



The role of large Internet platforms and their impact on freedom of expression and public deliberation

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BACKGROUND AND OBJECTIVES

With the adoption of the 2030 Agenda and the Sustainable Development Goals (SDGs), the international community seeks to advance peaceful, just, and inclusive societies and strengthen their democratic governance. For this process to be effective, it is necessary to have effective, transparent institutions that are consistently accountable for their actions.

However, the debate on the promotion of democratic governance concerns not only public institutions but also private companies since their actions can limit the free exercise of people's rights, especially when they moderate and control public information and communication spaces.

Social media have gained a central role in users' access to information and in public deliberation in different countries and, at the same time, have acquired public space characteristics.

In this context, the United Nations Development Programme (UNDP) in Uruguay, in partnership with the Latin American Observatory of Media Regulation and Convergence (OBSERVA-COM), leads the initiative "Internet, Freedom of Expression and Access to Information in Uruguay. Contributions to the Debate on Democratic Governance Online". This dossier includes its first findings and proposals.

This initiative aims to promote dialogue and informed debate on the impact of large Internet platforms on access to information and public deliberation on social media and to place this issue on the public agenda and develop recommendations to potentially adapt the national and regional regulatory framework.

We conducted a survey of key actors from organized civil society to journalists and members of academia with a background in freedom of expression and democratic governance online as part of the sources used to prepare this dossier.

“This initiative aims to promote dialogue and informed debate on the impact of large Internet platforms on the access to information and public deliberation on social media and to place this issue on the public agenda and develop recommendations to potentially adapt the national and regional regulatory framework.”



We organized three roundtables; one for organized civil society representatives, another for journalists and members of academia, and a third one for governance and communications representatives and specialists from the UNDP offices in the region.

During these meetings, we collected input and made a joint diagnosis of the impact of large Internet platforms on the access to information and public deliberation on social media. The issues discussed in these roundtables made it possible to identify and define an agenda and roadmap on this issue for the next two years.

To elaborate this roadmap, we will design and implement a public deliberation mechanism in 2021 to collect new inputs to develop public policies on democratic governance online. We also aim to present precise recommendations to adapt the regulatory framework in this field.

INTRODUCTION

Over the last decade, public and private environments have increasingly re-organized around information and communication. In our countries, platforms such as Facebook, YouTube, Twitter, WhatsApp, and Instagram have taken on a central role in how users consume information and in public deliberation. Social media have acquired public space characteristics, and interpersonal messaging services have made viral communication possible.

This process poses increasing challenges for the protection and promotion of freedom of expression and access to information on the Internet, which enables a plural and diverse media landscape in today's democracies. On the one hand, there are also more possibilities for content production and social engagement. On the other hand, there are also new risks associated with the mechanisms created to exert direct and indirect control on freedom of expression and online information, imposed by both governments and companies.

In the past, platforms were simply considered “vehicles” furnished by “intermediaries,” but they have now become the publishers of the content put out on their platforms, increasingly taking part in the online discussions and exchanges. The platforms adopt content removal, deindexing, or blocking policies based on their own terms, which do not always respect the legitimate opinions of their users or the international standards on human rights. Their decisions in the event of non-compliance with their terms of service can even lead to the suspension or deletion of their users' accounts, thus denying them the possibility to participate in this new public space.

Even without going to the extreme of deleting information or opinions, the prioritization, recommendation, and curatorship of user-generated content—which basically define what we can, and cannot, find on the platform—fragment the public debate and affect diversity by creating information biases and silencing the voices of some sectors.

In practice, the architecture of the applications and their content moderation policies act as a sort of private regulation mechanism of the public debate landscape.

“The pandemic has generated more information, but not necessarily more knowledge. Social media have taken over much of the public and political debate” (UNDP, 2021).¹

1. Latin America and the Caribbean: Effective Governance, beyond Recovery

This problem has been exacerbated during the COVID-19 pandemic, as automation has become the primary moderation mechanism, making its own decisions, which dramatically increases the removal of content and the elimination of expressions of public interest.

In addition, criticism of platforms has grown in recent years because they are doing “little” to address misinformation, hate speech, and online violence. This goes hand in hand with strong pressure (from social groups, governments, and advertisers) to undertake more aggressive content moderation, especially to remove content and profiles that publish “offensive,” “violent,” or “false” statements. This led to corporate undertakings to reinforce their private control over online information, as there are no public and democratic parameters to guide such private content moderation policies on the Internet.

