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**Manuel Michalski (Complainant)**

**vs**

**Google Ireland Ltd. (Respondent)**

**Case: 3100712485**

## **Regular Decision**

In its capacity as an out of court dispute settlement body under Art. 21 of the digital services act, ADROIT, based on the statements submitted by the parties, held that

- 1. The admissible Complaint is upheld.**
- 2. It is declaratorily held that the Respondent's moderation decision to the detriment of the Complainant was not rightful.**
- 3. The Respondent bears the cost of the proceedings.**

## **A. Parties**

The Complainant is Manuel Michalski, residing at Stralsunder Str. 69, 13355 Berlin, in Germany.

The Respondent is Google Ireland Ltd., with registered address at Gordon House, Barrow Street, 4 Dublin, Ireland.

## **B. Procedural History**

The Complaint was filed by the Complainant with ADROIT on the 2 Apr 2025 by online submission. In accordance with the Rules of Procedure, ADROIT formally notified the platform provider of the Complaint and hence the case was formally opened.

The Respondent has submitted a response in writing on 31 Jul 2025 4:52 PM. ADROIT appointed an adjudicator as the sole arbiter for this case.

## **C. Facts of the Case**

This Complaint challenges a content moderation decision issued by the Respondent, which adversely impacted the Complainant in their capacity as an active user of the Respondent's platform at the relevant time. The facts giving rise to this dispute are outlined below.

By moderation decision, the Respondent has taken measures against content provided by the Complainant on the Respondents Online-Platform.

In particular, the Complainant challenged the removal of a review originally posted on Google Maps concerning a public virtual reality facility. The disputed review provided both positive and negative observations. The Complainant stated that the review reflected their personal impressions and

did not contain false factual allegations, insults, or defamatory statements. Following the removal, Google informed the Complainant that the content may violate applicable German law, specifically defamation provisions.

The Complainant filed an objection through Google's internal complaint-handling mechanism, reiterating that the review constituted a subjective opinion protected under German law. They emphasized the importance of maintaining a balanced review system that accommodates both positive and critical feedback. To address potential concerns about tone, the Complainant revised and resubmitted the review in a more objective form. They reported, however, that the revised version was also not published and believed it had not been properly reviewed.

In its response, Google maintained that the review violated German defamation law and stated it was obligated to comply with all applicable legal requirements. Google confirmed that the initial removal decision had been reviewed during the internal complaint process and upheld on 2 April 2025. It concluded that no error had been made in the initial assessment and declined to reinstate the content.

#### **D. Admissibility**

The Complaint is admissible.

Otherwise, there are no concerns regarding the admissibility of the Complaint.

#### **E. Merits of the Case**

The Complaint is upheld on the merits.

ADROIT is called to determine whether the disputed review constitutes permissible opinion or crosses the threshold into defamatory speech or

otherwise unlawful effects under applicable legal and platform standards. This assessment is made pursuant to Article 21(3) of the Digital Services Act (DSA), which mandates certified dispute resolution bodies to evaluate whether a provider's content moderation decision complies with applicable law, including fundamental rights protected by the Charter of Fundamental Rights of the European Union (CFR) and national constitutions.

### **I. Contractual Basis: Terms of Service and Defamation Policy**

Google's Terms of Service set out the contractual framework governing users' access to and use of its services. These terms prohibit content or activities that violate applicable laws, infringe the rights of others, or otherwise contravene Google's content policies. In the context of user reviews, Google's policies include prohibitions against defamatory or harmful statements, as defined under relevant legal standards. Where Google determines that content may violate applicable defamation laws, it reserves the right to remove such content.

It is important to note that private online platforms might be public forums and although they retain editorial discretion to moderate user-generated content, their enforcement actions should be balanced with the user's fundamental rights. Under the Digital Services Act (DSA), Google is required to ensure that moderation decisions are carried out in a transparent, proportionate, and legally compliant manner. This includes providing users with sufficiently clear statements of reasons for content removals and ensuring that users have access to effective internal and external redress mechanisms.

### **II. Disputed Content and Platform Enforcement**

This dispute arises from a complaint regarding the removal of a review on Google Maps. The review in question, posted by the Complainant and subsequently removed by Google, stated:

"Unfortunately, it was quite disappointing. At least: The colleague on site was very friendly and remained calm and helpful even when it was busy. Here are my impressions, summarized briefly: Negative points: The first VR seats are located directly in the entrance area. This means you are potentially observed by other guests while playing, which makes it rather difficult to immerse yourself in the game. The noise level there is also correspondingly high. The technology used (Pico VR) seems outdated - the graphics were weak and the performance problematic. Headsets and sound are wireless, which in our case led to noticeable stuttering, delays, and lag. For an immersive VR experience with as little motion sickness as possible, smooth frame rates are crucial - unfortunately, that wasn't the case here. The games themselves seemed quite simple. Even the highest difficulty level offered little challenge. Neutral to negative (but predictable): This is stationary VR, without a PC backpack or greater freedom of movement. The play area is quite small, which meant that the Guardian system often appeared. Other points: In case of technical problems, you can call a Game Master - although this took a while several times for us. Apparently, only one person was responsible for several rooms. Conclusion: Apart from the very friendly staff member, unfortunately, nothing here really convinced me. I was invited and didn't have to pay anything - but the experience was still more frustrating than entertaining."

