured for both coders to decide without requiring additional context was between five seconds and 53 min in total. For decisions that consulted an additional layer of context, the time span was between 22 s and 43 min. One hundred and eighty-three decisions required partial consultation of the context, and 141 decisions needed detailed consultation of the context. Information about the context, however, was only available in 162 cases, leaving 21 cases without context.

The coders for this study also had the possibility of discussing inappropriate, disturbing, or traumatising content with the Moderation Decision Supervisory Team when needed. Content moderators for large online platforms are often not employed by the platforms but instead are often contractors. Content moderators who are contractors often have different working conditions in which to make their content moderation

⁶⁷ Hsu and Field (n 32).

⁶⁸ See also Art 24 (1) lit a DSA, 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) (Text with EEA relevance).

decisions compared to their colleagues employed by the platforms.⁶⁹ Former contractor content moderators for Meta's Facebook called Cognizant,⁷⁰ for example, had to decide on a piece of content in about 30 seconds.⁷¹ Since the type of content (short text, long text, text with emojis to accentuate the meaning, text with emojis to replace words,⁷² pictures, pictures and text, videos, audio, 3D environments, etc.) is also related to its complexity and, therefore, the time needed to make a moderation decision, no meaningful legal interpretation was generally possible following the level of detail used for this analysis. Strict "productivity" goals, such as the number of moderated pieces per day or per hour or accuracy rates⁷³ of about 95 %, ⁷⁴ also increase the pressure on moderators when making their decisions.

Finally, an essential part of the coding framework was a common "heuristic of standards of proof", which had to be applied when making the coding decisions and was designed as a benchmark for the coding team to have the same "degree of strictness" in reaching the coding decisions. The Moderation Decision Supervisory Team discussed this extensively within the coding team and agreed on coding the content at a final stage based on a heuristic of standards of proof that adheres to a variety of different legal standards differentiating between international law, criminal law, and civil law because "since the Normative Taxonomy of Expressions deals with legal circumstances rooted in international and domestic (German and Austrian) law, we had to apply different standards of proof".⁷⁵

Therefore, the heuristics of standards of proof mimic the different law categories used in the taxonomy. A more detailed description is provided in Annex I, Section 3. For international law categories, the heuristics of standards of proof of the European Court of Human Rights (ECtHR), the International Court of Justice (ICJ), and the International Criminal Court (ICC) were considered.⁷⁶ The common element for the three courts is the shared definition of standard of proof and the quality of "beyond reasonable doubt". Additionally, the ECtHR demands that

"such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or similar un-rebutted presumptions of fact".⁷⁷

Furthermore, the ICJ includes "preponderance of evidence", a heuristic in which the parties of a case can agree on the standards to use for the case.⁷⁸

For classifying heuristics of standards of proof for German criminal law, we decided to use three different standards of proof following the jurisprudence: the standard of "initial suspicion", which is not only a presumption according to § 152 II and § 160 Code of Criminal Procedure (StPO), the standard of proof for convictions according to § 261 Code of Criminal Procedure (StPO), and the standard of "sufficient suspicion" according to § 170 I and § 203 Code of Criminal Procedure (StPO).⁷⁹

Because the standard of "initial suspicion" would be too broad for classification, and the second standard of proof for convictions "cannot be operationalised since an assessment is only possible after full evidence has been considered (in oral proceedings before the court)",⁸⁰ we chose the third standard of "sufficient suspicion". The criminal law heuristics, therefore, can be understood as follows: "A sufficient suspicion exists if, after a preliminary assessment of the facts resulting from the entire file content and the results of the evidence, a conviction of the accused is more likely than an acquittal, and there is, therefore, a predominantly probability of a conviction. Due to the vagueness of the legal term, the prosecution has a margin of judgment when filing a lawsuit. In doing so, she makes the prognostic decision as to whether, after a preliminary assessment of the factual and legal situation at the end of the main hearing, she would probably come to an application for conviction. To examine the sufficient suspicion of the crime, both the legal and the actual aspects must be assessed. The matter must, therefore, be punishable from a legal point of view and can be proven with the means available."⁸¹

For the third category of deciding on the heuristics of proof, which covers private law claims, we decided to take "credibility" as the standard to use according to § 294 Code of Civil Procedure (ZPO), which focuses on overwhelming credibility: "A fact is made credible if it can be regarded as true with an overwhelming probability".⁸² We prefer this definition and understanding of standard of proof (§ 294 Code of Civil Procedure (ZPO)) compared to § 286 Code of Civil Procedure (ZPO) as an alternative understanding, which would require full proof of evidence, a definition we believe is not appropriate for digital content.

After both members of the coding team had finished working on the dataset, the coding decisions of both coders were compared to determine the intercoder reliability. In the final dataset, the intercoder reliability was 92.50 % for Dataset_0001 (all deleted content) and 97.00 % for Dataset_0002 (all content), leading to a combined intercoder reliability for both samples of 94.75 %. Following Ali et al.,⁸³ Cohen's k is used to measure intercoder agreement for classifying objects into categories for two raters with an expected above-chance base agreement proportion in their rating.⁸⁴ We argue that Cohen's k is a reliable metric for measuring intercoder reliability, that the result is well within a reliable margin of error for coding results, and, thus, that our coding process based on the taxonomy we developed is robust enough to provide reliable results.

The legal coders noted their degree of certainty about their decision-

⁶⁹ Bryan Pietsch, 'TikTok Content Moderator Sues Company, Alleging Trauma from Hours Reviewing Videos of Rape and Killings' *Washington Post* (28 December 2021) <<https://www.washingtonpost.com/technology/2021/12/28/tiktok-moderator-lawsuit-violent-content-ptsd/>> accessed 10 February 2023; Condé Nast, 'Twitter's Moderation System Is in Tatters' *Wired UK* <<https://www.wired.co.uk/article/twitters-moderation-system-is-in-tatters>> accessed 10 February 2023; Vittoria Elliott, 'Meta's Gruesome Content Broke Him. Now He Wants It to Pay' *Wired* <<https://www.wired.com/story/meta-kenya-lawsuit-outsourcing-content-moderation/>> accessed 10 February 2023; user, 'Sama Quits the Content Moderation Game, Fires 3% of Staff' (*htxt*, 11 January 2023) <<https://htxt.co.za/2023/01/11/sama-quits-the-content-moderation-game-fires-3-of-staff-2/>> accessed 10 February 2023; Adam Satariano and Mike Isaac, 'The Silent Partner Cleaning Up Facebook for \$500 Million a Year' *The New York Times* (31 August 2021) <<https://www.nytimes.com/2021/08/31/technology/facebook-accenture-content-moderation.html>> accessed 10 February 2023.

⁷⁰ Casey Newton, 'A Facebook Content Moderation Vendor Is Quitting the Business after Two Verge Investigations' (*The Verge*, 30 October 2019) <<https://www.theverge.com/2019/10/30/20940956/cognizant-facebook-content-moderation-exit-business-conditions-investigation>> accessed 1 November 2023.

⁷¹ Casey Newton, 'The Secret Lives of Facebook Moderators in America' (*The Verge*, 25 February 2019) <<https://www.theverge.com/2019/2/25/18229714/cognizant-facebook-content-moderator-interviews-trauma-working-conditions-arizona>> accessed 10 February 2023.

⁷² Sandeep Sunawal, Sue Brown and Laura Brandimarte, *Understanding the Role of Nonverbal Tokens in the Spread of Online Information* (2023) <<https://hdl.handle.net/10125/103303>> accessed 10 February 2023.

⁷³ Those rates are measured against a dataset annotated by employed content moderators of the platform and compared against the contractor content moderators.

⁷⁴ Newton (n 109).

⁷⁵ Tiedeke and others (n 30) 6.

⁷⁶ See Annex I Section 3 Evaluation criteria, a heuristic of standards of proof.

⁷⁷ Tiedeke and others (n 30) 6.

⁷⁸ *ibid.*

⁷⁹ § 152 II, § 160, § 261, §§ 170 I, § 203, German Code of Criminal Procedure (Strafprozeßordnung – StPO).

⁸⁰ Tiedeke and others (n 30) 7.

⁸¹ *ibid* 7–8.

⁸² *ibid* 8.

⁸³ Shiza Ali and others, 'Understanding the Effect of Deplatforming on Social Networks', *13th ACM Web Science Conference 2021* (ACM 2021) <<https://dl.acm.org/doi/10.1145/3447535.3462637>> accessed 20 July 2021.

⁸⁴ Hsu and Field (n 32).

making during the coding process. Of the decisions, 1432 were classified as “high”, 151 were marked as “fair”, 16 were referred to as “50/50”, 0 were categorised as “little”, and 1 was classified as “none”. These values indicate the difficulties in forming decisions and the perceived certainty in making content moderation decisions. How difficult content moderation is (or is perceived by coders) not only changes in complexity due to the content types and their specificities (as illustrated by comparing the content moderation of videos with the content moderation of text) but also in relation to the content and message under evaluation. The former might need more time to process (e.g., file length) or layers of content to moderate (e.g., images in a frame, such as forbidden symbols and text or emojis in the background). In addition, taking into consideration the wording (spoken text and tone) and facial expressions and gestures is important for forming moderation decisions. The category we used and documented, ‘perceived certainty’, which measures an individual’s struggle to make a decision, can help in better understanding the common difficulties (per CS, moderation topics, or content types) and to make the inner layer of evaluating content and categorising it visible. This highlights the fact that (legal) moderation is subjective and open to argument and interpretation.

4. Analysis

The following section provides a deeper analysis of all the content deleted on the German platform.

Having coded these two samples, we can now interpret the platform content moderation decisions based on our coding, which serves as a ground truth. We acknowledge that these interpretations are subjective, but we believe they allow for a robust systematic analysis of the platform’s content moderation decisions and how they relate to German law.

Out of a randomly selected sample of 800 posts, the platform deleted 83 or 10.4 % of the content uploaded. Of the posts deleted, only three were deleted for legal reasons, while the others were deleted based on ToS. We do not have access to the exact legal reasoning of the platform moderators; they simply coded these answers as ‘legal’ and deleted them. While these three content items involve problematic content, such as being “scared of becoming gay”, or whether it is a good idea to post and discuss recipes for making drugs online, in none of these cases were we able to identify content that we believed to be illegal. As a result, we believe that these posts were incorrectly removed by the platform moderators for what they believed were legal reasons.

By contrast, in the same randomly selected sample of 800 posts, we found seven that we believe to be illegal that were not identified as illegal by the platform. Of these posts, two were deleted by the platform moderators based either on their own ToS or without any justification at all, while five went completely undetected.

We believe that these seven posts all constitute illegal content, with the most common classifications used by our coders being 3–6-D (unfair competition), 3–5-D (contractual obligations), 2–6-D (public incitement to commit offences), and 2–14-D (revilement of religious faiths and ideological communities). Notably, while both our coders and our internal review process agreed that these seven content items were illegal independently of each other, they mostly did not agree on the reasons for the content being illegal. This was often because there were many things wrong with them, but also because the precise violation was often ambiguous and hard to define. In all the cases we identified, these cases were not only illegal but also violated the platform’s ToS.

In only one case, namely 2–14-D, which related to the revilement of religious faiths and ideological communities, did both coders agree on the reasons for the illegality. This piece of content was a long and highly negative post against Islam, which both of our coders determined had crossed the boundary towards illegality.

The other cases constituted a mixture of public incitement to commit offences, using phrases inciting others to commit offences (2–6-D), such as “stech sie ab” [colloquial language suggesting to stab someone] in the

domain of hate speech (1–6), and insults (2–16-D), suggesting attaching a woman to a “fucking machine for a week”. Often, context was needed to fully understand what was being said in these posts, and it took our coders between just over 1 minute and 43 minutes to fully accurately assess the legality of the posts.

Finally, we looked closely at cases in which we believed either the law or the platform’s ToS had been violated. Out of 800 posts on the platform, we found 46 cases in which we believe this was the case. Of these 46 posts which we believe are problematic, the platform had only removed 13. This suggests that there is an issue not just with the platform enforcing the law but also with their own ToS. This legal, but at times problematic, content includes “encouraging users to insult other users”, “encouraging drug use”, “cursing other users’ mothers because of darker skin”, and “aggressive sexual behaviour”. While none of this content is illegal, it calls into question the extent to which the online platform actually enforces its own ToS and whether the ToS cover the problematic incidents appearing on the platform to a sufficient degree.

4.1. Analysing deleted and problematic content

To more accurately analyse the types of content being moderated, we coded another 800-item sample based solely on deleted content. Due to the sample design, we were not able to look at items that the platform had missed since we were only looking at deleted content. However, it did provide a much deeper analysis of the content the platform had identified as worthy of deletion.

Of the 800 deleted posts, the platform moderators justified their deletion decisions with ‘legal’ reasons in 29 cases, or 3.6 % of all deletions. However, of those platform decisions, we only agreed with 3 out of the 29 cases, around 10 %. We believe that the other 90 % of the deletions made for ‘legal’ reasons constitute legal speech.

Ten percent of the platform’s deletions due to legality that we agree with cover issues related to attempting to sell or promote the use of illegal drugs (2-22-D). For the remaining 90 % of platform content that we believe to be legal, while trying to be generous to the platform’s challenges around content moderation, it could be argued that another 5 out of the 29 pieces or 17 % of the content deleted for legal reasons would violate the platform’s ToS in one way or another. These were posts related to bullying and harassment, encouraging other users to “look for a hairy monkey as their ideal partner” (4-2-CS-4) and “making people feel very uncomfortable by insulting their mothers intellect” (5-1).

However, in 21 out of the 29 or 72 % cases of the purportedly illegal content we looked at, we could not find any reasons to justify this, either in law or in the platform’s ToS. Examples of deleted content for supposedly legal reasons include attempts to motivate other users to “follow their dreams in a reputable and honest way” and providing advice on the “right black high-cut shoes” to buy or what is “a good computer to buy”.

Often, the deleted posts also encourage users to do better, to be more honest about their bad behaviour to their colleagues and stop lying about being sick, and providing extensive career advice. The posts sometimes even express kind thoughts, such as telling other users that they look good and not to worry too much about their weight.

Equally troublingly, in only 166 or 20.6 % of the 800 removals were our coders able to find any justification at all for the removal of this content, either in the law or in the ToS. While the platform often used justifications for the removals, such as “troll”, “general-violation”, “provocation”, or “offense”, we were unable to link these removals with any meaningful justification in the ToS.

This suggests a considerable problem for online forum users, as there seem to be three sets of rules at play:

1. The law, which is mostly misinterpreted and covers only a tiny fraction of the content removals, around 3.6 % of all the content removed.



Fig. 1. Posts deleted and posts remaining online on the German platform.

2. The platform’s own ToS, which seem to be rarely followed, and together with the law, only cover 20.6 % of all removals.
3. The platform’s own internal decision-making processes around content takedowns, which are not publicly available and yet cover 79.3 % of all content removals.

Based on the representative samples we coded, the following picture emerges:

<u>Platform content moderation in our sample of overall platform content</u>				
Data: sample of 800 of all platform posts	Number of posts deleted	Posts deleted based on law	Illegal posts not deleted	
Sample of all posts	83 (10.4 % of all posts)	3 (0.4 % of all posts)	5 (0.6 % of all posts)	
<u>Platform content moderation in our sample of deleted platform content</u>				
Data: sample of 800 deleted posts	Posts that the platform deems illegal	Posts that the authors deem illegal	Posts in which the authors disagree with the platform’s interpretation of the law	Posts that the platform deems illegal and the authors deem legal
Deleted posts	29 (3.6 % of deletions)	31 (3.9 % of deletions)	54 (6.8 % of deletions)	26 (3.3 % of deletions)
Data: sample of 800 deleted posts	Posts the authors believe are illegal, but the platforms believe are legal	Posts the platform deleted as illegal that the authors agree are illegal		
Sample deleted posts	28 (3.5 % of deletions)	3 (0.4 % of deletions)		

Crucially, the posts removed without any justification in either the law or ToS also cover political speech. To provide just a few examples, they include posts in which users argue why Germany should not leave the EU: For example, “That’s completely illogical; why should Germany leave the EU ‘in protest’ of the UK’s politics ... then we would be the ones harmed. How would you feel if I smashed up my computer screen in response to hunger in Africa? For me, that would make just as much sense as what you’re proposing”, which was removed for ‘custom’ reasons. Another example encourages users to “look more closely at the politics of the group he’s interested in. Have a look at the film ‘The Wave’ if you don’t know it yet”, which was considered to be ‘trolling’. Other examples of deleted content are warning users to be careful with political parties calling for the shutting down of public sector media broadcasters or warning against the dangerous influence of far-right-wing parties, both of which were seen to be too ‘provocative’. In many ways, much of the deleted content is not the cesspit of the internet that moderated content is often suggested to be, but rather a model of balanced, reasonable, discursive political interaction that could benefit democracy if it were not deleted.

Given these examples and the extensive data produced here to back them up, it seems difficult to suggest that this online platform systematically follows either the law or its own ToS. Instead, its moderators seem to have enormous discretion to decide as they see fit what to delete without any deeper engagement with their own rules or standards.

Our research results also question the role of ToS in online platforms. Rather than being a set of standards by which platforms moderate content, the results suggest that, at least for this platform, the ToS are heavily disconnected from the platform’s decision-making. Further research is required to better understand and interpret the actual basis of decision-making of online platforms rather than relying on ToS or the law alone as frameworks.

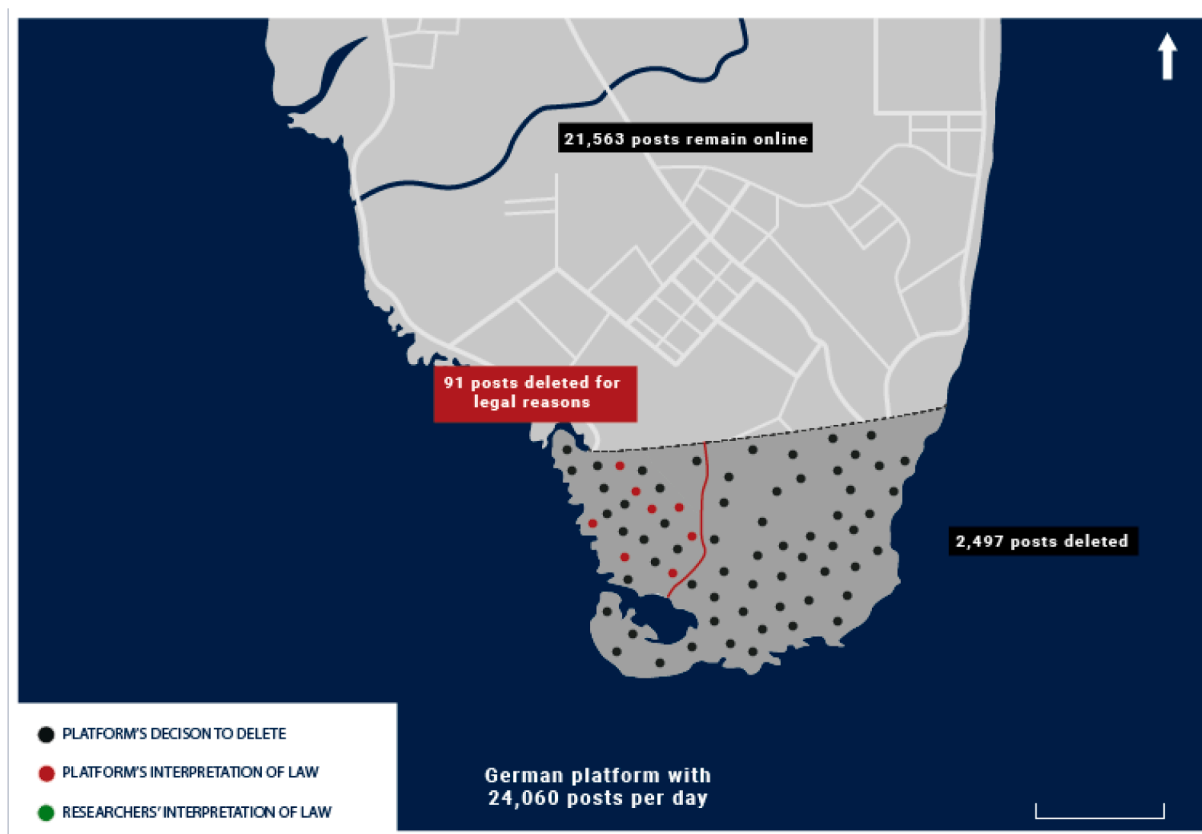


Fig. 2. Posts deleted and posts remaining online on the German platform.

4.2. Mapping interpretations of the law by platforms

To make our results more easily interpretable, we took our representative's coding results and scaled them back up to the total number of posts on the German platform we were studying, which had, in the period between 1.1.2019 and 30.4.2019, on average 24,060 user-generated posts per day.

Taking a first look at our platform data, the platform we selected seems to be a good representation of these types of online platforms. At the beginning of the paper, we cited WAN-IFRA as a good empirical baseline, which suggests that, on average, 10–11 % of content is deleted on online news platforms.⁸⁵ Our platform fits perfectly into this range, with 10.38 % of all content being deleted. This constitutes, on average, the deletion of 2497 posts per day, with 21,563 posts remaining online out of a total of 24,060 average posts per day.

However, these results can be difficult to interpret, as they are based on two representative samples of 800. Therefore, we decided to scale them up to the average number of posts a platform receives on average every day, which is 24,060 in total. This interpretative tool can help provide an overview of a typical day for an internet platform. To do this, we scaled up the sample of all posts to 24,060 posts and the sample of deleted posts to 2497 posts, which were the average, including the posts and deletions of the platform we were studying.

If the platform were an island of user-generated content, one day of content would look something like this: The unshaded part of the island in the top and middle of the island represents the content that stays online. As mentioned above, the content uploaded online after moderation would include a total of 21,563 posts on the platform. The shaded parts at the bottom of the island marked with black dots represent the content that the platform has deleted. The sum of the posts deleted

through platform moderation would amount to 2497. While the proportions of the image are not precisely to scale, they broadly represent the relationship between posts remaining online and posts being deleted (Fig. 1).

If we take a closer look at the reasons for deletion on the German platform, we expect that approximately 0.4 % of all posts on an average day will be deleted for illegality, with a margin of error of 0.29 % and a confidence level of 80 %. This would mean that on an average day with 24,060 posts, approximately 90 pieces of content are deleted, as they are believed to be illegal, although that number may vary between 26 and 166 pieces of illegal content deleted, with a confidence level of 80 %. The content referring to illegality is marked as red dots on the western region of the island (Figs. 2 and 3).

Additionally, the mapping of content moderation decisions provides insight into the different opinions regarding what represents illegal content between the legal coders and the platform's moderators. We estimate that on an average day, approximately 0.6 % of all content uploaded onto the platform was not deleted by the platform's moderators, with a confidence level of 80% and a margin of error of 0.35%. This would mean that on an average day with 24,060 items of content posted, approximately 150 illegal posts would not be deleted by the content moderators. However, due to the margin of error, that number may vary between 60 and 229, with a confidence level of 80%.

Furthermore, the authors disagree with the vast majority of the platform moderators' assessments of what constitutes illegal content. Of all the deletions, 3.9% were deleted by the platform moderators because they believed this content was illegal. The authors believe that approximately 90% of the content was incorrectly classified as illegal content, and only approximately 10% was correctly classified as illegal content. Instead, the vast majority of the content that the platform moderators deleted because they believed it was illegal constituted legal content from the legal perspective of the authors.

What does this mean on an 'average day' for an online platform with

⁸⁵ Goodman (n 31) 14.

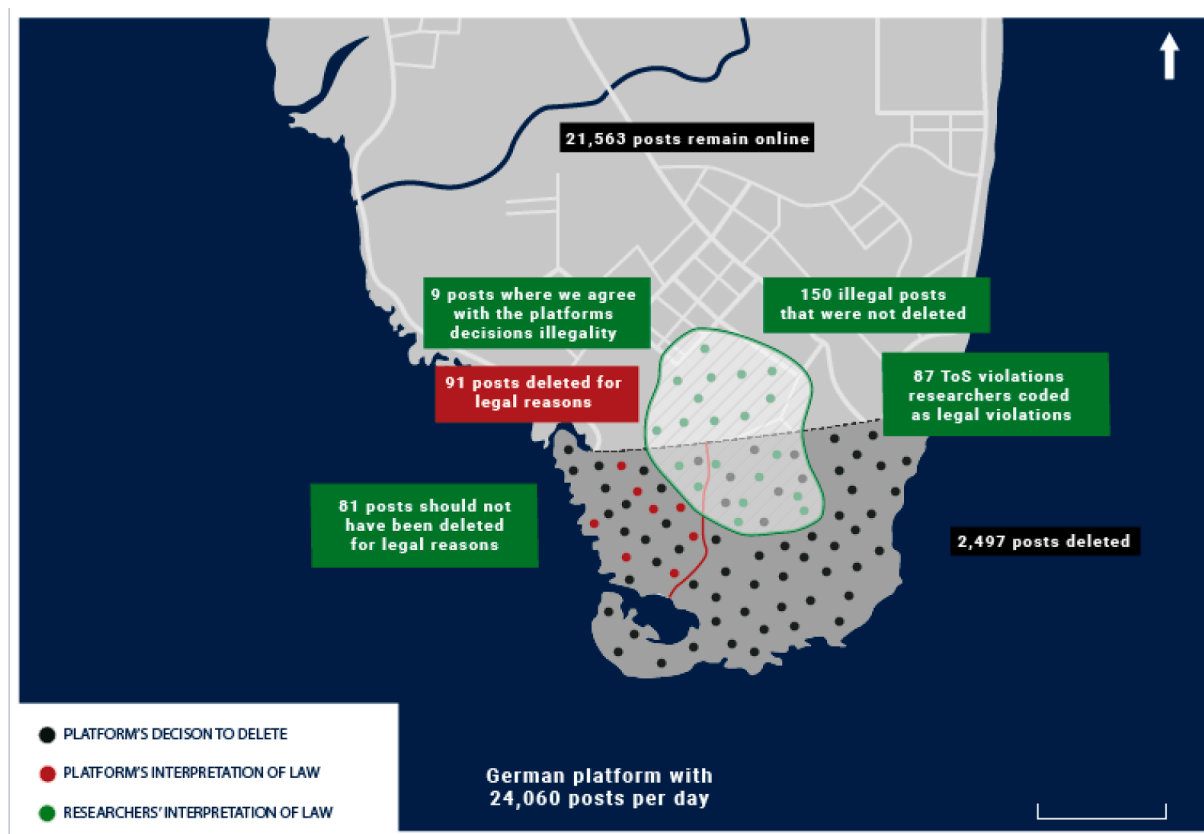


Fig. 3. Legal evaluation of our analysis compared to posts deleted and posts remaining online on the German platform.

24,060 posts submitted? On an average day, the online platform would classify as illegal and delete approximately 81 pieces of content that we believe are legal, although the number would vary between 62 and 102 pieces of content, with a confidence level of 80%. On the same day, this online platform would classify as illegal and delete approximately 9 pieces of content that the authors concur is illegal, although that number would vary between 3 and 17 pieces of content, with a confidence level of 80%. Finally, on an average day, approximately 87 pieces of content would be removed as ToS violations that we, as researchers, believe are illegal, although the number would vary between 67 and 120 pieces of content, with a confidence level of 80%.

This suggests that platforms struggle considerably to correctly interpret the law and get it wrong at least as often as they get it right. This poses considerable challenges both for freedom of expression and, more broadly, platform governance. As regulators continue to expand platform governance provisions, they need to be aware of the ways in which platforms interpret and, following our analysis, often misinterpret the law.

4.3. Blurring boundaries between Law and ToS

As illustrated in the empirical-legal analysis of online content moderation, the platform struggles to interpret the law accurately. To the platform's users, this misinterpretation of the law is often masked by the fact that its ToS also typically go beyond the boundaries of the law, making it difficult for them to ascertain whether legal provisions or ToS have been used as a basis for removing online content.

Not only because of the vast, flexible, and adjustable boundaries the ToS offer to the platform, CS can be regarded as the lowest legal boundary of the reason for moderation. Because of the need for adaptive (human) enforcement, examples provided for education and understanding the CS's meaning of each norm are crucial in the content moderation process. As illustrated in Section 2, moderation in Germany

might be based on either the legal classes of reasons or the ToS. In this blurred situation, quasi-moderation priority rules evolve. To understand these reasons, better explanations could be added to platform's ToS, for example, to increase knowledge about the nuances of definitions.⁸⁶ The preference given in moderation for ToS reasons over legal grounds can also be explained by the complexity of legal analysis, as outlined by Fiala and Husovec.⁸⁷ Another manifestation of such preferences in moderation can also start earlier in the content moderation process—in the phase of detection through flagging. Research has shown the preferences of platforms, such as Meta or Twitter, to design their notice and action systems to enable easy ToS flagging and reduce cumbersome legal flagging.⁸⁸ Therefore, showing preferences for ToS moderation over legal moderation seems logical. This emphasis on ToS moderation is also a key finding in our research. As highlighted in Fig. 2, out of 2497 deleted posts, only 90 would be deleted for legal reasons. This emphasis on ToS moderation can have several important factors, for example, the design of the ToS themselves (this could include broad categories, such as 'illegal content and hate speech'), the design of the content moderation system in place (the system allows only for one moderation reason), or internal content moderation policies (for example, if the content violates one rule, it should not be further investigated).

Nevertheless, European regulatory measures that address legal and

⁸⁶ Tiedeke and others (n 30).

⁸⁷ Lenka Fiala and Martin Husovec, 'Using Experimental Evidence to Improve Delegated Enforcement' (2022) 71 *International Review of Law and Economics* 106079.

⁸⁸ Wagner and others (n 2).

ToS violations are setting new standards for content moderation systems and processes in the EU.⁸⁹ These regulatory measures are being addressed by large online platforms operating in a local regulatory context. Understanding that the various layers (including the laws of the Member States) exist for reasons of content moderation and their legal nature (of a contractual nature or legal provision) is currently a rich research subject. The DSA emphasises the importance of differentiating between the moderation reasons of the law and the ToS.⁹⁰ The boundaries between the ToS and the law must be better understood, tested, controlled, and researched to comprehend the moderation of speech by large online platforms.

By addressing the subjectivity and human elements of content moderation systems, this research shows differences in moderation decisions between our coding team and the platform's content moderators. Understanding the relationships between the two types of moderators, the moderation reasons, the time taken, or the perceived certainty of a decision can motivate future research in different contexts. This could include tests for several platforms, types of content, and system design solutions or languages. We aim to build a better collective understanding of how large online platforms moderate speech. Not only is the enforcement of legal provisions more complex for platforms, but it could also be more expensive compared to the moderation of ToS. Making it more cumbersome to report legal violations (e.g., by adding several steps in the reporting mechanism compared to the ToS reporting mechanism)⁹¹ or pointing the user towards potential liability duties can create hurdles for reporting. Such impairments could affect the flagging of the content in question, the nudges of users, or other design decisions.

Using the measurement of 'perceived certainty' can help content moderators and coders revisit uncertain decisions. For example, a high uncertainty value could trigger another loop in the content moderation process and forward the piece of content in question to another moderator with special expertise in the field. The accuracy rates could be determined by comparing the contractor's coded samples to the outsourcing company's coded samples. If the accuracy rate falls below a target benchmark, moderators would be under increased supervision from internal colleagues and could lose their jobs. In the case of Cognizant, for example, a contractor for Meta's content moderation, the set benchmark includes an accuracy target of 95 % of the decisions. According to employees, however, the usual accuracy rate of an employee would "float[s] in the high 80s or low 90s".⁹²

As mentioned previously, the classification of content and the corresponding reasoning can be based on several, often overlapping, moderation reasons. For example, if the content were to be classified as § 111 German criminal law, the CS "violence and incitement" (code 3-1) would also apply in most cases. As found in further research,⁹³ expanding the categories to code might give further insight into the potential risk level of the online content. By addressing several risks in a more granular description of moderation reasons and actions, the phenomenon of online speech could be better studied and researched. The status quo of content moderation processes and moderation reasons is relatively obscure at present. Data are often unavailable, or only an *ex-post* analysis (analysis of data that were already moderated, and the moderated content is already deleted and therefore inaccessible) is possible for studying content moderation decisions. It is, however, important to better understand *ex-ante* moderation metrics, ratios, and

means to increase the scientific understanding of these socio-technical systems.

