

# Memory as Law in Germany: Investigating Reactions to the *Network Enforcement Act*

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*In what ways should a democratic society address fake news, bullying, online harassment, disinformation and fake news on social media platforms? Germany became the first country to begin to answer this question with the passing of the Network Enforcement Act (NetzDG for short). The Network Enforcement Act is the first law of a western democracy to regulate social media platforms and place liability in their hands. While at least one study found that the Network Enforcement Act enjoys wide public support domestically, this paper challenges the assertion that the law is widely popular in Germany. This article argues that the German response to the Network Enforcement Act provides an insight into Germany's internal debate on freedom of expression, history and memory. This article provides a genesis for the Network Enforcement Act and analyzes the divergent domestic reactions to it by drawing from public consultations prior to the passing of the law. This Article also considers how social factors, such as demographics, have changed in modern Germany, perhaps indicating*

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*differing views on speech and media regulation within the population. The “law and culture” theory may help to explain why the public has greeted the Network Enforcement Act with mixed reactions.*

Keywords: *Network Enforcement Act*, NetzDG, social media regulation, memory, public consultations, censorship, freedom of expression

The *Network Enforcement Act* is notable for many reasons, not least of which is the controversy it has attracted since its inception. The *Network Enforcement Act* marked the first-ever attempt by a western democracy to hold social media companies responsible for hosting hate speech, disinformation and fake news on their social media networks.<sup>3</sup> The law was born as a legal response to concerns regarding the rise of anti-refugee sentiment and an emboldened Alternative für Deutschland (AfD), a far-right political party, which capitalized on anti-immigration and media skepticism to fuel electoral success.<sup>4</sup> Introduced as a bill in 2017, news of efforts to regulate social media networks shot around the world. Major global organizations, such as Human Rights Watch, Electronic Frontier Foundation and Reporters Without Borders, decried the bill as censorious and repressive, while supporters hailed this first-in-class regulatory law as a necessary act for a country with as dark of a history as Germany. While the *Network Enforcement Act* was widely seen as unpopular overseas, it was considered popular domestically. One widely cited survey found that 87% of the German population supports the *Network Enforcement Act*.<sup>5</sup> This statistic has been reported in several studies and mainstream news media articles and paints a picture of a homogeneous response to platform regulation.

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3. GESETZ ZUR VERBESSERUNG DER RECHTSDURCHSETZUNG IN SOZIALEN NETZWERKEN (Netzwerkdurchsetzungsgesetz - NetzDG) (Sept. 1, 2017) Bundesgesetzblatt, Teil I [BGBl I] at 3352 (Ger.) [https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/NetzDG\\_engl.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/NetzDG_engl.pdf?__blob=publicationFile&v=2).

4. Linards Udris, Daniel Vogler and Jens Lucht, *Germany's AfD: With the Media and Against the Media*. EUROPEAN JOURNALISM OBSERVATORY. April 28, 2018, <https://en.ejo.ch/media-politics/with-the-media-and-against-the-media>.

5. Heidi Tworek and Paddy Leerssen, *An Analysis of Germany's NetzDG Law*, TRANSATLANTIC WORKING GROUP, (2019), [https://www.ivir.nl/publicaties/download/NetzDG\\_Tworek\\_Leerssen\\_April\\_2019.pdf](https://www.ivir.nl/publicaties/download/NetzDG_Tworek_Leerssen_April_2019.pdf).

This Article shows that the nature of the public response may be less homogeneous than it has been believed to be. Drawing upon statements from public consultations, a *de facto* regulatory practice to solicit public feedback on proposed laws and amendments, a spectrum of opinions regarding the *Network Enforcement Act* becomes evident. This Article argues that further investigation is needed to gain an accurate understanding of the public sentiment toward the *Network Enforcement Act*. The law and culture theory, which argues that culture begets law, further illustrates the complex relationship citizens have with media, freedom of expression, state control, and history.

The contribution of this Article is to shed light on the spectrum of opinions within Germany concerning social media regulation. To date, limited research exists that maps the gamut of public opinion in Germany regarding the *Network Enforcement Act*. This Article attempts to fill that gap. Initial findings suggest a variance within the German public. The point is to show that opinions are varied and reflect a changing German society.

Part I of this Article describes the *Network Enforcement Act*. It highlights the social factors, specifically violence against asylum seekers and the rising presence of the Alternative für Deutschland political party, that catalyzed calls to regulate social media platforms. This section also lays out the specifics of the *Network Enforcement Act*.

Part II considers the “law and culture” theory to explain the *Network Enforcement Act* against other, longstanding laws on hate speech and disinformation in Germany. The *Network Enforcement Act* was novel for holding social media networks responsible for unlawful content, but the law also draws upon extant law. In particular, this theory also helps to explain the formation of media laws in Germany with history and memory serving as guiding features in the formation of law.

Part III catalogues and analyzes content from feedback from public consultations, a standard regulatory practice that solicits public feedback on proposed laws and amendments. In all, 26 comments from individuals, academics and civil society organizations, such as journalistic entities, digital rights groups and legal associations, were collected, catalogued and analyzed for this Article.

Part IV contextualizes the potential roots to the comments, such as demographics, history, or memory of Germany's troubled history with state control. It ultimately argues that more investigation is required before effectively gauging public attitudes toward the *Network Enforcement Act*. Part V concludes the paper.

## I.

### DESCRIBING THE NETWORK ENFORCEMENT ACT IN GERMANY

The law is naturally seen as a remedy to social ills, and the drive to regulate social media platforms in Germany arose in response to two colliding problems spreading across Germany. Between 2014 and 2015, more than a million asylum seekers, mostly from Syrian-Arab, Iraq and Afghanistan, sought to be relocated to Germany.<sup>6</sup> Asylum seekers settled in several cities and regions, particularly Bonn and Wiesbaden. This massive influx triggered resentment, anger and hatred among many. German Chancellor Angela Merkel encouraged Germans to reject nationalism and be “self-assured and free, compassionate and open-minded.”<sup>7</sup> She went on to describe the crisis as one that put “our European values to the test as seldom before.”<sup>8</sup>

Germany witnessed the largest spike in hate and unlawful speech that it had seen in years during this time period. The Federal Ministry of the Interior recorded hundreds of domestic attacks against refugees – many of them physically violent in nature. Tworek (2021) identified that the number of attacks on housing for asylum seekers quadrupled. The Bundeskriminalamt or Federal Criminal Police Office determined that far-right attitudes were behind 177 of the 199 violent acts against refugees' accommodation in 2014. Between January 2015 and early 2017, Amadeu Antonio Stiftung, a foundation that tracks instances of anti-Semitism, right-wing extremism and racism, recorded roughly

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6. Bruce Katz, Luise Noring and Nantke Garrelts, *Cities and Refugees: The German Experience* (Sept. 18, 2016), BROOKINGS INSTITUTION, <https://www.brookings.edu/research/cities-and-refugees-the-german-experience/>.

