Chapter 8
Human Rights and Social Media: Challenges and Opportunities for Human Rights Education

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8.1 Introduction

Social media and freedom of expression are intentionally ambiguous terms. Their meaning and scope change along with societies and the technologies they use. It is primarily for this reason that disinformation is a growing challenge for all forms of social media and its users. The fine line between freedom of expression and political propaganda raises increasing concerns during international unrest and hybrid threats. States and businesses strive to address this challenge promptly and effectively. Yet, the dogmatic distinction between free expression and journalistic due care needs to be made aware of the myriad new media channels and evolving means of communication. In 2022, the European Union (EU) proposed the Code of Practice on Disinformation (European Commission, 2022)—a nonbinding set of practical guidelines to support social media platforms' attempts to eliminate harmful online communications. This is only the latest in a long line of steps toward enhancing media providers' accountability and countering the political and social threats posed by various content categories made available through various online media outlets. The latest code builds on the experiences of the 2018 Code of Practice on Disinformation, introduced initially to encourage the worldwide business community to rise to the challenge of countering disinformation. The EU's strategy against disinformation has relied on the Code as a proven effective measure to limit the dissemination of online content that might impact election results, public health, or international security.

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The Code is, however, only the latest in a series of institutionalized measures taken to address this most recent human rights concern. It is complemented by enhanced EU action within the Digital Act Package and the Digital Services Act (DSA), as well as national actions aimed at limiting the discretionary power of online platforms and the undesirable "chilling" effect they might have on freedom of speech.

In this chapter I will be looking into the ambiguity of existing freedom of expression safeguards, their online application, legal measures aimed at establishing provider liability, as well as recent ideas from individual countries to ensure that national law is applied to international social media companies, based on the example of the Polish draft law on freedom of speech online. The chapter proposes a dedicated administrative "Freedom of Speech Council" to counter the allegedly over-restrictive policies of social media giants and existing notice and mechanisms.

This chapter suggests that the Central and Eastern European experience in online and offline media regulation be considered in the development of media policies in the Central Asian states. Given Poland's communist past, its democratic revolution, and its efforts in ensuring the rule of law in public discourse, its experience may prove useful when it comes to understanding current geopolitical processes in Central Asia. Poland has successfully implemented the relevant EU laws on intermediary liability, building its current online media governance model around the co-regulation imposed by the EU's 2001 e-Commerce Directive. It is currently one of the stronger supporting voices in the debate on further advancing this model of intermediary liability through the DSA. These measures are, however, somewhat unique as they reflect Poland's preoccupation with digital sovereignty and its expectation that the new intermediary liability model will provide stronger protection. That said, this interpretation is not directly reflected in the EU explanatory reports—on the contrary, in fact, EU Member States are to further advance co-regulation rather than top-down regulation of intermediaries within the respective territorial jurisdictions. The Central Asian model of strong media censorship and the expectation that locally available online media will conform with local ethical and legal standards is, therefore, of direct interest.

This chapter seeks to contribute to the further economic and social advancement of Central Asian information societies. The transition from a strongly censored state-funded media to a liberal media market is particularly interesting in the context of the most recent changes to the structure of public media in Poland and Poland's expectations concerning the draft DSA, discussed in the final paragraphs of this chapter.

8.2 The European Consensus on Freedom of Expression Throughout Eurasia

The United Nations concluded its negotiations of the Covenant on Civil and Political Rights (ICCPR) in 1966. They took place in parallel to a similar discussion over the first European treaty aimed at protecting human rights, inspired by the success of the Universal Declaration of Human Rights (UDHR) (see Bates, 2010, 2). In November 1950, the European Convention for the Protection of Human Rights and Fundamental Freedoms (known as the European Convention on Human Rights or ECHR) was signed, laying the foundations for the work of the Council of Europe (CoE) and the European Court of Human Rights (ECtHR). Building on numerous articles of the UDHR, the stipulations on freedom of expression contained in the ECHR resembled those of Article 19 of the UDHR.

