ARTICLE 19

Draft version

Taming big tech: Unbundling, open markets and competition as a solution to power over hosting and content curation

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Policy Brief

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ARTICLE 19 works for a world where all people everywhere can freely express themselves and actively engage in public life without fear of discrimination. We do this by working on two interlocking freedoms, which set the foundation for all our work. The Freedom to Speak concerns everyone's right to express and disseminate opinions, ideas and information through any means, as well as to disagree from, and question power-holders. The Freedom to Know concerns the right to demand and receive information by powerholders for transparency good governance and sustainable development. When either of these freedoms comes under threat, by the failure of power-holders to adequately protect them, ARTICLE 19 speaks with one voice, through courts of law, through global and regional organisations, and through civil society wherever we are present.

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Executive summary

In this policy brief, ARTICLE 19 outlines how open markets and competition can help address current freedom of expression challenges in online content curation. ARTICLE 19 hopes to offer practical solutions to achieve these objectives by suggesting pro-competitive instruments such as the unbundling of the provision of hosting and content curation services.

Social media platforms over recent years have become important actors in the exercise of freedom of expression. Their reach and influence in this area is undeniable as they have become sources of political and journalistic expression in particular. However, they have mainly focused on users' engagement and collected unprecedented amounts of data. Consequently, their business models have contributed to the dissemination of various kinds of problematic content, including 'hate speech' and forms of 'disinformation.' This is why any proposed public policy or regulation of social media services must consider the impact it may have on human rights.

In this brief, ARTICLE 19 discusses the risks posed by extreme concentration on social media markets and the reduction of exposure diversity on social media platforms. One of the key issues remains the excessive market power held by big social media platforms. Acting as gatekeepers, they have a direct impact on the dynamic of content's distribution, and thus on media diversity and freedom of expression on social media markets. ARTICLE 19 believes that to fix those challenges it is necessary to diminish concentration of power in the market as well as gatekeeping powers of large platforms, and to lower barriers to entry for alternative players. These goals might be achieved in more than one way; in this policy brief ARTICLE 19 makes a proposal for a specific instrument to be used, which has the merit to lead to pro-competition outcomes, while at the same time setting the conditions for media diversity and freedom of expression to be better guaranteed on the market.

It remains clear that pro-competitive measures to counterweight the power that large social media platforms have on the free flow of information in society are only part of the solution. The other part is to have content curation services that comply with international human rights standards. These two parts are not alternative, but rather complement each other: we need both to protect freedom of expression and media diversity on social media markets.

The policy brief is divided into three parts. Firstly, we outline the relevant international human rights and freedom of expression standards followed by the key problems and concepts with regards to social media markets. Lastly, we propose a pro-competition regulatory solution, rather than a control-oriented solution.

Key recommendations

- States should put in place measures to counterweight excessive concentration on social media markets. Among the possible measures, we suggest that States introduce asymmetric regulation that imposes the unbundling between hosting and content curation with independent regulatory authorities to enforce it.

- The unbundling could be shaped as a form of functional separation.

- Independent regulatory authorities could ensure that the unbundling rules are implemented taking into account the contractual layer and the technical layer.

Introduction

Over the last two decades, social media platforms have been tremendous enablers for exercising the right to freedom of expression and information online. At the same time, they have collected massive amounts of users' data, built users' profiles and drawn them in with targeted advertising. By focusing on users' engagement, social media platforms' business models have contributed to the acceleration of the dissemination of various kinds of problematic content, including 'hate speech' or various forms of 'disinformation.' They have also provided spaces for new forms of harassment and intimidation of many users.

Presently, many legislators and regulators are looking for ways to address these problems through legislative and regulatory interventions, and it is worrying that some of these interventions might do more harm than good to users' rights and could denature the Internet as a free and open space for all. The current proposals either focus on specific types of content (e.g. 'hate speech,' 'disinformation' or 'terrorism');[1] follow the money approach and concentrate on the relationships among social media platforms, news producers and advertisers;[2] or combine a targeted intervention on selected services provided by digital platforms with a broader intervention on behaviours put in place by platforms with a certain degree of market power.[3] A few proposals, though, put forward a more far reaching approach and look at content moderation systems, as well as at the market failures in social media markets that heavily amplify the challenges we face.[4]

Many of the regulatory proposals that look at market failures focus on the phenomenon of gatekeeping. Gatekeepers control economic actors' access to the users and are able to raise barriers to entry for competitors. As such, they determine the competition dynamics in the online market and in the after-markets. Other actors, who want access to the same users, have to accept the conditions imposed by those gatekeepers with dominant market positions. Gatekeepers in turn deprive users of viable alternatives. Regulatory initiatives in this area totally disregard or inefficiently address the fact that gatekeepers on social media markets (i.e. the large social media platforms) have also a strong impact on users' freedom of expression.

