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[46] But a parallel can also be drawn between the ostrich burying its head in the sand and the negligent, biased judge. See in detail Goodrich, Peter: *Imago Decidendi: On the Common Law of Images*. Leiden–Boston, 2017. Brill, 52–53.

[47] Ripa 1997. 238.
The ostrich as a symbol of truth is also referred to by Pliny the Elder in his history of nature *(Historia Naturalis)*. Ripa also quotes from it. See Plinius, Caius Secundus: *Historia Naturalis*. L. 10. C. 1.
The alleged ability of the "camel-bird" to digest iron is the reason why the ostrich biting a horseshoe appears on coats of arms and seals, as well as on the badges of medieval blacksmith guilds. The legend dates back to the Numidian Wars, when on the African theatre of war, King Jugurtha's light troops of Moors saddling on ostriches defeated the Roman cavalry, who were having difficulty moving across the sand of the desert. The Romans attributed their defeat to the magical powers of the mighty running birds. This later gave rise to the myth of the fight between the horse and the ostrich, where the ostrich swallows the enemy horse and leaves only the horseshoe in its beak. Bertényi, Iván – Feiszt, György: Vas megye címerei és zászlai [Coat of arms and seals of county Vas]. In Feiszt, György (ed.): *Magyarország önigazgatási jelképeit bemutató kézikönyvek. I. kötet [Handbooks on the symbols of self-government in Hungary. Vol. I.]*. Kemendollár, 2004. Akvirál '96 Kft. 34–35.

[48] When depicting the attributes of Justitia, Vasari is obviously referring to an earlier depiction of Justitia, namely one of Raphael's works, probably one of his last (1520), which is on display in its original splendour in the Vatican Museums *(Musei Vaticani, Sala di Costantino)*. The fresco has long been attributed to Giulio Romano (1499–1546) or Giovanfrancesco Pennini (1488–1528), both of whom were pupils of Raphael, but in June 2017 Italian restorers established with absolute certainty that the Justitia is a work by Raphael (Amicizia e Giustizia, il Raffaello ritrovato. *Vatican Magazine*, 30 giugno 2017; *www.vaticannews.va/it/vaticano/news/2020-05/musei-vaticani-raffaello-sala-costantino-restauro-arte-500.html*), even though Vasari himself had already referred to it as the work of the master in his *Le vite de' più eccellenti pittori, scultori e architettori*. And the same claim was made in the early 19th century by the French architect, archaeologist, and art critic Quatremère de Quincy (see Quincy, Quatremère de: *Istoria della vita e delle opere di Raffaello Sanzio da Urbino*. Ed. Longhena, Francesco di. Milano, 1829. Francesco Sonzogno, 393–394.).

[49] In Vasari's allegorical depiction of Justitia, a hippopotamus appears at the end of a sceptre held in her right hand, which, according to Valeriano's *Hieroglyphica*, "when it grows up, it covets its mother and therefore, despite all its resistance, kills its own sire". Vasari associates the hippopotamus with the impartial judge, who shows no mercy even to those closest to him. Anno, James P.: *"L'Allegoria della Giustizia" di Giorgio Vasari.* Osserva il dipinto nei dettagli. *https://artsandculture.google.com/exhibit/l-allegoria-della-giustizia-di-giorgio-vasari-museo-e-real-bosco-di-capodimonte/zQIC9Et8vAoNLg?hl=it.*
Vasari relied on the advice and guidance of the prelate Paolo Giovio (1483–1542), a historian, to visualise the sophisticated symbolism of the whole work. In January 1543, he wrote a long letter to Cardinal Farnese, detailing the symbolism of the painting.

[50] Athena (Minerva) was said to have three heads: with one she gives advice, with the other she judges, and with the third she acts virtuously. Another characteristic attribute is the eagle-owl pulling his chariot and his shield decorated with the gorgon's head. Ripa 1997. 524.