Article 10 of the ECHR includes a more detailed version of the general clauses from Article 19 of the UDHR. Its wording grants everyone "the right to freedom of expression", including "freedom to hold opinions and to receive and impart information and ideas". It is important to note the three elements of this right, which resemble the structure of the original Article 19 in the UDHR, those being the right to have, share, and access all forms of expression. None of these integral freedoms should be infringed on through "interference by public authority". They should all be granted to everyone with no discrimination and "regardless of frontiers" (ECHR, 1950, Article 10 para. 1). A limitation clause in Article 10 para. 2 allows for constraints to be placed on the exercise of these freedoms only when certain conditions are met. Exercise of the freedom of expression may be limited through the introduction of "formalities, conditions, restrictions or penalties" prescribed by law and "necessary in a democratic society" (Arai-Takahashi, 2002, 11). The reasons for which the right may be limited are named directly in the text of the ECHR and have been thoroughly explained in the ECtHR jurisprudence.[1]

The ECtHR has noted on numerous occasions that Article 10 refers to states and introduces their negative obligation to refrain from interference with the exercise of the individual right to free expression, unless circumstances, described in Article 10 para. 2, are met (see Council of Europe Research Division, 2011a, 2011b, 21). States are obliged to refrain from interfering with the dissemination of information or ideas individuals wish to share with others under their jurisdiction (ibid.). The right to receive information is rarely understood to impose an obligation upon a state to disclose personal information on the individual claiming access thereto (European Commission of Human Rights, 1987, pt. B, para. 74).[2] Enforcement of such rights

[1] These include: "the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary" (ECHR, 1950, Article 10 para. 2).

[2] See also: Council of Europe Research Division (2011a).

should be assured primarily through the introduction of an "effective and accessible procedure" enabling the applicants to have access to "all relevant and appropriate information".[3]

The European human rights protection system heavily relies on ECHR case law. The ECtHR imposes on state parties' additional obligations under Article 10. Until recently, positive obligations of states[4] primarily pertained to privacy protection (European Court of Human Rights, 2008b, Article 8) or the right to assembly (Article 11).[5]

Regarding Article 10, states were initially only under a (negative) obligation to refrain from infringing on the right to freedom of expression, without implying a positive obligation of the states to protect that right from infringement by nonstate, private actors. This was the case until 2008 when the ECtHR confirmed states' positive obligation to safeguard the ability of individuals to exercise their right to receive and impart information within the limits set by the ECHR. In Khurshid Mustafa and Tarzibachi v. Sweden, the Court claimed: "It cannot remain passive where a national court's interpretation of a legal act (…) appears unreasonable, arbitrary, discriminatory or, more broadly, inconsistent with the principles underlying the Convention" (European Court of Human Rights, 2008a). It therefore claimed that state parties had an obligation to oversee private disputes among individuals within their jurisdictions in order to safeguard the human rights guarantees set out by the ECHR.

The European approach to the right to freedom of expression may be regarded as the obligation of states to guarantee, for everyone within their jurisdiction, the right to hold, receive, and impart information regardless of frontiers, unless limitations are introduced within acts of national law if considered necessary in a democratic society. Such limitations may only be exercised by state authorities or entities acting on their behalf. State parties are also under a positive obligation to protect the right from unauthorized infringement by private parties. When it comes to safeguarding the execution of these obligations, it is the ECtHR that has the authority to hold states responsible for individual breaches of their obligations as set out by the ECHR. The personal complaint procedure has proven to be a relatively[6] successful tool in implementing the European standard of free speech in all its detail.[7] Its application to online services in general and social media more specifically is discussed below.

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[3] For the appropriate case-law, see: Council of Europe Research Division (2011b).

[4] On the positive and negative obligations of states under the ECHR, see generally: Akandji-Kombe J-F (2007).

[5] See, for example: European Court of Human Rights (1988), para. 34; and more recently: European Court of Human Rights (2005).

[6] The ECtHR has faced strong criticism from the British authorities, see, for example: Watt and Bowcott (2012).

[7] Largely thanks to the introduction of a unique "margin of appreciation" doctrine recognizing cultural differences among states which influence their interpretation of human rights and individual liberties. See generally: Greer (2000).

This detailed European standard serves to ensure the successful implementation of the universal human rights paradigm for freedom of expression. It should be understood as a detailed reiteration of the UN General Comment.

