Making online platforms responsible for news content

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Executive summary

This paper aims to contribute to the highly salient debate on fake news and hate speech by analysing possible ways of online platforms' regulation. The paper firstly outlines the main challenges currently posed by the rapid spread of hate speech and fake news to democracy. Secondly, it describes the sheer influence of online platforms on contemporary media consumption, the duopolistic position of Facebook and Google in the global digital advertising market and the vast legal protections these online platforms currently enjoy in both the EU and the US. The paper then proceeds to a comprehensive overview of relevant proposals and initiatives, put forward by governments, but also the civil society, the private sector and the platforms themselves. Based on its observations, the paper proposes the following measures to actors wishing to mandate a greater responsibility of online platforms for news:

Governments:

1. Examine the use of algorithms by online platforms in order to reveal potential errors and biases; understand to what extent the algorithms are a conscious editorial choice and how this should affect platforms' liability.
2. Provide guidelines on the editorial and take-down practices of online platforms. Make sure rules for taking down such content are transparent and in line with principles of freedom of speech, as well as the human rights law. Install dedicated bodies to oversee and report on their conduct.
3. Properly apply existing legislation on platforms, notably from the realms of copyright, audio-visual, and competition law.
4. When proposing legislation about hate speech or fake news, develop definitions for these terms that are as specific as possible.
5. Ensure that platforms install appropriate redress mechanisms that allow users to complain if their content had been unjustly removed.

Platforms:

6. Be transparent about editorial practices and report them, especially when it comes to taking down content.
7. Continue partnering with journalists and fact checkers.
8. Graphically differentiate news content from other types of posts.
9. Publicly proclaim your intention to support media literacy and your trust in high-quality journalism.
10. Fund media literacy classes, particularly in those parts of the world that have recently democratized and whose media market does not have an established tradition (e.g. Central and Eastern Europe).

Civil society and the private sector:

11. Push online platforms toward being transparent about their editorial practices.
12. Promote a discourse that views fake news and hate speech as "not cool," like eating unhealthy food.

Contents[1]

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1. Introduction: Digital revolution and democracy

The digital revolution of the past two decades has profoundly changed our way of news consumption. Instead of relying on traditional media organizations that present us information selected according to their own editorial principles, we can nowadays easily create news ourselves, select information conforming to our own tastes and share them across the Internet. Digital algorithms create a personalized information diet, consistent with our existing preferences and online behavior. This revolution in communication undoubtedly has positive effects on democratization, popular emancipation, transparency, efficiency or entrepreneurship.[1] Nevertheless, recent global events have triggered discussions about challenges it poses to democratic societies, where free, independent, accurate and pluralistic media play an irreplaceable role in creating an informed public opinion and controlling the powerful.[22]

Worryingly, authoritarians, populists and extremists across the globe are exceptionally skilled in exploiting the new media environment for their purposes: Both the French presidential candidate Marine Le Pen and the German AfD party have the greatest number of supporters on social media among political subjects in their respective countries, generating impressions not only from provocative and often factually incorrect posts, but also from carefully nurtured distrust towards traditional media, experts and "the establishment".[3] Islamic radicals use social media in order to identify, isolate, radicalize and recruit combatants to fight for their cause.[4] The regime of Vladimir Putin skillfully uses social media to disseminate contradictory information on the Internet in order to sow popular distrust towards democratic institutions, manipulate the Western election process and strengthen its influence over the European continent.[5] In short, as a renowned "digital sociologist" Zeynep Tufekci summarized, *"in the 21st century, we no longer live in an age of information scarcity and therefore, new censorship and propaganda work by info glum distraction, confusion and stealing of political focus."[6]*

Recognizing challenges the digital revolution poses to democracy, Western societies have started to look for remedies against this situation. Proposed solutions include notably a greater focus on media education and critical thinking,[7] expansion of fact-checking services[8] as well as re-evaluating the role of online platforms. This paper contributes to this emerging debate about online platforms' regulation by summarizing and critically evaluating recent regulatory proposals and non-regulatory initiatives that extend responsibility and legal liability of online platforms for news content they display. Apart from providing a general overview of global development, this paper aims to indicate possible ways of how this issue can be addressed in the future.

This paper aims to formulate such conclusions and proposals that would ultimately mandate an online environment that supports quality, fact checked and accurate journalism, and counters the spread of two

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[2] The freedom of the press and media pluralism are widely recognized as core principles of democracy, enshrined in notable international human rights documents including the Universal Declaration on Human Rights or the European Convention on Human Rights, as well as in national constitutions of many democratic states. According to article 10 of the European Convention on Human Rights, "*everyone has the right to freedom of expression. The right should include the right to hold opinions and to receive and impart information without interference by public authority and regardless of frontiers."*

types of harmful news content: **fake news** and **hate speech**. These concepts are defined and briefly explained in the following two paragraphs:

Drawing inspiration from one of the first academic studies on fake news conducted by Allcot and Gentzkov (2017), this paper defines **fake news** as articles that are intentionally and verifiably false.[9] The Russian disinformation campaign in post-Maidan Ukraine and wider Europe was among the first instances demonstrating how dissemination of false stories across the Internet can be used as a successful propagandist tool.[10] However, the fake news issue started to be widely discussed on the global level only after the 2016 American presidential election.[11] 20 top-performing false stories from hoax and hyper-partisan sites gained more impressions on Facebook than 20 most read articles from traditional media outlets during the last three months leading to the elections.[12] Their rapid spread was facilitated by several factors: Besides peoples' natural predisposition to believe stories that fit the worldview they already hold,[13] fake news are catchier and also cheaper to produce compared to fact-checked, accurate information.[14] They can also be easily monetized through advertising on clickbait websites, as it notoriously happened in a fake news factory in Veles, Macedonia before the election.[15] Because the majority of fake news stories favored Donald Trump over Hillary Clinton, a number of commentators have suggested that fake news contributed to his victory, unleashing a global debate about the actual effect of fake news on voting behavior.[16]