In a 2017 Joint Declaration, the Special Rapporteur for Freedom of Expression of the United Nations (UN), the Organization for Security and Cooperation in Europe (OSCE), the Organization of American States (OAS), and the African Commission on Human and Peoples’ Rights, expressed their *“concern about some measures taken by intermediaries to limit access to or the dissemination of digital content”*.²

This document serves as input to understand the new role of large platforms in the circulation of information, the exercise of freedom of expression, and public deliberation online to raise questions on issues that are worth analyzing in the Latin America and Caribbean region.

The first section describes the shift in the role of Internet intermediaries, who went from “vehicles” that transported users’ content, to gatekeepers. The second section addresses how content moderation has become a new form of private regulation of public spaces, including disinformation. The third section attempts to sort the direct and indirect restrictions that large platforms impose on freedom of expression and public deliberation online. The fourth

“The pandemic has generated more information, but not necessarily more knowledge. Social media have taken over much of the public and political debate.”



https://www.latinamerica.undp.org/content/rblac/en/home/library/democratic_governance/america-latina-y-el-caribe--governanza-effective-mas-alla-de-la-.html (UNDP)

2. <http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=1056&IID=2>

section deals with the economic impacts on sustainability and diversity in journalism and the media. Finally, section five delivers some notes on the role of the State and the tensions on the democratic governance of the new public spaces of modern societies.

1

```
    selectedScopes = [],
    selectedElements = [],
    previousElements = [],
    previousScopes = [];

scope.$watch(watchExpr, function ngSwitchWatchAction(value) {
    var i, ii;
    for (i = 0, ii = previousElements.length; i < ii; ++i) {
        previousElements[i].remove();
    }
    previousElements.length = 0;

    for (i = 0, ii = selectedScopes.length; i < ii; ++i) {
        var selected = selectedElements[i];
```

THE ROLE OF LARGE CONTENT PLATFORMS: FROM CARRIERS TO GATEKEEPERS

From the beginning of Internet operations, several countries embraced the idea that platforms should not be liable for third-party content in which they were not involved. The main reason behind this was that platforms were considered technology companies, not media outlets or publishers. They were a vehicle that enabled the circulation of third-party content over which technology intermediaries had no influence. They did not apply filters and did not carry out active surveillance (except under pressure from States), nor did they modify or remove content.

This safeguard is essential because if platforms were liable for all the content their users post, it could trigger a silencing effect across social media. Companies could apply a more restrictive policy on such content, out of fear of being accused of illegal content, as a shield against potential lawsuits. From this perspective, generic and systematic monitoring to filter such content is expected, causing adverse effects on freedom of expression, access to information, and the process of public deliberation.

The two legal instruments that first embraced this view were Section 230 of the United States *Communications Decency Act* (1996) and Europe's *Electronic Commerce Directive* (2000). As the dates indicate, the laws at the time were not created with social media in mind, let alone considering their current widespread dominance.

The legal provisions in the United States and Europe set forth that companies would be granted legal protection (so-called "safe harbor") as long as they were intermediaries that did not interfere with user-generated content. The freedom given to them to moderate third-party content on their own initiative did not anticipate that this could grant them power over the circulation of information, allowing them to act as gatekeepers, a role that is evident today and that is at the forefront of global debate.

The concept of intermediaries' responsibility has changed substantially in recent years due to the growing evidence (and testimonies of the interested parties) showing that the leading transnational companies in the sector adopt policies and make unilateral decisions that interfere with the content generated and posted by their users and, at the same time, with the content other users can access. And not just because they are bound by States or other private actors. Thus, the notion of no strict liability over third-party content where there has been no interference on their part in any way, should be sustained. Still, the debate has shifted to considering responsibility when decisions interfere with third-party content and the (previously) free flow of information and communication on the social media outlets.

In 2011, a report by the then Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of the United Nations, Frank La Rue, questioned the potential gatekeeping role that intermediaries could play given that “due to their position and the role they play, intermediaries have emerged as conduits through which it is technically possible to exert control over online content”.³

The next Special Rapporteur later reinforced this new perspective, David Kaye, in his 2016 Annual Report to the Human Rights Council, on the promotion and protection of the right to freedom of opinion and expression, which included a chapter on “*Freedom of expression, States and the private sector in the digital age*”.⁴ “*It is common for private companies to censor, monitor, or otherwise restrict freedom of expression, usually under pressure from governments, but sometimes on their own initiative,*” Kaye argued at the time.

Experts expressed their “concern” about “algorithms or digital recognition-based content removal systems”, which “are not transparent in nature, which fail to respect minimum due process standards and/or which unduly restrict access to or the dissemination of content.”



