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for Media Research at the University of Hamburg

Online Games – A High Level Quest for Media Regulation in Germany

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Outline

Online games as a phenomenon

Legal framework

Scope of European law

Scope of German law

Focus point: Youth protection

Lessons learned

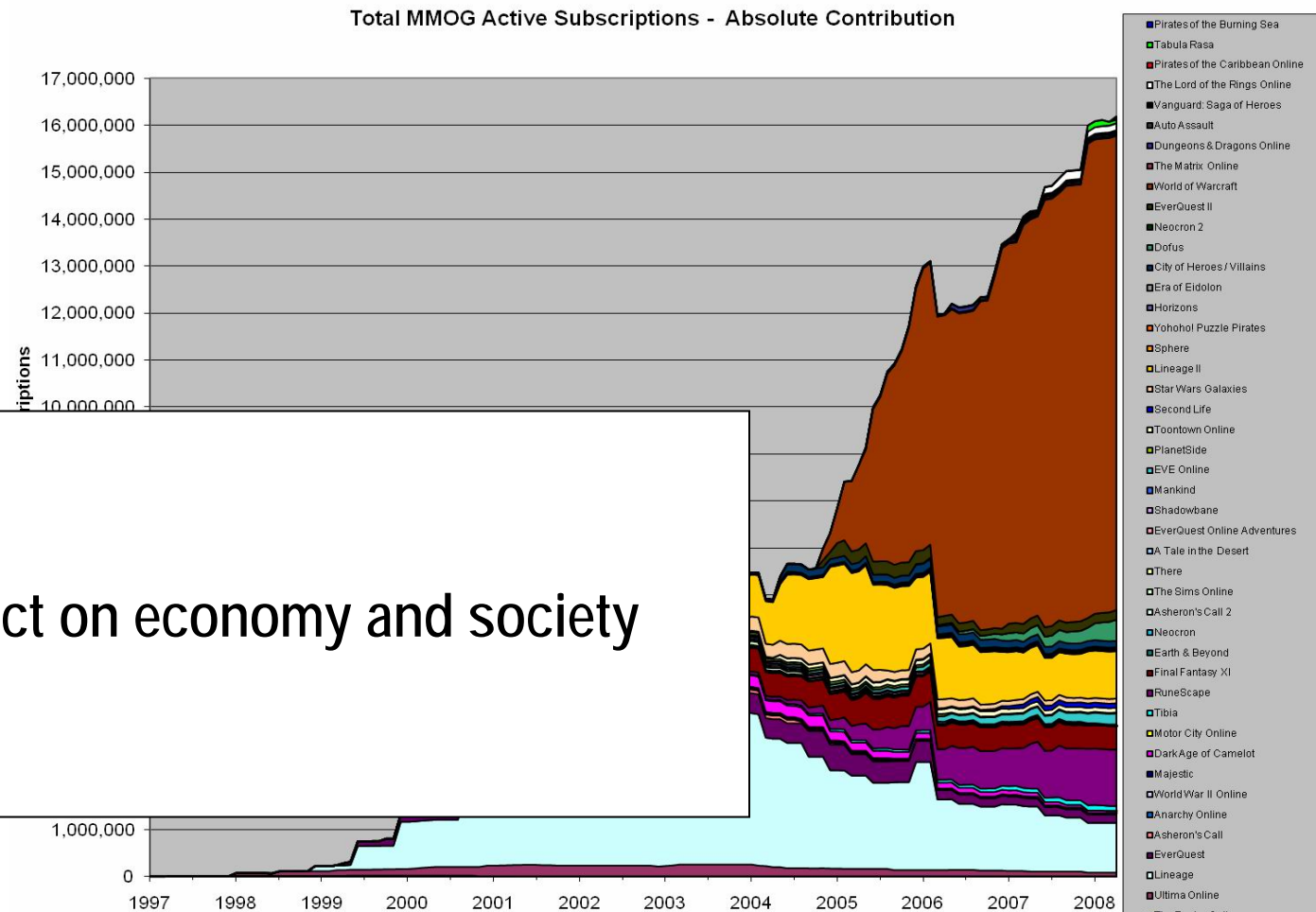
Online Games – Continuous Rapid Growth



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(Only) One
example:
MMOGs

→ Impact on economy and society



Online Games – The Phenomenon/-a

Very different types with most probably different legal implications:



Picture sources: <http://www.teagames.com/>

<http://www.bigpoint.com/>

<http://www.speedgamez.com/>

<http://www.flickr.com/photos/1001/151803717/>

<http://www.flickr.com/photos/mrbeany/1863137952/>

<http://www.flickr.com/photos/mixvio/1765751569/>

Regulatory Issues



[...]

