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## The Political Power of Platforms: How Current Attempts to Regulate Misinformation Amplify Opinion Power

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### ABSTRACT

This contribution critically reviews the ongoing policy initiatives in Europe to impose greater societal responsibility on social media platforms. I discuss the current regulatory approach of treating social platforms as mere ‘intermediaries’ of the speech of others and propose a different perspective. Instead of perceiving platforms as intermediaries and facilitators of the speech of others, I view social media platforms as active political actors in their own right, and wielders of considerable opinion power. I will explain how taking the perspective of opinion power throws a very different, and rather alarming light on the recent regulatory initiatives.

### KEYWORDS

Social media platforms; regulation; Europe; opinion power; pluralism

### Introduction

What if ... Facebook was a government?<sup>1</sup> It would govern a huge nation. With an expected rise in 2020 to 2.6 billion users,<sup>2</sup> it would connect more people than are governed by any one nation on this planet. These people not only use Facebook to chat, watch videos or read news. They are also citizens with political leanings, interests and the power to vote. They are all united through one platform – a platform that knows more about voters’ personal preferences, political engagement and psychographic trigger points than many governments in this world. If Facebook was a government, it would have its own laws (actually it does). Like any state, platforms also have to organize their citizens, but their laws are not determined by democratically elected parliaments. These laws are given by the platforms to the people who use them, in the form of Terms of Use, Privacy Policies and community guidelines. Contractual freedom is the platform’s fundamental right, and because of the prerogative of contractual freedom, we have largely come to accept that these contracts and terms create quasi-binding rules or a system of micro regulation that, on occasion, can even overrule national laws – at least on the platform.

Facebook is not a government – yet. Moreover, the current political debate around the regulation of social media platforms in Europe, but also in the US, is still very

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much framed in terms of governing a set of commercial actors whose business model is to connect and facilitate the speech of their billions of users. In this commentary, I propose a different perspective. Instead of perceiving platforms as intermediaries and facilitators of the speech of others, I view social media platforms as effective political actors in their own right, and wielders of considerable *opinion power* (defined in Section three below). I will argue that, in media law and policy, we have a long tradition of thinking about and dealing with sometimes dominant opinion power in the media. This is because we understand that opinion power in the media can far too easily translate into political power. I will explain how, when viewed through the lens of opinion power, some of the recent European initiatives on platform governance appear in a new and rather alarming light. Finally, I will make a suggestion for the way forward.

### The Current European Approach to Platform Governance

Platform governance is a topic high on Europe's political agenda. The new European Commission has announced a revision of the governance framework (to date known as the e-commerce Directive)<sup>3</sup> that should lead to greater accountability of platforms for the content shared by their users, as part of the planned Digital Services Act Package (European Commission 2020; Von der Leyen 2019). The EU has already adopted three directives that, each in their own way, extend the responsibilities of platforms with respect to the way content is organized and distributed.<sup>4</sup> The Digital Services Act Package must issue *ex ante* rules to ensure that markets characterized by large platforms with significant network effects and acting as gatekeepers remain fair and contestable by innovators, businesses and new market entrants.

Meanwhile, at the level of the European Member States, three countries are competing for the role of 'global leaders' in devising a new approach to platform governance: Germany, France and the UK.<sup>5</sup> Germany, arguably, kicked-off the debate, with the German Network Enforcement Act – which may not have added much to the existing regulatory (e-commerce) framework in terms of substance, but signalled that Germany was serious about enforcing the existing intermediary obligations, with the introduction of new procedures and significant fines.<sup>6</sup> More recently, Germany suggested new provisions be added to its media law, which made Germany, to the knowledge of this author, the first country to impose media pluralism obligations on internet intermediaries.<sup>7</sup> The German approach, combined with the revised European Audiovisual Media Services Directive, signals an important point of departure from the traditional European e-commerce approach to the regulation of social media (for an analysis of that approach see Hoboken et al. 2018), and a move into a media law regime. We will see below why this move is so important.