As per the United Nations CCPR/C/GC/34, the obligation to respect freedoms of opinion and expression is binding for every state party. This indicates that the state's executive, legislative, and judicial branches, as well as other national, regional, or local public or governmental authorities, are directly obligated to guarantee that these rules are not violated. Insofar as these Covenant rights are amenable to application between private persons or entities, state parties are also obligated to ensure that individuals are shielded from any private actions that might restrict them in their exercise of the freedoms of expression and opinion. States parties are required to ensure that the rights contained in Article 19 of the Covenant are enshrined in the domestic law of the state in a manner consistent with the guidance provided by the United Nations Human Rights Committee (UNHRC) in its General Comment No. 31 on the nature of the general legal obligation imposed on states parties to the Covenant.

Article 19 para. 1 requires states to ensure that individuals' freedom to express their beliefs is protected. The Covenant forbids any exceptions or limitations to this right. The right of an individual to change their opinion at any time and for any reason is included in the concept of freedom of opinion. No person's rights under the Covenant may be diminished because of their actual, perceived, or hypothetical opinions. Opinions of a political, scientific, historical, moral, or religious nature are all protected under this clause. Criminalizing the expression of an opinion is inconsistent with paragraph 1.

The UNHRC emphasized explicitly that "free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights". It is considered a cornerstone of a democratic society (UNHRC, 2011, 3).

8.3 Intermediary Liability in the 2022 Digital Services Act

These general guidelines and practices have been locally applied to reflect the challenges posed by the global information society. Europe has long taken the "mere conduit" approach to online media regulation, ensuring that service providers are not held liable for the content they merely allow access to. The most recent reiteration of this approach—as a good practice example—is briefly outlined below.

The DSA, prepared by the European Commission, is a key element of the reform of consumer protection in the information society. It serves as an example for other countries and regional organizations, including Central Asian countries. These countries benefit in terms of increased platform competition for consumers in the remittance market. It can help remittance senders make annual savings of millions of euros every year on remittances from Europe to Central Asia.

The legislative package, of which the DSA is a part, aims to increase the competitiveness of European goods and services in the context of a global digital economy. Announced on 16 December 2020 together with the Digital Markets Act (DMA),[8] the DSA is a milestone on the path toward the implementation of the European Digital Strategy (EDS) (European Commission, 2020). One of the aims of the EDS is the long-awaited reform of internet service providers' liability regimes, including "very large platforms" and social media. Through the DSA, the European Commission intends to replace the e-Commerce Directive that has been in force for over two decades.[9] The main objectives of the project include: (1) simplifying and ensuring transparency of the accountability regime for providers of electronically supplied services; (2) introduction of a due diligence standard and imposition of an obligation for "very large online platforms" to carry out a risk analysis, i.e., those used by a minimum of ten percent of users in the EU, or at least 45 million people; (3) introduction of new information and procedural obligations to protect users from unfair advertising, including profiling and disinformation; and (4) simplification of mechanisms that allow users to quickly and effectively protect their interests online, while guaranteeing respect for individual rights, in particular the right to a fair trial. All these changes in law and the accompanying practice are intended to reflect the fundamental assumption of Community law concerning the control of internet content. It is the prohibition of preventive censorship and the provision of judicial oversight of decisions that shape the scope of individual rights on the internet, especially those taken by private entities. Europe is once again trying to set standards for the effective protection of individual rights in cyberspace, without duplicating either authoritarian solutions that work well in the Global East or those based on a deep trust in the mechanisms of the free market, which Europe's Western partners have relied on. Central Asia values effective media censorship to protect national security and governmental authority, looking at online service providers in the same way as offline press publishers. This contrasts with the EU, which understands the fundamentally distinct nature of online media and provides a unique model of regulation offered for consideration here.

This unique nature of online and offline media in Central Asia is reflected in the latest (2022) report published by Reporters without Borders, which notes the decline of Central Asian states in the global ranking of press freedom (Putz, 2022). Except for Turkmenistan, every nation in Central Asia saw its real score fall, even as its ranking increased. As a result, governments might celebrate an increasing rank as evidence of advancement, despite a general decline in or stagnation of press freedoms in the area. With an internet penetration rate of roughly 50 percent in, e.g., Kyrgyzstan, online services and intermediary liability have yet to become prominent in regional public debates (CIA, 2022). Would it be worth considering a different approach to online

[8] Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act) of 15.12.2020, COM (2020) 842 final, 2020/0374(COD).

