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Digital reboot:
How to achieve open markets, fair competition and provider diversity in digital markets

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ABSTRACT

The rise of digital media monopolies is bringing the *status quo* of our media system into conflict with the democratic principles of our constitution. A concrete action plan to liberate the internet and secure media freedom for the digital future is therefore needed. This article proposes new guidelines for the field of digital media regulation. The specific measures proposed address four aspects — they aim to (1) restore provider diversity in the digital media markets; (2) balance digital opinion-forming power in categories relevant to democracy; (3) ensure the principle of independence from the State in the field of digital media; and (4) create transparency in market and opinion power. A timeframe illustrates how this could be implemented.

Keywords: Regulation| | Digital monopolies| Digital corporations | Concentration | Media law | Constitution | Media system | Public opinion

This text is a thought experiment. The internet started out with high levels of expectation in terms of freedom and opportunities for expression but these hopes are increasingly being dashed. Communication is being restricted and filtered. The rules governing the

internet are increasingly algorithm-driven and the tools are controlled and owned by a small number of monopolistic corporations. This is a cause for concern. Many people who had hoped for freedom feel exposed and powerless. This is why, as a democratic society, we should take back control. The following considerations combine concerns with solutions. The situation depends to a large extent on legal regulation. We argue that it is feasible to design these rules in such a way that the internet is freed again. Some of the ideas may seem utopian, but much depends simply on strong political will. The following text presents solutions and a timeframe. The latter depends on the typical duration of legislative processes, court decisions and administrative decisions.

I Background

It is widely recognised that the analogue media world of newspapers, television and radio is steadily shrinking and is being replaced by digital media. There is much to suggest that digital media are already the leading media. This can be seen indirectly from the distribution of advertising investment because, since 2020, digital media have attracted more attention than all analogue media combined (see Janke 2021 and 2022; Statista 2022; Navarro 2023). Typically, advertising companies invest where they expect to attract the public's attention, which is why advertising investments are a good indirect indicator of the relative importance and relevance of the respective media types and channels. The digital transformation as such is not a cause for concern. However, scientific measurements of digital media usage (based on Andree/Thomsen 2020) show a significant concentration of traffic on monopolistic and oligopolistic platforms (YouTube, Facebook, Instagram, Google, TikTok, etc.), while many millions of the remaining independent content providers and offers hardly attract any traffic. This means that the future world of digital media is likely to be largely controlled by a few platforms ('intermediaries') operated by a small number of large US digital corporations, but increasingly also by corporations from China.

The remaining independent offers, on the other hand, have little chance of success. This also applies in particular to digital extensions of previously analogue editorial media (e.g. www.theguardian.com as an international example, or www.spiegel.de as a German reference), i.e., the so-called 'content providers' (see Andree/Thomsen 2020). At the same time, the ecosystems of Alphabet and Meta alone account for a third of total digital usage time, with the top four companies (including Apple and Amazon) already sharing almost half of digital media usage between them.

The main problem is that the largest editorial publishers are unable to build up any significant usage intensity and time. We can demonstrate this using one of the strongest providers in Germany: spiegel.de has a net reach of 49% but only achieves an average monthly usage time of 18 minutes. The same applies to the domains of public service broadcasters – the domains of the German TV channels ARD and ZDF achieve reach of

33% and 31% respectively but likewise are only able to achieve aggregate usage times of 27 minutes (ARD) and 39 minutes (ZDF) per month among users. If we aggregate all public service broadcasting domains and determine the share of video on demand, they have a relative share of 4% – compared to 48% for television in the same time period. Under strictly digital conditions, Germany's 'dual system', with a strong share of public service broadcasting on top of private broadcasting, will dwindle in terms of its significance.

These figures illustrate the dominance of tech companies in digital media. As a result, huge future markets in the digital world will be occupied by monopolies and oligopolies. Free and fair competition is in jeopardy. Particularly controversial is the existence of monopolistic concentration in the field of media types that are relevant to democracy, such as search engines (Google, 88% market share in terms of usage time), free video on demand (YouTube, 78% market share in terms of usage time) and social media (Facebook and Meta combined have an 85% market share in terms of usage time). All these figures are for Germany and are based on Andree / Thomsen 2020.

The suppression of free market principles can be empirically proven in detail. Incidentally, the systematic approach revolving around the creation of monopolies as a core element of successful corporate strategy is not even denied inside the ecosystems of digital corporations. Instead, it is proclaimed quite openly (Thiel 2014, Seemann 2021). The methods used by tech companies to restrict competition have also been described in scientific detail: network effects lead to massive lock-in effects, closed standards prevent content or followers from being shared across platform boundaries and the elimination or dimming of outlinks keeps traffic within the platforms. Killer acquisitions eliminate competitors and cross-platform network effects and synergies are being systematically exploited. Particularly concerning is the systematic abuse of market dominance, often combined with deliberate violations of the law, as well as the self-allocation of traffic by occupying critical gateways (such as Google for Alphabet) and self-preferencing traffic flows (i.e. to YouTube, also from Alphabet).