France is another European country that has become serious about the regulation of social media. With the French Law on 'the fight against the manipulation of information',<sup>8</sup> France has written a new chapter in its long-standing tradition of dealing with the dissemination of false information by the press and political parties, notably in its Press Law<sup>9</sup> and Electoral Code<sup>10</sup> (for an elaborate discussion see Craufurd-Smith 2019). Alongside transparency obligations and an obligation to actively implement

measures to combat the dissemination of false information likely to disturb public order or to affect the integrity of a ballot, France has created a new, much discussed civil procedure. This procedure makes it possible for political parties, candidates and even interested individuals to apply for a judicial order to prevent the transmission of allegations or accusations that are ‘factually inaccurate or misleading’. The criteria stipulated are that these allegations are ‘likely to alter the integrity of the upcoming ballot’ and are ‘deliberately, artificially or automatically and massively disseminated by means of an online public communication service’.<sup>11</sup>

More recently, France has adopted a new law aimed at combating hate content on the Internet, a French version of the German NetzDG, with the capability of obliging platforms to remove certain types of content within one hour (!), coupled with serious fines.<sup>12</sup> In addition, France has been working on developing a more general approach to the regulation of social media as the result of direct cooperation between the French government and Facebook (Desmaris, Dubreui, and Loutrel 2019). The French approach rests on five pillars, starting with the development of a broader vision on the role, regulation and realization of public values vis-à-vis social media (first pillar), new accountability regulations with a new duty of care for social media platforms at their heart (second pillar), along with a public stakeholder dialogue under the auspices of the government (third pillar), a specialized regulator (fourth pillar)<sup>13</sup> and European coordination (fifth pillar).<sup>14</sup>

New societal and other *duties of care* are also central to the new UK approach to platform governance. In April 2019, the UK put forward its own ambitious plans for a ‘new system of accountability and oversight for tech companies, moving far beyond self-regulation’, in what must be a ‘first attempt globally to address a comprehensive spectrum of online harms in a single and coherent way’.<sup>15</sup> The white paper suggests that an extraordinarily broad range of content be tackled, from issues of national security and terrorist content, content infringing copyright, misinformation and filter bubbles, to cyberbullying and cyber-crime. The UK version of a duty of care aims to make companies take more responsibility for the safety of their users and oblige them to address harm caused by content or activity on their services.<sup>16</sup> The exact scope of the duty of care still needs to be specified (by a yet to be created regulatory authority). This broad approach, in combination with the far-reaching powers of a new regulatory authority, has also earned the proposal substantial criticism from human rights advocates and legal experts.<sup>17</sup>

It would go far beyond the scope of this commentary to compare the different national and European approaches in more depth.<sup>18</sup> For the purpose of this contribution, it is important to make one central observation: the thrust of most, if not all, of these national and international approaches pivots on the idea of imposing additional accountability obligations on platforms. All these initiatives seek to extend some control of national regulators and society over social media platforms. Moreover, with no exception, all of these initiatives formalize the role of social media platforms as the governors of much of the speech that is being shared online.

## Why the Current Approach Is Potentially Counterproductive and Dangerous for Democracy

In order to understand why the current European approach to platform governance might be potentially counterproductive, or even dangerous for democracy, I would like to introduce the notion of ‘opinion power’ (translated from the German term ‘Meinungsmacht’). Opinion power can be defined as the ability of the media to influence processes of individual and public opinion formation (Neuberger 2018, 56). Originally coined by the German Federal Constitutional Court, opinion power as a concept is closely linked to the concept of pluralism and the idea that imbalances in the ability to influence the process of public opinion formation can pose a danger to a pluralistic media landscape<sup>19</sup> and ultimately democracy. As the European Court of Human Rights stipulated: ‘There can be no democracy without pluralism’.<sup>20</sup> The concept of opinion power, in this regard, explicitly acknowledges the dynamic interplay between the media, its audience and political actors. Compared to the notion of ‘communication power’, which internationally is perhaps far more common, it can be argued that the notion of opinion power holds an additional normative load. Communication power, in the sense of the combination of networking, networked and network-making power introduced by Castells, is useful in describing the different ways in which the media can exercise power over the process of opinion formation (through their gatekeeper function, agenda setting and control over the necessary communication resources) (Castells 2009, 418ff). Moreover, it can also imply political power relationships (Castells 2009, 422). However, what characterizes the concept of opinion power is that because of its close ties to the concepts of pluralism and democracy, it can help us better understand the role of the media as an active political player in the process of opinion formation. Opinion power is not only the power to influence political processes (such as democratic will formation); it *is* political power.