[51] Pál, József – Újvári, Edit (ed.): *Szimbólumtár. Jelképek, motívumok, témák az egyetemes és a magyar kultúrából [Symbol catalogue. Symbols, motifs, themes from universal and Hungarian culture].* Budapest, 1997. Balassi Kiadó, 260.

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[53] This article is published as part of the research project of the MTA–ELTE Legal History Research Group of the Hungarian Academy of Sciences at the Department of Hungarian State and Legal History of Eötvös Loránd University, Budapest. The Research Group is a member of the Eötvös Loránd Research Network (ELKH).

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Early Regulation of Social Media Liability Issues in the United States of America and the European Union

1. Introduction

The stakes for the internet have been rising since the mid-2000s: "The debate on platform regulation picks up in 2014. First, with the fall-out from the Facebook/WhatsApp deal,[1] which kick-started a public debate on mergers and acquisitions by digital platforms. Then in 2018, the Cambridge Analytica scandal[2] ramps up the volume of the debate on privacy by large platforms and provides the political lever for starting to design regulatory frameworks for the big digital platforms, at least in Europe."[3] As a result, regulation of the internet (and within it, the platform providers that underpin social media) now seems more realistic than ever before. This paper examines how the United States of America and the European Union have attempted to regulate new media's liability issues-, and how the codification processes set up two different types of liability regimes twenty to twenty-five years ago.

2. Communication Decency Act

The myth of a "lawless space"[4] in the context of Internet regulation quickly dissipated, and it became increasingly apparent that, in line with US litigation patterns, Internet companies would be exposed to lawsuits in which they would be held liable for providing a forum for infringing content. The litigation costs and also the penalty imposed would make it impossible for them to grow.

In the first key case, Don Fitzpatrick published a daily newsletter in the early nineties called "Rumorville", which published news and gossip about journalists and the industry they worked in. The newsletter was available to CompuServe users who subscribed to the CompuServe journalists' forum. Robert Blanchard and his company Cubby developed a similar newsletter called "Skuttlebut". Cubby sued both Fitzpatrick and CompuServe for spreading false information[5]. The reason for suing CompuServe was that Cubby claimed that it was acting as a publisher and was therefore responsible for its content. The Court found that since CompuServe had no prior knowledge of the content that Fitzpatrick would be publishing on "Rumorville", it was merely a distributor, not a publisher. The Court ruled that "CompuServe has no more editorial control over such a publication than does a public library, bookstore, or newsstand".[6]

A few years later, in the autumn of 1994, on a then trendy forum (belonging to the company called Prodigy) an unknown user made comments about Stratton Oakmont and its president, Daniel Porush, that they were committing fraud. The company and its president sued the anonymous author of the comment.[7] The legal question was whether Prodigy was a publisher, in which case it would be liable for the content posted on it even if it did not upload it, or merely a distributor, in which case it would be exempt from liability and the person who uploaded the content would bear the consequences alone. In the court proceedings, Prodigy was found to have guidelines for users on what content is not desirable, to employ human moderators and to have a (rudimentary but functioning) filtering system to weed out offensive content. Although the Court noted in its judgment that forums in principle should be considered merely distributors, in the given case, Prodigy was ruled as a publisher because of its editorial activity in relation to the forum, which provides it a liability.

The divergent judgments in the two cases raise the question of whether it is worthwhile to moderate or censor since if the internet company does not do so, it is merely a distributor and having exemption from liability. This problem, however, contradicts the need to curb inappropriate content on the Internet, since the lack of law and liability would have perpetuated the Wild West (or, in Alfred C. Yen's words, the "western frontier"[8]), where anything goes. The decisions have stirred up the American legal community.

