

Editorial

by Karin Sein

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- 1 The almost-over year 2025 marks a shift in the meaning of the EU digital law. Originally intended to regulate new digital markets, provide a safer online environment, as well as to enhance competition and innovation, it has now taken on a new dimension – a geopolitical one. The new US National Security Strategy views EU rules on digital markets and digital services, particularly those affecting US Big Tech, as a threat to US national interests. What originally started as a classical market and safety regulation has suddenly become related to international security policy.
- 2 Another shift is the growing awareness of risks associated with AI and social media. Australia has already restricted access to social media for teenagers, and several EU countries are discussing whether to follow the path. Estonia, on the other hand, has launched a project to integrate artificial intelligence tools and skills into its school curriculum – hence, the national approaches vary between a complete prohibition and mandatory engagement.
- 3 It is therefore timely that the new issue of JIPITEC deals with several aspects of EU digital law. Gerrit Hornung and Hendrik Link welcome the introduction of individual rights, specifically the right to lodge a complaint and the right to explanation, in the Artificial Intelligence Act. As the use of AI has a significant impact on fundamental rights, these rights are vital individual remedies, although in some aspects, such as the subsidiarity clause in Article 86(3) of the AI Act, they come with considerable legal uncertainty.
- 4 The Christmas issue continues with the Digital Services Act (DSA), as Sarah Eskens explores the application of the DSA's intermediary services concepts to various WhatsApp and Telegram functionalities, raising the question of whether they could be classified as online platform services and are therefore subject to the requirements of the DSA. She concludes that whereas WhatsApp group chats are mere conduit or caching services, WhatsApp channels qualify as online platforms, and in the case of Telegram, things are even more nuanced. She observes that even if online spaces on messaging apps do not qualify as online platform services, they do have a semi-public character and may lead to public harms, indicating a gap in the current DSA.
- 5 Theodoros Chiou and Leander Stähler continue to explore the copyright law implications of AI training for 3D reconstruction purposes. They show that whereas 3D reconstruction techniques may involve copyright-relevant reproductions of 2D content/inputs at the training stage, this is not necessarily the case at the output stage. Hence, the 3D reconstruction models resemble 'virtual 3D printers' rather than '3D collage machines'.
- 6 Barna Arnold Keserű discusses whether photorealistic human faces can be protected as trademarks under European Union law. He observes that the EUIPO case law from 2017 to 2024 tends to accept it. However, this shift does not come without challenges, be it the concept of genuine use or a potential conflict between trademark and personality rights.
- 7 Finally, Diogo Sasdelli and Thomas J. Lampotlshammer analyse the lawfulness requirements for storing customer data in the Digital Product Passport under the new Ecodesign for Sustainable Products Regulation. They note that the new Regulation

sets high standards for the proof of the consumer's explicit consent, but also presents major challenges with respect to the principle of ne bis in idem.

- 8 Writing this editorial in Tallinn, not far from the Eastern border of the EU and only a couple of days before the holidays, raises mixed feelings. Christmas is a time of gratitude. Perhaps it takes someone raised and educated in the Soviet Union to understand what real luxury it is to read, teach, and discuss EU law as part of our everyday job. As academics, we often take a critical stance on a certain piece of EU legislation or CJEU judgment – and rightly so. However, books like Stoltenberg's memoirs about his service as a NATO secretary-general should remind us that the opportunity to do so is something that we should not take for granted.
- 9 May JIPITEC's new issue add to this wonderful opportunity of discussing European digital law!

Happy holidays and a successful year 2026!

Karin Sein