

## Obligations for Digital Platforms to safeguard the Information Space

In the course of their history, democracies established safeguards for public debate in their constitutions and by means of media regulation and journalistic self-regulation. All of these safeguards were based on distinctions that have been erased in the digital information and communication space – distinctions between national and international, between public and private, between media and social media, between journalism, advertising and sponsored content, and between human and algorithmic content.

In the digital domain, it is platforms and social networks that define the standards and architectures of the digital space. The phrase “code is law” sums up a situation in which, for the time being, digital law is determined by those who run the platforms or the despots who give the orders. Tech companies have replaced democratic parliaments in drafting laws, and judges in enforcing them. They have often even replaced regulatory bodies in implementing media policy, and media in selecting and ranking content.

Online intermediaries such as search engines, social media networks and content aggregators are nowadays the entities that design and control the information space we inhabit. By means of algorithmically-driven indexing and content filtering, they shape and influence the way individuals consume news and information. The digital platforms are no longer mere technical intermediaries, neutral hosts and conveyors of content with no impact on the public space. They are the gate-keepers and, furthermore, the “structuring entities” that define the rules of the public space, set its standards, determine content censorship, and decide over hierarchization of media outlets and information.

As consumers, we have delegated the organization of public deliberation to these digital platforms and social media without – as citizens – imposing the specific obligations that should attach to their role as the entities that shape and structure the public space.

Such extensive powers and their impact could nonetheless have major implications for media pluralism, understood as both internal and external media pluralism, and they could, potentially and ultimately, undermine democracy.

The overall goal of this proposal is to re-introduce democratic safeguards, to guarantee respect for the right to freedom of opinion and expression, and to impose the creation of mechanisms for promoting reliable news and information; and to this end, obtain targeted action favouring authoritative news sources and trustworthy information, in order to safeguard media freedom and pluralism as well as online freedom of opinion and expression.

**To achieve this, we propose the creation of a new regulatory model, by imposing a series of ex-ante obligations on the structuring platforms to frame their activity, to be implemented by them under the control of the judge or the regulator.**

This proposal, which aims to overhaul digital platforms regulation, provides the European Union (EU) with a historic opportunity to impose democratic safeguards in the digital information and communication space and to establish the foundations of a sustainable ecosystem for a media industry in crisis, as envisaged in the Information and Democracy Initiative launched by RSF.

### **The Information and Democracy Initiative**

The International Declaration on Information and Democracy – initiated by RSF and adopted in November 2018 by an international civil society commission jointly chaired by RSF secretary-general Christophe Deloire and Nobel peace laureate Shirin Ebadi – defines basic principles and safeguards for the global information and communication space. It was the basis for the international Partnership for Information and Democracy signed by 30 countries, including 20 EU members, during the UN General Assembly in New York in September 2019, which aims to implement the Declaration’s principles. The Partnership led to the creation of a dedicated body, the Forum on Information and Democracy, tasked with assisting regulation and self-regulation of the online information and communication space and implementing the Partnership’s goals. The Forum was created in November 2019 by 11 NGOs, research centres and think tanks from all continents. Its first working group, on how to respond to “infodemics,” will present its recommendations during the Paris Peace Forum in November 2020.

## 1. Responsibilities proportionate to their impact on the information and communication space

As a corollary of this new status, the structuring entities must be held accountable in function of, and in proportion to, the impact of their contribution and participation in the information and communication space.

**Although they must not have a general obligation to monitor content shared** on their services, the responsibilities of digital services providers – especially those that can be regarded as “structuring entities” – must be increased.

A new system of responsibility must be defined with a **series of specific obligations** (see sections below for details):

- overall obligations of transparency, neutrality, due diligence and vigilance, and respect for users' right to privacy
- obligations as regards content moderation, to respect international standards on freedom expression
- obligations as regards indexing and ranking reliable news and information (due prominence obligations), so that their users' right to freedom of opinion is respected.

## 2. Overall transparency obligation

**Content moderation and recommendation transparency:** Platforms must be subject to detailed transparency obligations regarding content they promote, content they censor, and their overall approach to content ranking. As regards content moderation, they must be subject to strict obligations and must provide precise data about the number and nature of content moderation operations required and carried out, the legal justification for these operations, and the safeguards provided for respecting fundamental rights.

**Auditability of their algorithms:** This transparency implies access to the algorithms they use to rank and moderate content – access that can be reserved to auditors who are subject to a confidentiality requirement. The Forum on Information and Democracy, a Partnership for Information and Democracy body, can act as independent auditor. This independent authority should consist of experts in technical areas with the necessary investigative capacity, should conduct regular audits and tests, and should publish regular evaluations of its findings. Failure to respect transparency obligations must be sanctioned. In November 2020, the Forum's Working Group on Infodemics will produce recommendations on the conduct of such audits.