Contrarily to fake news, **hate speech** is already a well-researched phenomenon, legally defined in many democratic states. Particularly the EU law defines hate speech as "*public incitement to violence and hatred against a group of persons or a member of such group defined by sex, race, color, religion, descent or national or ethnic origin,"* which is punishable both online and offline.[17] Hate speech (as fake news are also clearly destined to be) is a concept vividly debated between proponents of minimal governmental regulation, who argue that any restriction of free speech is impermissible, and interventionists who claim that hate speech must be prohibited in order to retain civic relations in their states and prevent escalation to real-life physical violence.[18] In Europe, discussion over the appropriate level of hate speech regulation has gained traction over the past two years, as an unprecedented number of hateful messages flooded the Internet and social media in the aftermath of the migration crisis and Brexit.[19]

2. The winner takes it all: The unprecedented power of global online platforms

2.1. Economic position of platforms

In both the US[20] and the EU[21], well over a third of citizens identify the Internet as their favorite source of news. While it is still trailing behind TV, the Internet's position as the news source is on the rise and is expected to grow further as young generation is abandoning traditional media[3] in favor of online news. While general demand for news is on the rise, trust in traditional media plummeted to all time low in 2017.[22]
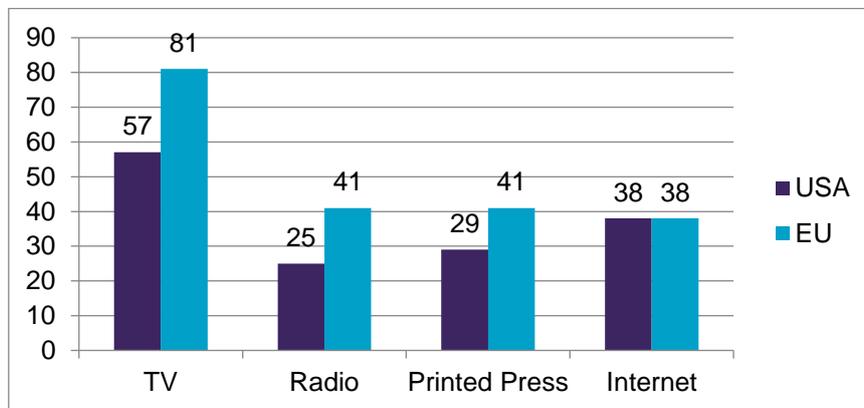

Chart 1: How people get their news, **sources: PewResearch Centre 2016; Standard Eurobarometer 84, 2015**

Online platforms[4] ranging from search engines (Google, Baidu) to news aggregating platforms (Google News, Czech Seznam.cz), social media and creative content platforms (Facebook, Twitter, YouTube), and communication services (Facebook Messenger, WhatsApp, Snapchat) are the unequivocal winners of the digital revolution in journalism. Reuters Digital News Report identified the growing number of people using these platforms to access online news (contrarily to accessing the preferred news websites directly) as one of the key journalism trends of the past five years.[23] 51% of Reuters survey respondents admitted using social media to access news, with 12% identifying them as their main source of information.[24] What is more, 47% of EU respondents who use online platforms to read news admit they do not access news websites at all, but are instead satisfied with titles and snippets available to them on the platforms.[25] When accessing distributed news through social media, search engines or news

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[3] Forms of mass communication existing before the dawn of the Internet, including newspapers, magazines television, radio and books

[4] In literature, relevant internet services are referred to either as **internet intermediaries** (e.g. UNESCO, 2014) or **online platforms (**to be used interchangeably in this paper). This paper opts for a definition of online platforms/intermediaries used by the European Commission in its 2015 online platforms public consultation, according to which a non the terms (non-exhaustively) **includes online advertising platforms, marketplaces, search engines, social media and creative content outlets, application distribution platforms, communication services and collaborative economy platforms** (European Commission, 2015, p. 5).

aggregators, a growing number of readers (the number of readers that recognize the news brand varies from around 60% in Germany and Finland to 30% in Anglo-Saxon countries) do not even recognize the brand of site from which the news originate.[26]

Aggregating news is quickly becoming an additional revenue source of a few already wealthy and powerful companies – Facebook and Google especially – which have de-facto taken over the digital advertising market. In 2016, Facebook had 1,8 billion monthly visitors, followed by Messenger (1,2 bn; owned by Facebook), WhatsApp (1,2 bn; owned by Facebook) and YouTube (1 bn; owned by Google).[27] Google controls over 70% of search engine global share.[28] In 2016, Facebook and Google combined controlled 71% of the US advertising market,[29] while also being responsible for up to 90 of digital advertising market growth in 2016 – leaving all news organizations to fight over the rest of the online advertising revenues.[30] Online platforms defend their position in the news distribution chain by claiming that redirecting consumers to news sites increases traffic and consequent revenues of traditional newspaper publishers: According to a Deloitte study, the total value referral traffic to traditional news publishers in France, Germany, UK and Spain in 2014 was €746m.[31] At the same time though, increased digital revenues are nowadays clearly insufficient for the newspaper industry to make up for lost revenues in print: In Europe, publishers' digital revenues (both from advertising and subscriptions) rose by €4 billion between 2010 and 2014, but print revenues shrank by €14 billion, resulting in €10 billion total loss.[32] In 2012, for every $1 gained in digital, American newspapers lost $7 in print.[33] Greater employment insecurity of journalists is a logical consequence of this development: between 1990 to 2016, the US newspaper industry lost 60% of its personnel, accounting to total 271 800 jobs.[34] The incremental oligarchizing of media, where wealthy individuals buy media organizations to foster their political and economic power, is another nefarious consequence of the media revenues decline, as media organizations are no longer a lucrative business to ordinary private companies.[35]