3. United Nations General Assembly. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue A/HRC/17/27 16 May 2011 Para. 74. http://ap.ohchr.org/documents/dpage_s.aspx?m=85

4. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/095/15/PDF/G1609515.pdf?OpenElement>

As mentioned, the new role of intermediaries as *gatekeepers* was stressed in May 2017 in a Joint Declaration of the Special Rapporteurs for Freedom of Expression of the UN, OSCE, OAS, and the African Commission on Human and Peoples' Rights, addressing issues related to disinformation (*fake news*) and propaganda in traditional mainstream media and on the Internet.⁵

Although they reinforce the general principle that intermediaries should not be held accountable for any third-party content associated with their services—with some exceptions—the document signed by all Rapporteurs raises concern as part of the international agenda for freedom of expression about the role of some platforms and applications that limit access to or the dissemination of information online, even by removing content of public interest, as per their own initiative and without pressure from any State.

Experts expressed their “concern” about “*algorithms or digital recognition-based content removal systems, which are not transparent in nature, which fail to respect minimum due process standards and/or which unduly restrict access to or the dissemination of content.*” In these cases, the Joint Declaration recommended that Internet intermediary companies adopt “*clear policies*” based on “*objectively justifiable criteria rather than ideological or political goals and should, where possible, be adopted after consultation with their users.*” It also recalled that intermediaries, while they facilitate the enjoyment of the right to freedom of expression through digital technologies, have a responsibility to “*respect human rights*” and warned that “*intermediaries should respect minimum due process guarantees including by notifying users promptly when content which they created, uploaded or host may be subject to a content action*” and allow the user to contest that action.⁶

5. <http://www.oas.org/es/cidh/expresion/showarticle.asp?artID=1056&IID=2>

6. a. Where intermediaries intend to take action to restrict third party content (such as deletion or moderation) which goes beyond legal requirements, they should adopt clear, pre-determined policies governing those actions. Those policies should be based on objectively justifiable criteria rather than ideological or political goals and should, where possible, be adopted after consultation with their users.
- b. Intermediaries should take effective measures to ensure that their users can both easily access and understand any policies and practices, including terms of service, they have in place for actions covered by paragraph 4(a), including detailed information about how they are enforced, where relevant, by making available clear, concise and easy to understand summaries of or explanatory guides to those policies and practices.
- c. In taking actions covered by paragraph 4(a), intermediaries should respect minimum due process guarantees including by notifying users promptly when content which they created, uploaded or host may be subject to a content action and giving the user an opportunity to contest that action, subject only to legal or reasonable practical constraints, by scrutinizing claims under such policies carefully before taking action and by applying measures consistently.

This shift from vehicles to gatekeepers unfolded as there was a change in landscape between the two decades of this century. While in the 2000s, social media was only one of the options for accessing information, during the 2010s, it became the primary source of information worldwide. The growth of social media platforms contributed in two aspects: it strengthened public settings, thus bringing people closer together, and it expanded a person's opportunities for expression.

Concentration on the Internet as an aggravating factor

The role of gatekeepers is made more complicated given that Internet operations are concentrated in the hands of a few firms. Alphabet (Google), Amazon, Apple, Facebook, and Microsoft are among the eight most valuable companies in the world today, and they are the top four of listed companies.⁷

In addition to their remarkable ability to earn revenue from their services, these companies have a very high degree of concentration and hold a dominant position over other competitors. For example, although there are numerous search engines available on the Internet, Google accounts for 97.48% of the Internet search traffic in Latin America (Feb 2021).⁸ Several of these large companies have gained an increasingly dominant position on the Internet not just because of their business decisions or the success of their services among the population but also through mergers and acquisitions.

If we look at the number of users, Facebook has over 2.7 billion users, Instagram over 1.2 billion, and there are 350 million registered accounts on Twitter.⁹ YouTube has more than 2.2 billion active users every month. These companies target different market segments but, at the same time, they fight over the same digital advertising pie. A more detailed assessment of the degree of concentration depends on the definition of relevant markets.

In October 2020, the U.S. Department of Justice (DOJ) sued Google over online search dominance, and several state attorneys general joined the DOJ

d. The standards outlined in paragraph 4(b) should, subject only to legitimate competitive or operational needs, also be applied to any automated processes (whether algorithmic or otherwise) run by intermediaries for taking action either in relation to third party content or their own content.