5. Consequences for the regulation of platforms

Our research suggests that platforms struggle to accurately interpret and enforce the law in their content moderation practices. They both miss much illegal content and incorrectly delete legal content because they believe it is illegal. In both cases, freedom of expression suffers. Based on this, we believe there are several relevant avenues to explore further to deal with these challenges in the regulation of platforms:

- *More and better legal training for platform content moderators:* Online content moderators clearly do not have sufficient legal training currently to accurately interpret the law. They need more and better legal training if they are to have any chance of accurately interpreting the law. Legislators might want to consider setting minimum standards for this in the context of future research and regulatory needs, such as those that exist in the DSA, such as Art. 87, Art. 35, and Art. 23. The latter mentions in para. 3 that decisions need to be taken on a case-by-case basis and should be dealt with in a timely, diligent, and objective way. According to para. 1, the rules created for frequent violations stemming from an account could lead to deplatforming, or, according to para. 2, a warning could be placed before the suspension of an account.
- *More time to study content and better working conditions for content moderators:* Currently, content moderators do not have enough time to accurately study online content. Our study shows that different pieces of content need different time spans (between 22 seconds and 43 minutes) for evaluation in forming content moderation decisions about them.
 - On a more general level, working conditions are also important in making qualitative content moderation decisions. Time constraints in content moderation and pre-defined task loads can contradict online platforms' accurate interpretation of the law.
- *A better understanding of content moderation outside of ToS and the law:* Our research suggests that platforms struggle to interpret not only the law but also their own terms of service. Both researchers and the general public urgently need a much better understanding of the actual rules on which their content is moderated, since many removals cannot be justified based on either the law or the ToS.
- *Better internal moderation processes:* The internal processes of online platform moderators are currently not well designed to respond to the challenges of illegal content. There is a need for greater sharing of best practices and the development of robust content moderation standards both by regulators and industry to ensure high-quality content moderation going forward.
- *More transparency on the reasons for content moderation:* Currently, it is very difficult for users to find out why their online content is being moderated. Providing greater transparency regarding the reasons for moderation can also contribute to improving the quality of moderation decisions. As mentioned in Section 2, the DSA demands outlined research agendas, and future work needs more insight into the machinery of content moderation, risk mitigation, third-party audits, transparency reporting, the indication of statements of reasons, and auditing reporting from large online platforms. In Germany, compliance with the DSA builds on the transparency demands of the NetzDG. However, the DSA's fines are much larger, and those imposed on platforms can reach 6% of the platform's global annual turnover, according to Art. 52.
- *Regular auditing of platforms' content moderation practices:* Based on these results, platforms' content moderation practices should be audited on a regular basis. Over time, these audits could contribute to improving the quality of content moderation practices. In future work, the concept of very large online platforms and search engines with biannual reporting obligations, according to Art. 15, Art. 24,

⁸⁹ See Art. 15, 24, 42 DSA, 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) (Text with EEA relevance).

⁹⁰ See Art. 15 (1) lit c *ibid*.

⁹¹ Wagner and others (n 20) 5-8.

⁹² Newton (n 109). *ibid*.

⁹³ Johanne Kübler and others, 'The 2021 German Federal Election on Social Media: Analysing Electoral Risks Created by Twitter and Facebook' (2023).

and Art. 42 of the DSA can scope future research. Furthermore, this new law provides metrics about content moderation details, for example, “any use made of automated means for the purpose of content moderation, including a qualitative description, a specification of the precise purposes, indicators of the accuracy and the possible rate of error of the automated means used in fulfilling those purposes, and any safeguards applied”.⁹⁴

- **Misinterpretation-aware regulation:** Regulators of online content should be acutely aware of the ways in which online platforms misinterpret the existing law in their content moderation practices. While this is impossible to prevent entirely, legislative efforts should focus on developing misinterpretation-aware regulation—that is, regulation that takes likely misinterpretation into account and attempts to mitigate the effects of misinterpretation.

- **Enabling research and access to data:** It took a great deal of time and energy to gain access to this kind of data, which would be unavailable to most researchers. Regulators should ensure that researchers have access to this data and are able to access it easily, quickly, systematically, and in the format and size that enables their research. For example, the DSA includes provisions providing data access for researchers in Art. 40, which can open up new data for future research. Only by ensuring access to and continuous objective research of these platforms and their decisions regarding speech can Member States control, observe, and understand potential national legal infringements and potential (public) harm.

6. Conclusion

This study aimed to provide an initial empirical-legal approach for future research, tackling the task of understanding how platforms interpret the law in their moderation process while shedding light on the intersecting and overlapping sets of content moderation grounds related to either the law or a ToS violation by answering the research question: *How do online platforms interpret the law when they moderate online content?* Testing moderation decisions is vital for supporting upcoming compliance needs and enforcing Art. 34, 35, and 37 of the DSA, as well as the moderation of illegal content regulated within the NetzDG. This study provided a novel method for testing legal compliance with national provisions that could demand action from platforms and provide guidance supporting future research in this area. This need to find robust methodologies is especially relevant to understanding legal interpretations in the context of content moderation decisions and reasoning.

Moreover, novel regulations, such as the DSA and the AVMSD, highlight the demand for future research on the rules and guidelines governing digital spaces of speech in a broader framework compared to

Annex I: Coding Taxonomy

To evaluate the quality of content governance decisions in online forums in Germany and Austria, we developed a comprehensive taxonomy of what we believe are the legal reasons for the deletion of content under German and Austrian national and international law. This coding taxonomy was developed for this research project and several separate research projects that also looked at German and Austrian platforms.

In addition, we wanted to evaluate the extent to which platforms enforce their own terms of service (ToS). As a result, we included a section in the taxonomy that catalogues the relevant aspects of platforms’ ToS that can lead to the deletion of content.

As there is a broad debate about the extent to which ToS norms ‘travel’ between platforms,⁹⁵ we wanted to ensure that we included a broad cross-section of ToS within our taxonomy. To ensure a meaningful representation of the broad diversity of existing platform cases, we included one local German platform and one international platform. This led us to choose the community standards of a medium-sized German platform and Meta’s Facebook Inc., both of which have highly developed ToS that they use for content removal.⁹⁶

⁹⁴ See Art. 15 (1) lit e DSA, 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) (Text with EEA relevance).

⁹⁵ Ben Wagner, *Global Free Expression: Governing the Boundaries of Internet Content* (Springer International Publishing 2016).

⁹⁶ Evelyn Douek, ‘Facebook’s Oversight Board: Move Fast with Stable Infrastructure and Humility’ (2019) 21 *NCJL & Tech* 1; Kate Klonick ‘The Facebook Oversight Board: Creating an Independent Institution to Adjudicate Online Free Expression’ (2019) 129 *Yale LJ* 2418.

national legislative solutions, such as NetzDG. Moreover, the intersection between different regulations, such as the DSA and the AVMSD, is creating a demand for cross-regulatory research. Specific areas in these regulations in the content moderation domain might touch on the obligations of online platforms and VSPs, such as the rules on creation or the need to implement flagging mechanisms for users.

To evaluate compliance with these legal rules, however, we need empirical methodologies that understand and measure the legal aspects of content moderation and provide reliable evidence. Only by understanding the interplay of law and contractual obligations can content moderation decisions be meaningfully audited and evaluated. Additionally, providing visibilities for these overlapping categories and moderation reasons can help in better understanding the economies of content moderation decisions.

Comparing the internal moderation decisions of the platform’s moderators in our case study to our legal coding decisions shows the subjectiveness of content classification. Furthermore, we provide insight into the content moderation conditions needed to legally interpret pieces of content, such as the degree of context required to form a decision or the time needed to classify a piece. In addition, indicating the perceived certainty of the coding decisions of our legal coding team stresses the individual challenges in making informed decisions. We not only see the need for more standards around the moderation aspect regarding working conditions but also observe the lack of legal training specified for content moderation tasks and tools supporting the process. This article, therefore, highlights the necessity of accountability, audit, and control for content moderation regarding the legal nuances of legal content moderation and the importance of (national/platform/debate-specific) context. Only by developing novel methodologies focussing on empirical testing of online platforms’ content moderation practices is it possible to meaningfully assess how the law is being interpreted in practice.

Declaration of competing interest

The authors declare the following financial interests/personal relationships which may be considered as potential competing interests: Research for this project has received a seed funding grant from the Leibniz Institute for Media Research | Hans-Bredow-Institut (HBI). We gratefully acknowledge this funding, without which this research project would not have been possible.

Data availability

The authors do not have permission to share data.

The other central document we developed to evaluate the quality of content governance decisions is a “Coding Guideline”, which provides a structure and layout for the evaluation process. The Coding Guideline also provided information on the “heuristics of a standard of proof” that had to be applied when making the coding decisions and was designed as a benchmark for the coding team to have the same “degree of strictness” in reaching the coding decisions. To provide easy access to the relevant codes, a short overview of the taxonomy, including just the codes and qualifications, was created to give the coders a quick understanding. The following details regarding the coding guideline (B) and the coding template (C) are explained below.

The result is the first publicly available legal and ToS taxonomy that allows evaluation of the quality of individual content governance decisions for German and Austrian online forums. While such documents may exist internally within individual online platforms, they have not been developed systematically in this manner to allow for public scrutiny and debate. We believe that this step is particularly important, as without a common understanding of the criteria for assessing legal decisions, it is impossible for researchers to make claims about the quality of platform decision-making accurately.

Making high-quality content governance decisions is a challenging task. Moderators making these decisions often do not have the time or the skills to make informed decisions about content governance.⁹⁷ However, while various initiatives have sprung up to assess the quality of content governance by online platforms, these initiatives do not typically determine the quality of legal compliance by platforms.⁹⁸ Thus, we hope that publishing this taxonomy will contribute to the debate about increasing online platforms’ accountability and the level of critical scholarly scrutiny of content moderation decisions. Given the ongoing debates about the degree of legal compliance by platforms in Germany, Austria, and Europe, we hope that this taxonomy can provide a sound empirical basis for scholars working in this area. Previous versions of this annex have been published in an open-access archive, and we will continue to provide them online.

Coding Guideline

Categories

Code	Context required			Time required for coding		Certainty					
Legal Code	International	None	Partial	Detailed	Without context	With context	High	Fair	50/50	Little	None
Other Code	Criminal Illegal										

Step-by-step instructions

1. Subsume and collect content under “Content Codes”.
2. Note the hierarchy of the “content codes” (1–5).
3. Enter the coding in the table according to the hierarchy, first the legal codes and then the other codes.
4. Write down and enter the time for the coding.
5. Is the assessment only possible with context?
6. Enter the time for the coding after consulting the context.
7. Write down how sure you are about the coding decision.

Time: Time is required for the entire coding process, i.e., from reading and capturing the content, thinking, assigning or using context if necessary, and entering code.

3. Evaluation criteria: a heuristic of standards of proof

Regarding the threshold for decision-making, we considered various standards of proof. Since the Normative Taxonomy of Expressions deals with legal circumstances rooted in international and domestic (German and Austrian) law, we had to apply different standards of proof.

For international law, we considered the **European Court of Human Rights (ECtHR)**, the **International Court of Justice (ICJ)**, and the **International Criminal Court (ICC)** for our interpretation and understanding of the standard of proof.

European Court of Human Rights (ECtHR): The ECtHR uses the standard of proof “beyond reasonable doubt”, adding that “such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or similar un-rebutted presumptions of fact”. In this context, the conduct of the parties when evidence is being obtained must be taken into account.⁹⁹ In assessing the evidence, the Court applies the standard of proof “beyond reasonable doubt”. A “reasonable doubt”¹⁰⁰ is not a doubt based on a merely theoretical possibility or raised to avoid a disagreeable conclusion but a doubt for which reasons can be drawn from the facts presented.¹⁰¹ Proof of ill treatment may follow from the coexistence of sufficiently strong, clear, and concordant inferences or similar un-rebutted presumptions of fact.¹⁰² The ECtHR “adopts the standard of proof ‘beyond reasonable doubt’ but adds that such proof may follow from the coexistence of sufficiently strong, clear, and concordant inferences or similar

⁹⁷ Heldt (n 3).

⁹⁸ Amélie Heldt, ‘Reading between the Lines and the Numbers: An Analysis of the First NetzDG Reports’ (2019) 8 Internet Policy Review <<https://policyreview.info/articles/analysis/reading-between-lines-and-numbers-analysis-first-netzdg-reports>> accessed 13 February 2022.

⁹⁹ *Ireland v United Kingdom* App no 5310/71 (ECtHR, 18 January 1978), pp. 64–65 161.

¹⁰⁰ *Ireland v. the United Kingdom*, App no 5310/71 (ECtHR, 18 January 1978) pp. 64–65, 161, and *Angelova v. Bulgaria*, no. 38361/97, § 111, ECHR 2002-IV.

¹⁰¹ “The Greek case”, ECtHR, applications nos. 3321/67, 3322/67, 3323/67 and 3344/67, Commission’s report of 5 November 1969, https://www.echr.coe.int/Documents/Denmark_v_Greece_I.pdf and *Naumenko v. Ukraine*, no. 42023/98, § 109, 10 February 2004.

¹⁰² *Shamayev v Georgia and Russia* App no 36378/02 (ECtHR, 12 April 2005) 338; detailed: Michael O’Boyle ‘Proof: European Court of Human Rights (ECtHR)’ *Max Planck Encyclopedias of International Law* <<https://opil.ouplaw.com/view/10.1093/law-mpeipro/e3437.013.3437/law-mpeipro-e3437>> accessed 26 April 2021.

unrebutted presumptions of fact. In this context, the conduct of the Parties when evidence is being obtained has to be taken into account".¹⁰³

International Court of Justice (ICJ): Two standards of proof are referred to in international adjudication most frequently, namely, "proof beyond reasonable doubt" and "preponderance of evidence". The parties to a dispute may agree on a particular standard to be applied. In international criminal cases, it is generally accepted that allegations must be proven beyond a reasonable doubt. Proof beyond a reasonable doubt requires a high degree of cogency. This means that the evidence weighs heavily in one direction. The preponderance of evidence means that the evidence adduced by one party based on reasonable probability weighs heavier than the evidence produced by the other side. For example, the ICJ applied a strict standard of proof with respect to the allegation of the UK in *The Corfu Channel Case* that the minefields in question had been laid with the connivance of the Albanian government.¹⁰⁴ In the Application of the Convention on the Prevention and Punishment of the Crime of Genocide Case, the ICJ relied on a strict standard of proof as well.¹⁰⁵ The ICJ "has long recognised that claims against a State involving charges of exceptional gravity must be proved by fully conclusive evidence".¹⁰⁶ The Court requires that it be fully convinced that allegations made in the proceedings, that the crime of genocide or the other acts enumerated in Article III have been committed, have been clearly established. The same standard applies to the proof of attribution for such acts".¹⁰⁷

International Criminal Court (ICC): In international criminal cases, it is generally accepted that allegations must be proven beyond a reasonable doubt.

Concerning the assessment of German criminal law, we considered three standards of proof:

The standard of "initial suspicion" according to § 152 II and § 160 Code of Criminal Procedure (StPO), which exists if there are **actual indications (circumstantial evidence) of a criminal act**. According to criminalistic experience, it must therefore appear possible that a prosecutable crime is present. In particular, the initial suspicion must be **distinguished from mere presumption**, since such a presumption does not usually entail consequences regarding criminal proceedings.

Since the threshold for this standard will only lead to investigations by the authorities, we considered the standard unsuitable for our study.

Regarding the standard of proof that leads to a conviction by the court, according to § 261 Code of Criminal Procedure (StPO), the threshold is too high. Since it is required to have an adequate level of certainty based on the experience of life, on the other hand, reasonable doubts not based solely on theoretical considerations no longer arise. This standard cannot be operationalised, since an assessment is only possible after full evidence has been considered (in oral proceedings before the court).

Therefore, we decided to apply the standard of sufficient suspicion, according to §§ 170 I and § 203 Code of Criminal Procedure (StPO). This is a standard based on the prediction that is defined as follows: "A sufficient suspicion exists if, after a preliminary assessment of the facts resulting from the entire file content and the results of the evidence, a conviction of the accused is more likely than an acquittal, and there is, therefore, a predominant probability of a conviction. Due to the vagueness of the legal term, the prosecution has a margin of judgment when filing a lawsuit. In doing so, she makes the prognostic decision as to whether, after a preliminary assessment of the factual and legal situation at the end of the main hearing, she would probably come to an application for conviction. To examine the sufficient suspicion of the crime, both the legal and the actual aspects must be assessed. The matter must, therefore, be punishable from a legal point of view and can be proven with the means available".

However, we are aware that this standard is not perfect either, since, at the Public Prosecution Office, the accused must be given the chance to be heard before it can be decided whether there is sufficient suspicion, and the prosecutor can decide about bringing charges or to dismiss the case.

For claims arising from private law, we chose to take Credibility, according to § 294 Code of Civil Procedure (ZPO), as the standard to be applied. This standard of proof is about the substantiation of the facts on which the elements of the offence are based.

It is a demonstration of an overwhelming probability. A fact is made credible if it can be regarded as true with an overwhelming probability. We considered this standard preferable to the full proof requirement according to § 286 Code of Civil Procedure (ZPO) because evidence cannot be taken when deciding on the content.

C. The Coding Template

1. Design of the coding template

The coding template was designed to enable the content moderators to swiftly assess relevant content in light of the abstract (legal) norm (Code) but at the same time offer them some hands-on guidance in providing examples for the category reflected in the code. The process of decision-making is in line with the steps and standards set out in Section B of this article.

Legal and non-legal codes

MANIFESTLY ILLEGAL AND PROHIBITED BY INTERNATIONAL LAW

Code	1-1
Legal Source	Security Council resolution 1566 (2004), Rec. 3 "(...) criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the (continued on next page)

¹⁰³ *Ireland v United Kingdom* App no 5310/71 (ECtHR, 18 January 1978) 161.

¹⁰⁴ *The Corfu Channel Case* (United Kingdom v. Albania); Merits, International Court of Justice (ICJ), 9 April 1949, 16-17 <<https://www.refworld.org/cases/ICJ,402399e62.html>> accessed 15 November 2020.

¹⁰⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, (Bosnia and Herzegovina v Serbia and Montenegro), Judgment, Merits, ICJ GL No 91, ICGJ 70 (ICJ 2007), 26th February 2007, United Nations [UN], International Court of Justice [ICJ] <<https://www.icj-cij.org/public/files/case-related/91/091-20070226-JUD-01-00-EN.pdf>>, para. 209.

¹⁰⁶ cf. *Corfu Channel* (United Kingdom v. Albania), Judgment, I.C.J. Reports 1949, p. 17

¹⁰⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, (Bosnia and Herzegovina v Serbia and Montenegro), Judgment, Merits, ICJ GL No 91, ICGJ 70, 26th February 2007, United Nations [UN]; International Court of Justice [ICJ] 209 <<https://www.icj-cij.org/public/files/case-related/91/091-20070226-JUD-01-00-EN.pdf>> accessed 26 April 2021; *Corfu Channel Case (United Kingdom v Albania)* 17; Rüdiger Wolfrum and Mirka Möldner 'International Courts and Tribunals, Evidence' *MPEPIL*77 <<https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e26>> accessed 26 April 2021.

(continued)

Qualification	purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a Government or an international organization to do or to abstain from doing any act".
Notes on interpretation and application	Terrorism promotion E: The promotion or a call for a new form of terrorism has arisen, which is directed against IT services, in particular against state institutions, and is referred to as "cyber terrorism". F: The Internet and social networks such as Facebook, LinkedIn, Video, Twitter and YouTube are increasingly being used by terrorist organizations to recruit, finance, train and incite Internet users to spread terrorism and commit terrorist acts. ¹

¹ ACP-EU Joint parliamentary assembly, 'Resolution on the global spread of terrorism: the importance of the Internet and social media' (ACP-EU/101.544/14/fin.) <https://www.europarl.europa.eu/intcoop/acp/90_01/pdf/1024174en.pdf> accessed 29 April 2021.

Code	1-2
Legal Source	Article 2 (1) International Convention for the Suppression of the Financing of Terrorism (1999) "Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out: (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act."
Qualification	Terrorism financing
Notes on interpretation and application	Promotion of terrorist financing through e.g. calls to action. "Financing of terrorism: Terrorism activities take place in many different forms ranging from isolated acts to planned activities of organised groups. The forms of financing of terrorism therefore vary accordingly. It comprises not only the financing of the terrorist acts as such, but also any support to the criminal network. Terrorist organisations require significant funding, both for the actual undertaking of terrorist acts, but also to other issues: to maintain the functioning of the organisation, to provide for its basic technical necessities, as well as to cover costs related to spreading related ideologies (...)" ¹

¹ Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, 'Financing of terrorism' <<https://www.coe.int/en/web/moneyval/implementation/financing-terrorism>> accessed 29 April 2021.

Code	1-3
Legal Source	Art. 24 International Covenant on Civil and Political Rights (ICCPR) "1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. 2. Every child shall be registered immediately after birth and shall have a name. 3. Every child has the right to acquire a nationality." Declaration of the Rights of the Child, 1989
Qualification	Sexual exploitation of children / Child abuse material or anything objectionable involving minors, grooming or predation
Notes on interpretation and application	" Online sexual exploitation most commonly includes grooming, live streaming, consuming child sexual abuse material, and coercing and blackmailing children for sexual purposes. " ¹
Code	1-4
Legal Source	United Nations Convention against Transnational Organized Crime and the Protocols, Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children , UNGA 55/25
Qualification	Promotion of and/or enabling of human trafficking, Offering or advertising human trafficking
Notes on interpretation and application	"Three constituent elements of human trafficking: The Act (What is done): Recruitment, transportation, transfer, harbouring or receipt of persons. The Means (How it is done): Threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim. The Purpose (Why it is done): For the purpose of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices and the removal of organs." ²

¹ ECPAT International, 'What is online child sexual exploitation?' <<https://www.ecpat.org/what-we-do/online-child-sexual-exploitation/>> accessed 29 April 2021.

² UNODC, 'Human Trafficking' <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html#What_is_Human_Trafficking> accessed 29 April 2021.

Code	1-5
Legal Source	Article III Convention on the Prevention and Punishment of the Crime of Genocide, Article 25 (3) and Article 6 Rome Statute of the International Criminal Court
Qualification	Incitement to or promotion of genocide (jus cogens)
Notes on interpretation and application	"Statements that dehumanize as a 'genocidal hate speech' and contribute to a culture of hate and thus create the conditions for committing genocide. An example of genocidal hate speech would be an RTLM radio host stating that 'Tutsis are cockroaches.' ¹ Dehumanizing rhetoric: "A campaign of hate and dehumanization of the Rohingya had been under way for months, and escalated after 8 June 2012, led by the Rakhine Nationalities Development Party (RNDP), various Rakhine organizations, radical Buddhist monk organizations, and several officials and influential figures. It was spread through anti-Rohingya or anti-Muslim publications, public statements, rallies and the boycott of Muslim shops. The Rohingya were labelled 'illegal immigrants' and 'terrorists' and portrayed as an existential threat that might 'swallow other races' with their 'incontrollable birth rates'. In November 2012, the RNDP, in Toe Thet Yay, an official publication, cited Hitler, arguing that 'inhuman acts' were sometimes necessary to 'maintain a race'." ²

¹ Shannon Fyfe, 'Tracking Hate Speech Acts as Incitement to Genocide in International Criminal Law' 30 LJIL (2017) 523, 548.

² Human Rights Council, 'Report of the Independent International Fact-Finding Mission on Myanmar' (UN Doc. A/HRC/39/64) 25.

Code	1-6
Legal Source	Art. 19 ICCPR, Art. 17 ECHR: Prohibition of abuse of rights "Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

(continued on next page)

(continued)

Qualification	Qualified hate speech amounting to calls for violence
Notes on interpretation and application	<p>"Hate speech entails the advocacy, promotion or incitement to denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat to such persons on the basis of a non-exhaustive list of personal characteristics or status that includes race, colour, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, sex, gender, gender identity and sexual orientation. A particular feature of hate speech is that it aims at inciting or can reasonably be expected to have the effect of inciting others to commit acts of violence, intimidation, hostility or discrimination against those it targets. Incitement to hatred can result from insulting, the holding up to ridicule or the slandering of specific groups of population where such forms of expression are exercised in an irresponsible manner, which might entail being unnecessarily offensive, advocating discrimination or using vexatious or humiliating language. Intent to incite might also be established where there is an unambiguous call by a person using hate speech to others to commit the impugned acts. It might also be inferred from the strength of the language used and other relevant circumstances in which hate speech is used. Member states must sanction or even prevent all forms of expression which spread, incite, promote or justify hatred, provided that any formalities, conditions, restrictions or penalties imposed are proportionate to the legitimate aim pursued."¹</p> <p>"Incitement to hatred can result from insulting, the holding up to ridicule or the slandering of specific groups of population where such forms of expression are exercised in an irresponsible manner, which might entail being unnecessarily offensive, advocating discrimination or using vexatious or humiliating language. Intent to incite might also be established where there is an unambiguous call by a person using hate speech to others to commit the impugned acts. It might also be inferred from the strength of the language used and other relevant circumstances in which hate speech is used. Member states must sanction or even prevent all forms of expression which spread, incite, promote or justify hatred, provided that any formalities, conditions, restrictions or penalties imposed are proportionate to the legitimate aim pursued."²</p>

¹ Council of Europe 'hate speech, apology of violence, promoting negationism and condoning terrorism: the limits to the freedom of expression' (July 2018) <<https://rm.coe.int/factsheet-on-hate-speech-july2018-docx/16808c168d>> accessed 26 April 2021.

² Ibid.

Code	1-7
Legal Sources	Art. 19 ICCPR, CCPR General Comment No. 16, Consideration 4 GDPR, Article 8 ECHR, Article 11 IACHR
Qualification	Qualified breaches of personal information, defamatory personal content, Impersonation (fake accounts/profiles/pages), sexual objectification, unauthorized dissemination of intimate images ("revenge porn")
Notes on interpretation and application	"Article 17 provides for the right of every person to be protected against arbitrary or unlawful interference with his privacy, family, home or correspondence as well as against unlawful attacks on his honour and reputation. In the view of the Committee this right is required to be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons. The obligations imposed by this article require the State to adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right." ¹

¹ Internet & Jurisdiction Policy Network 'Content & Jurisdiction Program' 22 <<https://www.internetjurisdiction.net/uploads/pdfs/Papers/Content-Jurisdiction-Program-Operational-Approaches.pdf>> accessed 26 April 2021>.

Code	1-8
Legal Sources	Art. 19 ICCPR, CCPR General Comment 34 (CCPR/C/GC/34), Art. 10 ECHR: Freedom of expression, Art. 13 IACHR: Freedom of Thought and Expression , Art 9 ACHPR (Banjul Charter)
Qualification	Qualified violations/misuses of freedom of expression
Notes on interpretation and application	<p>Disinformation, sexually explicit content, nudity or pornography, content critical of religion (blasphemy/apostasy).</p> <p>Defamatory personal content, bullying, harassment (coordinated/organized damage, cyberstalking, deadnaming, doxing).</p> <p>Violent, graphic content, promotion or publication of crimes, content to organize violence or to support violent organizations, sexual violence and exploitation, aid to self-harm or suicide, disclosure of confidential or secret information, lèse majesté or critical comments on people in contemporary history.¹</p>

¹ Internet & Jurisdiction Policy Network 'Content & Jurisdiction Program' 22 <<https://www.internetjurisdiction.net/uploads/pdfs/Papers/Content-Jurisdiction-Program-Operational-Approaches.pdf>> accessed 26 April 2021>.

Code	1-9
Legal Sources	Art. 20 ICCPR, General Comment No. 11: Prohibition of propaganda for war and inciting national, racial or religious hatred (Art. 20) 29/07/1983, CCPR General Comment No. 11. (General Comments).
Qualification	Prohibition of propaganda for war and inciting national, radical or religious hatred: Hate speech, violent extremist content.
Notes on interpretation and application	Freedom of information is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. ¹

¹ Handyside v United Kingdom App no 5493/72 (ECtHR, 7 December 1976) 49; Lingens v Austria App no 9815/82 (ECtHR, 8 July 1986) 41.

Illegal under national (criminal) law (Germany)

Code	2-G-1-1
Legal Source	<p>§ 86 German Criminal Code</p> <p>Dissemination of propaganda material of unconstitutional organisations:</p> <p>"(1) Whoever disseminates in Germany or produces, stocks, imports or exports or makes publicly available through data storage media for dissemination in Germany or abroad the propaganda material.</p> <ol style="list-style-type: none"> 1. of a political party which has been declared unconstitutional by the Federal Constitutional Court or a political party or organisation which has been held by final decision to be a surrogate organisation of such a party, 2. of an organisation which has been banned by final decision because it is directed against the constitutional order or against the concept of international understanding or which has been held by final decision to be a surrogate organisation of such a banned organisation, 3. of a government, organisation or institution outside the territorial scope of this statute which is actively pursuing the objectives of one of the political parties or organisations referred to in nos. 1 and 2 or 4. propaganda material the content of which is intended to further the activities of a former National Socialist organisation incurs a penalty of imprisonment for a term not exceeding three years or a fine. <p>(2) Propaganda material within the meaning of subsection (1) is only material (section 11 (3)) whose content is directed against the free democratic basic order or the concept of international understanding.</p> <p>(3) Subsection (1) does not apply if the propaganda material or the act serves civic information, to prevent unconstitutional activities, to promote</p>

(continued on next page)

(continued)

Qualification Notes on interpretation and application	<p>the arts or science, research or teaching, reporting about current or historical events, or similar purposes. (4) If the degree of guilt is minor, the court may dispense with imposing a penalty under this provision.” Dissemination of propaganda material of unconstitutional organisations Dissemination of propaganda. Propaganda means writings (§ 11 III StGB) that contain content-promoting and support-oriented aspects. Organization must be prohibited (§§ 84, 84 StGB). Example: (1) The setting of hyperlinks to forbidden Nazi websites does not constitute aiding and abetting sedition, if it is carried out in a recognisable manner, distancing oneself from the content of these sites within the framework of extensive documentation. (2) The offer on a homepage to have blocked websites read out to you over the telephone is not punishable if it is recognisably a satire.¹</p>
¹ LG Stuttgart, judgment of 15 June 2005, 38 Ns 2 Js 21,471/02 (translation by the authors).	
Code Legal Source	<p>2-G-1-2 § 86a German Criminal Code “(1) Whoever 1. disseminates the symbols of one of the political parties or organisations designated in section 86 (1) nos. 1, 2 and 4 in Germany or uses them publicly, in a meeting or in material (section 11 (3)) disseminated by themselves or 2. produces, stocks, imports or exports objects which depict or contain such symbols for dissemination or use in Germany or abroad in a manner referred to in no. 1, incurs a penalty of imprisonment for a term not exceeding three years or a fine. (2) Symbols within the meaning of subsection (1) are, in particular, flags, insignia, uniforms and their parts, slogans and forms of greeting. Symbols which are so similar as to be mistaken for those referred to in sentence 1 are deemed to be equivalent to them (...)”</p>
Qualification Notes on interpretation and application	<p>Use of symbols of unconstitutional organisations “By inserting swastikas into the ‘Aryan Music Group’ internet platform set up by him (...), the defendant made public use (Paragraph 86a (1) (1) of the German Criminal Code) of signs identifying unconstitutional organisations”.¹</p>
¹ BGH, decision of 19 August 2014, 3 StR 88/14 (translation by the authors).	
Code Legal Source	<p>2-G-1-3 § 89a German Criminal Code Preparation of serious violent offence endangering state “(1) Whoever prepares a serious violent offence endangering the state incurs a penalty of imprisonment for a term of between six months and 10 years. A ‘serious violent offence endangering the state’ means an offence against life in the cases under section 211 or 212 or against personal liberty in the cases under section 239a or 239b which, under the circumstances, is intended and suited to undermine the continued existence or security of a state or of an international organisation, or to abolish, rob of legal effect or subvert the constitutional principles of the Federal Republic of Germany. (2) Subsection (1) only applies to offenders who prepare a serious violent offence endangering the state by 1. instructing another person or receiving instruction in the production or the use of firearms, explosives, explosive or incendiary devices, nuclear fission material or other radioactive substances, substances which contain or can produce poison, other substances which are detrimental to health, special devices which are necessary in the commission of the offence or other skills which may be of use in the commission of an offence under subsection (1), 2. producing, obtaining for themselves or another, storing or supplying to another weapons, substances or devices referred to in no. 1 or 3. obtaining or storing objects or substances which are essential for the production of weapons, substances or devices referred to in no. 1. (2a) Subsection (1) also applies to offenders who prepare a serious offence endangering the state by undertaking to leave Germany for the purpose of committing a serious offence endangering the state or the acts referred to in subsection (2) no. 1 in order to enter a state where people are given training and instructions within the meaning of subsection (2) no. 1. (3) Subsection (1) also applies if the preparations are made abroad. If the preparations are made outside the territory of the Member States of the European Union, the aforesaid only applies if the preparations are made by a German national or a foreign national whose livelihood is based in Germany, or the serious violent offence endangering the state so prepared is to be committed in Germany or against a German national. (...)”</p>
Qualification Notes on interpretation and application	<p>Preparation of serious violent offence endangering state “A serious act of violence that endangers the state pursuant to § 89a (1) sentence 2 StGB exists if the realisation of an offence enumerated there is likely to impair the security of a state. The state protection clause covers both the Federal Republic of Germany and all foreign states. All states recognised under international law are protected, irrespective of whether they are regarded here as legal or criminal offences. The support or approval of German foreign policy is also irrelevant.¹ The concept of the security of a state includes its internal and external security. Internal security is the state of relative safety of its existence and constitution against violent actions of internal forces, whereby the ability of a state to defend itself internally against disturbances is central. It will normally be compromised if the prepared act, as the perpetrator imagines it to be, is likely under the circumstances to affect the internal structure of a State. The necessary suitability must be determined objectively on the basis of the (quasi fictitious) circumstances of the prepared act. From a subjective point of view (‘determined’) it is a prerequisite that the perpetrator has included the possible consequences of the prepared act in his will. For this purpose, it is sufficient that he has recognised the factual circumstances which show the suitability for impairing the protected property and has included them in his will. On the other hand, it is not necessary to act in a targeted manner to impair internal security in the sense of an intention. With regard to the corresponding aptitude and determination, the concrete circumstances of the individual case must be taken into account; in this context, the question of state endangerment may depend on details such as the prominence of the victims, the publicity or symbolic significance of the location and the circumstances of the act (Senate, judgement of 27 October 2015 - 3 StR 218/15, BGHSt 61, 36. 10)”.²</p>
¹ Jürgen Schäfer, in Joecks and Miebach (eds.), Münchener Kommentar zum StGB, 3rd edn, § 89a recital 19; OLG Stuttgart, decision of 4 February 2014 -4Ws16/14, juris recital 16.	
² BGH, decision of 4 April 2019 AK- 8/19, para. 24 (translation by the authors).	
Code Legal Source	<p>2-G-1-4 § 91 German Criminal Code Instructions for committing serious violent offence endangering state “(1) Whoever 1. extols or gives another person access to material (section 11 (3)) whose content is of such a nature as to serve as instructions for committing a serious violent offence endangering the state (section 89a (1)) if the circumstances of its dissemination are conducive to promoting or encouraging others’ preparedness to commit a serious violent offence endangering the state, 2. obtains material of the kind designated in no. 1 for the purpose of committing a serious violent offence endangering the state incurs a penalty of imprisonment for a term not exceeding three years or a fine. (2) Subsection (1) no. 1 does not apply if 1. the act serves the purpose of civic information, protection against anti-constitutional activities, the arts and science, research or teaching,</p>

(continued on next page)

(continued)

<p>Qualification Notes on interpretation and application</p>	<p>reporting about current or historical events, or similar purposes or 2. the act solely serves the performance of lawful professional or official duties. (3) If the degree of guilt is minor, the court may dispense with imposing a penalty under this provision.” Instructions for committing serious violent offence endangering state Statements that lead to the commission of serious acts of violence that endanger the state. Instruction manual: Due to their content, they are suitable as instructions for an act within the meaning of 89a I of the penal code and to encourage the willingness of third parties to commit the offense. Spreading the instruction manual, by advertising or making it accessible. “(a) In the period between June 2014 and 21 November 2015, the defendant strongly lobbied his then life partner S. M. to leave for Syria, join the IS and carry out a suicide bombing with an explosive belt. It was important to him to supply the IS with a suicide bomber in order to strengthen it militarily by killing a large number of opponents (‘infidels’) (paragraph 1 part 1 of the executed warrant). (b) During the same period, the accused showed M. M., son of S. M., born on 5 August 2007, videos showing children fighting for the I.S., shooting at other people and being shot themselves. His aim was to win M. M. as a child soldier for the organisation and to make him receptive to its ideas and activities (paragraph 1 part 2 of the executed warrant). (c) On 15 July 2016 at about 10 p.m., the accused used a chat room to influence an unknown underage male person named H., presumably his younger brother living in Syria, to commit a suicide bombing with explosives for the IS. He stated that if his chat partner did not carry out an attack because he was ‘scared’ or thought he was too young, they would be ‘disgraced’ (paragraph 2 of the executed warrant). bb) With regard to the non-European terrorist organisation ‘Islamic State’ (IS), the urgent suspicion of a crime results from the evaluations of the Federal Public Prosecutor General in the introductory note of 12 December 2016, which - according to court experience - are based in particular on the expert opinions of the Islamic Studies expert Dr St. The defendant has so far denied the allegations, in particular his membership of the IS. During his police interrogation, he testified that one of his eight brothers had first been in Syria with the ‘Free Syrian Army’ (FSA) and had ‘then changed’, possibly to the I.S.; this brother had been ‘killed by the government’ in 2014. He - the defendant - never claimed to be a member of the IS. With regard to the membership in the IS, the urgent suspicion is based above all on the evaluation of the accused’s digital communication, namely on the secured and transmitted chat contents. Thus, he described himself as a member of the ‘Dawla’ (chat of 21 January 2014) and declared that he had seen Abu Bakr al-Baghdadi (chat of 10 February 2014) and that he had ‘pledged his loyalty to the ISIS’ (chat of 6 July 2014). The extensive chat traffic is characterised by the Islamist attitude of the accused. In a large number of such messages, he exchanged information with various communication partners about matters related to the IS as well as suicide bombings and other acts of murder. For example, he told a caller with a Syrian telephone number who he advised to commit suicide bombing: ‘I could let you join the Islamic State in Iraq and Syria. I could arrange it for you ... I’ll have them arrange a martyr operation for you’ (chat of 1 March 2014). Information on the circumstances of the accused’s family members also finds its support in chat traffic. In particular, communication with them also provides ‘inside information’ on planned operations of the IS; for example, he pointed out to chat partners, presumably his aunt and uncle, in good time - out of concern for their safety - the planned attacks in Tartu and Raqqa (chats of 27 August 2013 and 14 May 2014). Moreover, the accused communicated, for example, with a person in Turkey speaking for the IS named ‘S. N.’ about the ‘Pledge of Allegiance to the Caliph’, ‘Coalition Clauses’ and the desired political future of Syria (chats from August 2013 to July 2014).¹</p>
--	---

¹ BGH, decision of 7 September 2017 – AK 42/17 –, juris, paras 18–23 (translation by the authors).