The legacy media has opinion power. As the fundamental rights scholar, Garton Ash explains, the opinion power that the media wields is directly connected to the flourishing or the demise of our democracies: ‘[m]edia, old and new, are the primary means we have to create a public sphere and to practice self-government’ (Garton Ash 2016, 183). In other words, there is no democracy without communication, and those who organize and control public communication are powerful sources of political power in their own right.<sup>21</sup> As Castells has said elsewhere: ‘Politics is based on socialized communication, on the capacity to influence people’s minds’ (Castells 2007, 240). The role that the tabloid media play in political events in the US and the UK, and the way certain politicians have declared war on the quality media is a case in point.<sup>22</sup> The opinion power of the legacy media is the prime reason why the media, compared to other industries, has always been subjected to enhanced societal responsibility and accountability to the public (Garton Ash 2016, 89; Schulz 2017, 373).<sup>23</sup>

In contrast, social media platforms thus far have seldom been discussed from the perspective of opinion power. Social media is not media in the traditional sense, and as such it still falls under the limited accountability approach of e-commerce law. The recent initiatives in France, the UK and in Brussels all continue to emphasize that platforms are not the speakers – their users are.<sup>24</sup> However, does opinion power require an active speaker? The media scholar Martin Moore answered this question in the

negative, and warned of the enormous opinion power that social media platforms have: '[t]he use of their power to command attention to promote their own views and services takes large information intermediaries beyond neutral platforms, and can give them a political power comparable to that of a broadcaster' (Moore 2016, 29). It is equally true, however, that social media does not exercise opinion power in the same way as the traditional media, and consequently the concept of opinion power itself needs to be re-thought (Schulz 2017).

What then is the nature of opinion power as exercised by the social media? To answer this question conclusively would go far beyond the scope of this commentary.<sup>25</sup> However, in the traditional sense, opinion power is typically based on the ability of an editor to curate and set an agenda, in combination with the means to reach an audience (Jarren 2018), and thereby influence the competition of ideas in the market place of ideas. It is clear that the process of curation and agenda setting on algorithmically mediated platforms is different from that of the traditional media, which is not to say that it is not equally effective (Gillespie 2018). There is little doubt that social media platforms also have the means to reach an audience. What distinguishes their opinion power from that of the traditional media is, above all, the knowledge (data) and the tools to command and organize online attention, and the ability to use that data and algorithmic tools for persuasion (Ghosh and Scott 2018; Napoli 2019; Neuberger 2018).

Platforms often sell their power to persuade to the highest bidder, whether advertisers, governments and/or political parties, which have come to rely on the infrastructure of platforms to communicate with their customers, citizens and/or voters. Perhaps even more concerning are situations in which platforms use that power to turn users into voters, such as in Google's attempt to activate users against new copyright law initiatives,<sup>26</sup> or supporting marriage equality legislation,<sup>27</sup> or the way Uber and Airbnb mobilize their users to protest against new government laws aiming to regulate these platforms.<sup>28</sup> Most importantly, however, is that alongside immediate communication power (such as networking, networked and network-making power), social media also has what I call 'systemic opinion power', which is the power to create dependences and influence other players in a democracy. In so doing, these platforms change the very structure and balance of the media market, and thereby directly and permanently impact the pluralistic public sphere.

With this growing power of platforms as central conveners of online attention, as well as providers of the technology that powers the online media (Webb 2019), the legacy media now finds itself in a concerning state of dependence (Beckett 2019). This dependence seeps through all layers and aspects of the very essence of media in a democracy, including what defines it as a political player: from determining the conditions of access to content, data and the distribution infrastructure, to the means to influence the hearts and minds of the audience, as well as control of critical communication infrastructures (including the operating systems that run our devices), access to funding and technology innovation as the survival guarantee in a digital world, to finally the very means with which the audience can express and exercise its political will through chats with their government, public fora and the means to organize protest and resistance.