To solve this problem, Republican Chris Cox and Democrat Ron Wyden proposed an amendment to the Telecommunications Act.[9] The Telecommunications Act was a huge step forward in itself, amending the Communications Act of 1934 after sixty years and providing a new set of rules for a significantly changed communications environment. For the first time, the Internet appeared as a subject of regulation,[10] but the key was the Cox-Wyden section, which was incorporated as Section 230(c)(1) of the Act (commonly known as the Communications Decency Act, CDA).[11] Twenty-six short words in English completely rewrote the history of the Internet:[12] "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." In addition, Section 230(c)(2) also includes "good Samaritan" protections against civil liability for the removal or moderation of speech they deem obscene or offensive, even constitutionally protected speech, if the providers act in good faith.

With these two regulatory solutions, the state in the 1990s effectively privatised freedom of expression and the decisions to remove illegal or harmful content. If we simplify it, we can say that all the means to remove content were in the hands of the service providers if they acted in good faith. "It gave internet startups and their investors the confidence that they could fill their platforms with content from ordinary users, without attracting any legal liability for anything those users might write."[13] Doesn't take much courage to say that this legislation has, at the same time, enabled the Internet to develop and grow exponentially over the last two decades. It has also meant progress, but it has also embedded the present problems: if providers considered that a user or a piece of content was not in their interests, they had the legal power to remove it. It was not called censorship, but in reality, that is what happened. And it is the same with the infamous paedophile comments on YouTube;[14] the Nazi paraphernalia sold on Amazon,[15] or the video footage of the Christchurch massacre.[16] Even though these companies have grown to unimaginable economic power, the CDA230 gives them almost unlimited loopholes – whether they restrict content or users upload unacceptable content. However, the flip side of the question is whether the aforementioned Wild West would really come without CDA230. Knowing the history of communication, let there be no doubt…

To answer the above, it is worth looking at the story of Kenneth Zeran through his court case.[17] After the Oklahoma City bombing, an unknown person began selling a T-shirt with a message about the bombing and a message on a forum saying, "Call Ken if you want one of these". The phone number belonged to Zeran, who had no idea what had happened. To date, it has not been possible to find out who posted the message, but Zeran has received hundreds of threatening phone calls. Zeran has sued AOL for not doing everything possible to remove the original message and copies of it from its platform. AOL's position was that CDA230 gives (almost) complete immunity for content uploaded by third parties, even if it knew the content was illegal. The US courts gave AOL the truth both at first instance and on appeal based on CDA230(c)(1) and did not consider the applicability of CDA230(c)(2). Thus, immunity appears to be complete.[18] However, it

Social media liability[22]

has been challenged[19] repeatedly over the years,[20] the need to amend the CDA will only become stronger after 2020, because, as Nicolas P. Suzor put it, platforms are "judges, juries and enforcers at the same time".[21]

3. The TWF and AVMS Directives

The European internal market, also known as the single market, which was created on 1 January 1993, has brought many benefits to the then twelve – now many more – Member States and their citizens and, thanks to various agreements, it has also opened the European Economic Area (EEA) to other countries. The Single Market is based on the so-called "four freedoms"[23] – free movement of persons, services, goods and capital – enshrined in the Treaty on European Union.[24] Nevertheless, as Perry Keller writes, "the media sector has presented a huge challenge for the project of creating a European single market".[25] However, the European Court of Justice has confirmed in several cases[26] that, as a general rule, no legal barriers to cross-border television broadcasting can be imposed. Under these circumstances – after long negotiations and discussions – the directive on cross-border television (Television without Frontiers, TWF)[27] was created. "The TWF Directive, the forerunner to the AVMS Directive, is the main regulatory instrument for the audiovisual sector in Europe."[28] The Directive lays down two key points which have subsequently been used to regulate Internet services: the principle of free movement of services and the country-of-origin principle.[29]

Already in the context of this Directive, what is different from the competition-based regulatory approach of the United States of America was apparent: the media in Europe play a prominent role in maintaining and transmitting democratic rules as well as in maintaining, developing, and disseminating cultural, social, and societal aspects. With all these principles in mind, while ensuring competition in the market, and with the exponential technological development of the industry, it became clear over time that "patching" the TWF would not yield satisfactory results, and a new directive was needed,[30] not only for the television segment but for the whole of the now audiovisual industry. In 2010, this became the Audiovisual Media Services Directive (AVMS),[31] in which the word "internet" appears only three times. Although the situation later changed with Video on Demand (VoD) and on demand audiovisual media services, it soon became clear that the rules on the internet could not be adequately addressed in the TWF-AVMS framework by "rewriting" the old rules.