2.2. Editorial policies of platforms

The digital revolution did not shift power from professional journalists to online platforms in the economic sense only: Crucially, these platforms have unprecedented influence on which news we read. On Facebook, for example, we see only about 10% of the content we would if the News Feed was not curated.[36] However, online platforms have a different rationale than media companies in selecting content which is to be displayed. While publishers' associations typically bind themselves by codes of conduct in order to transparently proclaim their commitment to serve public interest by observing standards of accuracy, impartiality and independence, online platforms' notion of public interest reflected in terms of service is limited to stating what is restrained (e.g. sexual obscenity) and does not reflect what should be promoted (e.g. dissemination of independent and accurate news, freedom of speech).[37] The business model of online platforms is based on providing customers with content they like, with little regard to the public interest: platforms show their customers tips for holidays and music bands that fit their profile and they show them the news content on the very same basis. In the business model of Google and Facebook, there is no economic incentive to produce quality news that, in order to fulfill their democratic function, must inevitably include articles that are unpleasant to read.[38]

Another contrast in editorial practices of online platforms and traditional media is that on online platforms it is not conducted by human editors but by computational algorithms that generate results personalized to each user's profile. Unlike traditional editorial choices, algorithmic biases are difficult to spot and challenge, as they are non-transparent (algorithms are trade secrets of online platforms), change constantly and have different effects on different people's feed.[39] What is more, terms of service used by online platforms are unilaterally defined, transnational and often stricter than national legal enforcement, creating a form of "global privatized governance" by online platforms.[40] These self-defined policies as well as algorithmic and other technological choices are influential and possibly controversial, as following examples prove:

- Apple updating its News application in August 2016, multiplying CNN website's average monthly readership six times[41]

- Google removing AdWords advertisements of sex workers rights group in 2011, incorrectly blaming them for selling sexual services[42]

- Facebook tweaking algorithms to successfully influence its users' emotions in 2014 for research purposes[43]

- Facebook placing all types of articles – written by distinguished authors, activist bloggers, or trolls writing fake news articles for political purposes or money – on one graphically uniform news feed, giving them seemingly the same legitimacy[44]

- Facebook removing the iconic Vietnam War picture of a running girl as it violated its nudity policies[45]

- Facebook algorithm coining 2014 Ferguson protests as irrelevant, thus suppressing this story in the News Feed[46]

Crucially, the decision to use a particular algorithm, to allow only certain kind of advertisement, or to act according to specific terms of service can be classified as a conscious editorial choice, similar to the one traditional media make through their editors. However, legal standing of online intermediaries differs from the one of traditional media companies in both European and American law, where they are protected from user generated content liability through the E-Commerce Directive[5] and the Communications Decency Act[6] respectively. To the contrary, traditional media companies have to assume content liability, which means they can be sued for the content they publish (e.g. for defamation and libel).[47]

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[5] According to the E-Commerce Directive, online intermediaries (so called information society services) are not liable for illegal content as long as they are neutral transmitters (do not intervene into organization or promotion of the content) and as long as they remove it when they have "actual knowledge" about its existence. At the same time, both the Directive and consequent cases of the European Court of Justice have prohibited Member States from imposing general content monitoring obligation on intermediaries, which effectively means that while it is possible to make intermediaries put illegal content down, it is impossible to ensure it will stay down (as users can always upload it again). Beyond these restrictions, the Member States are free to impose stricter regime on intermediaries.
[6] According to the section 230 (c) Communications Decency Act, *"no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."* Contrarily to the E-Commerce Directive, this Act immunizes the internet services providers from liability even if they fail to remove illegal content after notification.

3. Responses

For online platforms including Facebook and Google, it is existential to retain their status of neutral technological companies that merely transmit content and facilitate communication, but do not actively organize or promote content, in order to avoid liability over content uploaded by their users.[48] Pressure from governments, the private sector and civil society for them to assume a greater responsibility for content is nevertheless mounting as malicious effects of current setting (fake news, hate speech) surface. The following pages firstly list regulatory proposals put forward by executive bodies that aim to extend legal liability or responsibility of online platforms for news content. As regulatory proposals may be used by other executive bodies in the future, the presentation of these policy options also includes detailed pros and cons. Second part of the Responses section lists selected non-legislative initiatives, originating in parliaments, courts, and the civil society. The third part summarizes initiatives proposed by online platforms (Facebook and Google) themselves.