Contrary to the regulatory objectives of German media law, which is intended to prevent and limit the concentration of opinion power controlled by dominant media corporations, the *status quo* described above jeopardises the media system, which is vital to democracy, and provokes a state of unconstitutionality. If analogue media were to be 'switched off' and the remaining, exclusively digital sphere of media use were to be concentrated in the hands of a few providers, fundamental principles of a free and democratic media order would be violated:

1. As the owners of digital media power have extensive control over the availability, visibility and ranking of content and are even allowed to set numerous framework conditions through their virtual house rules (terms and conditions), the digital media genres that have been monopolised or oligopolised (search, social media, free video on demand) are neither free nor independent.

2. Concentration of traffic: The fact that a few dominant portal operators account for a large proportion of traffic undermines the constitutional requirement of provider diversity.

3. The considerable interdependence between digital corporations and governments as well as government agencies (e.g. access to user data for security purposes, including in the US) and conflicts of interest with other Western governments in areas such as cybersecurity pose a serious threat to the requirement of independence from the State in the field of content provision.

4. Under conditions of oligopolistic control in terms of access and unfair competition, journalistic providers, who are economically dependent given that they need to monetise media attention, are deprived of the opportunity to build up relevant usage times. As a result, their financial basis is eroded, leading to a question mark hanging over their very survival in the digital sphere.

5. This even applies to public service broadcasting in terms of the visibility of its content. Even if such services continue to be financed by usage fees, they will be drained of traffic and usage on their own domains (media streaming and libraries) under the conditions of digital monopoly formation. In an alternative scenario, public service broadcasting could also create content and publish it on the leading digital platforms (especially YouTube or TikTok). However, in this scenario, access to public service broadcasting content would be fully controlled by the platform owners. Moreover, the fees would then be being used to reinforce the *status quo,* which is in contradiction to the constitutional principles of free media.

II. Objective

The *status quo* shows that the current regulation of digital media markets can be considered a failure. The reality of digital oligopolies leaves no room for interpretation in this regard. The elimination of a level playing field in most digital markets has long since occurred, which is worrying because these are business markets as well as the markets of ideas and opinions for our democracies. It is clear that the lack of open markets and competition, which is the responsibility of the respective antitrust authorities, also has major implications in the field of media law, particularly due to a lack of provider diversity. The ongoing collapse of economic competition is leading to a constitutionally dangerous state of affairs in the digital media sphere. It is obvious that current EU measures such as the Digital Markets Act or the Digital Services Act will not change this situation, either because they only address economic phenomena and not journalistic ones or because they only scratch the surface of the symptoms without curing them. There are currently no measures in the pipeline that would challenge the existing dominance of digital corporations in media markets substantially.

Based on these facts, the objectives of future-proof digital regulation are as follows:

1. Correcting the current misregulation, which unilaterally privileges platforms, accelerates the formation of digital monopolies and oligopolies and thereby jeopardises the basic conditions for functioning media competition.

2. Consistent opening of digital media markets to enable fair and free competition.

3. Restoring provider diversity in the field of digital media through market opening and liberalisation initiatives.

4. Securing our democratic public sphere and free media order in the medium and long term. Given that the *status quo* of the digital media markets is fundamentally defective, it does not seem advisable to attempt to optimise the current misregulation in individual aspects only.

Instead, it seems more sensible to ask: Based on what we know today, how would we design digital markets and their impact on media if we could start from scratch? How could we enable a comprehensive 'digital reset' that would ensure competition, diversity and public opinion formation in the long term?

This paper is therefore intended as a solution-oriented and thought-provoking document that attempts to rethink the digital markets and media from the perspective of a democratically, politically and economically desirable state of a pluralistic, fair, open and transparent internet. At first glance, this may seem like a digital utopia and perhaps even naïve. However, when you carefully consider the current threat to our democracy posed by the looming takeover of the political public sphere by the platforms of digital corporations, there seems to be no alternative to implementing this utopia.

