

## ESSAYS II/2022

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# DOPING IN ESPORT<sup>1</sup>

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## 1. INTRODUCTION

On 15 March 2015, the fifth *Counter-Strike Global Offensive World Championship* took place in Katowice, Poland, with a prize pool of US \$250,000. The event included 16 teams playing and 100,000 live spectators, whilst breaking Twitch records with more than one million online viewers following the tournament.<sup>3</sup> Yet, that is not the only reason this tournament is remembered. In fact, a few months later professional player Kory Friesen, Aka *Semphis*, admitted that he and his team, Cloud9, were using Adderall during the tournament in Poland.<sup>4</sup>

During an interview with the content creator Mohan "Lauders" Govindasmy, the pro player not only claimed that all the players on his team, one of the most prominent ones, were using Adderall but also candidly admitted that all the players belonging to the *E-Sports Entertainment Association League* were using the drug during tournaments.<sup>5</sup> Although it has been se-

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<sup>1</sup> The essay was written in the Spring 2022 semester for the course MVV793K Internet Gaming and Entertainment Law.

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<sup>3</sup> ESL and Intel bring the IEM World Championship back to Katowice on March 4-6, 2016. In: *Esifaceitgroup.com* [online]. 24. 11. 2015. [cit. 1. 5. 2022]. Available at: <https://about.eslgaming.com/blog/2015/11/esl-and-intel-bring-the-iem-world-championship-back-to-katowice-on-march-4-6-2016/>

<sup>4</sup> WOLF, Jacob. Semphis: Cloud9 was on Adderall at ESL Katowice. In: *Dotesports.com* [online]. 14. 6. 2015. [cit. 1. 5. 2022]. Available at: <https://dotesports.com/counter-strike/news/counter-strike-semphis-adderall-esl-2085>

<sup>5</sup> LEWIS, Richard. Cloud9 addresses Adderall accusations. In: *Dotesport.com* [online]. 24. 6. 2015. [cit. 1. 5. 2022]. Available at: <https://dotesports.com/counter-strike/news/cloud9-adderall-accusations-statement-2071>

ven years now, *Semphis'* allegations seem to have started a process of anti-doping regulation policies even in competitive gaming, whose institutions had never before taken the issue seriously. Despite many may think otherwise, the eSports phenomenon is not so recent, in fact, it can be said to have been an almost immediate consequence of the advent of computers.

Indeed, the first known computer competition dates back to 19<sup>th</sup> October 1972 at Stanford University in California, where the '*Spacewars Intergalactic Olympics'* were held.

The tournament's first prize was an annual subscription to '*Rolling Stones'* magazine, which seems ridiculous compared to the million-dollar prizes that can be won today in eSports, but already with the spread of coin-ops in arcades and the first home consoles, the first real championships began to emerge.<sup>6</sup>

Electronic sports, also called eSports, is a form of competition that takes place through the use of video games. Competitive gaming does not only concern professionals, but also semi-professionals and amateurs who organise themselves, usually in teams, to face each other via electronic devices.

The confrontation between players is based on hand-eye coordination, and organisational and team skills, which makes the eSports phenomenon an inclusive environment accessible to all without distinction due to the gender, race or physical abilities of each player. Usually, competitive gaming tournaments are run by different leagues or committees that, also under the guidance of the various sponsors, decide on the terms of the event that players must adhere to in order to participate. What is lacking in the eSports environment, however, is a single, delineated system of rules that can prevent abuses committed and suffered by players, who are often also very young.

The purpose of this paper is to understand the actual relevance of the doping problem in the world of eSports and how much the need for internal regulation is felt. In the first part, I will briefly discuss the similari-

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<sup>6</sup> SCHOLZ, Tobias, Julia HITSCHER. *eSports Yearbook 2013/14*. 1. Issue, Norderstedt: Books on Demand, 6. 10. 2015, p. 9.

ties and differences between traditional sports and eSports and then focus on the policies adopted with regard to doping, at first in relation to e-doping, i.e. the use of unauthorised in-game technologies during competitions. Thus, I will focus on the problems of substance abuse in competitive gaming and how efforts are being made to curb the damage caused by them. Finally, I will focus on how these vague regulations collide with a world as peculiar as eSports.

## 2. ELECTRONIC SPORTS VS TRADITIONAL SPORTS

In every corner of the globe, despite climatic, environmental or cultural differences, there is at least one thing that characterises people - everyone loves healthy competition. There are those who take part in it and are showered with glory and those who are fulfilled even just by playing the role of spectator. Gathering in a stadium, around a TV or even a computer to cheer on your favourite team or player is something we have all done at least once. If until a few years ago the idea of cheering on a teenager playing video games might have seemed unusual, today it is more than normal. In fact, according to *Newzoo's* projections, in 2023, live streams on Twitch will reach 1 billion viewers.<sup>7</sup> Despite, the growing interest in eSports and the attention it receives from the media, it is still difficult for our society to perceive competitive gaming as professional as we do with traditional sports, which is one of the reasons why there are gaps in its regulation.

The similarities between traditional sports and eSports are now many, starting with the presence of teams, sponsors, managers and events, but also the creation of special scholarships or the provisions for issuing visas to participate in overseas competitions. Obviously, the similarities between the two worlds are not only limited to the positive sides, in fact, even in eSports we are faced with match-fixing, doping, gender discrimination and

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<sup>7</sup> WILSON, Jason. *Newzoo: Esports revenues will hit \$1.38B in 2022*. In: *Sportsbusinessjournal.com* [online]. 19. 4. 2022. [cit. 1. 5. 2022]. Available at: <https://www.sportsbusinessjournal.com/Esports/Sections/Finance/2022/04/Newzoo-Esports-Report-2022-Revenues-Livestreaming-Co-Streaming.aspx#:~:text=It%20should%20grow%2013.8%25%20this,a%20CAGR%20of%20%2B16.3%25>

exploitation of athletes.<sup>8</sup> As can be seen, there are many similarities between traditional sports and eSport, but we should not forget the profound differences either.

The first glaring difference that characterises traditional sports is certainly the distinct physical preparation required in the two areas. ESport athletes, for example, require considerable hand-eye coordination, which requires multiple daily training sessions, but unlike traditional sports, they do not focus on the muscular development of the athlete's physicality, preferring focus, problem-solving and team skills. Requiring no special athletic training or equipment, eSports are a more accessible and inclusive field than traditional sports, involving only a device, talent and skills to excel in competitive gaming.

Suchlike a vast lucrative market in the absence of official recognition, however, also opens fertile ground for the darker sides of traditional sports such as doping and betting, which in the absence of regulation see the proliferation of match-fixing and substance abuse.

Such a peculiar field can only lead to new ways of approaching these issues. For instance, when we talk about doping in eSports we cannot limit ourselves to the use of performance-enhancing substances, but we also refer to the phenomenon of e-doping.

### **3. E-DOPING**

ESports is now a multi-billion-dollar industry involving millions of people connected across the globe as both players and spectators. A market of this size has quickly brought to the surface dynamics that, as in traditional sports, have a simple goal: cheating. The particular way in which e-competitions are conducted, however, also paves the way for alternative methods to those used in traditional sports. When we speak of doping in eSports, we are not only referring to the use of substances to improve one's skills during a match but also to e-doping.

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<sup>8</sup> FUNK, C. Daniel et al. eSport vs. Sport: A Comparison of Spectator Motives. *Sport Marketing Quarterly*. 2018, vol. 27, no. 2, p. 108.

What is commonly referred to as e-doping is the use of bugs, programmes or software that can alter the game itself during a match. These activities are difficult to detect in practice and since there is no precise regulation, the task of preventing the use of these technologies has fallen into the hands of those who publish the games or the companies that regulate the tournaments. Specifically, the activities that can be considered e-doping are numerous and continue to be implemented.<sup>9</sup>

For example, *aimbots* can be used to alter the outcome of a game to help better aim, or a lag can be used to slow down or distort the challenger's gameplay. Other technologies capable of altering the outcome of a game can be, for instance, world-hacking, which consists of a programme launched by a third party that allows one to bypass the mechanisms normally present in-game by allowing access to information such as the positions of other players on the map that are not accessible during a game. E-doping can also consist of the removal of elements present in the video game or the more widespread practice of character sharing, which, especially in Massively Multiplayer Online Role-Playing Games (MMORPG) allows for rapid level advancement by creating unequal situations between players.<sup>10</sup>

There is a multitude of ways in which a player can cheat a game and it is therefore understandable why game creators do not trust players, as these forms of cheating have evolved over time. In many cases, players resort to modifying or manipulating the game code or even the software and intrinsic components of the game system infringing, also, on the intellectual property rights of the game developers.

#### 4. TRADITIONAL DOPING

Now that we have explored the concept of e-doping, which appears to be unique to eSports, we can move on to analyse another misbehaviour that

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<sup>9</sup> CHANDA, Subhrajit, Taurun SINGH and Shaun STAR. Contouring E-Doping: A Menace to Sportsmanship in Esports. *Turkish Online Journal of Qualitative Inquiry*. July 2021, vol. 8, no. 12, p. 967.

<sup>10</sup> CHANDA, Subhrajit, Taurun SINGH and Shaun STAR. Contouring E-Doping: A Menace to Sportsmanship in Esports. *Turkish Online Journal of Qualitative Inquiry*. July 2021, vol. 8, no. 12, p. 968-969.

has characterised traditional sports since time immemorial and cannot be ignored in the eSports contest. The abuse of energy drinks, caffeine and performance-enhancing pills in eSports is nothing new, but despite this, the seriousness of the situation has always gone unnoticed.