7. https://en.wikipedia.org/wiki/List_of_public_corporations_by_market_capitalization

8. <https://gs.statcounter.com/search-engine-market-share/all/south-america>

9. <https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/>

as plaintiffs. In Europe, Google and Facebook were already facing proceedings. In 2017, the European Commission fined Google €2.4 billion for favoring its own sales service (Google Shopping) in its price comparison feature. This was the largest fine applied by the European Union for antitrust practices and the first time that the European Commission imposed a sanction on behaviors related to Internet searches.¹⁰ That same year, Facebook was fined €122 million in Europe because it had stated—amid their WhatsApp takeover—that it would not automatically match their users’ accounts on its social network to the messaging service platform, which it later ended up doing.¹¹

By keeping user information closed and without interoperability, databases suffer from the network effect, giving users strong incentives to choose larger networks and giving advertisers more added value by investing in ads offered by larger platforms with more complex databases. This leads to economies of scale, where service and application providers operating in two-sided markets tend to concentrate horizontally.

The effect of concentration is that the different services offered by intermediary firms (such as search engines, social networks, messaging services, etc.) are now provided to users under a shared terms and services policy, algorithms policy, and advertising policy. In this sense, concentration becomes an aggravating factor for the risks that any intermediary poses to the enjoyment of the right to freedom of expression.

“The role of gatekeepers is made more complex given that Internet operations are concentrated in the hands of a few firms.”



10. http://brasil.elpais.com/brasil/2017/06/27/economia/1498554639_549183.html?id_externo_rsoc=FB_BR_CM

11. <https://www.theguardian.com/business/2017/may/18/facebook-fined-eu-whatsapp-european-commission> and <https://techcrunch.com/2017/05/18/facebook-fined-122m-in-europe-over-misleading-whatsapp-filing/>

2



CONTENT MODERATION AS A FORM OF PRIVATE REGULATION OF NEW PUBLIC SPACES

Intermediaries moderate the exchange of information and communication on social media in various ways: all forms of indexing, prioritization, and removal are used to edit the content a person can access online.

To this end, social media platforms also work with a large number of publishers to analyze content based on established guidelines.¹² For instance, Facebook stated in 2020 that it had 35,000 content moderators.

Furthermore, the COVID-19 pandemic forced content reviewers to go home, which meant that posts were almost entirely moderated by algorithms. Many international civil society organizations warned of the problems of content moderation using automated filtering and of the risks of the practice spreading after the pandemic.¹³

YouTube, for example, removed over 11.4 million videos in the second quarter of 2020 for violating its community guidelines. Forty-two percent were removed before being viewed. The company stated that automated filtering removed more user content than before and that a large proportion did not even infringe the platform's guidelines.¹⁴

The moderation process has a significant impact on access to information and democratic deliberation because private platforms have become public spaces. This role combines two features.

First, they are currently significant spaces to exchange information and opinions. This relevance is evidenced by the number of users and their cen-

12. <https://www.propublica.org/article/facebook-hate-speech-censorship-internal-documents-algorithms>

13. <https://www.observacom.org/eff-advierte-sobre-la-moderacion-automat-ica-de-contenidos-en-internet-durante-el-covid19-y-teme-se-extienda-luego-de-la-crisis/>

14. <https://www.observacom.org/censurabot/filtrado-automat-ico-de-contenidos-en-youtube-elimino-mas-contenido-legitimo-que-la-moderacion-humana/>

tral role in the public debate, with political, social, and cultural consequences. Global surveys like the Digital News Report by the Reuters Institute, Oxford University,¹⁵ also provide evidence of the growing importance of social media as sources of information and spaces to exchange ideas.

Second, the significant market power held by these companies creates an absence of effective competition. This means that the organizational role of the public sphere dynamics is not distributed among several actors. All indicators show a clear dominance of platforms such as Facebook, Google Search, and YouTube in all the regions of the world where their services are used freely.

Characterizing these services as public spaces is not the only factor that calls for addressing these issues publicly. Any company must respect their users' human rights as set out in the Guiding Principles on Business and Human Rights, adopted by the UN Human Rights Council in 2011.

Applying these principles becomes more relevant in companies that offer services to access and exchange information and to communicate. In a special report on the role of the private sector in the digital age, the UN Special Rapporteur on Freedom of Opinion and Expression, David Kaye, recalls that the Guiding Principles on Business and Human Rights reaffirm that "States must ensure that not only State organs but also businesses under their jurisdiction respect human rights".¹⁶

Therefore, it is essential to address this topic as part of the public agenda given the central role of these platforms in the information exchange process, their significant market power, and their obligation to respect human rights.