4. The E-Commerce Directive

The regulation of internet services in Europe has not been without its problems. Already when the TWF was amended in 1997, it was suggested that the new audiovisual regulation should cover this area, but this proposal

failed in the European Parliament.[32] Thus a formal distinction has been created between traditional media services, where the provider determines the time for which content can be consumed, and Internet-based services, where the consumer can determine that. Thus was born the concept of "information society services", which has become one of the key concepts in the twenty years since the adoption of the E-Commerce Directive[33] of 8 June 2000 (ECD), which still governs digital services today. The ECD stresses that the concept is not a product of the ECD itself,[34] as it was already found in earlier directives,[35] and provides a definition of the concept with a definitive purpose, i.e., what services are covered and what services are excluded. Furthermore, it stresses that "information society services span a wide range of economic activities which take place on-line".[36]

This broad range includes:[37]
- selling goods on-line;
- offering on-line information or commercial communications;
- providing tools allowing for search, access and retrieval of data;
- transmission of information via a communication network;
- providing access to a communication network;
- hosting information provided by a recipient of the service;
- video-on-demand;
- commercial communications by electronic mail.

However, it does not include, among other things, the supply of goods or services off-line; the distribution of television or radio broadcasting or the use of electronic mail.[38] The ECD thus contributed to the proper functioning of the internal market by ensuring the free movement of information society services between Member States. As can be seen from the above list, Internet service providers (including the then-nascent community media services) were brought within the scope of the ECD in the early 2000s, rather than the TWF Directive. However, it is evident throughout from the careful wording of the regulation that it reflects "the policy consensus that the internet should not be brought under existing media regulatory regimes",[39] thus bridging the gap between the early internet legal vacuum and traditional state regulation.

On a vital issue for the internet, namely who can be held liable for infringing content, the European Union has developed a different regime from the CDA230 rules outlined above.[40] The core regulation in this question is Section 4 of the ECD, entitled "Liability of intermediary service providers". The rules use a threefold set of definitions and the first two ("mere conduit"[41] and "caching")[42] give service providers immunity from liability just like the US system. However, the more interesting issue is the liability of hosting service providers, for which rules are set out in Article 14 of the ECD. Under this, the provider is in principle responsible for the content hosted on it and is exempt from liability if:
- has no actual knowledge of illegal activity or information, and as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
- the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.[43]

The (relative)[44] novelty of the European system is, therefore, this so-called notice-and-takedown system (NTDS),[45] which has thus introduced a multi-stage system of conditions and procedures: the intermediary service provider must have a certain knowledge of content that is manifestly illegal and must take steps to remove it within a specified period.

5. Conclusion

After this brief overview, it can be concluded that the European Union has opted for a different model (also known as the "safe harbour model")[46] from the US regulation, which focuses on an automatic exemption. Although many issues have been debated since the adoption of the Directive (such as when to declare that the service provider has actual knowledge; what is a manifestly illegal content; what is the time limit within which the service provider must act; are we talking about an active or passive type of service provider), it would be beyond the scope of this study to examine these questions in detail. However, we have to point out that those questions are crucial in determining whether content has been lawfully removed or whether there are censorship effects. The two paths that emerged in the 1990s and 2000s thus outlined different regulatory directions, but in the intervening years, it has become clear from international judicial practice that they are converging.

