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“I can do it, I have the right to do it, it is the right thing to do” - any adult person knows that these are three different things. And yet, the lines that divide these three sentences seem blurred when it comes to the online activities of Internet users. In theory, the law should provide answers to all those questions, but the application of the law to a concrete case is often a tricky business, and even the most obvious cases can become the subject matter of harsh judicial wrangling up to the highest courts. For example, a recent judgment of the ECtHR on hate speech and incitement to violence also had to deal with the failure on the part of public authorities to investigate the case. It is also true that the veil of anonymity that certain Internet platforms draw over their users does not lighten the courts’ burden. By way of example, a German court of law had to amend its own (heavily criticised by legal experts) decision in a defamation case concerning a well-known German politician’s request for information about anonymous users who had insulted her on Facebook.

It is understandable that regular citizens do not know every paragraph of every law applicable to a concrete case. However, even seasoned professionals in the media business happen to have difficulties in interpreting legal rules correctly. And even when they have the law on their side, very often, professionals have to go from court to court in order to ascertain their rights. This point is illustrated by the fact that the French INA had to go all the way to the CJEU and the national Cour de cassation to bring an end to a major dispute concerning the INA’s exploitation of performers’ performances.

Regulators can provide assistance in understanding applicable rules. For instance, the Belgian regulator CSA has published a guidance note on the fight against certain forms of illegal Internet content, in particular hate speech. But in the end, it is up to the legislator to find the rules that fight wrongs without impinging on citizen’s rights, an exercise that is not without its traps, as shown in Germany, where the Federal Ministry of Justice and Consumer Protection has announced a controversial bill designed to combat right-wing extremism and hate speech on the Internet, which, among other things, tightens certain provisions of the Network Enforcement Act.

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Maja Cappello, editor

European Audiovisual Observatory