The scandal involving Kory Forsen in 2015 was the first real warning sign that was heard by institutional eSports figures. *Semphis'* allegations generated much uproar and led to the introduction of the first control systems within tournaments. It was not, however, the first time the world of eSports had seen statements of this kind. In 2015, we also came across another interview, this time anonymous, in which a young pro player recounted his experience. His words suggest that taking performance-enhancing pills, such as Adderall, is almost part of the norm during tournaments, thus the pill was offered to him by a teammate shortly before the match. The then 16-year-old did not hesitate to take it and although he is aware of his mistake now, he does not deny that he felt its incredible benefits during the tournament.<sup>11</sup>

Adderall, like Vyvanse and Ritalin are similar substances, is an amphetamine-based drug usually prescribed for the treatment of Attention Deficit Hyperactivity Disorder (ADHD) or narcolepsy. The effects of these pills mainly affect the cognitive area, increasing concentration abilities and reaction times. There is therefore no doubt that this is a performance-enhancing substance, as Dr Gary Wadler, the former chairman of the committee in charge of drawing up the list of prohibited substances for the World Anti-Doping Agency in 2012, also said. Despite this, it is well known how ESL's pro gaming director Michal Blicharz downplayed the issue at the time by stating that performance-enhancing substance abuse was not widespread behaviour.

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<sup>11</sup> PARKIN, Simon. Winners might use drugs - Does eSports have a doping problem? In: *Euro-gamer.com* [online]. 8. 4. 2015. [cit. 1. 5. 2022]. Available at: <https://www.eurogamer.net/winners-might-use-drugs>

The top eSports organisations have repeatedly tried to dismiss the issue with superficiality, not considering traditional doping a real problem in the world of competitive gaming.<sup>12</sup>

The issue has therefore remained unresolved for a long time before being addressed, primarily due to the lack of an appropriate institutional body to regulate eSports. However, that is not the only case. In fact, the reasons that have contributed to making this process long and tortuous are many.

Starting with the fact that it was not a physical performance, thus there was no conception of the usefulness of using pills as doping factors in cyberspace, but as previously mentioned, Adderall or 'ADDY', as it is often called in gamer communities, would lead to an exceptional increase in focus and hand-eye coordination that are fundamental into the eSport competition.

Another motivation concerned the fear of putting an emerging and peculiar sport such as competitive gaming in a bad light in the eyes of the international sporting community. This motivation was partially set aside thanks to the intervention of Alex Lim, former General Secretary of the International E-Sports Federation and who fought to have WADA add eSports to the list of sports for which the use of beta-blockers such as Adderall is prohibited. Lim, in fact, had as his objective the health of the players themselves who often, being very young and unprotected by the lack of regulation, do not even understand what side effects the abuse of this type of drug may entail.<sup>13</sup>

Finally, another possible reason why this regulation process is slowing down exponentially: a considerable number of gamers actually suffer from ADHD and therefore need to take drugs such as Adderall because of it. In contrast to many other conditions, however, ADHD develops on a spectrum and it is not certain that people on the spectrum all need the same treat-

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<sup>12</sup> PARKIN, Simon. Winners might use drugs - Does eSports have a doping problem? In: *Eurogamer.com* [online]. 8. 4. 2015. [cit. 1. 5. 2022]. Available at: <https://www.eurogamer.net/winners-might-use-drugs>

<sup>13</sup> *Ibidem*.



ment. For example, there are people who may need to take 5mg doses as well as others who may need 10mg. Given the very personal nature of the prescription, therefore, one cannot introduce a general limit to the use of the substance when necessary, nor disqualify those who use it following their doctor's instructions.

The first concrete steps forward were only taken in the wake of the *Semphis* scandal, which sanctioned the actual beginning of an, albeit feeble, regulation.

## 5. REGULATION

As we have seen, competitive gaming is not immune to the viruses that afflict its sibling, traditional sport, indeed given its peculiarity it demands greater attention in regulation, which must also juggle in cyberspace. The need to regulate these behaviours and prevent them is deeply felt in the eSports landscape, especially due to the fact that there is no official institution that can deal with them. The task of finding a solution is burdened on the distributors of the games and the organisations that run the tournaments. Thus, we are often faced with different forecasts depending on the event in which one participates, and not all of them have decided to adopt the same solutions.

### 5.1 E-DOPING REGULATION

Considering that preventing player misbehaviour is not easy in any sport when we talk about shortcuts taken through cyberspace, the challenge becomes even more difficult. The ease, with which a player could circumvent prevention measures by using illegal software or playing remotely, has triggered tournament companies and game developers to develop anti-cheating technologies and prevention tools of their own. Some of these tools appear better than others when placed in the balance against players' rights, especially the right to privacy.

As in the case of the *Pattern Detector*, an approach that consists of analysing the entire hard drive of players with the aim of detecting cheating codes, which in addition to obviously invading players' privacy also needs

constant updating; or think of *Player Supervision*, whereby the administrators of the game server are given the power to independently monitor each player and thus check whether any hacking attempts are in progress. This method certainly raises concerns because, in addition to the violation of players' privacy, it would also endanger the tactics and strategies of one's own team in the game that could reach the opposing team. More controversial is the case of the *Statistical Approach* on the other hand, which uses the statistical method tries to uncover anomalies that can be traced back to incorrect activity. The latter approach certainly does not invade the privacy of players, but it does entail quite a few problems, as it has often happened that the system did not recognise particularly skilled players and therefore labelled them as cheaters, which is why it is no longer used on its own but is often combined with other approaches.<sup>14</sup>

There are, however, other examples of solutions adopted to prevent cheating that I would describe as more reliable, such as *Valve Anti-Cheat (VAC)*, a software developed by Valve, the company that distributes Dota 2, the eSport with the highest recorded prize pool (around \$47.2 millions). Although for security reasons the software itself is not public, we are well aware how it works. The VAC accesses the system's memory and processor trying to identify anomalies or irregular player behaviour. If misbehaviour is found to have occurred, the user will be subject to sanctions such as a temporary or permanent ban. The ingenuity of this system lies in the implementation process that VAT carries out by constantly learning both from the codes found and from those provided by the users themselves who are encouraged by Valve to participate. Another interesting method is *Sandboxing*, which prevents misbehaviour during the game by inhibiting the possibility of malicious programmes being started. *Sandboxing* prevents the underlying malicious mechanisms from being used and thus there is no need to ban players either.<sup>15</sup>

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<sup>14</sup> CHANDA, Subhrajit, Taurun SINGH and Shaun STAR. Contouring E-Doping: A Menace to Sportsmanship in Esports. *Turkish Online Journal of Qualitative Inquiry*. July 2021, vol. 8, no. 12, p. 972.

<sup>15</sup> *Ibidem*, p. 971-972; 978.

## 5.2 PERFORMANCE-ENHANCING SUBSTANCES REGULATION

As widely discussed, the use of performance-enhancing substances by players is a widespread and worrying pathology spreading from within the world of eSports. Since 2015, the attitude of the organisations in charge of competitive gaming events has also changed, leading to the introduction of prevention mechanisms during tournaments.

The Electronic Sports League is at the forefront of regulating banned substances during matches and was the first to introduce player testing by collaborating with agencies that deal with doping tests in traditional sports. In collaboration with WADA and the National Anti-Doping Agency (NADA), ESL has drawn up a list of banned substances and a strict policy to regulate players' behaviour that can be found within the WADA charter. Like the ESL, other organisations, such as AE sports the owner of FIFA, have also decided to adopt this policy by testing players who, if found positive, would not only be excluded from tournaments but could also go against serious consequences.<sup>16</sup>

Certainly, one can see the benefits of this awareness-raising process put in place by these bodies that manage the world of eSports. Subjecting players to randomized drug tests aims not only to protect the health of players but also to ensure a fair fight during matches, which is also speeding up the process of legitimising eSports as a sport and giving more credibility to the entire industry.

But on the other hand, there have been several internal complaints that also show us the negative side of this policy. Given the lack of regulation unlike traditional sports, in competitive gaming players do not have many protections other than those given by their team. Thus, it is evident how something as personal as a drug test can lead to harm the right to privacy of players who are not protected as much as they should be. In addition, the list of prohibited substances provided by the World Anti-Doping Agency is extremely verbose containing over one hundred substances and some of

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<sup>16</sup> HOPPE, David. The 2015 Esports Doping Scandal and the Charge of the ESL. In: *Gammalaw.com* [online]. 15. 8. 2018. [cit. 1. 5. 2022]. Available at: [https://gammalaw.com/esports\\_doping\\_scandal\\_and\\_the\\_charge\\_of\\_the\\_esl/](https://gammalaw.com/esports_doping_scandal_and_the_charge_of_the_esl/)

them, such as marijuana, that not only would not prove useful for improving game performance but are also becoming legal and tolerated in many countries.<sup>17</sup>

Moreover, in order to be able to undergo these tests, players would have to forego the possibility of playing remotely, as their physical presence is required to perform them. Not to mention the fact that these tests are randomized so the whole process is basically pointless if we exclude the fear component they put on the players. The process of regulating these behaviours involves too many extremely sensitive aspects being called into play, which is why a clearer and more studied policy to address the issue is desirable.

## 6. CONCLUSION

The more a phenomenon grows, the less one needs a microscope to realise the flaws within it. This also applies to eSports. In fact, there is no doubt that every type of doping, be it traditional or electronic, is part of that set of categories that require in-depth analysis and regulation that is detached from that of traditional sports.