3. 1. Governmental regulation

Before exploring possibilities of intermediary regulation, it is important to note significant distinctions in how news content may be illegal and how it can be countered. The concept of **hate speech** is already considered a criminal offense in the European Union according to the Council Framework Decision 2008/913/JHA. This Decision importantly concerns both offline and online world and it ensures that individual perpetrators are penalized by national legal systems. According to the EU E-Commerce Directive, it is possible to claim liability of online platform if it fails to remove illegal content. Consequently, major European initiatives against online platforms are currently aimed at ensuring that platforms learn about hate speech, classified as a type of illegal content, and that they remove it within a set timeframe.[49] On the other hand, no such initiatives are currently conceivable in the United States, because the strong American First Amendment makes no exception to hate speech and because the Communication Decency Act immunizes the internet service providers from liability even if they fail to remove illegal content after notification.[50]

Contrarily to hate speech, **fake news** are not strictly speaking illegal, even though they are factually incorrect. Consequently, under the current legal framework in both the EU and the US, it is impossible to sue their disseminators or online platforms that facilitate their spread unless they include illegal elements (e.g. hate speech, incitement to terrorism, copyright infringement). At the same time, due to often unclear provenance of these news, it is more difficult to sue authors of fake news even for these offenses. Therefore, a number of current regulatory proposals introduce measures supporting quality journalism to the detriment of fake news, without making platforms legally liable. In a situation when the current business model does not incentivize platforms to promote quality news, such proposals include notably the attempts to create a fairer level playing field in royalty negotiations between news producers and online platforms through copyright reforms.[51]

3.1.1. The European Union

The European Commission is currently the most fervent regulator of the US technological platforms. To give just a few examples, in June 2017 the Commission's competition authority fined Google with a record €2,42 billion for abusing its dominant position as search engine in giving illegal advantage to own comparison shopping service. It is currently investigating Google with two other antitrust charges[52]. The Commission also announced in May its decision to fine Facebook €110 million over providing misleading information on 2014 WhatsApp takeover. In 2016, it notoriously handed Apple a €13 billion tax bill, accusing it of profiting from preferential tax treatment in Ireland.[53]

In 2015, the Commission proposed an ambitious *Digital Single Market Strategy,* which broadly speaking aims to harmonize national regulations of online businesses in the EU.[54] In 2016, the Commission published a Communication on Online Platforms in the Digital Single Market, where it announced that one-size-fits-all approach to online platforms would be detrimental considering their diverse nature, and thus that it will use different mechanisms (copyright law, audiovisual law, telecommunications law etc.) to address particular problems that may arise. Crucially, the E-Commerce Directive will stay intact, and thus platforms should not be held liable for illegal content they are not aware of. Rather, the Commission chooses to promote co-regulative and self-regulative approach, where platforms are asked to strike codes of conduct and voluntary agreements with governments and civil society, while also promoting fairer redistribution of value generated by copyrighted works.[55]

3.1.1.1. Copyright legislation reform and the press publisher's right

According to the copyright in the Digital Single Market Directive proposal unveiled in September 2016, publishers of journalistic publications should be granted a new 20 years exclusive right to allow or restrict the distribution of their publications (including articles, photographs, design or editorial work). At the present, the EU law states that only authors of articles, photos or videos are granted an automatic copyright. While contract between publishers and journalists typically provides that journalists delegate this right to their employer who then represents them in court in copyright cases, it is often difficult and time consuming for publishers to prove this transfer of rights in courts. Thanks to the new right, publishing houses hope to be able to block commercial news aggregators (e.g. Google News) more efficiently from publishing snippets of their press publications without consent and proper remuneration, which should also create a level playing field in licensing negotiations between publishers and platforms.[56] Inclusion of this provision into the Directive proposal is a success of long-lasting lobbying efforts of the European publishing industry, led by the German publishing giant Axel Springer.[57]

Pros:[58]

- The new right would enable publishers to restrict online platforms from displaying snippets of their works and from drawing advertising revenues from that without proper remuneration. This could empower press publishers to negotiate more favorable financial conditions with online platforms.

- The new right would provide a legal clarity for publishers, facilitating legal enforcement of copyright and its licensing.

- Given that the EU is a larger market for online platforms than individual Member States, platforms are more likely to negotiate with publishers if the right applies everywhere across the block.

Critique:[59]

- While established news brands are more often accessed directly, small media houses and startups depend on traffic driven to them by online platforms. Spanish Google News closure, which occurred as a consequence of introducing a similar law in the country, had particularly detrimental effect on small publishers and startups, whose traffic dropped by 14 % (compared to 9 % in the case of traditional publishers). Consequently, the new right could be detrimental to media SMEs

- The new right may cause increased search costs for citizens, which in turn may choose not to read the given content at all.

3.1.1.2. The Audiovisual Media Services Directive reform to include video-sharing platforms

The Audiovisual Media Services Directive (AVMSD) is the EU's strongest legal instrument for regulating audiovisual media. In terms of content, it sets standards against hate speech that all EU TV (linear) broadcasters have to respect.[60] The AVMSD anti-hate speech provisions can be used by national regulators to block foreign propagandist broadcasting, as Lithuania did two times when it temporarily suspended Russian TV channels broadcasting from Sweden for inciting violence.[61] According to the 2016 reform proposal of AVMSD, the Member States shall newly ensure that video-sharing platforms take measures to protect citizens from hate speech as defined in the 2008 Council Framework Decision. The Directive expects platforms to define and apply their own codes of conduct against hate speech and incitement of violence, establish mechanisms that allow users to flag such content and exchange best practices on self-regulation against hate speech with other video-sharing platforms. Member States should also ensure that users are provided with redress mechanisms in order to complain if their content was removed unjustly from online platforms.[62] At the same time, AVMSD Directive is without prejudice to the E-Commerce Directive, which effectively means that video-sharing platforms cannot be held liable for content unless they are notified about its existence. On the 26th of April 2017, the European Parliament's responsible Committee for Culture and Education voted in favor of the reform proposal. Apart from video-sharing platforms such as YouTube, the Committee decided to include social media (Facebook, Twitter), because they also serve as platforms for users to upload videos.[63]

Pros:[64]

- Racism and xenophobia are globally on the rise, exacerbated by the European migration crisis.