ARTICLE 19 is concerned that social media gatekeepers act not only as "economic" gatekeepers, but also as "human rights" gatekeepers. They impact how people exercise their rights in the digital ecosystem, in particular the right to freedom of expression and information and the right to privacy.[5] At a community level, social media platforms with high market power can also exert decisive influence on public debate, which raises issues in relation to diversity and pluralism in the online environment. It is of utmost importance that media freedom and media pluralism are guaranteed online as they are offline.

Therefore, we are convinced that to adequately address the current challenges related to content curation, one has to look not only at how content curation is or should be provided. Equal attention must be devoted to the market power of those providing content curation. It must also address how the behaviour of platforms influences the dynamics in the market where this service is provided. Addressing content curation and platforms' behaviour on the market separately will not efficiently solve the problems at stake.

ARTICLE 19's response to this problem is three-fold:

- First, we believe in the preservation of intermediary liability and we argue that content curation systems should comply with international standards on freedom of expression. We address these issues in our comprehensive policies on internet intermediaries[6] and on platform regulation.[7]

- Second, we argue that market failures play a fundamental role in potentially all content curation challenges, either as cause or as facilitating factors. These problems are addressed in this policy where we offer a regulatory proposal to deal with them, relying on the use of a traditional pro-competitive regulatory tool.

- Finally, we believe that there is a problem with the way users are exposed to diversity of views and sources online. This is due to recommender systems used by online media outlets and social media platforms, and by the commercial relationship between the former and the latter. We outline this problem and offer some solutions in another policy paper.[8]

This policy brief is divided in three parts:

- In the first part, we set out the applicable standards for positive obligations of States to promote the right to freedom of expression, particularly as it relates to plurality of sources, market concentration and exposure to diversity.

- In the second part, we lay down the key issues that arise in relation to content curation on social media platforms, which are worsened by gatekeeping scenarios.

- In the third part, we propose a likely pro-competitive regulatory solution to solve or minimise the impact of those issues by addressing the gatekeeping, making recommendations for regulators and companies.

Applicable International human rights standards

Guarantees to the right to freedom of expression

The right to freedom of expression is protected by Article 19 of the Universal Declaration of Human Rights (UDHR)[9], and given legal force through Article 19 of the International Covenant on Civil and Political Rights (ICCPR).[10] Similar guarantees to the right to freedom of expression are further provided in the regional treaties.[11]

The scope of the right to freedom of expression is broad. It requires States to guarantee to all people the freedom to seek, receive or impart information or ideas of any kind, regardless of frontiers, through any media of a person's choice. In 2011, the UN Human Rights Committee (HR Committee), the treaty body monitoring States' compliance with the ICCPR, clarified that the right to freedom of expression applies also to all forms of electronic and Internet-based modes of expression.[12] Similarly, the four special mandates on freedom of expression highlighted in their 2011 Joint Declaration on Freedom of Expression and the Internet that regulatory approaches in the telecommunications and broadcasting sectors could not simply be transferred to the Internet[13]. In particular, they recommended the adoption of tailored approaches to address illegal content online, while pointing out that specific restrictions for material disseminated over the Internet were unnecessary.[14]

Positive obligations to promote the right to freedom of expression

Importantly, under international human rights standards, States are under not only a so-called 'negative obligation' to refrain from violating the right to freedom of expression but also a 'positive obligation' to ensure enjoyment of the right. This means that they must also take active steps to create an enabling environment for the enjoyment of the right to freedom of expression.[15] This includes, for instance, measures preventing the monopolisation or undue media concentration or ensuring that minority groups are able to make themselves heard through the media.

