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Catherine Hatfield

University of Tennessee at Chattanooga, tdf326@mocs.utc.edu

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Potential for United States Participation in the European Union's Digital Services Act

Catherine Isabella Hatfield

Departmental Honors Thesis
The University of Tennessee at Chattanooga
Communication Department

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Dr. Charlene Simmons
Department Head and Associate Professor
of Communications
Thesis Director

Dr. Michael McCluskey
Associate Department Head and Professor of
Communications
Department Examiner

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Introduction

In the past decade, social media platforms such as Facebook, Instagram and X (formerly known as Twitter) have grown from simple ways to keep in touch with family and friends into massive information-sharing hubs. We've reached the point where platforms such as these are significant sources of news for the bulk of the population. According to X, "In the first 6.5 months of 2022, there were 4.6B Tweets about news in the US and 10.4B Tweets about news globally." (X Blog, 2024) World leaders, academics, and other public figures routinely use these social media applications to distribute their information to the broader public. As these platforms gain credibility, however, the question of how to regulate these platforms is at the forefront of the minds of many world leaders. Despite many social media giants being based within the United States, these platforms' policies and terms of use affect users worldwide. Coupled with the fact that any policy changes proposed by America or the European Union (which comprise a significant portion of these for-profit companies' user base) will likely be accepted, social media regulation becomes a question of international relations rather than solely national security. Undeniably, these platforms need to be controlled to some extent, but there has been contention between various countries about how to determine the extent of this moderation. Because of this contention regarding possible solutions and the shared nature of these platforms, it seems to make the most sense for world leaders to collaborate on regulatory legislation rather than having each country attempt to draft up its own rules for these companies to follow.

The United States and the European Union are in a place to collaborate on legislation that serves as a precedent for worldwide social media regulation and inspires other countries to follow suit with similar laws. Both parties are on good terms with one another, having collaborated in the past and even currently on matters of technological and commercial

importance. They have collaborated on legislation recently and have both shown a vested interest in shared goals, such as the fight against disinformation campaigns and the careful moderation of free speech on these platforms. Because of this, the United States and the European Union should act now to form a collaborative union and enact social media regulation policies as a united front to pave the way for a brighter future. To further simplify things, the best way forward with this partnership would be for the United States to adopt the European Union's recently launched Digital Services Act.

Why The EU and The US?

Though the United States and the countries within the European Union are not the only countries with significant populations of social media users, these two arguably have some of the most bargaining power. The United States is the country with the largest amount of X advertisers, and the same goes for many major social media sites. (6Sense, 2024) Additionally, as of January 2024, over 105 million Americans use X, making the United States the country with the most users. (Dixon, 2024) Although the United States is trailed most closely by Asian rather than European countries when it comes to number of users of X and other social media giants, the European Union remains a significant player in media regulations and the ideal candidate for a partnership with the United States for several reasons. Firstly, the European Union makes up for the comparatively small number of social media users hailing from each country by being a coalition of these smaller countries, representing a sizeable portion of the internet's user base when viewed as a whole. Secondly, the European Union and the United States have previously drawn on laws passed by each other when drafting up their regulations, even in some cases taking cues from one another regarding media regulations. Thirdly, the

European Union is itself a legislative collaboration between several countries, meaning that they already have the infrastructure in place to support a collaboration of this sort with minimal reworking of this system.

Additionally, while the United States takes a more conservative view on how much the government should involve itself in regulating social media, suppressing misinformation and protecting user data, the European Union has a more liberal approach. The EU has taken steps to allow governments more direct involvement with this moderation. However, more moderation is not necessarily the best approach - nor is less moderation. Both countries' approaches undoubtedly have pros and cons, and still, both starkly contrast to the restrictive moderation found in countries like China. Having two powers with differing stances on the issue work together to determine a standard code of regulations may seem counterintuitive, but it would likely allow for a more balanced final product.

