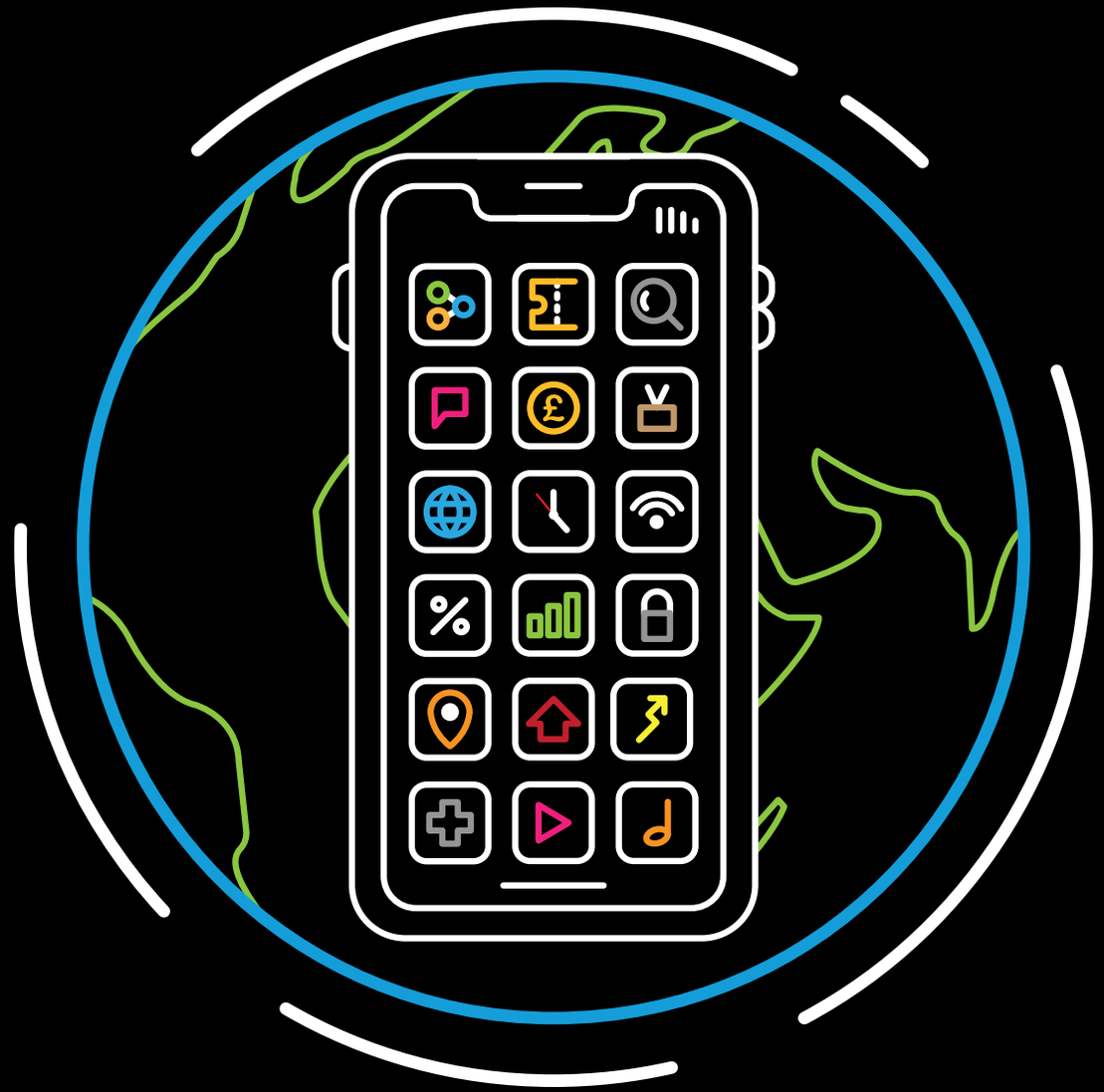
INTERNATIONAL ASSOCIATION OF ENTERTAINMENT LAWYERS

Nationalism vs globalism: regional and transnational legal issues reshaping the entertainment industry

Edited by William Genereux & Marijn Kingma



IAEL 2020

"Nationalism vs globalism: regional and transnational legal issues reshaping the entertainment industry"

Editors
William Genereux
Marijn Kingma

Publisher
FRUKT
www.wearefrukt.com

Design
Lauren Cotterell
Rashpal Amrit

Message from the President: Jeff Liebenson

I hoped this year of 2020 would be marked by our pursuit of this very interesting and relevant topic of Nationalism vs Globalism. And also my tenth year of serving as President of the IAEL, which is and continues to be such an honor.