The problems that prevent the avoidance of such behaviour are in fact closely linked to the innovative nature that characterises this category of sport. Indeed, even though the abuse of performance-enhancing substances is also a widespread phenomenon in traditional sports, in the case of eSports we have to concern ourselves with other factors, such as the circumstance that players may often not be physically present at the match or that many tournaments have not yet decided to adopt any type of regulation. Furthermore, although there are cases of traditional sports in which the use of substances such as Adderall is prohibited, this is still a minority, which has not led to a thorough analysis in the detection of this type of substance in the body.

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<sup>17</sup> HOPPE, David. The 2015 Esports Doping Scandal and the Charge of the ESL. In: *Gammalaw.com* [online]. 15. 8. 2018. [cit. 1. 5. 2022]. Available at: [https://gammalaw.com/esports\\_doping\\_scandal\\_and\\_the\\_charge\\_of\\_the\\_esl/](https://gammalaw.com/esports_doping_scandal_and_the_charge_of_the_esl/)

As far as e-doping is concerned, on the other hand, the need for *ad hoc* regulation is even more obvious to us, since in order to combat it we feel the need to respond actively on the same ground: technology.<sup>18</sup> This new professional approach that is finally being adopted towards eSports also brings with it a series of increasingly pressing needs, starting with the creation of an international body to regulate and standardise competitive gaming and protect players from a potentially toxic environment.

However, as the creation of this institution does not seem at all close, we must hope that the predictions of a possible entry into the Olympic Community will trigger a consequent regulatory mechanism by the eSports community itself.

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<sup>18</sup> CHANDA, Subhrajit, SINGH, Taurun, STAR, Shaun. Contouring E-Doping: A Menace to Sportsmanship in Esports. *Turkish Online Journal of Qualitative Inquiry*. July 2021, vol. 8, no. 12, p. 971.

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# OVERHYPE AND UNDERDELIVER - THE CYBERPUNK 2077 INCIDENT<sup>19</sup>

VOJTĚCH JURÍČKA<sup>20</sup>

## 1. INTRODUCTION

For a game company to sell 18 million copies of a videogame is considered a great success. Even more so when said game's launch is plagued by so many controversies and problems like that of Cyberpunk 2077. The circumstances regarding this game's development, marketing, launch and post-launch state are so unique that it has the potential to become a textbook example of both what to do and what to avoid regarding game development, marketing, publishing, and maintenance.

The reputation of the game's developer, CD Projekt RED (referred to as "CDPR") moulded by its previous and highly successful title *The Witcher 3: Wild Hunt*, as well as *Cyberpunk 2077*'s effective marketing<sup>21</sup> have both become a double-edged sword that has created huge expectations from the public. However, as the game was released those expectations proved to be bigger than what the company could deliver.

Thus, several million consumers have purchased a game that not only did not meet their expectations shaped by the developer's marketing strategy over the years but was borderline unplayable on older versions of con-

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<sup>19</sup> The essay was written in the Spring 2022 semester for the course MVV793K Internet Gaming and Entertainment Law.

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<sup>21</sup> LEBLANC, Wesley. *The Witcher 3 Has Sold More Than 40 Million Copies, Cyberpunk 2077 Surpasses 18 Million*. In: *Game informer.com* [online]. 14. 4. 2022. [cit. 28. 5. 2022]. Available at: <https://www.gameinformer.com/2022/04/14/the-witcher-3-has-sold-more-than-40-million-copies-cyberpunk-2077-surpasses-18-million>

soles.<sup>22</sup> This came as a surprise at the time, as there were no reviews covering these older models. The consumers' money was invested into a product that was not what it was marketed to be. Also, it did not work properly even by the gaming industry's standards.

This essay examines the circumstances surrounding the marketing and release of *Cyberpunk 2077* and discusses, whether there has been an instance of nonconformity with the requirements for digital content laid down in the Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services.

## 2. MARKETING

*Cyberpunk 2077* was initially announced on 30 May 2012<sup>23</sup> with its first teaser trailer uploaded to YouTube on 10 January 2013. This was before the release of *The Witcher 3*, so the game was not well known yet. Then the abovementioned *Witcher 3* won reportedly over 800 awards,<sup>24</sup> most notably the Game of the Year award at The Game Awards 2015<sup>25</sup> and an expansion titled *Blood and Wine* won the Best RPG award at The Game Awards 2016.<sup>26</sup> Due to these achievements, CDPR gained substantial global notoriety. Then during E3 2018 a trailer for the game was released,<sup>27</sup> and two months later a 48-minute gameplay reveal showcasing early develop-

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<sup>22</sup> LEADBETTER, Richard. *Cyberpunk 2077: how bad is last-gen performance - and what will it take to fix it?* In: *Eurogamer.net* [online]. 16. 12. 2020. [cit. 28. 5. 2022]. Available at: <https://www.eurogamer.net/digitalfoundry-2077-cyberpunk-2077-how-bad-is-last-gen-performance-and-can-it-be-improved>

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<sup>24</sup> COOPER, Rhys. *The Witcher 3 Awards Reach Over 800, A True Master Piece*. In: *Segment-Next.com* [online]. 15. 9. 2021. [cit. 28. 5. 2022]. Available at: <https://segmentnext.com/the-witcher-3-awards-reach-over-800-a-true-master-piece/>

<sup>25</sup> SARKAR, Samit. *Here are the winners of The Game Awards 2015*. In: *Polygon.com* [online]. 3. 12. 2015. [cit. 28. 5. 2022]. Available at: <https://www.polygon.com/2015/12/3/9846760/the-game-awards-2015-winners>

<sup>26</sup> STARK, Chelsea. *The Game Awards: Here's the full winners list*. In: *Polygon.com* [online]. 1. 12. 2016. [cit. 28. 5. 2022]. Available at: <https://www.polygon.com/2016/12/1/13784410/the-game-awards-winners>



ment gameplay followed.<sup>28</sup> As such, the first showcase of the game's graphics and gameplay was shown via a cinematic trailer and many of the game's systems and features were demonstrated. Therefore, the public could start to form a clearer picture of what to expect.

A year later, on the stage of the E3 2019 event, another cinematic trailer was shown, now focusing on the story of the game.<sup>29</sup> In the end scene of said trailer, a character portrayed by the actor Keanu Reeves was revealed upon which the actor came on stage and gave a brief commentary on the game. This was another major point in the marketing of the game, as the inclusion of a famous actor granted the game even more popularity. Also, an announcement of a cosplay contest fed the growing hype even more, as it uncommonly came more than a year before the game's release.<sup>30</sup> And at that time the announcement of the game's release was also made. The intended release date had been 4 April 2020, but the game was later delayed to September of that year, then to November until it finally came out on 10 December 2020.

In the year and a half between E3 2019 and the game's release, many videos and showcases were published by CDPR. Most of them were trailers themed around a feature in the game, such as the "lifepaths," which were 3 possible tutorial scenarios, in-game gangs, weapons, cars, clothes and more. Also, CDPR announced their collaboration with many musicians in order to produce music played on the game's radio stations. Some notable examples

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<sup>27</sup> CYBERPUNK 2077. Cyberpunk 2077 — Official E3 2018 Trailer. In: *Youtube.com* [online]. 10. 6. 2018. [cit. 28. 5. 2022]. Available at: [https://www.youtube.com/watch?v=8X2klf-S6fb8&ab\\_channel=Cyberpunk2077](https://www.youtube.com/watch?v=8X2klf-S6fb8&ab_channel=Cyberpunk2077)

<sup>28</sup> CYBERPUNK 2077. Cyberpunk 2077 Gameplay Reveal — 48-minute walkthrough. In: *Youtube.com* [online]. 27. 8. 2018. [cit. 28. 5. 2022]. Available at: [https://www.youtube.com/watch?v=vjF9GgrY9c0&ab\\_channel=Cyberpunk2077](https://www.youtube.com/watch?v=vjF9GgrY9c0&ab_channel=Cyberpunk2077)

<sup>29</sup> CYBERPUNK 2077. Cyberpunk 2077 — Official E3 2019 Cinematic Trailer. In: *Youtube.com* [online]. 9. 6. 2019. [cit. 28. 5. 2022]. Available at: [https://www.youtube.com/watch?v=qIcTM8WXFjk&ab\\_channel=Cyberpunk2077](https://www.youtube.com/watch?v=qIcTM8WXFjk&ab_channel=Cyberpunk2077)

<sup>30</sup> Also, a cosplay contest was announced during the event, uncommonly more than a year before the game's release. See: CYBERPUNK 2077. Cyberpunk 2077 — Cosplay Contest Announcement. In: *Youtube.com* [online]. 27. 6. 2019. [cit. 28. 5. 2022]. [https://www.youtube.com/watch?v=qU3-4IrZ7tk&ab\\_channel=Cyberpunk2077](https://www.youtube.com/watch?v=qU3-4IrZ7tk&ab_channel=Cyberpunk2077)

being Refused, Grimes, and Run The Jewels, which only added more celebrities collaborating on the game and brought more publicity.<sup>31</sup>