III. Changed framework conditions, basic assumptions and responsibilities

Before presenting specific measures, it seems appropriate and necessary to rethink certain basic assumptions and responsibilities that characterise the current misregulation and that have contributed significantly to enabling the current 'digital feudalism' and the threat to market principles in the first place. From this, new guidelines must be derived that are commensurate with a guarantee of freedom in the digital realm:

1. The digital *status quo* proves that we need a new understanding of the concept of monopoly. Currently, we usually talk about monopolies when no other providers exist. This made sense in times when monopolies arose solely through economic processes (e.g. barriers to market entry due to the high infrastructure-related costs of entry), through State privileges and permits or concessions granted to individual providers (e.g. the postal monopoly). This terminology is not up to date in the digital age. The typical state of digital markets is for critical networks to be occupied by a particularly successful individual provider who then sets the standard (e.g. the search services provided by Google). Despite the existence of one successful

network in which almost all usage activities take place, there are still alternative providers (i.e. DuckDuckGo, Ecosia) that are possibly even superior in terms of freedom from data surveillance, but they are hardly ever utilised given that only the largest network promises an all-encompassing service. It is therefore advisable to use the term 'digital monopoly' precisely when market principles are massively disrupted due to the special characteristics of digital network effects. The following guidelines emerge from this analysis:

Guideline 1: We should speak of specific monopoly risks when a portal operator, either by itself or through other portals under its control, can manage and influence more than 50% of user attention on digital markets which serve to shape opinion (i.e. categories such as search engines, social media, free video-on-demand). We should speak of a duopoly if two providers are in control of more than 70% of the respective user attention.

The current misregulation of digital markets is based largely on a misleading distinction between content providers and so-called 'intermediaries' (German Bundestag 2018). This distinction is questionable from the outset (see Jarren/Neuberger 2020 for a general discussion). First of all, the compound term 'intermediary' consists of essential defining features of the already established concept of media (a 'medium' is typically an intermediary (medium) located between (inter) sender and receiver (Münker/Roesler 2008; Hoffmann 2002; Krüger 2021). The distinction is also questionable from a media history perspective: users used to obtain content mainly from newspapers, then from radio, then from television, and now increasingly obtain content from the internet and the platforms. They currently do this via social media, which they even refer to as 'media'. Here, even classifications by experts are of little help (cf. Lowe/Noam 2023).

Key is to focus on current media use in practice. It is extremely alarming that users clearly do not distinguish between media and intermediaries in practice. A corresponding survey (n = 1,000) shows clear findings that this is the case (see Figure 1 and note in the appendix). Users obtain content indiscriminately from various media, regardless of whether these media are analogue or digital or whether these media act as editors or merely as technical assistants but nevertheless organise, prioritise and commercialise content. From the perspective of media practice, platforms are therefore content providers. It is particularly fascinating that the platforms ('intermediaries') can be clearly classified as content providers from a media economics perspective as well. Traditional editorial content providers (e.g. newspapers, linear television) offer content in the same way, attracting audience attention that is then sold back to advertising companies.

Figure 1: 'Media' from the perspective of their users (wordcloud, font size weighted by relative frequency of mentionings)

It is immediately apparent that monetisation works in exactly the same way for the platforms. The fact that digital media are misleadingly treated as intermediaries today is in itself the result of a regulatory evasion strategy with regard to seemingly passive service providers who characterise themselves by "distancing as a business model" (Peifer 2014, p. 27). It enables digital corporations to take on economic responsibility for content but at the same time to reject legal responsibility for the very same content even though they control the reception of content through commercialisation (as an incentive) and, in many cases, even through targeting. This leads to ...

Guideline 2: Those who take on economic responsibility for content should also take on responsibility for the same content. Or, to put it another way: anyone who wants to be considered an intermediary should not be allowed to monetise content.

The proposed redesign of intermediary regulation also addresses an obvious shortcoming in current media regulation, which quickly becomes apparent when we ask how we would implement the principles of German media law in a scenario where there were only 'intermediaries' and no longer content providers. This question remains unresolved due to the current artificial distinction between 'intermediaries' and 'media'. This leads to ...

Guideline 3: The constitutionally required rules of German media law must apply without exception to all digital media providers. All of them must be subject to independence, diversity of providers (also in terms of usage), independence from the State, a significant

proportion of journalistic and editorial content that is actually consumed and a significant proportion of use of public service broadcasting offerings. This applies in particular to digital media markets that are relevant to democracy, i.e. at least to the categories of search engines, free video-on-demand (formerly television) and social media.

Another core problem of digital regulation is the complexity of responsibilities, especially in the field of media. Digital corporations have consistently exploited this complexity to their advantage in the past. The asymmetry of the situation is particularly evident in the field of media content — for example, when the Bavarian State Media Authority (*Bayerische Landesmedienanstalt*) is sent into battle against Elon Musk and Twitter/X to find out whether the algorithm is being manipulated to give certain tweets greater reach. The asymmetry of the situation is also evident when it comes to the weak regulatory power of the German Federal Antitrust Office (*Bundeskartellamt*). The current *status quo* of digital monopolies shows that the purely product market-related activities of the German Federal Antitrust Office have had little impact on the evolution of the digital media markets in recent decades. A look at the *status quo* of monopolies and oligopolies clearly shows that, if the German Federal Antitrust Office had not existed at all and we had simply left the digital markets to their fate, the resulting market order would have been exactly the same. It follows that ...