But we are confronted by a pandemic that has affected our world. As we go inward to avoid mass contagion and yet continue to hear about its devastating effects across the globe, it sometimes is difficult to think of anything else. I echo the co-editors' hope that normalcy will to some degree return soon.

I am quite certain that the subject chosen by our co-editors will remain relevant. So in that spirit, we move on.

At times like this, it's inspiring to see the IAEL do what the IAEL does best—focusing on the key issues of the day, and enjoying the collegiality of our fellow members across national boundaries.

So while the world is going through distancing and isolation, the IAEL has come together to mount its first-ever digital IAEL Legal Summit. This has been a true group effort with major contributions from different corners of the world, bringing our different backgrounds and perspectives to work together across national borders.

I want to thank Marijn Kingma from The Netherlands and William Genereux from Canada, our co-editors who have brought their experiences from where they live and their legal expertise to life in developing this book, as well as our contributors for providing their rich perspectives.

Thanks to Duncan Calow and Marcel Bunders for your continued support, guidance and humor with respect to the many adversities we have weathered this year!

While the book focuses on digital and other entertainment deals crossing borders, it also addresses what legal needs still should be considered on a national or country-by-country basis. Our hope is that exploring these legal trends will help us in guiding our clients to deal with our multicultural world of entertainment law, notwithstanding the nationalistic urges of our time.

Perhaps this mirrors our staging of this digital IAEL Legal Summit with members from around the world enjoying our different cultures and coordinating our common interests.

We look forward to the upcoming publication of this, our 35th annual book published by the IAEL, Nationalism vs Globalism: Regional and Transnational Legal Issues Reshaping the Entertainment Industry.

Editors' Introduction:
William Genereux & Marijn Kingma

When this year's topic 'nationalism vs globalism' was chosen at the IAEL general meeting in 2019, no one could have foreseen that our world would soon be faced with a global pandemic. As we are writing this, COVID-19 has halted normal life throughout the world. With countries taking extreme lockdown measures, the impact on the economy is unimaginable and the entertainment industry had been brought to a near standstill. Concerts, festivals, movie releases and other events have been cancelled and entertainment lawyers are faced with unprecedented legal issues. But the entertainment industry is also proving its creativity in these times with initiatives like drive-in festivals, balcony concerts and virtual movie watching parties.

It was unavoidable that Midem, where we present our annual IAEL book each year, was cancelled. This has led to the decision to hold our 2020 IAEL book so that we can present it to the IAEL community at next year's Midem. The book will be released as the "IAEL 2020-2021" book. We believe the topic and content of the book will remain relevant.

However, we did not want to refrain from publishing anything at all this year, so we have decided to release five contributions from our book for next year as a 'sneak preview.' We believe the chapters we have chosen are a good reflection of our book and are also great standalone reads.

Our 2020-2021 book will explore the longstanding conflict between nationalism and globalism as it relates to the entertainment industry. Contributions will be subdivided into three major categories. The first category focuses on issues in specific jurisdictions and markets. The second attempts to map-out the expansion of regional forces into wider applications. The third seeks to bring a holistic view that reconciles many of the vital issues affecting the industry at large, and which are shaping our future world.

As a sneak preview from the first chapter, we have chosen a contribution about the effects of Brexit on the entertainment industry, a topic that cannot be missed in a chapter about regionalism. From the second part of our book, we have selected two articles about the effect of the GDPR around the world, as countries are adapting their data protection legislation to keep up with Europe's strict rules. Finally, we have released two contributions from the third chapter of the book. The first looks at the (im)possibility to regulate fake news and political advertising on social media platforms. The second article is about what is no doubt the biggest challenge of our times: global warming. The article discusses environmental impacts of recorded music and what we as lawyers can do to help mitigate climate change.

The fast spread of the virus is a direct result of globalization – international air traffic has quickly moved it around the world. And while countries are all imposing their own countermeasures, the virus knows no national borders. Meanwhile, globalization may also halt the virus. The global scientific community was able to find a reliable test for COVID-19 within days and is now working together to find a treatment and a vaccine. We are hoping that by the time our book comes out in 2021, global efforts will have resulted in a return back to – relative – normalcy.

We would like to thank IAEL's president Jeff Liebenson for his time, effort and leadership. We would also like to thank Janneke Popma, associate at Höcker, for her indispensable organizational skills. Additionally, the authors all need to be recognized for their creativity and their understanding when we had to postpone the release of the book.