- Extending anti-hate speech provisions to video-sharing platforms may protect a larger share of citizens from hate speech, as young people move from TV to video-sharing (YouTube) and on-demand platforms (Netflix).

- It may address the lack of level playing field between TV broadcasters, on-demand platforms and video-sharing platforms as only traditional broadcasters currently have to abide by anti-hate speech and other rules.

Critique:[65]

- It is unclear how the Member States can make video-sharing platforms abide by the Directive without having the possibility to penalize them, which would be against the E-Commerce Directive. This incertitude is likely to complicate the transposition process and threatens to fragment the Digital Single Market.

- The EU hate speech definition is broad, and its application is prone to different interpretations in the Member States. Extending its applicability to video-sharing platforms may facilitate curbing of free speech of European citizens by the governments, and bring further legal uncertainty and expenses to these platforms.

- Responsibility for taking the content down is given to online platforms, which recognize hate speech not only according to national laws, but also their terms of service. This means that definitions of what constitutes hate speech can vary across different intermediaries and can also be stricter than national laws require. This is especially worrying since most online intermediaries have no considerations for free speech in their terms and are not incentivized to change this.

- Delegating the take down power to online platforms without proper oversight (either by national regulatory agencies, courts or transparent codes of conduct) means that they can take content down for obscure reasons, including their commercial interests.

- Including social media through the back-door without a proper impact assessment (as the Parliament committee proposed), defining them merely as carriers of certain amount of audiovisual content does not take into account specific nature of this kind of online platform**s.**

3.1.1.3. Code of Conduct on Countering Illegal Hate Speech Online

In May 2016, the European Commission and four major IT companies, Facebook, Twitter, YouTube and Microsoft, signed a Code of Conduct on Countering Illegal Hate Speech Online. Inspired by a similar code signed a year earlier in Germany, its goal is to ensure that hate speech content that is flagged by users will be reviewed and removed by online platforms within 24 hours. The document also encourages the IT companies to form partnerships with civil society companies that will help flag harmful content and to invest more into educational initiatives that promote media literacy and critical thinking.[66] After one year of operation, the companies removed illegal content within the proposed timeframe in approximately 60% of cases in June 2017, improving their performance twice as much since December 2016.[67]

Pros: [68]

• Racism and xenophobia are globally on the rise, exacerbated by European migration crisis

• According to the E-Commerce Directive the intermediaries are legally obliged to take down illegal content when they learn about it. However, expeditious removal of such content remains a challenge that can be tackled by the Code.

• June 2017 evaluation results show the IT companies are gradually improving their performance to fulfill the Code obligations.

Critique: [69]

• The take down practice which occurs in accordance the terms of service of online platforms has no considerations for free speech and no legal oversight (same issues as with the AVMSD proposal).

• The Code does not require establishing a redress mechanism available to users if their content is taken down.

3.1.1.4. New initiatives: Harmonizing taking down of hate speech and algorithm investigation

According to internal documents, the European Commission is considering proposing legislation that would harmonize how online platforms take down hate speech. Concrete proposal including both legislative and non-legislative instruments countering hate speech should be unveiled by the end of 2017.[70] The Commission also plans to open an investigation of algorithms, aiming to find out according to which principles online platforms organize and filter data and show personalize content.[71]

3.1.2. Germany

Despite certain EU harmonization in audiovisual, copyright and hate speech domains, media regulation in the EU member states remains extremely variable. Germany in particular employs exceptionally strict laws against hate speech, defamation and slender, a practice rooted in the country's tragic 20th century experience.[72] Unsurprisingly then, Germany is also a global pioneer in proposing initiatives that extend responsibility and liability of platforms for content.

3.1.2.1. Government to impose fines on online platforms that fail to duly remove harmful content

One year before the European Commission, the German government signed a voluntary code of conduct with major online platforms (Facebook, Twitter and YouTube), where these platforms pledged to remove harmful content within 24 hours. Further toughening its stance in 2017, the German parliament approved a landmark Act Improving Law Enforcement on Social Networks, according to which online platforms which fail to remove obviously criminal content within 24 hours and non-obviously illegal content within a week after notification can be fined by up to €50 million, and the individual responsible by up to €5 million. Online platforms are also required to file quarterly reports and reveal identities of users posting malicious content. Following parliamentary approval, the bill comes into effect in October 2017. Pioneer in these initiatives, Germany is also calling for an EU wide legislation against hate speech and fake news. However, the Commission is lukewarm to fight online platforms as long as they duly remove illegal content upon notification. The EU executive body reiterates that voluntary agreements are enough to make online platforms comply (citing its June 2017 evaluation of its Code of Conduct) and fears that the tough stance of Germany may fragment the European Digital Single Market.[73]

Pros:[74]

• According to a study commissioned by the German justice ministry, online platforms are inefficient in removing content if ruled only according to voluntary contract. Twitter deleted only 1% of the content flagged by users, and Facebook only 39% since the German Code of Conduct was signed.

• Reporting obligation is helpful in the condition of prevailing lack of transparency about content management by platforms.

Critique: [75]

• The law threatens freedom of speech and media pluralism, especially since the range of offenses is wide and includes offenses of various intensity. At some points, the law implies to target fake news too, which are not necessarily illegal.