Historically, the European Union has had stricter laws and regulations relating to media than the United States has. For example, the European Union's laws regarding advertising regulation, especially product placement in television and movies, are famously much stricter than those regulations put in place by the United States. In the European Union, any form of product placement is forbidden in children's media, product placement of tobacco or prescription medications is not allowed under any circumstances, and the program must be transparent about the fact that the audience is being advertised to; "The product placement should be appropriately identified at the start and at the end of the programme and when the programme resumes after an advertising break." (European Commission, 2022) This is a stark contrast to those advertising laws in the United States, which itself accounts for more than half the global spending on product placement, amounting to an estimated 18.5 billion dollars in 2024. (Navarro, 2023) This

example illustrates a trend within regulations from these lawmakers; Where the European Union is more involved in the creation and distribution of its media, the United States has historically taken a more lax approach. Despite this difference, there are still many commonalities between the way both parties craft their regulations; European lawmakers sometimes draw on United States law for inspiration, and vice versa. For example, the *Journal of Public Policy & Marketing* states, “Although the EU drew on U.S. law when drafting its 1984 Directive on Misleading Advertising, many of its member states have legal traditions predating those of the United States, and they are reluctant to change.” (Petty, 1997)

Not only do the United States and the European Union draw inspiration from one another when crafting some regulations, but in the case of technological advancements, both parties are already actively working together. In 2021, the EU-U.S. Trade and Technology Council was founded. This council was created to serve as a meeting of the minds of the United States and the European Union to collaborate on trade policies and the development of new technologies. As stated by the European Commission, “The European Union and the United States are partners strongly committed to driving digital transformation and cooperating on new technologies based on their shared democratic values, including respect for human rights.” Though written about a collaboration that focuses mainly on trade and economics, this mission statement already contains the foundation for a successful partnership between the two parties and proves that the concept of both working together to regulate technology is not outside the realm of possibilities. Instead, the fact that a shared forum for the discussion of global technologies is already in place would theoretically make it relatively easy to collaborate on new legislature, seeing as the infrastructure is already in place and the partnership has been flourishing for several years.

In addition to their collaborative EU-U.S. Trade and Technology Council, the United States and the European Union have also collaborated on data privacy regulations in recent years. The EU-US Data Privacy Framework is a pact that solidifies the rights of European citizens whose data may be transferred to United States organizations, ensuring that their data is handled fairly and lawfully and offering transparency in how it is collected and used. This legislation, implemented in 2023, replaced the 2016 EU-US Privacy Shield, an earlier iteration of this data protection program that was effectively overhauled into the version we now see today. Previous legislation was considered to not offer enough protection to EU data from US surveillance, which resulted in the EU-US Data Privacy Framework implementing stricter regulations to remedy this issue. Despite differing views on data privacy, this legislation marks another recent instance of the United States and the European Union collaborating with one another on internet regulation, further proving the validity of further possible collaborations on internet regulation between the two.

Though the potential for these two parties to collaborate on regulatory legislature is already in place, several hurdles must be tackled first. While the difference in regulatory trends between the two would likely provide a more balanced and fair final product, these differences will undoubtedly cause friction and likely necessitate strenuous negotiation to come to an agreement on proper policies for controversial topics. Two examples of regulatory legislatures already put in place by both parties are their policies regarding online misinformation and the protection and limitations of free speech online. Though both countries see the need for regulation of these policies and have similar goals, they have different ways of going about policymaking, as they have different roadblocks to grapple with.

There are many complex and nuanced issues that will need to be discussed at length in order to come to an agreement. However, this paper will focus primarily on the regulation of free speech and disinformation, as these are two of the most pressing matters in our current age and these two issues are both covered by the European Union's Digital Services Act, the piece of legislation that the United States will ideally adopt and begin giving input on.

