

# Games Law Briefing

June 2024



Dear Reader,

As we enjoy a sunny spring here in Frankfurt, it is time for an update on legal news relevant to the games industry. This time we focus in particular on the developments around the Digital Services Act which has become fully applicable since our last issue. Beyond that, we also report on very relevant court decisions.

We hope you enjoy reading!

# Games Law Briefing:

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## I. CASE LAW

### **Higher Administrative Court of North Rhine-Westphalia: No "Gambling" if the stake is insignificant +++**

In Germany, "gambling" is defined as wagering a significant amount of money (the "stake") so as to have a chance of winning a prize, with winning or losing depending on luck rather than skill. The Higher Administrative Court of North Rhine-Westphalia recently held, in line with the Criminal Chamber of the Federal Court of Justice, that an amount of money shall not be significant if no more than ten euros can be wagered per hour.

#### **Relevance for the games industry:**

This decision can be relevant, and potentially helpful, for providers of social games, games of skill with the chance to win, and lootboxes.

[\(To the decision dated 11 March 2024, in German\)](#)

### **+++ Munich Regional Court I: Necessity of a **cancellation button** +++**

A cancellation button for subscriptions that be concluded online is mandatory in Germany since July 2022. Consumer watchdogs have, once again, successfully filed a case against an online service provider claiming that the cancellation button was missing.

#### **Relevance for the games industry:**

Game publishers and online service providers can be affected by the law if they offer online subscription models via their websites.

[\(To the press release dated 25 April 2024, in German\)](#)

### **+++ Cologne Regional Court: No **copyright protection of a game's basic concept** +++**

The Cologne Regional Court had to decide whether the basic concept of a racing game could be protected by copyright. The plaintiff argued that its

game was a unique idle racing game that had been copied by the defendant. In line with other decisions of German courts, the court emphasized that the concept or idea of a video game is not protectable. Only the concrete design based on the idea can enjoy copyright protection.

### **Relevance for the games industry:**

Litigation against (alleged) clones, whether based on copyright, unfair competition, trademarks, or designs, is always a very complex issue that requires plaintiffs to convince the judges (who are not always experts in video games). Therefore, an easy-to-understand description and documentation can be the key to success.

[\(To the judgment dated 11 January 2024, in German\)](#)

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## **II. DIGITAL SERVICES ACT NEWS**

### **+++ Germany adopts DSA implementation law +++**

While the Digital Services Act has been fully applicable since 17 February 2024, Germany has been somewhat late in implementing certain provisions to ensure its enforcement. The German implementation law, known as *Digitale-Dienste-Gesetz*, was adopted on 26 April 2024 and serves, among other things, as legal basis for the German authorities to enforce the DSA. The law designates the Federal Network Agency (*Bundesnetzagentur*) as the competent Digital Services Coordinator for general matters in Germany. It also designates the Federal Agency for the Protection of Children and Young Persons in the Media (BzKJ) as the competent authority for the protection of minors on online platforms, and the Federal Commissioner for Data Protection and Freedom of Information (*Bundesdatenschutzbeauftragter*) for advertising based on online profiling. The law came into force on 14 May 2024.

[\(To the press release by the Federal Network Agency dated 14 May 2024, in German\)](#)

### +++ **Formal Proceedings** against Facebook and Instagram +++

The European Commission has opened two formal proceedings against Meta, the provider of Facebook and Instagram, to investigate possible violations of the Digital Services Act. The first focusses on misleading advertising, political content, disinformation, and the unavailability of election monitoring tools in the run-up to the European elections. More relevant for games companies, though, is that the European Commission assumes that Meta's tools to report illegal content are not sufficient.

The second proceeding focusses on the protection of minors. The European Commission is concerned that the systems of the digital platforms, including their algorithms, stimulate behavioral addictions in children and create so-called "rabbit-hole effects". Additionally, the European Commission plans to review Meta's age-verification tools.

[\(To the press release about the first proceeding dated 30 April 2024\)](#)

[\(To the press release about the second proceeding dated 16 May 2024\)](#)

### +++ **European Commission launches Whistleblower Tools** for Digital Services Act and Digital Markets Act +++

The European Commission has launched two whistleblower tools for the Digital Services Act (DSA) and the Digital Markets Act (DMA). The tools shall enable individuals to provide information allowing to identify and uncover harmful practices of Very Large Online Platforms, designated under the DSA, or any violations of the gatekeepers under the DMA.

Insiders can report, for example, content moderation practices, the functioning of recommendation systems, advertising practices or public safety and health concerns.

[\(To the press release dated 30 April 2024\)](#)

### +++ **Consumer Organization issues Warning Letter** against online platforms for using **Dark Patterns** +++

The Federation of German Consumer Organizations (vzbv) has sent warning letters to two online retailers that are considered online

platforms under the DSA. The DSA prohibits online platforms from using manipulative designs that encourage users to make unfavorable decisions (so-called "dark patterns"). Among other things, the consumer organization points out that the online shops use practices such as manipulative patterns triggering feelings of guilt to encourage users to place an order ("Confirmshaming").