7. *Angela Merkel To Receive UNHCR Nansen Refugee Award For Protecting Refugees At Height Of Syria Crisis*, (Oct. 4, 2022), COUNCIL OF EUROPE NEWSROOM, <https://www.coe.int/en/web/portal/-/angela-merkel-to-receive-unhcr-nansen-refugee-award-for-protecting-refugees-at-height-of-syria-crisis>.

8. *Angela Merkel Awarded Top UN refugee prize, For Aid To Syrians Fleeing War*, (Oct. 11, 2022), <https://news.un.org/en/story/2022/10/1129212>.

3,300 anti-refugee incidents. These incidents included more than 750 cases of arson or outright assault.”<sup>9</sup>

In investigating these crimes, authorities discovered that the peak in hate speech and disinformation in many instances had started as content posted on popular social media platforms, specifically Facebook, YouTube and Twitter.<sup>10</sup> Much of the content was xenophobic and violent in nature, such as posting a hangman’s noose as a suggested remedy to the refugee crisis,<sup>11</sup> a snide remark from a right-wing politician about the mating habits of Africans,<sup>12</sup> or a call to return to World War II-era concentration camps to deal with asylum-seekers.<sup>13</sup> The role of social platforms was again evident when an anonymous map titled, “No Asylum Center in My Neighborhood,” specified the exact location of hundreds of asylum homes on Google. The map was linked to a far-right group.<sup>14</sup>

Media organizations had noted that comments from readers for stories on asylum seekers were sharp in tone. *Der Spiegel*, one of the Germany’s most widely read and respected media outlets, disabled its readers’ comment function for articles related to refugees.<sup>15</sup> Editors cited concern over hate speech as the reason. Prosecutors launched investigations into the comments and judges issued fines and even probation time to the worst offenders, but the effects were muted.<sup>16</sup>

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9. Heidi J.S. Tworek, *Fighting Hate with Speech Law: Media and German Visions of Democracy*. THE JOURNAL OF HOLOCAUST RESEARCH (2021), Vol. 35, No. 2, 109. In addition, among the most prominent studies connecting social media to violence was one from Müller and Schwarz (2020). Their study found that Facebook had played a unique role in inciting the violence. Their study predicted anti-refugee sentiment on Facebook to crimes against refugees in reasonably similar municipalities with higher social media usage. They concluded that social media can enable the spread and dissemination of extreme viewpoints. See: Karsten Müller & Carlo Schwarz, *Fanning the Flames of Hate: Social Media And Hate Crime* (Dec. 7, 2017), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3082972](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3082972).

10. Id.

11. Anthony Fiaola, *Germany Springs To Action Over Hate Speech Against Migrants* (Jan. 6, 2016), THE WASHINGTON POST, [https://www.washingtonpost.com/world/europe/germany-springs-to-action-over-hate-speech-against-migrants/2016/01/06/6031218e-b315-11e5-8abc-d09392edc612\\_story.html](https://www.washingtonpost.com/world/europe/germany-springs-to-action-over-hate-speech-against-migrants/2016/01/06/6031218e-b315-11e5-8abc-d09392edc612_story.html).

12. Id.

13. Id.

14. Sumi Somaskanda, *Germany Has A Refugee Problem, and the Problem Is the Germans* (Aug. 7, 2015), FOREIGN POLICY, <https://foreignpolicy.com/2015/08/07/germany-refugees-asylum-seekers-arson-violence-unwelcome/>.

15. Anthony Fiaola, *Germany Springs To Action Over Hate Speech Against Migrants* (Jan. 6, 2016), THE WASHINGTON POST, [https://www.washingtonpost.com/world/europe/germany-springs-to-action-over-hate-speech-against-migrants/2016/01/06/6031218e-b315-11e5-8abc-d09392edc612\\_story.html](https://www.washingtonpost.com/world/europe/germany-springs-to-action-over-hate-speech-against-migrants/2016/01/06/6031218e-b315-11e5-8abc-d09392edc612_story.html).

16. Id.

Germany was grappling with a real rise in xenophobia, and government ministries pursued new solutions. Tworek (2021) noted that the Federal Ministry for Family, Seniors, Women, and Youth created the ‘*Demokratie leben!*’ program that backed civil society projects to tackle extremism and polarization in society.<sup>17</sup> The program focused on promoting democracy, shaping diversity and preventing extremism.<sup>18</sup> The program was seen as essential: Funding expanded three-fold from 40.5 million euros in 2015 to 115.5 million euros in 2019.<sup>19</sup> As Tworek pointed out, *Demokratie leben* became the most well-funded program to combat extremism in Germany and the expanded support underscored government’s view of a need for such a program.

Global and national political and social forces in the runup to the 2017 federal elections also influenced the formation of the *Network Enforcement Act*. That was the year the AfD, a far-right political party, which had previously fared poorly in German elections, surged to third place. AfD had campaigned on an anti-immigrant and nationalist agenda, mirroring much of the rhetoric from the 2016 Trump campaign. It advocated for Germany to close its borders to asylum seekers, leave the European Union and amend the constitution to allow people born to non-German parents to have their German citizenship revoked if they committed serious crimes.<sup>20</sup> The AfD finished the election in third place and became the largest opposition party.<sup>21</sup>

Faced with backlash concerning hate speech and disinformation, social media companies made efforts to self-regulate. Facebook announced a partnership of sorts to work with the German Ministry of Justice to crack down on unlawful speech.<sup>22</sup> Facebook

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17. See: “‘Über ‘Demokratie Leben!’” (January 5, 2021), <https://www.demokratie-leben.de/das-programm/ueber-demokratie-leben>, accessed December 13, 2022.