<p>Code Legal Source</p>	<p>2-G-1-5 §100a German Criminal Code</p>
<p>Qualification Notes on interpretation and application</p>	<p>“(1) Whoever, despite knowing better, allows forged or falsified objects, reports concerning them or untrue assertions of a factual nature to come to the attention of another or to become known to the public, which, if they were genuine or true, would be of significance for the external security of the Federal Republic of Germany or its relations with a foreign power in order to deceive a foreign power into believing them to be genuine objects or facts, and thereby creates the risk of serious detriment to the external security of the Federal Republic of Germany or its relations with a foreign power, incurs a penalty of imprisonment for a term of between six months and five years. (2) Whoever produces such objects through forgery or falsification or procures them in order to allow them to come to the attention of another or to become known to the public in the manner indicated in subsection (1) in order to deceive a foreign power, and thereby creates the risk of serious detriment to the external security of the Federal Republic of Germany or its relations with a foreign power, incurs the same penalty.” Treasonous forgery “3. counterfeiting on the grounds of treason (§ 100 a para. 2 StGB). This offence is committed by anyone who intentionally allows facts, objects or messages about them which are false, falsified or untrue, but which, if they were genuine or true, would be state secrets, to reach an unauthorised person as genuine or true or makes them public and thereby endangers the welfare of the Federal Republic of Germany or one of its countries. The defendant has fulfilled this condition by deliberately making the claim, contrary to the truth, that there are political collateral agreements to the EDC Treaty which the Federal Government is keeping secret from the German people and the Bundestag, and that the Gehlen organisation is carrying out increased activity in France in connection with attempts by German generals to achieve hegemony in the EDC countries, ‘disclosures’, through which he is seriously endangering the political position of the Federal Republic, its reputation both internally and externally. It is not a case of betrayal of a genuine state secret within the meaning of Section 100 of the German Criminal Code, but rather the public disclosure of an ‘invented state secret’ in accordance with Section 100a (2) of the German Criminal Code. It is true that the concept of state secrets is defined for both § 100 and § 100a, according to the structure of the law, in § 99 StGB as ‘facts, objects or knowledge etc., the secrecy of which is necessary for the welfare of the Federal Republic of Germany or one of its states before a foreign government’. The question of doubt as to whether a state or endeavour of the government that is contrary to the Basic Law can be a genuine state secret within the meaning of § 100 StGB, which has not yet been decided by the Federal Court of Justice, does not arise in the case of the counterfeiting of § 100a StGB in violation of the constitution. The genesis of this provision leaves no doubt that it is also - and precisely - intended to cover the passing on of news etc. about allegedly unlawful conditions and endeavours, i.e., ‘illegal’ state secrets. The Member of the Bundestag Dr. Arndt, who, as far as can be seen, was the only one who explicitly commented on this issue when § 100 a was discussed in the Bundestag, stated ‘The invented state secrets can of course also include illegal facts. This will be the most dangerous and shameful betrayal in particular’. (Negotiations of the German Bundestag I. parliamentary term, 158th session, Stenographic Reports S 6325). This was not contradicted during the deliberations in the Bundestag. This also corresponds to the meaning and purpose of § 100 a. If one were to interpret the concept of state secrets in § 100a StGB as meaning that the invented fact which is ‘betrayed’ must not be ‘illegal’, must not be contrary to the constitution, the meaning of this provision would be distorted and its effect paralysed, especially for the most important cases which the legislature had in mind. Facts which have just been invented and disseminated which are contrary to the Basic Law may considerably impair the welfare of the Federal Republic of Germany because they refer, and regularly do so in relation to foreign countries, to alleged unconstitutional events or circumstances. The more malicious the forgery, the greater the threat to the welfare of the Federal Republic of Germany would be posed by the nature of the invented ‘secret’, the lower would be its protection against this most dangerous form of foreign policy well poisoning. If the defendant in the Gehlen case had confined himself to the false assertion that the Gehlen organisation was carrying out increased activity in France, even the narrowest interpretation would undoubtedly have resulted in the facts of § 100 a (2). However, since he also stated that the Gehlen organisation had increased its activities in France in preparation for aggressive, illegal efforts by German generals, such an incorrect interpretation would remove the criminal liability of the offence under Paragraph 100a (2)</p>

(continued on next page)

(continued)

and, under certain circumstances, the offence would remain unpunished at all. This is not the intention of the law and was not the will of the legislature. The 'facts' invented and disclosed by the defendant, which, with regard to both the secret agreements on the EDC contract and the Gehlen organisation, concerned allegedly unlawful acts and plans, were therefore state secrets within the meaning of § 100 a (2) StGB. They were presented to the public as true and secret and were considered state secrets according to § 100a.¹

¹ BGH, judgment of 22 December 1956 - 2 StE 15/56, BGHSt 10, paras 217–219 (translation by the authors).

Code	2-G-1-6
Legal Source	<p>“§ 111 German Criminal Code</p> <p>(1) Whoever publicly, in a meeting or by disseminating material (section 11 (3)) incites the commission of an unlawful act incurs the same penalty as an abettor (section 26) (...).”</p>
Qualification	Public incitement to commit offences
Notes on interpretation and application	<p>The incitement for unlawful acts carried out in the manner described is punished. An incitement is a certain statement, beyond mere approval, that others should do or refrain from doing something. The general incitement is addressed to an indefinite number of people.</p> <p>“The conviction of the accused for public provocation to commit criminal offences pursuant to § 111 (1) and (2) StGB in case II 5 a) of the grounds for the judgement does not stand.</p> <p>a) According to the findings made in this regard, the defendant, after a dispute with the aggrieved party, praised K. After a dispute with the aggrieved party K., with whom he had previously entered into a relationship, the defendant offered to pay 200 euros for the killing of the aggrieved parties on his 'Facebook' page, which can be viewed by all users of this Internet platform. He also informed them of her whereabouts and attached several photographs of the victim. The entry did not result in any criminal offences against the victim.</p> <p>b) The conviction for public provocation to commit a crime does not stand up to legal review. The Regional Court correctly assumed the existence of the objective prerequisites of this criminal provision but did not deal with the defendant's inner criminal side. It therefore remains unclear whether the defendant at least accepted that his summons would be taken seriously by others.¹ The fact that the defendant has confessed to the commission of the offence does not replace the finding of a corresponding intention.”²</p>

¹ OLG Frankfurt, NStZ-RR 2003, 327, 328; Fischer, StGB, 65th ed., § 111 recital 6.

² BGH, decision of 19 June 2018 - 4 StR 484/17 recitals 5–7 (translation by the authors).

Code	2-G-1-7
Legal Source	<p>§ 126 German Criminal Code</p> <p>“(1) Whoever, in a manner which is suitable for causing a disturbance of the public peace, threatens to commit</p> <ol style="list-style-type: none"> breach of the peace as designated in section 125a sentence 2 nos. 1 to 4, murder under specific aggravating circumstances (section 211), murder (section 212) or genocide (Section 6 of the Code of Crimes against International Law) or a crime against humanity (section 7 of the Code of Crimes against International Law) or a war crime (section 8, 9, 10, 11 or 12 of the Code of Crimes against International Law), grievous bodily harm (section 226), an offence against personal liberty under section 232 (3) sentence 2, section 232a (3), (4) or (5), section 232b (3) or (4), section 233a (3) or (4), each to the extent that it represents a serious criminal offence, section 234, 234a, 239a or 239b, robbery or extortion with use of force or threat of force (sections 249 to 251 or section 255), a serious criminal offence constituting a public danger under sections 306 to 306c or section 307 (1) to (3), section 308 (1) to (3), section 309 (1) to (4), section 313, section 314 or section 315 (3), section 315b (3), section 316a (1) or (3), section 316c (1) or (3) or section 318 (3) or (4) or a less serious criminal offence constituting a public danger under section 309 (6), section 311 (1), section 316b (1), section 317 (1) or section 318 (1) (...) <p>incurs a penalty of imprisonment for a term not exceeding three years or a fine.”</p>
Qualification	Disturbing public peace by threatening to commit offences. Expressions that are likely to disturb public peace.
Notes on interpretation and application	<p>Public peace is an objective state of general legal security and the subjective consciousness of the population to live in peace and quiet. Disturbance of this state must be affected by the threat of criminal offences (catalogue). Peace is disturbed when a general disturbance of the population within Germany occurs, but at least below a not inconsiderable number of persons.</p> <p>Threat is the announcement that the commission of one of the offences mentioned in § 126 StGB is imminent, whereby the threatening party claims to have influence on this. The offence must already be substantiated in its essential features.</p> <p>“The threat of bomb attacks in a generally accessible medium is likely to frighten the population or in any case to create or intensify a state of insecurity and thereby disturb the public peace in the sense of the provision of § 126 (1) StGB. Even if the political conviction of an accused person cannot, in principle, justify the assumption of an unfavourable social prognosis on its own, this principle cannot apply without further ado in cases of the new phenomenon of radical Islamist perpetrators, even if there are doubts about the continued existence of the corresponding extremist 'political' conviction.”¹</p> <p>“An editor who reports on the website, via Facebook or Twitter from an objective perspective - deliberately against his better judgment - that the 'largest terrorist attack to date in Western Europe' has taken place in Mannheim, whereby it is not apparent to the reader of the freely accessible part of the article that it is an invented story, is about to disrupt the public peace by pretending that a murder, manslaughter or grievous bodily harm is imminent, in accordance with section 126 (2) in conjunction with section 126 (3) of the German Civil Code. para. 1 StGB.”²</p>

¹ AG Saarbrücken, judgment of 3 March 2011 - 26 Ls 29 Js 159/10 (57/11) -, juris, paras 69 and 97, (translation by the authors).

² AG Mannheim, judgment of 7 January 2019 - 20 Cs 806 Js 10,181/18 -, juris, para 30, (translation by the authors).

Code	2-G-1-8
Legal Source	<p>§ 129 German Criminal Code</p> <p>“(1) Whoever forms an organisation or participates as a member in an organisation the objectives or activities of which are directed at the commission of offences which incur a penalty of a maximum term of imprisonment of at least two years incurs a penalty of imprisonment for a term not exceeding five years or a fine. Whoever supports such an organisation or recruits members or supporters for such an organisation incurs a penalty of imprisonment for a term not exceeding three years or a fine.</p> <p>(2) An organisation is a structured association of more than two persons, established to exist for a longer period of time, regardless of whether it has formally defined roles for its members, continuous membership or a developed structure and whose purpose is the pursuit of an overriding common interest.</p> <p>(3) Subsection (1) does not apply</p> <ol style="list-style-type: none"> if the organisation is a political party which the Federal Constitutional Court has not declared to be unconstitutional, if the commission of offences is only one objective or an activity merely of subordinate importance or to the extent that the objectives or activities of the organisation relate to criminal offences under sections 84 to 87. (...).”
Qualification	Forming criminal organisations

(continued on next page)

(continued)

Notes on interpretation and application	This covers statements which contribute to the formation of a criminal organisation or encourage the formation of a criminal organisation or testify to the membership of a criminal organisation. An association is a long-term, voluntary, organizational union of at least three persons who pursue common goals when subordinated to the will of the entirety and feel themselves to be a unified association. The purpose of the association must be to commit offences/crimes. "1. membership of an association presupposes a certain degree of consensual integration of the offender into the organisation. It is still necessary for the offender to engage in an activity related to the organisation in order to further the criminal aims of the association, by which he promotes them from within and not only from without." ¹
---	--

¹ BGH, decision of 22 March 2018 - StB 32/17 -, juris, paras 21, 23, 24 and 33 (translation by the authors).

Code	2-G-1-9
Legal Source	§ 129a German Criminal Code “(1) Whoever forms an organisation (section 129 (2)) whose objectives or activities are directed at the commission of 1. murder under specific aggravating circumstances (section 211) or murder (section 212) or genocide (Section 6 of the Code of Crimes against International Law) or a crime against humanity (section 7 of the Code of Crimes against International Law) or a war crime (section 8, 9, 10, 11 or 12 of the Code of Crimes against International Law) or 2. offences against personal liberty under section 239a or section 239b, (...) (2) Whoever forms an organisation whose objectives or activities are directed at 1. causing serious physical or mental harm to another person, especially of the kind designated in section 226, 2. committing offences under section 303b, section 305, section 305a or offences constituting a public danger under sections 306 to 306c or section 307 (1) to (3), section 308 (1) to (4), section 309 (1) to (5), section 313, 314 or section 315 (1), (3) or (4), section 316b (1) or (3) or section 316c (1) to (3) or section 317 (1), 3. committing offences against the environment under section 330a (1) to (3), 4. committing offences under section 19 (1) to (3), section 20 (1) or (2), section 20a (1) to (3), section 19 (2) no. 2 or (3) no. 2, section 20 (1) or (2), or section 20a (1) to (3), in each case also in conjunction with section 21, or under section 22a (1) to (3) of the War Weapons Control Act or 5. committing offences under section 51 (1) to (3) of the Weapons Act, or whoever participates as a member of such an organisation if one of the offences referred to in nos. 1 to 5 is intended to seriously intimidate the population, to unlawfully coerce an authority or an international organisation by force or threat of force, or to destroy or significantly impair the fundamental political, constitutional, economic or social structures of a state or of an international organisation and which, given the nature or consequences of such offences, may seriously damage a state or an international organisation incurs the same penalty. (...)”
Qualification	Forming terrorist organisations
Notes on interpretation and application	“The subject of the arrest warrant is the accusation that the defendant, who was 18 years old at the time of the offence, had in nine cases in June and July 2016 supported the Association ‘Islamic State’ (hereinafter: IS), whose purposes and activities were directed towards committing murder (section 211 of the German Criminal Code) or manslaughter (section 212 of the German Criminal Code), by sending him from Germany via the messenger service ‘Telegram’ to be informed by IS member M.s Messenger Service ‘Telegram’, either by translating texts relating to the IS into German or by checking the accuracy of existing translations into German, knowing that his communication partner belonged to the IS. Knowing the aims and actions of this organisation, he had intended to promote its propaganda through his activities (punishable under Section 129b (1) sentences 1 and 2 of the German Criminal Code in conjunction with Section 129a (5) sentence 1, Section 53 of the German Criminal Code and Sections 1, 105 of the German Judicial Reform Act).” ¹

¹ BGH, decision of 1 February 2017 - AK 1/17 -, juris, para 2 (translation by the authors).

Code	2-G-1-10
Legal Source	§ 129b German Criminal Code “(1) Sections 129 and 129a apply to foreign organisations. If the offence relates to an organisation outside the Member States of the European Union, this only applies if the offence was committed by way of an activity carried out within the territorial scope of this statute or if the offender or the victim is a German national or is in Germany. (...)”
Qualification	Foreign criminal and terrorist organisations
Notes on interpretation and application	Compare: 2-G-1-8 and 2-G-1-9: with reference to criminal or terrorist organizations in other countries.

Code	2-G-1-11
Legal Source	§ 130 German Criminal Code “(1) Whoever, in a manner which is suitable for causing a disturbance of the public peace, 1. incites hatred against a national, racial, religious group or a group defined by their ethnic origin, against sections of the population or individuals on account of their belonging to one of the aforementioned groups or sections of the population, or calls for violent or arbitrary measures against them or 2. violates the human dignity of others by insulting, maliciously maligning or defaming one of the aforementioned groups, sections of the population or individuals on account of their belonging to one of the aforementioned groups or sections of the population incurs a penalty of imprisonment for a term of between three months and five years. (2) Whoever 1. disseminates material (section 11 (3)) or makes it available to the public, or offers, supplies or makes available to a person under 18 years of age material (section 11 (3)) which a) incites hatred against one of the groups referred to in subsection (1) no. 1, sections of the population or individuals on account of their belonging to one of the groups referred to in subsection (1) no. 1, or sections of the population, b) calls for violent or arbitrary measures against one of the persons or bodies of persons referred to in letter (a) or c) attacks the human dignity of one of the persons or bodies of persons referred to in letter (a) by insulting, maliciously maligning or defaming them, 2. makes content referred to in no. 1 (a) to (c) available to a person under 18 years of age or to the public through broadcasting or tele media services or 3. produces, purchases, supplies, stocks, offers, advertises or undertakes to import or export material (section 11 (3)) of such content referred to in no. 1 (a) to (c) in order to use it or parts obtained from it within the meaning of no. 1 or 2 or to facilitate such use by another incurs a penalty of imprisonment for a term not exceeding three years or a fine. (3) Whoever publicly or in a meeting approves of, denies or downplays an act committed under the rule of National Socialism of the kind indicated in Section 6 (1) of the Code of Crimes against International Law in a manner which is suitable for causing a disturbance of the public peace incurs a penalty of imprisonment for a term not exceeding five years or a fine.

(continued on next page)

(continued)

Qualification Notes on interpretation and application	(4) Whoever publicly or in a meeting disturbs the public peace in a manner which violates the dignity of the victims by approving of, glorifying or justifying National Socialist tyranny and arbitrary rule (...)" Incitement of masses (Volksverhetzung) A statement that is inflammatory. The incitement must be directed against parts of the population with references to national, racial, religious or ethnic groups. Incitement to hatred is a form of incitement to a hostile act which is aimed at the feelings of the addressees and goes beyond mere expressions of rejection and contempt. An appeal to violence - or any other arbitrary measure - presupposes an appeal character of the statement. Defamation is the making or spreading of knowingly false factual claims which lower the reputation of the population. Insulting is a particularly disparaging manifestation of disregard according to content or form. Malicious disparagement is the representation of others than despicable, inferior or unworthy for reprehensible reasons. ¹ "The Higher Regional Court of Hamm has decided that a professional soldier can be convicted of incitement of masses, if he insults foreigners and refugees in publicly accessible comments on Facebook as 'Gesochse', 'Monkeys', 'Vermin' and criminal 'Pack'." ²
--	--

¹ Jürgen Schäfer in Joecks and Miebach (eds), *Münchener Kommentar zum StGB*, 3rd edn, § 130, recitals 20ff.² OLG Hamm, decision of 26. September 2017, 4 RVs 103/17, (translation by the authors).

Code Legal Source	2-G-1-12 § 131 German Criminal Code "(1) Whoever 1. takes material (section 11 (3)) which describes cruel or otherwise inhuman acts of violence against humans or humanoid beings in a manner which glorifies or downplays such acts of violence or which represents the cruel or inhuman aspects of the event in a manner which violates human dignity and a) disseminates or makes it available to the public, b) offers, supplies or makes it available to a person under 18 years of age or 2. makes content referred to in no. 1 available through broadcasting or tele media services to a) a person under 18 years of age, b) the public or 3. produces, obtains, supplies, stocks, offers, advertises or undertakes to import or export material (section 11 (3)) of such content referred to in no. 1 in order to use it or parts obtained from it within the meaning of no. 1 (a) or (b), or no. 2, or to facilitate such use by another (...) (2) Subsection (1) does not apply if the act serves the reporting about current or historical events. (3) Subsection (1) sentence 1 no. 1 (b) and no. 2 (a) does not apply if it is the person having the duty of care and custody of another person who acts; this does not apply if the person having the duty of care and custody grossly breaches the duty of care and upbringing by offering, supplying or making available such material." Depictions of violence "1) to disseminate or publicly use a mark within the meaning of § 20 (1) sentence 1 no. 5 of the German Associations Act by sharing it in the publicly viewable chronicle of a Facebook account. 2) A dissemination or use covered by § 20 Paragraph 1 Sentence 1 No. 5 VereinsG does not exist if it is clearly evident from the content of the statement associated with the use of the trademark that the use of the trademark does not run counter to the protective purpose of § 20 Paragraph 1 Sentence 1 No. 5 VereinsG. 3) In the event of ambiguity in the content of the statement associated with the use of the prohibited sign, other possible interpretations with convincing reasons must not be excluded in advance in comparison with the interpretation leading to a conviction pursuant to § 20 (1) sentence 1 no. 5 Vereinsgesetz, unlike in the case of a criminal conviction for a mere statement. 4) to disseminate or make available to the public within the meaning of § 131 (1) sentence 1 no. 1 letter a StGB by sharing a video recording in the publicly viewable chronicle of a Facebook account. 5) The mere fact that a video recording shows cruel or inhuman acts of violence does not allow the conclusion to be drawn that the cruel or inhuman nature of the event is thereby depicted in a manner that violates human dignity within the meaning of section 131(1)(1)(3) of the StGB. 6) In the third variant of § 131, paragraph 1, no. 1 of the German Criminal Code, the presentation of violence as an offence presupposes that it is intended to create or reinforce an attitude in the viewer that denies the fundamental claim to value and respect that every human being has." ¹
Qualification Notes on interpretation and application	

¹ BayVerfG, order of 14 February 2020 - 207 StRR 8/20 (translation by the authors).

Code Legal Source	2-G-1-13 § 140 German Criminal Code "Whoever 1. rewards or 2. approves of publicly, in a meeting or by disseminating material (section 11 (3)) in a manner which is suitable for causing a disturbance of the public peace one of the unlawful acts referred to in section 138 (1) nos. 2 to 4 and no. 5 last alternative and in section 126 (1) or an unlawful act under section 176 (3), sections 176a and 176b, under section 177 (4) to (8) or section 178 after it has been committed or culpably attempted incurs a penalty of imprisonment for a term not exceeding three years or a fine."
Qualification Notes on interpretation and application	Rewarding and approval of offences Reward means that the perpetrator rewards one of the above-mentioned illegal activities after it has been committed, i.e., directly or indirectly, after the fact, to a participant (or an association which is responsible for the act or has declared itself responsible for the act) by giving a previously unpromised advantage. The advantage does not have to be of a material nature, it can also lie in a demonstrative award. Approval means that the perpetrator approves the act publicly or in a meeting or by distributing writings, i.e., by means of a statement recognizably related to the concrete act. ¹ "(1) In order to assess whether a statement is to be understood as condoning offences in accordance with the restrictive meaning of the constituent element of the offence, its objective meaning must first be determined, taking into account the circumstances of the individual case, from the point of view of an average public which is impartial and reasonably well-informed. (2) In the light of the freedom of opinion protected by Article 5(1) sentence 1 of the Basic Law, no meaning may be attached to it which it objectively does not have, and in the event of ambiguity, the interpretation leading to a conviction may be assumed only if other possibilities of interpretation without penalty can be excluded on convincing grounds (para. 16). (3) The requirements of Article 140 of the Criminal Code are therefore not met if a statement (here: on arson attacks on asylum seekers' accommodation) made by a defendant is not exclusively descriptive in the sense of an explanatory model for the way in which citizens react in the event of an alleged lack of political participation (para. 22)." ²

¹ Michael Heuchemer in, Heintschel-Heinegg (ed), *BeckOK StGB*, 49th edn, § 140, recitals 10–14.² OLG Karlsruhe, decision of 11 May 2017 - 2 Rv 9 Ss 177/17 -, juris, paras 16 and 22 (translation by the authors).

Code	2-G-1-14
Legal Source	§ 166 German Criminal Code “(1) Whoever publicly or by disseminating material (section 11 (3)) reviles the religion or ideology of others in a manner which is suitable for causing a disturbance of the public peace incurs a penalty of imprisonment for a term not exceeding three years or a fine. (2) Whoever publicly or by disseminating material (section 11 (3)) reviles a church or other religious or ideological community in Germany or its institutions or customs in a manner which is suitable for causing a disturbance of the public peace incurs the same penalty.”
Qualification	Revilement of religious faiths and religious and ideological communities
Notes on interpretation and application	“When assessing the legality of the terms of use and Community standards applied by the operator of a social media platform (here: Facebook), a balance must be struck between the user’s freedom of opinion on the one hand and the fundamental rights of Articles 2, 12 and 14 of the Basic Law in dispute for the operator of a social media platform on the other. The general freedom of action and freedom to exercise an occupation and the right to set up and run a business must be brought into balance with Article 5 of the Basic Law by way of practical concordance. In this respect, the fundamental rights do not have a direct effect, but only a radiating effect. (2) It would be incompatible with the need to balance the conflicting fundamental rights positions in accordance with the principle of practical concordance if the operator of a social media platform were to be allowed, on the basis of ‘virtual domiciliary rights’ on the platform provided by him, to delete a user’s contribution which the operator considers to be in breach of its guidelines, even if the contribution does not exceed the limits of permissible expression of opinion.” ¹

¹ LG Bamberg, judgment of 18 October 2018 - 2 O 248/18, juris, paras 79, 86 (translation by the authors).

Code	2-G-1-15
Legal Source	§ 184b German Criminal Code “(1) Whoever 1. disseminates child pornographic material or makes it available to the general public, whereby pornographic material (section 11 (3)) is deemed to be child pornography if it relates to a) sexual acts performed by, on or in the presence of a person under 14 years of age (child), b) the reproduction of a child in a state of full or partial undress in an unnaturally sexual pose or c) the sexually provocative reproduction of a child’s bare genitalia or bare buttocks, 2. undertakes to procure, for another, child pornographic material which reproduces actual or realistic acts, 3. produces child pornographic material which reproduces actual acts or 4. produces, obtains, supplies, stocks, offers, advertises or undertakes to import or export such child pornographic material in order to use it or parts thereof within the meaning of no. 1 or 2 or of section 184d (1) sentence 1, or to facilitate such use by another, unless the offence is subject to a penalty under no. 3, (...).” § 184d German Criminal Code “(1) Whoever makes pornographic content available to another person or to the public through broadcasting or tele media services incurs a penalty under sections 184 to 184c. In the cases under section 184 (1), sentence 1 does not apply to dissemination via tele media if technical or other measures are in place to ensure that the pornographic content is not accessible to persons under 18 years of age. Section 184b (5) and (6) applies accordingly. (2) Whoever undertakes to access child pornography via tele media also incurs a penalty under section 184b (3). Whoever undertakes to access youth pornography via tele media also incurs a penalty under section 184c (3); section 184c (4) applies accordingly. Section 184b (5) and (6) sentence 1 applies accordingly.”
Qualification	Dissemination, procurement and possession of child pornography, making pornographic content available through broadcasting or tele media services; accessing child or youth pornographic content via tele media
Notes on interpretation and application	An image is child pornographic if it involves sexual acts by and on persons under the age of 14 (child), shows a partially or completely unclothed child in an unnaturally sexually explicit position, or shows the unclothed genitals or buttocks of a child in a sexually suggestive manner. ¹ “Making child pornographic material publicly accessible on the Internet in accordance with § 184b, paragraph 1, no. 2 of the German Criminal Code (StGB) is to be affirmed if the addressee is given the opportunity to access the material, which is given by making the files available. However, the fact that the addressee has actually been granted (read) access does not require the facts to be fulfilled (continuation BGH, 27 June 2001, 1 StR 66/01, BGHSt 47, 55).” ²

¹ Theo Ziegler in, Heintschel-Heinegg, *BeckOK StGB*, 49th edn, § 184b, recitals 3–8.

² BGH, decision of 12 November 2013 - 3 StR 322/13, juris, para 3. (translation by the authors).

Code	2-G-1-16
Legal Source	§ 185 German Criminal Code “The penalty for insult is imprisonment for a term not exceeding one year or a fine and, if the insult is committed by means of an assault, imprisonment for a term not exceeding two years or a fine.”
Qualification	Insult
Notes on interpretation and application	The honour of a person is protected. It mainly includes value judgments, i.e., statements of disregard or disrespect. These can concern the ethical value of another person or the social value. Assertions of facts are only factual if they are made to the person concerned (as opposed to § 186 StGB). In principle, the content of the statement must be determined, taking into account all the accompanying circumstances. Satire and caricatures are not insulting, nor are general discourtesies, lack of distance. ¹ Examples: TV announcer as ‘milked goat’ ² , police officers as ‘shit cops’ ³ , comparison of a soldier with ‘murderer, torturer, concentration camp supervisor and executioner’ ⁴ , ‘killer squad’ to GSG9, physically handicapped person as ‘cripple’. ⁵ Legal Justification: § 193 Safeguarding legitimate interests The first prerequisite for justification is the exercise of a legitimate interest, i.e., the pursuit of a public or private, non-material or material purpose recognised by law as worthy of protection. The pursuit of the interest must also be proportionate: The pursuit of a legitimate purpose does not in itself justify the violation of honour; rather, it must also be the appropriate means of doing so, taking into account all the circumstances: Only the legitimate pursuit of legally recognised interests is not unlawful. ⁶ “(1) In the case of a very similar infringement of the obligation to cease and desist under a settlement, there is normally no legal interest in bringing an action for an injunction. (2) If a third party’s mail is shared in a social network and marked with a consenting note (‘important and correct action’), the disseminator makes the statements contained therein his own. (3) Legal persons governed by private law may not rely on the principles developed in the case law on defamatory criticism.” ⁷

¹ Brian Valerius in, Heintschel-Heinegg, *BeckOK StGB*, 49th edn, § 185, recital 16.

² BGH, decision of 5 March 1963 – VI ZR 55/62.

³ AG Bonn, Judgment of 10 August 2016, 702 Ds 74/16.

⁴ BVerfGE 93, 266.

⁵ BVerfGE 86, 1, para 20, (translation by the authors).

⁶ Jörg Eisele and Ulrike Schittenhelm in, Schönke, Schröder, *Strafgesetzbuch Kommentar*, 30th edn, 2019, § 193, recitals 9–13.

⁷ OLG Dresden, Judgment of 1 Juni 2018 – 4 U 217/18 –, juris, paras 10,15 and 18 (translation by the authors).