Disinformation merits a chapter by itself, given the spread of the *fake news* phenomenon in the second half of the 2010s. Until then, information reliability did not require special attention. Although in some cases pluralism and diversity depend on positive regulatory action and public policies, the transparen-

“All forms of indexing, prioritization, and removal are used to edit the content a person can access online.”



15. <http://www.digitalnewsreport.org/>

16. <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/PrivateSectorin-thedigitalage.aspx>

cy of public debate and the pursuit of credibility by traditional media helped to make information reliability less relevant until the 2010s.

The combination of publisher participation, a wider range of stakeholders, and an opaque architecture created an environment conducive to disinformation practices, understood, as defined by UNDP and UNESCO, as false, manipulated, or deceptive content, created and disseminated unintentionally or intentionally, and which can cause potential harm to peace, human rights, and sustainable development.

After controversy over content handling in electoral processes and public health, there has been growing criticism towards platforms, as they seem to address disinformation, hate speech, and online violence insufficiently. Conversely, detractors point to the opposite problem: platforms moderate a lot of content and exercise private censorship over third-party content.

Criticism about excess and lack of moderation share a lack of public parameters to guide content moderation policies and the reinforced application of private rules to information. Several countries have attempted to implement regulatory processes, but there are still no clearly useful benchmarks.

Concerned with disinformation in an electoral context, the UN Special Rapporteur on Freedom of Opinion and Expression of the Inter-American Commission on Human Rights (IA-CHR) published the document entitled “Disinformation in electoral contexts. Guide to guarantee freedom of expression regarding deliberate disinformation in electoral contexts”.¹⁷ In Europe, the High-Level Group on Fake News and Online Disinformation developed a Code of Practice at the request of the European Commission, which was signed by the leading platforms. The code sets out platform commitments on identifying and combating disinformation.

Proposals recently published by civil society also help understand how businesses deal with the phenomenon and what types of solutions can ad-

“Many international civil society organizations warned of the problems of content moderation using automated filtering and of the risks of the practice spreading after the pandemic.”



¹⁷ <https://www.observacom.org/cidh-presenta-avances-de-recomendaciones-sobre-desinformacion-en-contextos-electorales/>

dress it. An example is a document issued by the Information and Democracy Forum, led by Reporters Without Borders, with 250 recommendations on how to tackle the *infodemic*.¹⁸

18. <https://informationdemocracy.org/working-groups/concrete-solutions-against-the-infodemic/>

3



RESTRICTIONS ON INFORMATION, FREEDOM OF EXPRESSION, AND PUBLIC DELIBERATION ON THE INTERNET

The content moderation process may guarantee rights but also threaten freedom of expression and other human rights.

Direct restrictions resulting from intermediaries' action on freedom of expression are classified into those imposed by structures or pressures from outside the state (governments, justice, or others) or from private actors (individuals, organizations, or businesses), and those resulting from the intermediaries' own decisions.

The latter include intervention on third-party content for a potential violation of the terms of use and information indexing and hierarchization performed by algorithms.

Evidence shows unclear boundaries between blocking, indexing, or removing third-party content that could be categorized as legitimate—due to serious collision with other fundamental rights—and interventions that are incompatible with international human rights standards.

Direct restrictions placed by major platforms on freedom of expression and public deliberation on the Internet can be classified into five types:

A. Content removal, deindexing or blocking following court orders, state pressure, and private actors.

The Google, Facebook, and Twitter transparency reports highlight the burden of state orders requesting removal and moderation, which includes, for businesses, all government authorities, and court orders. In the private sector, these requests involve intellectual property issues. There is evidence of excessive application of defamation laws to prevent or hinder critical expressions protected by freedom of expression. There is also evidence of private requests for removal for alleged

copyright infringement that affects public interest content. Both types of restrictions (often illegitimate) are severe problems in many of the region's countries, and the platforms are not directly responsible.

B. Removal, deindexing, or blocking of content at one's discretion

These decisions are discretionary and based on non-compliance with terms of service or community policies users must accept to use a platform to share or communicate content. However, these terms often disregard international parameters of freedom of expression, and they are applied without due process and transparency.

In recent years, Facebook, Google, and Twitter have included data on removing content that does not comply with their community rules in their transparency reports. In the first quarter of 2020 alone, Facebook removed or took action on approximately 1.8 billion fake accounts and content involving what the company determined as violations of its adult nudity policies, fake accounts, and hate speech and violence, among other things.¹⁹ In 2019, YouTube removed over 12 million channels globally, resulting in the removal of 259 million videos.²⁰ In addition, nearly 32 million specific videos were deleted. Twitter took action on over 2 million accounts in the second half of 2019. In that period, 873,000 accounts were removed and almost 3 million videos deleted, a 50% growth compared to the previous period.