Risks posed by excessive concentration

Media concentration can undermine freedom of expression in a variety of ways. A reduced number of media owners can result in a reduced diversity of viewpoints being permitted to express themselves through the media. In addition, the economies of scale achieved by large media conglomerates also mean that smaller outlets have to reduce their expenditures and are no longer capable to support investigative journalism. Moreover, advertisers will choose to go with the largest media conglomerates, further adding to the predicament of smaller competitors. Big players will then face no competition, which in turn could lead to a reduced level of quality and innovation, and to higher prices for consumers.

For these reasons, a number of international bodies have long since recognised that the right to freedom of expression implies a duty for States to prevent excessive concentration in the media sector. Among others, the UN Commission on Human Rights has called on States to:

> Encourage a diversity of ownership of media and of sources of information, including through … effective regulations on undue concentration of ownership of the media in the private sector.[16]

In their 2002 Joint Declaration, the UN, OSCE and OAS special mandates on freedom of expression noted that "the threat posed by increasing concentration of ownership of the media and the means of communication, in particular to diversity and editorial independence."[17]

The duty of States to prevent media concentration is further underlined by a number of international instruments. The African Declaration of Principles on Freedom of Expression and Access to Information calls on States to adopt effective measures to avoid undue concentration of media ownership, although such measures shall not be so stringent that they inhibit the development of the media sector as a whole.[18]

Although Internet intermediaries do not directly affect the plurality of media sources in the sector, they have a significant impact in the distribution of content and have the ability to influence the public debate. They can also affect the business models of traditional media and put their sustainability at risk. Hence, excessive concentration on the social media market (i.e. at the content distribution layer) can pose risks to concentration at the creation layer. For these reasons, the Council of Europe, in its 2018 Recommendation on media pluralism and transparency of media ownership reminded States that they have an obligation to guarantee media pluralism on the current media markets, which include internet intermediaries.[19] The Council also reminded States that relevant regulation of the media should take into account the adverse impact that the possible anti-competitive behaviour of online gatekeepers can have on media pluralism.[20]

Exposure diversity

Currently, algorithmic based content curation systems impact the diversity of content each user is exposed to. For instance, in its report to General Assembly of 2018, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (Special rapporteur on FoE) highlighted that algorithms of social media and search platforms determine how widely, when and with which audiences and individuals' content is shared. He also highlighted that "social media newsfeeds display content according to subjective assessments of how interesting or engaging content might be to a user; as a result, users might be offered little or no exposure to certain type of critical social or political stories and content posted to their platforms."[21]

Because of the lack of transparency that surrounds the functioning of these systems, users are not aware that platforms reduce/limit what they can see. This interferes with their individual agency to seek and share ideas and opinions across ideological, political and societal divisions. At societal level, the reduction of exposure diversity has an enormous impact on the free flow of information and contributes to the polarisation of discourse. To address this challenge, the Special Rapporteur on FoE recommended companies to signal to individuals where and when algorithms, and artificial intelligence more in general, play a role in displaying or moderating content, and to give them the notice necessary to understand and address the impact of artificial intelligence systems on the enjoyment of their human rights.

The Council of Europe has also dedicated attention to this phenomenon. The 2018 Recommendation on media pluralism calls on the Council of Europe Member States to "improve the transparency of the processes of online distribution of media content, including automated processes, assess the impact of such processes on users' effective exposure to a broad diversity of

media content; seek to improve these distribution processes in order to enhance users' effective exposure to the broadest possible diversity of media content."[22]

The problem and key concepts

Content curation and moderation

In this policy, we use the key terms as follows:

- The term **content curation** is used to describe the process of deciding which content should be presented to users (in terms of frequency, order, priority, discoverability and so on), based on the business model and design of the platform. Content curation includes the promotion, demotion and other forms of ranking content.[23] Social media platforms curate content by using algorithmic recommendation systems which aim to maximise users' engagement.

- **Content moderation** activities refer to the removal or suspension of content, or the cancellation or suspension of an account that has been declared illegal by a court or that it is not admitted under the platform's terms of services. Content moderation also includes content flagged as illegal or subject to removal notice.

Significant market power

It has been repeatedly affirmed that big social media platforms have too much power. Market power is traditionally understood as the level of influence that a company has on determining market price, or other relevant aspects of a service, either for a specific product or service, or generally within its industry or sector.

A number of existing regulatory frameworks deal with companies with market power, and attribute it with specific consequences and obligations. When rules are imposed only on players with a certain degree of market power, we refer to it as 'asymmetric regulation.'