In these ways, social media increasingly determines the conditions by which the legacy media functions. From the standpoint of opinion power, this is not only deeply problematic insofar as the legacy media has traditionally been our designated resource of reliable (or unreliable) information on all matters, including the political. More importantly, the media is also tasked with a watchdog function – to observe and scrutinize the way political power is exercised, be that public or private power. As a result of the shifting power conditions, the fourth estate risks increasingly being unable to act independently from platforms. The same is true for political parties (Dobber et al. 2017; Kreiss and McGregor 2018). As Zuckerberg wrote in his letter on Facebook’s Global Ambitions in 2017:

In recent campaigns around the world – from India and Indonesia across Europe to the United States – we’ve seen the candidate with the largest and most engaged following on Facebook usually wins. Just as TV became the primary medium for civic communication in the 1960s, social media is becoming this in the 21st century.<sup>29</sup>

Because communication is the lifeblood of a democracy, this dependence also ultimately extends to governments, which increasingly rely on platforms to communicate with their constituency. As the Google Public Policy Blog states: ‘From live streams of the State of the Union and legislative hearings, to explainer videos on important issues and Hangouts with constituents, YouTube has become an important platform where citizens engage with their governments and elected officials’.<sup>30</sup> If, for example, Dutch citizens wish to communicate with their government, Facebook, Twitter, WhatsApp and Instagram outshine traditional modes of communication.<sup>31</sup> Moreover, as the self-appointed facilitators of the new self-government of the online global population,<sup>32</sup> currently there is little that would prevent the leading social media platforms from using and canalizing this civic power for the goals they see fit – much like a government with the difference that governments are subject to democratic oversight..

## Assessing Current Platform Governance Initiatives in the Light of Opinion Power

In essence, the regulatory initiatives described above in Section two concentrate on governing the communication power of users. What internet 2.0, and social media platforms in particular, have done so far is to liberate the audience, the individual viewers, and provide them with an entirely new power to shape public life and political decision-making.<sup>33</sup> John Perry Barlow’s Declaration of the Independence of Cyberspace (Barlow 1996) is now famous: ‘Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather’. He ends with, ‘We will create a civilization of the Mind in Cyberspace. May it be more humane and fairer than the world your governments have made before’.

The internet, and social media platforms on it, have had an enormously liberating effect on the opinion power of individuals. This has also had many positive effects on democracy (Barlow 1996). However, as also acknowledged in the French government

report, for example, the liberation of individual users as active actors is also at the heart of many of the current problems concerning misinformation, the proliferation of hate speech, polarization, nationalism and the abuse of the Internet for adversarial purposes (Desmaris, Dubreui, and Loutrel 2019). The locus of the recently proposed regulatory initiatives is to reverse this effect and make platforms more accountable for reining in the power of individuals to communicate ideas and opinions, but also, for example, hate speech, fake news, harmful content, false advertising, political demagoguery and cyberbullying. In so doing, current approaches quite literally establish platform governance, by making platforms the primary governors of online communication.

The major regulatory initiatives that are on the table in Europe treat social media platforms as facilitators of the speech of others. New duties of care and new transparency obligations are being created, and there are new calls for access to data so that governments and other stakeholders can at least observe what is occurring on these platforms, as well as calls for better and more effective algorithms. These are all part of attempt to infuse some public value standards into corporations that are essentially very large profit-driven companies. *In so doing, and by formalizing and reinforcing the role of platforms as governors of online speech, however, the current initiatives also further reinforce the opinion power of these platforms and thereby their political power.*

In her new book, Julie Cohen impressively reminds us how real is the danger of platforms becoming private sovereigns of the digital world, and how governments around the world seem to have increasingly accepted that governance of, and decision-making power over, the digital realm is increasingly shifting towards a system of 'collaborative relationships' between platforms and governments (Cohen 2019, 236). If anything, the Covid-19 crisis reveals how deep the dependence has become – not only that of the media and political parties but also governments – in relying on platforms to manage a national crisis. Examples range from the prominent role of digital platforms in determining reliable from unreliable information online, their role in monitoring the spread of the virus throughout the population and managing national exit strategies through technological solutions.