“The terms of service or policies users must accept often disregard international parameters of freedom of expression, and they are applied without due process and transparency.”



¹⁹. Facebook Transparency Report. Available from <https://transparency.facebook.com/>

²⁰. Google Transparency Report. Available from <https://transparencyreport.google.com/youtube-policy/removals>

C. Prioritization of information content, ideas, and opinions

Part of the impact of platforms on freedom of expression, diversity, and pluralism comes from the architecture and infrastructure of social media, which impact the flow and prioritization of information content, ideas, and opinions. Algorithms apply affinity criteria to make recommendations, and often content gains traction through adhesion (*likes* and *shares*), promoting information that is not truthful or reliable.

The platforms' business model is based on the prospect of accumulating millions of data on each user to achieve better user profiles and, in turn, to supply advertisers with hyper-segmented profiles. This depends on ensuring user usage time and getting users involved in creating new content and new connections. The platforms' main principle is that the users' attention span, participation, and direct involvement increase if they can find content with which they identify.

This identification has to do with the proximity to their own ideas and opinions and how close the source of information is (friends and social leaders).

Therefore, when users read information and news on social media, their network of friends and leaders guides the content offered, along with recommendations made by algorithms and artificial intelligence. It is a radical shift, as consumption was previously guided by the choice of a reference media outlet (accessed directly from the browser) and by the editor's journalistic selection criteria.

In this scenario, the business model based on data accumulation leads to fragmentation, and algorithms and artificial intelligence are guided by values more related to uniformity and similarity than pluralism and diversity. In addition to how social media work, search engines and video platforms also offer personalized content based on the users' previous characteristics and behavior. On YouTube, for example,

“Algorithms and artificial intelligence are guided by values more related to uniformity and similarity than pluralism and diversity.”



referral systems are responsible for 70% of the views,²¹ as reported by the company.

In addition to information diversity, intermediaries may also affect cultural diversity with the use of algorithms. In music or video on demand (VOD) systems, algorithms define the catalogs, greatly influencing actual user consumption. The cultural diversity actually seen or heard decreases as there are no definitions regarding specific action to promote domestic content.

This concern led to revising the audiovisual services regulations in Europe, starting with the revision of the Audiovisual Media Services Directive in 2018, which also appears as a critical factor in some of Latin America's regulatory proposals.²²

D. Fragmentation of public debate and silencing of diverse voices

The risk of segmenting public discussion lies in the very design of platforms and applications. Sorting and selection algorithms show, highlight, or hide information and opinions based on hierarchical criteria based on users' previous preferences and choices to expand their engagement with the platform.

Curating content based on user affinity seems logical from a service model perspective. But it also seems clear that this platform architecture makes it difficult for users to access diverse and plural content. Therefore, the platform's commercial logic contradicts the normative values of democracy.

This contradiction is directly related to the goal of keeping the user on the platform longer. As a result, fragmentation and segmentation are spirally reinforced, thus consolidate what scholars call *bubble filters* and *echo chambers*. This is a significant shift that involves changing how the public sphere is managed. While traditional media have journalistic values as organizers of their curatorship, platforms organize their content based on an attention economy model.

In addition to the above process, the opaque nature of some social media platforms also affects pluralism and diversity. This opacity

21. <https://blog.hootsuite.com/how-the-youtube-algorithm-works/>

22. <http://www.observacom.org/avance-erratico-de-los-intentos-de-regulacion-ott-en-america-latina/>

occurs in two ways: first, it occurs due to fragmentation. Although the entire debate is held on open platforms, it is impossible to follow up and give an overall dimension to the public discussion on social media—perhaps with a more negligible effect on Twitter, which does not have segmentation as an organizational feature. Therefore, the public debate remains opaque to each individual user.

The other dimension is the existence of closed discussion groups with mass participation, such as closed Facebook groups or message groups like WhatsApp and Telegram. In that case, there is no public board where messages are published as in open networks: they are only visible to recipients or users of the closed group.

The public debate takes on complex outlines when fragmented and opaque. It hinders public scrutiny of ideas and the visibility of contradictory perspectives. The segmentation of the public discussion caused by the algorithm impacts not only the diversity and pluralism of information consumed but also the targeting of advertising and political propaganda.²³

E. Indirect restrictions: the impact on media sustainability

In addition to direct restrictions, sometimes intermediaries' decisions and actions affect freedom of expression indirectly. This occurs when services and new business models have an economic impact on national producers of information and journalistic content, affecting their sustainability and creating an impact on diversity and pluralism. The issue of sustainability is also linked to taxation, which impacts countries' economies and fiscal justice.