• The law further incentivizes taking down of content, and discourages platforms from respecting freedom of speech. This means that the platforms may remove too much content hoping to avoid risk.

- Delegating the take down power to online platforms without proper oversight (either by national regulatory agencies, courts or transparent codes of conduct) means that they can take content down for obscure reasons, including their commercial interests.

3. 2. Global non-legislative initiatives

The following part summarizes global non-legislative initiatives that incentivize greater responsibility of online platforms for news content, originating in the parliaments, private sector and civil society that have not resulted in legislative action.

3.2.1. US Republican senator accuses Facebook of bias in selecting trending news

Given strong protections of freedom of the speech and freedom of the press under the First Amendment, the US regulators have much less possibilities to regulate online platforms than Europeans do. Consequently, no legislative proposals similar to the EU or German ones have been put forward there.[76] So far, American policymakers have tried to address news content responsibility of online platforms only in May 2016, and through a non-legislative action. After an explosive article claimed that human editors of the Trending section[7] have been intentionally suppressing articles from conservative sources,[77] the head of Senate Commerce Committee John Thune demanded Facebook to explain how articles recommended in Trending were selected, to investigate accusations of political bias and to give a succinct overview of future steps trying to prevent this behavior.[78] After Mark Zuckerberg's personal meeting with prominent republicans, Facebook laid off the entire editorial staff of Trending.[79]

3.2.2. Citizens sue platforms

Online platforms face increasing number of lawsuits from citizens, some of which have already resulted in a binding sentence. In May 2017, a Viennese appeal court ruled that hateful posts against the Green Party leader Eva Glawishnig have to be removed everywhere across the Facebook global platform, and not just blocked in Austria.[80] Three French human rights associations are suing Facebook, Twitter and YouTube to reveal how they monitor, review and take down posts, complaining that only a small portion of flagged hate speech posts is removed.[81] American families of terrorist attacks' victims from Bataclan, San Bernardino, Jordan and Palestine are suing Twitter, Facebook and Google for materially helping ISIS to raise money, spread propaganda and recruit followers. Under the American Communications Decency Act, platforms cannot be held liable for content uploaded by users, even if they are informed about it. Therefore, rather than targeting the platforms through hate speech laws as Europeans do, these families claim the platforms have enabled the rise of ISIS, using anti-terrorist legislation to prove their case.[882]

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[7] A sidebar recommending the most discussed articles on the platforms, available in the US, the UK, Canada, Australia and Canada.

[8] Due to space limitations and its primary focus on news content, this paper does not cover attempts of governments to increase liability of platforms through anti-terrorist laws. For more information on the topic see e.g. Monica Horten,

3.2.3. UK parliamentary committee launched an inquiry into fake news

In January 2017, British parliamentary committee for Culture, Media and Education launched an investigation to reveal the sources of fake news, how they are spread and how they may affect democracy. The MPs also aimed to investigate how advertising affects the spread of fake news and, crucially, how to address the responsibility of online platforms.[83] However, due to the preliminary dissolution of the British Parliament, it is unclear whether evidence already gathered from stakeholders will be used in future legislative actions.[84]

3.2.4. Companies remove ads from Google after it places their ads next to extremist content

The business model of online platforms depends on providing advertising spaces.[9] Consequently, advertisers enjoy a powerful economic leverage over platforms. Worryingly for platforms, the income providers are becoming concerned about their brand safety, stepping up their calls on platforms to assume content responsibilities of traditional media companies.[85] This became particularly apparent in March 2017, when major advertising companies both in Europe and the US – including Verizon, Walmart, Pepsi, Johnson&Johnson, the Guardian, Havas (world's sixth biggest advertising company) and the British government – pulled their advertisements from Google and YouTube, after they failed to receive assurances that their ads will not be placed next to extremist content.[86] This event was triggered by an investigation published in Times, revealing that YouTube videos showcasing neo-Nazi groups, ISIS or al-Qaeda preachers were accompanied by advertisements of these reputable brands. What is particularly worrying to concerned companies is that the producers of violent content may have gotten a fraction of their marketing money.[87] Responding to these accusations, Google promised its clients more control over their ad placement, pledging to remove ads from hateful content sites, to tighten verification of creators that monetize money with YouTube and to simplify management of exclusions.[88] The downside of such arrangement is that due to the lack of transparency over what Google classifies as harmful content, sensitive or controversial material (e.g. art) may too be negatively affected.[89]

3.2.5. Sleeping giants are seeking for ads

Apart from businesses, the extraordinary potential of advertising to tame extremist content has been spotted by the civil society. Through the Sleeping Giants initiative, people notify businesses about their advertisements being placed on the American alt-rite site Breitbart.[90] Similarly, a Slovak based project Konspiratori.sk identifies fake news websites which are not worthy of advertisers' money.[91] This initiative has already prevented 17 000 campaigns from being displayed on these websites.[92] While these initiatives do not target online platforms specifically, they further accentuate the pressure on online

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Content Responsibility: The looming cloud of uncertainty for internet intermediaries, Centre for Democracy and Technology, 2016, pp. 12-13 or Cas Sunstein, #Republic*: Divided Democracy at the Age of Social Media, Princeton University Press,* 2017, chapter Terrorism.com

[9] Advertisement revenue amounted to 75% of Google's revenue and 97% of Facebook's revenue in 2016. Google generates most of its advertising revenue through its services AdWords and AdSense. Through AdWords, advertisers can place their ads on Google and its partner sites (e.g. in Google Search), while AdSense shows ads on non-Google affiliated websites, which in turn gain revenue. Facebook operates a personalized advertising service Audience Network.

platforms to tighten advertisers' control over their ads and to disable advertising on extremist and fake news sites.

