



Legal Basis for Social Media: Updated Status Report

10 May 2017

Summary

On 9 October 2013, in fulfilment of Amherd postulate 11.3912 of 29 September 2011, the Federal Council adopted the report on the legal basis for social media (hereinafter: the 2013 Social Media Report) for the attention of the federal parliament. At the same time the Federal Council instructed DETEC to submit to it a new status report on the legal basis for social media by the end of 2016.

An additional report is necessary in particular because at the time of the assessment of the subject within the framework of the 2013 Social Media Report, various areas were subject to detailed clarification and/or national legislation and international rules were the subject of a comprehensive revision.

Usage behaviour on social networks (Facebook, Twitter, YouTube etc.) has changed since 2013 and the range of possible types of application and offerings has increased. In very general terms, it is evident that social media are becoming more important in shaping public opinion. On the one hand because it is primarily younger people who increasingly acquire information via these channels and on the other hand because content published on social media is making its way into reporting by the traditional mass media. The line of demarcation between conventional mass media and social media platforms is becoming more and more blurred.

Growing interference with and manipulation of political discourse by false information ("fake news") is an international phenomenon. The specific features of social media and the way they work – the greater anonymity of authorship and the increased interest in surprising, apparently unbelievable content (the mechanism of the attention economy) - favour this phenomenon. "Fake news" is acquiring a new dimension because it is now generated automatically by programs (so-called "social bots"). In other countries, legal measures are being considered to combat the negative effects of "fake news". In Switzerland, it seems appropriate for the time being to monitor these developments.

So-called "trusted flaggers" are major players in relation to the reporting of problematic content on social platforms. If they report a violent video, for example, their request is prioritised and the video is removed very quickly. In Switzerland, the Federal Office of Police, fedpol, performs this task with regard to YouTube and reports mainly terrorist propaganda and violent material. It would be expedient if fedpol could also extend this activity to other social media platforms.

As the present updated status report indicates, the questions raised in the 2013 Social Media Report have been taken into consideration, as far as possible, in the current regulatory projects. The Federal Council therefore concludes that at present no additional regulatory activities need to be initiated in relation to social media.

The right to data acquisition is the subject of a comprehensive analysis of the legal situation in Switzerland, the EU and a number of comparable countries. It is intended that it will be presented by the end of 2017 within the framework of the Federal Council's "Digital Switzerland" strategy. The work is being performed under the aegis of the Federal Department of Justice and Police (FDJP).

Specific declaration requirements for advertising on social media are currently lacking in the legislation currently in force in Switzerland. Only the general provisions of the legislation on unfair competition must be considered. Social platforms are overjoyed with the increasing popularity and professionalisation of social media stars, not to mention the ever-greater trend towards distribution channels for commercial advertising. For genuine opinion forming among recipients, it may be appropriate to extend the transparency requirement applicable to radio and television advertising to social media. These and other regulatory questions are the subject of the review currently in progress as to whether Swiss legislation should be selectively harmonised with corresponding European regulations and regulatory projects.

Enforcement of the law relating to social media in the trans-national arena remains problematic. As various parliamentary initiatives demonstrate, the subject is also attracting political attention. In March 2017, the Council of States referred Levrat motion 16.4082 "Facilitating access by the prosecuting authorities to the data of social networks" to the competent commission for preliminary examination. The Federal Supreme Court has also addressed the issue. The current efforts at the international level, e.g. in the Council of Europe, to find a practical solution are to be strenuously promoted by Switzerland.