### 3. LAUNCH AND ISSUES

Around the time of the game's launch, the game was well-received by critics.<sup>32</sup> That said, it was reported that many reviewers did not yet receive a review version of the game as late as five days prior to the launch. This fact has the potential to significantly delay the reviews, as the game was stated to have a playtime of more than a hundred hours and the reviewers could not make a comprehensive opinion of it.<sup>33</sup> Also, as it was later clarified, their reviews were based only on the game's PC build and could not show any gameplay that the reviewers recorded themselves. Just prerecorded gameplay footage provided by CDPR was allowed. Thus, the reviews could talk about the state of the game but were unable to show it to the public themselves. The state of the console versions of the game was wholly unknown to the public.<sup>34</sup>

As the public delved into the game themselves, complaints about the game's unfinished state started to appear. They reported to have encountered issues ranging from minor graphical glitches to game-breaking bugs that blocked them from progressing through the game, be it gameplaywise or that the game kept crashing constantly.<sup>35</sup> On consoles, the difference between the trailers, footage shown prior to release and

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<sup>31</sup> ANDERSON, Maia. Here Is Every Song In The Soundtrack For Cyberpunk 2077, Including A\$AP Rocky, HEALTH, Metz And More. In: *mxdown.com* [online]. 11. 12. 2020. [cit. 28. 5. 2022]. Available at: <https://music.mxdown.com/2020/12/11/news/here-is-every-song-in-the-soundtrack-for-cyberpunk-2077-including-asap-rocky-health-metz-and-more/>

<sup>32</sup> MACDONALD, Keza. Cyberpunk 2077: how 2020's biggest video game launch turned into a shambles. In: *The Guardian.com* [online]. 18. 12. 2020. [cit. 28. 5. 2022]. Available at: <https://www.theguardian.com/games/2020/dec/18/cyberpunk-2077-how-2020s-biggest-video-game-launch-turned-into-a-shambles>

<sup>33</sup> SULLIVAN, Kean. Cyberpunk 2077 Reviews May Come Later Than Expected. In: *Gamerant.com* [online]. Gamerant.com. 5. 12. 2020. [cit. 28. 5. 2022]. Available at: <https://gamerant.com/cyberpunk-2077-review-embargo-date/>

<sup>34</sup> REEVES, Brianna. Cyberpunk 2077 Reviewers Weren't Allowed To Use Their Own Gameplay Footage. In: *Screenrant.com* [online]. 9. 12. 2020. [cit. 28. 5. 2022]. Available at: <https://screenrant.com/cyberpunk-2077-reviews-gameplay-video-embargo-official-cdpr/>

the actual graphical performance was substantial and also unexpected due to the abovementioned issues with reviews. All of this made the backlash only worse. Furthermore, many features that were previously advertised were missing, as were some of the features commonly expected in similar open-world style games.<sup>36</sup>

A lot of consumers that bought the game sought to get refunds, which then led to CDPR publishing a statement. The developer had apologized for the state of the game, vowed to provide patches and future updates and finally urged them to either get refunds through the platforms where they bought the game or contact CDPR themselves for assistance with the refund process.<sup>37</sup> Sony removed the game from PlayStation Store on 17 December 2020 and offered refunds.<sup>38</sup> Microsoft store did not remove the game but included a warning about possible performance issues.<sup>39</sup> Also, a class-action lawsuit was filed against CDPR on behalf of the company's investors, who claimed that CDPR made "*false and/or misleading statements*" about the game and that the game was "*virtually unplayable*" contrary to their CEO's claim,<sup>40</sup> that the game was "complete and playable" already in January 2020.<sup>41</sup>

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<sup>35</sup> MACDONALD, Keza. Cyberpunk 2077: how 2020's biggest video game launch turned into a shambles. In: *The Guardian.com* [online]. 18. 12. 2020. [cit. 28. 5. 2022]. Available at: <https://www.theguardian.com/games/2020/dec/18/cyberpunk-2077-how-2020s-biggest-video-game-launch-turned-into-a-shamble>

<sup>36</sup> ISAAC, Mike., BROWNING, Kellen. Cyberpunk 2077 Was Supposed to Be the Biggest Video Game of the Year. What Happened? In: *Ny Times.com* [online]. 19. 12. 2020. [cit. 28. 5. 2022]. Available at: <https://www.nytimes.com/2020/12/19/style/cyberpunk-2077-video-game-disaster.html>

<sup>37</sup> CYBERPUNK 2077. Important update. In: *Twitter.com* [online]. 14. 12. 2020. [cit. 28. 5. 2022]. Available at: <https://twitter.com/CyberpunkGame/status/1338390123373801472>

<sup>38</sup> DORNBUSH, Jonathan. Sony Removes Cyberpunk 2077 from PS Store, Will Offer Refunds to PlayStation Players Who Already Bought It. In: *Ign.com* [online]. 18. 12. 2020. [cit. 28. 5. 2022]. Available at: <https://www.ign.com/articles/sony-removing-cyberpunk-2077-from-ps-store-will-offer-refunds-to-playstation-players-who-already-bought-it>

<sup>39</sup> PETERS, Jay. Cyberpunk 2077's Microsoft store listing now has a warning for bugs. In: *The Verge.com* [online]. 18. 12. 2020. [cit. 28. 5. 2022]. Available at: <https://www.theverge.com/2020/12/18/22189918/cyberpunk-2077-microsoft-store-listing-warning-label>

<sup>40</sup> CD PROJEKT RED. Important news. In: *Twitter.com* [online]. 16. 1. 2020. [cit. 28. 5. 2022]. Available at: <https://twitter.com/CDPROJEKTRED/status/1217861009446182912>

The issues concerning *Cyberpunk 2077*'s launch can be divided into two categories. The first category are technical issues concerning performance and gameplay. While the PC version was the most stable and the one that was reviewed by critics, the performance on console versions of the game was suboptimal. In its re-review of the game for Xbox One and PlayStation 4, IGN reported that the game “*fails to hit even the lowest bar of technical quality one should expect even when playing on low-end hardware*”.<sup>42</sup> Even after several patches, the game on Xbox One had reportedly performed at less than 720p resolution and the framerate often dropped to around 10 frames per second while in combat, and 20 frames per second while just walking around, possibly causing nausea to people playing. Crashes were also still present. PlayStation 4 had performed a bit better but overall had the same issues. Furthermore, both consoles suffered from blocky characters and objects due to geometry and textures taking a long time to load or even failing to load entirely and the broken<sup>43</sup> behaviour of non-player characters and vehicles.<sup>44</sup>

The second category of issues that plagued *Cyberpunk 2077* around its launch are features that were said or implied to be a part of the game during the lengthy marketing phase but were not present in the final product.<sup>45</sup> One of the earliest examples is the very start of the E3 2018 trailer, where the main character, V, is shown riding a train, which implies the game would have a functional train or metro network. That was not

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<sup>41</sup> BOLDING, Jonathan. Class action suit filed for CD Projekt investors over *Cyberpunk 2077*. In: *PC Gamer.com* [online]. 27. 12. 2020. [cit. 28. 5. 2022]. Available at: <https://www.pcgamer.com/class-action-suit-filed-for-cd-projekt-investors-over-cyberpunk-2077/>

<sup>42</sup> LEGARIE, Destin. *Cyberpunk 2077* for Xbox One and PlayStation 4 Review. In: *Ign.com* [online]. 8. 11. 2020. [cit. 28. 5. 2022]. Available at: <https://www.ign.com/articles/cyberpunk-2077-for-xbox-one-and-playstation-4-review>

<sup>43</sup> Broken as in hindering the player's ability to play the game due to not functioning properly, not as in merely appearing to be “stupid” and the game not having “the most believable city”.

<sup>44</sup> LEGARIE, Destin. *Cyberpunk 2077* for Xbox One and PlayStation 4 Review. In: *Ign.com* [online]. 8. 11. 2020. [cit. 28. 5. 2022]. Available at: <https://www.ign.com/articles/cyberpunk-2077-for-xbox-one-and-playstation-4-review>

<sup>45</sup> A user-made list of promised features can be found here: [https://www.reddit.com/r/cyberpunkgame/comments/kcve8s/promised\\_but\\_missing\\_feature\\_list\\_will\\_update/](https://www.reddit.com/r/cyberpunkgame/comments/kcve8s/promised_but_missing_feature_list_will_update/)

the case in the final product. The same trailer later showed a car chase possibly implicating that such a feature will be present and functional, more so when it is common in other games of a similar open-world genre, such as Grand Theft Auto. Yet car chases were present only in the form of a few pre-scripted events.