Picture sources: http://community.ageofconan.com/conan/frontend/files/CONTENT/newSC-Lucis_picture027.jpg;
http://www.mad-arts.de/images/blog/070222_secondlife.jpg; http://meetschmitt.typepad.com/photos/uncategorized/2007/07/28/mcdonalds_in_game.jpg

Legal Framework of Online Games

I. Constitutional Law

Freedom of
expression and
the media

Basic economic
Rights (property,
freedom of choice and
exercise of profession)

...

II. European Law

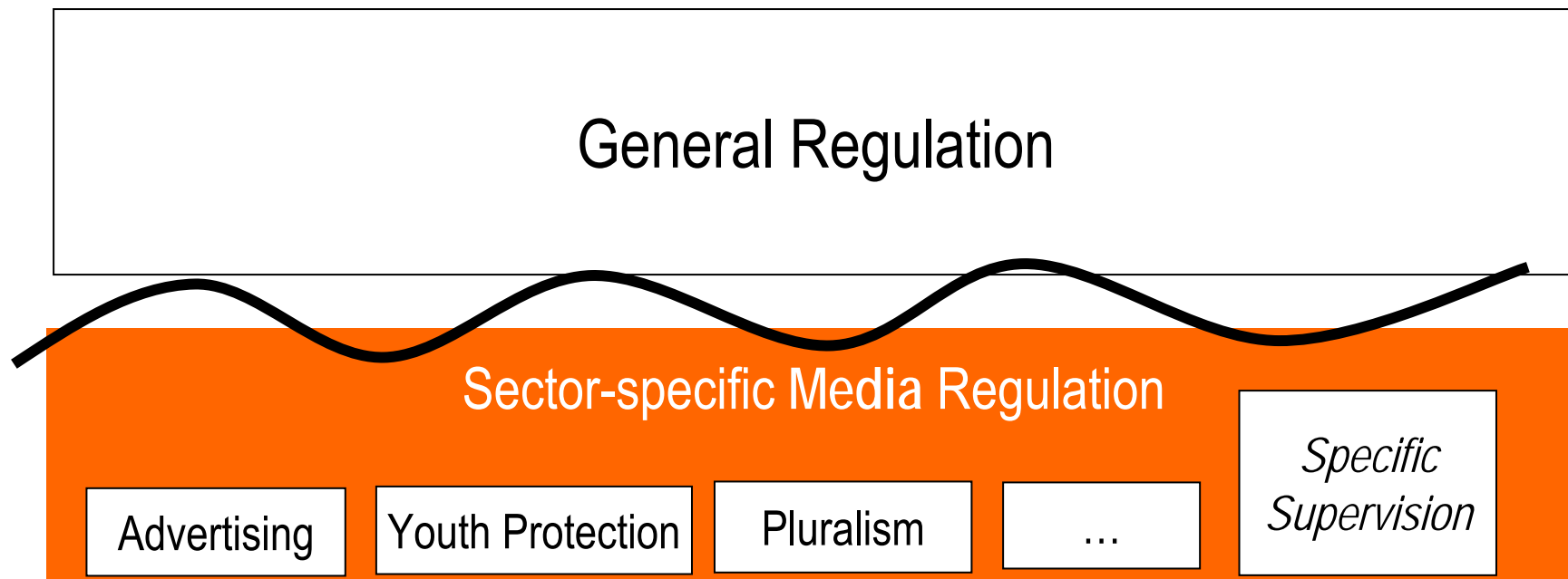
- E-Commerce-Directive
- Audiovisual Media Services Directive