The increasing incidence of intermediaries as gateways to online information has also changed the flow of resources in the digital economy, which seems to indirectly affect diversity and pluralism. At the same time, it negatively impacts the financial resources received by producers of traditional information content, especially those with high fixed costs like investigative journalists and hard news reporters.

The growth of Internet advertising is mainly concentrated by two companies: Google and Facebook. According to the News Media Alliance, these companies account for 60% of the advertising market,

23. <https://scout.ai/story/the-rise-of-the-weaponized-ai-propaganda-machine>

while the remaining 40% is disputed not only by publishers but by all the other players in the online advertising ecosystem, including other tech giants such as Amazon and Twitter, as well as blogs, search engines, and other news sites.²⁴ Advertising as a resource is critical for businesses: 98% of Facebook's revenue and 85% of Google's revenue in 2018.²⁵

The debate on the economic impact for journalism companies addresses substantial issues such as the new business models in the digital environment and the potential alliances between intermediaries and journalism companies. Although the shift in resource transfer is visible, primarily due to the changed destination of digital advertising, many variables are involved. What matters is understanding the extent to which current trends threaten pluralism and diversity of information.²⁶

“The increasing incidence of intermediaries as gateways to online information has also changed the flow of resources in the digital economy, which seems to indirectly affect diversity and pluralism.”



24. <https://www.observacom.org/poder-de-los-intermediarios-de-internet-en-estados-unidos-cual-es-su-real-incidencia-en-el-negocio-de-la-prensa-y-en-la-innovacion/>

25. <https://www.digitalsme.eu/the-digital-services-act-and-the-role-of-social-media-platforms/>

26. The debate on survival must indeed go beyond advertising revenues and various direct collection models to include other business models. In a paper published alongside previous research by OBSERVACOM, Caio Túlio Costa states:

“large traditional media make the most sense of the crisis and are the most reluctant to become their top business, invest in technology, monitor and embrace social media, encourage content hyper-distribution, work on network advertising independently, create experiences to bring in revenue from value-added services, and thereby survive”.

Some of this has already taken place. Although newspapers believe they can fight giants for advertising, they are betting on alliance strategies. In June 2017, an alliance of large U.S. media companies was announced to pool data and deal with competition from Google and Facebook. It includes newspapers like The New York Times, Daily News, Penske Media, and channels like The Weather. In 2015, an experience led by The Guardian brought together CNN and Reuters to sell programmatic ads, and in 2016 Germany helped eight large groups meet to gather data and face Google and Facebook.

It is essential to know the extent to which applications are allies or competitors of news companies to develop new business models. A study on how the sites of the top five newspapers in France, Germany, Spain, and the United Kingdom are accessed identified that 66% of traffic comes from referrals, and 34% is direct access.²⁷ These data illustrate how complex the ecosystem is.

Eleven of the largest newspapers in Latin America have a network called Grupo de Diarios América to sell digital advertising for their online version in the United States. In Brazil, the Digital Premium network was created to bring together 65 newspaper sites. In 2017, the network joined Google programmatic advertising.

²⁷ <https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/technology-media-telecommunications/deloitte-uk-impact-of-web-traffic-on-newspaper-revenues-2016.pdf>

4

THE ROLE OF THE STATE AND TENSIONS OVER DEMOCRATIC GOVERNANCE

For over a century, Western democracies have tended to ensure pluralism and diversity in their communication environments. The premise that has guided these efforts is that freedom of expression and access to diverse, pluralistic, and reliable information are democratic pillars. It was considered necessary to establish public rules because the market on its own does not guarantee pluralism and diversity. This premise has guided the adoption of various public media systems or sector-specific regulatory mechanisms and has aided country development, especially in North America and Europe.

The emergence of e-commerce in 1994 ushered in a new environment to exchange information, facilitate communication, and access cultural goods and services. For years, the development of websites, blogs, and public deliberation environments has expanded and decentralized citizens' sources of information and expression outlets. However, in the first decades of the Internet, the debate on democratic governance focused on the web's technical aspects and logical layer. However, growing networks and the concentration of information circulation on a few platforms have created the need to update the debate on democratic governance.

Progress in the debate on the role of states and the democratic governance of online information exchange services and applications—and the points of tension in the discussion on their regulation—depends on understanding the above aspects: their new role as a public space—extensive content platforms—, the impact of platforms on freedom of expression as gatekeepers, and the aggravating effects of concentrating this role in the hands of a few transnational companies.