Competition rules refer to the concept of 'dominance' to indicate a company with the *de facto* possibility to prevent effective competition on the market and to behave in a manner independent of competitors, customers and suppliers. Various thresholds are used to identify the dominant position, depending on the specific regulatory framework (for example, US rules define dominance in a slightly different way from the EU rules).

The EU electronic communications rules refer to the concept of 'significant market power.' A company is deemed to have this power if, either individually or jointly with others, it enjoys a position equivalent to dominance, namely a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.[24] Similar concepts are used by telecoms frameworks around the world. The concept of 'significant media market power' have also been developed by some scholars, to refer more specifically to the dynamics in the media sector.[25]

When looking at possible rules for internet intermediaries, policy makers, regulators and others have suggested various concepts, as well as various thresholds. These include 'very large online platforms' (defined based on the average monthly users: equal or higher than 45 million in the EU);' [26] 'gatekeepers' (defined based on the combination of three quantitative parameters: annual

turnover, average market capitalisation, and average monthly users for at least three financial years);[27] 'significant market status;'[28] or 'structuring digital platforms.'[29]

For the purposes of this policy, ARTICLE 19 suggests that in order to assess the degree of market power of each platform, the following factors could be considered: (i) the number of the platform's users, (ii) the platform's annual global turnover and; (iii) the platform's capacity to play a role in access to the market (gatekeeping) or in the functioning of the market ('regulatory role').[30] In this policy, terms 'large' social media platforms, or 'gatekeepers' refer to those platforms that show a certain degree of market power according to those factors, and for this reason, should be subject to the asymmetric rules (see below).

High concentration, barriers to entry and gatekeeping

Social media markets show high concentration and are dominated by only a few companies.[31] Moreover, social media markets present high barriers to entry and they do not appear easily contestable. In other words, it is not easy, for potential competitors, especially local ones, to enter the market and challenge the incumbents' market power. Large social media platforms have greater ability than smaller platforms to attract users, because the number of users on a platform directly increases the benefits of that platform to the user. This network effect raises significant barriers to entry to competitors.

Large platforms also benefit from economies of scale: the incremental cost of a new user is very marginal with comparison to the large fixed costs to build the platform. Scope also favours large platforms; their presence across a range of services (hosting, instant messaging, etc.) allows them to accumulate vast amounts of data from consumers, which competitors without similar scope cannot collect.

High concentration and barriers to entry shield large platforms from competition in the market and these large platforms are able to act as gatekeepers. As such, they have the capacity to exclude rivals or impede entry, they can control access by online advertisers to their users and can control access by users to online content via their content curation algorithms.

Social media gatekeepers are able to adopt business models and practices which are not driven by demand. They can also lower the quality of the content curation service offered to users without suffering any competitive pressure. Users do not have viable alternatives and switching costs (among others, the time and efforts needed to switch, as well as the linked loss of contacts, connections and the like) are kept artificially high by the platforms.

As a result, existing gatekeeping social media companies manage to dictate content curation rules in the market and they also constitute a bottleneck in the distribution of content, greatly affecting users' diversity of exposure. What is distributed by or shared on these few platforms is visible to a vast public, while what is not distributed by or shared on these platforms might not be visible to the majority of individuals.

The gatekeepers' key role in distribution is ever more problematic because these large platforms decide what to distribute based on a profit maximisation logic. In other words, they promote the content that engages users the most, because they can then monetise users' attention with advertisers. Platforms have no incentives to expose users to all content potentially available, but only to the tiny portion of it that will keep them more engaged.[32] The platforms therefore design their content curation activities accordingly.[33] As a result, the personalisation of content is not

performed based on the criteria such as diversity of content or diversity of sources; instead, the end goal of the platforms is the maximisation of engagement and the maximisation of profit. Hence, it can be argued that the algorithmic amplification optimised for engagement shrinks users' exposure diversity[34] and, at societal level, has a strong impact on the flow of information, being potentially capable to influence or dictate the agenda of public debate.[35]

To conclude, we argue that high concentration, barriers to entry and gatekeeping positions on social media markets are important reasons why large platforms can adopt unsatisfactory content curation practices and reduce users' exposure diversity without facing any significant trade-offs. Therefore, to guarantee freedom of expression and exposure diversity on those markets we need not only content curation standards based on international human rights, but also measures to reduce market concentration, lower barriers to entry and diminish gatekeeping power of social media platforms. It is only with the combination of those two lines of interventions that we can adequately achieve our goals.