Thank you everyone.

>> William Genereux

TORONTO

William is a Toronto lawyer with 35 years' experience in entertainment law, corporate law and litigation. In the 1980s he played in a hardcore punk band. In the 1990s he co-owned and operated a dance music record label. In the 2000s he was a lecturer at the Ted Rogers School of Management – Ryerson University, Toronto. His clients include top-selling recording artists, producers, writers, digital technology entrepreneurs and filmmakers. He is a member of the Law Society of Ontario, volunteers with Artists' Legal Aid Services in conjunction with the University of Toronto Faculty of Law, and is a past-chair of the Canadian Bar Association – Ontario, Entertainment, Media and Communications Law Section.

>> Marijn Kingma

U.S.A.

Marijn Kingma is a partner at Höcker Advocaten, based in Amsterdam. Marijn specializes in information law, with a focus on copyright and privacy-related issues. Marijn has a varied practice; her clients range from collective management organisations and NGO's to broadcasters and international entertainment companies. She conducts complex, strategic litigation and has been involved in several national and European landmark cases. Marijn is ranked in the Chambers guide as a "very strong, young up-and-coming lawyer" who is "unbelievably good and very clever" and is ranked in the Legal500 guide as "next generation lawyer", noting that "her knowledge, flexibility and positive mood makes working with her a fun, but still very effective experience". She is editor for the Dutch law journal AMI, an active member of the International Association of Entertainment Lawyers and a regular speaker at (national and international) conferences.

Regulating counterfeit politics: fake news and political advertising on global social media platforms

"Since the Cambridge Analytica scandal, the regulation of political content on social media platforms has become a hot topic."

Authors: Jen Clarke

Jen joined the music team at Swan Turton in 2019 where she assists on contentious and non-contentious matters involving music, media, and advertising.

Jen is a classically trained pianist, vocalist and experienced songwriter and performer. Before studying law she toured with several indie bands internationally and released multiple recordings as a solo artist.

Prior to joining Swan Turton Jen worked at a City law firm where she trained and qualified into its global entertainment and media group and spent time on secondments at Bauer Media and Red Bull Media House UK.

>> Introduction

Global tech companies who are social media platforms hold an ambiguous space in the regulatory sphere. Legal frameworks in Europe (the E-Commerce Directive[1]) and in the US (Section 230 of the Communications Decency Act[2]) establish that social media platforms are not legally liable for the content posted on them if they play a 'passive role' and are neutral in the creation of content. Facebook, Twitter and YouTube have long maintained their position as being open 'platforms', like public squares, instead of 'publishers', thereby trying to circumvent increased regulatory measures. But what happens when the 'public square' inhabits a space owned by a private company, with massive revenue margins?

Facebook has been known to manoeuvre its regulatory identity with a degree of fluidity to bend to its benefit. Its position as a 'tech platform' permits it to avoid liability for posted content, however, in the California Court of Appeal in 2018, Facebook's attorneys argued that the company is a publisher in an attempt to claim First Amendment rights.[3] In February 2020, whilst attending a security conference in Germany, Mark Zuckerberg made his preference for Facebook to be considered as a 'special case' known, claiming that the regulatory approach for the platform should be 'somewhere in between' publisher and tech platform.[4] This demonstrates how tech companies have come to inhabit a liminal space between reportage and user content - and that not even Facebook knows what it has become.

Since the Cambridge Analytica scandal, the regulation of political content on social media platforms has become a hot topic. Specifically, how to prevent the distorting relationship between disinformation - false content spread with the specific intent to deceive, mislead or manipulate - and global politics. Less formal regulatory methods such as self-governance, as well as the self-reporting EU Code of Practice on Disinformation, are attractive methods used by platforms due to lack of any real sanctions. However in 2017, Germany was at the forefront of creating forceful legislation to hold social media platforms accountable by way of the Netzwerkdurchsetzungsgesetz (Network Enforcement Act). Recently, in the UK the Online Harms White Paper introduced a new statutory duty of care to 'make companies take more responsibility for the safety of their users and tackle harm caused by content or activity on their services'. This is set to come into effect in 2020.[5]

On a global level, regulators encounter serious challenges as they struggle with trying to figure out how to regulate the ever-changing social media landscape, while constantly being criticised as not keeping up. To make this task even more complicated, any attempt at regulation which restricts speech must weighed up against other fundamental rights such as freedom of speech.

While there is significant public pressure to increase regulation to prevent the spread of disinformation, platforms such as Facebook and Twitter have openly stated that politicians are exempt from their internal guidelines due to the 'newsworthiness' of their content, provided that public interest outweighs the risk of harm.