Legal Framework of Online Games

III. National Law in Germany

Federal level	Telecommunications regulation	Economic aspects Telemedia (= “online services”) regulation	“Fixed media” Youth protection regulation	Privacy regulation (different laws for online and offline)	General regulation (competition law, tax etc.)
	Broadcasting regulation	Content aspects	Telemedia = “online media”		

Legal Framework of Online Games



 Scope of media regulation is of paramount importance

Scope of European Law

E-Commerce-Directive, “information society service”

- *information society service*: any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services

→ Focus point “normally provided for remuneration”; problematic phenomena:

- Online games by “private” developers, provided free of charge
- Online games, which are generally provided free of charge (F2P), whereas specific features can be only accessed when paid for (P2P)
- Boxed product games that are only playable online, while this actual usage is free of charge
- ...

Scope of European Law

E-Commerce-Directive, “information society service”

→ Other issues:

- It may become questionable, whether *persistent* online games / virtual worlds are “made available” on the individual request of the user, when considering that these games run autonomously on and on.
- Games can be highly *modular*. e.g. what about text-based or voice-based features inside the game?

Scope of European Law

Audiovisual Media Services Directive

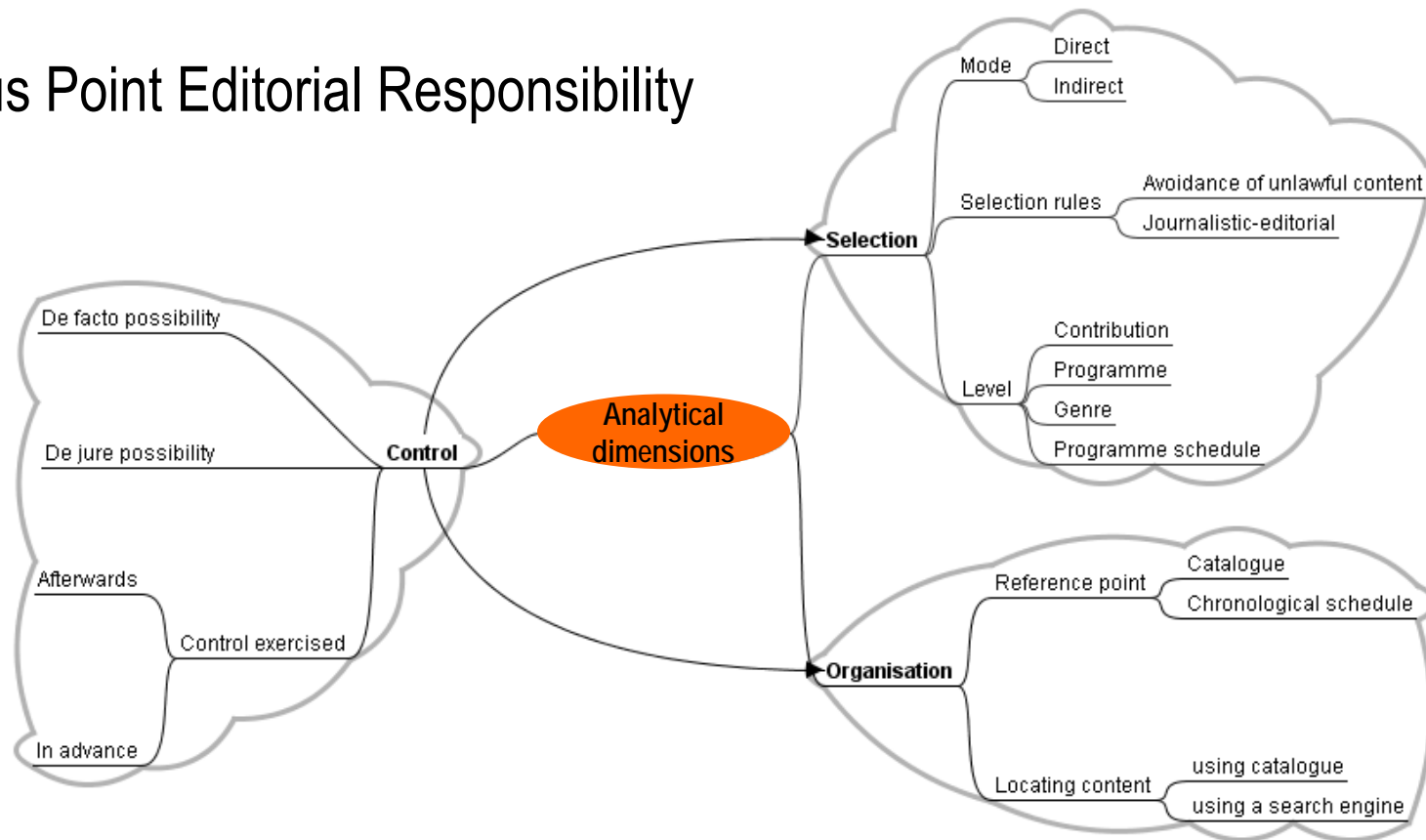
- Article 1 AMSD:

An *audiovisual media service* is a service [...] which is under the **editorial responsibility** of a media service provider and the principal purpose of which is the **provision of programmes** in order to inform, entertain or educate, to the general public by electronic communications networks [...]. Such an audiovisual media service is either a television broadcast as defined in point (e) of this Article or an on-demand audiovisual media service as defined in point (g) of this Article“.

Scope of European Law

Audiovisual Media Services Directive

→ Focus Point Editorial Responsibility



Scope of European Law

Audiovisual Media Services Directive

→ Focus point editorial responsibility

- Exercising effective control as a criterion for the definition of a service
- Effectiveness in this context means the legal and factual possibility of control by the provider relating to the communicative characteristics of a service.
- The provider must make the service distinguishable from other services of the same type by giving it certain communicative characteristics (by selecting and organising programmes)

Scope of European Law

Audiovisual Media Services Directive

→ Focus point editorial responsibility

Computer games take their concrete form through the *user's interaction*. So the *operator loses all control* over the audiovisual content seen by the user.

→ No selection and/or organisation by provider

→ Online computer games usually do *not fall within the scope of the AMS-Directive*.

Exceptions:

- In-game-broadcasting
- "Press conferences" in virtual worlds?

Scope of German National Law

Online Games as Telemedia

→ Very broad and unspecific definition:

Electronic information and communication services

→ Demarcation to specific other services/media is important:

- Broadcasting == high impact audiovisual media services
- Telecommunication == services relating just to transportation level
- Fixed media == not provided over electronic communication networks, e.g. DVDs, computer hard drives, etc.

Scope of German National Law

Online Games as Telemedia

→ A number of problematic cases arises:

Online-distribution vs. online-using of games

Locally installed clients

Online games (especially browser games) being
buffered and run locally as applets

Online games as a bunch of interconnected services with modular
structure → number of different services offered parallelly

Online games being only a small, yet fully integrated part
of a “main service” (e.g. mini-games within Facebook)