A pro-competition regulatory solution

The unbundling of hosting and content curation

As outlined earlier, high concentration in social media markets - coupled with consistent barriers to entry for competitors and the gatekeeping role of large platforms - plays a fundamental role in the structural competition problems and freedom of expression challenges we need to address in those markets. ARTICLE 19's proposal aims to fix those challenges by diminishing the concentration of power in the market and by lowering gatekeeping powers of large platforms and barriers to entry for alternative players. There might be various instruments that could be used to achieve those objectives. ARTICLE 19 suggests to use the unbundling of hosting and content curation activities, for the reasons that are explained in the following paragraphs.

A vast majority of social media platforms provide hosting and curation activities as a 'bundle.' This means that two services - hosting a profile on the platform (with pictures, videos, and a variety of content that one can upload) and content curation - are offered together as one. The bundle has a strategic economic value, and it contributes to lock in users, who will not look for the content curation service outside of the platform, and to raise barriers to entry to the market for potential competitors.

This scenario is undesirable from a number of perspectives, and has an impact on competition, innovation, individuals' rights and, to a certain extent, also broader public objectives of media diversity. As mentioned earlier, it also results in a number of market failures such as excessive concentration in the market, barriers to entry, and other externalities created by the large platforms' behaviours that fall on individual users and on society, who pay the costs. In other words, by offering both services together, large social media platforms manage to protect themselves from competitive pressure and deprive users from alternatives; they are able to hold their gatekeeping position safely. This does not need to be the case, and it is not something irreversible.

Therefore, ARTICLE 19 proposes to impose, via regulation, **the unbundling of hosting and content curation on large platforms**. Unbundling is a highly pro-competition remedy: it opens the market for content curation and relies on competition among players to deliver more choices and better-quality services to users. Unbundling is also capable of addressing the market failures mentioned above. Furthermore, this regulatory solution is not a novelty in the history of economic regulation. On the contrary, it has often been used in network industries, and especially in the telecom sector, in order to enhance competition and stimulate market entry.

Unbundling is less invasive or paternalistic than other instruments to address challenges related to content curation, such as imposing specific curation policies or establishing 'must carry' obligations. It interferes with digital platforms' freedom of economic activities only in a limited way and it supports long term market driven sustainable outcomes for content curation rather than involving top down requirements by a regulator, which is often problematic when it comes to freedom of expression and media diversity objectives. Finally, and remarkably, unbundling empowers users to make their own choices, rather than imposing strict standards on the market.

Hence, ARTICLE 19 encourages decision makers and regulators to consider the implementation of the unbundling of hosting and content curation as a sound and efficient instrument to solve the

challenges mentioned above. With regards to the specific features of the suggested regulatory solution, we make the following suggestions:

Suggestion 1: States should introduce asymmetric regulation that imposes the unbundling between hosting and content curation and independent regulatory authorities to enforce it.

ARTICLE 19 believes that to address the problems described earlier, regulation is needed, because large platforms do not have sufficient incentives to implement the unbundling via self-regulation. Therefore, we propose that States should adopt rules that would oblige social media platforms with a significant market power to unbundle hosting and content curation activities and allow third parties to offer content curation to the platforms' users.

We suggest these rules should be enforced by independent and accountable authorities, both in law and in practice. The rules should contain a definition of the degree of market power that triggers the asymmetric obligations, together with the thresholds to identify such market power. The independent regulator should be tasked to perform this case-by-case assessment, based on the information provided by the platforms and collected on the market. However, the thresholds should be described with sufficient legal certainty as to make platforms capable to make a self-assessment.

For users, the unbundling would mean that when they create or have a profile, for example, on Facebook or any other large platform, they would be asked by the latter whether they want the content curation service to be provided by Facebook itself, or by other players to be freely selected.

The option to stay with the same platform should be presented as opt-in, rather than opt-out. We believe that opt-in default is more pro-competitive and reduces switching costs (and, therefore, it also avoids that platforms undermine the effects of the unbundling by making the switching hard for users and by nudging them towards a locked-in situation).