"The monitoring team is said to suspend around 1 million fake accounts per day, according to Facebook."

This chapter discusses a range of attempts to regulate global social media platforms in respect to political speech such as hate speech and disinformation, by way of self-governance, through recent EU case law, as well as legislation in Europe.

Self-governance and self-monitoring as a regulatory strategy

Internal self-governance has yet to prove itself as an effective regulatory strategy.

Facebook
Facebook states that rather than blocking content for being untrue, they demote posts in the news feed when rated false by fact-checkers and also point people to accurate articles on the same subject.[6]

Currently, Facebook uses a combination of two strategies to monitor content: AI and human monitoring, consisting of 35,000 low-wage workers employed to monitor flagged content, in order to decide if it is permissible or not. The monitoring team is said to suspend around 1 million fake accounts per day, according to Facebook.[7]

As a further method, in September 2019 Facebook proposed an Oversight Board[8] to shift responsibility away from executives and engineers. The Board will be comprised of roughly 40 people of varying backgrounds and professions, including lawyers, who will serve a three year term, with the intention of issuing the final word for platform users who want to appeal moderation decisions. However beyond the optics of Facebook taking further measures it is unlikely the Board offers any viable solution since it maintains jurisdiction over personal posts only. Critics have said that this strategy misses the mark: instead of focusing on take downs of personal posts, the Board's authority should instead be expanded to have remit over how Facebook operates e.g. its data governance practices and use of algorithms.[9]

In September 2019, Facebook announced a $10 million "Deepfake Detection Challenge," working with non profit coalition 'Partnership on AI', Microsoft, and universities like MIT, Berkeley and Oxford, to award an individual who creates tech that will automatically seek out and detect algorithmically-generated videos.[10] Deepfakes refer to doctored and manipulated media. More specially, it is the AI process which makes it possible to create a computer-generated video of a person speaking - and these doctored videos are becoming increasingly realistic. In the past, the vast majority of deepfake usage has been to insert celebrities into pornographic content. However it stands to be a huge tool in political warfare due to its ability to make realistic videos of politicians saying whatever the creator chooses. A report from NYU has called deepfakes a 'credible threat' to the US 2020 elections and Texas and California have criminalised the use of deepfakes in relation to elections.[11] In November 2019 just weeks before the UK election, a deepfake video of Boris Johnson and Jeremy Corbyn endorsing each other surfaced as a demonstration of how deepfakes work.[12] As ridiculous as this example may seem, more nuanced deepfakes carry a high risk of spreading disinformation. It has been voiced that the biggest risk posed by deepfakes is their potential to reinforce the views of those who are unwilling to critically evaluate the media they consume.

But politicians seem to have been given a 'free pass' since Facebook implemented the aforementioned 'newsworthiness' exemption in 2016. This means that if a politician makes a statement or shares a post which breaks Facebook's community standards it will still be allowed on the platform - if the public interest in seeing it outweighs the risk of harm. In November 2019 this was clarified further with an announcement by Nick Clegg, Facebook's head of global affairs: "Today, I announced that from now on we will treat speech from politicians as newsworthy content that should, as a general rule, be seen and heard."[13] But the scope of this exemption lacks any specific definition and begs the question: who or what qualifies as a 'politician'? This exception has been criticised as a dangerous move, especially in light of the recent resurgence in right wing parties who may use this opportunity to broadcast violent rhetoric or hate speech. In particular, Dave Willner, Facebook's former head of content standards, has publically stated that Facebook's hands off policy in respect to political speech - including hate speech - is 'cowardice'. Wilner states that while the hate speech rules have not changed much in the last 10 years, "[w]hat has changed is the willingness of politicians to say things that are clearly racist, sexist, etc."[14]

"However, the [EU] Code has been criticised for its lack of remedies: it is not legally binding and lacks sanctions for non-compliance."

Twitter
In 2018, Twitter published a blog post entitled "World Leaders" in a seemingly veiled reference to Donald Trump and set out why its user rules do not apply to world leaders: because their tweets are considered newsworthy. Twitter said, "We review Tweets by leaders within the political context that defines them, and enforce our rules accordingly… We work hard to remain unbiased with the public interest in mind." One year later in October 2019, Twitter announced a ban on political advertising.