Guideline 4: In order to protect people in Germany from the potentially disastrous consequences of digital monopolies in the media, we need an organisation that can deal with digital corporations quickly, competently, efficiently and on an equal footing. The goal would be to regulate digital corporations as efficiently, clearly and strictly as Amazon regulates its own marketplace. Therefore, responsibility for digital markets as a whole should be transferred to a new federal agency (working title: 'The Authority for Fair and Free Competition in Digital Markets'). This authority would also have to take into account the media law implications of digital regulation. The various authorities currently responsible (on the federal and State level) would staff the executive committee of the new authority in cooperation with one another so that the two could work together smoothly. An organisation jointly staffed by the German Federal Antitrust Office and the media authorities of the federal States would also be conceivable.

Due to the speed of digital transformation, digital corporations have often succeeded in tapping into markets and establishing de facto control without the responsible authorities and institutions being able to protect the interests of the people affected. Network effects have given rise to robust structures with noticeable market-closing effects and considerable financial power, which have made it possible to seize additional, adjacent markets (e.g. the development of tools in the field of artificial intelligence). This creates barriers to market entry for innovative competitors. Legal regulations to limit abusive exclusionary practices were often introduced many years too late. This leads to the following conclusion...

Guideline 5: In the event of rapid changes in the market environment (such as in the case of generative AI, which is currently on the rise), the new digital authority should set up a fast-track task force to enable provisional regulations to be put in place until appropriate legislation is established. The power to issue such 'legislative decrees' (statutes, technical regulations) could also be provided for in broad, targeted framework regulations at EU level (model: Art. 49 DMA).

IV. Measures and implementation

The aforementioned *guidelines* challenge fundamental aspects and processes of current regulatory practice and are intended to provide a new framework that will enable stakeholders to respond more quickly and precisely to the current digital challenges.

In contrast, the following *measures* provide distinct solutions that break up the monopolistic usage structures of digital markets and open up large platforms (portals) to ensure diversity and competition. These measures are conceptualised as extensions of the right approaches from the DMA and DSA with the aim of reducing the extreme power asymmetry between the tech platforms and people and, above all, giving the users, who are responsible for the creation of large platforms in the first place through their participation, a participatory voice and involvement.

Some of these measures can only be implemented by broadening the interpretation of provisions that are already included in the recently adopted Digital Markets Act. In some cases, the DMA will have to be amended and expanded. This is easier and faster than enacting a specific piece of legislation. Furthermore, it is particularly important in digital legislation to think in terms of ongoing revisions and adjustments because the issues that are being regulated are also constantly changing and adapted legislation is therefore needed. Insofar as media phenomena are concerned, national media laws (in Germany, the Interstate Media Treaty) would need to be adapted and the State media authorities would have to be involved. In some cases, an interpretation by the courts, which would develop the law further, may help. Where legislative initiatives are necessary, the following sections are based on the typical duration of legislative procedures in the case of amendments.

A. Measures to restore diversity in the digital media market

1. General enforcement of open standards and interoperability

A reliable method for creating monopolies is to establish closed standards that bind users to a specific operator or service provider and severely restrict people's freedom to switch to alternative offers. Conversely, open standards offer a simple and proven method of quickly creating competition and diversity. This ensures that no single player has an

insurmountable advantage in the market. We should therefore introduce rules that require all digital companies with a turnover of 7.5 billion euro or more across the EU to offer all content available on their platforms exclusively via open standards so that it can be used independently of the operator. This would mean that users could seamlessly transfer all content, such as videos, images and text, from one platform to another as they wish. These open standards would also have to allow followers to be 'transferred' across platforms.

■ Political implementation and accountability: EU, federal and state legislation

■ Process/responsibilities: Application and modification of regulations (amendment and extension of Article 5 of the DMA, if necessary of the Telecommunications Act (Directive [EU] 2018/1972); national media legislation) European Commission, State media authorities, European and national courts (enforcement of regulations)

■ Difficulty: Medium

■ Time frame: 2027

2. Full outlink freedom for content creators

The permeability of platforms is directly linked to the issue of open standards. If all content is created on the same open standards, it can also be shared across different platforms. We should therefore require all platforms (with global annual revenues of 500 million euro or more) to enable outlinks at every level of content, i.e. at the headline level, the image or video level and the text level. Furthermore, we would have to ensure that, when clicking on an outlink while using an app, the user automatically exits the in-app browser and is able to access the selected content outside the app. Every click on a piece of content with an outlink should be considered as a decision by the user to leave the platform.