The August 2018 walkthrough presented several other cut features, such as being able to control and use a military drone, connecting into a person's head with a cable or hanging from a wall with Mantis blades. The commentary in the video claimed the game to have an "*enhanced crowd and community system to create the most believable city in any open-world game to date,*" yet the final product was nowhere near the claimed quality.<sup>46</sup> In a similar fashion, the trailer Rides of the Dark Future showed several vehicles and many vehicle colours that were not purchasable by the player. Any system of interchangeable vehicle parts or swappable paint jobs is not present in the game.<sup>47</sup> The previously mentioned lifepaths were presented to be an important part of shaping the player character but in the end, had little to no impact overall and were met with great disappointment from the players.<sup>48</sup> Another trailer called In Style<sup>49</sup> focused on fashion but ironically the game did not have a way to change appearance after the start of the game until 15 February 2022 with the release of patch 1.5.<sup>50</sup> The same patch also added purchasable apartments, a feature implied in the trailer The Diner before the game's launch but implemented more than a year la-

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<sup>46</sup> For an illustrational example, see: OMINOUS.TV. A.I. in Cyberpunk is stupid. In: *Youtube.com* [online]. 10. 12. 2020. [cit. 28. 5. 2022]. Available at: [https://www.youtube.com/watch?v=1coBF2\\_0--k&ab\\_channel=Ominous.TV](https://www.youtube.com/watch?v=1coBF2_0--k&ab_channel=Ominous.TV)

<sup>47</sup> CYBERPUNK 2077. Cyberpunk 2077 — Rides of the Dark Future. In: *Youtube.com* [online]. 15. 10. 2020. [cit. 28. 5. 2022]. Available at: [https://www.youtube.com/watch?v=6IM00-PaX7Yc&ab\\_channel=Cyberpunk2077](https://www.youtube.com/watch?v=6IM00-PaX7Yc&ab_channel=Cyberpunk2077)

<sup>48</sup> KELLY, Andy. A Year On, Cyberpunk 2077's Lifepaths Feel More Pointless Than Ever. In: *The Gamer.com* [online]. 8. 12. 2021. [cit. 28. 5. 2022]. Available at: <https://www.thegamer.com/cyberpunk-2077-life-paths-pointless/>

<sup>49</sup> CYBERPUNK 2077. Cyberpunk 2077 — 2077 in Style. In: *Youtube.com* [online]. 15. 10. 2020. [cit. 28. 5. 2022]. Available at: [https://www.youtube.com/watch?v=YlyDJVYqfpA&ab\\_channel=Cyberpunk2077](https://www.youtube.com/watch?v=YlyDJVYqfpA&ab_channel=Cyberpunk2077)

<sup>50</sup> CD PROJEKT RED. PATCH 1.5 & NEXT-GENERATION UPDATE — LIST OF CHANGES. In: *Cyberpunk.net* [online]. c 2022. [cit. 28. 5. 2022]. Available at: <https://www.cyberpunk.net/en/news/41435/patch-1-5-next-generation-update-list-of-changes>

ter.<sup>51</sup> NPCs seemingly have no handmade daily routines<sup>52</sup> and while the “wanted system” is lacking and bugged,<sup>53</sup> there is no sign of policemen taking bribes or “powerful people” chasing the player,<sup>54</sup> only basic enemy encounters. Additionally, the Monowire weapon was said to have different uses but ultimately was not used for stealthy kills or hacking enemies.<sup>55</sup>

#### 4. CONFORMITY REQUIREMENTS UNDER THE CONSUMER PROTECTION LAW

Cyberpunk 2077 falls under the scope of the Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services (“Digital Content Directive”) as Recital 19 of said directive specifically includes digital games among other examples. It would be classified as digital content according to Art. 2 (1) of the Digital Content Directive, as it does not have the features of a digital service, as it is a one-time purchase that does not depend on the developer continuously providing any support, such as a live server. However, it can still be modified by the developer at a later date.<sup>56</sup> Thus, the Digital Content Directive is applicable to the Cyberpunk 2077 – End User License Agreement<sup>57</sup> (“EULA”) involving

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<sup>51</sup> CYBERPUNK 2077. Cyberpunk 2077 — The Diner. In: *Youtube.com* [online]. 15. 10. 2020. [cit. 28. 5. 2022]. Available at: [https://www.youtube.com/watch?v=6a8f1TbYb2w&ab\\_channel=Cyberpunk2077](https://www.youtube.com/watch?v=6a8f1TbYb2w&ab_channel=Cyberpunk2077)

<sup>52</sup> MAHER, Clan. There will be over 1,000 Cyberpunk 2077 NPCs with daily routines. In: *VG247.com* [online]. 8. 6. 2020. [cit. 28. 5. 2022]. Available at: <https://www.vg247.com/cyberpunk-2077-npcs-1000-daily-routines>

<sup>53</sup> WILLIAMS, Demi. Cyberpunk 2077 has a cop spawning bug and it's out of control. In: *Games radar.com* [online]. 14. 12. 2020. [cit. 28. 5. 2022]. Available at: <https://www.gamesradar.com/cyberpunk-2077-has-a-cop-spawning-bug-and-its-out-of-control/>

<sup>54</sup> HENRY, Jasmine. Cyberpunk 2077 Has A 'Wanted' System and Corrupt Police. In: *Gamerant.com* [online]. 18. 7. 2019. [cit. 28. 5. 2022]. Available at: <https://gamerant.com/cyberpunk-2077-wanted-system-corrupt-police/>

<sup>55</sup> CYBERPUNK 2077. Let's talk about nanowires. In: *Twitter.com* [online]. 23. 7. 2019. [cit. 28. 5. 2022]. Available at: <https://twitter.com/CyberpunkGame/status/1153684171606450178?s=09>

<sup>56</sup> CD PROJEKT RED. *CYBERPUNK 2077 – END USER LICENCE AGREEMENT* [online]. 10. 12. 2020. [cit. 28. 5. 2022]. Article 5.

<sup>57</sup> *Ibidem*.

the supply of Cyberpunk 2077 according to Art. 3 (1) of said directive and Cyberpunk 2077 must meet the conformity requirements specified within when it is being supplied to the consumer by the trader.

The conformity requirements fall under two categories. Firstly, there are subjective requirements for conformity, which are tied to the EULA between the trader and the consumer.<sup>58</sup> Second are the objective requirements, which the digital content must fulfil irrespectively of the EULA.<sup>59</sup> If these requirements are not met at the time of the supply, the trader is then deemed to be liable in accordance with Art. 11 (2) of the Digital Content Directive. The timeframe stems from the supply being a single act, not a continuous supply, as the use of the game is not subject to a time limit and thus does not fall under the third paragraph of said article.

Regarding the subjective requirements in Art. 7, the EULA is adhesive in nature. Thus, the consumer cannot make any requests upon the trader related to any particular purpose, that the game should fulfil, or demand the supply of any particular accessories, instructions or customer assistance.<sup>60</sup> The contract also does not provide any description of the game, be it quantitative or qualitative. Concerning functionality, compatibility, interoperability, and any other features required by the contract, the EULA licenses the consumer to “*display, view, download, install, play and use*” the game. The consumer can do so on either a personal computer, games console or other devices and platforms that the game is purchased for and that CDPR authorized while taking into account the specified minimum requirements of such devices.<sup>61</sup> This implies that the game should be functional enough to download, install, play and use etc. on the devices meeting the necessary requirements when sold to the consumer. Furthermore, as

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<sup>58</sup> Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services [online]. 20. 5. 2019. [cit. 28. 5. 2022]. Article 7.

<sup>59</sup> Ibidem, Article 8.

<sup>60</sup> Ibidem, Article 7 b) and c).

<sup>61</sup> CD PROJEKT RED. *CYBERPUNK 2077 – END USER LICENCE AGREEMENT* [online] 10. 12. 2020. [cit. 28. 5. 2022]. Article 7 a).

stated above, the game can be patched, updated or changed by CDPR as per Art. 5 of the EULA.

In addition to the game being installable and playable, it must also be compliant with the objective requirements for conformity specified in Art. 8 of the Digital Content Directive. Therefore, it must be fit for purposes for which other digital content of the same type would be used while taking into account applicable law, technical standards or codes of conduct specific to that sector.<sup>62</sup> In a similar fashion, it must have the same qualities and performance features regarding functionality, compatibility, accessibility, and continuity that similar digital content has, and that the consumer can reasonably expect to be present. These expectations can be affected by the nature of the digital content, as well as public statements about it made by authorized individuals, mainly in the form of advertising or labelling. However, this does not apply in case the trader either was not aware or could not have been aware of such a statement, the public statement was corrected by the time the contract was concluded, or if the statement was not eligible to influence the consumer's decision to acquire the digital content.<sup>63</sup> Furthermore, the abovementioned objective requirements are not applicable, if the consumer was at the time of the conclusion of the contract informed about a specific characteristic of the digital content not being in conformity and the consumer expressly and separately accepted such non-conformity.<sup>64</sup>

## 5. CONFORMITY OF THE GAME REGARDING TECHNICAL ISSUES

With the conformity requirements being established, it is now possible to examine, whether *Cyberpunk 2077* was in fact conforming to them. As sta-

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<sup>62</sup> Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services [online] 20. 5. 2019. [cit. 28. 5. 2022]. Article 8 (1) a.

<sup>63</sup> Ibidem, Article 8 (1) b).

<sup>64</sup> Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services [online]. 20. 5. 2019. [cit. 28. 5. 2022]. Article 8 (5).



ted above, to meet one of the subjective requirements the game must be playable. This also relates to the objective requirement as the game's purpose is to be played. Therefore, it should possess the necessary qualities, performance features, functionality etc. that are common among games of the same type within the industry to be fit for that purpose and to meet the expectations of consumers that were shaped by the game's advertising.