Despite the ban, political controversy remains on Twitter. During a televised debate for the 2019 UK election, the Conservative party was accused of misleading the public by temporarily rebranding one of their official party accounts to appear as a 'fact checking' account called "factcheckuk". Perhaps not coincidentally, "Fullfact.org" is the UK's independent fact checking charity in relation to political and environmental claims. Following the incident, Twitter issued a statement that it would take "decisive corrective action" if a similar stunt was attempted again but in the instant case no punitive sanctions were enforced.

YouTube
Over five hundred hours of video are uploaded to YouTube every minute.[15] According to its transparency report, Google-owned YouTube removed more than 4 million channels for violating its community guidelines between April and June 2019. However the majority of the channel removals were 'easy targets'; 90.3 % were identified and removed because of spam/scams. Only .4% were removed due to 'hate' and .5% removed due to violence and extremism.[16]

It could be argued that self-governance and self monitoring makes for good PR but when the statistics are more closely examined, they may demonstrate that the removal of harmful content in relation to hate speech is far less than it may first appear.

International legal reform against hate speech and disinformation

In recent years, Europe has taken the lead on integrating the regulation of social media platforms into the law.

EU Code of Practice on Disinformation
In 2018, the EU rolled out the EU Code of Practice on Disinformation, which is a self regulatory set of voluntary standards, which was signed by Facebook, Google, Twitter, and Mozilla in October 2018, and Microsoft in May 2019. The Code provides the parameters for political advertising and issue-based advertising and sets out that all advertisements should be clearly distinguishable from editorial content, including news. However, the Code has been criticised for its lack of remedies: it is not legally binding and lacks sanctions for non-compliance. The European Commission's report on the Code has not yet been released, but in October 2019 it released the First Annual Reports submitted by its signatories. The EC Report will reflect on the tech companies' commitments to the Code and if the results don't measure up, the Commission may propose further measures, including those of a regulatory or co-regulatory nature.

Monitoring Content: Eva Glawischnig-Piesczek v Facebook Ireland Limited[17]

The facts of this case relate to a personal post on Facebook which shared an article entitled, "Greens: Minimum income for refugees should stay". The post included a comment against the subject of the article, Greens' leader Ms Eva Glawischnig-Piesczek, which was found to be harmful and defamatory. Ms Glawischnig-Piesczek wrote to Facebook and asked for the harmful comment to be deleted. Facebook did not comply with her request so Ms Glawischnig-Piesczek brought proceedings. The CJEU decision was handed down in October 2019 and granted an order prohibiting Facebook from publishing and/or disseminating the harmful comment and/or equivalent content.

This was considered to be a landmark decision as it widens the obligations of monitoring of host platforms to 'identical' or 'equivalent' material on a potentially global scale. The E-Commerce Directive sets out that a hosting platform should not be liable for user-generated content, if it has no knowledge of any illegality and acts expeditiously upon obtaining such knowledge (Article 14(1)). Further, Article 15 of the E-Commerce Directive states that hosting platforms may not be subject to a general monitoring obligation. However, the court decided that Article 15 does not preclude general monitoring 'in a specific case' (such as the instant case) where the content was found to be illegal according to the court of the member state.[18]

"There are two defining features of the NetzDG: the complaints-removal requirement and the transparency requirement."

The result of this ruling is that Facebook must proactively search for duplicate posts and posts that are 'identical' or 'equivalent' to the original post when it is deemed to be unlawful. However, this obligation is limited to court orders only and does not include user flagging. In practical terms, the court insists that an independent assessment of whether the content is similar or equivalent is not necessary and that platforms can instead have recourse to automated search tools and technologies.[19] However this aspect of the ruling has been criticised by some as deficient since it offers no clarification on what constitutes 'identical' or 'equivalent', and further, the tools and technologies to seek 'identical' or 'equivalent' posts simply do not exist.[20]

Germany's Network Enforcement Act: "hate speech law"

Perhaps the most rigorous enactment of regulatory law directed towards social media platforms at a domestic level is Germany's Network Enforcement Act (Netzwerkdurchsetzungsgesetz or "NetzDG") which came into force on 1 January 2018.[21] This law was pushed through with urgency in light of an upcoming election, as concerns grew about how the proliferation of online disinformation may affect its outcome.

The development of the law was highly criticised by many stakeholders, including the tech industry, activists, and academics for its potential encroachment on freedom of expression. Critics voiced their objection to the NetzDG as representing "privatized enforcement" since the platforms would assess the legality of the content, rather than courts or public bodies such as law enforcement. The Act does not create new categories of illegal content. Unlawful content is content which meets the threshold of certain offences of the German Criminal Code, including incitement to hatred, defamation of religions, religious and ideological associations insult and (intentional) defamation.