Large parts of public and private life have thus moved to the online world and thereby to social media platforms. The suggested European initiatives fostering platform governance merely accelerate this trend. None of the national strategies is directed at creating countervailing powers. True, there is a suggestion in the French proposal to promote content from allegedly reliable sources, such as press agencies and audiovisual communication services, that is, broadcasting.<sup>34</sup> However, against this it can be argued that if the strategy is to do so *on* social media platforms, this could arguably further increase their opinion power. The French and the British proposals hint at the importance of stimulating the legacy media,<sup>35</sup> following earlier suggestions from the High Level Expert Group on Misinformation (High Level Group on Fake News and Online Disinformation 2018). France even goes so far as to suggest that platforms should be obliged to invest in media and information education.<sup>36</sup>

Nevertheless, rather than using this opportunity to develop a more concrete strategy that aims to alleviate the increasing pressure on the public service and quality media, while also investing in national media innovation, the focus of all of the



initiatives is clearly on holding platforms accountable. In many countries, there are even suggestions to further curb the power of the legacy media, with public service media funding under increasing pressure, for example, in the UK and the Netherlands. The European Union and its Member States seem to have accepted by and large that the Internet is now governed by certain platforms, and much of the current policy proposals on the table are simply what seem to be desperate attempts by national or regional governments to maintain the illusion of control and a foot in the door.

Rules that would, for example, oblige platforms to be more transparent about the way in which social media platforms themselves wield opinion power are virtually absent, whether that is the power to decide whom to show which political message (political microtargeting), or the power to decide for which public values or societal goals their algorithms should be optimized. Platforms are redefining the strategies and values that will supposedly make our world a better place, giving them their own particular Silicon Valley spin: from determining what quality journalism is, to 'maintaining peace, addressing climate change ... accelerating science and curing diseases and eliminating poverty'.<sup>37</sup> Currently, in Europe, there are no proposals on the table to set limits to how far platforms may go in using AI, algorithms and the data they collect to persuade and abuse that power for own political purposes. No attention whatsoever is being paid to the growing trend by Facebook and YouTube to move into the active role of content editors by commissioning content and concluding deals with rights holders. Nor are there much meaningful policy discussions about how to address the growing dependence of the legacy media, and indeed society, on platforms, or create more equal negotiation conditions and safeguards for the independence of those whose task it is to remain watchful and investigate abuses of political power, whether by politicians, governments or powerful internet companies.

## Concluding Remarks and Some Reflections on the Way Forward

As the fundamental rights scholar Edwin Baker once said: 'Dispersal of media power, like dispersal of voting power, is simply an egalitarian attribute of a system claiming to be democratic' (Baker 2006, 14). The media is a powerful actor in a democracy, as a watchdog of reigning powers and wielder of considerable power to influence individual and public opinion formation. This is why there is a long tradition in media law and policy to disperse opinion power, aiming for a diversity of independent media and preventing the dominance of a few sources. In contrast, the governance of social media as 'non-media' continues to follow an evolving e-commerce logic, which entails ruling the facilitators of the opinion power of others (the media and users). When viewed from the perspective of the potentially enormous opinion power of social media, however, it becomes clear that making some social media platforms the central locus of the governance of online communication and enforcers of public value standards, not only enhances their public accountability but also strengthens their grip on the very process of democratic opinion formation.

To date, the debate on how to reduce dependence and rein in platform (monopoly) power has been framed as a debate in the realm of competition law. In its Strategy on Shaping Europe's Digital Future, the European Commission announced a revision

of competition law to make it fit to ensure fair conditions in markets that are characterized by strong platforms (European Commission 2020). However, competition law – and this is also a lesson that can be learned from the long history of media law and policy – is only designed and suited to deal with opinion power to a limited degree (Lynskey 2017; Napoli 2019, 119).