[9] EU Directive 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market (e-Commerce Directive).

media freedom? What is the cost/benefit analysis of the EU example? How does this reform impact free speech online, in the EU, and beyond? How will individual states deal with the updated requirements and ensure the rule of law and effective protection of free speech within their jurisdictions and across borders? In the next section, I will briefly analyze the Polish case, which is significant for the rule of law challenges faced by other Central and Eastern European states.

8.4 Digital Services Act (DSA) Package

The liability of providers of electronically supplied services is a well-regulated issue in Community law, notably through the e-Commerce Directive, which has been in force for over two decades. Its basic assumption is that service providers are not responsible for the content they allow their consumers to access. *Mere conduit* is a fundamental principle for the European approach to content control. It has also been included in the Digital Service DSA in a form very similar to Article 12 of the e-Commerce Directive and implemented in national law.

Respectively, Chap. 3 of the Polish Act on the Provision of Electronic Services excludes the service provider's liability for the provision of electronic services.[10] According to the provisions of Article 12 of the Act, a service provider who provides services involving the transmission in a telecommunications network of data by the recipient of the service or the provision of access to a telecommunications network shall not be liable for the content of such data if they are not the initiator of the data transfer, do not select the recipient of the data transfer, or select or modify the information contained in the transfer. This disclaimer also covers the automatic and short-term intermediate storage of the transmitted data if this action is solely to carry out the transmission and the data are stored only as long as is typically necessary for the transmission. According to Article 13 of the Polish Act, the exclusion also applies to providers of caching services, i.e., those who, by transmitting data and providing automatic and short-term intermediate storage of such data, accelerate re-access to them at the request of another entity, if they meet the conditions described above.

The most important provisions implementing this principle are contained in Article 14 of the Polish Act on the Provision of Electronic Services, which introduces a peculiar European variation of the notice and take-down mechanism known in the United States, sometimes called *notice and (take) action.* According to its provisions, the liability of hosting service providers is excluded if they are not aware of the unlawful nature of the data or related activities by providing "ICT system resources to store data by the recipient of the service" and, in the event of receiving an official notification or obtaining reliable information about the unlawful nature of the data or related activities, they immediately prevent access to these data. This provision is supplemented by Article 15 of the Act, which emphasizes the lack of a general

[10] Act on the Provision of Electronic Services (2002) as amended (hereinafter referred to as the Act).

obligation to monitor data, perceived in the European Union from the beginning of regulatory work as a threat to freedom of expression (Husovec et al., 2020).

Similar solutions can be found in the draft articles 3–5 of the DSA, although formally, under Article 71, the relevant provisions of the Directive will cease to apply. However, Article 71(2) of the DSA provides that any existing reference to the Directive and the national provisions implementing it, including the Polish Act on the Provision of Electronic Services, are to be treated as direct references to the DSA. Articles 3–5 of the DSA will be supplemented by additional provisions concerning, for example, platforms or disinformation, requiring their operators to exercise due diligence in preventing violations of the legally protected interests of users.

In addition to the standard transmission, caching, and hosting known from the e-Commerce Directive, the DSA introduces the possibility of also exempting from liability for transmitted content service providers involved in offering access to local networks, the operation of critical internet resources, such as the domain name system or keeping registers of top-level domain names (TLDs). It should be noted that while the DSA's objective is to extend the same legal rules to as many information society service providers as possible, both the wide range of inclusions and the unclear relationship between the DSA and, for example, media law, including, above all, the definition of an audiovisual media service and the editorial responsibility of its provider under the Audiovisual Media Services Directive, may be unsatisfactory. Moreover, the new rules do not cover search engines or content aggregators (Audiovisual Media Services Directive, 2010, pp. 1–24).[11]

Without carrying out a detailed analysis of the above articles and the interpretative and practical problems resulting from their content, it should be noted that since their adoption two decades ago, they have been the subject of fervent and justified criticism as unclear and as imposing on service providers a disproportionate burden of immediately deciding on the legality or illegality of the content to which they allow access.

Moreover, such decisions are often tantamount to an immediately enforceable decision of a single-instance, one-person quasi-court, such as an employee of the service provider acting as a moderator or examining a report regarding potentially illegal content, and directly affect the shape of individual rights.