The history of Germany and the extreme far right clearly influenced the development of the law. The idea of "militant democracy" (wehrhafte Demokratie) where free speech could be constrained to protect democratic norms has played its part, along with the assertion of free speech having boundaries. Ironically, the attempt to temper free speech for good led to concerns that the Act's contents may unintentionally act as a precedent for control of online expression employed by authoritarian regimes.[22]

The NetzDG applies to 'social network providers' in Germany with more than two million users which is further defined as "a telemedia service provider operating an internet platform designed to enable users to share content with other users, or to make such content available to the public." Exceptions include platforms with journalistic or editorial content and professional networks such as LinkedIn. The Federal Office of Justice is the body which monitors the compliance of the social network providers.

There are two defining features of the NetzDG: the complaints-removal requirement and the transparency requirement. The first requires the social network provider to provide a complaints system to deal with and block unlawful content. It requires a tight turnaround on the removal of unlawful content and enforces heavy financial penalties if unlawful material is not removed from platforms quickly.

The removal aspect of the law is controversial. An initial concern was that private companies would over-censor and take down content to avoid the risk of steep fines: up to 5 million euros for natural persons and up to 50m euros for legal persons. There have been few sanctions applied which has led to some speculation as to the over-removal of content, hinting at the collateral damage of free speech and unintentional censoring.[23] There has also been criticism of the onus on providers to determine the lawfulness of content and also concern as to how borderline content would be monitored and enforced consistently.

The transparency requirement has been received more favourably. If a social network provider receives more than 100 complaints a year, it must file reports every six months. However Facebook was caught out in July 2019 when Germany imposed a €2 million fine on them for underreporting hate speech complaints in contravention of the Act. This is due to Facebook purportedly only tallying the complaints in relation to the Act, and not including posts complained about due to violation of Facebook's community standards. This illustrates another key criticism of the NetzDG: a lack of standardised reporting formats which has led to difficulties when comparing reporting amongst platforms.

Several countries including France are using the NetzDG as a draft for their legislation so this law is being monitored closely on a global scale. In February 2020 Mark Zuckerberg attended a security conference in Germany where he also met with European commission

officials to lobby how Facebook should be regulated. Zuckerbuerg claimed that the NetzDG should not apply to internet content platforms, as he claimed moderating this type of content is "fundamentally different"; however this suggestion was not received favourably by EC officials.[24]

Digital Services Act
The European Commission in Brussels is currently drafting the Digital Services Act to replace the E-Commerce Directive. The new legislation, due to be finalised by the end of 2020, is expected to impose further obligations on global tech companies, and include the provision of legal powers to regulate hate speech and political advertising. It is speculated that new EU-wide transparency rules will be drafted for political advertising to ensure algorithms used will be subject to regulatory scrutiny.[25] The Act will also create an EU-wide tech regulator with the power to enforce rules, instead of this being left to member states.

The (De-)regulation of Political Advertising on Social Media Platforms

In October 2019 Zuckerberg confirmed Facebook's decision to allow unchecked political advertising - in other words, they will permit all political ads,even false ones - despite Twitter committing to ban all political advertising. Rob Leathern, the director of product management at Facebook wrote in a blog post, "[w)e have based(our policy) on the principle that people should be able to hear from those who wish to lead them, warts and all, and that what they say should be scrutinized and debated in public."[26]

Purportedly, Facebook's decision to permit political advertising is not based on revenue prospects, as they have claimed that the vast majority of its revenue comes from commercial, not political, ads.[27] But these figures are still significant: Facebook's chief executive predicts the company will get 0.5% of sales next year from political adverting, which amounts to roughly 400 million USD.[28] Meanwhile, US President Donald Trump continues to spend a fair deal amount on advertising on social media: in 2019 over $15.7m was spent on Facebook and at least $9.4m on Google advertising.[29] In January 2020, an internal post from Facebook employee Andrew Bosworth was leaked to the New York Times claiming that President Trump's use of Facebook advertising may lead to his re-election.[30]

"An important step towards transparency would involve forcing big tech companies to reveal the formulas they use to collect data and match them with advertisers."

In contrast, in November 2019, Google promised to take action against 'demonstrably false claims' and limited micro-targeting of political ads to age, general and postal code.[31]

In September 2019, Privacy International released a report[32] which states that Facebook, Twitter and Google have failed to provide adequate transparency for global users around political advertising on their services. As part of recent transparency efforts, Facebook, Twitter and Google have all launched searchable online libraries of political ads on their platforms, but these have been criticised by researchers for being poorly maintained and falling short of providing any useful ad targeting information.