18. Id.

19. Heidi J.S. Tworek, *Fighting Hate With Speech Law: Media and German Visions of Democracy*. THE JOURNAL OF HOLOCAUST RESEARCH (2021), Vol. 35, No. 2, 109.

20. Anton Troianovski, *Head of Germany’s Upstart Anti-Immigrant Party Pushed Aside* (April 23, 2017), THE WALL STREET JOURNAL, <https://www.wsj.com/articles/head-of-germanys-upstart-anti-immigrant-party-pushed-aside-1492960872>.

21. Kate Connolly, *German Election: Merkel Wins Fourth Term But Far-Right AfD Surges To Third* (Sept. 24, 2017), THE GUARDIAN, <https://www.theguardian.com/world/2017/sep/24/angela-merkel-fourth-term-far-right-afd-third-german-election>.

22. Ruth Bender and Sam Schechner, *Facebook Outlines New Measures To Combat Racist And Xenophobic Content* (Sept. 14, 2015), THE WALL STREET JOURNAL, <https://www.wsj.com/articles/facebook-outlines-new-measures-to-combat-racist-and-xenophobic-content-1442242351>.

pledged to help support organizations that tracked online hate speech, but it did not indicate a change in its policy concerning offensive content.<sup>23</sup> Self-regulation ultimately proved insufficient for lasting change when it became apparent that harmful content had only been partially deleted.<sup>24</sup>

Jurisdictional challenges also gave rise to the unique problem of cracking down on online speech. A clear example occurred in 2017 when Chan-jo Jun, a lawyer for a Syrian refugee, filed a lawsuit in the town of Wuerzburg to stop Facebook from using a photo showing a Syrian refugee with Chancellor Angela Merkel. The case placed Facebook's hate speech policies under public scrutiny, but it also highlighted the jurisdictional challenges of online speech.<sup>25</sup> Jun was one of several attorneys that contended that Facebook relied on procedural tactics to stay out of German courtrooms. This followed from a similar case in 2016 when a regional court in Hamburg denied the complaint on the grounds that it lacked the jurisdiction to adjudicate because Facebook's European operations were based in Ireland.<sup>26</sup> These factors inspired calls to adapt a formal statute outlawing online hate speech.<sup>27</sup> By spring, the Social Democratic Party (SPD) and the Christians Democratic Union (CDU) introduced a bill to formally regulate social media platforms.

The *Network Enforcement Act* was introduced to the German Bundestag and Bundesrat in April 2017. With several names attached to it, the *Network Enforcement Act* or in German, the *Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken* or *NetzDG*, was controversial for its contents. It outlines regulations for social media platform operators, like Facebook, Twitter and Instagram, with at least two

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23. Id.

24. Id.

25. Kate Matussek, *Facebook Does Not Understand German, At Least Not In Court* (Mar. 7, 2017), BLOOMBERG NEWS, <https://news.bloomberglaw.com/business-and-practice/facebook-doesnt-understand-german-at-least-not-in-court>.

26. Heidi J.S. Tworek, *Fighting Hate With Speech Law: Media and German Visions of Democracy*. THE JOURNAL OF HOLOCAUST RESEARCH (2021), Vol. 35, No. 2, 109.

27. Jefferson Chase, *Facebook Slams Proposed German Social Media Law* (May 29, 2017), DEUTSCHE WELLE, <https://www.dw.com/en/facebook-slams-proposed-german-anti-hate-speech-social-media-law/a-39021094>.

million users within Germany.<sup>28</sup> It goes further than any democratic country has in holding social media companies accountable for unlawful content that included insult, malicious gossip, defamation, public incitement to crime, incitement to hatred, disseminating portrayals of violence and threatening a felony.<sup>29</sup>

The *Network Enforcement Act* stipulates binding obligations for social media networks. Section 1 identifies that the law is applicable to profit-making platforms with at least 2 million users.<sup>30</sup> Section 2 lays out the reporting requirements for social networks, such as those networks that receive more than 100 complaints annually shall be obliged to produce half-yearly German-language reports detailing how they handled their complaints.<sup>31</sup> Section 3 mandates the effective handling of complaints regarding unlawful

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28. Stefan Theil, *The German NetzDG: A Risk Worth Taking?* (Feb. 8 2018), VERFASSUNGSBLOG, <https://verfassungsblog.de/the-german-netzdg-a-risk-worth-taking/>.

29. Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken (Netzwerkdurchsetzungsgesetz - NetzDG) (Sept. 1, 2017) Bundesgesetzblatt, Teil I [BGBl I] at 3352 (Ger.) [https://www.bmju.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/NetzDG\\_engl.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmju.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/NetzDG_engl.pdf?__blob=publicationFile&v=2).

30. The full text of Section 1 NetzDG reads:

(1) This Act shall apply to telemedia service providers which, for profit-making purposes, operate internet platforms which are designed to enable users to share any content with other users or to make such content available to the public (social networks). Platforms offering journalistic or editorial content, the responsibility for which lies with the service provider itself, shall not constitute social networks within the meaning of this Act. The same shall apply to platforms which are designed to enable individual communication or the dissemination of specific content.

(2) The provider of a social network shall be exempt from the obligations stipulated in sections 2 and 3 if the social network has fewer than two million registered users in the Federal Republic of Germany.

(3) Unlawful content shall be content within the meaning of subsection (1) which fulfils the requirements of the offences described in 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 and which is not justified. The *Network Enforcement Act* has since been amended. The original can be found here: <https://germanlawarchive.iuscomp.org/?p=1245>.

31. The full text of Section 1 NetzDG reads:

(1) Providers of social networks which receive more than 100 complaints per calendar year about unlawful content shall be obliged to produce half-yearly German-language reports on the handling of complaints about unlawful content on their platforms, covering the points enumerated in subsection (2), and shall be obliged to publish these reports in the Federal Gazette and on their own website no later than one month after the half-year concerned has ended. The reports published on their own website shall be easily recognizable, directly accessible and permanently available.