In addition, we would have to ensure that, through the progressive application of the Digital Markets and Digital Services Act, platforms do not use algorithms to disadvantage posts that contain outlinks. Any structural barrier to outlinks, no matter how small, as well as the mere discrimination or 'dimming' of posts containing outlinks, would have to be legally classified as abuse of technically possible exclusivity (insofar as this constitutes a monopoly-like power). Acting out of self-interest, meaning the abuse of such a dominant position, should be punished just as severely as other antitrust offences, even if the self-advantage does not concern products but 'only' information and communication. The underlying principle is therefore that anyone who wants to be an open platform maintained by the work of its users must allow those same users to attract traffic to their own offerings through their content without discrimination.

■ Political implementation and accountability: Germany / Federal States, insofar as they are willing to monitor content through the application of federal law

■ Process/responsibilities: Application and enforcement of Digital Markets Act (Articles 5-7) and Digital Services Act (Article 14) as well as national media legislation (e.g. Sections 82, 84, 94 of the German Interstate Media Treaty)

■ Difficulty: Low

■ Time frame: 2024

3. Abolition of active traffic manipulation and sanctions for self-preferential treatment

Over the years, digital corporations have built ecosystems consisting of various interconnected quasi-monopolies and oligopolies. Given that they control the gateways, they can currently allocate traffic themselves (e.g. from Google to YouTube), without competitors having a chance to gain the share of traffic that their offers would receive under conditions of fair allocation. This practice should be prevented through consistent enforcement of the law. As outlined already above (IV, 2), gatekeepers should not be allowed to 'dim down' the visibility of posts that contain outlinks. On top of that, gatekeepers should not actively manipulate traffic in any way to favour their own offerings. Traffic flows should be checked by independent institutions through scientific measurements at regular intervals. Such traffic manipulation also constitutes abuse of a dominant market position and in the future should therefore be punished in a similar way as serious violations against antitrust law.

■ Political implementation and accountability: EU, federal legislation

■ Process/responsibilities: European Commission, national antitrust authorities (application of the DMA)

■ Difficulty: Low

■ Time frame: 2025

4. Payment of full tax liability in the country where economic gains are generated

Digital corporations should pay taxes in Germany on all profits they generate in Germany. This is a competitive, diversity-preserving and democracy relevant aspect: media activities in Germany take place in the same attention market as the editorial media which are based locally, which means that they are in competition with digital corporations. Disadvantages should therefore be eliminated. Otherwise, the relatively higher tax burden is a factor that allows big technology companies (Big Tech) to drain and systematically destroy our democratically minded media system.

■ Political implementation and accountability: Germany / European national states

■ Process/responsibilities: Tax legislation (sales tax, income tax, corporate tax)

■ Difficulty: Low

■ Time frame: 2025

5. Communitisation of data – opening up to competition

The services offered by platforms are essentially created through the collaboration of users. Case law that is in step with the digital age should take this fact into account and identify ways in which the value of data can be made available not only to digital corporations but also to society, which produces and generates this data in the first place.

Or to put it another way: Legal frameworks should be designed to ensure that digital corporations do not gain any competitive advantage over potential competitors through their exclusive ownership of data. They would therefore have to make aggregated and anonymised data available to the public and to science. This would enable competitors or start-ups to build products that are on par with those of digital corporations and start developing directly on a competitive basis.

Once again, platforms that do not want to share this data should clearly limit themselves to their role as passive service providers. Making data available explicitly applies to all content (texts, pictures, videos, etc.) published by users on social media as well. Every company therefore has the same starting conditions as Meta or Alphabet, for example, which in turn enables competition in the field of generative AI (ChatGPT, etc.).

It should be added that the legitimate demands of commercial copyright holders, in particular for fair payment, are not restricted by the proposed granting of access. On the contrary, attractive options for multiple use are likely to arise here.

■ Political implementation and accountability: EU, European national states, authorities

■ Process/responsibilities: Extension of the concept of the Data Act to user and communication data, exercise of prohibition rights under the EU's General Data Protection Regulation (GDPR), e.g. data protection officers of the federal and State governments, remuneration of rights holders and copyright collecting societies for the use of copyright-protected works.

■ Difficulty: High

■ Time frame: 2029

B. Ensuring diversity, balancing the power of opinion, liability for content in the event of monetisation

1. Separation of channel and content on platforms relevant to democracy

The strict separation of channel and content has proven effective in media and telecommunications law to establish effective checks and balances. Digital platforms with a dominant market position in categories that play a central role in political opinion-forming (e.g. Google and YouTube by Alphabet, Facebook and Instagram by Meta, TikTok, etc.) would therefore have to be split into two levels at the company level. As a result, one entity would then monetise the distribution channel and the other entity would monetise that content.

For example, YouTube would have one company for YouTube Platform Services and another for YouTube Content Services. The video platform itself would have to be designed to be fully interoperable (see IV, A.1). From this perspective, YouTube Platform Services would be transformed into an operator that enables various providers (beyond YouTube) to operate channels independently and in competition with YouTube Content Services and to monetise them through advertising.