They restrict freedom of expression (if access to the indicated content was "immediately prevented") or deprive individuals of the opportunity to effectively assert the protection of their rights (if the entry or image is not considered by the service provider to be blocked or, in practice, removed). The most considerable doubts, however, were raised not so much by the mechanism used by private individuals to protect their rights or other legally protected interests but by the cooperation that arose in the application of these provisions between organizations protecting copyright, often on behalf of foreign corporations and service providers operating in Europe.

Service providers have often put mechanisms in place on their own to detect potential infringements of intellectual property rights by specific groups of operators,

[11] See also: RIPE NCC (2021), para. 22.

contributing to the discussion on the undesirable "chilling" effect that the legislation has produced in European practice.

Service providers, defending themselves against possible financial liability for damage caused to copyright holders that could be harmed by the distribution of certain digitized materials, independently and hastily decided to prevent access to them, without analyzing the provisions introducing exceptions to protection, such as fair use or the specificity of the genre of creativity. Consequently, applying the Directive has often been described as encouraging lobbying by large media content providers, whether from Europe or the United States.[12] This exciting aspect of the intermediary liability regime and its implementation shows that service providers may effectively and diligently protect some online rights on the condition that sufficient incentives exist, including a pending liability. In the case of intellectual property rights protection, these result in individual business risk assessments that prevent any potential individual harm to copyright holders.

Criticism of the principle of mere conduit in European law has focused on excessive, quasi-judicial power transferred to private entities under the provisions of the e-Commerce Directive. An individual has often been deprived of a genuine opportunity to appeal against such a decision because it is technically impossible to establish the identity of the actual infringer of its legally protected interests or, as a last resort, the difficulty of attributing to it the perpetrator of the infringement.

8.5 Disinformation as a Crime

The DSA will likely perpetuate this imperfect solution and its "chilling" effect (European Union, 2021). Interestingly, this undesirable side effect of the e-Commerce Directive has recently become a subject of interest of the Polish Ministry of Justice, which presented a draft law on freedom of speech in social media (Polish Ministry of Justice, 2022). The project aims to force, e.g., Facebook administrators not to remove content that they consider inconsistent with the terms of use of the website, but, in the opinion of a possibly appointed Freedom of Speech Council, would be under Polish law. When the social media operator and the Council disagree on their perceptions of the free speech allowed online, the latter would be able to impose a fine of 50 million Polish Zloty (12 million euros) on the former.

This proposal and the motivation for it are a good illustration of the disputed division of powers between the state and the private service provider when it comes to setting the boundaries of freedom of expression and the right to be informed in the age of social media (Polish Ombudsman Office, 2021).

A day after Twitter banned US President Donald Trump from its platform for inciting violence on Capitol Hill in Washington D.C., the Polish Minister of Justice

[12] Cf. Article 17 of the Directive on Copyright and Related Rights in the Digital Single Market and amendments to Directives 96/9/EC and 2001/29/EC and the Polish complaint before the CJEU: Poland v. Parliament and Council, Case C-401/19. See also: Schwemer and Schovsbo (2020).

announced updated plans to introduce a Polish law ensuring freedom of online speech. He argued that democracy could only be discussed when "we are dealing with a guarantee of freedom of speech and freedom of the debate. Unfortunately, the decisions of large corporations have threatened and violated the values at the heart of democracy" (Polish Ministry of Justice, 2022). The Ministry of Justice started working on a draft act on protecting freedom of speech on social networking sites in 2020. Among other things, these efforts followed a ban on a right-wing party nationalist march advertised as a Facebook event in 2016 (Press, 2016). In November 2016, the accounts of the March for Independence, the All-Polish Youth, the National Radical Camp, and the National Movement were taken down by Facebook administrators. Yet, Facebook was unable to defend the ban under Polish law. When pressed directly by the Ministry of Digitization, it ineffectively referred to the nationalists' use of the "forbidden" phalanx and swastika symbols, which are not themselves illegal in Poland (while hate speech is, but that is not what Facebook referred to in their decision). The Facebook account of the Independence March was quickly restored in November 2016. In early 2022, Facebook banned the site of another right-wing party, Konfederacja, this time for spreading disinformation on COVID-19 and opposing the vaccine mandate (Wątor, 2022). This last incident directly incentivized the relaunching of the Freedom of Speech Council debate. Minister of Justice Zbigniew Ziobro clarified that blocking the Konfederacja site was "incredible and unacceptable" interference in the public debate and could influence future elections. Ziobro argued that "big corporations shape the image of the world in line with their belief". The draft act is meant as a countermeasure and intended to "ensure that Poles enjoy the freedom of speech and the right to information" (Polish Ombudsman Office, 2021). Should this new regulation be approved, social media users are to be granted "their right to a free debate and expression of views" and see it "protected against arbitrary deletion of content or its moderation" because it "is not in keeping with the worldview of the owner of a given website" (ibid.).