(2) The reports shall cover at least the following points:

1. general observations outlining the efforts undertaken by the provider of the social network to eliminate criminally punishable activity on the platform,
2. description of the mechanisms for submitting complaints about unlawful content and the criteria applied in deciding whether to delete or block unlawful content,
3. number of incoming complaints about unlawful content in the reporting period, broken down according to whether the complaints were submitted by complaints bodies or by users, and according to the reason for the complaint,
4. organization, personnel resources, specialist and linguistic expertise in the units responsible for processing complaints, as well as training and support of the persons responsible for processing complaints,
5. membership of industry associations with an indication as to whether these industry associations have a complaints service,
6. number of complaints for which an external body was consulted in preparation for making the decision,
7. number of complaints in the reporting period that resulted in the deletion or blocking of the content at issue, broken down according to whether the complaints were submitted by complaints bodies or by users, according



content.<sup>32</sup> Section 4 lays the fines as much as 50 million euros for failing to comply with the law.<sup>33</sup> Section 5 requires a local authority in Germany.<sup>34</sup>

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to the reason for the complaint, according to whether the case fell under section 3 subsection (2) number (3) letter (a), and if so, whether the complaint was forwarded to the user, and whether the matter was referred to a recognized self-regulation institution pursuant to section 3 subsection (2) number (3) letter (b),

8. time between complaints being received by the social network and the unlawful content being deleted or blocked, broken down according to whether the complaints were submitted by complaints bodies or by users, according to the reason for the complaint, and into the periods “within 24 hours”/“within 48 hours”/“within a week”/“at some later point”,
9. measures to inform the person who submitted the complaint, and the user for whom the content at issue was saved, about the decision on the complaint.

**32. The fully text of Section 3 of NetzDG reads:**

(1) The provider of a social network shall maintain an effective and transparent procedure for handling complaints about unlawful content in accordance with subsections (2) and (3). The provider shall supply users with an easily recognizable, directly accessible and permanently available procedure for submitting complaints about unlawful content.

(2) The procedure shall ensure that the provider of the social network:

1. takes immediate note of the complaint and checks whether the content reported in the complaint is unlawful and subject to removal or whether access to the content must be blocked,
2. removes or blocks access to content that is manifestly unlawful within 24 hours of receiving the complaint; this shall not apply if the social network has reached agreement with the competent law enforcement authority on a longer period for deleting or blocking any manifestly unlawful content,
3. removes or blocks access to all unlawful content immediately, this generally being within 7 days of receiving the complaint; the 7-day time limit may be exceeded if
  - a) the decision regarding the unlawfulness of the content is dependent on the falsity of a factual allegation or is clearly dependent on other factual circumstances; in such cases, the social network can give the user an opportunity to respond to the complaint before the decision is rendered;
  - b) the social network refers the decision regarding unlawfulness to a recognized self-regulation institution pursuant to subsections (6) to (8) within 7 days of receiving the complaint and agrees to accept the decision of that institution,
4. in the case of removal, retains the content as evidence and stores it for this purpose within the scope of Directives 2000/31/EC and 2010/13/EU for a period of ten weeks,
5. immediately notifies the person submitting the complaint and the user about any decision, while also providing them with reasons for its decision.

**33. The relevant text of Section 4 of NetzDG reads:**

- (1) A regulatory offence shall be deemed to have been committed by any person who, intentionally or negligently,
1. in contravention of section 2(1) sentence 1, fails to produce a report, to produce it correctly, to produce it completely or to produce it in due time, or fails to publish it, to publish it correctly, to publish it completely, to publish it in the prescribed form or to publish it in due time,
  2. in contravention of section 3(1) sentence 1, fails to provide, to provide correctly or to provide completely, a procedure mentioned therein for dealing with complaints submitted by complaints bodies or by users whose place of residence or seat is located in the Federal Republic of Germany,
  3. in contravention of section 3(1) sentence 2, fails to supply a procedure mentioned therein or to supply it correctly,
  4. in contravention of section 3(4) sentence 1, fails to monitor the handling of complaints or to monitor it correctly,
  5. in contravention of section 3(4) sentence 2, fails to rectify an organizational deficiency or to rectify it in due time,
  6. in contravention of section 3(4) sentence 3, fails to offer training or support or to offer them in due time, or
  7. in contravention of section 5, fails to name a person authorized to receive service in the Federal Republic of Germany or fails to name a person in the Federal Republic of Germany authorized to receive information requests from German law enforcement authorities, or
  8. in contravention of section 5 subsection (2), second sentence, fails to respond to requests for information while acting as the person authorized to receive service.

**34. The full text of Section 5 of NetzDG reads:**

(1) Providers of social networks shall immediately name a person authorized to receive service in the Federal Republic of Germany and shall draw attention to this fact on their platform in an easily recognizable and directly accessible manner. It shall be possible to effect service on this person in procedures pursuant to section 4 or in judicial

After having been passed through the German cabinet in spring, the *Network Enforcement* sailed into law in the German Bundestag and Bundesrat by fall.

## II.

### APPLYING THE LAW AND CULTURE THEORETICAL FRAMEWORK

A starting point to appreciating the relationship between law and culture is to consider the view that culture begets law. Edward B. Tylor, the first professor of anthropology at the University of Oxford, used the term “culture” as an expression of a full range of learned human behavior patterns. He argued that “culture is that complex whole which includes knowledge, belief, art, law, morals, custom and any other capabilities and habits acquired by man as a member of society.”<sup>35</sup> His argument is that culture does not act alone: It is closely connected to the law, i.e., culture influences law and vice versa.

The “law and culture” tradition emanated from German jurisprudence during the first half of the nineteenth century.<sup>36</sup> Friedrich Carl von Savigny, the leading German jurist of his time and founder of the German historical rule of law,<sup>37</sup> rejected the prevailing legal philosophy of the time and put forward that the law should not be developed in consequence of particular customs.

Using the law and culture theory, Savigny argued that law is a product of the life of a people and comes into its existence through spontaneous processes occurring in the daily lives of persons throughout their history. In this way, the “locus of the law is not state legislation but the customs and practices of a people and the notions and understandings prevalent among them.”<sup>38</sup> In his famous manifesto, *Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft* (*Of the Vocation of our Age for Legislation and Legal Science*), Savigny argued that the legislature and the legal profession are not the

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proceedings before German courts on account of the dissemination of unlawful content. The same shall also apply to the service of documents initiating such proceedings.