In November 2019 Google announced an update on its political ads policy.[33] Google promised to take action against 'demonstrably false claims' and limited micro-targeting of political ads to age, general area and postal code.[34] In an attempt at transparency, Google set out the three options it provides for political advertising: (i) search ads, which appear on Google in response to a search for a particular topic or candidate, (ii) YouTube ads, which appear on YouTube videos and generate income for creators, and (iii) display ads, which are featured on websites and generate income for publishers. While the policy update aids transparency, it remains to be seen if it will have any practical effect. Google takes the position that, "robust political dialogue is an important part of democracy…so we expect that the number of political ads on which we take action will be very limited - but we will continue to do so for clear violations."[35]

An important step towards transparency would involve forcing big tech companies to reveal the formulas they use to collect data and match them with advertisers. Katarzyna Szymielewicz from the Polish NGO Fundacja Panoptykon says, "Liability doesn't concern only content. It's more about the way tech platforms moderate the discussion. The users might create the content, but the companies create the algorithm. They should have certain transparency obligations."[36] The way in which Facebook currently selects what information to show you is based on the information you have interacted with. This has been referred to as the 'echo chamber' effect whereby Facebook's algorithms program the information that affirms your views, even if it's not a widely held idea. Facebook benefits from this because more interaction equates with more advertising potential, and you're more likely to interact with content you agree with.

"What's the best way to deal with the regulation of political advertising and hate speech on global platforms? And who should be in charge of the regulations?."

These algorithms are not limited to advertising. Political ads running on Facebook can be targeted at a user's preferences as a result of the company's tracking and profiling. The more the user engages and responds, the better the algorithm gets at predicting content the user will like. As a result, over time the content in a user's feed will likely become narrow. And some fear this loss of plurality may take its toll on democracy.

Moving Towards Global Solutions

What's the best way to deal with the regulation of political advertising and hate speech on global platforms? And who should be in charge of the regulations? It depends on who you ask.

Certain 'think-tanks' have suggested that the onus should be shifted from the tech companies onto government agencies. In response to the NetzDG, Bitkom, an association that represents digital companies, stated that the German government should build up specialist teams to monitor online content for potential infringements, instead of requiring social media platforms to do it themselves to prevent providers deleting content as a precaution.[37] In the UK, the Online Harms White Papersuggests that an independent regulator should be appointed - possibly Ofcom (the UK's communications regulator).

Meanwhile in February 2020, Mark Zuckerberg stated governments should provide "more guidance and regulation…on political advertising or what discourse should be allowed and on(drawing the line between) harmful expression and freedom".[38] In February 2020, Facebook published a White Paper called "Charting a Way Forward: Online Content Regulation"[39] which calls for global, rather than national policies. The Paper sets out that internet companies should not face any liability for content on their platforms. This proposal was promptly rejected by the EU, with the EU Industry Commissioner stating, "It's not for us to adapt to this company, it's for the company to adapt to us.[40] EU Chief Justice Vera Jourova also rejected the White Paper, stating "Facebook cannot push away all responsibility" and calling for "oversight of algorithms to avoid decisions being taken in black boxes and in the ways they moderate content."[41]

The Open Markets Institute suggests an anti-monopoly approach to increase responsibility: banning any further acquisitions by Google and Facebook until they have clear strategies and policies in place for managing the volumes of hate speech.[42] Other critics have called for Facebook to be broken up. But Nick Clegg on behalf of Facebook claims,"…I firmly believe that simply breaking(Facebook) up will not make the problems go away. The real solutions will only come through new, smart regulation instead."

The new Digital Services Act will surely assist with the future regulatory landscape in the EU. Other domestic instruments will attempt new regulatory approaches and meet criticism before they have been enacted. For example, the UK Online Harms White Paper which incentivises towards prior filtering, has already been criticized as an unnecessary incursion on free speech.[43] Also, the effective implementation of any new regulation requires careful planning of how it will work in practice. For example, the NetzDG has demonstrated that it is difficult to consistently enforce legislation without strict reporting mechanisms in place.

Amid the new technologies which aim to obfuscate what is real versus what is fake, the regulation of global social media platforms is in desperate need of widespread and consistent reform. Judging from the recent comments from the EU regarding a need for transparency of the 'bigger picture', e.g. oversight of algorithms, there may be a shift in how global social media platforms are regulated: moving away from focusing on individual takedowns, towards a macro approach which monitors the frameworks in which global social media platforms operate.