Suggestion 2: The unbundling should be shaped as a form of functional separation

We recommend a form of functional separation, not a structural one. Indeed, the unbundling rules impose large platforms to separate the provision of the hosting service from the provision of content curation service. They do not impose to separate the platform's assets that are used to provide one from those that are used to provide the other, for example by imposing to sell one of them. In other words, they do not imply a change in the platform's physical structure or assets.

In addition, we suggest that the platform that provides the hosting should remain free to offer content curation too. What changes is that it should keep the two services separate and provide competitors the possibility to offer the curation service on its platform as well as allow users to freely choose among a variety of content curation providers.

Suggestion 3: Independent regulatory authorities should ensure that the unbundling rules are implemented taking into account the contractual layer and the technical layer

The unbundling rules should be designed and implemented to address the contractual layer (contractual agreements between the platforms with significant market power and the alternative

players that provide content curation services to the platforms' users) and the technical layer (how to make this technically possible while ensuring data protection, consumer protection and security). There might be various ways to do so; to help regulators in their tasks, we made some preliminary recommendations:

- For the contractual layer, ARTICLE 19 suggests that platforms provide access to competitors based on fair, reasonable, transparent and non-discriminatory grounds. We also suggest platforms should not be allowed to change the access conditions unilaterally in a way that nullifies competitors' efforts and investments.

- For the technical layer, ARTICLE 19 believes that an efficient solution is for platforms to open their curation Application Programming Interface (API) to potential competitors. As such, the efficacy of the unbundling remedy is based on the adoption of interoperability solutions, whose details should be defined by the regulator, guided by independent experts with the relevant knowledge and in cooperation with the platform in order to deal with the substantial information asymmetries in the market. Indeed, as explained by distinguished academic experts, various types of interoperability exist, and each of them could best fit different situations and needs[36].

Endnotes

[1] See, e.g. for 'hate speech' NetzDG Law in Germany (Federal Law Gazette I, p. 3352 ff, version of 1 September 2017, valid rom 1 October 2017) or Avia Law in France (Bill 388, adopted by the National Assembly on 2 January 2020); for disinformation see e.g. ARTICLE 19, Malaysia: "Anti-Fake News Act," April 2018.

[2] For example, in April 2020 the Australian government has instructed the Australian Competition and Consumer Commission (ACCC) to develop a mandatory code to address commercial arrangements between digital platforms and news media businesses. Among the elements the code will cover include the sharing of data, ranking and display of news content and the monetisation and the sharing of revenue generated from news. The mandatory code will also establish appropriate enforcement, penalty and binding dispute resolution mechanism; see Joint media release with Th Hon Paul Fletcher MP, Minister for Communications, Cyber Safety and the Arts, 20 April 2020.

[3] European Commission, Proposal for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC, COM(2020) 825 final, 2020/0361 (COD). For a definition of 'online platforms' see Article 2 therein. For a definition of 'very large online platforms' see Article 25 therein. See e.g. the proposal of the European Commission for a Digital Markets Act and the Digital Single Act.

[4] European Commission, Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act), COM(2020) 842 final 2020/0374 (COD). For indications about the identification of gatekeepers, see Article 3 therein.

[5] ARTICLE 19 has repeatedly raised this point; see, *inter alai,* ARTICLE 19 submission to DG COMP call for contributions about 'Shaping Competition Policy in the Digital Area', September 2018; EU: Joint statement on DG CNECT and DG COMP inception impact assessments, 30 June 2020.

[6] See ARTICLE 19, Internet Intermediaries: Dilemma of Liability, 2013 and ARTICLE 19, Sidestepping Rights: Regulating Speech by Contract, 2018.

[7] LINK TO THE FINAL VERSION OF THE PLAFORM REGULATION POLICY WILL BE INSERTED HERE.

[8] ARTICLE 19, policy brief on diversity and pluralism online, forthcoming, 2021.

[9] UN General Assembly, Universal declaration of human rights, 1948, (217 [III] A). Paris.

[10] UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, UN Treaty Series, vol. 999, p.171.

[11] Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 September 1950; Article 9 of the African Charter on Human and Peoples' Rights (Banjul Charter), 27 June 1981; Article 13 of the American Convention on Human Rights, 22 November 1969.

[12]HR Committee, General Comment No. 34 on Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, para 12, 17 and 39.

[13] The 2011 Joint Declaration on Freedom of Expression and the Internet, adopted by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (Special Rapporteur on FOE), the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, June 2011.