(2) To enable the receipt of requests for information from German law enforcement authorities, a person in the Federal Republic of Germany shall be named who is authorized to receive such requests. The person so authorized shall be obliged to respond to such requests for information pursuant to the first sentence within 48 hours of receipt. In cases where the requested information is not exhaustively provided, reasons for this shall be included in the response.

35. Edward B. Tylor, (1871) *PRIMITIVE CULTURE VOLUME I* (Dover Thrift Editions), Kindle Edition.

36. Menachem Mautner, *Three Approaches to Law and Culture*, 96 *CORNELL L. REV.* 839 (2011)

Available at: <https://scholarship.law.cornell.edu/clr/vol96/iss4/25>.

37. *Id.*, 843-4.

38. *Id.*

source of the law, but they are ones tasked with determining the contents of the law, i.e., that the understanding of law is found in the realms of social life and culture.<sup>39</sup> From this historical approach, statutes and laws reflect existing social practices and law and culture is as distinct to a country as its language or system of education.

Mautner similarly argues that law begins as culture and is deeply informed by history.<sup>40</sup> Deductively, statutes reinforce and reflect existing social patterns. The viewpoint that the laws are *specific* and based in history is particularly productive when considering the regulation of social media in Germany. Following its unconditional surrender in 1945, the Federal Republic of Germany was formed to aggressively set itself apart from the government of the previous regime. While freedom of expression is explicitly protected in the German Basic Law,<sup>41</sup> and the German Federal Constitutional Court recognizes the importance of the free exchange of information and ideas in support of finding the truth, of legitimizing democracy, of helping to make decisions in personal and public matters,<sup>42</sup> there are limits.

After World War II, Germany adopted a “memory centric” approach to passing laws. The *Volksverhetzung* or, the incitement to hatred against certain populations that outlawed insulting groups or attacking the dignity of others,<sup>43</sup> is one such example. These laws are often applied to, but are not exclusively related to, Holocaust denial in Germany. Holocaust denial refers to a conspiracy theory that claims, despite massive evidence,

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39. Id.

40. Id.

41. *Grundgesetz für die Bundesrepublik Deutschland (Basic Law)*, art. 5(1): “Every person shall have the right to freely express and disseminate his opinions. For the purposes of this provision, opinion is understood to include all kinds of judgments, whether they be “well-founded or unfounded, emotional or rational, valuable or worthless, dangerous or harmless ... An expression of opinion does not lose this protection by being sharply or hurtfully worded.” See: [https://www.gesetze-im-internet.de/englisch\\_gg/englisch\\_gg.html](https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html).

42. Winifred Brugger, *Bans on or Protection of Hate Speech? Some Observations Based on German and American Law*, 17 TULANE JOURNAL OF LAW. 1 (2002) Available at: <https://journals.tulane.edu/tclf/article/view/1662>.

43. *German Criminal Code*, §130 (1): “Anyone who, in a manner that is likely to disturb the public peace, (1) incites hatred, calls for violence or arbitrary measures against a national, racial, religious or ethnic group, against parts of the population or against an individual because of his or her membership of a specified group or part of the population.” Para. (2) further addresses attacks on others by insulting a specific group or part of the population. Para. (2) states: “Attacks the human dignity of others by insulting, maliciously, contemptuously or slandering a specified group, parts of the population or an individual because of their membership of a specified group or part of the population.” See: [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html).

several false assertions, including that the genocide of Jews is a myth or hoax or fabrication.<sup>44</sup> Gliszczyńska-Grabias (2013) points out that Holocaust denial is punishable on the basis of regulations that prohibit insulting and humiliating the dead, among other legal methods.<sup>45</sup> When the German Federal Constitutional Court sought to resolve the conflict between the need for punishing Holocaust deniers and protecting the right to freedom of expression, the resolution was another paragraph that criminalized instigation to racial hatred.<sup>46</sup> Other sections of the *German Criminal Code* further call to protect the victims.<sup>47</sup> These prohibitions have been accepted by the Federal Constitutional Court as legitimate limits on free speech.<sup>48</sup>

Brugger further pointed out the acceptance of these limitations is supported on an abstract level and the other as case-specific.<sup>49</sup> On an abstract level, the Federal Constitutional Court sees these prohibitions of hate speech as being justified by the clauses in the Basic Law that serve to pointedly limit communicative rights. In the case-specific reasoning, the Court has developed balancing rules that state the following: “Freedom of opinion does not take precedence over protection of personality. As such,

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44. The International Holocaust Remembrance Alliance (IHRA) published this definition on Holocaust denial: “Holocaust denial is discourse and propaganda that deny the historical reality and the extent of the extermination of the Jews by the Nazis and their accomplices during World War II, known as the Holocaust or the Shoah. Holocaust denial refers specifically to any attempt to claim that the Holocaust/Shoah did not take place. Holocaust denial may include publicly denying or calling into doubt the use of principal mechanisms of destruction (such as gas chambers, mass shooting, starvation and torture) or the intentionality of the genocide of the Jewish people. Holocaust denial in its various forms is an expression of antisemitism. The attempt to deny the genocide of the Jews is an effort to exonerate National Socialism and antisemitism from guilt or responsibility in the genocide of the Jewish people. Forms of Holocaust denial also include blaming the Jews for either exaggerating or creating the Shoah for political or financial gain as if the Shoah itself was the result of a conspiracy plotted by the Jews. In this, the goal is to make the Jews culpable and antisemitism once again legitimate. The goals of Holocaust denial often are the rehabilitation of an explicit antisemitism and the promotion of political ideologies and conditions suitable for the advent of the very type of event it denies.” See: <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-holocaust-denial-and-distortion>.

45. Aleksandra Gliszczyńska-Grabias, *Penalizing Holocaust Denial: A View from Europe* (2013), *GLOBAL ANTISEMITISM: A CRISIS OF MODERNITY*, 247.