Code	2-G-1-17
Legal Source	§ 186 German Criminal Code "Whoever asserts or disseminates a fact about another person which is suitable for degrading that person or negatively affecting public opinion about that person, unless this fact can be proved to be true, incurs a penalty of imprisonment for a term not exceeding one year or a fine and, if the offence was committed publicly or by disseminating material (section 11 (3)), a penalty of imprisonment for a term not exceeding two years or a fine." § 188 Towards a person of political life § 193 Safeguarding legitimate interests
Qualification	Malicious gossip (<i>Üble Nachrede</i>)
Notes on interpretation and application	Attack on the honour of a person through statements of facts against third parties (different from § 185 StGB). The "fact", i.e., the content of the assertion of truth, must be objectively suitable, if it comes to the knowledge of third parties, to disparage the person concerned or degrade him in public opinion. Facts are external events, states and conditions that can be the object of sensory perception, but also internal facts (character traits, motives, goals) as soon as they relate to external phenomena. Facts are everything that can be true or false, i.e., as a statement of truth, the statement of facts must in principle be accessible to verification. Facts must not be proven "true". ¹

¹ Jörg Eisele and Ulrike Schittenhelm in, Schönke, Schröder, *Strafgesetzbuch Kommentar*, 30th edn, 2019, § 186, recitals 2–10 (translation by the authors).

Code	2-G-1-18
Legal Source	§ 187 German Criminal Code "Whoever, despite knowing better, asserts or disseminates an untrue fact about another person which is suitable for degrading that person or negatively affecting public opinion about that person or endangering said person's creditworthiness incurs a penalty of imprisonment for a term not exceeding two years or a fine, and, if the act was committed publicly, in a meeting or by disseminating material (section 11 (3)), a penalty of imprisonment for a term not exceeding five years or a fine." § 188 Towards a person of political life § 193 Safeguarding legitimate interests
Qualification	Defamation
Notes on interpretation and application	Perpetrator must knowingly disseminate a proven untrue statement of facts. The untrue fact must be capable of degrading or disparaging a third person. Or the untrue fact must be capable of endangering the credit of the person concerned. Credit is the confidence that someone enjoys in the fulfilment of their pecuniary obligations. ¹

¹ *Ibid*, recitals 1–10 (translation by the authors).

Code	2-G-1-19
Legal Source	§ 201a German Criminal Code "(1) Whoever 1. without being authorised to do so creates or transmits photographs or other images of another person in private premises or in a room which is specially protected from view, and thereby violates the intimate privacy of the person depicted, 2. without being authorised to do so produces a photograph or other image exhibiting the helplessness of another person or transmits such image, and thereby violates the intimate privacy of the person depicted, 3. uses a photograph or other image produced by an offence under no. 1 or no. 2 or makes it available to a third party or 4. makes available to a third party, in the awareness of that third party lacking authorisation to do so, a photograph or other image of the type set out in no. 1 or no. 2 which has been produced with authorisation, and thereby violates the intimate privacy of the person depicted, incurs a penalty of imprisonment for a term not exceeding two years or a fine. (2) Whoever, without being authorised to do so, makes available to a third party a photograph or other image of another person which is of such a nature as to significantly damage the reputation of the person depicted incurs the same penalty. (3) Whoever 1. produces or offers to procure for a third party for a consideration or 2. procures for themselves or for a third party for a consideration an image showing the nakedness of another person under 18 years (...)"
Qualification	Violation of intimate privacy by taking photographs or other images
Notes on interpretation and application	Only unauthorized use or access is considered as a criminal act. Use is to play in front of yourself or a third party. Making it accessible is to enable third parties to access the recordings. "Father is not allowed to put pictures of his daughter on the net. A father has been sentenced to a fine for posting photos of his little daughter on the Internet without the permission of the custodial grandmother. The district court of Hanover sentenced him to a fine of 40 daily rates of 40 euros each, as a spokesman for the court said on 03.02.2020 (Ref.: 244 Ds 228/19). Custodial grandmother sued. The grandmother had allowed the 23-year-old, as the custodian of the then nine month old girl, to take photos of herself and the child. However, he published the pictures on Facebook between January and April 2019, despite their prohibition, and thus gave his Facebook friends an insight into the protected space in the grandmother's flat. The grandmother had filed a complaint against the publication of the pictures in social media. The judgment is final." ¹

¹ AG Hannover, decision of 3 February 2020 – 244 Ds 228/19; Redaktion beck-aktuell, 'AG Hannover: Vater darf Bilder seiner Tochter nicht ins Netz stellen' <<https://rsw.beck.de/aktuell/daily/meldung/detail/ag-hannover-vater-darf-bilder-seiner-tochter-nicht-ins-netz-stellen>> accessed 1 May 2021.

Code	2-G-1-20
Legal Source	§ 241 German Criminal Code "(1) Whoever threatens a person with the commission of a serious criminal offence against that person or a person close to him or her incurs a penalty of imprisonment for a term not exceeding one year or a fine. (2) Whoever, despite knowing better, pretends to another person that the commission of a serious criminal offence against that person or a person close to him or her is imminent incurs the same penalty."
Qualification	Threatening commission of serious criminal offence
Notes on interpretation and application	A statement that involves the prospect of committing a crime, with a certain future behaviour that constitutes a crime in the sense of § 12 StGB (i. e., minimum prison sentence of one year). A threat is also considered "an illegal act against the sexual self-determination, the physical integrity, the personal liberty or against a thing of substantial value is to fall. At the same time, the maximum penalty for the threat of a crime will be raised from one to two years' imprisonment." ¹

¹ Maximilian Heim, 'Verschärfte Strafen für Hass und Hetze im Internet' (2020) NJW Special, 440 (translation by the authors).

Code	2-G-1-21
Legal Source	§ 269 German Criminal Code “(1) Whoever, for the purposes of deception in legal commerce, stores or modifies data which are of probative value in such a way that a counterfeit or falsified document would be created upon their retrieval, or whoever uses data stored or modified in such a manner incurs a penalty of imprisonment for a term not exceeding five years or a fine. (2) The attempt is punishable. (3) Section 267 (3) and (4) applies accordingly.”
Qualification	Forgery of data of probative value
Notes on interpretation and application	Only the use of incorrect or fake evidence-relevant data can be considered as a criminal act. “According to the findings made in this regard, the defendant, after a dispute with the aggrieved party, praised K. with whom he had previously entered into a relationship, the defendant offered to pay 200 Euros for the killing of the victims on his ‘Facebook’ page, which can be viewed by all users of this internet platform. He also informed them of her whereabouts and attached several photographs of the victims. The entry did not result in any criminal offences against the injured party. (...) The findings made show, however, that the accused is guilty of falsifying evidence-relevant data (§ 269 (1) StGB) in the variant of the offence of using altered data.” ¹

¹ BGH, decision of 19 June 2018 - 4 StR 484/17, (translations by the authors).

Code	2-G-1-22
Legal Source	§ 14 BtMG labelling and advertising “(…)” 5. No advertising shall be made for narcotic drugs referred to in Annex I. The advertising of the stunning substances listed in Annexes II and III shall be restricted to professionals in industry and commerce and to persons and associations of persons operating a pharmacy or a veterinary dispensary, and to doctors, dentists and veterinarians in the case of the stunning substances listed in Annex III.” (§ 29 BtMG Criminal Offences / § 30 BtMG Offences)
Qualification	Labelling and advertising / Criminal Offences
Notes on interpretation and application	Statements related to advertising, offering drugs or commercial trading with drugs. “The advertising ban does not contain any restriction regarding the advertising channel. It therefore covers every medium and thus all advertising channels. Advertising can be done orally, in writing, by telephone, telegram, fax, e-mail, radio, television or internet, by distributing leaflets, brochures, posters, brochures, CDs or DVDs, newspaper or magazine advertisements (KPV/Patzak BtMG § 29 part 18. marginal no. 8). With regard to the restriction of advertising outside professional circles, advertising cannot be carried out on advertising channels that are generally accessible. Legal advertising on the internet for Schedule II and III narcotics is therefore excluded, unless it is a closed user group. In that case, however, it must be ensured that access to it is only possible after verification of the user.” ¹

¹ Wolfgang Bohnen, in Bohnen and Schmidt, *BeckOK BtMG*, 9th edn, 2020, § 14, recital 20 (translation by the authors).

Code	2-G-1-23
Legal Source	§ 35 WaffG: Advertising, obligations to inform, trade prohibitions “(1) Anyone who offers weapons or ammunition for sale or exchange in advertisements or promotional literature shall draw attention to the requirement of eligibility to purchase the following types of weapons as follows: 1. In the case of firearms requiring a permit and ammunition requiring a permit: Only to holders of an acquisition permit, 2. in the case of firearms and ammunition and other weapons not subject to authorisation: Only to persons of 18 years of age or older, 3. for prohibited weapons: ...to be sold only to holders of a special permit, and to disclose his name, his address and, where applicable, his registered trademark. Advertisements and promotional literature pursuant to sentence 1 may only be published if they contain the name and address of the offerer as well as the information to be provided by him depending on the type of wafer (...)”
Qualification	Advertising, obligations to inform, trade prohibitions Weapons Act / Criminal Offences
Notes on interpretation and application	The provision of § 35 contains both obligations of information for those who offer weapons or ammunition for sale or exchange in advertisements and for those who give weapons subject to authorisation to another in retail trade. Finally, paragraph 3 contains a basic ban on certain forms of distribution or transfer.

Code	2-G-1-24
Legal Source	§ 3, 3a and 11 Heilmittelwerbegesetz / Drug Advertising Act (HWG) § 3 HWG “Misleading advertising is not permitted. Misleading advertising exists in particular in this case, 1. if medicinal products, medical devices, processes, treatments, objects or other means are attributed a therapeutic effect or effects which they do not have 2. if the impression is wrongly given that (a) success can be expected with certainty, (b) no harmful effects occur during normal or prolonged use, (c) the advertising is not organised for the purposes of the contest, 3. if untrue information or information suitable for deception (a) on the composition or nature of medicinal products, medical devices, articles or other means, or on the nature of processes or treatments; or (b) are made about the person, education, qualification or success of the manufacturer, inventor or the persons working or having worked for them.” § 3a HWG “Advertising for medicinal products which are subject to the obligation to obtain marketing authorisation and which are not authorised or deemed to be authorised under the provisions of the pharmaceutical legislation is prohibited. Sentence 1 shall also apply if the advertising relates to indications or pharmaceutical forms which are not covered by the approval.” § 11 HWG “(1) Outside the specialist circles, no advertising may be made for medicinal products, processes, treatments, objects or other means (...) 2. with information or presentations which refer to a recommendation by scientists, health professionals, animal health professionals or other persons who, on the basis of their knowledge, may encourage the use of medicinal products, 3. with the reproduction of patient histories as well as with references to them, if this is done in an abusive, repulsive or misleading manner or if a detailed description or presentation can lead to an incorrect self-diagnosis, 5. with a pictorial representation which makes improper, repulsive or misleading use of changes in the human body as a result of disease or injury or of the action of a medicinal product on the human body or parts of the human body, (...) 7. with advertising statements which suggest that health could be impaired or improved by not using the medicinal product,

(continued on next page)

(continued)

	<p>8. by means of advertising presentations, which are associated with the offering for sale or acceptance of addresses,</p> <p>9. with publications whose advertising purpose is misleading or not clearly recognizable, (...)</p> <p>11. with statements of third parties, in particular with letters of thanks, acknowledgement or recommendation, or with references to such statements, if they are made in an abusive, repulsive or misleading manner,</p> <p>12. with advertising measures that are exclusively or predominantly aimed at children under 14 years of age,</p> <p>13. with competitions, draws or other procedures whose outcome depends on chance, if these measures or procedures encourage the improper or excessive use of medicines,</p> <p>14. by the supply of medicinal products, their samples or specimens or by vouchers for them,</p> <p>15. by the unsolicited delivery of samples or specimens of other means or objects or by vouchers for them.</p> <p>Sentence 1 No. 7 to 9, 11 and 12 shall apply accordingly to medical devices. Furthermore, the following advertising is not permitted for the operative plastic-surgical procedures mentioned in § 1 paragraph 1 number 2:</p> <p>1. with the effect of such a treatment by comparative presentation of the body condition or appearance before and after the operation or</p> <p>2. with advertising measures that are exclusively or predominantly aimed at children and young people.</p> <p>(2) Outside the specialist circles, medicinal products for human use may not be advertised with claims which suggest that the effect of the medicinal product is equivalent or superior to another medicinal product or another treatment.”</p>
Qualification	Drug Advertising Act /Criminal Offences
Notes on interpretation and application	<p>Statements concerning misleading advertising or unlawful advertising with and for medicinal products or medical devices. Advertising is inadmissible if it is made to non-specialist circles or if the impression is made that success will certainly occur, side effects are concealed, or it is concealed that it is advertising etc.</p> <p>“a mail-order pharmacy established in another Member State is prohibited from advertising a prize draw to attract customers if participation in the prize draw is linked to the submission of a prescription for a medicinal product for human use subject to medical prescription, if the prize offered is not a medicinal product but another article (in this case, an electric bicycle worth EUR 2 500 and electric toothbrushes), and if there is no risk of encouraging the inappropriate or excessive use of medicinal products.”¹</p>

¹ BGH PharmR 2020, 487 (translation by the authors).

Illegal under national (criminal) law (Austria)

Code	2-A-1-1
Legal Source	<p>§ 246 Austrian Criminal Code</p> <p>“(1) Whoever establishes a union whose purpose, although not exclusive, is to unlawfully undermine the independence, the form of government laid down in the constitution or a constitutional institution of the Republic of Austria or one of its federal provinces shall be punished by imprisonment from six months to five years.</p> <p>(2) Also to be punished is anyone who acts as a leader in such an association, recruits members for it or supports it with funds or otherwise in a significant way.</p> <p>(3) Anyone who otherwise takes part in such an association or supports it in a manner other than that specified in para. 2 shall be punished by imprisonment for up to one year or a fine of up to 720 daily rates.</p> <p>and</p> <p>§ 247a. (1) Whoever founds or leads an anti-state movement shall be punished with imprisonment for up to two years if he or another participant has carried out or contributed to a serious act in which the anti-state orientation is clearly manifest.</p> <p>(2) Whoever takes part in such a movement with the intention of encouraging the commission of anti-state acts or supports it with substantial funds or in any other substantial way, shall be punished under the condition of para. 1 with imprisonment of up to one year or with a fine of up to 720 daily rates.</p> <p>(3) An anti-state movement is a group of many people whose aim is to reject outright the sovereign rights of the Republic of Austria (federal, provincial, municipal or other self-government) or to continue to presume to exercise such or alleged sovereign rights, and whose purpose is to continue to prevent the execution of laws, regulations or other sovereign decisions of the authorities or to enforce the presumed or alleged sovereign rights in a way that clearly manifests the anti-state orientation.</p> <p>(4) The perpetrator shall not be punished in accordance with paras. 1 and 2 if the act is punishable by a more severe penalty under another provision.</p> <p>(5) According to paras. 1 and 2, no punishment shall be imposed on anyone who voluntarily withdraws from the movement, before the authority has learned of his or her fault, in such a way that it is clearly evident that the anti-state orientation is no longer supported.”</p>
Qualification	Anti-state activities
Notes on interpretation and application	<p>“The concept of connection corresponds to that of § 279 (armed connection). This is to be understood as a union of a larger number of people. This presupposes, first of all, an agreement of will to form a community. However, a union is only present if a minimum of organisational order is given, even if this is not recorded in writing.”¹</p> <p>“For a connection, a larger number of people must join together. According to the prevailing opinion, a larger number is 10 people. However, this is not an absolute limit, but a guideline. Depending on the degree of organisation and danger, a connection in the sense of § 246 can exist even if the number of persons is just below this guideline value. The greater the danger to the state emanating from the connection, the more likely it is that the facts will be fulfilled even if the number is below 10.”²</p>

¹ Farsam Salimi and Alexander Tipold, in Triffterer, Rosbaud, Hinterhofer (eds), *Salzburger Kommentar zum Strafgesetzbuch*, (19th Lfg 2008) § 246, recital 15 (translation by the authors).

² Ibid, § 246, recital 16 (translation by the authors).

Code	2-A-1-2
Legal Source	<p>§ 248 Austrian Criminal Code</p> <p>“(1) Anyone who hatefully insults or disparages the Republic of Austria or one of its federal provinces in such a way that the act becomes known to a broad public shall be punished with imprisonment of up to one year or a fine of up to 720 daily rates.</p> <p>(2) Anyone who, in the manner described in paragraph 1, in a hateful manner insults, disparages or otherwise degrades a flag of the Republic of Austria or of one of its federal provinces shown on a public occasion or at an event open to the public, a national emblem affixed by an Austrian authority, the federal anthem or a provincial anthem, shall be punished by imprisonment for up to six months or a fine of up to 360 daily rates.”</p>
Qualification	Disparagement of the state and its symbols
Notes on interpretation and application	<p>“Insulting means the crude manifestation of disregard. How this manifestation takes place is irrelevant: it can be verbal, through insulting signs, gestures or other actions. Verbal insulting is present, for example, through the exclamation “shit...” or other insulting words. It depends not only on the wording, but also on the way and the circumstances in which the word is used.</p> <p>Insulting by gestures is present, for example, when pointing the outstretched middle finger in the direction of the hoisted flag or when playing the hymn. Spitting out in front of the flag can also fulfil the crime scene.”¹</p>

¹ Ibid, § 248, recital 28 (translation by the authors).

Code	2-A-1-3
Legal Source	§ 242 Austrian Criminal Code “(1) Whoever undertakes to amend the constitution of the Republic of Austria or of one of its federal provinces by force or by threat of force, or to partition off an area belonging to the Republic of Austria, shall be punished with imprisonment from ten to twenty years. (2) An undertaking within the meaning of para. 1 is also already present at an attempt.”
Qualification	High Treason
Notes on interpretation and application	“Violence (margin no. 16 ff) or threat of violence (margin no. 18) can be considered an offence. These means of action are aimed at amending the constitution of the Federation (margin no. 21 ff) or of the provinces (margin no. 29 ff) or at partitioning off an area belonging to the Republic of Austria (margin no. 31 ff). The pursuit of the aforementioned objectives by other (unlawful) means is not punishable under § 242. However, a punishability on account of § 246 (connections hostile to the state) is possible. Pursuing these goals by legal means is not punishable at all: For example, holding a strike with highly treasonous aims is not criminal if it is within the scope of what is permissible under labour law.” ¹
¹ Ibid, § 242, recital 15 (translation by the authors).	
Code	2-A-1-4
Legal Source	§ 244 Austrian Criminal Code “(1) Anyone who conspires with another to commit treason is punishable with imprisonment from one to ten years. (2) Similarly, anyone who prepares a high treason in any other way and thereby causes or significantly increases the danger of a high treasonous enterprise or who prepares a high treason in cooperation with a foreign power is to be punished.”
Qualification	Preparation of a high treason
Notes on interpretation and application	“The mere procurement of writing materials for the production of highly treasonous appeals will usually neither cause nor significantly increase the danger of treason. Neither will the distribution of leaflets to propagate highly treasonous aims. Cases must be judged differently in which the perpetrator is already forming teams, procuring money, weapons and the like, trying to get security organs or members of the armed forces on his side or trying to win over persons to take over important positions after taking power. However, it depends on the assessment of the circumstances of the individual case, especially the time horizon.” ¹
¹ Ibid, § 244, recital 29 (translation by the authors).	
Code	2-A-1-5
Legal Source	§ 258 Austrian Criminal Code “(1) Who 1. has a legal relationship between the Republic of Austria or one of its federal provinces and a foreign power or a supranational or international institution or 2. has knowledge of a fact which is important for the relations between the Republic of Austria or one of its federal provinces and a foreign power or a supranational or international institution, produces false evidence or falsifies, destroys, damages or removes genuine evidence and thereby endangers the interests of the Republic of Austria or one of its federal provinces shall be punished by imprisonment from six months to five years. (2) Similarly, anyone who makes use of such false or falsified evidence and thereby endangers the interests of the Republic of Austria or one of its federal provinces shall be punished.”
Qualification	Traitorous counterfeiting and destruction of evidence
Notes on interpretation and application	“The means of evidence concerning the legal relationship (§ 258, Section 1, Line 1) include cases where the forgery of a document gives the impression that Austria has concluded this or that agreement with a foreign country. Evidence relating to a fact which is significant for Austria's foreign relations (§ 258.1(2)) exists if the photograph attached to a news item is falsified to the extent that it proves the untruthful presence of a certain public figure at a certain announcement. This could in fact be used to the detriment of Austria to document incorrectly that an Austrian official had participated in a public announcement hostile to a third state.” ¹
¹ Maria Eder-Rieder, in Triffterer, Rosbaud, Hinterhofer (eds), <i>Salzburger Kommentar zum Strafgesetzbuch</i> (23rd Lfg, 2010), § 258 StGB, recital 12f (translation by the authors).	
Code	2-A-1-6
Legal Source	§ 282 Austrian Criminal Code “(1) Anyone who, in a printed work, on the radio or otherwise in such a way that it becomes accessible to the general public, incites a person to commit an act which is punishable by a penalty shall, if he is not punishable by a more severe penalty as a party to that act (§ 12), be punished by imprisonment for up to two years. (2) Similarly, anyone who, in the manner described in para. 1, approves of an act committed intentionally and punishable by a custodial sentence of more than one year in a manner that is likely to outrage the general sense of justice or to incite people to commit such an act shall be punished.”
Qualification	Incitement to commit punishable acts and approval of punishable acts
Notes on interpretation and application	“An incitement is to be understood as any utterance that is intended to arouse the decision to act in a certain way in others, namely, to commit an act threatened with punishment.” ¹ “In contrast to Section 281, which sanctions an incitement to disobey (any) law, a request under Section 282 (1) only relates to criminal laws. According to Section 282 (1), an incitement must involve the commission of an act that is threatened with a judicial penalty; it is irrelevant whether the offense is part of the Criminal Code or ancillary criminal law.” ² “The appeal ‘Loot the jewelry stores!’ clearly concerns property crimes and fulfils § 282 (58). The same applies to the incitement to violent demonstrations and to destroy business premises, to damage cars (§§ 125 ff) or to defend oneself violently against a police force, sections 269, 270 (59). On the other hand, the distribution of leaflets calling for a violent demonstration under the motto ‘Vienna glöst’ or ‘a hot night’ is not sufficient for criminal liability under section 282, Paragraph 1.60.” ³
¹ Ibid, § 282 StGB, recital 25 (translation by the authors).	
² Ibid, § 282, recital 27, (translation by the authors).	
³ Ibid, § 282, recital 31, (translation by the authors).	
Code	2-A-1-7
Legal Source	§ 282a Austrian Criminal Code “(1) Anyone who, in a printed work, on the radio or in any other medium or otherwise publicly in such a way that it becomes accessible to many people, incites the commission of a terrorist offence (§ 278c par. 1 nos. 1 to 9 or 10) shall be punished with imprisonment of up to two years, unless he or she is threatened with a more severe penalty as a participant in this act (§ 12). (2) Also to be punished is anyone who, in the manner described in para 1, condones a terrorist offence (§ 278c para 1 subparas 1 through 9 or 10) in a manner that is likely to result in the commission of one or more such offences.”
Qualification	Incitement to commit terrorist offences and endorsement of terrorist offences

(continued on next page)

(continued)

Notes on interpretation and application	"Mere expressions of sympathy for a terrorist organization do not meet the requirements of approving at least one specific terrorist offense within the meaning of Section 278c Paragraph 1 Z 1 to 9 or 10 StGB." ¹
---	--

¹ OGH 14 Os 76/17h = JSt-LS OGH 2018/6 (translation by the authors).

Code	2-A-1-8
Legal Source	§ 283 Austrian Criminal Code "(1) Whoever publicly in such a way that it becomes accessible to many people 1. incites to violence or hatred against a church or religious society or any other group of persons defined according to the existing or absent criteria of race, colour, language, religion or belief, nationality, ancestry or national or ethnic origin, gender, disability, age or sexual orientation, or against a member of such a group expressly because of membership of that group, 2. insults one of the groups defined in Z or a person because of the belonging to such a group with the intention to violate the human dignity of the members of the group or the person in a way that is suitable to make the group or person despicable or disparaging in public opinion, or 3. approves, denies, grossly trivialises or justifies crimes in the sense of §§ 321 to 321f as well as § 321k, which have been legally established by a domestic or an international court, where the act is directed against one of the groups referred to in Z 1 or against a member of such a group expressly because of membership of such a group and is committed in a manner likely to incite violence or hatred against such a group or against a member of such a group, shall be punished by imprisonment for a term not exceeding two years. (2) Any person who commits the act referred to in subsection (1) in a printed work, on the radio or otherwise in a manner whereby the acts referred to in subsection (1) become accessible to a wide public shall be liable to a custodial sentence not exceeding three years. (3) Whoever, by an act under subsection (1) or (2), causes other persons to exercise violence against a group referred to in subsection (1)(1) or against a member of such a group because of his membership of that group, shall be punished with imprisonment for a term of six months to five years. (4) Any person who, unless he is punishable by a more severe penalty as a participant (section 12) in an act under subsections (1) to (3), produces written material, pictures or other representations of ideas or theories that incite hatred or violence against a group referred to in subsection (1)(1) or against a member of such a group because of his membership of such a group, in a printed work, on the radio or otherwise in a manner that makes them accessible to a broad public, in an approving or justifying manner, or otherwise makes them publicly available, incurs a penalty of imprisonment for a term not exceeding a year or a fine of up to 720 daily rates."
Qualification	Incitement to violence
Notes on interpretation and application	"Incite means to want to arouse the decision to a certain behaviour in another directly through a certain behaviour, especially through a statement." (...) ¹ "The request or incitement to a hostile act only fulfils Section 283 (1) if it was done publicly. According to § 69, an act is committed publicly if it can be directly perceived by a larger group of people. A larger group of people is assumed from a guideline number of around 10 people." ² "Hate is a tendency to incite hatred and contempt (...)" ³

¹ Hubert Hinterhofer, in Triffterer, Rosbaud, Hinterhofer (eds), *Salzburger Kommentar zum Strafgesetzbuch*, (6th ed, 2001) § 283, recital 18 (translation by the authors).

² Ibid, § 283, recital 22 (translation by the authors).

³ Ibid, § 283, recital 26 (translation by the authors).

Code	2-A-1-9
Legal Source	§ 278 Austrian Criminal Code "(1) Anyone who founds a criminal organisation or participates in such an organisation as a member, is punishable by imprisonment for up to three years. (2) A criminal organisation is a long-term association of more than two persons, the purpose of which is that one or more members of the association commit one or more crimes, other substantial acts of violence against life and limb, not only minor damage to property, theft or fraud, offences under sections 165, 177b, 233 to 239, 241a to 241c, 241e, 241f, 283, 304 or 307, in section 278d subsection1, other offences or misdemeanours referred to in Article 114(1) or 116 of the Aliens Police Act may be committed. (3) A member participates in a criminal organisation if he or she commits an offence within the framework of its criminal orientation or participates in its activities by providing information or assets or in any other way with the knowledge that he or she is thereby promoting the organisation or its criminal activities (...)"
Qualification	Criminal organization
Notes on interpretation and application	"Organizing" characterizes a process that consists of several expressions of will and is only present if these correspond to one another." ¹ "An organisation within the meaning of § 278 only exists if there are corresponding expressions of will from at least three people who create a union of a community." ² "The existence of a criminal organization does not depend on whether its members have already committed crimes within the meaning of Section 278 (2) StGB, but only on the orientation of the organization to carry them out." ³

¹ Otto Triffterer, in Triffterer, Rosbaud, Hinterhofer (eds), *Salzburger Kommentar zum Strafgesetzbuch* (6th ed, 2001) § 278, recital 17, (translation by the authors).

² Ibid, § 278, recital 22, (translation by the authors).

³ OGH 15 Os 6/2016w = RZ 2016, 225 (translation by the authors).

Code	2-A-1-10
Legal Source	§ 278a Austrian Criminal Code "Whoever wants to establish a company-like connection of a larger number of employees over a longer period of time or takes part in such a union as a member (Section 278 (3)), 1. which is aimed, although not exclusively, at the recurrent and planned commission of serious criminal offences threatening life, physical integrity, freedom or property, or serious criminal offences in the field of sexual exploitation of human beings, smuggling or illicit trafficking in explosive ordnance, nuclear material and radioactive substances, hazardous waste, counterfeit currency or narcotic drugs, which thereby seeks enrichment on a large scale and seeks to corrupt or intimidate others or to shield himself in a particular way from prosecution, (...)"
Qualification	Criminal organization
Notes on interpretation and application	"If one looks at the various offenses in the StGB in which the establishment of associations or organizations is described, the criminal organization within the meaning of Section 278a has the highest degree of organization." ¹ "According to the Justice Committee, the term "company-like" should "summarize the elements of the division of labour, hierarchical structure and the existence of a certain infrastructure as essential characteristics of organized action" (JAB StRÄG 1996, 10); This feature also makes it clear that the establishment is a successful offense (margin no. 21)." ²

¹ Otto Triffterer, in Triffterer, Rosbaud, Hinterhofer (eds), *Salzburger Kommentar zum Strafgesetzbuch* (5th ed, 1997) § 278a, recital 21, (translation by the authors).

² Ibid, § 278a, recital 26, (translation by the authors).

Code	2-A-1-11
Legal Source	§ 278b Austrian Criminal Code “(1) Whoever leads a terrorist group (paragraph 3) is punishable with imprisonment. (...) (2) Whoever participates in a terrorist organization as a member (§ 278 para. 3) shall be punished with imprisonment from one to ten years. (3) A terrorist group is a long-term association of more than two persons, the purpose of which is to carry out one or more terrorist offences (Section 278c) or terrorist financing (Section 278d) by one or more of its members.”
Qualification	Terrorist organization
Notes on interpretation and application	“The teaching subsumes as participation in a terrorist association: the establishment of contact with an advertiser and the organized association to form a travel group with the aim of participating in combat operations (116) and recruiting members; (117) the establishment of contact with a person who recruits members for ISIS, as well as the organized association to a travel group with the aim of participating in combat operations; (121) joining of the <i>Asa'ib Ahl al-Haqq</i> militia and the multiple undertaking of supply deliveries in the form of delivery of various goods in connection with battles; (122) the support of members of ISIS by young women through (planned) marriage; (123) the marriage of an ISIS fighter according to the Islamic rite in a ceremony transmitted via Skype and the promise to travel to Syria to support and strengthen him in the fight by starting a family, personal care and housekeeping; (124) the concrete promise of support to a person recruiting fighters in connection with the departure towards the fighting area of the terrorist organization; (125) the reinforcement of the intention of a separately persecuted person to participate as a member of ISIS and to fight for the establishment of a God based state on radical Islamist principles, as well as contacting a liaison officer of the terrorist organization to have their families resettled in homes of displaced Syrians and join the terrorist group as fighters; (126) the departure from Syria in an area controlled by ISIS, the education of under age children according to the propaganda of the terrorist organization, the participation in the development of a radical Islamist-oriented social infrastructure of this terrorist organization, the participation in an education in Islamic law including military training; (139)” ¹

¹ Alice Sadoghi, in Triffterer, Rosbaud, Hinterhofer (eds), *Salzburger Kommentar zum Strafgesetzbuch* (40th ed, 2019) § 278b, recitals 64–74 (further details 63–118) (translation by the authors).

Code	2-A-1-12
Legal Source	§ 207a Austrian Criminal Code “(1) Whoever produces a pornographic depiction of a minor (para. 4) 1. or 2. offers, procures, hands over, demonstrates or otherwise makes available to another person is punishable by imprisonment for up to three years. (2) Any person who produces, imports, transports or exports a pornographic depiction of a minor (par. 4) for the purpose of distribution or who commissions an act referred to in par. 1 for commercial gain shall be punished by imprisonment from six months to five years. Anyone who commits an offence as a member of a criminal organisation or in such a way that it causes a particularly serious disadvantage to the minor shall be punished with a term of imprisonment of between one and ten years; likewise, anyone who produces a pornographic depiction of a minor (paragraph 4) using serious violence or endangers the life of the depicted minor intentionally or through gross negligence (Article 6(3)) shall be punished. (3) Anyone who obtains or possesses a pornographic image of an adult minor (para. 4 nos. 3 and 4) shall be punishable by imprisonment for up to one year or a fine of up to 720 daily rates. Penalties of up to two years imprisonment shall be imposed on anyone who obtains or possesses a pornographic image of a minor (par. 4). (3a) Paragraph 3 also punishes anyone who knowingly accesses a pornographic image of a minor on the Internet. (4) Pornographic depictions of minors are 1. realistic images of a sexual act on a minor or a minor on himself, on another person or with an animal, 2. realistic depictions of an event with a minor, the viewing of which, according to the circumstances, gives the impression that this is a sexual act on the minor or the minor on himself, on another person or with an animal, 3. realistic illustrations a) of a sexual act within the meaning of no. 1 or an event within the meaning of no. 2, but with minors of legal age, or b) the genitals or pubic area of minors, as far as they are luridly distorted images, reduced to themselves and detached from other expressions of life, which serve the sexual arousal of the viewer, 4. pictorial representations, the viewing of which - as a result of alteration of an illustration or without the use of such an illustration - gives the impression according to the circumstances that it is an illustration according to lines 1 to 3. (...)”
Qualification	Pornographic depictions of minors
Notes on interpretation and application	“On the one hand, Section 184b of the German Criminal Code is narrower than Section 207a of the Austrian Criminal Code, because Section 184b of the German Criminal Code requires child pornography as the object of the crime, while Section 207a of the Austrian Criminal Code also includes pornographic depictions of adult minors. In contrast to Austria, where people between 14 and 18 years of age are also included in the protection area, it must therefore be clear from the presentation within the framework of Section 184b of the German Criminal Code that children under 14 years of age are involved. (19) On the other hand, Section 184b of the German Criminal Code is also wider than its Austrian counterpart. In German criminal law, for example, obtaining possession of relevant representations for a third party (Section 184b (2)) as well as obtaining possession (Section 184b (4)) are corporate offenses. In contrast to Austrian law, it is sufficient for the completion of the offense if the perpetrator starts the corresponding acquisition processes, i.e., “undertakes” them (20).” ¹ “The young actors themselves can also be perpetrators of Section 207a Paragraph 1. This applies, for example, if you make the pornographic representation available to third parties or export it. For example, a young person is liable to prosecution according to § 207a Paragraph 1 Z 3, who makes a “luridly distorted” and “reduced to himself” pornographic representation of his genitals (§ 207a Paragraph 4 Z 3 lit b; Rz 38 ff) via webcam or E-Mail available to others. Since minors are not culpable (§ 4 Abs 1 JGG), underage actors can never make themselves punishable because of § 207a Abs 1.” ²





¹ Hubert Hinterhofer, in Triffterer, Rosbaud, Hinterhofer (eds), *Salzburger Kommentar zum Strafgesetzbuch* (14th Lfg, 2006) § 207, recital 18, (translation by the authors).

