

Games Law Briefing

December 2023



Dear Reader,

Another eventful year of work with many important judgements and regulatory developments is nearing its end. We would like to take this opportunity to thank you for your interest in our newsletter and your input "from the sidelines" - be it through clients or discussions over the past year. Games and law are incredibly dynamic and every day holds an exciting new "quest" for our team. We wish you and your loved ones a Merry Christmas, look forward to the New Year and, as always, hope you enjoy reading this issue!

Games Law Briefing:

I. CASE LAW

+++ ECJ: **Automated Decision-Making - strict Requirements** +++

The European Court of Justice (ECJ) ruled that a credit scoring by the agency SCHUFA constitutes an automated decision within the meaning of Art. 22 GDPR which is principally unlawful. According to the ECJ, scoring is only permitted if it is necessary, if there is a legal basis, or if the person concerned gives his or her consent.

Relevance for the games industry: The ruling may have important consequences that go beyond the individual case (e.g., for the automated banning of players). The ECJ held that a decision within the meaning of Art. 22 GDPR may include automated evaluation measures that significantly affect the decision-making.

[\(To the ECJ ruling dated 7 December 2023\)](#)

+++ ECJ: **Competence for Regulation of Online Intermediaries Limited by the „Country of Origin“ Principle** +++

In a landmark judgement, the ECJ has clarified that an EU member state cannot impose general abstract obligations on a communication platform based in another EU member state. According to the so-called country-of-origin principle, the member state in which the company has its registered office is generally responsible for regulation within the European Union. In other words: Germany, for example, can regulate online services registered in Germany, but not online services registered in France. Under certain conditions, member states can take measures to ensure the public order and safety of their citizens. However, general, and abstract measures that aim at a category of information society service without distinction to any provider would subject the service providers to different laws and, consequently, reintroduce legal obstacles to freedom which the E-Commerce Directive seeks to eliminate.

Relevance for the games industry: All EU online businesses –including games companies – will now often have better chances to argue that only the law of their home country applies.

[\(To the ECJ ruling dated 9 November 2023\)](#)

+++ FCJ: **Restriction of the Right to Naming Authors through General Terms and Conditions** +++

The Federal Court of Justice (BGH) has ruled that authors can waive their right to be named as the author in individual cases by means of general terms and conditions. The author's right to be named as the author in accordance with Section 13 Sent. 2 German Copyright Act (UrhG) cannot be waived entirely. Beyond this core, however, the author can waive the right to be named in the general terms and conditions if such a waiver is not unreasonably disadvantageous within the meaning of Section 307 of the German Civil Code. The admissibility of such a waiver must be determined on a case-by-case basis. In the case of a microstock portal relevant to the legal dispute, the FCJ held that the platform's business model was geared towards a mass market and the waiver increased the attractiveness and number of sublicenses for the author's works on such a portal. Therefore, the FCJ found the clause to be permissible.

Relevance for the games industry: The right to be named as an author impacts many aspects of the games business, e.g. development contracts or user generated content.

(To the judgement of the German Federal Court of Justice dated 15 June 2023, in German)

+++ Berlin Court of Appeal: **Price Adjustment Clauses in Streaming Subscriptions Inadmissible** +++

The Berlin Court of Appeal has confirmed that the price adjustment clauses of two online streaming services violate consumer law. According to the court, an increase in total costs is not sufficient to justify a unilateral price increase clause for an on-going contractual relationship. In addition, the clauses in question did not stipulate that prices are reduced if costs fall.

Relevance for the games industry: These requirements must be observed for online subscriptions of all kinds, including online games.

(Judgement 1: KG 23 U 15/22, Judgement 2: KG 23 U 112/22)

(To the press release of the press office of the Berlin civil courts of 15 November 2023, in German)

+++ Munich Regional Court I: **Cancellation Button Must Be Easy to Find** +++

The Munich Regional Court I has upheld the claim of a consumer

association against a Pay-TV provider which had not displayed the cancellation button directly on the homepage. Since July 2022, the law has imposed very detailed requirements on the implementation of a cancellation button for subscription services. Failure to comply with the law is regularly the subject of warnings from consumer advocates.

Relevance for the games industry: These requirements must be observed for online subscriptions of all kinds, including online games.

[\(To the press release of the consumer organisation North Rhine-Westphalia of 20 November 2023, in German\)](#)

II. LEGISLATIVE PROJECTS AND GAMES NEWS

+++ **European Parliament Calls for New Rules against the "Addictive Design" of Online Services** +++

The European Parliament adopted an initiative to make online services less addictive. The resolution follows a report by the Committee on the Internal Market and Consumer Protection of 25 October 2023 which warned about the addictive design of online services. The committee concluded that certain technology companies and online services exploit psychological vulnerabilities to keep users tied to the online service for a particularly long time. The Committee emphasizes the risks to physical and mental health, especially for minors. Despite new digital laws, such as the Digital Services Act, the Parliament calls for further intervention by the European Commission.