46. Emanuela Fronza, *Criminal Law and Free Speech* (2018), *IN: MEMORY AND PUNISHMENT IN INTERNATIONAL CRIMINAL JUSTICE SERIES*, 19,128, [https://doi.org/10.1007/978-94-6265-234-7\\_4](https://doi.org/10.1007/978-94-6265-234-7_4)

47. *Strafgesetzbuch* (StGB) [Criminal Code] Nov. 13, 1998 (Federal Law Gazette I, p3322) as last amended by Article 2 of the Act of 22 November 2021 (Federal Law Gazette I, p4906), §189 of the *German Criminal Code* states, “Whoever defames the memory of a deceased person shall be liable to imprisonment not exceeding two years or a fine.” Available in English at: [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html).

48. Brugger, 6-7.

49. Id.

the expression of opinion must be viewed as a specific criminal insult and comes before freedom of expression.”<sup>50</sup> In cases where expressions of opinions are linked to factual claims, the protection merited can depend on the truth of the underlying factual beliefs. If the assumptions have proven untrue, freedom of expression yields to personality protection.

History from the World War II-era goes a long way in explaining support for the *Network Enforcement Act*. However, German history also explains pushback against the law. Some comments from the public deriding Germany for state control of media. Tworek warns that German history also imparts an important lesson of the serious consequences of state control.<sup>51</sup> She draws upon the example of radio as a vital tool to Nazi ambitions after Adolf Hitler was elected chancellor in 1933. Nazi Propaganda Minister Joseph Goebbels swiftly took control over the radio. Tworek writes that state control over radio was aimed at defending democracy. Instead, it laid the groundwork for Nazi propaganda machine. Content reviewed for this study did not expressly mention Goebbels, but statements indicated skepticism of state control over media.<sup>52</sup> These two, seemingly conflicting opinions point to a German society that is complex and anything but homogenous. On the one hand, the German public uses history to advocate for the regulation of social media. On the other hand, the German public, perhaps due to its history, is also leery of regulation of social media.

Another approach to understanding the relationship between law and culture considers the law and anthropological perspective. The approach focuses on the relationship between law and culture, law and language and the intersections among plural legal orders rooted in the community, the state and the region.<sup>53</sup> Legal anthropologists must look at actual court cases and the applications of laws against wider systems of social relations.<sup>54</sup>

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50. Id.

51. Heidi Tworek, *A Lesson from 1930s Germany: Beware of State Control of Social Media* (May 26, 2019), THE ATLANTIC, <https://www.theatlantic.com/international/archive/2019/05/germany-war-radio-social-media/590149/>.

52. Id.

53. Auburn University, *Legal Anthropology* (April 2, 2017), <https://www.cla.auburn.edu/envirolitigators/introduction-to-the-enviro-litigators/legal-anthropology/>.

54. Id.

Applying this theory to Germany helps to explain the *Network Enforcement Act* as a law that emerged from a society with a dark history. Tworek points out that the law reinforces 22 existing statutes of extant German speech law<sup>55</sup>, much of the international community chastised Germany for regulating freedom of expression. Within Germany, the picture was more complex: Some, particularly within the political elite, countered that such a law was necessary for a country with as dark of a history and complex national consciousness as Germany, while others cited the law as an example of excessive state control. It should not be forgotten that the *Network Enforcement Act* arose following acts of violence carried out against refugees.

The third, constitutive, approach, that Mautner describes considers law as participating in the formation of culture and in the constitution of people's minds, practices and social relations. Here, the law is an inseparable aspect of social relations.<sup>56</sup> This approach provides a useful lens in which to think about German media and regulation. Following World War II, laws were set in place to ensure media diversity.

The use of the aforementioned theories within law and culture may not be entirely exclusive, but they provide insight into the role of law and culture with the specific context of disinformation and hate speech in Germany for a richer understanding of the formation, implementation and controversy for the *Network Enforcement Act*. This law in many ways shaped discourse around platform regulation and ways to legally address disinformation and hate speech in a digital and networked society.

### III.

#### ANALYSIS:

#### PUBLIC FEEDBACK ON THE NETZDG

Public involvement is part of the regulatory process. During this process, governments solicit feedback from the public concerning proposed laws and amendments. Germany has facilitated this process for decades, but in recent years has worked to make the process more accessible. Statements are now posted, mostly in

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55. Heidi J.S. Tworek, *Fighting Hate With Speech Law: Media and German Visions of Democracy.* "JOURNAL OF HOLOCAUST RESEARCH, 35:2, 106-122. Available at: [10.1080/25785648.2021.1899510](https://doi.org/10.1080/25785648.2021.1899510).

56. Mautner, 844.

German, through the Ministry of Justice. Calls to provide feedback are made public and members of the public can send in their comments.

The federal government made calls to solicit feedback when the *Network Enforcement Act* was proposed as a bill. In total, 26 stakeholders filed statements indicating their feedback on the proposed law. This study categorized the groups based on their sentiment of the *Network Enforcement Act*, with some expressing support with provisions and others calling for its rejection. The groups represented digital rights, law, rights of ethnic and sexual minority, technology firms and human rights.

The primary methodology for this Article was to collect statements from Ministry of Justice and translate them from German. These statements were catalogued and analyzed. Support for the *Network Enforcement Act* was defined by strong backing of law in its current form. Support with provisions indicated partial backing for the law albeit with changes in place. These changes ranged from specific sections to recommendations on additions. The final category, rejection, connoted a desire to see the law dismissed.

a. Against the *Network Enforcement Act*

Civil society organizations, such as Reporters Without Borders, raised significant concerns over the *Network Enforcement Act* based on the substance of the law.