This would also empower the many creators and influencers, who would then be able to switch from one provider to another — and possibly find that they can achieve significantly higher earnings there — without leaving the platform itself (in this case, YouTube). Competition would also create transparency with regard to cost and profit structures within the respective platform. This would make it possible to compare key indicators in order to prevent any form of abuse of market dominance from the outset.

■ Political implementation and accountability: EU, Germany / National European States

■ Process/responsibilities: European Commission, federal legislature/State legislation

■ Difficulty: High

■ Time frame: 2029 (EU)

2. 30 percent market share cap in categories relevant to democracy

Digital platforms with a dominant position in categories that play an important role in political opinion-forming (search, free video-on-demand, social media) should, in line with the provisions of the German Interstate Media Treaty for nationwide broadcasting, be limited to, as a maximum, 30 percent of the share of the market in the respective media category. By separating channel and content (IV, B.1) or other options (e.g. syndication), it would be easy to allow additional competitors access to the same platform operator and to ensure that individual competitors do not exceed the 30 percent limit.

The respective market power would be measured annually by scientific means and reviewed by an independent authority (see below under IV, D1/2).

■ Political implementation and accountability: For Germany: Federal States

■ Process/responsibilities: State media authorities/Commission on the Determination of Concentration in the Media (*Kommission zur Ermittlung der Konzentration im Medienbereich* (KEK))

■ Difficulty: High

■ Time frame: 2025

3. Monetisation and distributor liability – Prohibiting the monetisation of illegal content

If platforms take on economic responsibility for content (e.g. through advertising), they should also bear full responsibility for the content and should be subject to liability for dissemination (see above). Any form of monetisation of content should entail the legal interpretation that the company has adopted the content used as its own.

This would make the platforms responsible for content that they monetise. This leaves open the option of maintaining feeds on platforms that do not assume liability for dissemination (e.g. 'Facebook / YouTube / Spotify unfiltered') provided that no monetisation through advertising or fees takes place in such feeds or contexts. In this way, every user would remain free to disseminate free (and 'unfiltered') expressions of opinion on such platform offerings – even in the case of potentially criminal content (in such instances the usual notice & takedown procedures would apply).

This principle would enable new and innovative designs that are at the cutting edge of digital technology. They would also represent a consistent separation between content that is financed through advertisement and content that is independently produced. In addition, this would result in clear labelling for ad-sponsored content, a model that is also used in traditional media, such as broadcasting and the press.

This would open up a wide range of new and attractive options for platform owners. For example, they could market attention inventories to authors with a wide reach and monetise them through advertising. Alternatively, agencies could act as content providers, bundling the content of many individual authors (creators, influencers, etc.) and taking on liability for the content on their behalf.

This scenario would solve several structural problems of the platform economy at once: First, freedom of expression would not be limited. Second, platforms could no longer pass on the core problem of their revenue model to the general public. Third, much of the digital content would be removed from the direct control of the platforms, which is in line with the digital corporations' self-image as the 'mere technical service providers' which they

claim to be. This is another reason why these measures would have a balancing effect on the aspect of opinion power. Furthermore, monetary incentives for racist or criminal content would be eliminated. At the same time, the regulations would also resolve the massive disadvantage of editorial media and have a positive effect on diversity and competition.

■ Political implementation and accountability: Germany / national European States

■ Process/responsibilities: Extension/supplement to Articles 6-9 of the DSA (EU), German respectively national legislation, courts

■ Difficulty: High

■ Time frame: 2027

4. Platform terms and conditions should be coordinated with the community

With the rise of platforms, a second 'legal order' is increasingly replacing our free and democratic legal order. These rules and regulations are currently largely shaped by the tech corporations, which also control the entire 'judicial system' within their platforms – i.e. options for appeal, appellate courts, trials and the organisational staffing of the 'judges'. This has the significant flaw that there is no separation of powers in such cases: plaintiffs, judges, the judiciary and enforcement are all controlled by the respective digital corporation.

Based on current laws, this is just as legal as and similar to the way that a supermarket is allowed to set house rules. Section 14 of the DSA only addresses a few issues within its legal framework. Since the economic value of these platforms consists almost exclusively of a network of users and the network effects that they 'create', it is not legitimate that these communities are not allowed to have a say in the network that they themselves are creating through their own work. An innovative solution could be to require platforms with revenues of 500 million euro or more across the EU to develop their terms and conditions and community standards in cooperation with democratically elected representatives of their users and to put them to a vote within the community. In case of doubt, platforms would also have to accept decisions that run counter to the economic interests of the platform owners.

Corporations that benefit from the many advantages of the platform business model would also have to accept such disadvantages. Such co-determination of the platforms by their communities would reconnect them to the participatory principles of the internet and at the same time prevent our free, democratically legitimate legal system from being increasingly replaced by the legal systems of tech giants in the future.

