SB 3 Article #1

Moderating online content: fighting harm or silencing dissent?

In recent months, the world has seen growing criticism levelled against social media companies regarding how they moderate user content.

These companies often face critical human rights dilemmas: aggressively combating what is viewed as harmful content risks silencing 'protected speech': speech that, under international law, should be permitted. Intervening with or removing content affects the rights to freedom of expression and privacy, and can easily lead to censorship.

Faced with the need to do more to ensure accountability, many governments have started to regulate online content. Some 40 new social media laws have been adopted worldwide in the last two years. Another 30 are under consideration.

It's a worrying trend, according to UN Human Rights, and has immense consequences for public debate and participation.

For Peggy Hicks, Director of Thematic Engagement for UN Human Rights, nearly every country that has adopted laws relating to online content has jeopardised human rights in doing so.

"This happens because governments respond to public pressure by rushing in with simple solutions for complex problems," said Hicks, speaking at a press briefing last week. "Additionally, some governments see this legislation as a way to limit speech they dislike and even silence civil society or other critics."

The only way to address these challenges is to adopt a human rights-based approach, she said.

"We need to sound a loud and persistent alarm, given the tendency for flawed regulations to be cloned, and bad practices to flourish."

New laws a cause for concern

In the aftermath of the torrent of racist abuse directed towards Black English football players following the UEFA Euro 2021 final, calls have increased in the United Kingdom to implement new online legislation, and quickly.

But the draft Online Safety Bill, which was tabled in May, would make provisions that are likely to lead to the removal of significant amounts of protected speech.

Similarly, in India, in the wake of some serious incidents of online incitement to violence, the government in February unveiled the Guidelines for Intermediaries and a Digital Media Ethics Code. While the new rules entail some useful obligations for companies related to transparency and redress, a number of provisions raise significant concern.

Under the new rules, for example, non-judicial authorities have the power to request quick take-downs and the companies and their staff face expanded liability risks for failure to comply. Moreover, the rules threaten to undermine secure end-to-end encryption. Several tensions in this regard have already surfaced and have been brought before Indian courts.

UN human rights experts have also expressed concerns on new and draft laws in other countries including Australia, Brazil, Bangladesh, France, Singapore and Tanzania.

Hicks adds that laws such as these often suffer from similar problems, with poor definitions of what constitutes unlawful or harmful content. "There is an over-emphasis on content take-downs, limited judicial oversight and an over-reliance on artificial intelligence or algorithms."

Social media shut-downs

The flagging of content by social media companies has also led to some drastic responses by governments, including major disruptions. Last month, the Nigerian government announced the indefinite suspension of Twitter after the platform deleted a post from President Buhari's account saying it violated company policies.

Within hours, Nigeria's major telecommunications companies had blocked millions from accessing Twitter, and Nigerian authorities threatened to prosecute anyone who bypassed the ban.

For UN Human Rights, shutdowns like this matter because they restrict people's ability to access information, also affecting other rights including work, health and education. They also have massive economic costs and undermine development.

"But it is not only a question of rights and law – having transparent rules around content moderation and ensuring different views are reflected is also a question of trust in institutions – one of the most precious commodities in democratic societies," she says.

The EU's Digital Services Act: an opportunity to regulate well

Decisions made in the European Union in the coming months could have an impact on digital policy globally, according to UN Human Rights. The EU is currently considering the Digital Services Act, the draft of which has some positive elements: it is grounded in human rights language, it contains clear transparency requirements for platforms, and it was drafted using a participatory process.

However, for UN Human Rights, some contradictory signals remain, including the risk that over-broad liability will be imposed on companies for user-generated content, and that there will be limited judicial oversight. There is also room to bring more voices to the table in the drafting process.

Hicks urged caution as the process unfolds: "When democracies start regulating, there is a ripple effect across the world, and other countries may follow. The internet does not have borders - we need to aim for a global digital space where it is safe for people to exercise their rights."

Five actions for a way forward

To address the dilemmas of regulation and moderation of online content, UN Human Rights has proposed five actions for States and companies to consider.

First, UN Human Rights urges that the focus of regulation should be on improving content moderation processes, rather than adding content-specific restrictions.

For example, when faced with complex issues, people should be making the decisions, not algorithms.

Second, restrictions imposed by States should be based on laws, they should be clear, and they should be necessary, proportionate and non-discriminatory.

Third, companies need to be transparent about how they curate and moderate content and how they share information, and States need to be transparent about their requests to restrict content or access users' data.

Fourth, users should have effective opportunities to appeal against decisions they consider to be unfair, and independent courts should have the final say over lawfulness of content.

Finally, civil society and experts should be involved in the design and evaluation of regulations.

Companies can and must do better

Social media companies are often criticized both for failing to take down harmful content, and also for when they actually do so.

In either case, there are few channels for people to use to address their concerns. As an example, during the recent upsurge in violence in Israel and the Occupied Palestinian Territory in May, Palestinian voices were disproportionately undermined by social media company content moderation practices, and there were limited avenues for challenging take-down decisions. Instagram acknowledged problems with its automated curation systems.

The UN Guiding Principles on Business and Human Rights stipulate that all companies have a responsibility to respect human rights.

Companies can and must do much more to be transparent and to provide effective and accessible redress channels, says Hicks. People being targeted by incitement online, as well as those being censored online, both need to have objective and clear responses to their concerns.

"We face competing visions for our privacy, our expression and our lives, spurred on by competing economies, and competing businesses," says Hicks.

"Companies and States alike have agreed to respect human rights. Let's start holding them to that."

23 July 2021

https://www.ohchr.org/EN/NewsEvents/Pages/Online-content-regulation.aspx

SB 3 Article #2

The Problem With Censoring Political Speech Online – Including Trump's

No one is required to publish politicians' speech, but online platforms should be cautious when censoring them.