The primary instrument for dealing with opinion power in the media is media concentration law. Thus far, at least in Europe, there have been very few policy initiatives (notably in Germany and the UK) that aim to make media concentration law fit for a digital media reality with online platforms.<sup>38</sup> In the US, Napoli has suggested reviving and reconceptualizing the ‘public interest criterion’ (Napoli 2019, 163). However, these attempts have not gone much further than identifying the lack of adequate measurements as a major obstacle.<sup>39</sup> It is time for researchers and policymakers to work harder on this question of how to reinstate the dispersal of opinion power. Media concentration law for the digital realm is unlikely to involve statutory measurements of audience reach and ownership limitations, which are the traditional tools of media concentration law. Digital media concentration law and policy focus will likely have to shift to the creation of counter powers, the diffusion of control over proprietary and opaque algorithms, entirely new forms of transparency, the regulation of political advertising online and the separation of social infrastructure from the distribution of content.

The source of the political power of platforms is their ability to wield opinion power, whether it is that of their users or politicians, or their ability to influence public discourse for their own purposes. Without adequate safeguards, all commitments to neutrality, fairness and non-manipulation are meaningless. The sheer possibility of the abuse of this immense power for one’s own political goals is in itself a threat to any functioning democracy. Dispersing concentrations of opinion power and creating countervailing powers is essential to preventing certain social media platforms from becoming quasi-governments of online speech, while also ensuring that they each remain one of many platforms that allow us to engage in public debate.

## Notes

1. This commentary is based on a keynote, ‘The political power of platforms’, which I presented on 13 November 2018 at the University of Zurich, Switzerland upon invitation of the Digital Society Initiative of the University of Zurich and is further developed in a report written for the Brandenburgische Akademie der Wissenschaften. I would like to thank all participants of the seminars, for their useful comments.
2. <https://www.statista.com/statistics/490424/number-of-worldwide-facebook-users/>
3. Art. 14 (1)(1) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (‘E-Commerce Directive’), OJ L 178, 17.7.2000, p. 1–16.
4. Directive (EU) 2018/1808, 14.11.2018 amending Audiovisual Media Services Directive (‘AVMDS Directive’) (2010/13/EU), OJ L 303, 28. 11.2018, 69; Directive (EU) 2019/790, 17.4.2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, OJ L 130, 17.5.2019, 92 (‘DSM Directive’); Proposal for a Regulation on preventing the dissemination of terrorist content online (COM(2018)0640), 12.9.2018. For further literature see e.g. (Caiola 2017; Kucerawy 2019; Quintais 2020; Van Druenen 2020).