■ Political implementation and accountability: EU / national legislation

■ Process / responsibilities: Extension of the DSA (Art. 14), amendment of the NetzDG in Germany

■ Difficulty: High

■ Time frame: 2027

5. Introduction of appeal bodies / oversight boards by the community

Following the same logic, platforms should also create independent and neutral appeal bodies drawn from their user community. Similarly, independent oversight boards made up of users should monitor the various policies of the platforms and intervene in cases of doubt.

■ Political implementation and accountability: EU / national legislation

■ Process/responsibilities: Extension of the DSA (Articles 20-23), amendment of the NetzDG in Germany

■ Difficulty: High

■ Time frame: 2026

C. Measures to ensure the independence of digital media from the State

1. Disclosure of government interactions and conflicts of interest

Digital corporations that offer services in the field of digital media (e.g. Meta for Facebook, Instagram, WhatsApp; Alphabet for Google & YouTube, ByteDance for TikTok) should, as a basic condition of their economic presence in Germany or other EU Member States, transparently document any form of interaction with and influence by State institutions.

■ Political implementation and accountability: Germany / nation States, within the limits of the EU

■ Process/responsibilities: State Media Treaty; EU Media Freedom Act

■ Difficulty: High

■ Time frame: 2027

2. Separating business areas where there are conflicts of interest

Digital corporations should also no longer be allowed to engage in economic activities in the media sector in Germany if they are connected in any way to State institutions in the field of cybersecurity or are generally required to report to or disclose information to such

institutions. If digital corporations maintain such connections with governments or government institutions or if they have done so in the past or decide to partake in such business relationships in the future, they should outsource them to independent companies. If they are not prepared to do so, they should completely cease their economic activities in the media sector of Germany or the other European nation States. No conflicts of interest arising from media companies receiving payments or instructions from government institutions or being dependent on government institutions should be tolerated in the media sector.

■ Political implementation and accountability: Germany / European nation States, then EU

■ Process/responsibilities: Federal legislation, State legislation, EU legislation if applicable

■ Difficulty: High

■ Time frame: 2026

D. Control of market and opinion power

1. Disclosure of use, turnover & profit, taxes

Due to the extraterritorial structure of digital corporations, the amount of revenue or profit that they generate in a given country or how much they pay in taxes and where they pay their taxes is often unknown. There is also no access to the usage data of platforms, which would enable us as a society to determine the degree of media concentration.

The legal barriers to disclosing such information are currently insurmountable due to the legal protection of trade and business secrets. Nevertheless, we must find solutions here, insofar as the protection of our constitution and democracy requires it. We should therefore establish rules for all internationally active digital companies in the media sector with a turnover of more than 500 million euro in Germany and 7.5 billion euro across the EU. These companies should be required to disclose their turnover and profits generated in the country (or in the EU if this relates to the EU as a whole), as well as their usage data, to a supervisory authority yet to be designated and on a quarterly basis. The information would be kept confidential but (in the example of Germany) would also be available for consultation by government tax authorities, antitrust authorities, the Commission on the Determination of Concentration in the Media (KEK) or other legitimate institutions. The usage data provided would have to be sufficiently detailed: How many people visited the platform (unique users)? How many sessions? How long were these sessions? How much aggregate usage time did the platform achieve (total duration)? In this way, we can immediately create a reliable set of data as a basis for the appropriate taxation of big tech and the assessment of concentration. On top of that, the tech

corporations can also take the opportunity to publish such data openly, fulfilling their often self-imposed demand for transparency.

■ Political implementation and accountability: Germany / European nation States, EU if applicable

■ Process/responsibilities: Federal tax legislation; antitrust legislation, tax and antitrust authorities

■ Difficulty: High

■ Time frame: 2026

2. Review of competition and media diversity through scientific standards and independent authorities

Competition and diversity in digital markets should be continuously reviewed through specific, periodically published scientific studies commissioned by the newly formed digital authority.

Particular attention should be paid to the digital media market. As in the analogue media, market dominance in categories relevant to democracy would be reviewed by independent institutions and determined by equally independent periodic scientific measurements. These analyses would have to be based on real usage measurements and aggregated usage time (reach considerations are not sufficient here). They could be compared with the data provided to us by the platforms (see IV, D.1).

■ Political implementation and accountability: Germany / European nation states

■ Process/responsibilities: for Germany: Federal states, expansion of the KEK's area of competence

■ Difficulty: Easy

■ Time frame: 2025

V. Implementation: Timeframe

The implementation of the schedule is shown in the following diagramme, including the respective responsibilities marked in different colours.