[\(To the press release re. Shein dated 29 April 2024, in German\)](#)

[\(To the first press release re. Temu dated 26 March 2024, in German\)](#)

### **+++ New **Very Large Online Platform** under the Digital Services Act +++**

Recently the European Commission has designated Shein as Very Large Online Platform (VLOPs) under the DSA. VLOPs have an average of more than 45 million monthly users in the European Union and must comply with the highest standards set out in the DSA.

[\(To the press release dated 26 April 2024\)](#)

### **+++ **Formal Proceedings** against TikTok+++**

The European Commission has opened two formal proceedings against TikTok. The first was opened on 19 February 2024 and focuses on the protection of minors, advertising transparency, and the safeguarding of public data for research. The second was opened on 22 April 2024 and seeks to assess whether the launch of TikTok Lite in France and Spain is a violation of the DSA.

[\(To the press release dated 22 April 2024\)](#)

### **+++ **European Court of Justice: No Suspension of the DSA for Amazon** +++**

The European Court of Justice (ECJ) has ruled in preliminary proceedings in favor of the European Commission and against Amazon that Amazon must make its advertising archive publicly available under the DSA. filed a lawsuit and preliminary proceedings against its designation as a Very Large Online Platform, arguing that the obligation to make its advertising archive publicly available unlawfully restricts its fundamental rights and

freedom to conduct a business. The ECJ held that this argument could not be regarded as *prima facie* irrelevant or unfounded and Amazon was also threatened with serious and irreparable damage pending a decision in the main proceeding. However, the objectives of the DSA would take precedence over the interests of Amazon. A suspension of the DSA would mean that the full achievement of its objectives could possibly be postponed for several years which could lead to the development of an online environment that poses a threat to fundamental rights. The main proceedings are still pending before the General Court.

[\(To the order dated 27 March 2024\)](#)

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## III. LEGISLATIVE PROJECTS AND NEWS

### +++ Council of the European Union approves **Artificial Intelligence Act** +++

After its formal adoption in the European Parliament in March, the Council of the European Union approved the final version of the AI Act on 21 May 2024. The Council of the European Union must now formally adopt the new provisions. The AI Act will enter into force 20 days after its publication in the Official Journal of the EU and, with a few exceptions, will be fully applicable 24 months after its entry into force.

[\(Update AI Act - the ten most important questions for users of AI systems | ADVANT Beiten Blog\)](#)

[\(Artificial intelligence: what is more important than the AI Act? | ADVANT Beiten Blog\)](#)

### +++ State Treaty on the **Protection of Minors** in the Media has entered notification procedures +++

Germany's most important law on youth protection online is currently being revised and has entered notification procedures. During the notification procedures, it is assessed by the European Commission on its impact on the European Single Market.

[\(Information on the notification procedures in brief\)](#)

### **+++ European Parliament adopts Directive on Combating Violence against Women +++**

The European Parliament has adopted new rules against gender-based violence in April 2024. This Directive obliges the European Member States to implement criminal laws against gender-based cyber stalking, cyber harassment, and cyber incitement to violence or hatred. Moreover, Member States shall take necessary measures that non-consensual uploaded intimate or manipulated material and harassing or inciting content is promptly removed by online services providers.

[\(To the press release dated 24 April 2024\)](#)

### **+++ European Parliament adopts Cyber Resilience Act +++**

On 12 March 2024, the European Parliament also adopted the final version of the Cyber Resilience Act, which now waits for its approval by the Council of the European Union. Upon its applicability, manufacturers, importers, and distributors of products with digital elements must comply with certain essential cybersecurity requirements. The scope of the law is broad and covers videogames, online platform services, game consoles and other products with digital elements. Most provisions are applicable 36 months after its entry into force.

[\(The Cyber Resilience Act: What You Should Know Now | ADVANT Beiten Blog\)](#)

### **+++ German Gambling Authority: Loot boxes should be regulated more strictly +++**

The Joint Gambling Authority of the Federal States (GGL) has recently published a statement in which it advocates stricter regulations for loot boxes. Following an expert workshop on 28 February 2024, the authority holds that loot boxes must not only be assessed under gambling laws but also any other legal framework that helps to protect minors and vulnerable users from gambling addiction.

[\(To the press release dated 1 March 2024, in German\)](#)

## Last but not least:

Thanks for the nice chats at More than Just a Game in Stanford and London, and the Games Industry Law Summit on Tour in Limassol. We are looking forward to the next events, including [More than Just a Game Frankfurt](#) which we host in our offices on 20 June 2024, and the Gamescom Cologne.

The logo features the text 'MORE THAN JUST A GAME' in a bold, white, sans-serif font, with 'MORE' on the top line, 'THAN JUST A' in a smaller font on the second line, and 'GAME' on the third line. A thin white horizontal line is positioned below 'GAME'. Below this line, the word 'FRANKFURT' is written in a smaller, white, sans-serif font. The background of the logo is a dark blue gradient with a subtle light flare effect behind the text.

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