[\(To the press release of 25 October 2023\)](#)

+++ **Political Agreement on Artificial Intelligence Act** +++

On 8 December 2023, the European institutions reached an agreement in the trilogue negotiations on the Artificial Intelligence Act (AI Act). The AI Act aims to set unionwide rules on the regulation of AI. This includes a definition of AI, as well as different compliance measures, including transparency measures and the obligation to execute risk assessments. Additionally, the Act aims to prohibit malicious practices such as manipulative techniques. It is expected that the AI Act enters into force in mid 2024.

[\(To the press release of the Council of the European Union of 9 December 2023\)](#)

+++ Provisional Agreement on Security Requirements for Digital Products +++

The Cyber Resilience Act aims to set minimum standards across the EU for the security of products and software that are connected to another device or a network. This applies, for instance, to home cameras, smart fridges, televisions, and various toys. According to the European Commission, smart watches and computer games are also covered. Under the Act, manufacturers are obliged to issue a declaration of conformity and to cooperate with the competent authorities. The compromise text will now be finalized and must then be formally adopted by the European Parliament and the Council of the European Union.

[\(To the European Commission press release of 1 December 2023\)](#)

[\(To the press release of the Council of the European Union dated 30 November 2023\)](#)

+++ Data Act Passed +++

On 27 November 2023, the Council of the European Union adopted the Regulation on Harmonised Rules for Fair Access to and Use of Data (Data Act). The Data Act requires manufacturers and service providers to share non-personal data generated by the use of connected products and related services with their users so that it can be further used by users and also passed on to third parties. New requirements also apply e.g. to cloud services and SaaS software. In particular, they must remove all obstacles to switch between similar services. The Data Act is expected to be published in the Official Journal of the European Union this year. It shall enter into force 20 days after its publication. Most of the obligations arising from the Data Act are to be applicable 20 months after its entry into force.

[\(For further information see our blog post\)](#)

+++ Council of the European Union Calls for European Video Games Strategy +++

After the European Parliament published a resolution on ["eSport and Video Games"](#) last year, the Council of the European Union also called on

the Commission and the member states to promote the video games industry in the European Union. The Council proposes among other things:

- Member states to share best practices to promote the growth of video games companies and to attract and promote talent in this sector
- Promoting initiatives for a safe online environment
- Exploring the possibility of a European video games strategy

This is the first set of Council conclusions adopted on this topic.

[\(To the press release of the Council of the European Union dated 24 November 2023\)](#)

+++ Update on the Draft Regulation on Preventing and Fighting Child Sexual Abuse +++

The Committee on Civil Liberties, Justice and Home Affairs has issued an opinion on the draft for a Regulation on preventing and fighting child sexual abuse (CSAM Regulation). The CSAM Regulation will contain obligations for internet service providers to protect children. Another new obligation addresses providers of video games whose games include a chat function. These chat functions are subject to explicit obligations to protect children from cybergrooming. The next step is for the draft to be approved by the European Parliament before the triologue negotiations between the Council, Parliament and Commission take place.

[\(To the press release of 14 November 2023\)](#)

+++ Update of the Youth Media Protection State Agreement +++

On 8 November 2023, the Broadcasting Commission of the federal states published a draft for the reform of the Interstate Treaty on the Protection of Minors in the Media. Among other things, the draft relates in particular to technical protection of minors in the media. This includes additional protection measures which must be implemented in operating systems. Additionally, the draft provides for the addition of interaction risks, as is now also provided for in the Youth Protection Act. In addition, a general conflict-of-law rule on the provisions of the Digital Services Act has been included in the law.

[\(To the publication of 8 November 2023, in German\)](#)

+++ Less than two Years until the German Accessibility Reinforcement Act Takes Effect +++

In July 2021, the German Accessibility Reinforcement Act (BFSG) was passed, which implements EU Directive 2019/882 on accessibility requirements for products and services. The law affects numerous products and services that are placed on the market or provided after 28 June 2025. For the games industry, it is likely to be of particular relevance that e-commerce services, i.e. telemedia services offered via websites and applications on mobile devices fall under the scope of the new legislation. These services must be fully accessible (barrier-free). Furthermore, the service provider must in future indicate in a clearly visible manner (e.g. in the general terms and conditions) how the accessibility requirements are met.

[\(To the legal text, in German\)](#)

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