The Digital Services Act

The European Union's Digital Services Act was created in 2022, and went into effect in 2023. It is a legislative code that tackles several issues presented by the internet and social media, including harm to minors, hate speech, misinformation, data privacy, increased transparency requirements, and more. The European Commission describes the Digital Services Act as such:

"The Digital Services Act (DSA) regulates the obligations of digital services, including marketplaces, that act as intermediaries in their role of connecting consumers with goods, services, and content. It better protects users by safeguarding fundamental rights online, establishing a powerful transparency and accountability framework for online platforms and providing a single, uniform framework across the EU." (European Union, 2024)

It is worth noting that the Digital Services act does not define what is or is not illegal online, nor does it necessitate that specific content be removed in all European Union countries. Illegal content is decided on a country-by-country basis - or can sometimes even differ within each country - and is only required to be removed within the country that deems it illegal. While some content, such as terrorist content or child sexual abuse material, is deemed illegal at an EU

level and is required to be removed in all EU countries, the majority of decisions on what is or is not considered illegal content (versus simply harmful content) is left up to each country to decide on its own.

Instead of attempting to create a robust list of what content should be deemed illegal, the Digital Services Act instead focuses its efforts on the detection, flagging and removal of content deemed illegal on a country or EU basis, establishing a framework for getting illegal content removed that is able to be applied to each country's own definition of illegal content. For example, Germany has much stricter laws on references to Nazism than some other European countries. Under the Digital Services Act, this content must only be removed in Germany, and is left untouched for users from other countries. Additionally, the Digital Services Act provides a framework for larger platforms to examine how illegal content spreads on their platform in order to address the issue at its source.

The Digital Services Act provides many benefits to citizens of the European Union, including increased data privacy, protection from counterfeit or unsafe goods, and increased transparency about the advertisements they see. Though the Digital Services Act covers these rights and many more, two of the most pressing and compelling legislative topics tackled by this regulation are disinformation and free speech. Because these issues are so hotly debated in the United States, these two will be the most beneficial to examine in-depth in order to prove that the United States could adopt this legislation without compromising its views on these issues.

Free Speech

Both the European Union and the United States have had their work cut out for them in deciding on a definition for misinformation within their own countries. The task of determining the limitations of free speech in a way that satisfies both parties is monumental. Though both

countries value and protect the freedom of speech, their exact laws and methods of regulation greatly differ.

In the European Union, the right to “freedom of expression and information” is enshrined within the Charter of Fundamental Rights, alongside such liberties as the right to asylum, the right to education, and the freedom of assembly and association, to name a few. (European Commission, 2017) However, the European Union has a no-tolerance policy for hate speech, which it defines as “the public incitement to violence or hatred on the basis of certain characteristics, including race, colour, religion, descent and national or ethnic origin.” (Jourová, 2016)

In the United States, free speech is valued as one of the country’s most famous and foundational rights. As such, it is protected fiercely by the American people, and any perceived attempt to infringe on this right sparks national outrage. This protectiveness over the right to speak freely has not stopped United States lawmakers from passing any legislation at all - for example, speech that directly incites violence is outlawed - but hate speech itself is not directly regulated within the United States. Hate speech that does not include threats of violence towards an individual or group is currently legal in the United States, which makes the US’s regulatory practices regarding hate speech a far cry away from the European Union’s much stricter legislation.

At first glance, these two views on free speech regulation may seem fundamentally incompatible with one another. However, the European Union’s Digital Services Act could easily allow both parties’ goals to be met, through its clause that allows each country to define what is or is not protected under freedom of expression. Within the European Union, hate speech is not protected by the government, meaning that hate speech must be removed in all European

Union countries. However, should the United States adopt this legislation, any hate speech would simply not be removed for United States users - United States users would still be able to see the content, while it would be removed or hidden for European Union users. This would still be beneficial for the United States, however, as speech that is considered illegal in the United States, such as direct threats, defamation or child sexual abuse material, will already be being monitored and taken down under the parameters of this legislation, as such content is also illegal in the European Union. Essentially, this legislation would provide an easy way for the United States to begin eliminating content that has already been deemed illegal within the US without requiring any removals that might infringe upon the right of free speech.