3. 3. Responses from online platforms

Pressured by governments, advertisers and the civil society to take action, online platforms are duly proposing measures to curb the spread of hate speech and fake news, while still trying to rhetorically distinct themselves from traditional media companies in order to retain their easy-going regulatory status.[93] The following pages summarize such initiatives and measures proposed by Facebook and Google, the two most powerful online platforms in terms of global outreach.

3.3.1. Partnering with fact checking sites

Google rolled out its worldwide fact checking feature in April 2017. The tool places fact-checked stories on the top of general search and the News site, highlighting the disputed claim, a person who claimed it and a fact-checking verdict. The fact-checking is currently conducted by 115 organizations worldwide, all of which had to abide by the community standards (e.g. transparency, independence) defined by the international fact-checkers' Poynters associations and the Duke University Reporters' Lab.[94]

In December 2016, Facebook announced partnering with 5 US fact-checking organizations to verify stories flagged by enough users as "false". If the story is also deemed as fake by these fact checkers, it will be marked in the News Feed as disputed and algorithmically downgraded. If a person decides to post the message anyway, he will be given a warning.[95] Before French and German 2017 elections, Facebook additionally teamed up with major French media companies and with German fact-checking organizations to verify news.[96]

While both Facebook's and Google's cooperation with fact-checkers has been generally praised by experts,[97] these partnerships have already stirred accusations of liberal bias.[98]

3.3.2. Depriving suspicious sites from advertising income

In November 2016, Google introduced an AdSense misrepresentative content policy, according to which *"Google ads may not be placed on pages that misrepresent (…) the primary purpose of web property,"* aiming primarily at pages that pretend to have affiliation with another individual or organization.[99] Following the introduction of this policy, Google permanently kicked out 200 publishers from the AdSense network.[100] However, banning 200 publishers appears to be a drop in a bucket considering that 2 million publishers use the service.[101] As described above, Google and YouTube also pledged to remove AdSense sites from extremist websites following a pressure from their advertisers.

In the same vein, Facebook changed policies of its own Audience Network, including fake news sites into the list of "deceptive and misleading sites" that are banned from displaying ads supported by this service (with no clear explanation of what fake news site is).[102]

3.3.4. Playing algorithms

In April 2017, Google announced it would refine its search algorithm in order to demote misleading, offensive or blatantly false content from the top of the search result page. The company hired 10 thousand people to review and flag "low quality" content. In addition, Google promised to allow people to complain about offensive or misleading suggestions appearing in the engine's auto-complete function and the featured snippets appearing at the top of the page.[103]

Similarly, Facebook refined its controversial Trending page yet again in January 2017. Recommended stories will now be based not only on the number of people discussing them, but will also consider the number of publishers posting on Facebook about the story.[104] As already mentioned, Facebook also promised to downgrade stories flagged as false by users and fact checkers in the News Feed.

Clearly, employing human editors to determine what is authoritative and what is low quality content has the potential to steer controversies and accusations of bias (see the Facebook Trending story), especially since algorithms are trade secrets of these firms and cannot be transparently reviewed.[105]

3.3.5. Supporting journalism

In order to bolster its fractured relationship with publishers and media organizations, Google introduced its Digital News Initiative in 2015, partnering with leading European publishers including the Guardian, La Stampa or El Pais. Through the initiative, Google invests into development innovative products for newsrooms, provides free online courses for journalists and funds innovative media projects (so far, Google has funded 124 European projects with total €24 million).[106] For its part, Facebook unveiled its own Journalism Project in January 2017, partnering with another set of publishers including Bild, Washington Post or El Pais. In the introductory note, Facebook pledged to test new media products and business models, promote independent journalism, provide journalistic training and invest into media literacy projects.[107]

4. Conclusions

This paper aimed to summarize and evaluate regulatory proposals and non-regulatory initiatives extending responsibility and legal liability of online platforms for news content, put forward either by governments or parliaments, the private sector, civil society and the online platforms themselves. The overarching goal of these initiatives is to make platforms support quality journalism and fight more efficiently the issues of fake news and hate speech. By presenting the existing options, this paper hopes to provide a general overview and indicate possible ways of regulation and self-regulation of platforms to relevant stakeholders. This section highlights key conclusions of this paper and presents recommendations based on these conclusions.

Online platforms such as Facebook, Google or YouTube have successfully capitalized on the digital revolution by providing people space through which they can share posts, send messages, offer their services or search for information. They have accumulated an unprecedented global audience, took over the majority portion of the digital advertising market and profoundly changed the patterns of news distribution and consumption. Despite repeatedly claiming their neutrality of mere technological transmitters, online platforms make conscious editorial choices of what news content their consumers see and how it is presented to them, even though these choices are predominantly made by algorithms instead of human editors. The algorithms propose to people news that best fit their profile, using the same basis as for consumer products. Traditional media are meanwhile struggling to adapt to the new digital environment. Both their traditional sources of revenue, advertising and readers, are now uncertain, as the advertising market was taken over by digital platforms while people, increasingly distrustful to traditional media, are looking for information elsewhere.

