Introduction to Part II

How Should Freedom of Expression Be Applied in the Digital Environment?

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The second part of this book focuses on freedom of expression. Freedom of expression is a cornerstone of human rights and democratic governance, 'providing the vehicle for the exchange and development of opinions'.[1] The internet (social media platforms in particular) has transformed how people communicate and exchange ideas, democratised access to information, and decentralised public discourse. At the same time, it has created a broad range of new threats, such as disinformation, platform monopolies, online hate speech, regulatory tensions, and the potential to undermine democratic principles.[2] This part looks at some of these challenges while aiming to answer the following core question: *How should freedom of expression be applied in the digital environment?* Examining this question is essential to ensure that this right continues to foster democratic participation and safeguard individual autonomy.

This part includes four chapters on different issues connected to the freedom of expression online – positive state obligations, new media doctrines, disinformation, and the potential digital imperialism of the EU. The combination of these topics tries to demonstrate the complexities of freedom of expression and provide a basis for understanding how freedom of expression can continue to be protected, balanced with other rights, and adapted to the realities of the digital age. This is achieved by examining the obligations of different actors, global regulatory tensions, and the challenges to democratic principles.

[1] UN Human Rights Committee, 'General Comment No. 34. Article 19: Freedoms of opinion and expression', 12 September 2011, UN Doc. CCPR/C/GC/34, para. 2.

[2] The UN Special Rapporteur on freedom of opinion and expression has reported on many such issues (e.g., gendered disinformation, media freedom and safety of journalists in the digital age, online hate speech, online content regulation, surveillance and human rights): UN, 'Special Rapporteur on freedom of opinion and expression. Annual thematic reports', www.ohchr.org/en/special-procedures/sr-freedom-of-opinion-and-expression/annual-thematic-reports).

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CHAPTER 9. FREEDOM OF EXPRESSION AND POSITIVE OBLIGATIONS OF THE STATE IN SOCIAL MEDIA

Chapter 9 opens the discussion with Artūrs Kučs' exploration of the evolving role of states in safeguarding freedom of expression within the digital environment, particularly on social media platforms. States have both negative obligations (to avoid undue interference) and positive obligations (to actively protect and ensure the right to freedom of expression). The latter include creating a favourable environment for public debate, protecting speakers from harm, and ensuring media pluralism. These obligations extend to relations between private parties, including users and internet intermediaries. The chapter responds to the core question of this part of the volume by noting the following aspects that should be central to applying freedom of expression online: (a) balancing it with protections against harmful content; (b) maintaining ultimate responsibility for safeguarding freedom of expression with states (not outsourcing decisions on limits of that freedom to private entities); (c) ensuring judicial oversight over content moderation; and (d) providing adequate legal regulation with effective remedies.

CHAPTER 10. THE DEVELOPMENT OF NEW MEDIA DOCTRINES ON FREEDOM OF EXPRESSION: HOW TO DEFEND DEMOCRATIC SOCIETY AND THE RULE OF LAW

Chapter 10 examines the evolution of freedom of expression doctrines in the context of digital media. Jukka Viljanen and Tomoe Watashiba look at how the European Court of Human Rights has adapted traditional doctrines to address challenges in the new media environment. Social media has expanded the concept of 'public watchdogs' beyond traditional media to include non-governmental organisations, bloggers, and activists, which may amplify the risk of disinformation and online hate and require a rethinking of liability issues. The authors explore how freedom of expression can balance individual rights, societal interests, and the regulation of disinformation and hate speech in the digital age. In relation to the core question, the chapter draws attention to the following aspects: (a) limitations on freedom of expression need to be guided by principles such as proportionality and the prohibition of the abuse of rights; (b) freedom of expression in digital spaces requires balancing individual rights with broader societal needs; (c) traditional doctrines (such as ensuring pluralism and protecting public watchdogs) must evolve to include the unique dynamics of digital media; (d) clear rules should be set for social media platforms without enabling censorship; and (e) pre-emptive measures, such as promoting media literacy and safeguarding public debate, must be adopted to protect democracy in the face of disinformation and authoritarian threats.

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CHAPTER 11. DISINFODEMIC THREATS. REAL, FALSE, AND FAKE NEWS: A CONTRIBUTION TO FIGHT DISINFORMATION WITHOUT AFFECTING THE FREEDOM OF EXPRESSION

Chapter 11 delves even deeper into the issue of disinformation. Oscar Puccinelli shows how the rapid dissemination of false, manipulated, and misleading information poses a threat to human rights, democracy, and public trust. Disinformation erodes public trust, affects electoral integrity, threatens public health, and harms individuals' rights to information and privacy. The chapter outlines the historical roots of disinformation, the technological factors that enable it, and the responses by public and private actors to mitigate its harmful effects. Puccinelli emphasises the need for cooperation among governments, civil society, and technology companies to develop rights-based responses to disinformation. He stresses the importance of international frameworks, such as the United Nations declarations, to guide balanced approaches. In response to the core question of this part – *How should freedom of expression be applied in the digital environment?* – the chapter asserts the following: (a) efforts to regulate false information must avoid overreach and comply with the principles of legality, necessity, and proportionality; (b) measures must address the harms caused by disinformation (e.g., hate speech, incitement to violence, threats to public health); (c) digital platforms need to have greater transparency in their operations; and (d) media literacy programmes need to be promoted to empower individuals to critically evaluate information, reduce the impact of disinformation, and to use their freedom of expression without spreading disinformation.