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A Brief History of the Danish Royal Titles

In the Hungarian constitutional history, one of the groups of royal prerogatives is called "honorary rights" (or "personal prerogatives of the king", based on the corresponding Latin expression *jura majestatica stricte personalia*). The royal titles are discussed within this category. In the Hungarian history, such titles were mainly connected to the so-called "co-reigns" and "claimed lands" of the Holy Crown, covering the neighbour countries of the historical Hungarian kingdom.[1] The history of the style of the Danish kings provides us with a similar picture, however, that extent of cumulation of the titles as we could see at the example of the Hungarian monarchs throughout the centuries, was not characteristic of Denmark, not even in the periods when the Danish monarchy was a middle-power state in the Northern and Baltic regions.

1. King of the Danes

According to our contemporary documentary sources of the period of the Árpád dynasty, the Hungarian kings were not used to be called "kings of Hungary" until the end of the 11th century. They rather used the title "king of the Hungarians" (usually in the forms of *Ungrorum rex* or *Hungarorum rex*).[2] The expression *rex Hungariae*, already referring to the territorial extent of royal power, appeared the first time at the time of rex Coloman the Learned (*Könyves Kálmán*, r. 1095–1116).[3] In the middle ages, the royal titles of the Danish kings also referred to the population as the king's subordinates instead of the territory of the country he was the ruler of, for they were usually named as "king of the Danes" and not "king of Denmark".

The *Annales Regni Francorum* already called the (alleged) 8–9th century Danish kings, Sigfred and Godfred, as *reges [rex] Danorum*,[4] and the same wording was used by Canute the Great (*Knud den Store*, r. 1019–1035), son of Sweyn Forkbeard (*Svend Tveskæg*, r. 987–1014), too.[5] In contrast with the Hungarian custom, this was not replaced with the territorial variant "king of Denmark" until the late middle ages, the establishment of the Danish–Norwegian personal union (1380) and Kalmar (Danish–Norwegian–Swedish) Union (1397). Since this period the title *rex Daciae* (the traditionally used spelling of *rex Daniae*) has been in use.

However, in the 12th century, in parallel with the recognition of the spiritual (sacral) legitimation of the royal power,[6] the expression "by the grace of God" appeared in the style of the Danish monarchs as well. Similarly to the Hungarian royal title,[7] the first Latin expression used for such purpose was *Divina favente clementia* also in Denmark, at the period of reign of Erik II the Memorable (*Erik Emune*, r. 1134–1137), but this already changed to *Dei gratia* (in Danish: *af Guds Nåde*) in the second part of the 12th century, at the time of Valdemar I the Great (*Valdemar den Store*, r. 1157–1182). Thus, at this time the full style of the Danish kings was "by the grace of God king of the Danes". As a characteristic example, we may refer to the charter of the Vitskøl Abbey founded by Valdemar I, that began with the words *"ego Waldemarus, dei gratia Danorum rex"*.[8]

2. King of the Wends and the Goths

After the conquest of Mecklenburg in 1185 (according to the researches of Roland Steinacher, at some time between 1187 and 1193),[9] the style was supplemented with the title "king of the Slavs" (in the form "king of the Danes and the Slavs", in Latin: *Danorum Sclavorumque rex*) and this remained in use for almost eight consequent centuries, until 1972.[10] A good example of the use of this title is, among others, the famous charter of 29 July 1282 ("the Danish Magna Carta") issued by Eric V Klipping (r. 1259–1286), referred to as *"Ericus dei gracia danorum slauorumque rex"*.[11] The habitual Danish translation of the expression *rex Sclavorum* is *Venders konge* ("king of the Wends"), of course not referring to the historic denomination used for Hungarian Slovenes *("vendek"),* but deriving from the common medieval German name of Slavic people "Wends" *(Wenedi, Wenden)*.[12]

In 1361 a further royal title appeared besides the name of the Danish kings. This was "king of the Goths" (in Latin: *Gothorum rex*) that had already been part of the