

# Act on Copyright Content Sharing Service Providers

Raue / Specht

2024

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Act on Copyright Content Sharing Service Providers  
Urheberrechts-Diensteanbieter-Gesetz (UrhDaG)

  
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# Act on Copyright Content Sharing Service Providers

Urheberrechts-Diensteanbieter-Gesetz  
(UrhDaG)

Article-by-Article Commentary

by

Benjamin Raue  
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DIE FACHBUCHHANDLUNG

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## Preface

Art. 17 of the Copyright in the Digital Single Market Directive 2019/790 (DSMD) was one of the most controversial legislative projects in the history of European copyright. It was a fight between those who wanted to strengthen copyright enforcement on internet platforms and close the ‘value gap’ – and those who feared undue restrictions on freedom of expression and information. The result was a lengthy and complex provision: direct platform liability with an obligation to conclude licence contracts on the one hand – and safeguards for user freedoms on the other hand.

As a directive, it has to be transposed into the copyright law of the Member States. The Directive uses many unspecific concepts and therefore leaves discretion for Member States to specify the provisions. This applies in particular to the strongly contested relation between the obligation to prevent copyright infringements and the obligation to protect the users’ freedoms: Which should prevail in case of conflict?

Some Member States have opted for a minimalist implementation, transposing Art. 17 DSMD (almost) word for word into their national copyright laws – and thus delegate the fine-tuning of the conflict between copyright protection and users’ freedoms to the courts.

Germany has chosen the hard way and passed the ‘Gesetz über die urheberrechtliche Verantwortlichkeit von Diensteanbietern für das Teilen von Online-Inhalten’, short: UrhDaG, the Act on Copyright Content Sharing Service Providers, a very detailed implementation specifying nearly every aspect of the platform liability in great details, for example

- a comprehensive definition of an OCSSP with a safe harbour clause for excluded service providers (§ 2 et seq.);
- a detailed provision specifying the obligation to acquire contractual rights of use (§ 4);
- several provisions on direct remuneration of authors, performers and photographers;
- very detailed provisions balancing between the obligation to pre-emptively block copyright infringing material with the users’ rights to freedom of expression and information (§§ 9–12), which more or less anticipated (and probably influenced) the CJEU’s decision Poland/Parliament and Council (ECLI:EU:C:2022:297), including a section on uses presumably authorised by law;
- a redress system consisting of complaints procedures and an alternative dispute resolution mechanism (§§ 13–17);
- detailed obligations for measures against abuse (§ 18);
- information rights for rightholders and for the purpose of scientific research (§ 19).

Due to the very heterogeneous implementation of Art. 17 DSMD in the Member States, further rulings of the CJEU and Member State courts are to be expected. The detailed German implementation could serve as a reference and source of inspiration for the further specification of Art. 17 DSMD.

The commentary on each article begins with the current version of the article both in the German original and an English translation followed by a clear and uniformly structured analysis of the provision including the extensive (academic) discussion that accompanied the implementation procedure. The interplay of the UrhDaG with the German Copyright Act is addressed as well as the respective requirements of the DSMD. The impact of the CJEU’s first decision on Art. 17 DSMD (Poland/Parliament and Council) is already discussed in the relevant provisions.

## **Preface**

The commentary is based on our analysis of the UrhDaG in the German Copyright article-by-article Commentary Dreier/Schulze, 7th edition, which has been updated for this English edition. We like to thank our teams for their invaluable support, especially Helena Mahn, Maja Christmann und Lea Kwiatkowski (Team Raue) and Prof. Dr. Anna K. Bernzen, Michele Brutscher and Gregor-Rafael Görden (Team Specht).

Benjamin Raue and Louisa Specht-Riemenschneider  
Trier and Bonn, March 2024

The logo for Beck's Shop.de features the text "beck-shop.de" in a bold, lowercase, sans-serif font. Above the "i" in "shop" are three small, solid orange circles of varying sizes, arranged in a slight arc. Below the main text, the words "DIE FACHBUCHHANDLUNG" are written in a smaller, all-caps, sans-serif font.

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