

Games Law Briefing

February 2024



Dear Reader,

Digital law is becoming increasingly European. With the Digital Services Act and other EU legislative acts, games companies face new challenges – even though arguably, the EU lawmaker had other sectors in mind. Our recent [Tech Law Briefing](#) provides an overview on the changing legal framework. We've also recently published a [blog post \(in German\)](#) providing an overview of the developments in 2023.

We hope you enjoy reading!

Your Contacts:

Dr Andreas Lober

[vCard](#)



Susanne Klein, LL.M.

[vCard](#)



Wojtek Ropel

[vCard](#)



Dr Peggy Müller

[vCard](#)



Lennart Kriebel

[vCard](#)



Fabian Eckstein, LL.M.

[vCard](#)



Jason Komninos, LL.M.

[vCard](#)



Daniel Trunk

[vCard](#)



Games Law Briefing:

I. CASE LAW

+++ Federal Constitutional Court: **Blocking of a Twitch Account** Not an Urgent Case +++

A well-known Twitch streamer's request for interim legal protection was rejected by the Federal Constitutional Court (BVerfG). The streamer wanted to expedite a decision by the Braunschweig Regional Court on the blocking of his user account on the streaming platform Twitch.tv. The Regional Court had scheduled a hearing for 30 January 2024, which the streamer considered too late. The BVerfG rejected the request, stating there was no sufficiently serious disadvantage for the streamer should the hearing take place on this date. The Regional Court deemed the case too complex to be decided without an oral hearing. A decision without an oral hearing is possible in urgent cases, but the court has discretion in this matter.

Relevance for the games industry: The BVerfG's decision highlights the discretion of specialized courts in preliminary proceedings. The case shows how conflicts between users and platforms or among users themselves can escalate. This underscores the need for clear and understandable community guidelines, especially regarding expressions of opinion (this is also a requirement under the Digital Services Act).

[\(To the decision dated 15 January 2024, in German\)](#)

+++ Higher Regional Court of Frankfurt: **Deletion of Identical** Unlawful Posts +++

The Higher Regional Court of Frankfurt ruled on 25 January 2024 that Facebook is obligated to remove unlawful posts that are substantially similar to a post which has been previously identified as infringing (case no. 16 U 65/22). The decision emphasizes that platform operators are required to identify and eliminate comparable unlawful content when they have actual knowledge of an infringement, even though they do not have general monitoring and investigation obligations under the E-Commerce Directive or Digital Services Act. The court considers it reasonable for Facebook to filter such content using technical processes and human review. Due to the fundamental importance of the question regarding the

duties of host providers in dealing with identical or essentially similar content, the Higher Regional Court has allowed for an appeal.

Relevance for the games industry: This decision is highly relevant for gaming platforms that rely on user-generated content. Preventing the (identical) re-upload of infringing content might be difficult – but preventing essentially similar infringements is even more challenging.

(To the press release of the Higher Regional Court Frankfurt dated 25 January 2024, in German)

+++ Higher Regional Court of Cologne: Requirement of Pre-Contractual Information for Free Offers on the Internet +++

A consumer protection body filed a lawsuit against an airline that had provided an option for non-binding reservations of rental vehicles on its website. To make a reservation, consumers had to enter their data in the reservation form. The airline did not properly comply with its obligation to provide pre-contractual information. The court confirmed that such duties exist even for reservations free of charge, when no contract with the car rental company has been concluded yet.

Relevance for the games industry: The ruling highlights that pre-contractual information requirements must also be met for free offers where the user provides their data as a form of consideration. Games – including Free-to-play games – must also include such information.

(To the judgment of the Higher Regional Court of Cologne dated 8 December 2023, in German)

II. LEGISLATIVE PROJECTS AND NEWS

+++ EU agrees on AI Regulation +++

The EU member states have reached an agreement on the AI Regulation (also known as AI Act). This regulation aims to foster innovation, strengthen trust in AI technologies, and ensure the protection of fundamental rights as well as the safety of EU citizens. It is based on a risk-based approach, imposing strict requirements on high-risk AI systems, while those with low risk are notably subject to certain

transparency obligations. AI applications that pose an unacceptable risk, such as social scoring and emotion recognition at the workplace, will be completely banned in the EU. Additionally, the regulation includes specific rules for generative AI models, which must meet varying degrees of requirements depending on whether a systemic risk exists. Before the regulation comes into effect, it still requires the approval of the European Parliament and a Council formation. It will apply 24 months after publication in the EU Official Journal, with certain bans taking effect after just six months.

[\(To the press release by the European Parliament dated 13 February 2024\)](#)

+++ German Digital Services Act Implementation Act Nearing Completion with Delay +++

On 18 January 2024, the German Bundestag debated in its first reading the Digital Services Act Implementation Act (Digitale-Dienste-Gesetz, DDG), which implements the EU's Digital Services Act (DSA) and will apply to intermediation service providers from 17 February 2024. The DDG adapts the national legal framework to the DSA, repeals the Telemedia Act (Telemediengesetz, TMG), and partially weakens the Network Enforcement Act (Netzwerkdurchsetzungsgesetz, NetzDG). It redefines liability privileges, responsibility for information transmission, the freedom of operation for digital services, and the obligation to maintain a legal notice. Parts of the NetzDG will remain to facilitate service in civil proceedings. The DDG was originally intended to come into force alongside the DSA, but disputes over competencies have delayed the process. The hearing of experts is planned for February 2024, with possible entry into force not before 1 April 2024.

[\(To the draft bill, in German\)](#)

+++ EU Commission Designates Additional Very Large Online Platforms Under the DSA +++

On 20 December 2023, the EU Commission designated three providers of adult content platforms as very large online platforms. This designation followed the Commission's own investigations into user numbers after the figures published by the providers were questioned.

[\(To the press release by the European Commission dated 20 December 2023\)](#)

EDITOR IN CHARGE:

Dr Andreas Lober | Rechtsanwalt

©Beiten Burkhardt

Rechtsanwaltsgesellschaft mbH



Update Preferences | Forward

Please note

This publication cannot replace consultation with a trained legal professional. If you no longer wish to receive information, you can [unsubscribe](#) at any time.

© Beiten Burkhardt

Rechtsanwaltsgesellschaft mbH

All rights reserved 2024

Imprint

This publication is issued by Beiten Burkhardt Rechtsanwaltsgesellschaft mbH

Ganghoferstrasse 33, 80339 Munich, Germany

Registered under HR B 155350 at the Regional Court Munich / VAT Reg. No.: DE811218811

For more information see:

www.advant-beiten.com/en/imprint

Beiten Burkhardt Rechtsanwaltsgesellschaft mbH is a member of ADVANT, an association of independent law firms. Each Member Firm is a separate and legally distinct entity, and is liable only for its own acts or omissions.