As observed, the review contained both critical and positive observations regarding a visit to a VR facility. It combined a favorable remark about the

staff's professionalism with detailed criticisms relating to the location of equipment, noise levels, technological quality, gameplay experience, and staffing arrangements. These comments appear to reflect the reviewer's personal impressions and subjective evaluation of the services received, rather than asserting objectively verifiable allegations of unlawful or unethical conduct by the business.

The central question in this context is whether the content qualifies as a protected value judgment or whether it contains factual statements that are demonstrably false and capable of causing reputational harm. The complainant provides critical assessments of the business's services (e.g., "the technology used seems outdated," "the games themselves seemed quite simple") and observations about logistical aspects (e.g., "the first VR seats are located directly in the entrance area," "only one person was responsible for several rooms"). These statements are framed as the user's perceptions rather than as definitive assertions of fact. Importantly, such evaluations are typical of consumer reviews, where users commonly report their personal experiences and levels of satisfaction.

German defamation law, as interpreted by national courts, draws a clear distinction between value judgments (*Werturteile*) and factual assertions (*Tatsachenbehauptungen*). Value judgments benefit from broad constitutional protection under Article 5(1) of the German Basic Law (*Grundgesetz*) and Article 11 of the Charter of Fundamental Rights of the European Union, provided they are not needlessly defamatory. Factual assertions, on the other hand, may be lawfully restricted when they are demonstrably false and capable of harming another's reputation. In this case, there is no evidence that the reviewer's comments contained false factual claims. Statements about perceived technical shortcomings or the quality of gameplay, even if sharply worded, remain inherently subjective.

The critical tone of the review does not, in itself, elevate the content to the

level of defamation. Expressions of dissatisfaction or disappointment, when grounded in a consumer's own experience, fall within the ambit of lawful expression in a democratic society. The review at issue does not allege illegal practices, dishonesty, or other forms of misconduct; rather, it communicates the user's dissatisfaction with the quality and nature of the services provided. Such commentary, though negative, contributes to a diverse and balanced review ecosystem.

In that sense, the suppression of lawful opinions carries significant risks. Platforms play a central role in enabling consumers to share their experiences and in allowing prospective customers to form their own assessments based on a variety of perspectives. Removing reviews that fall within the category of protected value judgments may undermine the credibility of review systems and discourage users from sharing honest feedback. This, in turn, diminishes the informational value of consumer reviews for the broader public.

Accordingly, when assessing reviews like the one at issue, it is essential to distinguish between subjective evaluations and verifiably false factual allegations. Opinions, even those strongly critical or unpleasant for the business concerned, remain protected under European and German constitutional standards. The appropriate legal remedy for businesses seeking to challenge genuinely false factual statements lies in targeted defamation actions, rather than in the pre-emptive suppression of lawful consumer opinions.

In the present case, the disputed review might not appear to fall within the category of harmful or unlawful content envisaged by Google's defamation policy. The content is framed as subjective evaluations and impressions based on the reviewer's personal experience rather than as verifiably false factual allegations. As such, it does not meet the threshold for defamation under German law, which requires the existence of false factual claims

capable of harming a business's reputation.

Thus, from a freedom of expression perspective, the removal of the disputed review may unduly restrict the user's ability to share lawful opinions. Article 11 of the Charter of Fundamental Rights of the European Union and Article 5(1) of the German Basic Law afford strong protection to value judgments expressed in good faith. By removing the review, Google may inadvertently diminish the diversity of perspectives available to the public, reducing the informational value of its review system and impairing consumers' ability to form a balanced view of the business concerned.

### **III. Decision and Conclusion**

In establishing whether Google's removal of the review was disproportionate or otherwise unlawful under the applicable legal framework, and whether the review constituted a permissible opinion or crossed the threshold into defamatory speech, ADROIT determines that Google's decision to remove the Complainant's content was unlawful under German defamation law, its own Policy Guidelines, and its obligations under the Digital Services Act (DSA). The review contains permissible value judgments and non-defamatory content.

Accordingly, ADROIT prevails in favor of the Complainant, emphasizing that private online platforms, while sometimes functioning as de facto public forums, must ensure that their enforcement actions respect users' fundamental rights. Furthermore, the burden of proof (*affirmanti incumbit probatio*) lies with the party alleging that the content is unlawful. A determination of "defamation" must be based on a demonstrably false factual assertion capable of damaging the reputation of a person or business.

## **F. Cost Decision and Information on Legal Remedies**



The Respondent bears the cost of the proceedings. According to ADROITs Fee Model, the Respondent is charged for this Decision with the Administrative Fee (Sec. C, II, Nr. 5 ADROIT Fee Model, EUR 149.57), as well as the Processing Fee (Sec. C, III, 1., EUR 349.77) amounting to total Fee of EUR 499,34.

This Decision can be appealed one week after it has been issued.

As an out-of-court dispute settlement decision under the DSA, this decision is not binding according to Art. 21 sec. 5 DSA. It does not preclude either party from pursuing further legal remedies.

Adroit, August 01, 2025