Misinformation

The European Union first took action against widespread disinformation in 2015. In response to the Russian disinformation campaign happening at the time, the European Union formed the East StratCom Taskforce in the European External Action Service. This task force released an in-depth plan for how the European Union intended to tackle domestic and foreign disinformation campaigns, with the notable inclusion of a real-time alert system to keep citizens updated on any new disinformation campaigns to look out for. The East StratCom Taskforce Action Plan, which ended up being the precursor to much more legislation, correctly stated that “Addressing disinformation requires political determination and unified action.”(European Union, 2018)

Facets of this Action Plan began rolling out after the plan’s inception, including the release of self-regulatory tools in 2018 and the debut of the proposed Rapid Alert System in 2019. Luckily, these tools were implemented just in time for the COVID-19 pandemic in 2020, during which disinformation ran rampant on popular social media sites such as X. In June 2020,

the European Union launched the COVID-19 Disinformation Monitoring Programme, a sub-program focusing entirely on limiting disinformation related to the pandemic. Also in June 2020, the European Digital Media Observatory was launched and was described as “a multidisciplinary community, including fact-checkers, academic researchers and other relevant stakeholders contributing to addressing disinformation.” (European Commission, 2024)

Contrastingly, the United States’ attempts to craft anti-disinformation policies have been notably more tumultuous and noticeably lacking in the political unity that led to the successful passing of the Digital Services Act. Although most Americans see disinformation as a threat that can lead to dangerous views, a lack of political consensus means that any legislation proposed to remedy this issue inevitably stalls. Many Americans worry that appointing an “arbiter of truth” to oversee the removal of misinformation will inevitably lead to political corruption and bias towards whichever party appointed said overseer, and therefore, they are reluctant to campaign for a solution of this type. (Hernandez and Poursoltan, 2023)

Despite the public’s concerns, the United States recently attempted to move forward with a solution of this very type. The United States formed the Disinformation Governance Board in 2022 to formally regulate disinformation. Operating as a facet of the United States Department of Homeland Security, this board’s purpose was to combat “misinformation, malinformation, and disinformation” that might threaten the security of the United States. Particular interest areas identified by the board included false information about the Mexican-American border disseminated by human smugglers and misleading information about the United States election from the Russian state, to name a few.

This board was announced to the public and began operating in April 2022. The board’s intended purpose was to monitor the spread of misinformation and research information on the

best and most effective ways to combat misinformation, which would be compiled into a report and presented to other Department of Homeland Security branches which were already defending against disinformation threats. The Disinformation Governance Board also specifically stated it would not be monitoring American citizens as part of its operations.

(Mayorkas, 2022) Less than one month later, on May 18th, the board's operations were "paused" as the board was re-assessed and its executive director, Nina Jankowicz, resigned. The board was officially dissolved in August 2022 per a recommendation from the Homeland Security Advisory Council.

Though no official reason for the dissolving of this board was discussed, it coincided with a significant amount of criticisms drawn from political parties on all sides of the spectrum. Republicans were worried about the policing of American speech and the possible limiting of the principle of "free speech," citing the board's purpose as being unconstitutional. Republicans were also unhappy with Nina Jankowicz's role as executive director, as she had been a vocal supporter of the democratic party in the past. This past support of democrats led to the concern that information aligned with democratic goals would face less scrutiny than information aligned with republican goals. Republicans subsequently called for Jankowicz's removal. On the other side of the spectrum, progressive voices also argued against the board, raising concerns that the definition of "misinformation" was not something that "even 40% of Americans" would be able to reach a consensus on. (Hart, 2022)

Because the United States already attempted to create a board of operatives to tackle disinformation campaigns, we can see that this issue is at the forefront of the minds of many American officials. The Digital Services Act factors in the European Union's 2022 code of policies in disinformation as well as allowing the same freedom to determine the exact

parameters of the term that was present within the regulation's policy on free speech. Much like its clause on free speech, the Digital Services Act provides a framework for the regulation of misinformation without actually pushing a required definition of the term onto countries that use this framework. Seeing as the Disinformation Governance Board's stated purpose was to determine the best ways to monitor and fight misinformation, adopting the Digital Services Act could provide a solution.