As mentioned at the outset, these proposals might seem unrealistic and utopian. But is that really the case? Much of what is required calls for strong political will to protect our democratic order and some measures will require EU initiatives. But it is worth pursuing these proposals. If we make the constitutionally compliant design of digital media markets our common priority, then we can make a difference. It can be done in a relatively

short period if there is political will. For example, it took just nine months to draft the Constitution of the Federal Republic of Germany. Who — except ourselves — would prevent us from reclaiming a manageable part of our living environment for our society in a free and democratic manner?

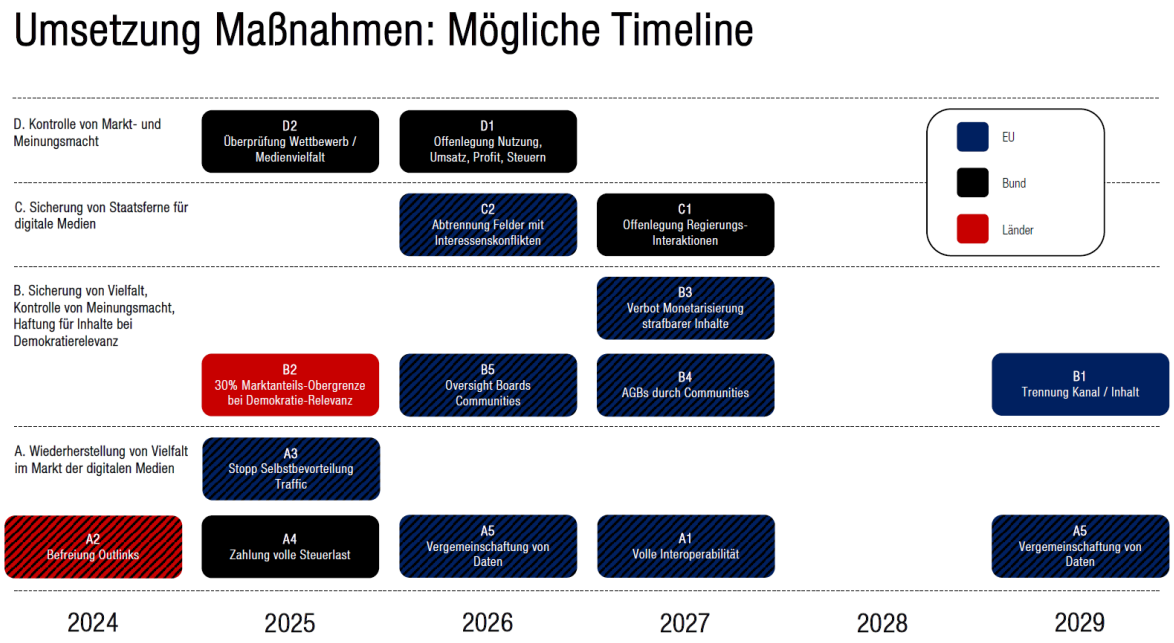

Figure 2: Implementation Timeline

We should be further motivated by the fact that all democratic parties are likely to agree quickly and without reservations to the proposed package of measures. Parties on the left are likely to categorically reject the abolition of equal opportunities in the digital world and the massive social inequality within the digital economy (see Schaupp 2021 on ‘cybernetic proletarianisation’ under the conditions of the platform economy). Conversely, the systematic abolition of open markets and fair and free competition by digital monopolies is likely to be fundamentally rejected by parties favouring free-market economics.

The liberation of digital media is therefore certainly challenging from a legal perspective. However, politically speaking, it is child's play and, for any self-professed democrat, there is really no alternative: the internet should be accessible to all people and not just belong to a few digital corporations. We therefore see this draft as a discussion paper and welcome feedback, suggestions and criticism. Above all, we welcome suggestions on how we can achieve the goal of democratically liberating the digital media markets even more quickly and consistently than the potential solutions we have outlined here.

1 Note on the online survey, November 2023: We chose a typical, everyday situation involving media use and asked users which media they use for the specified purpose. We asked the question openly and without any guidance and did not allow for multiple selections or multiple choice answers in order to rule out any influence. Users thus had no choice but to spontaneously express their own opinions in a free text field. The question asked was: "There are currently many political crises around the world. We would be interested to know which media you use to keep yourself informed about current events. Please list at least three media outlets that you use most frequently for this purpose in brief bullet points." The survey was conducted via the provider Appinio. A total of 1,000 people aged between 16 and 65 were surveyed. The sample is representative of the selected age group (16 to 65 years) and representative in terms of the proportion of women and men. Since participants register for such surveys voluntarily, we can expect distortions in the composition compared to a random sample. Furthermore, we assume satisficing effects, which typically lead to an overrepresentation of traditional media (in this case, television, radio and newspapers). However, we consider the set-up useful for our research interests, as it provides an indication of the heterogeneity of users' associations concerning the term 'media'. The results of the survey shown here will also be the subject of a follow-up publication.

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