The most important novelty proposed by the draft would be the establishment of the Freedom of Speech Council. It would be chaired by the Chairman of the National Broadcasting Council, who, along with the other members would be elected for a six-year term by the Sejm (but not the Senate, where the ruling coalition does not have a majority). Another change would be the introduction of trusted "notifiers", who would act against disinformation disseminated via social networking sites. They would lodge a complaint with the Freedom of Speech Council requesting that a specific post on a social networking site be marked as disinformation. Candidates for trusted notifier entities would be certified by institutions such as the Ombudsman, the Ombudsman for Children, the Ombudsman for Patients, and the Polish Financial Supervision Authority, all of which have been recently reappointed by the ruling Polish coalition.

The most significant change however would be the departure from imposing administrative fines on social networking sites that do not fulfill the obligations contained in the Act, in favor of creating a new version of the category of crimes subject to multi-million fines. Such regulation would allow, argues the Ministry of Justice, for the fine to be transferred to an EU state, where the website claimed to be

interfering with the freedom of speech on social networking websites is located. In this way, the execution of the fine would be fully enforceable, ensuring that the big social media corporations respect the statutory regulations.

It is against this background and with these expectations that Poland has strongly supported the DSA. It sees it as a promise of enforceability of national standards of freedom of speech against individual international companies, however flawed or distant from international standards these might be.

8.6 Lessons Learned and the Way Forward

All European states are looking to regulate transnational social media companies. The EU, and subsequently Poland, have adopted the updated version of the notice and take-action mechanism described above. As noted, however, they take a different view on issues of state sovereignty and the limits of national jurisdiction online. The contrast between the most recent EU proposal on the DSA and its Polish reading might be exciting for post-Soviet countries.

Much the same as all post-Soviet states, Poland has a history of media censorship. It is a part of history that it was eager to abandon after 1989. Poland's current media system has been built on the democratic principles of freedom of expression and the rule of law. This is also the paradigm behind the European regulation of civil society with free and open media. Yet, as Central and Eastern European states such as Poland and Hungary have struggled with the rule of law since the late 2010s, the question of appropriate media regulation has come to the forefront of public debate. Since 2016, the Polish authorities have implemented legislative and practical measures that closely tie public media to the ruling party. This has been achieved by selecting specific individuals to lead Polish public media and by making legislative changes. Poland expects the new intermediary regime to ensure that the country's unique understanding of freedom of expression and protection of traditional values, including those related to religion, to be reflected in the application of the new law. While interesting, this is far from the original policy approach that the EU established for all free media and the Union. Central Asian states might therefore consider these examples with interest.

An effective intermediary liability system is on offer that grants freedom of expression to two online actors. On the other hand, post-Soviet states such as Poland and Hungary are returning to a strict policy regarding media freedom. In their future debates, Central Asian countries might want to consider a balanced approach to intermediary liability that encapsulates values enshrined in the UDHR discussed above but also considers their post-Soviet past, which might impact the local understanding and interpretation of these universal principles.

Moreover, like the General Data Protection Regulation (GDPR), which revolutionized the universal protection of privacy and personality, the DSA gives freedom of speech a universal transboundary effect beyond the EU. It may also interest non-European actors, such as non-EU member states within the OSCE, to comply with

these standards. As it stands, the emphasis of the DSA is on the universal nature of freedom of expression. While on the one hand, it will require intermediary service providers to allow their platforms to be used for hate speech, discrimination, or terrorist practices; on the other, the democratic principles of the rule of law and freedom of the press are the pillars of the transnational regulation that the EU imposes.