Transparency obligations must also cover internal policies and decisions affecting the public sphere, as well as the commercial or other interests the platforms promote.

### 3. **Obligation to observe political, ideological and religious neutrality and neutrality with regard to their own interests**

Platforms must also be subject to an obligation to observe political, ideological and religious neutrality, and neutrality with regard to their own interests. They must not be able to promote political content, or recommend commercial interests to which they are linked, without clear transparency.

**Sanctioning platform conflicts of interest:** Any platforms' conflicts of interest – whether commercial or political – must be the subject of sanctions.

### 4. **A due diligence obligation**

In accordance with the [UN's guiding principles on business and human rights](#), this due diligence obligation should include the obligation to proactively identify, prevent, address and remedy the negative effects of their activities on human rights. Structuring platforms must be held accountable for any failure to respect this obligation.

### 5. **Obligations to comply with freedom of expression principles**

Platforms censor online content on their own terms, in violation of free speech principles. Such content comes under the basic right to freedom of expression and may have significant public interest value, whether from an artistic, historic, journalistic or judicial viewpoint. Platforms should therefore never be allowed to delete or block access to such content without justification, transparency and accountability.

**Ban on generalized surveillance:** While platforms must not be subject to a general obligation to monitor content shared on their services, they must be subject to a series of obligations to safeguard their users' right to freedom of expression.

**Best-efforts obligation rather than results obligation:** Platforms must not be subject to a strict obligation to delete all abusive content within a specific deadline. They should instead have a “best-efforts obligation” to delete content that does not respect international standards, taking account of their users’ right to freedom of expression. Compliance with this “best-efforts obligation” should be constantly monitored by an independent regulator and the national judicial apparatus.

**Bring their TOS into line with international standards:** Platforms must be obliged to bring their terms of service (TOS) into line with international standards on freedom of expression. Article 19 of the International Covenant on Civil and Political Rights clearly spells out the restrictions that may legitimately be placed on this freedom. Platforms should not impose tighter restrictions than those defined by the United Nations.

**Bring their moderation activities into line with international standards and provide appeal mechanisms:** Content censorship by platforms must comply fully with international standards on freedom of expression and must always be open to appeal by users whose content is deleted. The originators of content that is deleted or blocked should be able to contest the deletion, initially with the platform but with the possibility of appealing against a decision to an independent regulator under the control of a judge, or even directly to the judge.

**Sanction improper deletion of content:** Platforms must be held accountable for improper deletion of content and a system of sanctions must be established to that end.

**Combat misuse of their procedures:** Platforms must be required to establish procedures to guard against misuse of reporting rules and moderation mechanisms, especially misuse in bad faith designed to censor journalists.

## **6. Obligation to create mechanisms for promoting reliable information**

### **6.1- The co-regulation approach**

In contrast to other kinds of content (such as advertising, political campaigns and propaganda, etc.), content that respects media ethics and professional standards with regard to the production of reliable information is of vital importance to democracy and must enjoy special safeguards.

The Declaration on Information and Democracy states that platforms shall “implement mechanisms that favour visibility of reliable information. Such mechanisms shall be based on criteria of transparency, editorial independence, use of verification methods and compliance with journalism ethics. The integrity, authenticity, traceability of ideas and information shall be promoted, so that their origin and mode of production and dissemination are known.”

To this end, the DSA should adopt a co-regulatory approach, in the form of a legal obligation referring to a relevant self-regulatory standard.

Using “must-carry” and quota rules as a model, the DSA could impose on platforms the use of mechanisms designed to give prominence to information sources that respect standardized self-regulatory norms on professional and ethical practices, and give them preferential treatment in terms of prioritization of content, especially promotion and visibility in news feeds and search results (a due prominence obligation).

A new co-regulation framework should require platforms to use these self-regulatory tools, under the control of the national regulatory authorities, applying tools and clear criteria identified in the legislation. These legal requirements should include a “do no harm” obligation and the obligation not to discriminate on the basis of content or viewpoint. Intermediaries should not regard failure to respect or use these technical standards as grounds for excluding, downgrading or negatively impacting content visibility or monetization.

## **6.2- The Journalism Trust initiative (JTI)**

The Journalism Trust initiative (JTI), initiated by RSF, is a collaborative process of standardization designed to encourage respect for journalistic ethics and methods and reinforce the right to information by promoting online content produced in accordance with these principles.