Strictly speaking, the game was in fact playable. It could have been launched, displayed, and interacted with. However, if we were to define "playability" akin to functionality, as in the game running well without bugs, crashes, and similar issues that impede the consumer's enjoyment of the game, then one could not say so with the same certainty. While different people find different amounts of issues tolerable, it can still be somewhat objectively said, that a high-enough frequent occurrence of issues falling into the second category described in the previous chapter can result in an "unplayable" experience. The issues being (1) crashing, which results in the player being unable to play and possibly losing progress in the game and thus having to repeat the same sequence, (2) displaying less FPS (frames per second), than the common threshold of 30 FPS generally used in videogames or (3) having bugs or other issues that affect the player's interaction with the virtual elements of the game, being either graphical (i.e. blurry in-game graphics) or technical (i.e. button not triggering an action that it should trigger). The frequency of such issues needed to find a game to be unplayable can be derived from games of similar type, that were published at the same time. When comparing Doom Eternal<sup>65</sup> and Immortals Fenyx Rising,<sup>66</sup> two other games made and published by "big AAA game studios"<sup>67</sup> that also came out in December 2020 to Cyberpunk 2077,<sup>68</sup> nei-

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<sup>65</sup> META CRITIC. DOOM ETERNAL. In: *Metacritic.com* [online]. c 2022. [cit. 28. 5. 2022] Available at: <https://www.metacritic.com/game/playstation-4/doom-eternal>

<sup>66</sup> META CRITIC. IMMORTALS FENYX RISING. In: *Metacritic.com* [online]. c 2022. [cit. 28. 5. 2022] Available at: <https://www.metacritic.com/game/playstation-4/immortals-fenyx-rising>

<sup>67</sup> GARCIA, Janet. AAA (triple-A). In: *Video Game Dictionary Wiki Guide* [online]. 11. 4. 2020. [cit. 28. 5. 2022] Available at: [https://www.ign.com/wikis/video-game-dictionary/AAA\\_\(triple-A\)](https://www.ign.com/wikis/video-game-dictionary/AAA_(triple-A))

ther of the aforementioned games had such major issues and gained such infamy as *Cyberpunk 2077*.

Another thing to keep in mind is the fact that the reviewers got the game late and could only review its PC version. Thus, CDPR's advertisement did not at all reflect the console version and the public could not find out about the game's actual state even though it has been reviewed. The state of the reviewed PC version was not as big of an issue as it did not suffer such extensive problems, but on PS4 and Xbox One the difference between what was advertised and what was delivered was striking and unexpected.

None of the exceptions specified in Art. 8 (1) (b) (i) to (iii) are applicable, as CDPR could not have been unaware of the state of the game they were developing and did not make any corrective public statement. Additionally, if they would have made such a statement, it would certainly have the possibility to influence the customer's purchase as fewer consumers would buy it while aware that it is not a finished product and suffers from major issues.

Therefore, it can be argued that the game, albeit being playable in and of itself, does not meet the common standards for "playability" that are expected from games of the same type within the industry and can be deemed unplayable when compared to other titles. And as an unplayable game cannot fulfil its purpose, it does not conform with the requirements of Article 7 (a) and Article 8 (1) (a). Also, as it did not have the quality or performance advertised by CDPR that customers could reasonably expect, it does not conform with the requirements of Article 8 (1) (b).

## **6. CONFORMITY OF THE GAME REGARDING ADVERTISED FEATURES**

Another matter that needs to be examined is the game's conformity with the requirement of having the same quality and performance features that the trader advertised or otherwise publicly stated to have. As described

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<sup>68</sup> META CRITIC. CYBERPUNK 2077. In: *Metacritic.com* [online]. c 2022. [cit. 28. 5. 2022] Available at: <https://www.metacritic.com/game/playstation-4/cyberpunk-2077>

above, *Cyberpunk 2077*'s marketing was extensive and over time built major expectations through gameplay showcases, trailers, and collaboration with celebrities, which brought further attention to the game. As they were published through an official YouTube channel and thus can be perceived as public statements made by CDPR. As such, they are able to affect the consumer's reasonable expectations.

Hence, for a year and a half, the consumer's expectations were continually shaped by these showcases and claims. Also, it can be argued that so many promotions and associated celebrities gave the game much bigger credibility. As such, the project seemed to be even more extensive and the expectations that consumers had were all the greater. However, when consumers purchased the game, such features were not present or were not what they were marketed as. And oftentimes players found out about their absence only after the purchase of the game due to reviewers not being able to review console versions of the game.

The advertised features can be divided into two types. First are the features that are present but are underdeveloped when compared to either the showcases of the game or other games of the open-world game or RPG genres. An example being the abovementioned "*enhanced crowd and community system*", which was in some instances average at best, but overall subpar when compared to for example *Red Dead Redemption 2*, which came out two years earlier.<sup>69</sup> However, when it comes to bad consumer reception of such features, a case can be made that they are present as advertised. And although their quality has been embellished, such differences are more subject to consumers' subjective opinion than the second type of features. Thus, their misleading nature can be disputed as such occurrence by itself is not uncommon in the industry.

The second type is comprised of features that were advertised but are altogether missing. These features range from merely implied ones, such as

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<sup>69</sup> For comparison, see: OMINOUS.TV. A.I. in *Cyberpunk* is stupid. In: *Youtube.com* [online]. 10. 12. 2020. [cit. 28. 5. 2022]. Available at: [https://www.youtube.com/watch?v=1coBF2\\_0-k&ab\\_channel=Ominous.TV](https://www.youtube.com/watch?v=1coBF2_0-k&ab_channel=Ominous.TV) and DMSJ GAMING. INSANE AI - *Red Dead Redemption 2*. In: *Youtube.com* [online]. 3. 11. 2021. [cit. 28. 5. 2022] Available at: [https://www.youtube.com/watch?v=7PFtR0Kjtus&ab\\_channel=DMSJGaming](https://www.youtube.com/watch?v=7PFtR0Kjtus&ab_channel=DMSJGaming)

vehicle customization or purchasable apartments, to direct statements made in showcase videos or interviews such as regarding the Monowire weapon, Mantis Blades or AI having handmade daily routines. As opposed to the previous category, they are wholly absent, not merely lacking in quality and thus the same reasoning cannot be applied. However, one must consider that it is a common occurrence to cut content during development and a videogame developer cannot be held liable for every single detail that he shows in trailers individually. It does not help that some of these examples are only vague implications made in cinematic trailers or gameplay demos, which do not represent the final state of the game. Thus, on one hand, their capability to be misleading can be challenged as with the previous type. On the other hand, a point can be made that the purpose of such arguments is to protect the developer from being held liable for small details shown during the tumultuous development process. But when such small details pile up, they start forming a noticeable part of the game. Thus, at a certain point, they should stop being applied.

Cyberpunk 2077 can be said to be unique among other games due to the sheer amount of extensive showcases and claims made by CDPR, many of which were closely focused on single features. And as many advertised features ended up missing or were underwhelmingly developed, they form a substantial part of the game, that does not adhere to the developer's advertising when considered as a whole.

A question arises, what is the scope of such reasonable expectations and whether the consumers were made aware of changes concerning the removal of such features. In regards to the scope, while the features are merely details when compared to crashes, bugs and the like, the sum of features of the second type could still be a basis upon which one could claim nonconformity. The features of the first type, while not as severe, only add onto the pile and deepen the difference between what was advertised and what was delivered. In the end, the consumer paid the full price for only a partial product.

And regarding whether the consumer was informed about the advertised features not being in the final product or being different is another matter.

In some cases, like the Mantis blades wall climbing, the developers informed beforehand about the feature missing.<sup>70</sup> But in most cases, no prior notice was given by the developer. Thus, again, none of the exceptions specified in Art. 8 (1) (b) (i) to (iii) are applicable. CDPR must have been aware of the state of the game they were supplying and did not publish any corrective statements until after the release. Also, when taking into account the number of features in question, there is certainly a possibility that a customer would change their decision of purchasing the game, had they been made aware of their state. In conclusion, the absence of advertised features can be the cause of nonconformity with Art. 8 (1) (b) of the Digital Content Directive.

## 7. CONCLUSION

Upon the examination of *Cyberpunk 2077*'s marketing and launch, it has been concluded that the game does not conform to the Digital Content Directive's requirements. The two categories of issues, the first being technical problems and the second being advertised but missing features have been examined separately and both were found to be non-conforming. In the case of technical features, not only did they not meet the industry standards nor the consumer's reasonable expectations shaped by the game's advertising, but they could also be deemed to prevent the game's purpose – to be played. The missing features, albeit mostly minor gameplay features that do not affect the gameplay that much are many in numbers and were quite emphasized during the game's marketing phase. Their sum makes a big enough part of the game to significantly affect the consumer's reasonable expectations.

Thus, the consumer is entitled to a remedy for the lack of conformity. Art. 14 (1) of the Digital Content Directive lists three possible remedies. Either a proportionate reduction in its price, termination of the contract, or

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<sup>70</sup> DAHLGREN, Lisa. *Cyberpunk 2077's wall running scrapped due to design reasons*. In: *Gamereactor.eu* [online]. 25. 6. 2020. [cit. 28. 5. 2022]. Available at: <https://www.gamereactor.eu/cyberpunk-2077s-wall-running-scrapped-due-to-design-reasons/>

having the developer bring the game into conformity.<sup>71</sup> Consumers that bought the game and are dissatisfied with the product should certainly seek redress. After all, beside protecting the legitimate interests of consumers, a secondary effect of Consumer Protection Law is that it also pressures the manufacturers and developers into exerting a reasonable care in their activities. As such, the use of these remedies can lead to an improvement in the quality of the videogame market.

Overall, *Cyberpunk 2077* is a prime example of a game with bloated advertisement overemphasizing many features, while not knowing (or not caring) that the development team cannot deliver on such promises but also struggles with the basic functionality of said game. Though *Cyberpunk 2077* cannot be deemed a failure financially,<sup>72</sup> it has made a mark on CDPR's reputation, that will be hard to undo. Great marketing can indeed be a double-edged sword and should be handled with caution.

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<sup>71</sup> Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services [online]. 20. 5. 2019. [cit. 28. 5. 2022]. Article 14 (1).

