

BOOK REVIEW

Unlawful Content Online: Towards a New Regulatory Framework for Online Platforms. Luxembourg Legal Studies – Volume 21 by Carsten ULLRICH, Baden-Baden, Nomos, 2021, 650 pp.

Peter Mezei 

University of Szeged, Institute of Comparative Law and Legal Theory, Bocskai street 10-12, Szeged, 6720, Hungary
Email: mezei.peter@szte.hu

Carsten Ullrich's monograph¹ *Unlawful Content Online: Towards a New Regulatory Framework for Online Platforms*, based on his PhD thesis, belongs to those few works that will serve as a guidepost long after the closure of the European Union's reforms of the digital single market (DSM). The DSM was triggered by the enormous legal challenges of the platform economy, and the list of those challenges will only grow in the course of time. In order to successfully regulate these tectonic legal changes, a uniform, holistic approach is required. Thus we need a horizontal, all-encompassing (or at least more-encompassing) approach in the academic discussion of the topic. Ullrich's book not only meets this demand, but also it arrived at just the right time. It was published following the acceptance of the Copyright in the Digital Single Market Directive but before the finalisation of the Digital Services Act. Thus, it is built on the systematic, legal and socio-technological analysis of the robust *acquis*, case law and academic resources of the past and it simultaneously shows the way forward.

First, the monograph mirrors the introduction of the platform regulation's history, from the early Web 1.0 to the age of intermediary powerhouses, including definitions, technological aspects, key actors and platform liability (and safe harbours). These topics dominate the first major part of the book (Chapters 1–3). While this historic and descriptive approach would not bring the expert reader that much novelty, it is definitely necessary once we get to Chapters 4–6, where Ullrich boldly directs our attention to, first, the normative enforcement gaps of the platform age and, second, to the enforcement practices. The book covers a myriad of topics under Chapter 4, including personality and public order overlaps (defamation, hate speech and terrorist content), the economic aspects of intellectual property (copyright and trademark) and product and food safety regulations. From these, however, Ullrich cherry-picks the least discussed dimension of platform regulation, namely product and food safety, to be discussed further via case studies.

The book is structured along two main research questions. First, a rather poetic question is raised: is the then-current Electronic Commerce Directive still adequate to

¹ The monograph is based on Ullrich's earlier articles. Compare to C Ullrich, "Standards for Duty of Care? Debating Intermediary Liability from a Sectoral Perspective" (2017) 8(2) *Journal of Intellectual Property, Information Technology and E-Commerce Law* 111; C Ullrich, "A Risk-Based Approach towards Infringement Prevention on the Internet: Adopting the Anti-Money Laundering Framework to Online Platforms" (2018) 26(3) *International Journal of Law and Information Technology* 226; C Ullrich, *New Approach Meets New Economy: Enforcing EU Product Safety in e-Commerce* (2019) 26(4) *Maastricht Journal of European and Comparative Law* 558.

address combatting online harmful content? Second, by directing our attention to one of the author's key contribution to academia, can any new, alternative model for intermediary regulation be introduced to fight against illegal content?²

Ullrich rightly points out that his monograph has two key contributions to the academic discourse on platform regulation. From these, the first is the focus on product and food safety regulation. Academia so far has paid little attention to these topics. As Ullrich states in his book's preface, "academic coverage of the challenges of enforcing product and food safety law online is patchy at best".³ (We will get back to the second main contribution later on.) This reviewer, who has already had certain experience related to the intellectual property,⁴ data protection and hate speech dimensions of the Internet, cannot do anything but hail Ullrich's decision.

These topics are mainly approached from a practical/enforcement direction. Here, instead of further elaborating on the substantive law, the ways, methods and efficiency of these rules are tested. As Ullrich states, the analysis of such practice is twofold: the enforcement authorities' individual practices as well as the public authorities' collaboration with private actors are analysed. At this point, Ullrich switches his methodology from descriptive to primarily empirical. His sample consists of both in-person or telephone-based interviews and the independent completion of surveys. While "only" thirteen authorities are covered (from which one provided answers on both product safety and food safety issues, thus raising the number of total responses to fourteen), and from these responses only four covered food safety,⁵ such an amount of qualitative analysis is reasonable for reaching meaningful conclusions.

Ullrich's empirical approach and the ultimate outcome of the survey-based analysis confirm the validity of his claim regarding the second main contribution of the book to the existing discourse: namely, as Ullrich put it, "it will explore a regulatory model for content regulation and liability rules of online platforms, based on risk regulation and duty of care".⁶ Ullrich's regulatory reform proposal complies with his own earlier view that "[a] regulatory solution will need to be specialised, technically flexible and scalable. It will need to answer the transnational challenges posed by the internet and globalisation. At the same time, it needs to be democratically accountable and transparent."⁷

In sum, the systematic analysis of the European Union's – and, to a certain degree, the USA's – legal system, the complex research methodology, the extensive literature, including case law (which surpasses sixty-two pages in the monograph), as well as the interview questionnaire⁸ make Ullrich's monograph imperative in the field of research and policymaking on platform regulation.

² See C Ullrich, *Unlawful Content Online: Towards a New Regulatory Framework for Online Platforms*. Luxembourg Legal Studies – Volume 21. (Baden-Baden, Nomos 2021) p 33.

³ *ibid* at p 42.

⁴ Compare to the key output of the collaborative research team of Work Package 6 of the reCreating Europe H2020 project: JP Quintais, P Mezei, I Harkai, J Vieira Magalhães, C Katzenbach, SF Schwemer and T Riis, *Copyright Content Moderation in the EU: An Interdisciplinary Mapping Analysis* (1 August 2022), available at <<https://ssrn.com/abstract=4210278>>.

⁵ Ullrich argued that the "[r]esponse levels from Food Safety Authorities (FSAs) were markedly lower than in the area of product regulation. The low response in the area of food safety betrays a lack of perceived relevance of the topic. As will be shown, for many authorities, e-commerce marketplaces, though essential actors, remained beyond reach from regulatory or resource reasons." See Ullrich, *supra*, note 2, at p 421.

⁶ *ibid* at p 37.

⁷ *ibid* at p 45.

⁸ Annex I, *ibid* at pp 550–61.