5. This is not to say that other countries are not regulating social media. For an instructive overview, see Funke, D. (2019) 'A Guide to Anti-misinformation Actions Around the World' Poynter (8 January 2019) <<https://www.poynter.org/fact-checking/2019/a-guide-to-anti-misinformation-actions-around-the-world/>>
6. Act to Improve Enforcement of the Law in Social Networks (Network Enforcement Act), in force since October 2017, [https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/NetzDG\\_engl.pdf?\\_\\_blob=publicationFile&v=2](https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/NetzDG_engl.pdf?__blob=publicationFile&v=2)
7. Staatsvertrag zur Modernisierung der Medienordnung in Deutschland, Draft, 05. Dezember 2019.
8. Loi n° 2018-1202 du 22.12.2018 relative à la lutte contre la manipulation de l'information.
9. Art. 24 of French Press Law of 1881, as amended by Article 6 of the Law of 21 June 2004 concerning trust in the digital economy and, since then, also applicable to online communication.
10. Article L.97 Code Electoral.
11. New Art. L. 163-2.-I. Code Electoral.
12. Proposal for a law, adopted by the National Assembly, under the conditions provided for in Article 45, paragraph 4, of the Constitution, aimed at combating hateful content on the internet on 13 May 2020, TA n° 419, adopted in final reading on 13 May 2020.
13. 'It would be the regulator of the accountability of the large social media platforms by policing the transparency obligations of content ordering and moderation systems, as well as the duty of care towards its members. It is neither the regulator of social mediating services as a whole, nor the regulator of the content that is published on them. It does not have jurisdiction over all content taken individually. It cooperates with other state agencies that are under the authority of the government and with the judicial services' (Desmaris, Dubreui, and Loutrel 2019, 23).
14. '[S]ocial media would commit to be accountable for its users regarding abuses by other members and attempts to manipulate the platform by third parties. The obligation of means would allow intervention by the public authorities if it appeared that a platform's approach, currently voluntary, to ensuring that their users can have confidence through the creation of "trust and safety" systems or the moderation system, lacked resources' (Desmaris, Dubreui, and Loutrel 2019, 21).
15. Department for Digital Culture, Media and Sport (2019).
16. Department for Digital Culture, Media and Sport (2019, 16–19).
17. Article 19 2019; Edri 2019.
18. See also Helberger (2020).
19. BVerfG, Judgement of 4 November 1986, Az. 1 BvF 1/84 ('Niedersachsen-Urteil'). The Federal Constitutional Court refers in particular to 'dominant opinion power' ('vorherrschende Meinungsmacht').
20. European Court of Human Rights, Refah Partisi (the Welfare Party) and Others v. Turkey [GC] – 41340/98, 41342/98, 41343/98 et al., Judgment of 13 February 2003.
21. See Garton Ash, who explains how press barons use their influence to shape the public debate and lobby politicians (Garton Ash 2016, 189, 192; see also Livingstone and Lunt 1994). Or as Toby Mendel formulated it: 'In other words, the considerable influence of the media over political opinion can, where it is unduly controlled by one or a small number of players who are prepared to use that influence for political purposes, skew political power' (Mendel, Castillejo, and Gómez 2017, 12).
22. Burnett (2020).
23. And here, in particular, broadcasting, which the European Court of Human Rights described as the most pervasive of all media: 'more immediate and powerful effect' of broadcast media. European Court of Human Rights, Jersild, Application no. 15890/89, 23 September 1994, para. 31.
24. Desmaris, Dubreui, and Loutrel (2019, p. 2).
25. See also Dijck, De Waal, and Poell (2018), Gillespie (2018), Moore (2016), and Neuberger (2018).

26. *The Guardian*, 'Defend our freedom to share (or why SOPA is a bad idea)', 19 January 2012, <https://www.theguardian.com/science/grrlscientist/2012/jan/19/sopa-internet>
27. Google, Google supports marriage equality #ProudToLove <https://www.youtube.com/watch?v=EuaDPZINJc4> (32.444 likes).
28. 'New York Times, Airbnb and Uber Mobilize Vast User Base to Sway Policy', 4 November 2015, <https://www.nytimes.com/2015/11/05/technology/airbnb-and-uber-mobilize-vast-user-base-to-sway-policy.html>
29. M. Zuckerberg, Building a Global Community, Facebook Blog, 16 February 2017, <https://www.facebook.com/notes/mark-zuckerberg/building-global-community/10154544292806634/>
30. Google Public Policy Blog, Launching YouTube for Government, 2 October 2014, <https://publicpolicy.googleblog.com/2014/10/launching-youtube-for-government.html>
31. See the contact information of the Dutch government: <https://www.rijksoverheid.nl/contact>
32. M. Zuckerberg, Building a Global Community, Facebook Blog, 16 February 2017, <https://www.facebook.com/notes/mark-zuckerberg/building-global-community/10154544292806634/>
33. See John Perry Barlow's Declaration of the Independence of Cyberspace (Barlow 1996): 'Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather'. He ends with, 'We will create a civilization of the Mind in Cyberspace. May it be more humane and fair than the world your governments have made before.'
34. Desmaris, Dubreui, and Loutrel (2019), No. 2.
35. Department for Digital Culture, Media and Sport (2019) and Desmaris, Dubreui, and Loutrel (2019).
36. Ibid, No. 6.
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## Disclosure Statement

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