<sup>72</sup> STEWART, Jared. CD Projekt Red Reveals Updated Sales Figures for *Cyberpunk 2077*, *Witcher 3*, *Gamerant.com* [online]. 14. 4. 2022 [cit. 28. 5. 2022]. Available at: <https://gamerant.com/cyberpunk-2077-witcher-3-sales-figures-april-2022/>

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## THE ‘DUTY OF CARE’ AND SOCIAL MEDIA<sup>73</sup>

EMMA LAMBRIGTS<sup>74</sup>

### 1. INTRODUCTION

Nowadays, the internet is the largest provider of information in the whole world. With the majority of the population having access to online platforms, the internet is seen as a brilliant connector of the world with unique communication opportunities. However, over the years we found out that the internet and more specifically social media platforms can be a complicated and dark, even harmful place filled with unchecked facts.<sup>75</sup> One of the real challenges nowadays is creating a process on social media that guarantees a safe place for the users, respects human rights and ensures strict but proper enforcement.

In 2017 the US Supreme Court stated that “*the vast democratic forums of the Internet in general, and social media in particular,*” are “*the most important places for the exchange of views.*”<sup>76</sup> It’s obvious that social media platforms wriggle themselves more and more into our lives. This is noteworthy since all social media companies apply some kind of censorship in regard to the messages of their users. This kind of censorship, also known as content moderation, is a relatively new phenomenon. The focus of today’s discussion lies no longer on whether online activities should be regulated, now academics focus on how these activities should be regulated.<sup>77</sup>

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<sup>73</sup> The essay was written in the Autumn 2022 semester for the course MVV1368K Privacy and Personal Data.

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<sup>75</sup> ALKIVIADOU, Natalie. Hate speech on social media networks: towards a regulatory framework? *Information & Communications Technology Law*. 2019, Volume 28, Issue no. 1, p. 19.

<sup>76</sup> Judgement of the Supreme Court of the United States of 19 June 2017, Case 15-1184, *Packingham v. LANGVARDT*, Kyle. Regulating Online Content Moderation. *Georgetown Law Journal*. 2018, vol. 106, no. 5, p.1353.

<sup>77</sup> *Packingham v. LANGVARDT*, Kyle. Regulating Online Content Moderation. *Georgetown Law Journal*. 2018, vol. 106, no. 5, p. 1353-1387.

The issues of the regulation of social media content moderation can be addressed by numerous legal solutions. We could fall back on consumer protection law, mandatory disclosure rules, self-regulation, substantive regulation, the *duty of care*, etc.<sup>78</sup> In this essay, I will focus on the last-mentioned solution: the *duty of care* and I will examine if this duty is sufficient to protect our right to freedom of speech. First, I will examine the *duty of care* as content moderation on social media. In the subsequent chapter, I will discuss if it's sufficient and look into a possible remedy. Finally, I end with a short conclusion.

## 2. THE DUTY OF CARE AS CONTENT MODERATION ON SOCIAL MEDIA

One recent proposal to address the issues on social media (such as hate speech, fake news, social abuse, etc.) is the *duty of care*. This idea was introduced by Woods and Perrin in 2018 in one of their papers. They advertise the *duty of care* as a key policy to a mechanism resulting in the effective removal of harmful content on platforms.<sup>79</sup> This idea builds further on the offline *duty of care* regulation, for example, in the health and safety regulation.<sup>80</sup>

Newly, The United Kingdom introduced their Draft Online Safety Bill, with the aim of becoming the safest place in the world to go online, in which they set out a *duty of care* for, among others, social media platforms.<sup>81</sup> In this plan, the UK sets out a range of duties to ensure the safety of the users of different kinds of host-generated services. This idea can also be seen as the inspiration for the Online Harms White Paper which preceded the Draft Online Safety Bill.

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<sup>78</sup> Ibidem, p. 1353-1387.

<sup>79</sup> COMMON, F. MacKenzie. *Rule of law and human rights issues in social media content moderation* [online]. London, 2020. PhD thesis. London School of Economics and Political Science. Law department. [cit. 10. 10. 2022]. p. 168 and PERRIN, William, Lorna WOODS. Online harm reduction: a statutory duty of care and regulator. In: *Carnegie UK Trust. Org. uk* [online]. 2019. [cit. 10. 10. 2022]. p. 40.

<sup>80</sup> OHRVIK-STOTT, Jacob, Catherine MILLER. Digital duty of care. In: *Doteveryone's perspective.org.uk* [online]. 2019. [cit. 9. 10. 2022]. Available at: <https://doteveryone.org.uk/wp-content/uploads/2019/02/Doteveryone-briefing-a-digital-duty-of-care.pdf>

## 2.1 WHAT IS THE DUTY OF CARE IN THE LIGHT OF CONTENT MODERATION?

*The duty of care* interpreted by Perrin and Woods is the statutory *duty of care* which obliges social media companies to identify potential harms connected to the content that could/would occur on their platforms.<sup>82</sup> In this way, Perrin and Woods promote a ‘harm reduction cycle’ where the platforms measure the harm done, after which they implement solutions and they do that over and over again to reduce harmful content.<sup>83</sup> It implies an obligation for social media companies to take sufficient care to avoid failures related to harm on their platforms. This means that it’s not an obligation for them to clear these platforms of all harm.<sup>84</sup> It indicates the fact that platforms need to take reasonable steps to ensure the safety of their users and tackle all harmful activities. Platforms will be held responsible for harm done to their users and society, so if they fail to comply with the required conditions, they will be held responsible and for example, in the case of the Draft Online Safety Bill they will get punished.

Many benefits are associated with the *duty of care*, which addresses the issues on social media. First of all, is the implementing of this duty an attempt to create a legal framework in which the government has some kind of control over social media platforms. This could possibly lead to

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<sup>81</sup> GOVERNMENT OF THE UNITED KINGDOM OF ENGLAND - DEPARTMENT FOR DIGITAL, CULTURE, MEDIA AND SPORT. What’s changed since the draft Bill. In: *Gov.uk* [online]. 19. 4. 2022. [cit. 9. 10. 2022]. Available at: <https://www.gov.uk/government/publications/online-safety-bill-supporting-documents/online-safety-bill-factsheet#whats-changed-since-the-draft-bill>

<sup>82</sup> PERRIN, William, Lorna WOODS. Online harm reduction: a statutory duty of care and regulator. In: *Carnegie UK Trust. Org. uk* [online]. 2019. [cit. 10. 10. 2022]. p. 93.

<sup>83</sup> PERRIN, William, Lorna WOODS. Online harm reduction: a statutory duty of care and regulator. In: *Carnegie UK Trust. Org. uk* [online]. 2019. [cit. 10. 10. 2022]. p. 43-48; COMMON, F. MacKenzie. *Rule of law and human rights issues in social media content moderation* [online]. London, 2020. PhD thesis. London School of Economics and Political Science. Law department. [cit. 10. 10. 2022]. p. 168.

<sup>84</sup> PERRIN, William, Lorna WOODS. Online harm reduction: a statutory duty of care and regulator. In: *Carnegie UK Trust. Org. uk* [online]. 2019. [cit. 10. 10. 2022]. p. 43-48.

more (legal) certainty for users as well as for the company to help them create a more proactive approach.<sup>85</sup>

Secondly, it can cause a shift in the power balance between the platforms and the state, in that way that the state institutions (as a society) will have the responsibility to set out the conditions which should be followed by social media platforms.<sup>86</sup> This is with the aim of reducing the power given to social media in the case of self-regulation policies.

Finally, it holds social media companies responsible for their lack of entrepreneurship, with the aim of making sure they will consider the risks beforehand. It lays a duty on the companies and forces them to take responsibility.<sup>87</sup>

## 2.2 DUTY OF CARE IN RELATION TO THE FREEDOM OF SPEECH

In addition to all these advantages of the *duty of care*, there are, unfortunately, also some disadvantages. There are different flaws we can address, for example, the '*conceptualisation of harm*'. Perrin and Woods set out their idea around the concept of harm, but never mention what the notion of harm really contains.<sup>88</sup> More important and in relation to our topic is the protection of our right to freedom of speech. Since the *duty of care* (in our case) means that social media platforms need to comply with the conditions set out by the state, we will mainly focus on the duty of care as written down in the Draft Online Safety Bill of the UK. I chose this Bill since it's the most recent example of a duty of care implemented in the social media field.

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<sup>85</sup> COMMON, F. MacKenzie. *Rule of law and human rights issues in social media content moderation* [online]. London, 2020. PhD thesis. London School of Economics and Political Science. Law department. [cit. 10. 10. 2022]. p. 170.

<sup>86</sup> OHRVIK-STOTT, Jacob, Catherine MILLER. Digital duty of care. In: *Doteveryone's perspective.org.uk* [online]. 2019. [cit. 9. 10. 2022]. Available at: <https://doteveryone.org.uk/wp-content/uploads/2019/02/Doteveryone-briefing-a-digital-duty-of-care.pdf>

<sup>87</sup> Ibidem.

<sup>88</sup> COMMON, F. MacKenzie. *Rule of law and human rights issues in social media content moderation* [online]. London, 2020. PhD thesis. London School of Economics and Political Science. Law department. [cit. 10. 10. 2022]. p. 170.