² *Ibid.*, § 207a, recital 26, (translation by the authors).

Code	2-A-1-13
Legal Source	§ 115 Austrian Criminal Code “(1) Anyone who publicly or in front of several people insults, mocks, physically abuses or threatens to physically abuse another person shall be punished by imprisonment for up to three months or a fine of up to 180 daily rates, provided that he is not threatened with a more severe penalty under any other provision. (2) An act is committed in front of several people if it is committed in the presence of more than two people, different from the perpetrator and the assaulted person, who can perceive it. (3) A person who, merely by indignation at the behaviour of another, allows himself to be carried away to insult, mock, maltreat or threaten with maltreatment in a way that is excusable in the circumstances is excused if his indignation is generally understandable, especially in view of the time that has elapsed since the occasion.”
Qualification	Insult

(continued on next page)

(continued)

Notes on interpretation and application	<p>"An insult is public when it can be perceived directly by a larger group of people. From a guideline value of about 10 people, such a larger group of people required for the public inspection is to be assumed. Mere dissemination (e.g., by telling others) does not constitute a public disclosure. The acts of crime are committed ex lege (Paragraph 2) in front of several people if at least three persons - different from the perpetrator and the offender - are present at the same time and there is a concrete perceptibility for them. The three unaffected persons can also be close to the attacked person; the extent to which the perpetrator has an insult-free privacy will have to be assessed on a case-by-case basis (above, §§ 111 ff Rz 33)."¹</p> <p>"Insults can be, for example: 'idiot', 'madman', 'shit bull', 'bastard', 'shit nigger', 'asshole', 'criminal', 'Nazi', 'young Nazi', 'cretin', 'idiot', 'donkey', 'pig'.²</p> <p>"No insults are, for example, the mere improper addressing of someone informally (unless it is possibly particularly defamatory within a certain group of people), to indicate to sb that they're crazy by tapping one's forehead, statements such as 'I want nothing to do with you', 'go sit on a track', 'you're crazy' or the Götz quote (see margin no. 18). In the context, the statements 'to suffer from paranoia' and 'to live a poor life' were not viewed as insults."³</p> <p>"Even when describing a certain politician as a 'hygienically depraved political inferior, it is important whether there is mere disregard or - seen in context - a permissible political expression of opinion. This also applies to the designation of a member of parliament as a member of the red rent mafia."⁴</p> <p>"While insulting primarily expresses contempt for another, the essence of mockery lies primarily in ridiculing or deriding another. In contrast to § 491 StGB, it is not necessary for the other person to be exposed to public ridicule. Punishable mockery lies, e.g., in imitating the physical or mental infirmities of another (e.g., speech impediment, limp or hump), in calling the attacked person impotent or mentally diminished or in saying that someone is a case for the psychiatrist. Kienapfel/Schroll aptly describe the mockery as a 'popular instrument of mobbing at the workplace', which can also fall in the scope of the offence. As with the insult (Rz 19 ff), the constitutionally guaranteed liberty of the expression of opinion limits the offence. Thus, for example, the criticism of the Vienna Ballet that it "wobbles about the stage inhomogeneously" was not considered mockery, but rather art criticism without punishment.²⁶ Likewise, the judiciary did not see any mockery - probably in connection with a sufficient factual substrate - in the description of a journalist as 'old-fashioned greasy hand' or in the phrase of 'embarrassing foolish act'.²⁷"⁵</p> <p>"1. The accusation that "the government" acts out of a mere will to power in its function and does not want to improve anything is an unpunished assessment.</p> <p>2. The same is true for the designation of members of the government as "scumbags", insofar as there is a material basis for this assessment (criticism of the cultural policy of the federal government and the resulting precarious financial situation of cultural workers).</p> <p>3. If an artist known in Austria presents this designation of the members of the government in an unedited television program and the host of the program distances herself from it, the reason for exclusion under § 6 para. 2 no. 4 MedienG applies."⁶</p> <p>"It is therefore necessary to first determine the meaning assigned to the emoji or emoticon by the creator.</p> <p>This is true even if one wants to follow the BMVRDJ in the opinion that the one-time publication of the emojis "strong arm"</p>  <p>without further explanations under an article or a posting could neither fulfil the offence of requesting, provoking or inciting hatred, nor that of insulting in the sense of § 283 StGB.¹⁸ This opinion deals exclusively with the legal evaluation. On the factual level, the court must therefore first determine the meaning."⁷</p> <p>"A sign, which has a completely harmless explanatory value due to years of practice, is given a negative meaning by a certain grouping, or it receives this meaning through the way it is used or through the activity of the grouping.³⁴ In this sense the racist "White Power" movement, for example, adopted the emoji "All is well"</p>  <p>-a hand sign, where thumb and index finger form a circle, while the other fingers are stretched. The three stretched fingers should symbolize a "W", the circle formed by thumb and index finger in connection with the forearm a "P"³⁵. Similarly, users deviate from the actual meaning when, for example, the emoji "eggplant"</p>  <p>is used as a phallic symbol,³⁶ with which it could be used, for example, to substantiate a violation of honour (§§ 111 ff StGB) or to reinforce "stalking" (§ 107a StGB) or "cybermobbing" (§ 107c StGB). The Regional Labour Court of Baden-Württemberg had to judge a similar phenomenon of deviating significance. If the person who uttered an insult and a third party who perceives it agree that an emoji has a different meaning than that which the originator has attributed to it, the emoji can be interpreted in this sense. Specifically, an employee used the emoji "monkey face"</p>  <p>, and assumed, like the third party, that it had the meaning "bear head". If "bear's head" meant a certain superior of the employee, who had a pronounced facial expression due to illness, it was grossly offensive to use the nickname "bear's head" with the emoji, even if the emoji used was actually a monkey."⁸</p> <p>"All this can be illustrated by the example of the judgment of the OLG Innsbruck on 11 Bs 110/13h. The defendant posted a - even from the defence's point of view - "tasteless and also morally reprehensible" xenophobic joke on Facebook, which he combined with the emoticon. The OLG Innsbruck took into account the situation in which the specific entry was made, the use of language (tone of voice) during the discussion in question and the fact that the incriminated statement was made in response to xenophobic Facebook entries, including other xenophobic "jokes". Furthermore, the accused was a "simply thinking person". For the OLG Innsbruck, however, the following statement was already decisive: "The meaning of the emoticon used by the defendant follows from the Wikipedia page http://de.wikipedia.org/wiki/Emoticon. "The ... used emoticon stands for 'wink, don't take it so seriously!' "The OLG Innsbruck therefore strictly assumed the meaning that the creator attributed to the emoticon, which contributed to the fact that the accused was finally acquitted of the accusation of incitement."⁹</p>
---	---

¹ Heimo Lambauer, in Triffterer, Rosbaud, Hinterhofer (eds), Salzburger Kommentar zum Strafgesetzbuch (20th Lfg, 2009), § 115, recital 8f, (translation by the authors).

² Ibid, § 115, recital 14, (translation by the authors).

³ Ibid, § 115, recital 15, (translation by the authors).

⁴ Ibid, § 115, recital 20f, (translation by the authors).

⁵ Ibid, § 115, recitals 24-26, (translation by the authors).

⁶ OLG Wien 17 Bs 358/2018y, Medien und Recht 2019, 59, 59, (translation by the authors).

⁷ Johannes Oberlauer, 'Die Feststellung des Erklärungswerts von Emojis und Emoticons im Strafurteil' (2020) JSt, 117, 118, (translation by the authors).

⁸ Ibid, 117, 119; OLG Innsbruck 11 Bs 110/13h (translation by the authors).

⁹ Ibid.

Code	2-A-1-14
Legal Source	§ 297 StGB “(1) Anyone who exposes another person to the risk of official prosecution by falsely suspecting him of an offence punishable by a penalty to be imposed ex officio or of a breach of an official or professional duty shall, if he knows (§ 5 para. 3) that the suspicion is false, be punished with imprisonment of up to one year or with a fine of up to 720 daily rates, but if the wrongly charged act is punishable with imprisonment of more than one year, with imprisonment of six months to five years. (2) Under Section 1, no punishment shall be imposed on anyone who voluntarily removes the danger of official prosecution before an authority has taken action to prosecute the suspect.”
Qualification	Defamation
Notes on interpretation and application	“Defamation is committed by anyone who falsely suspects another person of having committed a criminal offence or a breach of an official or professional duty and thereby exposes this person to the risk of prosecution by the authorities. The decisive factor is that the perpetrator knows that the suspicion is false. A suspicion is also “false” if essential circumstances exonerating the person are concealed or the person is suspected of a more serious crime than the one actually committed.” ¹ “There is a risk of official prosecution if this is to be expected immediately due to the circumstances. It is sufficient for the Federal Police to conduct an investigation; criminal or disciplinary proceedings are not necessary.” ² “The perpetrator claimed during his detention hearing that a prison doctor ordered three prison guard officers to beat him, causing a laceration on his lip, and to squeeze his crotch with his hand, causing pain in his intimate area.” ³ “The perpetrator claimed to have handed over € 100,000 to an employee (presumably of a bank or insurance company), who, however, did not invest it but used it for other purposes. He thus accused her of the crime of infidelity. He accused the same woman of having committed an insurance fraud by reporting the same water damage in her apartment twice with forged documents. The damage is said to have amounted to more than € 7,000. With this he accused her of a serious fraud.” ⁴ “The perpetrator sent letters to several people under a false name, claiming that a woman had had sexual contact with “his” children, some of whom were minors. In this way he accused this woman of the crime of sexual abuse of minors.” ⁵
<p>¹ Peter Zöchbauer, Daniel Bauer, in Leukauf and Steininger (eds), <i>Strafgesetzbuch Kommentar</i>, § 297, recitals 4f.</p> <p>² <i>Ibid.</i>, § 297 (translation by the authors).</p> <p>³ OGH 06.12.2017, 13 Os 127/17a, (translation by the authors).</p> <p>⁴ OGH 09.10.2018, 14 Os 76/18k, (translation by the authors).</p> <p>⁵ OGH 09.10.2018, 14 Os 76/18k; Antidiskriminierungsstelle Steiermark, ‘Leitfaden Extremismus online und offline – Rechtsgrundlagen und entschiedene Gerchtsfälle’ (2019), < https://www.next.steiermark.at/cms/dokumente/12706023_148818855/5cd815d4/exleit.pdf>, (translation by the authors).</p>	
Code	2-A-1-15
Legal Source	§ 116 Austrian Criminal Code “Acts under sections 111 or 115 shall also be punishable if they are directed against the National Council, the Federal Council, the Federal Assembly or a Landtag, against the armed forces, an independent division of the armed forces or against an authority and are committed in public. The provisions of sections 111(3), 112 and 114 shall also apply to such offences.”
Qualification	Public insult of a constitutional representative body, the armed forces or an authority
Notes on interpretation and application	“The National Council, the Federal Council, the Federal Assembly and the state parliaments can be the objects of an insult of honour. The municipal council is not included (in Vienna it also has the functions of a state parliament anyway). However, individually identifiable municipal councils might be protected. However, the municipal council is protected in its entirety if it is acting as an authority and is therefore attacked.” [...] “The Federal President is not a collegiate body and therefore not mentioned here. In the case of punishable violations of honour against his person, even if these are not committed in public, this constitutes, however, an offence prosecutable on complaint according to § 117 Abs. 1.” ¹ “Only the protection of honour of the authorities is of greater importance in practice. The criminal law term ‘authority’ includes the organs of a territorial entity that are equipped with decisive and dispositive power and are permanently organized to fulfil state tasks (administration, jurisdiction) within their sphere of activity. This also includes the associated offices (departments with the character of authorities). The federal government, state governments and their offices, and also the city council (see, however, margin no. 5), the district authorities, security directors, federal police departments, state police commands, the Federal Criminal Police Office, or the Federal Asylum Office, including its outposts, are therefore insulting as ‘authorities’; no authorities are, for example, schools, hospitals, the Austrian Federal Railway Company, and the police inspections [...]” “Furthermore, courts (including the Asylum Court) and public prosecutor’s offices are authorities within the meaning of § 116. The same applies to chambers when they perform sovereign functions, and to collegiate bodies of the universities.” ²
<p>¹ Heimo Lambauer, in Triffterer, Rosbaud, Hinterhofer (eds), <i>Salzburger Kommentar zum Strafgesetzbuch</i> (20th Lfg, 2009) § 116, recital 6, (translation by the authors).</p> <p>² <i>Ibid.</i>, § 116, recital 10, (translation by the authors).</p>	
Code	2-A-1-16
Legal Source	§ 111 Austrian Criminal Code “(1) Anyone who, in a manner perceptible to a third party, accuses another person of a disparaging quality or attitude or accuses him of dishonourable behaviour or behaviour contrary to public morals which is likely to disparage or belittle him in public opinion shall be punished by imprisonment for up to six months or a fine of up to 360 daily rates. (2) Anyone who commits the offence in a printed work, on the radio or in any other way which makes the defamation of character accessible to the general public shall be punished by imprisonment for up to one year or a fine of up to 720 daily rates. (3) The offender is not to be punished if the allegation is proven to be true. In the case of para. 1, the perpetrator shall not be punished even if circumstances are proven which have provided sufficient grounds for the perpetrator to consider the allegation to be true.”
Qualification	Malicious gossip (<i>Üble Nachrede</i>)
Notes on interpretation and application	“Malicious gossip can be carried out in two ways. The first alternative of malicious gossip is the accusation of a contemptuous characteristic or attitude (invective) and the second is the accusation of dishonourable or immoral behaviour. The boundaries are fluid. An incorrect subordination to one of the two forms of commission does not do any harm, because they are equivalent and form an alternative mixed offence. [...] a) accusing of a contemptuous characteristic or attitude. The first alternative makes it a punishable offense to accuse another person of a contemptuous characteristic or attitude perceptible for a third party. According to the prevailing opinion, the “accusing” is equivalent to the “blaming” of the second alternative. In both cases, the perpetrator makes a verbal, written or dramatic statement. In the first alternative, the person concerned is ascribed an unworthy character. Insignificant character defects are neither contemptuous nor defamatory; accusations such as “unpunctuality”, “weakness in decision” or “tactlessness” do not fall in the scope of the offense. This first alternative of para. 1, also called invective, differs from the second in that the accusation does not refer to a certain behaviour, but to the contemptuous character or the general unworthy inner attitude of the person being reviled. The term “crook” or “liar” can be an invective when emphasizing a character flaw, but it can also be an insult under § 115 if the perpetrator wants to express his disregard in general terms. If, however, the accusation refers to a certain

(continued on next page)

(continued)

behaviour, as for example in the exclamation "You lied in this agreement!", then this statement is normally to be considered as dishonourable conduct under the second alternative of para. 1. The term Nazi, fascist or the belonging to the extreme right, liar, defamer, crook, mafioso, racist or addict can be for example factual invectives, where also accusations of character would meet the standards like intolerable moralities, degeneration, or perfidy. Mere incivilities and disturbances cannot be understood as invectives. The accusations to be a troublemaker, rascal, to be stubborn, to be unpleasant, cunning, senile, mischievous, or jealous does usually not meet the criteria of the fact. If a person is described as belonging to the extreme-left, the criteria will also not be met, because this political opinion is not covered by the law banning National Socialist activities. The claim that the opposing party in an election campaign is lying or deceiving the voters will also generally not meet the threshold of being qualified as an invective. On the one hand, the accusation is targeting a politician who is in a position where he has to bear more than a private person and on the other hand such accusations will also be qualified by the voters themselves as rhetorical exaggeration. Hence a claim that is heading for a § 263 accusation has to be treated differently. The accusation of playing down national socialistic institutions, after all being a Nazi or racist agitator can, as a not punishable judgement of value according to Art 10 (1) EMRK, lead to the exclusion of the offence. Accusation of dishonourable behaviour or violation of the good morals § 111 (1) is fulfilled if someone, observable for a third person, is accusing a person of dishonourable behaviour or violating the good morals in such a way that it is suitable to influence the public opinion contemptuously. The behaviour of a person can be qualified as dishonourable if the dominant social appreciation of the concerned party is damaged. A behaviour that is violating the good morals is a violation of the public decency.

The difference to an invective, according to the first case of paragraph 1, can be found in the accusation of a lack of character in general in contrast to an accusation that targets some concrete behaviour.

Defamation has to be observable for a third person. It is sufficient for the general case of paragraph 1 that a third person is able to observe the accusation. A person that is also defamed by the accusation will not be qualified as a third person, except the accusation is addressing several persons but is only targeting a concrete one of them. Also, statements that are given within the sphere of privacy and targeting external parties do not meet the criteria of publicity. Related parties generally will be qualified as third parties.

The statement that is touching the honour of a person has to be observed by a third person that neither is the offender nor the offended party, where this third person only has to have the opportunity to observe the behaviour. It is sufficient if the third person is within acoustic reach or has the possibility to read the postcard or, as a secretary, opens the office mail.¹

¹ Heimo Lambauer, in Triffterer, Rosbaud, Hinterhofer (eds), *Salzburg Commentary on the Criminal Code* (20th Lfg, 2009) § 111, recital 41, (translation by the authors).

Code	2-A-1-17
Legal Source	§ 107c Austrian Criminal Code “(1) Anyone who, by means of telecommunication or using a computer system, in a manner likely to unreasonably interfere with a person’s conduct of life, 1. commits an offence against the honour of a person in a manner that is perceptible to a large number of people for a longer period of time, or 2. makes a fact or image of a person’s most personal sphere of life perceptible to a larger number of people for a longer period of time without that person’s consent, shall be punished with imprisonment for not more than one year or with a fine not exceeding 720 daily penalty units. (2) If the act results in the suicide or attempted suicide of the person injured within the meaning of Section 1, if the perpetrator continues to commit acts within the meaning of Section 1 directed against the injured person within a period exceeding one year, or if the duration of the perceptibility according to Section 1 exceeds one year, the perpetrator shall be punished with imprisonment for up to three years.”
Qualification	Continued harassment by means of telecommunications or computer systems
Notes on interpretation and application	“After the leading and convincing opinion, a person is infringing another party’s ‘honour’ according to 107 c (1) Z 1 a decrease in standing or reputation of a human beings relevant environment.’ This characteristic, therefore, is identical to the category of honour crimes (§§ 111 bis 117) and includes e.g. insult, defamation, mockery or humiliations. Therefore, the (incorrect) claim that somebody has high (gambling) debts is influencing one’s sphere of honour. The deceive element is the objective honour of another party or his good reputation.” ¹ “§ 107 c (1) Z 2 includes the publication of facts or pictures of the personal sphere of the victim without consent. It is sufficient according to the wording to be perceptible for a minimal audience of about 10 persons (Rz 37). Making public is not only the act that includes simultaneous optical or acoustic perception, but also captures gradual public on the side of the addressee. It is neither about the special common element nor if the transmission of the facts or pictures takes place simultaneously, if telecommunication or the use of a computer system include the gradual capture of such a group of persons. Making accessible is sufficient and does not need actual listening or watching.” ² “The personal sphere includes the sexual preferences, serious illnesses, disabilities or religious beliefs. This includes action that not only addresses the electronic publishing of pictures of the victim, but also recordings of his living space. Other examples include the making public of AIDS-tests of the victim on the internet, the communication of the sheer fact that a person is HIV-positive via Twitter or the documentation of the lived religious practice of a human e.g., a photograph of a person praying in the direction of Mecca or in cases of self-flagellation.” ³

¹ Clemens Thiele, in Triffterer, Rosbaud, Hinterhofer (eds), *Salzburger Kommentar zum Strafgesetzbuch* (37th Lfg, 2017) § 107c, recital 24, (translation by the authors).

² *Ibid.*, § 107c, recital 25, (translation by the authors).

³ *Ibid.*, § 107c, recital 27, (translation by the authors).

Code	2-A-1-18
Legal Source	§ 107 Austrian Criminal Code “(1) Anyone who dangerously threatens another in order to make him fear and agitate shall be punished by imprisonment for up to one year or a fine of up to 720 daily rates. (2) Anyone who makes a dangerous threat by threatening death, serious mutilation or striking disfigurement, kidnapping, arson, exposure to nuclear energy, ionising radiation or explosives, or the destruction of economic existence or social position, or by using these means to put the threatened person or another person against whom the violence or dangerous threat is directed into an agonising state for an extended period of time, shall be punished by imprisonment for up to three years. (3) In the cases referred to in section 106(2), the penalty provided for therein shall be imposed.”
Qualification	Dangerous threat
Notes on interpretation and application	“§ 107 (2) is addressing only in the qualified cases, in which there is an act of threat, where the basic offense of § 107 (1) of the dangerous threat in § 74 (1) Z 5 has to be included in the interpretation. This means that the act of the meaning of dangerous threat according to § 107 is only a behaviour in which a personal injury, personal freedom, honour or property is threatened.” ¹ “The act of threat that fulfils the criteria of harm according to § 74 (1) Z 5 fulfils the provision when a harm to the personal sphere is committed and can be performed in writing, verbal or through gestures.” ²

¹ Robert Seiler, in Triffterer, Rosbaud, Hinterhofer (eds), *Salzburger Kommentar zum Strafgesetzbuch* (13th Lfg, 2005) § 107, recital 10, (translation by the authors).

² *Ibid.*, § 107, recital 11, (translation by the authors).

Code	2-A-1-19
Legal Source	§ 225a Austrian Criminal Code "Anyone who intentionally creates false data by entering, altering, deleting or suppressing data or falsifies genuine data with the intention that they are used in legal transactions to prove a right, a legal relationship or a fact shall be punished by imprisonment for up to one year or a fine of up to 720 daily rates."
Qualification	Data falsification
Notes on interpretation and application	"Only computer data as defined in Art 1 lit b CCC (including data definition § 118a Rz 60 f), which are important for private as well as sovereign legal transactions, are considered to be objects of crime. According to the prevailing doctrine, this data is data stored on data carriers as defined in § 74 (2), which is intended for legal transactions and allows the issuer to be identified ('electronic documents'). They are of legal significance if they refer to legal transactions in the broadest sense or are equivalent to documents with legal significance. Both personal and non-personal data and programs are protected. The latter do not, however, as a rule fulfil the similarity of documents presupposed by § 225a." ¹ "The unauthorized 'input' of correct or incorrect data is comparable to the production of a fake document. Subsequent 'altering' (modifying, changing, partially changing), 'deleting' (removing data from a data carrier) and 'suppressing' (withholding, hiding data) generally correspond to the falsification of a genuine certificate." ² "Changing' means any modification of existing data. A reduction of its usability is not assumed, otherwise this variant of the offence would be superfluous. Any manipulation of external data or data contents is covered here. It is sufficient if the creation of a new link makes it possible for the user to recognize different content even without a concrete change to the data output, since the link has changed the content of meaning. In practice, the so-called 'website spoofing' in particular causes considerable difficulties in this context. The perpetrator creates a website that looks and functions and has the look and feel of a bank, a serious antique dealer or any other corporate website. Subsequently, unsuspecting Internet users are directed to the fake website via e-mail and asked to provide their credit card number or other bank details or to act as 'independent sales representatives' in the antique trade if they have previously made a transfer to a specific account. The data, in this case of the entire foreign, already existing website, is assigned a different information content and thus no longer fulfils its intended purpose. In this respect, a change of data by merely changing the data sequence is also of interest if it changes the context. Ultimately, this is a "virtual identity thief", which as a rule serves as a predicate offence for large-scale computer fraud. The decisive factor is that this 'reprogramming' of the website results in a deception of the identity of the exhibitor, e.g., by simultaneously adding a (slightly) different imprint." ³ "The 'deletion' of data is the equivalent to the destruction of physical objects. The data is thereby destroyed and made unrecognizable, whereby a partial deletion is also covered in the sense of making it unrecognizable." ⁴ "The 'suppression' of computer data includes any action that prevents or terminates the availability of data to the person who has access to the computer or the data carrier on which it is stored. This act is already affirmative if the data cannot be immediately and completely restored. It is not necessary to destroy the data." ⁵ "The protection against falsification starts in any case after the first saving of an electronic document (see margin no. 20). In addition, according to part of the literature, this alternative also covers protection during the transmission process, e.g., by e-mail. Data is therefore falsified if it is changed in the non-volatile state or on the transmission path - if it is stored again, meaning the offender gives the impression that the data in this form no longer originates from the original issuer." ⁶
<p>¹ Clemens Thiele, in Triffterer, Rosbaud, Hinterhofer (eds), <i>Salzburger Kommentar zum Strafgesetzbuch</i> (15th Lfg, 2007) § 225a, recital 18, (translation by the authors).</p> <p>² Ibid., § 225a, recital 26, (translation by the authors).</p> <p>³ Ibid., § 225a, recital 29, (translation by the authors).</p> <p>⁴ Ibid., § 225a, recital 31, (translation by the authors).</p> <p>⁵ Ibid., § 225a, recital 32, (translation by the authors).</p> <p>⁶ Ibid., § 225a, recital 33, (translation by the authors).</p>	
Code	2-A-1-20
Legal Source	§ 188 StGB "Anyone who publicly disparages or mocks a person or an object of worship of a church or religious community existing in the country, or a doctrine, a legally permissible custom or a legally permissible institution of such a church or religious community in circumstances in which his conduct is likely to cause justified nuisance shall be punished with imprisonment for up to six months or a fine of up to 360 daily rates."
Qualification	Vilification of religious teachings
Notes on interpretation and application	"This [...] provision penalizes grossly disturbing impairments of the constitutionally guaranteed freedom of religion (Article 14 StGG 1867; Article 63 para. 2 StV v Saint Germain; Article 6 StV v Vienna; Article 9 EMRK). What is protected, however, is not the religion in question as such or the religious sensibilities of the individual, but religious peace (likewise E. Mayer/Tipold, SbgK § 188 Rz 6 mwN)." ¹ "The perpetrator claimed that it was no secret that the Prophet Mohammed "also liked to make out a little bit with children". She expressed this at a seminar of the educational institute of her political party. The Supreme Court of Justice (OGH) described this accusation of paedophilia as a public disparagement or mockery of a person who is revered by a religious community recognized in the country (OGH 11.12.2013, 15 Os 52/12d ("Mohammed-decision"))." ²
<p>¹ Peter Zöchbauer and Daniel Bauer, in Leukauf and Steininger (eds), <i>Strafgesetzbuch Kommentar</i>, § 188, recital 1, (translation by the authors).</p> <p>² Antidiskriminierungsstelle Steiermark, 'Leitfaden Extremismus online und offline – Rechtsgrundlagen und entschiedene Gerichtsfälle' (2019), <https://www.net.steiermark.at/cms/dokumente/12706023_148818855/5cd815d4/exleit.pdf>, (translation by the authors).</p>	
Code	2-A-1-21
Legal Source	§ 120a StGB "(1) Any person who intentionally takes a photograph of the genitals, the pubic region, the buttocks, the female breast or the underwear covering these parts of the body of another person who has protected these areas from view or is in a dwelling or in a room specially protected from view, without that person's consent, shall be liable to a custodial sentence not exceeding six months or to a monetary penalty not exceeding 360 daily penalty units. (2) Any person who makes accessible to a third party or publishes a photograph pursuant to subsection (1) without the consent of the person depicted shall be liable, unless the offence is punishable under another provision by the same or more severe penalty, to a custodial sentence not exceeding twelve months or to a monetary penalty not exceeding 720 daily penalty units. (...)"
Qualification	Unauthorised recording of images
Notes on interpretation and application	"The protected body parts include the genitals, the pubic region, the buttocks and the female breast. The terms genitals and pubic region are to be understood as in Section 207a (4) (3) (b) StGB. Although images of the female breast are not "upskirting" in the narrower sense, following the German model, these images are also to be included in the offence. Not only nude photos, but also photos of the underwear covering these parts of the body are to be included in the offence, because these are also supposed to be protected against the views of strangers by the outer clothing and such photos therefore also violate the privacy of the victim. Photographing leggings worn by a person under a dress or skirt, on the other hand, will not constitute an offence because it is not underwear. Whether one of the protected body parts appears on a part of the picture or takes up the whole picture is not relevant for the objective elements of the offence. However, in order to limit liability to conduct particularly worthy of punishment and to counteract problems of application in practice, intentionality is to be required on the subjective side of the offence. The perpetrator must therefore be concerned with the realisation of the elements of the offence." ¹

¹ ErläutRV 481 BlgNR XXVII. GP 15 (translation by the authors).

Code	2-A-1-22
Legal Source	§ 3g VerbotsG <p>“Anyone who engages in activities in the national socialist sense in a manner other than those described in §§ 3a to 3f shall be punished with imprisonment of one to ten years, or up to 20 years if the offender or the activity is particularly dangerous, unless the act is more severely punishable under another provision.”</p> <p>§ 3h VerbotsG “Anyone who denies, grossly trivialises, approves of or attempts to justify the National Socialist genocide or other National Socialist crimes against humanity in a printed work, on the radio or in another medium, or anyone else publicly in such a way that it becomes accessible to many people, will also be punished according to § 3g.”</p>
Qualification	Verbotsgesetz/Wiederbetätigung
Notes on interpretation and application	A violation of the VerbotsG is for instance: <p>“Glorification of the person of Adolf Hitler and approval of his mission in life. The propagandistic use of typical National Socialist slogans and symbols, such as “Heil Hitler”, “Sieg Heil”, the Hitler salute or the swastika”¹</p> <p>§ 3h covers the denial of the crimes against humanity committed under the National Socialist regime.</p> <p>“Every conduct not covered by §§ 3a to 3f of the VerbotsG (VG) is covered by § 3g of the VerbotsG (VG), insofar as it is suitable for propagating and updating any objectives of National Socialism in Austria or at least with an effect on the Republic of Austria, the act therefore also having an inherent propagandistic effect which, according to the perpetrator’s ideas, develops its effect on Austrian territory. The absence of this domestic reference would, even in the case of the existence of an identical norm under the laws of the scene of the crime covering the conduct in question, exclude punishability under the VerbotsG in Austria.”²</p> <p>“§ 3g VG is a catch-all offence and punishes (among other things) any other behaviour (not covered by §§ 3a to 3f VG) - which is not at all accessible to a conclusive legal description - which even in the abstract is suitable to revive one of the specific and manifold objectives of the NSDAP.</p> <p>The combination of several text passages of a single publication (a book) to a factual unit of action in the main questions (in conformity with the lawsuit) requires the examination of the factuality in the sense of § 3g VG on the basis of the overall impression of these text passages; whether each of them - considered in isolation - fulfils the facts, however, is irrelevant.”³</p>

¹ Antidiskriminierungsstelle Steiermark, ‘Leitfaden Extremismus online und offline – Rechtsgrundlagen und entschiedene Gerichtsfälle’ (2019), <[https://www.next.steiermark.at/cms/dokumente/12706023_148818855/5cd815d4/exleit.pdf](https://www.ne xt.steiermark.at/cms/dokumente/12706023_148818855/5cd815d4/exleit.pdf)>, (translation by the authors).

² LexisNexis ‘Nationalsozialistische Wiederbetätigung – keine Strafbarkeit nach §3g VerbotsG bei fehlendem Inlandsbezug’ (2007) LN Rechtsnews 3568 (translation by the authors).

³ Alois Birklbauer and Josef Landerl, ‘Nationalsozialistische Wiederbetätigung’, in LexisNexis Rechtsnews 9384 (28.06.2010), <https://360.lexisnexis.at/d/artikel/nationalsozialistische_wiederbetatigung_strafen_od/z_jst_2020_2_jst_2020_02_0130_986c945d51> (translation by the authors).

Not criminally punishable but giving rise to civil proceedings (Germany (D))

Code	2-G-2-1
Legal Source	§7 (4) TMG <p>“If a tele media service has been used by a user in order to infringe the intellectual property rights of another user, and if the holder of this right has no other possibility of remedying the infringement of his right, the holder of the right can demand that the service provider concerned block the use of information in accordance with § 8 (3) TMG in order to prevent the repetition of the infringement. The blocking must be reasonable and proportionate. A claim against the service provider for reimbursement of the pre- and out-of-court costs for asserting and enforcing the claim pursuant to sentence 1 does not exist except in the cases of § 8 (1) TMG sentence 3.”</p>
Qualification	Disturbance liability (Störerhaftung)
Notes on interpretation and application	The operator of a website is liable for his own content; for the content of a foreign party the operator of a website generally is only liable if he appropriates such content. This criterion is fulfilled if the website operator has knowledge of this content and it is technically possible and reasonable to inhibit the use. ¹

¹ Gerhard Wagner, in Säcker, Rixecker, Oetker, Limperg (eds), *Münchener Kommentar zum Bürgerlichen Gesetzbuch* (8th ed, 2020) § 823, recitals 852–858, (translation by the authors).