Potential Partnership

In late 2023, the European Union announced it would open formal infringement proceedings against X for violating the Digital Services Act. The European Union is, at the time of writing, currently investigating X for failing to take significant enough steps to restrict the posting of hate speech and other disallowed content, alongside other concerns related to data privacy and misleading content. There is no set date for the conclusion of this investigation, but if found to be in breach of the Digital Services Act, X could face a fine of up to several billion dollars or even a ban from the EU. (Chan, 2023) Of the proceedings, the EU's Commissioner for Internal Market, Thierry Breton, said, "Today's opening of formal proceedings against X makes it clear that, with the DSA, the time of big online platforms behaving like they are "too big to care" has come to an end." (European Commission, 2023)

With this comment, Breton brings up a valid concern. Despite the significant steps taken to ensure that companies comply with the Digital Services Act, X is still accused of not doing so. Whether or not this is because X's leadership views the company as "too big to care," as Breton suggests, is yet to be seen. However, if guilty of violating the act, it will mean that the consequences laid out by the Digital Services Act were not seen as dire enough by X. Simply

put, X's potential breach of this act can be read as an admission that X's European audience alone is not enough to convince the company to subscribe to a code of regulations efficiently.

This further proves the potential effectiveness of collaborative legislation between the United States and the European Union. X is a company based in the United States, so all United States laws will have a more direct effect on the platform. Further, X may have been alleged to have risked its EU user base in order to not comply with regulations, but it's unlikely that X would risk the potential loss of its EU and US audience. As previously stated, if the two stood as a united front and presented the same (or similar) expectations to X and other social media giants, they would create an offer even more challenging to refuse than the Digital Services Act is already. Simply put, the United States' participation in passing its own Digital Services Act could provide the bargaining power that the legislation needs to be wholly effective with X.

There are many facets to the Digital Services Act, not all of which have been discussed here. Although misinformation and hate speech regulation are two of the most significant issues addressed by the legislation, there are many other rules imposed, and not all of these are as compatible with the United States' views. Additionally, there could be significant political resistance to the United States adopting this policy from a group of foreign countries, and a lack of trust among the American people could cause this potential partnership to fail early. Further research is necessary on how the rest of the Digital Services Act fits in with United States ideals and how potential political backlash can be mitigated. However, time is of the essence. With another major United States election upcoming and one of America's biggest adversaries currently at war, the threat of misinformation is looming, and the longer the United States waits to act, the harder it will be to get under control. This partnership, should it be deemed a valid option, should be acted on sooner rather than later for the good of both parties involved.

Conclusion

Because social media is so ingrained in the lives of many Americans, it is easy to forget how new an invention the entire concept is. Not only have the majority of our favorite social media platforms existed for less than 25 years, but the use of social media platforms as widespread public forums and news-sharing vehicles is even more recent. As such, it makes sense that governments worldwide are struggling to keep up with this rapidly changing landscape of mass-media communication and are having so much trouble agreeing on where to draw the line between invasive regulations and helpful ones.

Especially within the United States, regulations often stack upon each other. Regulations implemented today will likely be referred to when future lawmakers draft legislation. Combined with the fact that this invention is new and constantly changing, social media regulation has become a uniquely complex problem facing lawmakers worldwide. However, it is not a problem they must face alone. The potential for collaboration between lawmakers - whether that means drafting regulations together, forming a task force to fight misinformation, or generally having open forum meetings about the most significant threats posed by social media today - could bring about more certainty and security in legislative decision-making.

Though the United States and the European Union have different beliefs, they share many common goals and are on good terms with one another. Their shared language, established partnership, and history of creating legislation that inspires other countries to follow suit set them up for a fruitful partnership, and the Digital Services Act seems like a great place to begin with creating the legislation of the future.