[1] *Directive 2000/31/EC.*

[2] *47 U.S.C. § 230.*

[3] *https://casetext.com/case/six4three-llc-v-facebook-inc-1.*

[4] *https://mobile.reuters.com/article/amp/idUSKBN2090MA?__twitter_impression=true.*

[5] *https://www.gov.uk/government/consultations/online-harms-white-paper/online-harms-white-paper.*

[6] *https://newsroom.fb.com/news/2018/08/hard-questions-free-expression/.*

[7] *https://techcrunch.com/2020/02/17/facebook-pushes-eu-for-dilute-and-fuzzy-internet-content-rules/.*

[8] *https://about.fb.com/news/2019/09/oversight-board-structure/.*

[9] *https://hbr.org/2019/10/facebooks-oversight-board-is-not-enough.*

[10] *https://ai.facebook.com/blog/deepfake-detection-challenge/.*

[11] *https://fortune.com/2019/09/03/instagram-whatsapp-and-deepfakes-may-threaten-2020-u-s-presidential-election/.*

[12] *https://www.bbc.co.uk/news/av/technology-50381728/the-fake-video-where-johnson-and-corbyn-endorse-each-other.*

[13] *https://about.fb.com/news/2019/09/elections-and-political-speech/.*

[14] *https://www.wired.com/story/facebook-content-standards-politicians-exemption-dave-willner/.*

[15] *https://transparencyreport.google.com/netzdg/youtube?hl=en_GB.*

[16] *https://transparencyreport.google.com/youtube-policy/removals?hl=en.*

[17] *C-18/18 Eva Glawischnig-Piesczek v Facebook Ireland Limited.*

[18] *C-18/18 Eva Glawischnig-Piesczek v Facebook Ireland Limited at paragraph 34-35.*

[19] *Ibid at paragraph 46.*

[20] *https://slate.com/technology/2019/10/european-court-justice-glawischnig-piesczek-facebook-censorship.html.*

[21] *Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken.*

[22] *See further discussion in the Transatlantic Working Group paper: https://www.ivir.nl/publicaties/download/NetzDG_Tworek_Leerssen_April_2019.pdf.*

[23] *https://blogs.lse.ac.uk/medialse/2018/08/16/removals-of-online-hate-speech-in-numbers/.*

[24] *https://techcrunch.com/2020/02/17/facebook-pushes-eu-for-dilute-and-fuzzy-internet-content-rules/.*

[25] *https://www.ft.com/content/e9aa1ed4-ad35-11e9-8030-530adfa879c2.*

[26] *https://about.fb.com/news/2020/01/political-ads/.*

[27] *https://www.nytimes.com/2020/01/09/technology/facebook-political-ads-lies.html.*

[28] *https://techcrunch.com/2019/10/30/zuckerberg-political-ads/.*

[29] *https://www.ft.com/content/c5d61988-fcbb-11e9-98fd-4d6c20050229.*

[30] *https://www.nytimes.com/2020/01/07/technology/facebook-andrew-bosworth-memo.html.*

[31] *https://blog.google/technology/ads/update-our-political-ads-policy.*

[32] *https://privacyinternational.org/long-read/3244/social-media-companies-have-failed-provide-adequate-advertising-transparency-users.*

[33] *https://blog.google/technology/ads/update-our-political-ads-policy/#click=https://t.co/ByNr2dhfGl.*

[34] *https://blog.google/technology/ads/update-our-political-ads-policy.*

[35] *https://www.blog.google/technology/ads/update-our-political-ads-policy/.*

[36] *https://codastory.com/disinformation/europe-tech-transparency/.*

[37] *https://www.independent.co.uk/news/world/europe/germany-fake-news-social-networks-fine-facebook-50-million-euros-illegal-content-hate-speech-angela-a7668731.html.*

[38] *https://www.euronews.com/2020/02/15/zuckerberg-tells-europe-regulate-soon-or-authoritarian-china-will-set-the-rules-on-social.*

[39] *https://about.fb.com/news/2020/02/online-content-regulation/.*

[40] *https://www.gadgetsnow.com/tech-news/eu-rejects-mark-zuckerbergs-offer-on-regulating-online-content/articleshow/74189129.cms.*

[41] *https://www.ft.com/content/81ae47b0-51a9-11ea-8841-482eed0038b1.*

[42] *https://www.independent.co.uk/news/long_reads/social-media-logan-paul-regulation-laws-legal-protection-youtuber-facebook-twitter-blogger-vlogger-a8191346.html.*

[43] *https://www.theguardian.com/technology/2019/apr/08/online-laws-threaten-freedom-of-speech-of-millions-of-britons.*