Free, pluralistic and independent media are the cornerstone of any democracy and the ongoing revolution in news consumption consequently poses important challenges to the Western societies, specifically in the form of fake news and hate speech. Recent global events, ranging from the 2016 US presidential elections and Brexit referendum to the 2015 migrant crisis, Islamic radicalization or the Kremlin's disinformation campaigns in Ukraine and wider Europe, lead to the final acknowledgement of these challenges beyond expert circles. In their attempt to fight fake news and hate speech, governments, businesses and civil society have recently stepped up the pressure on online platforms to accept greater responsibility and legal liability for the news they display.

This paper described how pressure on online platforms is mounting from the side of governments, political parties, the private sector and civil society and how these parties occasionally succeeded in pushing platforms towards greater responsibility for content without legal intervention. The two most influential platforms, Facebook and Google, respond to the pressure by proposing measures targeting malicious effects of online news distribution, notably through partnering with fact checking organizations, clamping down advertisements on untrustworthy websites, modifying algorithms and launching their own media supporting projects. These initiatives have generally been praised by media experts, but remain controversial: Firstly, employing human editors or fact-checking organizations to recognize authoritative and "low quality" stories will inevitably stir accusations of political bias, especially since algorithms used by these firms remain trade secrets and platforms have defined their value commitments to the society

only vaguely. Secondly, by enhancing their filtering and editorial features, Facebook and Google may further assimilate themselves to media companies and become de facto monopolistic media companies on the global market, without actually having to pay for news production. Lastly, the online platforms can hardly do enough in a situation when their very business model was built around providing their customers with content that they like and does not incentivize the production of quality news.

While these are rather strong arguments for democratic governments to regulate platforms in order to promote content respecting basic democratic principles, such as the rule of law and human rights, this paper also shows that regulation has serious pitfalls on its own. In both the US and the EU, platforms are currently protected from legal liability for illegal user generated content through the Communications Decency Act and the E-Commerce Directive respectively (in the EU, the safe harbor only applies when the platform is not aware of the content). None of these blocks is planning to amend regulatory status of the platforms. However, the European Commission has proposed several regulatory amendments in order to boost platforms' responsibility for content (the Audiovisual Media Services Directive and the Code of Conduct on Fighting Illegal Hate Speech Online) and to provide a level playing field between publishers and platforms in negotiations over royalties (the copyright directive). Finally, the Commission is currently working on setting standards on taking down illegal content and has announced its aim to investigate the use of algorithms by the online platforms. Generally, the EU executive body currently seems favorable to a soft law approach represented by the Code of Conduct, claiming that online platforms are gradually improving their performance in removing harmful content within the due date even without the risk of penalties. To the contrary, Germany pioneered attempts to extend platforms' liability by proposing laws according to which platforms can be heavily fined for not removing illegal content fast enough.

There are several shortcomings to these regulatory approaches. Notably, it is unclear how the governments of the EU member states can make online platforms protect citizens from illegal content without having the possibility to penalize them (forbidden according to the E-Commerce Directive). As a general rule, any regulation of online platforms threatens to sow uncertainty in the digital business environment and to complicate the position of small media companies and start-ups. It may also decrease the access of public to information and possibly restrain the freedom of speech. The current EU definition of hate speech is often criticized for being too broad. Existing media laws (e.g. libel) are already used by the people in power to silence their opponents and the "fake news" term has quickly taken been up by politicians (e.g. Donald Trump) aiming to discredit the media. It is thus too easy to imagine a government using the frequently blurred fake news/hate speech discourse to censor inconvenient views. Using precise definitions of hate speech in legislation is the only way to avoid this situation.

Another problem is that even when using a soft law approach, delegating responsibilities (e.g. to recognize and remove hate speech) to platforms themselves threatens to further empower "privatized governance" whereby platforms rule everyday conduct of their billions of users through their terms of service and non-transparent editorial practices. Therefore, taking down of illegal content should be subjected to proper judicial oversight or transparency and reporting obligations.

5. Recommendations

As this discussion demonstrates, regulation of online platforms – private entities with unprecedented global presence and economic power – is an extremely complex issue. Western societies have only recently started to realize the profound consequences of the digital revolution for their democracies, and appropriate responses will remain a hot topic of discussion for years. The existing measures are very recent and thus difficult to evaluate. Nevertheless, this paper dares to propose the following recommendations based on its key observations, which may serve as preliminary indicators to governments, the private sector and the civil society wishing to mandate a more responsible behavior of online platforms towards news:

Governments:

1. Examine the use of algorithms by online platforms in order to reveal potential errors and biases; understand to what extent the algorithms are a conscious editorial choice and how this should affect platforms' liability.

2. Provide guidelines on the editorial and take-down practices of online platforms. Make sure rules for taking down such content are transparent and in line with principles of freedom of speech, as well as the human rights law. Install dedicated bodies to oversee and report on their conduct.

3. Properly apply existing legislation on platforms, notably from the realms of copyright, audio-visual, and competition law.

4. When proposing legislation about hate speech or fake news, develop definitions for these terms that are as specific as possible.

5. Ensure that platforms install appropriate redress mechanisms that allow users to complain if their content had been unjustly removed.

Platforms

6. Be transparent about editorial practices and report them, especially when it comes to taking down content.

7. Continue partnering with journalists and fact checkers.

8. Graphically differentiate news content from other types of posts.

9. Publicly proclaim your intention to support media literacy and your trust in high-quality journalism.

10. Fund media literacy classes, particularly in those parts of the world that have recently democratized and whose media market does not have an established tradition (e.g. Central and Eastern Europe).

Civil society and the private sector

11. Push online platforms toward being transparent about their editorial practices.

12. Promote a discourse that views fake news and hate speech as "not cool," like eating unhealthy food.

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