Code	2-G-2-2
Legal Source	§ 1004 I BGB analogous in conjunction with, § 823 BGB
Qualification	Quasi-negatory injunctive relief and tort law
Notes on interpretation and application	“Irrespective of the fact that even in the case of an originally admissible suspicious transaction report, there is now a right to injunctive relief, the Regional Court correctly stated that the requirements for admissible suspicious transaction reports required by case law had not been met. The mere mention of a newspaper article in the “Stuttgarter Zeitung” as proof of the text had rightly not been sufficient for the Regional Court. On the other hand, the Regional Court wrongly stated that the passage “in the context of his television work, he should ... massive intimidation of employees, whom, according to the daily newspaper, he brainwashed in one-on-one interviews lasting several hours. Already with ... employees said that the situation was partly similar to a sect”. Correctly, these were factual statements. The statement that he was brainwashing his employees was just as accessible as the statement that sectarian conditions prevailed in his company. <p>The contested passage would give the public concerned the impression that he had exerted considerable psychological pressure on his employees in order to induce them to behave in a certain way. The statements were also accessible to evidence since his employees could easily be questioned as witnesses to this factual claim.</p> <p>Since these defamatory factual claims are untrue, there is also a quasi-legal right to injunctive relief in this respect according to §§ 823 (1), 1004 BGB, Article 1 (2) and Article 2 (1) GG.”¹</p>

¹ OLG Stuttgart, decision of 2nd October 2013 - 4 U 78/13, GRUR-RS 2013, 18,386, (translation by the authors).

Code	2-G-2-3
Legal Source	§ 97 German Copyright Act <p>“(1) Anyone who unlawfully infringes the copyright or any other right protected under this Act may claim from the infringed party the removal of the impairment or, in the event of a risk of repetition, injunctive relief. The right to injunctive relief shall also exist if an infringement is threatened for the first time.</p> <p>(2) Whoever performs the act intentionally or negligently is obliged to compensate the injured party for the resulting damage. In assessing the damages, the profit which the infringer has made from the infringement of the right may also be taken into account. The claim for damages may also be calculated on the basis of the amount which the infringer would have had to pay as reasonable compensation if he had obtained permission to use the infringed right. Authors of scientific publications (section 70), photographers (section 72) and performing artists (section 73) may also claim monetary compensation for damage other than pecuniary loss if and to the extent that this is equitable.”</p>

(continued on next page)

(continued)

Qualification	Copyright infringement
Notes on interpretation and application	<p>“Infringement: § 97 only concerns cases of infringement of a third party’s copyright or another right protected under the Copyright Act. Sanctioned is therefore the violation of absolute rights which are effective against everyone (“other rights” as defined in § 823 para. 1 BGB). However, the infringement of authorizations or permits which are only valid for the respective Contract Partner does not trigger the legal consequences of § 97 (amtl. Begr., BT-Drs. IV/270, 103; Schrickler/Loewenheim/Leistner nr. 8). Thus, whoever is only the holder of a right of use under the law of obligations, but not of a right of use in rem, cannot take action against the infringer in the event of infringement (only the author himself or the holder of the infringed right of use is legitimated to take action; → marginal no. 18). Absolute rights include, on the one hand, the rights flowing from the author’s moral rights and, on the other hand, the rights in rem arising from the comprehensive exploitation right of the author or the owner of a related right, including the prohibition of exploitation under Art. 96 (BGH ZUM 1986, 199, 202 - GEMA presumption III; Schrickler/Loewenheim/Leistner nos. 10 f.). Whether this also includes the violation of the protection against circumvention is disputed. By the bypass protection in accordance with §§ 95a exp. 1, 3 no new utilization or achievement patent right is created. The protection against circumvention merely flanked the copyright powers, which is why the applicability of § 97 can certainly be questioned (left open by BGH GRUR 2008, 996 marginal no. 12 - Clone CD).”¹</p>

¹ Louisa Specht, in Dreier, Schulze, Specht (eds), *Urheberrechtsgesetz Kommentar* (6th edn, 2018) § 97, recitals 3–3a, (translation by the authors).

Code	2-G-2-4
Legal Source	<p>§ 14 Trademark Act (MarkG)</p> <p>“(2) A third party shall be prohibited in trade, without the consent of the proprietor of the trademark, from</p> <ol style="list-style-type: none"> 1. using a sign which is identical to the trademark for goods or services which are identical to those for which it enjoys protection. 2. using a sign if the likelihood of confusion exists for the public because of the identity or similarity of the sign to the trademark and the identity or similarity of the goods or services covered by the trademark and the sign, including the likelihood of association with the trademark; or 3. using a sign identical with or similar to the trademark for goods or services which are not similar to those for which the trademark enjoys protection if the trademark is a trademark which has a reputation in Germany and the use of the sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trademark which has a reputation (...).”
Qualification	Trademark infringement
Notes on interpretation and application	<p>The criteria for a violation against § 14 Trademark Act:</p> <ul style="list-style-type: none"> - The use of a trademark by a third party - Within commercial practice - Without the permission of the trademark’s owner - If the criteria of § 14 (2) Trademark Act is met: <p>Double identity: The usage of an identical trademark for a similar category of goods or services. Danger of confusion case 1: The usage of an identical trademark for similar goods or services. Danger of confusion case 2: The usage of similar trademarks for identical goods or services. Danger of confusion case 3: The usage of similar trademarks for similar goods or services. Protection of prominence: The usage of an identical or similar trademark for unsimilar goods or services, if distinctiveness is met or the appreciation of a well-known trademark is misused or impaired without any justification.¹</p>

¹ For more details: Reinhard Ingerl, Christian Rohnke, *Markengesetz, Gesetz über den Schutz von Marken und sonstigen Kennzeichen* (3rd ed, 2010) § 14, recitals 391–393.(translation by the authors).

Code	2-G-2-5
Legal Source	<p>§ 241 II BGB, § 280 BGB</p> <p>§ 241</p> <p>“(2) An obligation may also, depending on its contents, oblige each party to take account of the rights, legal interests and other interests of the other party.”</p> <p>§ 280</p> <p>“(1) If the obligor breaches a duty arising from the obligation, the obligee may demand compensation for the damage caused thereby. This does not apply if the obligor is not responsible for the breach of duty.</p> <p>(2) Damages for delay in performance may be demanded by the obligee only subject to the additional requirement of section 286.</p> <p>(3) Damages in lieu of performance may be demanded by the obligee only subject to the additional requirements of sections 281, 282 or 283.”</p>
Qualification	Contractual obligations
Notes on interpretation and application	<p>“The user of a social media platform, which is intended to enable a general exchange of information and opinions, is entitled to a claim against the operator from the user contract in connection with § 241 Para. 2 BGB and the indirect third-party effect of the basic right to freedom of opinion (Art. 5 Para. 1 Sentence 1 GG) that a permissible expression of opinion posted by him is not removed from the platform and that its posting is not subject to sanctions by the operator. (RN.106)</p> <p>2) By establishing general rules of conduct, the platform operator can define rights, legal interests and interests in the sense of § 241 (2) BGB (German Civil Code), which the user must take into account. (margin no. 116)”¹</p>

¹ OLG München, judgment of 7 January 2020 – 18 U 1491/19, (translation by the authors).

Code	2-G-2-6
Legal Source	<p>§ 7 Unfair Competition Act in conjunction with § 3a Unfair Competition Act</p> <p>“§ 7 (1) A commercial practice which constitutes an unacceptable nuisance to a market participant shall be illegal. This shall apply to advertising particularly in cases where it is apparent that the solicited market participant does not want this advertising.</p> <p>(2) An unacceptable nuisance shall always be assumed in the case of</p> <ol style="list-style-type: none"> 1. advertising using a medium of commercial communication not listed under nos. 2 and 3 which is suited to distance marketing and through which a consumer is persistently solicited although it appears that he does not want this. 2. advertising by means of a telephone call, made to a consumer without his prior express consent, or made to another market participant without at least the latter’s presumed consent. 3. advertising using an automated calling machine, a fax machine or electronic mail without the addressee’s prior express consent; or 4. advertising using a communication <ol style="list-style-type: none"> a) where the identity of the sender on whose behalf the communication is transmitted is concealed or kept secret or b) which violates Section 6 (1) of the Telemedia Act (Telemediengesetz) or in which the recipient is prompted to call up a website which violates said provision or c) where there is no valid address to which the recipient can send an instruction to terminate transmission of communications of this kind, without costs arising by virtue thereof, other than transmission costs pursuant to the basic rates. <p>(...).”</p>

(continued on next page)

(continued)

Qualification Notes on interpretation and application	Spam <p>"Spam can reach from messages that contain a virus, offered products, advertised websites, offered prizes or winnings, mediation of business contacts which constitute of an advertising nature and where the receive is unwelcome to the receiving party. The message reaches its advertising nature if a good, service or enterprise is praised. Mails that only suit the purpose of the dissemination of a virus and do not advertise any product cannot be qualified as spam. A message is undesirable if the recipient receives it without his permission or is bothering him in any other way."¹</p> <p>Unacceptable Harassment: "Harassment: The business act must be perceived as a nuisance by the recipient circle because of the way it reaches them. The annoyance therefore follows from its imposition: The recipient, whether he likes it or not, must first of all deal with it. His opposing will has either been ignored by the actor or could not be formulated at all. The confrontation with the business act interferes with his private life or business processes and can - but need not - lead to a time and/or cost expenditure for the recipient, since he has to check and, if necessary, remove the advertisement, costs for keeping reception equipment are incurred, etc.</p> <p>The content of an advertisement is irrelevant for determining its annoying effect. It is irrelevant whether the addressee feels annoyed by the advertising message transported with a business act, e.g., because it is contrary to his political, religious, or moral views. Irrespective of the fact that a harassing effect cannot already lie in "the fact that the audience is confronted with unpleasant or pitiful realities through images outside the editorial part of the media" or "the advertisement by addressing suffering not in the usual political, charitable or reporting context, but in a commercial context, can be perceived as "disconcerting or deemed improper" and competition law must not amount to censorship of taste, advertising forms such as tasteless advertising or shocking image advertising cannot a priori fall under Section 7 UWG, since the accusation of unfairness is based on their content and not on the way in which the advertising message is communicated. (...)</p> <p>Unacceptability: Not every harassment is unfair within the meaning of § 7 para. 1 sentence 1 UWG because a large part of advertising measures usually reaches the recipient unsolicited. Moreover, competition without extensive and intensive influence on market participants is simply not conceivable and is generally not even expected. This is taken into account by the element of unreasonableness: not every annoyance, no matter how slight, can be attributed the verdict of anti-competitive behaviour; rather, the intervention of the law on unfair competition requires an annoyance that goes beyond the "healthy level". The assessment of unreasonableness does not depend on the viewpoint of the person specifically affected by a business act, but on that of an averagely sensitive market participant who is neither particularly sensitive nor particularly insensitive. The model of the average consumer with a normal understanding, which was developed by the European Court of Justice and the Federal Court of Justice for the assessment of misleading advertising, can also be made fruitful here for the determination of standards. If the advertising is directed at a certain group of people, the view of an averagely sensitive member of this group of people must be taken into account."²</p>
--	--

¹ Wettbewerbszentrale, 'Spam-Bekämpfung' <<https://www.wettbewerbszentrale.de/de/branchen/spam/ueberblick/>> accessed 3 May 2021, (translation by the authors).

² Stefan Leible, in Heermann, Schlingloff (eds), *Münchener Kommentar zum Lauterkeitsrecht* (3rd ed, 2020) § 7 UWG, (translation by the authors).
not criminally punishable but giving rise to civil proceedings (Austria (A))¹⁰⁸

Code Legal Source	2-A-2-1 § 86 UrhG <p>"(1) Anyone who without authorisation</p> <ol style="list-style-type: none"> 1. uses a work of literature or art in a manner reserved for the author under §§ 14 to 18a, 2. uses a performance in a manner reserved for the performing artist under § 68, 3. uses a performance in a form of exploitation reserved for the organiser according to § 72, 4. uses a photograph or a sound carrier in a manner reserved for the manufacturer under §§ 74 or 76, 5. uses a radio broadcast in a form of exploitation reserved for the radio broadcaster pursuant to § 76a or 6. uses a database in a manner reserved for the manufacturer under § 76d, <p>must, even if he is not at fault, pay an appropriate compensation to the injured party whose consent would have been required.</p> <p>(2) However, there shall be no claim to such remuneration if a radio broadcast, a communication to the public or a making available to the public has been inadmissible only because it has been made with the aid of image or sound carriers or radio broadcasts, which were made in accordance with § 50 para. 2, § 53(2), § 56(3), § 56b(2), § 56c(3)(2), § 56d(1)(2), §§ 68, 72, 74, 76 or 76a(2) and (3), and if this characteristic of the image or sound carriers or broadcasts was unknown to their user without his fault.</p> <p>(3) Anyone who uses a press report in contravention of § 79 shall pay the news collector an appropriate fee, even if he is not at fault."</p> <p>§ 87 UrhG <p>"(1) Any person who culpably damages another person by violating this Act shall also compensate the injured party for loss of profit, irrespective of the degree of fault.</p> <p>(2) In such a case, the injured party may also claim reasonable compensation for the disadvantages he has suffered as a result of the act, which do not consist in any financial loss.</p> <p>(3) The injured party, whose consent would have had to be obtained, may claim double the remuneration due to him under § 86 as compensation for the pecuniary loss culpably inflicted on him (para. 1), unless higher losses are proven.</p> <p>(4) If a work of literature or art is reproduced or distributed without authorisation, the injured party, whose consent would have had to be obtained, may also demand the surrender of the profit which the injuring party has made through the culpable intervention. The same shall apply if a performance contravenes section 68 subsection (1) or a radio broadcast is exploited in contravention of section 76a on a picture or sound carrier or if a photograph is reproduced or distributed in contravention of section 74 or a sound carrier in contravention of section 76. Finally, the same shall apply if the right of making available (§ 18a) is infringed.</p> <p>(5) In addition to an appropriate remuneration (§ 86) or the surrender of the profit (paragraph 4), compensation for financial loss can only be claimed if it exceeds the remuneration or the profit to be surrendered."</p> </p>
Qualification Notes on interpretation and application	Copyright infringement <p>"The claim to adequate remuneration according to § 86 UrhG is dogmatically - like the comparable claims under § 53 (1) MSchG and § 150 (1) PatG - a special form of the use claim under the law of enrichment in the sense of § 1041 ABGB. It concerns a statutory claim for remuneration for the unjustified use of a copyright protected work or a creative result subject to ancillary copyright."¹</p> <p>"The claim exists independently of a damage of the injured party and of the fault of the infringer."²</p> <p>"§ 87 UrhG contains some regulations that deviate from the general law of damages or supplement it, which take into account the special features of copyright and related rights. The provision deals with the extent of the damages to be compensated (para. 1), the compensation of non-material damage for a special impairment of the injured party connected with the infringement (para. 2), the lump sum compensation for damages - which serves to avoid difficult damage calculations in practice and to facilitate evidence - (para. 3), the right to the distribution of profits (para. 4) as well as questions of delimitation (para. 5). [...]</p> <p>A violation of copyright regulations in general also only obligates under the general conditions to the compensation. The damage incurred by the</p> <p style="text-align: right;">(continued on next page)</p>

¹⁰⁸ The Austrian civil law provisions differ from those presented in the section on German civil law due to disparities in the two legal systems.

(continued)

author or the person entitled to an ancillary copyright must therefore have been caused unlawfully and culpably by the infringer, whereby slight negligence is sufficient.”³

¹ Johann Guggenbichler, in Kucsko, Handig (eds), *urheber.recht*, § 86 UrhG, recital 2, (translation by the authors).

² *Ibid.*, § 86 UrhG, recital 1, (translation by the authors).

³ *Ibid.*, § 86 UrhG, recitals 1f, (translation by the authors).

Code	2-A-2-2
Legal Source	§ 10 MarkenSchG “(1) Subject to the safeguarding of earlier rights, a registered trademark shall confer on the proprietor the exclusive right to prohibit all third parties, in the course of trade and without his consent 1. to use a sign which is identical with the trademark in relation to goods or services which are identical with those for which the trademark is registered (Paragraph 10a) 2. to use a sign which is identical or similar to the trademark in relation to identical or similar goods or services (Section 10a) if there exists a likelihood of confusion on the part of the public, which includes the likelihood of association between the sign and the trademark. (2) The proprietor of a registered trade mark shall also be entitled to prevent all third parties not having his consent from using, in the course of trade, any sign which is identical with, or similar to, the trade mark in relation to goods or services which are identical with or similar or dissimilar to those for which the trade mark is registered (Section 10a), where the trade mark has a reputation in the country and where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the trade mark. The reputation of the earlier trademark must be established at the latest on the date of application for registration of the later trademark, where applicable on the date on which priority or seniority is claimed, or on the date on which the later other sign right comes into existence. 2a. Without prejudice to earlier rights, the proprietor of a registered trade mark shall also be entitled to prohibit a third party from introducing goods into his territory in the course of trade without putting them into free circulation, where those goods, including their packaging, originate in third countries and bear without authorization a trade mark which is identical to the trade mark registered for such goods or which cannot be distinguished in its essential aspects from such trade mark. This entitlement of the trademark owner expires if, during proceedings aimed at determining whether a registered trademark has been infringed and initiated pursuant to Regulation (EU) No. 608/2013 on the enforcement of intellectual property rights by the customs authorities, OJ No. L 181, 29.06.2013, p. 15, the customs applicant or the owner of the goods proves that the owner of the registered trademark is not entitled to prohibit the placing of the goods on the market in the country of final destination. (2b) If there is a risk that the packaging, labels, tags, safety or authenticity notices or proofs or other means of identification to which the trademark is affixed are used for goods or services and that such use constitutes an infringement of the trademark proprietor’s rights under Section 1 or 2, the trademark proprietor shall be entitled to prohibit the following acts if they are carried out in the course of trade: 1. the affixing of a sign identical with, or similar to, the trademark to those means of identification 2. offering, putting on the market or stocking for these purposes or importing or exporting such means of identification to which the trademark or a sign similar to it is affixed. (3) A registered trademark shall not entitle the proprietor to prohibit a third party from using. 1. the name or address of the third party, if the third party is a natural person 2. signs or indications which are devoid of any distinctive character or which may serve to designate the kind, quality, quantity, intended purpose, value, geographical origin, or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service 3. the trademark for the purposes of identifying or referring to goods or services as those of the proprietor of the trademark, in particular where the use of the trademark is necessary to indicate the intended purpose of a product or service, for example as accessories or spare parts in the course of trade, provided that such use is in accordance with honest practices in industrial or commercial matters.” Trademark infringement
Qualification	§ 10 Abs 1 Z 1: Identity protection/ double protection – if the trademark is used in an identical form
Notes on interpretation and application	§ 10 Abs 1 Z 2: Protection against a way of usage that is likely to be confused by third parties if there is a similarity to the brand in a degree that makes the party believe the good or service offered comes from the same enterprise. § 10 Abs 2: Protection against exploitation of reputation and impairment: special protection of well-known brands. In the case of a trademark infringement the injured party has the remedy of the injunctive relief according to § 51 MarkenSchG. § 53 MarkenSchG entitles, in the case of unauthorized use of a trademark, the injured party to adequate remuneration, in the case of culpable trademark infringement the injured party also has the claim to damages including the lost profit or the issuance of profit (Summary of MarkenSchG, translation by the authors).

Code	2-A-2-3
Legal Source	§ 107 TKG “(1) Calls - including the sending of faxes - for advertising purposes without prior consent of the subscriber are not permitted. The consent of the subscriber shall be equivalent to the consent of a person authorised by the subscriber to use his line. The consent given can be revoked at any time; revocation of consent has no effect on a contractual relationship with the addressee of the consent. 1a. In the case of telephone calls made for advertising purposes, the presentation of calling line identification must not be suppressed or falsified by the caller and the service provider must not be induced to suppress or falsify it. The sending of electronic mail, including SMS messages, shall not be allowed without the prior consent of the recipient where the sending is for the purposes of direct marketing. (3) Prior consent for the sending of electronic mail pursuant to paragraph 2 shall not be required if 1. the sender has received the contact information for the message in connection with the sale or service to his customers and 2. this message is for direct advertising of own similar products or services and 3. the recipient has been clearly and unambiguously given the opportunity to refuse such use of the electronic contact information at the time of its collection and, in addition, at each transmission, free of charge and without difficulty; and 4. the recipient has not refused the mailing from the outset, in particular by being entered on the list referred to in § 7 para. 2 of the E-Commerce Act.” Spam
Qualification	Spam
Notes on interpretation and application	“The plaintiff explains in his remedy that the Facebook or WhatsApp advertising in question addresses a commercially inexperienced audience and therefore an audience that is especially worthy of protection. The messages sent to students without given consent via Facebook violate § 107 (2) TKG.” (translation by the author) “Without the consent for the messages sent via Facebook to students the act violated § 107 (2) TKG. Regardless of if the addressee has told the advertiser that he does not desire any more consignment.” ¹

(continued on next page)

(continued)

"Relating to the messages received via Facebook or WhatsApp, the reference of the plaintiff regarding the legal provisions concerning undesired (unsolicited or unwelcome) advertising for distance selling or sales via electronic means (§ 107 Abs 2 TKG; § 7 ECG) per se are applicable. According to those provisions direct advertising using electronic means or messages is in the need of consent of the addressee that is given prior to the advertising act (and has to be revocable). For that, undesired electronic advertising per se is impermissible in Austria (Opt-in-System)". A consignment is "Unsolicited" (undesired or unwelcome) if in coordination with the transmission the advertiser has no prior given consent of the addressee (see Brenn, ECG 218), therefore, the addressee is not in need of an active contradiction."²

¹ OGH 4 Ob 237/18h = ZIIR 2020, 208, 210, (translation by the authors).

² Ibid.

Code	2-A-2-4
Legal Source	§ 6 MedienG "(1) If the objective facts of defamation, insult, ridicule or slander are established in a medium, the person concerned shall be entitled to compensation from the media owner for the personal harm suffered (section 8(1)). (2) The claim under Section 1 shall not exist if 1. it concerns a truthful report on a hearing in a public session of the National Council, the Federal Council, the Federal Assembly, a Land parliament or a committee of one of these general representative bodies, 2. in the case of defamation a) the publication is true; or b) there was an overriding public interest in the publication and there were sufficient reasons to believe the allegation to be true, even if due journalistic care had been exercised, 3. it is a direct broadcast on the radio (live broadcast) without an employee or agent of the radio having disregarded the due journalistic care, 3a. it is a matter of retrievability on a website without the media owner or one of its employees or agents having disregarded due diligence, or 4. it is a truthful reproduction of the statement of a third party and there was an overriding interest of the public in knowing the statement quoted. (3) If the publication relates to the highly personal sphere of life, the claim under Section 1 shall only be excluded on the grounds of Section 2 (1), Section 2 (2) (a), Section 2 (3) or Section 2 (3a), but in the case of Section 2 (2) (a) only if the facts published are directly related to public life."
Qualification	Protection of Personality – Malicious gossip, insult, mockery, and defamation
Notes on interpretation and application	§ 6 MedienG statutorily guaranteed, in the case of the fulfilment of the physical elements of the offence for defamation, insult, mockery or traducement, damages for the insult suffered against the media owner. Media owner is according to § 1 Z 8 MedienG, who a) operates a media business or service, or b) in other ways is giving shape to the media work or its manufacture or dissemination or, c) in the case of electronic means, the person concerning or arranging for influencing the design, availability, broadcast or dissemination, or d) is concerning the content design of a medium for the purpose of broadcast, availability or dissemination.

Code	2-A-2-5
Legal Source	§ 549 (1) ZPO "In legal disputes concerning lawsuits in which only claims for injunctive relief are asserted due to a substantial violation of personal rights in an electronic communications network affecting a natural person's human dignity, the court shall, at the request of the plaintiff, issue an injunction without a prior oral hearing and without hearing the defendant if the alleged claim can be conclusively derived from the information in the complaint. The complaint shall be accompanied by evidence from the electronic communications network showing or making apparent the infringing content."
Qualification	Proceedings for substantial violation of personality rights in an electronic communications network
Notes on interpretation and application	"The proposed provision is intended to establish a special procedure in the Code of Civil Procedure that is to be available for particularly massive cases of violations of personality rights. This procedure is to be used exclusively in legal disputes on actions in which claims for injunctive relief are filed due to a significant violation of personality rights in an electronic communications network that impairs the human dignity of a natural person. Following suggestions in the review procedure, the wording of the offence "significant violation of personality rights affecting the human dignity of a natural person" is intended to clarify that a personality right must be violated, regardless of whether it is a violation of honour and reputation, privacy, the right to one's own image or another personality right. However, since it must be a question of violations by means of the representation of thought content (words and images) in an electronic communications network, a violation of the right of personality to bodily integrity, for example, will not come into consideration [...]" Human dignity is violated if the right to be a human being is denied directly or indirectly, for example by denying the right to life as an equal citizen or by portraying the person as an inferior or worthless part of the population as a whole, or if the person is otherwise subjected to inhuman or degrading treatment (cf. Plöchl in Höpfel/Ratz, WK ² StGB § 283 Rz 23). In the given context, the aim is to deal with violations that cannot be justified by freedom of expression, such as when a statement no longer has any comprehensible connection to a factual dispute and is essentially only about the groundless disparagement of the person concerned as such, or in the case of swear words used with premeditation and not only in the heat of a dispute, which are, according to general opinion, particularly blatant and disparaging in themselves (such as from faecal language)." ¹

¹ ErläutRV 481 BlgNR XXVII. GP 9 (translation by the authors).

Code	3-1
Source	FB Community Standards Section I. <i>Gutefrage.net</i> , Community Guidelines
Qualification	Violence and incitement
Example and detailed descriptions by Facebook Inc. and <i>Gutefrage.net</i> , Community Guidelines	Facebook Inc.: "We remove content, disable accounts, and work with law enforcement when we believe there is a genuine risk of physical harm or direct threats to public safety. We also try to consider the language and context in order to distinguish casual statements from content that constitutes a credible threat to public or personal safety. In determining whether a threat is credible, we may also consider additional information like a person's public visibility and the risks to their physical safety. In some cases, we see aspirational or conditional threats directed at terrorists and other violent actors (e.g., Terrorists deserve to be killed), and we deem those non credible absent specific evidence to the contrary." <i>Gutefrage.net</i> : "Threat, trivialization or spreading of violence good question protects you and all users. Therefore, we expect you neither to threaten violence nor to use violence. Neither against yourself nor against others. This also includes statements, writings and media that glorify and

(continued on next page)

(continued)

trivialize violence.
 Examples:
 "Threat of violence
 unnecessarily detailed descriptions of extreme violence and fantasies of violence
 representation of extreme violence
 contributions glorifying violence
 harassing contributions, user stalking and mobbing
 trivialization of sexual, psychological or physical abuse, especially of children (this includes statements such as 'You only convince the victims that rape is something bad', 'In the past it was quite normal to have sex with children', 'Give your child a slap in the face more often, then it will learn respect' or similar).
 It is also not allowed to link to pages with corresponding content. When writing your contributions, always remember that younger users can see them."¹
 Facebook Inc.:
 "Do not post:
 Threats that could lead to death (and other forms of high-severity violence) of any target(s) where threat is defined as any of the following:
 Statements of intent to commit high-severity violence; or
 Calls for high-severity violence including content where no target is specified but a symbol represents the target and/or includes a visual of an armament to represent violence; or
 Statements advocating for high-severity violence; or
 Aspirational or conditional statements to commit high-severity violence
 Content that asks or offers services for hire to kill others (for example, hitmen, mercenaries, assassins) or advocates for the use of a hitman, mercenary or assassin against a target.
 Admissions, statements of intent or advocacy, calls to action, or aspirational or conditional statements to kidnap a target.
 Threats that lead to serious injury (mid-severity violence) towards private individuals, minor public figures, high risk persons, or high risk groups where threat is defined as any of the following:
 Statements of intent to commit violence; or
 Statements advocating violence; or
 Calls for mid-severity violence including content where no target is specified but a symbol represents the target; or
 Aspirational or conditional statements to commit violence; or
 Content about other target(s) apart from private individuals, minor public figures, high risk persons, or high risk groups and any credible:
 Statements of intent to commit violence; or
 Calls for action of violence; or
 Statements advocating for violence; or
 Aspirational or conditional statements to commit violence
 Threats that lead to physical harm (or other forms of lower-severity violence) towards private individuals (self-reporting required) or minor public figures where threat is defined as any of the following:
 Private individuals (name and/or face match are required) or minor public figures that includes:
 Statements of intent, calls for action, advocating, aspirational or conditional statements to commit low-severity violence
 Imagery of private individuals or minor public figures that has been manipulated to include threats of violence either in text or pictorial (adding bulls eye, dart, gun to head, etc.)
 Any content created for the express purpose of outing an individual as a member of a designated and recognizable at-risk group
 Instructions on how to make or use weapons if there's evidence of a goal to seriously injure or kill people, through:
 Language explicitly stating that goal, or
 Photos or videos that show or simulate the end result (serious injury or death) as part of the instruction
 Unless the aforementioned content is shared as part of recreational self-defence, for military training purposes, commercial video games, or news coverage (posted by Page or with news logo)
 Providing instructions on how to make or use explosives:
 Unless there is clear context that the content is for a non-violent purpose (for example part of commercial video games, clear scientific/educational purpose, fireworks, or specifically for fishing)
 Any content containing statements of intent, calls for action, or advocating for high or mid-severity violence due to voting, voter registration, or the outcome of an election
 Misinformation that contributes to the risk of imminent violence or physical harm.
 Statements of intent or advocacy, calls to action, or aspirational or conditional statements to bring weapons to locations, including but not limited to places of worship, educational facilities or polling places (or encouraging others to do the same)."²

¹ gutefrage.net, 'Unsere Richtlinien' <<https://www.gutefrage.net/policy>> accessed 3 May 2021, (translation by the authors).

² Facebook, 'Facebook Community Standards', Section I <https://www.facebook.com/communitystandards/violence_criminal_behavior> accessed 3 May 2021.

Code	3-2
Source	FB Community Standards Section I. Gutefrage.net, Community Guidelines
Qualification	Content of dangerous individuals and organizations
Example and detailed descriptions by Facebook Inc. and Gutefrage.net, Community Guidelines	"We do not allow any organizations or individuals that proclaim a violent mission or are engaged in violence to have a presence on Facebook. This includes organizations or individuals involved in the following: Terrorist activity Organized hate Mass murder (including attempts) or multiple murder Human trafficking Organized violence or criminal activity We also remove content that expresses support or praise for groups, leaders, or individuals involved in these activities." Facebook: "We do not allow the following people (living or deceased) or groups to maintain a presence (for example, have an account, Page, Group) on our platform:

(continued on next page)

(continued)

Terrorist organizations and terrorists, which include:
 Any non-state actor that:
 Engages in, advocates, or lends substantial support to purposive and planned acts of violence,
 Which causes or attempts to cause death, injury or serious harm to civilians, or any other person not taking direct part in the hostilities in a situation of armed conflict, and/or significant damage to property linked to death, serious injury or serious harm to civilians
 With the intent to coerce, intimidate and/or influence a civilian population, government, or international organization
 In order to achieve a political, religious, or ideological aim.
 Hate organizations and their leaders and prominent members
 A hate organization is defined as:
 Any association of three or more people that is organized under a name, sign, or symbol and that has an ideology, statements, or physical actions that attack individuals based on characteristics, including race, religious affiliation, nationality, ethnicity, gender, sex, sexual orientation, serious disease or disability.
 Mass and multiple murderers (including attempts)
 We consider a homicide to be a mass murder if it results in three or more deaths in one incident
 We consider an attempted mass murder to be one where an individual uses a weapon or vehicle to attempt mass harm in a public space or against more than one person
 We consider any individual who has committed two or more murders over multiple incidents or locations a multiple murderer
 Human trafficking groups and their leaders
 Human trafficking groups are organizations responsible for any of the following:
 Prostitution of others, forced/bonded labour, slavery, or the removal of organs
 Recruiting, transporting, transferring, detaining, providing, harbouring, or receiving a minor, or an adult against their will
 Criminal organizations and their leaders and prominent members
 A criminal organization is defined as:
 Any association of three or more people that is united under a name, colour(s), hand gesture(s) or recognized indicia, that has engaged in or threatens to engage in criminal activity, including (but not limited to) Homicide, Drug trafficking, Arms trafficking, Identity theft, Money laundering, Extortion or trafficking, Assault, Kidnapping, Sexual exploitation (covered in section 7 and section 8)
 We do not allow symbols that represent any of the above organizations or individuals to be shared on our platform without context that condemns or neutrally discusses the content. We do not allow content that praises any of the above organizations or individuals or any acts committed by them. We do not allow coordination of support for any of the above organizations or individuals or any acts committed by them. We do not allow content that praises, supports, or represents events that Facebook designates as terrorist attacks, hate crimes or mass shootings.”¹

¹ Facebook, ‘Facebook Community Standards’, Section I <https://www.facebook.com/communitystandards/violence_criminal_behavior> accessed 3 May 2021.