Facebook is one of the social networking sites whose owners take the utmost care to avoid accusations of spreading disinformation, bias, or manipulating the shared message. However, even the abovementioned project to establish a Freedom of Speech Council shows the futility of these efforts, for example, in the face of crushing accusations against Cambridge Analytica and its business model, based on targeted political advertising, which has been likened to military psychological operations (Flam, 2018). Despite developing the most advanced artificial intelligence system to support the fight against fake information and accounts, Facebook is once again proving powerless against government-backed disinformation (Facebook, 2020). In 2013 in St. Petersburg, a company operating under the name the "Internet Research Agency" was founded, now referred to by critics as a "troll factory". Numerous reports in the Western press have described its business model, which employs "copywriters" to create countless fake social media accounts that are used to distribute content developed on behalf of the Russian government (Legucka, 2019). The Internet Research Agency's budget of about 1 million euros allows the company to employ around 80 people on a rotational basis, "divided into foreign sections" (ibid.). They conduct discussions "in different European languages and evoke extreme emotions on the internet".

In June 2014, government papers were leaked by hackers. Based on these documents, the extent to which the Internet Research Agency attempted to sway public opinion through social media became publicly known. Until June 2015, when information from fake accounts used for biased internet trolling appeared in one of its offices, the Internet Research Agency had attracted little attention. The press then published stories of individuals getting paid for this job (Hans, 2014). Following reports from the U.S. Department of Justice in 2018, a U.S. grand jury accused 13 Russian nationals and three Russian organizations, including the Internet Research Agency, of breaking the law to interfere in "United States political processes and elections" (Mangan & Calia, 2018). Central Asia is another key area where the Internet Research Agency operates (Altynbayev, 2018). Historically, Moscow has seen Central Asia as within its sphere of influence. As a result, the development of Russian news outlets promoting Kremlin propaganda poses an extraordinary threat to this region.

Moreover, these outlets frequently provide two competing viewpoints for their audiences, inciting divides and conflicts. One example might be social media posts praising Russia's consumer policies and fostering a favorable image of the country in Central Asian nations while at the same time criticizing migrant labor from Central Asia on Russian television and in other media. Moreover, the Kremlin makes frequent use of regional social media platforms, well-known online forums, and so-called "influencers" or "trolls" to achieve their political aims of increasing divergence and "driving the ledge" (Warner, 2022).

According to the Georgian Center for Strategic Analysis for example., Russia uses social networks such as My World@Mail.Ru, VKontakte, and Odnoklassniki to advance its agenda and expand its cultural influence in the post-Soviet region (Altynbayev, 2018). Russia also utilizes the internet to sway elections elsewhere: It stirs up xenophobia in Europe and the United States, foments anti-American feelings, and strengthens Russian influence in Russian-speaking nations (ibid.).

8.7 Conclusion

Despite all these efforts, both regulatory and technological, there is no simple, single solution to the issue of online disinformation. The OSCE Representative for Media Freedom plays a crucial role in safeguarding media freedom and promoting the principles of free expression within the OSCE. While the Representative may align with the provisions outlined in the Digital Services Act (DSA), it is important to note that they do not explicitly incorporate the DSA into their mandate, as it falls outside the scope of their responsibilities. However, it is evident that the nonbinding recommendations issued by the OSCE Representative for Media Freedom are consistent with the objectives and principles set forth in the DSA. These recommendations aim to address challenges related to online media and digital platforms, such as ensuring transparency, accountability, and protecting freedom of expression, all of which align with the goals of the DSA. While the OSCE Representative for Media Freedom does not directly incorporate the DSA, their recommendations reflect a shared commitment to upholding media freedom and promoting responsible digital practices. They also agree with the defenders of free speech when they argue that the cure for disinformation is not a ban on free speech but more information. This is the path taken by the EU, which relies on cooperation rather than regulation when it comes to combatting fake news.

Not only has it been operating the EU versus Disinfo website since 2015,[13] where it identifies Russian disinformation on an ongoing basis, but in 2022 it published the updated Code of Practice on Disinformation (European Commission 2022). The updated document seeks to set out a new, broader range of commitments and measures to counter online disinformation. Signatories have committed to take action to demonetize the dissemination of disinformation, ensure the transparency of political advertising, empower users, enhance cooperation with fact-checkers, and provide researchers with better access to data (ibid.).

[13] EUvsDisinfo (2015).

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