If we look at the Draft Online Safety Bill of the UK, we look at a European framework. This means that in this situation article 10 ECHR will be applicable. This article is known for its very broad scope, which not only contains positive and tolerated ideas, but also includes freedom of information or ideas that shock or disturb the citizens of society and the state. This is logical because it fits with the cornerstones of a democratic society: pluralism, tolerance and broadmindedness.<sup>89</sup> More recently the Court suggested limiting this broad scope to ensure the protection of fundamental rights, but only as long as it falls within the framework of article 10, §2 ECHR.<sup>90</sup>

The Bill's duties of care set out different layers of obligations: we have general duties applying to user-to-user services and search services, and next to that we have additional duties for services related to children and much more.<sup>91</sup> If we look more in detail at the Bill, we will notice that article 9 (3) describes the harder duties; this provision is also seen as the heart of the draft of the Bill.<sup>92</sup> More interesting for us is provision 10 (3) because it sets out 'softer' duties which can have an impact on our right to free speech.<sup>93</sup>

If we look at the Bill in relation to our established freedom of speech some concerns arise. For example, the lack of an unambiguous definition of

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<sup>89</sup> Judgement of the ECHR of 7 February 2012, case n. 39954/08, *Axel Springer AG v. Germany*. Point 78; Judgement of the ECHR of 25 June 1992, case n. 13778/88, *Thorgeir Thorgeirson v. Iceland App.* Point 63 and COE, Peter. *The Draft Online Safety Bill and the regulation of hate speech: have we opened a Pandora's box?* *Journal of Media Law*. 2022, vol. 14, no.1, p. 67.

<sup>90</sup> Judgement of the ECHR of 16 June 2015, case n. 64569/09, *Delfi AS v. Estonia*.

ECHR 5 August 2011, Judgement of the ECHR of 5 August 2011, case n. 33014/05, *Editorial Board of Pravoye Delo and Shtetel v. Ukraine*.

<sup>91</sup> COE, Peter. *The Draft Online Safety Bill and the regulation of hate speech: have we opened a Pandora's box?* *Journal of Media Law*. 2022, vol. 14, no.1, p. 66.

<sup>92</sup> SMITH, Graham. *Harm Version 3.0: the draft Online Safety Bill*. In: *Inform's Blog* [online]. 1. 6. 2021. [cit. 10. 10. 2022]. Available at: <https://inform.org/2021/06/01/harm-version-3-0-the-draft-online-safety-bill-graham-smith/>; COE, Peter. *The Draft Online Safety Bill and the regulation of hate speech: have we opened a Pandora's box?* *Journal of Media Law*. 2022, vol. 14, no.1, p. 66.

<sup>93</sup> COE, Peter. *The Draft Online Safety Bill and the regulation of hate speech: have we opened a Pandora's box?* *Journal of Media Law*. 2022, vol.14, Issue no.1, p. 66.

hate speech may damage our right to free speech by allowing social media to (unlawfully) restrict the principles of this right. We can substantiate this flaw by the evidence presented by the House of Lords Communications and Digital Committee which suggested that hate speech and hate speech are difficult to distinguish. The fact that the term hate speech regularly changes definition is not helpful, as are the changes in the different legal parameters in criminal law in regard to hate speech.<sup>94</sup>

The same issue arises with regard to protecting children from potentially harmful content. Social media platforms have a responsibility to indicate in their terms of service how they will protect minors and young adults from harmful content.<sup>95</sup> What exactly is meant by harmful content remains vague as the Bill does not take into account the individuality of each person: what is harmful differs from person to person, especially in such a vulnerable group as young adults or children. Nor does it set standards on what should be considered as 'normal'. From these provisions, one can infer that there remains room for some subjectivity for social media platforms. This could have very serious implications for our freedom of expression.<sup>96</sup>

Besides that, articles 12 and 13 describe a general duty applicable to user-to-user and search services to consider the right to freedom of expression and protect users from unjustified infringements of this freedom. These core obligations merely state that the fundamental right to freedom of expression must be considered. This issue may cause problems in the future

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<sup>94</sup> COE, Peter. The Draft Online Safety Bill and the regulation of hate speech: have we opened a Pandora's box? *Journal of Media Law*. 2022, vol.14, no.1, p. 68.

<sup>95</sup> Clauses 10 and 22 and clause 11 of the The Draft Online Safety Bill of the United Kingdom. In: Gov.uk [online]. Last changed on 28 June 2022. [cit. 12. 10. 2022]. Available at: <https://www.gov.uk/government/publications/draft-online-safety-bill>

<sup>96</sup> Clause 45 and 46 of The Draft Online Safety Bill of the United Kingdom. In: Gov.uk [online]. last changed on 28 June 2022. [cit. 12. 10. 2022]. Available at: <https://www.gov.uk/government/publications/draft-online-safety-bill> ; RAMCHURN, Sarvapali D. et al. A response to Draft Online Safety Bill – a call for evidence from the Joint Committee. In: *King's College London* [online]. 2021. [cit. 12. 10. 2022]. Available at: [https://kclpure.kcl.ac.uk/portal/en/publications/a-response-to-draft-online-safety-bill--a-call-for-evidence-from-the-joint-committee\(2bb37179-10d0-4806-997a-ab3b042049a2\).html](https://kclpure.kcl.ac.uk/portal/en/publications/a-response-to-draft-online-safety-bill--a-call-for-evidence-from-the-joint-committee(2bb37179-10d0-4806-997a-ab3b042049a2).html); COE, Peter. The Draft Online Safety Bill and the regulation of hate speech: have we opened a Pandora's box? *Journal of Media Law*. 2022, vol. 14, no.1, p. 68.

because as long as platforms can prove that they have taken this right into account, they will remain out of harm's way.<sup>97</sup>

Furthermore, this Bill makes online platforms responsible as intermediaries for the content that is on their platform. This entails that platforms will act as social conscience. In this way, the Bill gives the platforms a legal basis for subjective evaluation of their platform and censoring content. This may, in extreme circumstances, lead platforms to act so cautiously as to remove anything that could even be seen as harmful. They will do everything possible to avoid sanctions. This along with the limitations of this Bill cited earlier can be seen as an excuse for removing legitimate content as it could be potentially harmful.<sup>98</sup>

### 3. BETTER REMEDIES?

From what has been mentioned above, there are clearly still some working points to the *duty of care* approach mentioned in the Draft Online Safety Bill, certainly regarding our freedom of expression. It is definitely important to find a better approach, especially as our right to free speech is one of our fundamental human rights and it should be a priority. However, a solution to this problem is not so obvious, mainly because social media has become so closely entangled in our lives.

Perhaps a better solution would be to create a framework which follows an approach that requires human rights due diligence.<sup>99</sup> These approaches are already used in issues such as business risk, and data protection.<sup>100</sup> Imposing duty-of-care due diligence could be a first step towards developing

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<sup>97</sup> Clause 12 and 13 of The Draft Online Safety Bill of the United Kingdom. In: *Gov.uk* [online]. last changed on 28 June 2022. [cit. 12. 10. 2022]. Available at: <https://www.gov.uk/government/publications/draft-online-safety-bill>; COE, Peter. The Draft Online Safety Bill and the regulation of hate speech: have we opened a Pandora's box? *Journal of Media Law*. 2022, vol. 14, no.1, p. 69.

<sup>98</sup> COE, Peter. The Draft Online Safety Bill and the regulation of hate speech: have we opened a Pandora's box? *Journal of Media Law*. 2022, vol. 14, no.1, p. 70.

<sup>99</sup> FASTERLING, Björn. Human Rights Due Diligence as Risk Management: Social Risk Versus Human Rights Risk. *Business and Human Rights Journal*. 2017, vol. 2, no.2, p. 246.

<sup>100</sup> COMMON, F. MacKenzie. *Rule of law and human rights issues in social media content moderation* [online]. London, 2020. PhD thesis. London School of Economics and Political Science. Law department. [cit. 10. 10. 2022]. p. 189.



a new process. In addition, we could also suggest tests that address the situation where the duty of care is negated by the risks attached to it which can lead to collateral damage to free speech.<sup>101</sup> But making the regulation is of course always 'easier', the real challenge is to implement regulation correctly.

#### 4. CONCLUSION

In this essay, the central question was if the Duty of Care, as written down in the Draft Online Safety Bill, would be a sufficient answer to the lack of protection of our right to freedom of speech in the current methods of content moderation. At first sight, we could say that the Duty of Care is an interesting approach, the Bill places an enormous amount of obligations on the platforms and sets out potential sanctions in case of breaching these duties. It holds the platforms accountable to ensure a workable framework to protect their users from online harm. This is positive as it forces platforms to think about the processes they run and use a risk-oriented strategy.

Yet when we look closer at this specific proposal, we see that the freedom given to the platforms has an effect on one of our fundamental human rights, our freedom of speech. The Bill is only a draft and we won't know how it will operate once it is enforced. But it's clear that for the reasons sets out above, there are serious concerns regarding the possible impact on the freedom of speech. It's good to hold companies accountable and to take action. However, it would be better to include in this regulation our free speech; a criterion that is often overlooked today.<sup>102</sup>

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<sup>101</sup> SMITH, Graham. A Ten Point Rule of Law Test for a Social Media Duty of Care. In: *Inform.org* [online]. 19. 3. 2019. [cit. 12. 10. 2022]. Available at: <https://inform.org/2019/03/19/a-ten-point-rule-of-law-test-for-a-social-media-duty-of-care-graham-smith/>

<sup>102</sup> INDEX ON CENSORSHIP. Wider definition of harm can be manipulated to restrict media freedom. In: *Index of censorship.com* [online]. 18. 2. 2019. [cit. 12. 10. 2022]. Available at: <https://www.indexoncensorship.org/2019/02/wider-definition-of-harm-can-be-manipulated-to-restrict-media-freedom/>

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