Code	3-3
Source	FB Community Standards Section I. <i>Gutefrage.net</i> , Community Guidelines
Qualification	Coordinated harm and publicizing crime
Example and detailed descriptions by Facebook Inc. and <i>Gutefrage.net</i> , Community Guidelines	<p>“Prevent and disrupt offline harm and copycat behaviour, we prohibit people from facilitating, organizing, promoting, or admitting to certain criminal or harmful activities targeted at people, businesses, property or animals. We allow people to debate and advocate for the legality of criminal and harmful activities, as well as draw attention to harmful or criminal activity that they may witness or experience as long as they do not advocate for or coordinate harm.”</p> <p>Facebook: “Do not post content that falls into the following categories:</p> <p>Harm against people Statements of intent, calls to action, or advocating for harm against people that depicts, admits to, or promotes the following acts committed by you or your associates: Acts of physical harm against humans, including acts of domestic violence, except when shared in a context of redemption or defence of self or another person Swatting Encouraging participation in a high risk viral challenge</p> <p>Harm against animals Statements of intent, calls to action, or advocating for harm against animals that depicts, admits to, or promotes: Acts of physical harm against animals committed by you or your associates except in cases of hunting, fishing, religious sacrifice, food preparation or processing, pest or vermin, self-defence or redemption Staged animal vs. animal fights, including acts committed by a third party</p> <p>Harm against property Statements of intent, calls to action, or advocating for harm against property that depicts, admits to, or promotes the following acts committed by you or your associates: Vandalism Hacking when the intent is to hijack a domain, corrupt or disrupt cyber systems, seek ransoms, or gain unauthorized access to data systems Theft when committed by you or your associates, as well as positive statements about theft when committed by a third party Voter and/or Census Fraud Offers to buy or sell votes with cash or gifts Statements that advocate, provide instructions, or show explicit intent to illegally participate in a voting or census process Voter and/or Census Interference Misrepresentation of the dates, locations, and times, and methods for voting or voter registration or census participation Misrepresentation of who can vote, qualifications for voting, whether a vote will be counted, and what information and/or materials must be provided in order to vote. Misrepresentation of whether a candidate is running or not Misrepresentation of who can participate in the census and what information or materials must be provided in order to participate Calls for coordinated interference that would affect an individual’s ability to participate in the census Content stating that census or voting participation may or will result in law enforcement consequences (e.g., arrest, deportation,</p>

(continued on next page)

(continued)

imprisonment)
 Misrepresentation of government involvement in the census, including that an individual's census information will be shared with another government agency.
 Other misrepresentations related to voting in an official election or census participation may be subject to false news standards, as referenced in [section 20](#)
 For the following content, we include a label so that people are aware the content may be sensitive:
 Imagery depicting a high risk viral challenge if shared with a caption that condemns or raise awareness of the associated risks"¹

¹ Facebook, 'Facebook Community Standards', Section I <https://www.facebook.com/communitystandards/violence_criminal_behavior> accessed 3 May 2021.

Code	3-4
Source	FB Community Standards Section I. <i>Gutefrage.net</i> , Community Guidelines
Qualification	Content on regulated goods
Example and detailed descriptions	<p>"To encourage safety and compliance with common legal restrictions, we prohibit attempts by individuals, manufacturers, and retailers to purchase, sell, or trade non-medical drugs, pharmaceutical drugs, and marijuana. We also prohibit the purchase, sale, gifting, exchange, and transfer of firearms, including firearm parts or ammunition, between private individuals on Facebook. Some of these items are not regulated everywhere; however, because of the borderless nature of our community, we try to enforce our policies as consistently as possible. Firearm stores and online retailers may promote items available for sale off of our services as long as those retailers comply with all applicable laws and regulations. We allow discussions about sales of firearms and firearm parts in stores or by online retailers and advocating for changes to firearm regulation. Regulated goods that are not prohibited by our Community Standards may be subject to our more stringent Commerce Policies. e.g., non-medical drugs, content that depicts the sale or attempt to purchase marijuana and pharmaceutical drugs, firearms, firearm parts, ammunition, explosives, trade of human blood, sale of live animals, sale of endangered species, trade of alcohol or tobacco between private individuals etc."</p> <p>"Sell / request services or products gutefrage is not a sales platform. Therefore we do not allow any contributions that aim to sell or receive products, services or other things. It is the same for us whether for commercial reasons or free of charge. Examples: Who can create a logo for my YouTube channel? Have to give away winter tires for 10 Euro. Who wants to buy them? Who wants to take over my Minecraft account? Still have a voucher, who wants it?"¹ And more general: "Illegal or unlawful contents gutefrage is open and versatile, but not a legal vacuum. Therefore we do not allow illegal content to be distributed on gutefrage. Also contributions that are intended to deliberately harm other users or companies will be deleted by our moderators. Examples: Where can I spray well? Where can I download the full version of Photoshop for free? Where can I get a weapon (without a license)? How do I get the anti-theft device off my new trousers? What do I need to make Speed? At the company XY only rip-off artists work, who have nothing in mind except cheating! How can I stop them?!</p> <p>Please note: The violation of copyrights (e.g. by uploading a picture from the Google image search or copying texts from other websites) can have serious legal consequences. Please contact us if you are the copyright holder of illegal media."²</p> <p>Facebook: "Do not post: Content about non-medical drugs that Coordinates or encourages others to sell non-medical drugs Depicts, admits to, attempts purchase, or promotes sales of non-medical drugs by the poster of the content or their associates Promotes, encourages, coordinates, or provides instructions for use or make of non-medical drugs Admits, either in writing or verbally, to personal use of non-medical drugs unless posted in a recovery context Content that depicts the sale or attempt to purchase marijuana and pharmaceutical drugs. This includes content that Mentions or depicts marijuana or pharmaceutical drugs Makes an attempt to sell or trade, by which we mean any of the following: Explicitly mentioning the product is for sale or trade or delivery Asking the audience to buy Listing the price Encouraging contact about the product either by explicitly asking to be contacted or including any type of contact information Attempting to solicit the product, defined as: Stating interest in buying the product, or Asking if anyone has the product for sale/trade This applies to both individual pieces of content and Pages and Groups primarily dedicated to the sale of marijuana or pharmaceutical drugs Content that attempts to offer, sell, gift, exchange, or transfer firearms, firearm parts, ammunition, or explosives between private individuals, unless posted by a Page representing a real brick-and-mortar store, legitimate website, brand or government agency (e.g. police department, fire department). This includes content that: Mentions or depicts firearms, firearm parts, ammunition, explosives, or 3D gun printing files of any firearm or its parts*, and Makes an attempt to sell or trade, by which we mean: Explicitly mentioning the product is for sale or trade, or Asking the audience to buy, or Listing the price or noting that the product is free Encouraging contact about the product either by Explicitly asking to be contacted Including any type of contact information Making an attempt to solicit the item for sale, defined as Stating that they are interested in buying the good, or Asking if anyone else has the good for sale/trade * 3D gun printing files or instructions to manufacture firearms using 3D printers or CNC milling machines, including links to websites where such files or instructions are made available, may not be shared by anyone. A Page representing a real brick-and-mortar store, legitimate website or</p>

(continued on next page)

(continued)

brand can otherwise post content that may promote these items only for sale off of our services and as long as those retailers comply with all applicable laws and regulations.

Content that depicts the trade (buying or selling) of human blood where trade is defined as:

- Mentioning or depicting the human organs and/or blood, and
- Indicating that human organs and/or blood are available for selling or buying, or
- Listing a price or expressing willingness to discuss price

Content that encourages contact to facilitate the trade of human blood

Content that attempts to sell live animals between private individuals.

Content that coordinates or supports the poaching, selling, buying or trade/trading of endangered species and their parts

Content that depicts poaching or selling of endangered species and their parts committed by you or your associates

Content about endangered species:

- Promoting or speaking positively of the poaching or selling of endangered species and their parts.
- Depicts poaching or selling of endangered species and their parts committed by the poster of the content or their associates.
- Content that attempts to sell, poach, buy, giveaway endangered species and their parts.
- Content that attempts to offer, sell, gift, exchange, or transfer alcohol or tobacco products between private individuals. This includes content that:
 - Mentions or depicts alcohol or tobacco, and
 - Makes an attempt to sell or trade, by which we mean:
 - Explicitly mentions the product is for sale or trade, or
 - Asks the audience to buy, or
 - Lists price or notes product is free
- And is not posted by a Page representing a real brick-and-mortar store, legitimate website or brand
- Content promoting weight loss products that include a miracle claim with a commercial offer

For the following content, we restrict visibility to adults twenty-one years of age and older:

Content posted by or promoting a brick-and-mortar store, legitimate website, or brand, which coordinates or promotes the sale or transfer of firearms, firearm parts, ammunition, or explosives. This includes content that

- Explicitly mentions the product is for sale or transfer and
- Asks the audience to buy the product, or
- Lists the price or notes that the product is free, or
- Encourages contact about the product either by explicitly asking to be contacted or including any type of contact information

Content that depicts the sale or attempt to purchase knives, which includes content that

- Mentions or depicts a knife or bladed weapon, and
- Explicitly mentions the product is for sale or trade or delivery, or
- Asks the audience to buy, or
- Lists the price, or
- Asks or gives away the product for free between private individuals, or
- Encourages contact about the product either by:
 - Explicitly asking to be contacted, or
 - Including any type of contact information

For the following content, we restrict visibility to adults eighteen years of age and older:

Content posted by or promoting a brick and mortar store, legitimate website or brand, which coordinates or promotes the sale or transfer of alcohol or tobacco products off of Facebook’s services. This includes content that:

- Mentions or depicts alcohol or tobacco, and
- Explicitly mentions the product is for sale or trade, or
- Asks the audience to buy, or
- Lists the price or notes product is free or
- Encourages contact about the product either by:
 - Explicitly asking to be contacted, or
 - Including any type of contact information
- Content that promotes the use or depicts the sale of weight loss products
- Mentions or depicts a weight loss product or supplement, and
- Promotes, encourages, coordinates, or provides instructions for use, or
- Explicitly mentions the product is for donation or sale or trade or delivery, or
- Asks the audience to buy, or
- Lists the price, or
- Gives away the product for free
- Promotes the use or depicts the sale of certain cosmetic procedures such as those involving body enhancement:
 - Mentions or depicts the cosmetic procedure, and
 - Promotes, encourages, coordinates, or provides instructions for the procedure, or
 - Explicitly mentions the procedure is for sale, or
 - Asks the audience to purchase the procedure, or
 - Lists the price of the procedure, or
 - Gives away the procedure for free.”³

¹ gutefrage.net, ‘Unsere Richtlinien’ <<https://www.gutefrage.net/policy>> accessed 3 May 2021, (translation by the authors).

² gutefrage.net, ‘Unsere Richtlinien’ <<https://www.gutefrage.net/policy>> accessed 3 May 2021, (translation by the authors).

³ Facebook, ‘Facebook Community Standards’, Section I <https://www.facebook.com/communitystandards/violence_criminal_behavior> accessed 3 May 2021.

Code	3-5
Source	FB Community Standards Section I. <i>Gutefrage.net</i> , Community Guidelines
Qualification	Fraud and deception
Example and detailed descriptions by Facebook Inc. and <i>Gutefrage.net</i> , Community Guidelines	“In an effort to prevent and disrupt harmful or fraudulent activity, we remove content aimed at deliberately deceiving people to gain an unfair advantage or deprive another of money, property, or legal right. However, we allow people to raise awareness and educate others as well as condemn these activities using our platform.” “Illegal or unlawful contents <i>gutefrage</i> is open and versatile, but not a legal vacuum. Therefore we do not allow illegal content to be distributed on <i>gutefrage</i> . Also contributions that are intended to deliberately harm other users or companies will be deleted by our

(continued on next page)

(continued)

moderators.
 Examples:
 "Where can I spray well?
 Where can I download the full version of Photoshop for free?
 Where can I get a weapon (without a license)?
 How do I get the anti-theft device off my new trousers?
 What do I need to make Speed?
 At the company XY only rip-off artists work, who have nothing in mind except cheating! How can I stop them?!

Please note: The violation of copyrights (e.g. by uploading a picture from the Google image search or copying texts from other websites) can have serious legal consequences. Please contact us if you are the copyright holder of illegal media."¹

Facebook:
 "Do not post:
 Content that engages in, promotes, encourages, facilitates, or admits to the following activities:
 Offering, solicitation and trade of:
 Goods/property purchased with stolen financial information
 Future exam papers or answer sheets where answers are not meant to be widely shared
 Educational and professional certificates
 Credentials for paid subscription services
 Fake user reviews
 Fake or manipulated documents, e.g. coupons, medical prescriptions
 Fake or counterfeit currency
 Offering or selling of personally identifiable information
 Coordination or facilitation of betting manipulation, e.g. match fixing
 Recruitment of workforce for the purpose of fraudulent activities, e.g. Social Security Number (SSN) scams
 Other forms of deception aimed at depriving people of money or property such as:
 Confidence schemes, e.g. romance/military impersonation scams
 Ponzi schemes or Pyramid schemes
 Setting up false businesses or entities
 Investment schemes with promise of high rates of return
 Bribery
 Embezzlement
 Money laundering (concealment of the origins of criminally obtained money)
 Charity scams or fake fundraising campaigns
 Debt Relief or Credit Repair Scam."²

¹ gutefrage.net, 'Unsere Richtlinien' <<https://www.gutefrage.net/policy>> accessed 3 May 2021, (translation by the authors).

² Facebook, 'Facebook Community Standards', Section I <https://www.facebook.com/communitystandards/violence_criminal_behavior> accessed 3 May 2021.

Code	3-6
Source	Facebook Community Standards Section II and <i>Gutefrage.net</i> , Community Guidelines
Qualification	Suicide and Self-Injury
Example and detailed descriptions by Facebook Inc. and <i>Gutefrage.net</i> , Community Guidelines	"Self-injury is defined as the intentional and direct injuring of the body, including self-mutilation and eating disorders. We want Facebook to be a space where people can share their experiences, raise awareness about these issues, and seek support from one another, which is why we allow people to discuss suicide and self-injury. We have been advised by experts that we should not remove live videos of self-injury while there is an opportunity for loved ones and authorities to provide help or resources. In contrast, we remove any content that identifies and negatively targets victims or survivors of self-injury or suicide seriously, humorously, or rhetorically." "Contributions hazardous to health The protection of our users is very important to us. Contributions that could endanger your own health or the health of other users (e.g. '20 paracetamol can be taken without any problems') are therefore not allowed. Should you find yourself in a difficult life situation and are looking for support, we have some offers of help for you here: For depression and suicidal thoughts For self-harming behaviour With negative body perception & eating disorders With mobbing" ¹ Facebook: "Do not post: Content that promotes, encourages, coordinates, or provides instructions for Suicide Self-injury Eating disorders Content that depicts graphic self-injury imagery Except in limited situations of newsworthiness, it is against our policies to post content depicting a person who engaged in a suicide attempt or death by suicide Content that focuses on depiction of ribs, collar bones, thigh gaps, hips, concave stomach, or protruding spine or scapula when shared together with terms associated with eating disorders. Content that contains instructions for drastic and unhealthy weight loss when shared together with terms associated with eating disorders. For the following content, we restrict content to adults over the age of 18, and include a sensitivity screen so that people are aware the content may be upsetting: Photos or videos depicting a person's death by suicide that are determined to be newsworthy Photos or videos depicting a person who engaged in euthanasia/assisted suicide in a medical setting For the following content, we include a sensitivity screen so that people are aware the content may be upsetting to some: Content that depicts older instances of self-harm such as healed cuts or other non-graphic self-injury imagery in a

(continued on next page)

(continued)

	<p>context of recovery</p> <p>Content that depicts ribs, collar bones, thigh gaps, hips, concave stomach, or protruding spine or scapula in a recovery context.</p> <p>We provide resources to people who post written or verbal admissions of engagement in self injury, including: Suicide, Euthanasia/assisted suicide, Self-harm</p> <p>Eating disorders²</p>
--	--

¹ gutefrage.net, 'Unsere Richtlinien' <<https://www.gutefrage.net/policy>> accessed 3 May 2021, (translation by the authors).

² Facebook, 'Facebook Community Standards', Section II <<https://www.facebook.com/communitystandards/safety>> accessed 3 May 2021.

Code	3-7
Source	Facebook Community Standards Section II and Gutefrage.net, Community Guidelines
Qualification	Child Nudity and sexual exploitation of children
Example and detailed descriptions by Facebook Inc. and Gutefrage.net, Community Guidelines	<p>"We do not allow content that sexually exploits or endangers children. When we become aware of apparent child exploitation, we report it to the National Center for Missing and Exploited Children (NCMEC), in compliance with applicable law. We know that sometimes people share nude images of their own children with good intentions; however, we generally remove these images because of the potential for abuse by others and to help avoid the possibility of other people reusing or misappropriating the images.</p> <p>We also work with external experts, including the Facebook Safety Advisory Board, to discuss and improve our policies and enforcement around online safety issues, especially with regard to children. Learn more about the new technology we're using to fight against child exploitation."</p> <p>"Strongly offensive, obscene or vulgar posts</p> <p>Offensive, vulgar or obscene contributions may not be posted on our site. Likewise prohibited are contributions that are solely aimed at the sexualization of a certain group of people (especially children), or to live out his own sexual inclinations.</p> <p>Not allowed are for example:</p> <p>Contributions with photos of genitals like: Would this penis satisfy you?</p> <p>Questions about porn links: Where can I find the link to the latest porn by porn star Julia?</p> <p>Contributions with strongly offensive language</p> <p>Articles like "What makes children so attractive/sexy in your eyes?"</p> <p>Fetish questions with the intention to live out this fetish with the help of the given answers / to inspire his fantasy"¹</p> <p>Facebook:</p> <p>"Do not post:</p> <p>Content that depicts participation in or advocates for the sexual exploitation of children, including (but not limited to)</p> <p>Engaging in any sexual activity involving minors</p> <p>Adults soliciting minors</p> <p>Minors soliciting minors</p> <p>Minors soliciting adults</p> <p>Using our products and site functionality with the intention of sexualizing minors</p> <p>Content that constitutes or facilitates inappropriate interactions with children, such as</p> <p>Initiating unsolicited contact with minors (for example, private messages between stranger adults and minors)</p> <p>Soliciting, displaying, sharing, or viewing imagery of nude, sexualized, or sexual activity with minors</p> <p>Arranging real-world sexual encounters or obtaining sexual material from a minor directly</p> <p>Displaying nudity to minors</p> <p>Content (including photos, videos, real-world art, digital content, and text) that depicts</p> <p>Any sexual activity involving minors</p> <p>Minors in a sexual fetish context</p> <p>Minors with sexual elements, including (but not limited to):</p> <p>Restraints</p> <p>Focus on genitals</p> <p>Presence of aroused adult</p> <p>Presence of sex toys</p> <p>Sexualized costume</p> <p>Stripping</p> <p>Staged environment (for example, on a bed) or professionally shot (quality/focus/angles)</p> <p>Open-mouth kissing with minor or adult</p> <p>Content (including photos, videos, real-world art, digital content, and verbal depictions) that shows minors in a sexualized context</p> <p>Content that depicts child nudity where nudity is defined as</p> <p>Visible genitalia (even when covered or obscured by transparent clothing)</p> <p>Visible anus and/or fully nude close-up of buttocks</p> <p>Uncovered female nipples for children older than toddler-age</p> <p>No clothes present from neck to knee for children older than toddler-age</p> <p>digitally-created depictions of nude minors, unless the image is for health or educational purposes."²</p>

¹ gutefrage.net, 'Unsere Richtlinien' <<https://www.gutefrage.net/policy>> accessed 3 May 2021, (translation by the authors).

² Facebook, 'Facebook Community Standards', Section II <<https://www.facebook.com/communitystandards/safety>> accessed 3 May 2021.

Code	3-8
Source	Facebook Community Standards Section II and Gutefrage.net, Community Guidelines
Qualification	Sexual exploitation of adults
Example and detailed descriptions by Facebook Inc. and Gutefrage.net, Community Guidelines	<p>"We remove content that depicts, threatens or promotes sexual violence, sexual assault, or sexual exploitation, while also allowing space for victims to share their experiences. We remove content that displays, advocates for, or coordinates sexual acts with non-consenting parties or commercial sexual services, such as prostitution and escort services. We do this to avoid facilitating transactions that may involve trafficking, coercion, and non-consensual sexual acts.</p>

(continued on next page)

(continued)

To protect victims and survivors, we also remove images that depict incidents of sexual violence and intimate images shared without permission from the people pictured. We've written about the [technology we use to protect against intimate images](#) and the [research that has informed our work](#). We've also put together a [guide to reporting and removing intimate images shared without your consent](#)."

General:

"Illegal or unlawful contents

gutefrage is open and versatile, but not a legal vacuum. Therefore we do not allow illegal content to be distributed on gutefrage. Also contributions that are intended to deliberately harm other users or companies will be deleted by our moderators."¹

Facebook:

"Do not post:

In instances where content consists of any form of non-consensual sexual touching, crushing, necrophilia or bestiality, or forced stripping, including:

Depictions (including real photos/videos), or

Advocacy (including aspirational and conditional statements), or

Statements of intent, or

Calls for action, or

Threatening, soliciting, or stating an intent to share imagery, or

Admitting participation, or

Mocking victims of any of the above

Content that attempts to exploit people by any of the following:

Coercing money, favours, or images from people by threats of exposure of their naked or semi-naked photos/videos Sharing, threatening, stating an intent to share, offering or asking for imagery known as "Revenge Porn" or "Non-Consensual Intimate Images" that fulfills all three of the following conditions:

Image is non-commercial or produced in a private setting

Person in the image is (near) nude, engaged in sexual activity, or in a sexual pose

Lack of consent to share the image is indicated by

Vengeful context (for example, caption, comments, or page title)

Independent sources (for example, law enforcement record) including entertainment media (for example, leak of images confirmed by media)

A visible match between the person depicted in the image and the person who has reported the content to us

The person who reported the content to us shares the same name as the person depicted in the image

Secretly taken non-commercial imagery of a real person's commonly sexualized body parts (breasts, groin, buttocks, or thighs) or of a real person engaged in sexual activity. This imagery is commonly known as "creepshots" or "upskirts" and includes photos or videos that mocks, sexualizes or exposes the person depicted in the imagery.

Threatening or stating an intent to share private sexual conversations that meets the following criteria:

Lack of consent is indicated by:

Vengeful context and/or threatening context, or

A visible match between the person depicted in the image and the person who has reported the content to us

The person who reported the content to us shares the same name as the person depicted in the image

Attempting to coordinate adult commercial sexual services or prostitution activities, such as requesting or offering or asking for rates for escort services and paid sexual fetish or domination services.

For the following content, we include a warning screen so that people are aware the content may be disturbing:

Narratives and statements that contain a depiction of non-consensual sexual touching (written or verbal) that includes details beyond mere naming or mentioning the act if:

Shared by the victim, or

Shared by a third party (other than the victim) in support of victim or condemnation of act or for general awareness to be determined by context/caption

Content mocking the concept of non-consensual sexual touching."²

¹ gutefrage.net, 'Unsere Richtlinien' <<https://www.gutefrage.net/policy>> accessed 3 May 2021, (translation by the authors).

² Facebook, 'Facebook Community Standards', Section II <<https://www.facebook.com/communitystandards/safety>> accessed 3 May 2021.

Code	3-9
Source	Facebook Community Standards Section II and Gutefrage.net, Community Guidelines
Qualification	Bullying and Harassment
Example and detailed descriptions by Facebook Inc. and Gutefrage.net, Community Guidelines	"Bullying and harassment happen in many places and come in many different forms, from making threats to releasing personally identifiable information, to sending threatening messages, and making unwanted malicious contact. We do not tolerate this kind of behaviour because it prevents people from feeling safe and respected on Facebook. We distinguish between public figures and private individuals because we want to allow discussion, which often includes critical commentary of people who are featured in the news or who have a large public audience. For public figures, we remove attacks that are severe as well as certain attacks where the public figure is directly tagged in the post or comment. For private individuals, our protection goes further: we remove content that's meant to degrade or shame, including, for example, claims about someone's sexual activity. We recognize that bullying and harassment can have more of an emotional impact on minors, which is why our policies provide heightened protection for users between the ages of 13 and 18. Context and intent matter, and we allow people to share and re-share posts if it is clear that something was shared in order to condemn or draw attention to bullying and harassment. In certain instances, we require self-reporting because it helps us understand that the person targeted feels bullied or harassed. In addition to reporting such behaviour and content, we encourage people to use tools available on Facebook to help protect against it. We also have a Bullying Prevention Hub , which is a resource for teens, parents, and educators seeking support for issues related to bullying and other conflicts. It offers step-by-step guidance, including information on how to start important conversations about bullying. Learn more about what we're doing to protect people from bullying and harassment here ." "Insults & user demonstration So that everyone can feel comfortable in our community, insults as well as mutual presentation / ridiculing are not

(continued on next page)

(continued)

allowed (no matter whether publicly or e.g. by private message). This includes among others:

- Insinuations
- accusations (e.g. "user xy is a troll")
- Tracking" individual users & their contributions with negative intent (for example, with the intention of exposing the user)"¹
- "Threat, trivialization or spreading of violence
- good question protects you and all users. Therefore we expect you neither to threaten violence nor to use violence. Neither against yourself nor against others. This also includes statements, writings and media that glorify and trivialize violence.
- Examples:
- Threat of violence
- unnecessarily detailed descriptions of extreme violence and fantasies of violence
- Representation of extreme violence
- contributions glorifying violence
- harassing contributions, user stalking and mobbing
- trivialization of sexual, psychological or physical abuse, especially of children (this includes statements such as "You only convince the victims that rape is something bad") "In the past it was quite normal to have sex with children" Give your child a slap in the face more often, then it will learn respect" or similar).
- It is also not allowed to link to pages with corresponding content. When writing your contributions, always remember that younger users can see them."²
- Facebook:
- "Do not:
- Repeatedly contact someone in a manner that is:
- Unwanted or
- Sexually harassing or
- Directed at a large number of individuals with no prior solicitation
- Target anyone maliciously by:
- Attacking them based on their status as a victim of sexual assault, sexual exploitation, or domestic abuse
- Calling for self-injury or suicide of a specific person, or group of people
- Attacking them through derogatory terms related to sexual activity (e.g. whore, slut)
- Posting content about a violent tragedy, or victims of violent tragedies that include claims that a violent tragedy did not occur
- Posting content about victims or survivors of violent tragedies by name or by image, with claims that they are
- Acting/pretending to be a victim of an event
- Otherwise paid or employed to mislead people about their role in the event
- Threaten to release an individual's private phone number, residential address, or email address
- Creating or posting content to Pages or Groups that are dedicated to attacking individual(s) by, for example
- Calling for death or serious disease or disability
- Making statements of intent of advocating to engage in sexual activity
- Claims about sexually transmitted diseases
- Sending messages that contain the following attacks when aimed at an individual or group of individuals in the thread
- Targeted cursing
- Calls for death, serious disease or disability, or physical harm
- Target another private individual, or public figure who is a minor, with:
- Calls for death or serious disease or disability
- Female-gendered cursing terms when used in a derogatory way
- Claims about sexual activity or sexually transmitted diseases
- Pages or Groups created to attack through:
- Targeted cursing
- High-severity physical descriptions
- Claims about religious identity or blasphemy
- Expressions of contempt or disgust
- Female-gendered cursing terms when used in a derogatory way
- Target public figures by purposefully exposing them to:
- For adults
- Calls for death or serious disease or disability
- Statements of intent to engage in a sexual activity or advocating to engage in a sexual activity
- Claims about sexually transmitted disease
- Female-gendered cursing terms when used in a derogatory way
- Content that praises, celebrates, or mocks their death
- For minors
- Comparisons to animals or insects that are culturally perceived as intellectually or physically inferior or to an inanimate object ("cow," "monkey" "potato")
- Content manipulated to highlight, circle, or otherwise negatively draw attention to specific physical characteristics (nose, ear, etc.)
- Target private individuals or involuntary minor public figures with:
- Comparisons to animals or insects that are culturally perceived as intellectually or physically inferior or to an inanimate object ("cow," "monkey" "potato")
- Content manipulated to highlight, circle, or otherwise negatively draw attention to specific physical characteristics (nose, ear, etc.)
- Attacks through negative physical descriptions
- Content that ranks individuals on physical appearance or personality
- Content that depicts others in the process of, or right after menstruating, urinating, vomiting, or defecating where context further degrades the individual or contains an expression of disgust
- Physical bullying where the context further degrades the individual
- In addition to the above, attacks through Pages or Groups:
- Negative character or ability claims

(continued on next page)

(continued)

Self-referential bullying; Only if the Object targets more than 1 private individual
 Content that praises, celebrates, or mocks their death
 Target private adults (who must self-report) or any private minors or involuntary minor public figures with:
 Targeted cursing
 Claims about romantic involvement, sexual orientation or gender identity
 Coordination, advocacy, or promotion of exclusion
 Negative character or ability claims, except in the context of criminal allegations against adults
 Expressions of contempt or disgust, except in the context of criminal allegations against adults
 Target private individuals who are minors with:
 Allegations about criminal or illegal behaviour
 Videos of physical bullying or violence against minors in a fight context shared in a non-condemning context
 Target private individuals (who must self-report) with:
 Self-referential bullying
 Unwanted manipulated imagery
 Comparison to other public, fictional or private individuals on the basis of physical appearance
 Claims about religious identity or blasphemy, except in at-risk countries where the Violence and Incitement policy should be applied
 Comparisons to animals or insects that are not culturally perceived as intellectually or physically inferior ("tiger," "lion")
 Neutral or positive physical descriptions
 Non-negative character or ability claims
 Any bullying or harassment violation, when shared in an endearing context
 Attacks through derogatory terms related to a lack of sexual activity
 For the following content, we include a warning screen so that people are aware the content may be disturbing:
 Videos of physical bullying or violence against minors in a fight context shared with a condemning caption."³

¹ gutefrage.net, 'Unsere Richtlinien' <<https://www.gutefrage.net/policy>> accessed 3 May 2021, (translation by the authors).

² gutefrage.net, 'Unsere Richtlinien' <<https://www.gutefrage.net/policy>> accessed 3 May 2021, (translation by the authors).

³ Facebook, 'Facebook Community Standards', Section II <<https://www.facebook.com/communitystandards/safety>> accessed 3 May 2021.

Code	3-10
Source	Facebook Community Standards Section II and Gutefrage.net, Community Guidelines
Qualification	Human exploitation
Example and detailed descriptions by Facebook Inc. and Gutefrage.net, Community Guidelines	<p>"In an effort to disrupt and prevent harm, we remove content that facilitates or coordinates the exploitation of humans, including human trafficking. We define human trafficking as the business of depriving someone of liberty for profit. It is the exploitation of humans in order to force them to engage in commercial sex, labour, or other activities against their will. It relies on deception, force and coercion, and degrades humans by depriving them of their freedom while economically or materially benefiting others.</p> <p>Human trafficking is multi-faceted and global; it can affect anyone regardless of age, socioeconomic background, ethnicity, gender, or location. It takes many forms, and any given trafficking situation can involve various stages of development. By the coercive nature of this abuse, victims cannot consent.</p> <p>While we need to be careful not to conflate human trafficking and smuggling, the two can be related and exhibit overlap. The United Nations defines human smuggling as the procurement or facilitation of illegal entry into a state across international borders. Without necessity for coercion or force, it may still result in the exploitation of vulnerable individuals who are trying to leave their country of origin, often in pursuit of a better life. Human smuggling is a crime against a state, relying on movement, and human trafficking is a crime against a person, relying on exploitation."</p> <p>"Illegal or illegal contents</p> <p>gutefrage is open and versatile, but not a legal vacuum. Therefore we do not allow illegal content to be distributed on gutefrage. Also contributions that are intended to deliberately harm other users or companies will be deleted by our moderators."¹</p> <p>Facebook:</p> <p>"Do not post:</p> <p>Content or exhibit behaviour that may lead to human exploitation, which includes any of the following:</p> <p>Sex Trafficking, covering minors and adults</p> <p>The sale of children for illegal adoption</p> <p>Orphanage Trafficking and Orphanage Voluntourism</p> <p>Forced Marriages</p> <p>Labour Exploitation (incl. bonded labour)</p> <p>Domestic Servitude</p> <p>Non-regenerative Organ Trafficking</p> <p>Forced Criminal Activity (e.g. forced begging, forced drug trafficking)</p> <p>Recruitment of Child Soldiers</p> <p>Content geared towards the:</p> <p>Recruitment of potential victims through force, fraud, coercion, enticement, deception, blackmail or other non-consensual acts.</p> <p>Facilitation of human exploitation by coordinating, transporting, transferring, harbouring or brokering of victims prior or during the exploitation.</p> <p>Exploitation of humans by promoting, depicting, or advocating for it.</p> <p>Content that offers or assists in smuggling of humans."²</p>

¹ gutefrage.net, 'Unsere Richtlinien' <<https://www.gutefrage.net/policy>> accessed 3 May 2021, (translation by the authors).

² Facebook, 'Facebook Community Standards', Section II <<https://www.facebook.com/communitystandards/safety>> accessed 3 May 2021.