In this regard, the United Nations High Commissioner for Human Rights, Michelle Bachelet, urged states to adopt a “smart mix of measures to regulate new technologies.” During a visit to Silicon Valley, Bachelet said, “We cannot expect Big Tech to self-regulate effectively, nor do I believe we

would want them to.” “Leaving individual companies on their own to develop rules and self-regulate means placing too much power in the hands of such companies and will inevitably lead to a fragmentation of approaches where industry-wide regulation is needed,” the UN High Commissioner for Human Rights explained.²⁸

The United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Tendayi Achiume, wrote a report on racial and xenophobic discrimination and emerging digital technologies, where she states that “From a human rights perspective, relying on companies to regulate themselves is a mistake and an abdication of State responsibility.”

Since 2017, regulation, co-regulation, and self-regulation policies have been implemented to impact content moderation. Germany approved the NetzDG Act, which imposes content moderation obligations on platforms. The law was criticized by organizations such as Reporters Without Borders for creating a chilling effect on freedom of expression, but subsequent academic evaluations show that there was no *overblocking*.²⁹

In 2018, the European Commission reached an agreement with Google, Twitter, and Facebook to change their terms and conditions of operation to comply with European regulations: an unprecedented first step towards regulating intermediary platforms to protect their users. The agreements include matters of applicable jurisdiction, consumer rights, and commercial communications, among others.³⁰

“Leaving individual companies on their own to develop rules and self-regulate means placing too much power in the hands of such companies and will inevitably lead to a fragmentation of approaches where industry-wide regulation is needed,” Michelle Bachelet, UN High Commissioner for Human Rights.



28. <https://www.observacom.org/michelle-bachelet-onu-into-a-los-estados-a-regular-a-las-plataformas-de-internet-con-un-mix-inteligente-de-medidas/>

29. https://www.bmjv.de/SharedDocs/Downloads/DE/News/PM/090920_Juristisches_Gutachten_Netz.pdf?__blob=publicationFile&v=3

30. <https://www.observacom.org/gigantes-tecnologicos-deberan-adeclar-terminos-y-condiciones-para-ajustarse-a-la-legislacion-europea-de-proteccion-de-derechos-de-usuarios/>

Some important proposals were presented in 2020. In October, the U.S. Department of Justice filed a proposal to change Section 230 of the Communications Decency Act and the intermediary liability regime.

In November, the United Kingdom announced the creation of a Digital Markets Unit to introduce and enforce a new code to govern the behavior of platforms that currently dominate the market, such as Google and Facebook. In December, the country also published a bill based on the Online Harms White Paper, which defines the *duty of care* of platforms towards their users, especially against hate speech and disinformation and the protection of children.

Also, in December, Europe published the Digital Services Act, which aims to revise the Ecommerce Directive and the definition of ex-ante regulation of digital platforms that act as gatekeepers. The initiative seeks to combat the dissemination of hate speech and associated harm to society, public discourse, and democracy and to prevent the dominance of large platforms in certain markets.³¹

Many of the reactions of the executive and legislative branches are directly related to specific political contexts, increasing the risk of specific political interests tarnishing the change processes.

Meanwhile, the Latin American civil society features more balanced alternatives that are compatible with international standards. A group of organizations, including OBSERVACOM (Latin American Observatory of Regulation, Media and Convergence), have developed a comprehensive proposal for democratic standards as a different way to address regulation that guarantees greater freedom of expression on the Internet, not less.

The initiative “Standards for the democratic regulation of large content platforms to ensure freedom of expression online and an open and free Internet”³² proposes more appropriate self-regulatory efforts, with forms of

“The challenge is to ensure adequate regulatory environments to protect human rights from tech giants with the sole aim of ensuring the full exercise of freedom of expression and information and a free and open Internet.”



31. <https://www.digitalsme.eu/the-digital-services-act-and-the-role-of-social-media-platforms/>

32. <https://www.observacom.org/wp-content/uploads-2020-09-estandares-regulacion-grandes-plataformas-internet-pdf/>

co-regulation and smart public regulation to limit the power of large platforms and protect the rights of social media users.

The challenge is to ensure adequate regulatory environments to protect human rights from tech giants with the sole aim of ensuring the full exercise of freedom of expression and information and a free and open Internet. In this scenario, the question of what type of public regulation is strictly necessary, balanced, and democratic must be at the core of the debate.

**The role of large Internet platforms
and their impact on freedom of expression
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