The process was launched by RSF under the aegis of the European Committee for Standardization (CEN), with help from French CEN member AFNOR and German CEN member DIN, and in partnership with Agence France-Presse (AFP) and the European Broadcasting Union (EBU), to draft a “workshop agreement”. More than 120 entities collaborated in the drafting, including news agencies (such as the Associated Press, DPA and EFE), broadcast media (such as the BBC, RTL and France TV), media unions (journalists’ federations in Taiwan and South Korea), consumer groups (the European Consumer Organisation) and tech groups (such as the World Wide Web Consortium). Google and Facebook participated, as did

many regulatory bodies from various European countries. The JTI European “Standard” was officially issued on 19 December 2019 in the form of a “CEN workshop agreement.”<sup>1</sup>

The JTI implementation phase aims at giving a competitive advantage to media that provide guarantees of compliance with the standard, on the basis of self-evaluation and third-party assessment. The advantages will be gained in algorithmic indexation by search engines and social networks, more advertising income, favourable decisions by independent authorities and public funding.

The JTI Standard’s adoption will thereby allow for the promotion and improvement of the visibility of sources of news and information that can be regarded as reliable, by providing a set of criteria for algorithmic indexation that were developed in a self-regulatory process under the CEN’s aegis and in cooperation with journalists and media from all over the world, and are implemented in a transparent and verifiable manner.

## **7. Obligations to promote pluralism and serendipity**

While platforms may personalize their users’ search research results, they must guarantee diversity and pluralism in terms of ideas and information, and in the media displayed in the search results. They must also encourage serendipity. This means that the tools used to index and rank content must offer alternative solutions that are visible and easily accessible and allow users to personalize these tools.

## **8. Obligations to contribute to media sustainability**

Aside from the unfair competition between fake news and news that can be regarded as reliable, a dramatic decline in income has been the other negative impact suffered by the media as a result of the development of digital platforms and their position of “structuring entities”.

The platforms now get most of the advertising revenue that previously went to the media. Furthermore, decisions taken by platforms can have disastrous financial consequences for the media. When Facebook, for example, trialled the use of a separate news feed for the media in certain countries, media outlets disappeared from users’ main feeds, resulting in an immediate collapse in their readership and

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<sup>1</sup> <https://www.cen.eu/News/Workshops/Pages/WS-2019-018.aspx>

a corresponding collapse in their advertising revenue. Although often the only sources of reliable, independently-reported news in their country, some of these media were wiped out financially

**Increase the visibility of reliable news sources, thereby making them more sustainable:** The use by platforms of independent mechanisms developed by journalists such as the Journalism Trust Initiative would make reliable news and information sources more visible, would increase their audience and would thereby strengthen their financial solidity and sustainability, helping to ensure that many of them can prosper.

**Provide for a redistribution of platform revenue towards public interest journalism:** The DSA could also consider redistributing part of the net national advertising revenue of structuring entities directly or indirectly to media outlets that respect independent standards produced by the media profession, such as the JTI Standard. National legislation could determine what percentage is redistributed.

**Redirect advertising towards public interest journalism:** Finally, the DSA could make structuring entities use independent mechanisms produced by the media profession, such as the JTI, to get their advertisers to allocate more of their spending to public interest journalism.

**A working group of the Forum on Information and Democracy could be tasked with drafting the outlines of a European plan for media sustainability in the post-Covid era.** This working group would propose emergency financial mechanisms for ensuring the survival of the most vulnerable media, as well as legislative and political measures for strengthening long-term media resilience.

## **9. An obligation to appoint a legal representative in each Member State**

In order to ensure that the platforms are effectively subject to compliance with their legal obligations in each member state, and to judicial control, they must be required to appoint a legal representative, able to receive subpoenas from private individuals and public authorities. Failing this, complaints against the platforms must be channelled through the international channel, which is particularly long and arduous, and which deters legal action or renders it ineffective.

## 10. A governance proposal

→ So that the principles and obligations set out in the DSA can continue to be relevant and provide protection regardless of future technological developments, an independent body should be tasked with coordinating among the various stakeholders in order to update its regulatory provisions when necessary.

→ So that new principles and obligations can routinely be defined without politicians being accused of trying to control information, we propose inserting the Forum on Information and Democracy into European governance so that it can, for example, work on emerging problems. Three avenues could be explored:

- The DSA could envisage using the “comitology procedure” in the relevant areas: platform transparency and neutrality (as defined above), promotion of reliable news and information, and co-regulation procedures. To this end, the Forum could be given a predominant position in the council of experts that is tasked with accompanying the Commission in its execution of the DSA.
- Like, for example, the permanent group of experts that the European Commission created in January 2018 to help it coordinate and implement environmental policy, the Commission could decide to task one of the Forum’s working groups to assist it with the DSA and with drafting legislative proposals and other initiatives with regard to these emerging issues.
- Finally, the European Democracy Action Plan could assign a permanent think-tank role to the Forum with regard to the Plan’s implementation to improve the resilience of democracies and adapting their response to emerging challenges linked to disinformation and media sustainability.