Code	3-11
Source	Facebook Community Standards Section II and Gutefrage.net, Community Guidelines
Qualification	Privacy violations and image privacy rights
Example and detailed descriptions by Facebook Inc. and Gutefrage.net, Community Guidelines	<p>Privacy and the protection of personal information are fundamentally important values for Facebook. We work hard to keep your account secure and safeguard your personal information in order to protect you from potential physical or financial harm. You should not post personal or confidential information about others without first getting their consent. We also provide people ways to report imagery that they believe to be in violation of their privacy rights.</p> <p>“Illegal or illegal contents gutefrage is open and versatile, but not a legal vacuum. Therefore we do not allow illegal content to be distributed on gutefrage. Also contributions that are intended to deliberately harm other users or companies will be deleted by our moderators.”¹</p> <p>Facebook: “Do not post: Content that facilitates identity theft by posting or soliciting personally identifiable information, including (but not limited to) National identification numbers, Social Security numbers, passport numbers, or exam numbers Government IDs School and education IDs featuring two of the following: (1) name, (2) photo, or (3) ID number Digital identities, including passwords Content that contains medical/psychological, biometric, or genetic records or official documentation of others Content that facilitates identity theft by sharing personally identifiable information via an external link Content that facilitates identity theft by sharing private financial information of an organization or business Content that facilitates identity theft by disclosing the following personal financial information (of either the self or others) Bank account and/or card information Financial records paired with account information Content that facilitates identity theft by sharing the private contact information of others defined as Private phone numbers or addresses Email, Messenger, and chat identities The above information may be shared to promote charitable causes, non-violating services, or to facilitate finding missing people or animals Except in limited cases of newsworthiness, content claimed or confirmed to come from a hacked source, regardless of whether the affected person is a public figure or a private individual. Content that identifies individuals by name and depicts their personal information, including: Driver’s licenses, Government IDs other than driver’s licenses, Green Cards, or immigration papers Marriage, birth, and name change certificates Digital identities, including passwords License plates Content that includes photographs that display the external view of private residences if the following conditions apply: The residence is a single-family home, or the resident’s unit number is identified in the image/caption The city or neighbourhood is identified A resident is mentioned or depicted That same resident objects to the exposure of their private residence Content that exposes the undercover status of law enforcement personnel if The content contains the agent’s full name or other explicit identification and explicitly mentions their undercover status, or The content contains images identifying the faces of the law enforcement personnel and explicitly mentions their undercover status Content that exposes information about safe houses by sharing any of the below, unless the safe house is actively promoting its location, contact information, or the type of service and protection it offers through comments, posts, Pages or Groups: Actual address of the safe house (post box only is allowed), Images of the safe house, Identifiable city/neighbourhood of the safe house, or Information outing residents of the safe house The following content also may be removed A reported photo or video of people where the person depicted in the image is: A minor under thirteen years old, and the content was reported by the minor or a parent or legal guardian, A minor between thirteen and eighteen years old, and the content was reported by the minor, An adult, where the content was reported by the adult from outside the United States and applicable law may provide rights to removal Any person who is incapacitated and unable to report the content on their own.”²</p>

¹ gutefrage.net, ‘Unsere Richtlinien’ <<https://www.gutefrage.net/policy>> accessed 3 May 2021, (translation by the authors).

² Facebook, ‘Facebook Community Standards’, Section II <<https://www.facebook.com/communitystandards/safety>> accessed 3 May 2021.

Code	3-12
Source	Facebook Community Standards Section III Gutefrage.net Community Guidelines
Qualification	Hate Speech
Example and detailed descriptions by Facebook Inc. and Gutefrage.net, Community Guidelines	<p>“We define hate speech as a direct attack on people based on what we call protected characteristics — race, ethnicity, national origin, religious affiliation, sexual orientation, caste, sex, gender, gender identity, and serious disease or disability. We also provide some protections for immigration status. We define attack as violent or dehumanizing speech, statements of inferiority, or calls for exclusion or segregation. We separate attacks into three tiers of severity, as described below.</p> <p>Sometimes people share content containing someone else’s hate speech for the purpose of raising awareness or</p>

(continued on next page)

(continued)

educating others. In some cases, words or terms that might otherwise violate our standards are used self-referentially or in an empowering way. People sometimes express contempt in the context of a romantic break-up. Other times, they use gender-exclusive language to control membership in a health or positive support group, such as a breastfeeding group for women only. In all of these cases, we allow the content but expect people to clearly indicate their intent, which helps us better understand why they shared it. Where the intention is unclear, we may remove the content.

We allow humour and social commentary related to these topics. In addition, we believe that people are more responsible when they share this kind of commentary using their authentic identity."

"Extremism, Xenophobia and Hate-Speech

good question is cosmopolitan. We therefore tolerate neither discrimination, defamation nor extremism in any form. gutfrege is not a place for spreading hate and incitement to hatred

Examples of hate contribution:

Conscious dissemination of false statements

"Refugees all get expensive cell phones for free!"

"Refugees may steal from supermarkets, they won't be punished anyway."

Camouflage as humour / irony

"In my next life I'll be an asylum seeker, then I'll get a new smartphone!"

Degrading and denigrating terms / sexist and racist insults

"Kan**ake", "Faggot.", "Bitch.", "Headscarf Girl", "gold piece", "cultural enricher", "knife" in relation to (male) refugees

Striking use of stereotypes / use of certain terms and language patterns

"The pharmaceutical lobby wants to vaccinate us all sick.", "Foreigners out!", "Islamization of the German Occident",

"The state wants to raise our children as homos!", "Sacrifice subscription", Devaluating / Negative Generalization,

"Jews are profit hungry", "Carnivores are murderers"

Striking visual language

Profile pictures (photos, cartoons, etc.) with racist, sexist or other degrading images

Images that reproduce stereotypes, for example by associating Muslim men with bestiality

Criminal equations

"It's a known fact that most homosexuals also molest children.", "No wonder that so many cars are stolen in

Brandenburg - it's close to the Polish border."

Advocacy / trivialization or threat of sexualized violence

"You should give them a real hard time!", "If they touch my wife, I'll cut their balls off myself!", "Women shouldn't complain about sexism when they're so slutty!"

advocacy of or call for acts of violence

"They should all be shot/burned/gasified.", "Take them to the gallows!", "I vote we open the gas chambers again and put the whole brood in there."¹

We therefore do not allow:

to attack persons or groups of persons verbally or visually, e.g. through videos and pictures - on the basis of their ethnic and religious affiliation, national origin, sexual orientation, gender (identity), social status, world view, lifestyle, physical or mental disability, as well as illness. An attack also includes the use of derogatory or violent language, defaming users in any way, and deliberately spreading prejudice and misinformation.

To spread or quote hate contributions of other people.

Use certain language patterns that use stereotypes to devalue others.

To write tendentious contributions whose only aim is to convince other users of the truth of their own views.

What is good question about questions on political issues?

Please always remember that your anonymity on the net does not protect you from punishment. Spreading hate is not an expression in the sense of freedom of opinion. There can be criminal offences; for this purpose, StGB § 111 Public incitement to commit criminal offences, § 130 Seditious, § 185 Insult, § 186 Defamation and slander and § 187 Defamation apply. We reserve the right to take legal action or to pass on such incidents to the authorities".²

Facebook:

"Do not post:

Tier 1

Content targeting a person or group of people (including all subsets except those described as having carried out violent crimes or sexual offenses) on the basis of their aforementioned protected characteristic(s) or immigration status with:

Violent speech or support in written or visual form

Dehumanizing speech or imagery in the form of comparisons, generalizations, or unqualified behavioural statements to or about:

Insects

Animals that are culturally perceived as intellectually or physically inferior

Filth, bacteria, disease and feces

Sexual predator

Subhumanity

Violent and sexual criminals

Other criminals (including but not limited to "thieves," "bank robbers," or saying "all [protected characteristic or quasi-protected characteristic] are 'criminals'")

Statements denying existence

Mocking the concept, events or victims of hate crimes even if no real person is depicted in an image

Designated dehumanizing comparisons, generalizations, or behavioural statements (in written or visual form)- that include:

Black people and apes or ape-like creatures

Black people and farm equipment

Jewish people and rats

Muslim people and pigs

Muslim person and sexual relations with goats or pigs

Mexican people and worm like creatures

Women as household objects or referring to women as property or 'objects'

Transgender or non-binary people referred to as 'it'

(continued on next page)

(continued)

Tier 2
 Content targeting a person or group of people on the basis of their protected characteristic(s) with:
 Generalizations that state inferiority (in written or visual form) in the following ways:
 Physical deficiencies are defined as those about:
 Hygiene, including but not limited to: filthy, dirty, smelly
 Physical appearance, including but not limited to: ugly, hideous
 Mental deficiencies are defined as those about:
 Intellectual capacity, including but not limited to: dumb, stupid, idiots
 Education, including but not limited to: illiterate, uneducated
 Mental health, including but not limited to: mentally ill, retarded, crazy, insane
 Moral deficiencies are defined as those about:
 Culturally perceived negative character trait, including but not limited to: coward, liar, arrogant, ignorant
 Derogatory terms related to sexual activity, including but not limited to: whore, slut, perverts
 Other statements of inferiority, which we define as:
 Expressions about being less than adequate, including but not limited to: worthless, useless
 Expressions about being better/worse than another protected characteristic, including but not limited to: "I believe that males are superior to females."
 Expressions about deviating from the norm, including but not limited to: freaks, abnormal
 Expressions of contempt or their visual equivalent, which we define as:
 Self-admission to intolerance on the basis of a protected characteristics, including but not limited to: homophobic, islamophobic, racist
 Expressions that a protected characteristic shouldn't exist
 Expressions of hate, including but not limited to: despise, hate
 Expressions of dismissal, including but not limited to: dont respect, don't like, dont care for
 Expressions of disgust or their visual equivalent, which we define as:
 Expressions that suggest the target causes sickness, including but not limited to: vomit, throw up
 Expressions of repulsion or distaste, including but not limited to: vile, disgusting, yuck
 Cursing, defined as:
 Referring to the target as genitalia or anus, including but not limited to: cunt, dick, asshole
 Profane terms or phrases with the intent to insult, including but not limited to: fuck, bitch, motherfucker
 Terms or phrases calling for engagement in sexual activity, or contact with genitalia or anus, or with feces or urine, including but not limited to: suck my dick, kiss my ass, eat shit

Tier 3
 Content targeting a person or group of people on the basis of their protected characteristic(s) with any of the following:
 Calls for segregation
 Explicit Exclusion which includes but is not limited to "expel" or "not allowed".
 Political Exclusion defined as denial of right to political participation.
 Economic Exclusion defined as denial of access to economic entitlements and limiting participation in the labour market,
 Social Exclusion defined as including but not limited to denial of opportunity to gain access to spaces (incl. online) and social services.
 We do allow criticism of immigration policies and arguments for restricting those policies.
 Content that describes or negatively targets people with slurs, where slurs are defined as words commonly used as insulting labels for the above-listed characteristics."³

¹ Gutefrage.net, Examples for Hate Speech on gutefrage.net <<https://www.gutefrage.net/frage/was-gilt-bei-gutefrage-als-hassred>> (translation by the authors).

² gutefrage.net, 'Unsere Richtlinien' <<https://www.gutefrage.net/policy>> accessed 3 May 2021, (translation by the authors).

³ Facebook, 'Facebook Community Standards', Section III <https://www.facebook.com/communitystandards/objectionable_content>accessed 3 May 2021.

Code Source	3-13 Facebook Community Standards Section III Gutefrage.net Community Guidelines
Qualification Example and detailed descriptions by Facebook Inc. and <i>Gutefrage.net</i> , Community Guidelines	Violent Graphic Content "We remove content that glorifies violence or celebrates the suffering or humiliation of others because it may create an environment that discourages participation. We allow graphic content (with some limitations) to help people raise awareness about issues. We know that people value the ability to discuss important issues like human rights abuses or acts of terrorism. We also know that people have different sensitivities with regard to graphic and violent content. For that reason, we add a warning label to especially graphic or violent content so that it is not available to people under the age of eighteen and so that people are aware of the graphic or violent nature before they click to see it." "Strongly offensive, obscene or vulgar posts Objectionable, vulgar or obscene contributions may not be posted on our site. Likewise prohibited are contributions that are solely aimed at the sexualization of a certain group of people (especially children), or to live out his own sexual inclinations. Not allowed are for example: Contributions with photos of genitals like: Would this penis satisfy you? Questions about porn links: Where can I find the link to the latest porn by porn star Julia? Contributions with strongly offensive language Articles like "What makes children so attractive/sexy in your eyes? Fetish questions with the intention to live out this fetish with the help of the given answers / to inspire his fantasy" ¹ "Threat, trivialization or spreading of violence good question protects you and all users. Therefore we expect you neither to threaten violence nor to use violence. Neither against yourself nor against others. This also includes statements, writings and media that glorify and trivialize violence. Examples: Threat of violence unnecessarily detailed descriptions of extreme violence and fantasies of violence

(continued on next page)

(continued)

Representation of extreme violence
 contributions glorifying violence
 harassing contributions, user stalking and mobbing
 trivialization of sexual, psychological or physical abuse, especially of children (this includes statements such as "You only convince the victims that rape is something bad") "In the past it was quite normal to have sex with children" "Give your child a slap in the face more often, then it will learn respect" or similar).
 It is also not allowed to link to pages with corresponding content. When writing your contributions, always remember that younger users can see them."²
 Facebook:
 "Do not post:
 Videos of people or dead bodies in non-medical settings if they depict
 Dismemberment
 Visible internal organs; partially decomposed bodies
 Charred or burning people unless in the context of cremation or self-immolation when that action is a form of political speech or newsworthy
 Victims of cannibalism
 Throat-slitting
 Live streams of capital punishment of a person
 Videos or photos that depict non-sexual child abuse, defined as
 Repeated kicking, beating, slapping, or stepping on by an adult or animal
 Strangling or suffocating by an adult or animal
 Drowning by an adult or animal
 Biting through skin by an adult or animal
 Poisoning by an adult
 Forcible restraint by an adult
 Inflicting of burn or cut wounds by an adult
 Forcible smoking
 Tossing, rotating, or shaking of an infant (too young to stand) by their wrists/ankles, arms/legs, or neck."³

¹ gutefrage.net, 'Unsere Richtlinien' <<https://www.gutefrage.net/policy>> accessed 3 May 2021, (translation by the authors).

² gutefrage.net, 'Unsere Richtlinien' <<https://www.gutefrage.net/policy>> accessed 3 May 2021, (translation by the authors).

³ Facebook, 'Facebook Community Standards', Section III <https://www.facebook.com/communitystandards/objectionable_content>accessed 3 May 2021.

Code	3-14
Source	Facebook Community Standards Section III Gutefrage.net Community Guidelines
Qualification	Adult Nudity and Sexual Activity
Example and detailed descriptions by Facebook Inc. and Gutefrage.net, Community Guidelines	We restrict the display of nudity or sexual activity because some people in our community may be sensitive to this type of content. Additionally, we default to removing sexual imagery to prevent the sharing of non-consensual or underage content. Restrictions on the display of sexual activity also apply to digitally created content unless it is posted for educational, humorous, or satirical purposes. "Strongly offensive, obscene or vulgar posts Objectionable, vulgar or obscene contributions may not be posted on our site. Likewise prohibited are contributions that are solely aimed at the sexualization of a certain group of people (especially children), or to live out his own sexual inclinations. Not allowed are for example: Contributions with photos of genitals like: Would this penis satisfy you? Questions about porn links: Where can I find the link to the latest porn by porn star Julia? Contributions with strongly offensive language Articles like "What makes children so attractive/sexy in your eyes?" Fetish questions with the intention to live out this fetish with the help of the given answers / to inspire his fantasy" ¹ Facebook: "For example, while we restrict some images of female breasts that include the nipple, we allow other images, including those depicting acts of protest, women actively engaged in breast-feeding, and photos of post-mastectomy scarring. We also allow photographs of paintings, sculptures, and other art that depicts nude figures." ²

¹ gutefrage.net, 'Unsere Richtlinien' <<https://www.gutefrage.net/policy>> accessed 3 May 2021, (translation by the authors).

² Facebook, 'Facebook Community Standards', Section III <https://www.facebook.com/communitystandards/objectionable_content>accessed 3 May 2021.

Code	3-15
Source	Facebook Community Standards Section III Gutefrage.net Community Guidelines
Qualification	Sexual Solicitation
Example and detailed descriptions by Facebook Inc. and Gutefrage.net, Community Guidelines	"As noted in Section 8 of our Community Standards (Sexual Exploitation of Adults), people use Facebook to discuss and draw attention to sexual violence and exploitation. We recognize the importance of and want to allow for this discussion. We draw the line, however, when content facilitates, encourages or coordinates sexual encounters between adults. We also restrict sexually explicit language that may lead to solicitation because some audiences within our global community may be sensitive to this type of content and it may impede the ability for people to connect with their friends and the broader community." "Strongly offensive, obscene or vulgar posts Objectionable, vulgar or obscene contributions may not be posted on our site. Likewise prohibited are contributions that are solely aimed at the sexualization of a certain group of people (especially children), or to live out his own sexual inclinations. Not allowed are for example: Contributions with photos of genitals like: Would this penis satisfy you? Questions about porn links: Where can I find the link to the latest porn by porn star Julia? Contributions with strongly offensive language Articles like "What makes children so attractive/sexy in your eyes?"

(continued on next page)

(continued)

Fetish questions with the intention to live out this fetish with the help of the given answers / to inspire his fantasy”¹
 Facebook:
 “Do not post:
 Attempted coordination of or recruitment for adult sexual activities, including but not limited to:
 Filmed sexual activities
 Pornographic activities, strip club shows, live sex performances, erotic dances
 Sexual, erotic, or tantric massages
 Explicit sexual solicitation by, including but not limited to the following, offering or asking for:
 Sex or sexual partners
 Sex chat or conversations
 Nude photos/videos/imagery
 Content that meets both of the following criteria:
 Criteria 1: Offer or Ask
 Content implicitly or indirectly* (typically through providing a method of contact) offers or asks for:
 Nude imagery, or
 Sex or sexual partners, or
 Sex chat conversations
 Criteria 2: Suggestive Elements
 Content makes the aforementioned offer or ask using one of the following sexually suggestive elements:
 Contextually specific and commonly sexual emojis or emoji strings, or
 Regional sexualized slang, or
 Mentions or depictions of sexual activity (including hand drawn, digital, or real world art) such as: sexual roles, sex positions, fetish scenarios, state of arousal, act of sexual intercourse or activity (sexual penetration or self-pleasuring), or
 Imagery of real individuals with nudity covered by human parts, objects, or digital obstruction, including long shots of fully nude butts
 Content must meet Criteria 1 (offer or ask) and be implicitly or indirectly offering or asking for sexual solicitation in order to be deemed violating.
 For example, if content is a hand-drawn image depicting sexual activity but does not ask or offer sexual solicitation, it is not violating.
 An offer or ask for pornographic material (including, but not limited to, sharing of links to external pornographic websites)
 Sexually explicit language that goes into graphic detail beyond mere reference to:
 A state of sexual arousal (wetness or erection) or
 An act of sexual intercourse (sexual penetration, self-pleasuring or exercising fetish scenarios)”²

¹ gutefrage.net, ‘Unsere Richtlinien’, <<https://www.gutefrage.net/policy>> accessed 3 May 2021, (translation by the authors).

² Facebook, ‘Facebook Community Standards’, Section III <https://www.facebook.com/communitystandards/objectionable_content>accessed 3 May 2021.

Code	3-16
Source	Facebook Community Standards Section III Gutefrage.net Community Guidelines
Qualification	Cruel and insensitive content
Example and detailed descriptions by Facebook Inc. and Gutefrage.net, Community Guidelines	<p>“We believe that people share and connect more freely when they do not feel targeted based on their vulnerabilities. As such, we have higher expectations for content that we call cruel and insensitive, which we define as content that targets victims of serious physical or emotional harm. We remove explicit attempts to mock victims and mark as cruel implicit attempts, many of which take the form of memes and GIFs.”</p> <p>“Strongly offensive, obscene or vulgar posts Objectionable, vulgar or obscene contributions may not be posted on our site. Likewise prohibited are contributions that are solely aimed at the sexualization of a certain group of people (especially children), or to live out his own sexual inclinations. Not allowed are for example: Contributions with photos of genitals like: Would this penis satisfy you? Questions about porn links: Where can I find the link to the latest porn by porn star Julia? Contributions with strongly offensive language Articles like “What makes children so attractive/sexy in your eyes? Fetish questions with the intention to live out this fetish with the help of the given answers / to inspire his fantasy”¹ Facebook: “Do not post: Content that depicts real people and laughs at or makes fun of their premature death, serious or fatal disease or disability, starvation, physical violence, domestic violence, or serious physical injury Content that contains sadistic remarks and any visual or written depiction of real people experiencing premature death, serious physical injury, physical violence or domestic violence. Imagery that depicts real animals that are visibly experiencing and being laughed at, made fun of, or contain sadistic remarks for any of the following (except staged animal vs. animal fights or animal fights in the wild): premature death serious physical injury (including mutilation) physical violence from a human.”²</p>

¹ gutefrage.net, ‘Unsere Richtlinien’, <<https://www.gutefrage.net/policy>> accessed 3 May 2021, (translation by the authors).

² Facebook, ‘Facebook Community Standards’, Section III <https://www.facebook.com/communitystandards/objectionable_content>accessed 3 May 2021.

Code	3-17
Source	Facebook Community Standards Section IV Gutefrage.net Community Guidelines
Qualification	Misrepresentation
Example and detailed descriptions by Facebook Inc. and Gutefrage.net, Community Guidelines	<p>“Authenticity is the cornerstone of our community. We believe that people are more accountable for their statements and actions when they use their authentic identities. That’s why we require people to connect on Facebook using the name they go by in everyday life. Our authenticity policies are intended to create a safe environment where people</p>

(continued on next page)

(continued)

can trust and hold one another accountable.”
 “Contributions that are not meant seriously (troll contributions), deliberately contain false information or mislead users are not allowed.”¹
 Facebook:
 “Do not: Misrepresent your identity by
 Using a name that does not abide by our [name policies](#)
 Providing a false date of birth
 Misuse our products by
 Creating a profile for someone under thirteen years old
 Maintaining multiple accounts
 Creating inauthentic profiles
 Sharing an account with any other person
 Creating another Facebook account after being banned from the site
 Creating or Managing a Page, Group, Event or Instagram Profile because the previous Page, Group, Event or Instagram Profile was removed from the site
 Evading the registration requirements outlined in our [Terms of Service](#)
 Impersonate others by
 Using their images with the explicit aim to deceive people
 Creating a profile assuming the persona of or speaking for another person or entity
 Creating a Page assuming to be or speak for another person or entity for whom the user is not authorized to do so.
 Posting imagery that is likely to deceive the public as to the content’s origin, if:
 The entity or an authorized representative object to the content, and
 Can establish a risk of harm to members of the public.”²

¹ gutefrage.net, ‘Unsere Richtlinien’, <<https://www.gutefrage.net/policy>> accessed 3 May 2021, (translation by the authors).

² Facebook, ‘Facebook Community Standards’, Section III <https://www.facebook.com/communitystandards/objectionable_content>accessed 3 May 2021.

Code	3-18
Source	Facebook Community Standards Section IV Gutefrage.net Community Guidelines
Qualification	Spam
Example and detailed descriptions by Facebook Inc. and Gutefrage.net, Community Guidelines	<p>“We work hard to limit the spread of spam because we do not want to allow content that is designed to deceive, or that attempts to mislead users to increase viewership. This content creates a negative user experience and detracts from people’s ability to engage authentically in online communities. We also aim to prevent people from abusing our platform, products, or features to artificially increase viewership or distribute content <i>en masse</i> for commercial gain.”</p> <p>“Publish spam articles</p> <p>We consider contributions that advertise products, offers or services as unauthorized advertising (spam) and delete them. By the way, this also applies to external surveys, petitions or, for example, advertising a private YouTube channel.</p> <p>Other, repetitive content can also be considered spam. For example, multiple posting of the same answer or fake / manipulated posts. It does not matter whether these contributions are posted publicly or, for example, by private message.”¹</p> <p>Facebook: “Do not: Post, share, engage with content, or create accounts, groups, pages, events or other assets, either manually or automatically, at very high frequencies. Attempt to or successfully sell, buy, or exchange site privileges or product features, such as accounts, admin roles, permission to post, pages, groups, likes, etc., except in the case of clearly identified branded content, as defined by our Branded Content Policy. Require or claim that users are required to engage with content (e.g. liking, sharing) before they are able to view or interact with promised content. Encourage likes, shares, follows, clicks, or the use of apps or websites under false pretences, such as: Offering false or non-existent services or functionality(e.g., “Get a ‘Dislike’ button!”) Failing to direct to promised content (e.g., “Click here for a discount code at Nordstrom”); false play buttons) Directing users off of Facebook through the deceptive or misleading use of URLs, defined as: Cloaking: Presenting different content to Facebook users and Facebook crawlers or tools. Misleading content: Content contains a link that promises one type of content but delivers something substantially different. Deceptive Pop-up websites: Websites that require an action (captcha, watch ad, click here) in order to view the expected landing page content and the domain name of the URL changes after the required action is complete. Like / Share-Gating: Landing pages that require users to like, share, or otherwise engage with content before gaining access to off-Facebook content. Deceptive Landing Page Functionality: Websites that have a misleading user interface, which results in accidental traffic being generated (pop-ups/unders, clickjacking, etc.) Impersonation: The website pretends to be a reputable brand or service by using a name, domain, or content featuring typos, misspellings, or other means to impersonate well-known brands www.facebook00k.com, www.face_book.com, using a landing page similar to another, trusted site to mislead visitors). And other behaviours that are substantially similar to those listed above.”²</p>

¹ gutefrage.net, ‘Unsere Richtlinien’, <<https://www.gutefrage.net/policy>> accessed 3 May 2021, (translation by the authors).

² Facebook, ‘Facebook Community Standards’, Section III <https://www.facebook.com/communitystandards/objectionable_content>accessed 3 May 2021.

Code	3-19
Source	Facebook Community Standards Section IV Gutefrage.net Community Guidelines
Qualification	Cybersecurity
Example and detailed descriptions by Facebook Inc. and Gutefrage.net, Community Guidelines	<p>“We recognize that the safety of our users extends to the security of their personal information. Attempts to gather sensitive personal information by deceptive or invasive methods are harmful to the authentic, open, and safe</p>

(continued on next page)

(continued)

atmosphere that we want to foster. Therefore, we do not allow attempts to gather sensitive user information through the abuse of our platform and products.”

No matching stipulation in the community guidelines of *Gutefrage.net*.

Facebook:

“Do not:

Attempt to compromise user accounts or gather sensitive information through unauthorized means, defined as: Gaining access to any account or user data other than your own without explicit permission from the account owner. Encouraging or deceiving users and entities to download or run files or programs that will compromise a user’s online or data security. Such files and programs will be deemed malicious software or “malware” if they harm or gain unauthorized access to a computer, device, or network.

Acquiring or requesting another user’s login credentials, whether explicitly or through deceptive means such as phishing (e.g. fake surveys designed to capture log-in info or links to fake login pages or impostor websites). Attempting to obtain the sensitive information of others such as usernames, passwords, or other personal information, through deceptive means or the use of malicious software or websites.

Publicly sharing your own or others’ login information on platform or through a third party service.

Creating, sharing, or hosting malicious software or malicious browser extensions to compromise accounts or gain access to user data.

Providing online infrastructure, including Web Hosting Services, Domain Name System servers, and ad networks that enables abusive links such that a majority of those links on Facebook or Instagram violate the Spam or Cybersecurity sections of the Community Standards.”¹

¹ Facebook, ‘Facebook Community Standards’, Section III <https://www.facebook.com/communitystandards/objectionable_content>accessed 3 May 2021.

Code	3-20
Source	Facebook Community Standards Section IV Gutefrage.net Community Guidelines
Qualification	Inauthentic Behaviour
Example and detailed descriptions by Facebook Inc. and <i>Gutefrage.net</i> , Community Guidelines	“In line with our commitment to authenticity, we don’t allow people to misrepresent themselves on Facebook, use fake accounts, artificially boost the popularity of content, or engage in behaviours designed to enable other violations under our Community Standards. This policy is intended to create a space where people can trust the people and communities they interact with.” “Contributions that are not meant seriously (troll contributions), deliberately contain false information or mislead users are not allowed.” ¹ Facebook: “Do not: Use multiple Facebook accounts or share accounts between multiple people, Misuse Facebook or Instagram reporting systems to harass others, Conceal a Page’s purpose by misleading users about the ownership or control of that Page, Engage in or claim to engage in Inauthentic Behaviour, which is defined as the use of Facebook or Instagram assets (accounts, pages, groups, or events), to mislead people or Facebook: about the identity, purpose, or origin of the entity that they represent about the popularity of Facebook or Instagram content or assets about the purpose of an audience or community about the source or origin of content to evade enforcement under our Community Standards Engage in, or claim to engage in Coordinated Inauthentic Behaviour, defined as the use of multiple Facebook or Instagram assets, working in concert to engage in Inauthentic Behaviour (as defined above), where the use of fake accounts is central to the operation Engage in or claim to engage in Foreign or Government Interference, which is Coordinated Inauthentic Behaviour conducted on behalf of a foreign or government actor.” ²

¹ gutefrage.net, ‘Unsere Richtlinien’, <<https://www.gutefrage.net/policy>> accessed 3 May 2021, (translation by the authors).

² Facebook, ‘Facebook Community Standards’, Section III <https://www.facebook.com/communitystandards/objectionable_content>accessed 3 May 2021.

Code	3-21
Source	Facebook Community Standards Section IV Gutefrage.net Community Guidelines
Qualification	False News
Example and detailed descriptions by Facebook Inc. and <i>Gutefrage.net</i> , Community Guidelines	“Reducing the spread of false news on Facebook is a responsibility that we take seriously. We also recognize that this is a challenging and sensitive issue. We want to help people stay informed without stifling productive public discourse. There is also a fine line between false news and satire or opinion. For these reasons, we don’t remove false news from Facebook but instead, significantly reduce its distribution by showing it lower in the News Feed.” “We are working to build a more informed community and reduce the spread of false news in a number of different ways, namely by Disrupting economic incentives for people, Pages, and domains that propagate misinformation Using various signals, including feedback from our community, to inform a machine learning model that predicts which stories may be false Reducing the distribution of content rated as false by independent third-party fact-checkers Empowering people to decide for themselves what to read, trust, and share by informing them with more context and promoting news literacy Collaborating with academics and other organizations to help solve this challenging issue.”

Code	3-22
Source	Facebook Community Standards Section IV Gutefrage.net Community Guidelines
Qualification	Manipulated Media
Example and detailed descriptions by Facebook Inc. and <i>Gutefrage.net</i> , Community Guidelines	“Media, including image, audio, or video, can be edited in a variety of ways. In many cases, these changes are benign, like a filter effect on a photo. In other cases, the manipulation isn’t apparent and could mislead, particularly in the

(continued on next page)

(continued)

	<p>case of video content. We aim to remove this category of manipulated media when the criteria laid out below have been met.”</p> <p>No matching stipulation in the community guidelines of <i>Gutefrage.net</i>.</p> <p>Facebook:</p> <p>“Do not post:</p> <p>Video that has been edited or synthesized, beyond adjustments for clarity or quality, in ways that are not apparent to an average person, and would likely mislead an average person to believe that a subject of the video said words that they did not say and is the product of artificial intelligence or machine learning, including deep learning techniques (e.g., a technical deepfake), that merges, combines, replaces, and/or superimposes content onto a video, creating a video that appears authentic.</p> <p>This policy does not extend to content that is parody or satire or is edited to omit words that were said or change the order of words that were said.”¹</p>
--	---

¹ Facebook, ‘Facebook Community Standards’, Section III <https://www.facebook.com/communitystandards/objectionable_content>accessed 3 May 2021.

Code	3-23
Source	Facebook Community Standards Section IV Gutefrage.net Community Guidelines
Qualification	Memorialization
Example and detailed descriptions by Facebook Inc. and <i>Gutefrage.net</i> , Community Guidelines	<p>“When someone passes away, friends and family can request that we memorialize the Facebook account. Once memorialized, the word “Remembering” appears above the name on the person’s profile to help make it that the account is now a memorial site and protects against attempted logins and fraudulent activity. To respect the choices someone made while alive, we aim to preserve their account after they pass away. We have also made it possible for people to identify a legacy contact to look after their account after they pass away. To support the bereaved, in some instances we may remove or change certain content when the legacy contact or family members request it.”</p> <p>Facebook:</p> <p>“For victims of murder and suicide we will remove the following content if it appears on the deceased’s profile photo, cover photo, or among recent timeline posts when requested by a legacy contact or family member of the deceased:</p> <p>Visual depiction of the object used in the deceased’s death Imagery of the convicted or alleged murderer of the deceased Content related to the deceased’s death</p> <p>For victims of murder, we will also remove the convicted or alleged murderer from the deceased’s profile if referenced in relationship status or among friends.</p> <p>When we have additional context provided by the legacy contact or a family member of the deceased, we may:</p> <p>Remove bullying or harassment violations on a memorialized profile, which normally require the individual to self-report Remove praise or support for the death, disease, or harm of the deceased person on a memorialized profile Change the deceased’s individual’s privacy settings from public to friends-only when there is harmful content on the profile Change a violating account name on the profile of the deceased individual.”¹</p>

¹ Facebook, ‘Facebook Community Standards’, Section III <https://www.facebook.com/communitystandards/objectionable_content>accessed 3 May 2021.

Code	3-24
Source	Facebook Community Standards Section V Gutefrage.net Community Guidelines
Qualification	Intellectual Property
Example and detailed descriptions by Facebook Inc. and <i>Gutefrage.net</i> , Community Guidelines	<p>Copyright infringement Trademark infringement</p> <p>Facebook: “Upon receipt of a report from a rights holder or an authorized representative, we will remove or restrict content that engages in:</p> <p>Copyright infringement Trademark infringement”</p>

otherwise sensitive content

Code	4-1
Legal Source	-
Qualification	The content does not meet the threshold of a legally relevant behaviour but can affect people’s feelings of comfort. Content classified under this category may lead to uncomfortable feelings.
Notes on interpretation and application	Targeting to the person individual insecurities (calling out weaknesses)

Code	4-2
Legal Source	Analogy to legally relevant category.
Qualification	Does not fit into a legally relevant category but can be considered to be equally relevant/invasive. Through the use of an analogy within the law, this category bridges the gap to capture problematic content, because of the intensity or extent, or the fact that there have not yet been cases decided by courts regarding these categories or the lack of new legislation on the subject.
Notes on interpretation and application	Deadnaming (Calling a person by the sex they do not longer identify with)