Vera Eidelman , Staff Attorney, ACLU Speech, Privacy, and Technology Project

Kate Ruane , Senior Legislative Counsel, ACLU

In January, many online platforms decided they no longer wanted to host President Trump's speech. Google, Twitter, Facebook, Pinterest, and other social media services announced they would no longer distribute Trump's hateful, demeaning, outrageous speech or anything else he might have to say. Many people were pleased. Others, including the ACLU, expressed concern that a few of these companies — namely Facebook, Google, and Twitter — wield such enormous power over online speech that, if they used it against people with fewer outlets than the president of the United States, the companies could effectively silence them.

The issues are complicated. But some policymakers, inspired by factually unsupported rhetoric claiming social media platforms disproportionately silence conservative voices all the way up to the former president, have taken steps that are clearly wrong. For example, Florida enacted a new law that, among other things, prohibits online platforms from blocking or terminating the account of any candidate for political office. It also forces them to publish anything candidates write — regardless of whether what they write is protected by the First Amendment (with the sole exception of obscenity) or violates the platforms' community standards. Florida Gov. Ron DeSantis announced this law as a way to prevent the platforms from "discriminat[ing] in favor of the dominant Silicon Valley ideology," while Lt. Gov. Jeanette Nuñez billed it as a response to "the leftist media" that seeks to silence "views that run contrary to their radical leftist narrative."

The Florida law is clearly unconstitutional. The Supreme Court struck down a strikingly similar law, also in Florida, nearly 50 years ago, in a case called Miami Herald v. Tornillo. The law at issue in Tornillo required newspapers that published criticisms of political candidates to then publish any reply by those candidates. In other words, it forced private publishers to carry the speech of political candidates, whether they liked it (or agreed with it) or not.

As the Supreme Court recognized in Tornillo, a government-mandated "right of access inescapably dampens the vigor and limits the variety of public debate." It makes no difference whether the right of access is to a newspaper or an online platform. Enabling platforms to make different choices about how to treat political candidates' speech is good for public discourse, it's good for users, and it's also a right protected by the First Amendment. We filed a friend-of-the-court brief, along with the Reporters Committee for Freedom of the Press and others, making these arguments this week.

While the government cannot force platforms to carry certain speech, that doesn't mean the largest platforms should engage in political censorship, either. The biggest social media companies are central actors when it comes to our collective ability to speak — and hear the speech of others — online. They blocked the accounts of a sitting President, after all, and that substantially limited the reach of his message. The Florida law reaches far beyond Facebook, Twitter, and Google, governing much smaller online communities and platforms. For the big three, though, our view is that — while the First Amendment protects whatever choice they make with respect to whether and how to publish the speech of political candidates — they should preserve as much political speech as possible, including content posted by candidates for political office.

To date, online companies have taken different approaches to political figures' speech, as shown by their treatment of Trump's accounts. Prior to the January 6 attack, the platforms experimented with various responses to posts by Trump that violated their community standards, from simply leaving them up, to labeling them, to restricting their distribution. On and after January 6, the platforms took action at the account level. Twitter permanently suspended Trump's account "due to the risk of further incitement of violence." YouTube suspended his account indefinitely, applying a sanction that didn't appear to exist in its policies, also pursuant to the platform's incitement-to-violence policy, and has since said it would end the suspension when it determines the risk of violence has sufficiently fallen.

Facebook initially also suspended Trump's accounts indefinitely, also without tethering the decision to an existing sanctions policy. In response, its Oversight Board ordered Facebook to impose a clear and proportionate penalty, and to explain where it came from. Last week, Facebook announced that it would suspend Trump for two years — until Jan. 6, 2023, which, it should be noted, is shortly after the next midterm elections. At this point the company stated it "will look to experts to assess whether the risk to public safety has receded." In addition, Facebook stated that it would not treat politicians any differently than other users when it comes to its "newsworthiness allowance," a policy lever it has used to keep up content that is "important to the public interest," even if it violates the platform's community standards. Going forward, Facebook said it would "remove the content if the risk of harm outweighs the public interest."

As we've said before, we have parted company with other advocacy organizations that have been more willing to accept limitations on the speech of political leaders on social media platforms. While politicians' advocating hatred or violence may be more persuasive and impactful, there is also a greater public interest in having access to their speech. At a minimum, statements of political leaders are important for government transparency — they give the electorate more information about the people running for office, and they may also reveal intent or uncover the meaning of policies in ways that matter for voters and courts alike. For example, courts considered President Trump's tweets as evidence in several challenges to his official acts, including the transgender military ban and the Muslim ban. Much of what politicians and political leaders say is, by definition, newsworthy, and can at times have legal or political consequences.

Given the importance of protecting political speech by political figures, the biggest platforms should strive to allow as much political speech as possible and avoid account-level punishments. And, if they decide to censor candidates, they should have a consistent plan in place for preserving the offending speech for transparency, research, and historical record purposes.

In addition, all platforms should publicly explain their rules for removing posts and accounts of political figures and all users, and explain the penalties that can apply. Those rules must take into account the needs of human rights advocates, researchers, journalists, and others to access rule-violating content. And — contrary to what we've seen from most if not all of the companies — penalties should not be imposed on an ad-hoc or political basis.

We recognize that the major platforms are private entities with their own First Amendment rights to control the content they publish. But the largest platforms' central role in online speech also means they should err on the side of preserving political speech — and, given their scale, they must also offer clarity upfront, at a minimum stick to their own rules, and offer opportunities for appeals when they (inevitably) get things wrong.

https://www.aclu.org/news/free-speech/the-problem-with-censoring-political-speech-online-including-trumps/