Bibliography

Twitter News. “How Many People Come to Twitter for News? As It Turns out, a Lot.” *X Blog*, X, 12 Sept. 2022,

Dixon, Stacy Jo. “X/Twitter: Global Audience 2024.” *Statista*, 20 Mar. 2024,
www.statista.com/statistics/242606/number-of-active-twitter-users-in-selected-countries/

“Twitter Ads - Market Share, Competitor Insights in Social Advertising.” 6sense, 6sense, 6sense.com/tech/social-advertising/twitter-ads-market-share. Accessed 9 Apr. 2024.

“Audiovisual Commercial Communications.” *Shaping Europe’s Digital Future*, European Commission, 7 June 2022, digital-strategy.ec.europa.eu/en/policies/commercial-communications#:~:text=Product%20placement%20against%20payment%20is,is%20prohibited%20in%20children’s%20programmes.

Navarro, J. G. “Global Product Placement Revenue 2021-2026.” *Statista*, Aug. 2023,
www.statista.com/statistics/915174/product-placement-revenue-worldwide/#:~:text=According%20to%20the%20latest%20estimates,an%20estimated%2018.5%20billion%20dollars.

Petty, Ross D. “Advertising Law in the United States and European Union.” *Journal of Public Policy & Marketing*, vol. 16, no. 1, 1997, pp. 2–13. *JSTOR*,
<http://www.jstor.org/stable/30000417>. Accessed 26 Mar. 2024.

“Digital Services Act.” European Commission, European Commission, 23 Feb. 2024, ec.europa.eu/commission/presscorner/detail/en/QANDA_20_2348.

“Action Plan Against Disinformation.” *Action Plan Against Disinformation - EEAS - European Union*, European Union, 5 Dec. 2018, www.eeas.europa.eu/sites/default/files/action_plan_against_disinformation.pdf.

“EU Code of Practice on Disinformation.” *European Commission*, European Commission, commission.europa.eu/strategy-and-policy/priorities-2019-2024/new-push-european-democracy/protecting-democracy/strengthened-eu-code-practice-disinformation_en. Accessed 25 Mar. 2024.

Edited by Alex Hernandez and Cameron Poursoltan, *US DISINFORMATION POLICY IN PERSPECTIVE: Comparative Global Disinformation Challenges*, Global Disinformation Policy Database, 2023, gdil.org/wp-content/uploads/2023/01/gdpcd_whitepaper_v2.pdf.

Hart, Benjamin. “Poorly Conceived Biden Disinformation Board Put on Pause.” *Intelligencer*, Intelligencer, 18 May 2022, nymag.com/intelligencer/2022/05/poorly-conceived-biden-disinformation-board-put-on-pause.html.

Mayorkas, Alejandro. “Mayorkas: Disinformation Board Won’t Monitor American Citizens | CNN Politics.” CNN, United States Department of Homeland Security, 1 May 2022, edition.cnn.com/videos/politics/2022/05/01/mayorkas-on-disinformation-board.cnn.

“Freedom of Expression and Information.” *European Commission*, European Commission, 4 May 2017, commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/know-your-rights/freedoms/freedom-expression-and-information_en.

Jourová, Věra. “Code of Conduct – Illegal Online Hate Speech Questions and Answers.”

European Commission, European Commission, June 2016,

ec.europa.eu/newsroom/document.cfm?doc_id=41844.

Chan, Kelvin. “European Union Investigating Musk’s X over Possible Breaches of Social Media Law.” *AP News*, AP News, 18 Dec. 2023, [apnews.com/article/twitter-x-musk-social-media-](https://apnews.com/article/twitter-x-musk-social-media-europe-82b2780d9abf123dc769d124aa04f24f)

[europe-82b2780d9abf123dc769d124aa04f24f](https://apnews.com/article/twitter-x-musk-social-media-europe-82b2780d9abf123dc769d124aa04f24f).

“ Commission Opens Formal Proceedings against X under the Digital Services Act.” *Press Corner*, European Commission, 18 Dec. 2023,

ec.europa.eu/commission/presscorner/detail/en/ip_23_6709.