Reporters without Borders argued that social media companies will over block content and lead to the unlawful interventions to freedom of the press and freedom of expression. According to a statement published on April 19, 2017 from Reporters Without Borders:

The federal government's draft law must be rejected in its current form. The proposed measures to regulate social networks are not suitable in the action against "hate crime and other criminal content" as mentioned in the justification for the law. Instead, the new regulations in this form constitute a disproportionate intervention to freedom of the press and freedom of expression. Reporters Without Borders does not deny that there is criminal content on social networks and is committed to combating such content if it is compatible with fundamental rights. Freedom of the press and freedom of expression [are rights]. These do not succeed with the NetzDG. ... It is the regulation of communication that [require solutions]. The NetzDG lacks this awareness. There is no other way to explain why with broad erasure of obligations in such a disproportionate way should be taken. Central principles [such as] the right to expression, are not taken into account. The NetzDG is, therefore, in its entirety unsuitable for achieving the

goals stated in the explanatory memorandum. That's why [Reporters Without Borders] moves to reject the draft law. Rather, what is needed is a fresh start from the ground up to legally regulate the fight against criminal content in social media.<sup>57</sup>

The Amadeu Antonio Foundation, a nonprofit that tracks extremism, xenophobia and anti-Semitic violence, voiced support for a stronger law. They pointed out that prior research from their organization indicated a sharp uptick of violence in society, prompted through unlawful speech online. The foundation argued that the law does not go far enough in combatting unlawful speech online. According to its statement that also published on April 27, 2017:

The draft of a *Network Enforcement Act* passed by the Federal Government on April 5th, 2017 aims to improve legal enforcement in the event of punishable hate content. The problem is to be solved with the help of legal rules for social networks countering hate speech online. ... The Amadeu Antonio Foundation initially welcomed the German government's commitment to get involved with the problem of punishable hate speech on the Internet. Communication content that attacks people because of their origin, skin color, gender, sexual orientation, physical limitations or religion or corresponding content promote, justify or incite hate speech is an increasing problem in social networks. However, the draft law in no way does justice to the goal of adequate law enforcement in the context of punishable hate content. ... The purpose of the law was to prevent hate speech and prosecute crimes, but its application would jeopardize the prosecution of criminal offences. The proposed law is therefore irreparable and should be rejected.<sup>58</sup>

Technology companies, such as Facebook and Google/YouTube also expressed concern for the proposed law. In its statement filed on May 24, 2017, Facebook agreed that the problem of disinformation and hate speech are social problems, but it argued that the *Network Enforcement Act* would improperly transfer responsibility for complex legal decisions from public authorities to private companies.<sup>59</sup> Google/YouTube also

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57. Reporters Without Borders, *Statement by Reporters Without Borders on the Draft Law to Improve Law Enforcement in Social Networks (NetzDG)* (April 19, 2017), online at [https://www.bmj.de/SharedDocs/Gesetzgebungsverfahren/Stellungnahmen/2017/Downloads/04192017\\_Stellungnahme\\_RoG\\_RefE\\_NetzDG.html](https://www.bmj.de/SharedDocs/Gesetzgebungsverfahren/Stellungnahmen/2017/Downloads/04192017_Stellungnahme_RoG_RefE_NetzDG.html) (visited Oct. 12, 2022) (arguing that the *Network Enforcement Act* would lead to a crackdown on freedom of expression).

58. Amadeu Antonio Stiftung, *Statement by Amadeu Antonio Stiftung on the Draft Law to Improve Law Enforcement in Social Networks (NetzDG)* (April 27, 2017), online at [https://www.bmj.de/SharedDocs/Gesetzgebungsverfahren/Stellungnahmen/2017/Downloads/03292017\\_Stellungnahme\\_AAS\\_RefE\\_NetzDG.pdf?blob=publicationFile&v=3](https://www.bmj.de/SharedDocs/Gesetzgebungsverfahren/Stellungnahmen/2017/Downloads/03292017_Stellungnahme_AAS_RefE_NetzDG.pdf?blob=publicationFile&v=3) (visited Dec. 15, 2022) (arguing that the *Network Enforcement Act* does not go far enough in addressing online unlawful speech).

59. Facebook Germany, *Statement by Facebook Germany on the Draft Law to Improve Law Enforcement in Social Networks (NetzDG)* (May 24, 2017), online at



released a statement that outlined their strong concern for the influence the *Network Enforcement Act* would have on freedom of expression. According to its statement from May 30, 2017:

Freedom of expression remains a top priority. In our opinion, the draft bill does not sufficiently ensure this requirement. The NetzDG would significantly affect the exercise of freedom of expression and information, which is essential for social discourse. (1) The draft law is not necessary, since operators of social networks are obliged to immediately remove culpable content. (2) The bill introduces de facto censorship and limits freedom of communication as it does not promote liability regulations, but tightens them up considerably through rigid, extremely short deletion periods. Fines are a considerable incentive to immediately open any content in case of doubt to delete the complaint. (3) The NetzDG violates European law. The eCommerce Directive has final regulations for the liability of hosting providers. (4) The requirement to use filtering measures to block all copies of removed content would be tantamount to a general monitoring obligation that would be contrary to European law. (5) Preserving evidence would be data retention.<sup>60</sup>

b. In Support of the *Network Enforcement Act*, with provisions

This was the largest group that submitted feedback statements. Civil society organizations noted that their general support for platform regulation but called certain elements of the law into question and advocated for changes.

The German Association of Judges voiced its support for the *Network Enforcement Act*, but it also raised concerns about specific provisions within the law. In particular, the association raised concerns about the capacity of the legal system to address the added regulatory requirements and the individual rights of victims.<sup>61</sup> According to its statement:

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[https://www.bmj.de/SharedDocs/Gesetzgebungsverfahren/Stellungnahmen/2017/Downloads/05242017\\_Stellungnahme\\_Facebook\\_RefE\\_NetzDG.html](https://www.bmj.de/SharedDocs/Gesetzgebungsverfahren/Stellungnahmen/2017/Downloads/05242017_Stellungnahme_Facebook_RefE_NetzDG.html) (visited Dec. 14, 2022) (arguing that Facebook has taken steps to address online disinformation and hate speech).

60. Google/YouTube, *Statement by Google/YouTube on the Draft Law to Improve Law Enforcement in Social Networks (NetzDG)* (March 30, 2017), online at

[https://www.bmj.de/SharedDocs/Gesetzgebungsverfahren/Stellungnahmen/2017/Downloads/03302017\\_Stellungnahme\\_google\\_youtube\\_RefE\\_NetzDG.html](https://www.bmj.de/SharedDocs/Gesetzgebungsverfahren/Stellungnahmen/2017/Downloads/03302017_Stellungnahme_google_youtube_RefE_NetzDG.html) (visited Oct. 12, 2022) (arguing that the *Network Enforcement Act* would lead to the over blocking of content).