Scope of German National Law

Online Games as Telemedia

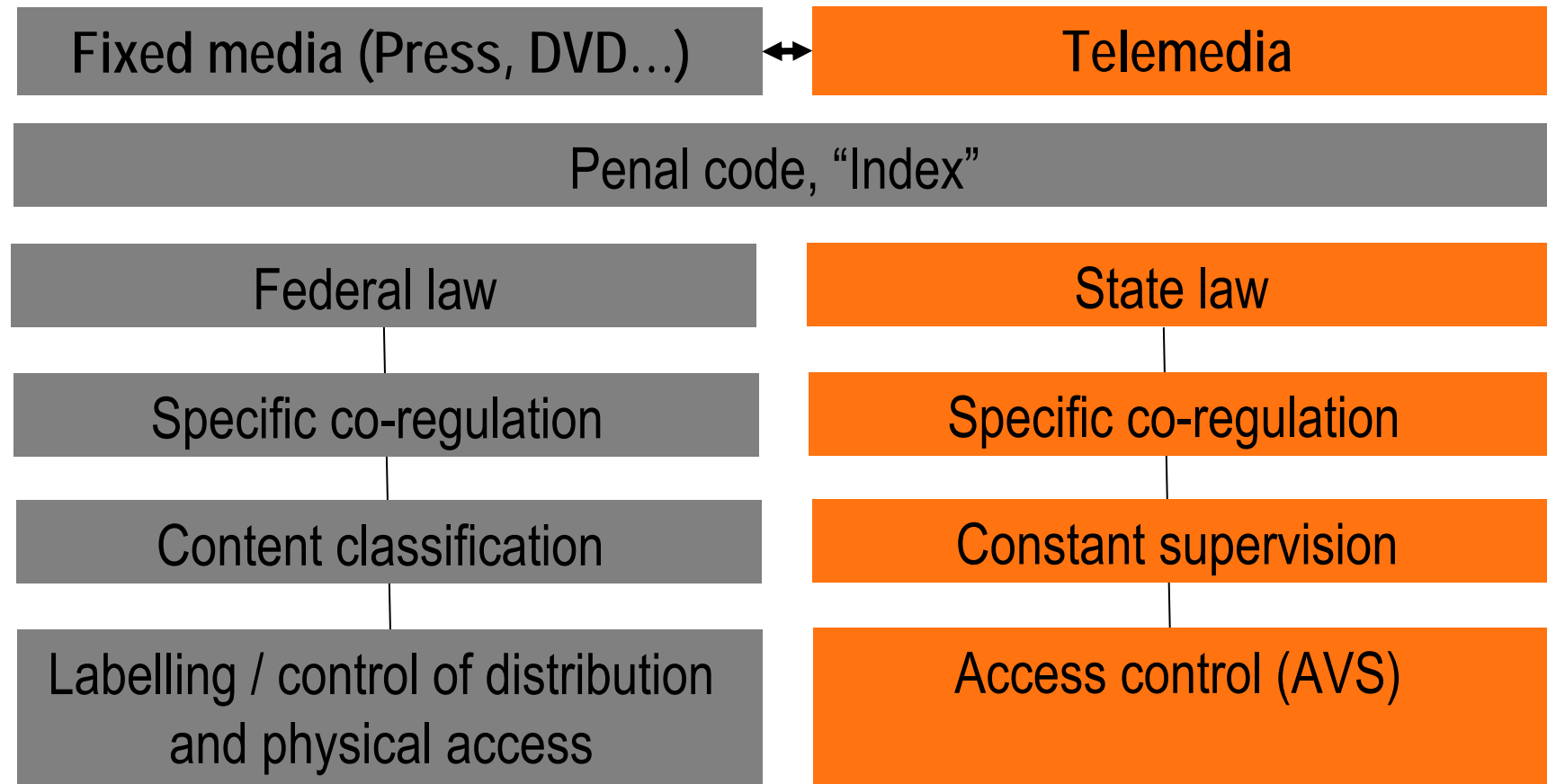
→ A number of problematic cases arises:

How to handle possible journalistic-editorial telemedia services?
(Game contents as editorial content?)

Who is the “provider” of online-games, actually? (developing studio,
publisher, game portal, server host, game host?)

Hybrid services and youth protection: different concepts for boxed
products and telemedia services

Focus Point: Youth Protection



Lessons Learned for Next Level

- Seeing games as a way to express oneself and, therefore, as a constitutionally protected form of communication
- Defining the scope of laws as a central issue
 - High season for conceptual jurisprudence
 - Graduated regulatory approaches to bridge the gap between media specific and general regulation
 - Considering “regulatory holiday” for emerging services
 - Defining the scope of laws means taking part in defining the media

Lessons Learned for Next Level

- Bearing the development paths of different communication services in mind
- Taking games as test cases for dealing with interaction and content created by users on platform
 - Need for clear cut rules for **liability** of platform providers – especially with regard to youth protection
 - Combining knowledge about media classification and internet regulation to deal with games
- As regards the downside of the German experience with a “zoo” of laws and regulators, the insight gained from snooker applies:

Lots of activity often means less control.



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Thank you for your attention!

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Further information available at <http://www.hans-bredow-institut.de/en/node>