[14] *Ibid*.

[15] *C.f.* Article 2 of the ICCPR.

[16] UN Commission on Human Rights, Resolution 2003/42, section 6(a).

[17] Joint declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, London, 10 December 2002.

[18] African Declaration of Principles on Freedom of Expression and Access to Information, adopted by the African Commission on Human and People's Rights at its ordinary session held from 21 October to 10 November 2019 in Banjul, the Gambia.

[19] Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on media pluralism and transparency of media ownership, adopted by the Committee of Ministers on 7 March 2018 at the 1309th meeting of the Ministers' Deputies.

[20] *Ibid.,* para 3.1.

[21] Special rapporteur on FoE, Report on Artificial Intelligence technologies and implications for freedom of expression and the information environment, 29 August 2018, A/73/348, para 10.

[22] Council of Europe, CM/Rec (2018) 1, *op. cit.*

[23] For a definition of content curation see, e.g. E. Mazzoni and D. Tambini, Prioritisation Uncovered, The Discoverability of Public Interest Content Online, Council of Europe Study, DGI(2020)19.

[24] Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast)Text with EEA relevance, Article 63.
[25] M. Eli Noam, Online Video: Content Models, Emerging Market Structure, and Regulatory Policy Solutions, TPRC47: The 47th Research Conference on Communication, Information and Internet Policy 2019, 26 July 2019.
[26] See the European Commission, Digital Services Act package – ex ante regulatory instrument of very large online platforms acting as gatekeepers, 2020.
[27] See the European Commission, Digital Markets Act: Ensuring fair and open digital markets (DMA), December 2020. However, the DMA also provides the possibility, for the Commission to define a gatekeeper based on a case-by-case qualitative assessment if needed, see Article 3.
[28] See, e.g. Unlocking digital competition, Report of the Digital Competition Expert Panel, United Kingdom, March 2019; or the UK Competition and Market Authority (CMA), Online platforms and digital advertising, Final report, July 2020.
[29] See the Competition Authority of France (Autorité de la concurrence), Contribution to the debate on competition policy and digital challenges, February 2020.
[30] ARTICLE 19, Recommendations for the EU Digital Service Act, 21 April 2020, Recommendation 7.
[31] The high level of concentration in digital platforms markets has been identified by, among others, by the CMA Study, *op. cit,*, and Unlocking digital competition, *op.cit.* .
[32] Studies demonstrate that the most engaging content is typically what Mark Zuckerberg called 'borderline,' that is the content which is more sensationalist and provocative, including those stories that appeal to our baser instincts and trigger outrage and fear. See M. Zuckergeberg, A Blueprint for Content Governance and Enforcement, 2018; or S. Vosoughi, D. Roy, and S. Aral, The spread of true and false news online, 2018, Science Vol. 359, Issue 6380, pp. 1146-1151; Z. Tufecki, The Rial Bias Built in at Facebook, New York Times, 16 May 2016..
[33] Tufekci, *Ibid.*
[34] S. Wolfram, Testimony before the Senate Subcommittee on Communications, Technology, Innovation, and the Internet Hearing on Optimizing for Engagement: Understanding the Use of Persuasive Technology on Internet Platforms, 25 June 2019; T. Wu, Blind Spot: The Attention Economy and the Law, Antitrust Law Journal, Volume 82 Issue 3, 2017; Mazzoni & Tambini, *op.cit.*
[35] For example, in Mexico the hashtags #PrensaSicaria, #PrensaCorrupta y #PrensaProstituida ha vebeen used to build a narrative against journalists, which includes certain grade of manipulation but also a level of human interaction. See: Signa_Lab, Prensasicaria, prensaprostituida, prensacorrupta, 4 December 2019. Another example are CLS strategies in Mexico, Bolivia and Venezuela, see Facebook, Coordinated Inauthentic Behaviour Report, August 2020. A third example is the use of bots on Twitter to try to hush Mexican activities, see: Wired, Pro-Government Twitter Bots Try to Hush Mexican Activists, August 2015.
[36] See, in particular, I. Brown, Interoperability as a tool for competition regulation, July 2020, and The technical components of interoperability as a tool for competition regulation, November 2020; or V. Bertola, A Technical and Policy Analysis of Interoperable Internet Messaging, 2020.