61. German Association of Judges, *Statement by the German Association of Judges on the Draft Law to Improve Law Enforcement in Social Networks (NetzDG)* (March 27, 2017), online at

[https://www.bmj.de/SharedDocs/Gesetzgebungsverfahren/Stellungnahmen/2017/Downloads/03272017\\_Stellungnahme\\_DRB\\_RefE\\_NetzDG.html](https://www.bmj.de/SharedDocs/Gesetzgebungsverfahren/Stellungnahmen/2017/Downloads/03272017_Stellungnahme_DRB_RefE_NetzDG.html) (visited Oct. 12, 2022) (arguing for changes that take the German legal system into account).

The German Association of Judges welcomes the project against the spread of hate crime and punishable fake news on the Internet. However, it regrets that domestic law enforcement agencies are not supported more effectively... The prosecution of false news and hate crimes should be included by the record as well. ...<sup>62</sup> Hate crimes and false news on the Internet can only then be pushed back effectively and sustainably if they are also effectively prosecuted under criminal law. This often fails because law enforcement agencies fail to identify those responsible for criminal content. ... The DRB [the judges association] doubts that the regulation without the possibility of sanctions actually will lead to noticeable improvements because of the provider of the social network can ignore the provision without consequences. ... In addition, consideration should be given to making it easier for those affected by criminal content to assert their claims for injunctive relief.<sup>63</sup>

Several of the comments called for changes to the law. For example, Show Face!, an organization with a mission to encourage society to fight against xenophobia, racism, antisemitism and extreme right-wing violence.<sup>64</sup> According to its statement from March 30, 2017:

Show face! welcomes in principle the initiative of the BMJV. Show face! however, sees two sides, among others, being given too little attention: that of the victims and that of the perpetrators. Therefore, Show your face! an additional, independent body (possibly similar to an ombudsman) should be in place. [We recommend creating] a place [for] whom those affected and victims of online hate crime can turn. Everyone can become a victim, but not everyone can afford a lawyer and a full procedure to accompany. Show face! also sees dealing with hate crime as a task for society as a whole on. With the transfer of responsibility for the detection and deletion of criminally relevant content on the platform operators alone cannot solve the problem. We don't achieve that the perpetrators and, above all, do not fight the causes of hate crime. Education, prevention, dialogue and a social debate about the values of our democracy are urgently needed. Then much of what is hate (or fake news) on the Internet is not criminally relevant and should therefore not be deleted. Content relevant to criminal law must be deleted.<sup>65</sup>

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62. Id.

63. Id.

64. GESICHT ZEIGEN!, <http://www.gesichtzeigen.de/english>, (last visited December 17, 2022).

65. Show Face for a Cosmopolitan Germany eV!, Statement by Show Face! On the Draft Law to Improve Law Enforcement in Social Networks (NetzDG) (March 30, 2017), online at [https://www.bmj.de/SharedDocs/Gesetzgebungsverfahren/Stellungnahmen/2017/Downloads/03302017\\_Stellungnahme\\_GesichtZeigen\\_RefE\\_NetzDG.html](https://www.bmj.de/SharedDocs/Gesetzgebungsverfahren/Stellungnahmen/2017/Downloads/03302017_Stellungnahme_GesichtZeigen_RefE_NetzDG.html) (visited December 16, 2022) (arguing for the need to address hate speech in society).

The Federal Bar Association, which represents 28 bar associations around Germany, also submitted a statement. The Association recommended a re-examination of certain aspects of the law. The Association noted that although the authorization for civil court proceedings is provided it does not sufficiently consider victims.<sup>66</sup>

c. In Support of the Law

Among the statements issued, no party expressly supported the *Network Enforcement Act*. No organization indicated support for the law in its current form.

IV.

DISCUSSION OF PUBLIC CONSULTATION STATEMENTS

It has been reported that the measure was popular with voters: One poll showed an approval rating of 87%, including 67% who strongly approved of the law. The same poll found 5% disapproving of the law.<sup>67</sup>

An analysis of the public consultations indicates a spectrum of reactions. These reactions ranged from supporting the law in principle to not supporting the law. Many of the organizations voiced support for the law, while others called for changes to it. Some indicated that the law did not go far enough, such as the Amadeu Foundation. These sentiments are influenced by the nature and mission, such as rooting out racism or ensuring digital rights, of the organization. Some of the statements pointed to strong revulsion for law. There were also strong calls to reject the law. Statements from Google/YouTube and Facebook indicated sentiments that were against social media regulation. Reporters Without Borders also voiced strong condemnation for the law.

These findings were limited in nature, given that the statements filed represented a small percentage of the German public. These results are not that surprising. The *Network Enforcement Act* is young and it may be difficult to gauge from its true popularity yet. Social media regulation as a response to disinformation, hate speech and

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66. Federal Bar Association, *Statement by the Federal Bar Association on the Draft Law to Improve Law Enforcement in Social Networks (NetzDG)* (March 30, 2017), online at [https://www.bmj.de/SharedDocs/Gesetzgebungsverfahren/Stellungnahmen/2017/Downloads/03302017\\_Stellungnahme\\_BAK\\_RefE\\_NetzDG.html](https://www.bmj.de/SharedDocs/Gesetzgebungsverfahren/Stellungnahmen/2017/Downloads/03302017_Stellungnahme_BAK_RefE_NetzDG.html), (visited Dec. 24, 2022)

67. Heidi Tworek and Paddy Leerssen, *An Analysis of Germany's NetzDG Law* (2019). TRANSATLANTIC WORKING GROUP, [https://www.ivir.nl/publicaties/download/NetzDG\\_Tworek\\_Leerssen\\_April\\_2019.pdf](https://www.ivir.nl/publicaties/download/NetzDG_Tworek_Leerssen_April_2019.pdf).

misinformation did not begin with the *Network Enforcement Act*, but the law succeeded in accelerating conversations about possible legal responses to these social challenges. Germany has also changed socially. The society is younger and more diverse. This may alter views of its past.

V.

CONCLUSION

The complexity of German national consciousness against a generation with minimal memory of World War II and more direct experience with digitalization speaks to a chasm regarding social media regulation. This law is not only controversial within the international community, but the data indicate that the law may be more controversial within Germany than previously thought. This study is best conceived as a snapshot that aims to capture how the German public perceived platform liability and regulation at a time when the lack of it had influenced the country. Since the law went into effect in Germany, the *Network Enforcement Act* remains a controversial law. It is recommended that extensive polling be carried out to gauge public sentiment.