CHAPTER 12. ONLINE FREEDOM OF EXPRESSION: A NEW EU IMPERIALISM?

In Chapter 12, the final chapter of this part, Philippe Jougleux examines the evolving role of the European Union (EU) in regulating online freedom of expression and the global implications of these efforts. The author frames EU interventions, such as the General Data Protection Regulation (GDPR) and the Digital Services Act (DSA), as examples of digital imperialism, whereby the EU's legal frameworks impose European values and legal standards on other jurisdictions (and create potential for global legal conflicts). The chapter explores key topics such as copyright law, content moderation, hate speech, and the right to be forgotten, while contrasting the EU's approach with the US's philosophy of free speech. The EU's rights-based approach to balancing free expression with societal harm contrasts sharply with the US emphasis on the marketplace of ideas and minimal restrictions. In response to the core question, the chapter focuses on the following aspects: (a) freedom of expression must be balanced against other societal

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interests, such as privacy, hate speech mitigation, and copyright protection; (b) there is a need for international consensus on freedom of expression in digital spaces (and subsequent joint regulation); (c) it is important to recognise the central role of online platforms in public debate and, accordingly, regulating them to ensure accountability while safeguarding freedom of expression; and (d) a balanced approach that reconciles regional legal traditions with the global nature of the internet should be adopted.

SHARED THEMES AND INTERCONNECTIONS

Although these four chapters explore diverse aspects of freedom of expression in the digital environment, they converge on the challenges of balancing this fundamental right with other human rights, societal needs, regulatory obligations, and technological realities. In the following, parallels are drawn through shared themes and how each chapter addresses the core question of this part: *How should freedom of expression be applied in the digital environment*?

A. BALANCING FREEDOM OF EXPRESSION WITH REGULATION

All four chapters highlight the tension between protecting freedom of expression and regulating harmful content or behaviour. They advocate for a balance between preventing harm (e.g., through disinformation and hate speech) and avoiding overly restrictive or arbitrary regulations that hinder democratic debate.

- Chapter 9 on the positive obligations of states in social media stresses the need for states to protect freedom of expression while setting clear rules for content moderation, ensuring private platforms do not overstep in censoring speech.
- Chapter 10 on new media doctrines on freedom of expression emphasises proportionality and context in applying freedom of expression doctrines, noting that digital platforms must balance rights with responsibilities, particularly in kerbing disinformation and hate speech.
- Chapter 11 on the threat of the disinfodemic discusses how combating disinformation requires targeted measures, but warns against overreach that stifles legitimate expression.
- Chapter 12 on EU imperialism critiques the EU's regulatory frameworks (e.g., DSA, GDPR) for imposing global standards, which can over-regulate platforms and risk excessive censorship.

B. THE ROLE OF STATES AND PLATFORMS

Each of the chapters engages with the issue of the division of responsibility between states and platforms in safeguarding freedom of expression. The authors maintain that states should assume primary responsibility for protecting freedom of expression

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and setting clear regulatory frameworks while ensuring that platforms are transparent and accountable in their content moderation practices.

- Chapter 9 focuses on the positive obligations of states to provide judicial oversight and emphasises the need to prevent private platforms from being the ones setting the boundaries of freedom of expression.
- Chapter 10 advocates for state-level interventions to ensure platforms uphold free expression without succumbing to profit-driven biases.
- Chapter 11 is critical of the delegation of the regulation of disinformation to platforms and calls for stronger state oversight to protect users from arbitrary content removal.
- Chapter 12 warns that EU regulations often delegate too much power to platforms, enabling them to act as gatekeepers of public discourse and risking private censorship.

C. TRANSPARENCY AND ACCOUNTABILITY

The importance of transparency in platform decision-making and accountability in content moderation processes is a recurring theme in the chapters of this part. Transparent, rights-based approaches to content moderation are essential for safeguarding freedom of expression in the digital age.

- Chapter 9 supports judicial oversight and user access to remedies as safeguards against opaque moderation practices by platforms.
- Chapter 10 argues that platforms must adopt transparent practices to foster public trust and accountability while addressing systemic risks such as hate speech.
- Chapter 11 advocates for platforms to disclose their moderation criteria and establish mechanisms for users to contest content removal decisions.
- Chapter 12 critiques the lack of transparency in algorithmic content moderation and calls for mechanisms to address issues such as shadow banning and disproportionate content filtering.

All four chapters also point out the need for international cooperation and international standards, which are necessary for freedom of expression to exist consistently across the global digital landscape, and to avoid fragmentation.

The chapters in this part collectively emphasise the intricate balance required to uphold freedom of expression in the digital age. By addressing the evolving obligations of states, the role of platforms, and the challenges posed by disinformation and regulatory disparities, these contributions provide insights into how this fundamental right can be preserved and adapted to the digital environment. Together, they emphasise the importance of safeguarding democratic principles, fostering accountability, and promoting international collaboration to ensure that freedom of expression remains a cornerstone of human rights in the face of rapid technological and societal changes.

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