

# Evaluating the Different Approaches to Social Media Regulation and Liability

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**Abstract:** With more than 5,17 billion users, social media is one of the most powerful forces in the world today. Consumers and businesses rely on it for connecting, researching, and communicating. Over the years, social media platforms have evolved into complex landscapes plagued by data privacy breaches, content moderation controversies, and mounting concerns about mental health outcomes. But how do governments and social media companies protect the public safety against risks and threats that social media present, such as misinformation, deep fakes, hate speech, and extremist communication? The discussion explores the different approaches to regulation and liability of social media platforms. Some governments have shifted away from social media platform self-regulation of content moderation to legal regulation. For example, the European Union Digital Services Act and the United Kingdom Online Safety Act provide for the accountability of a social media company for illegal and harmful content on its platform, but the approaches differ. Government control treads a fine line between free speech and censorship, over-regulation that may stifle innovation, and the responsibilities that come with running a platform, public safety and the future of the internet. In the United States (US) free speech is protected under the First Amendment of the Constitution which allows citizens to express themselves without government interference. Since social media companies are private companies, they can decide which speech they wish to host and amplify. Section 230 of the Communications Decency Act provides immunity against liability for user-generated content. In recent years there have been legal disputes regarding the immunity protection and content moderation decisions. Allowing a social media platform to self-regulate may be good for innovation, but social media is now a powerful communication space with billions of voices and some of these voices are illegal or harmful. It may be that some form of government oversight should be in place to protect the public safety. The discussion highlights that governments around the world are increasingly alarmed by the potential for social media platforms to be exploited, and this has resulted in an ongoing struggle between the need for free expression and the imperative to maintain public safety.

**Keywords:** Social Media Regulation; Social Media Liability for Harmful and Illegal Content; Public Safety and Social Media Regulation; Free Speech on Social Media.

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## 1. Introduction

Recent years have seen many developments in the social media realm, some of these developments have been controversial and are open to debate. Social media regulation, liability and issues relating to regulation and liability have been at the forefront of the developments. It has significant implications for free speech, user privacy, cybersecurity and platform responsibility to name but a few. The aim of social media regulation is to protect the rights of social media users and to establish a safe and secure online environment. The discussion will highlight that governments have different approaches to social media regulation and liability. The approaches will be explored in order to determine which may be the most effective in ensuring a digital environment that balances the benefits with the costs.

The following issues will be addressed:

- The threat social media presents to public safety;
- The different approaches to social media regulation and liability and why it has evolved in this manner;
- The practical effectiveness of the different approaches in establishing a safe and secure social media space; and
- The ongoing struggle between the need for free expression and the imperative to maintain public safety.

## 2. Understanding the Threat That Social Media Presents to Public Safety

Social media platforms revolutionised how information is shared and consumed, influencing global dialogue and cultural trends, bridging geographical divides and fostering global connectivity (Watney, 2024). It is a powerful disruptor and has considerable influence in society. Businesses have also found a dynamic space in these platforms, utilising them for customer interaction, brand promotion, and market research. These platforms continue to evolve, incorporating new features such as live streaming, augmented reality, and e-commerce capabilities (Walsh, 2022; Hines, 2024; Oladipo, 2024).

In the early days of the internet, it was hailed as the great equaliser, giving everyone a voice. Social media platforms emerged as the town square of the 21st century, where ideas could be exchanged freely, unfiltered by traditional gatekeepers like governments or mainstream media (Markovic, 2024). But the role of social media evolved into a double-edged sword. On the one hand, platforms like X stand as champions for free speech, allowing voices to be heard that might otherwise be silenced. On the other hand, they are powerful instruments in the hands of those who control them, with the potential to shape public discourse narratives, influence public opinion, and even incite conflict (Markovic, 2024).

In summary: The benefits of social media come at a cost. Social media fosters a dark side which threatens the safety and security of users. But the question is how should the public safety on social media be governed? The discussion hereafter explores the different approaches to social media regulation and liability and why it has evolved in this manner. It also looks at the practical enforcement of the different approaches in establishing a safe and secure social media space; and highlights that the approaches to regulation and liability continue to evoke debate and controversy.

### **3. Social Media Regulation and Liability**

#### **3.1 Self-regulation Versus Legislative Regulation**

In the early days of social media the platforms did not monitor user-generated content. They were not considered publishers but intermediaries, and could not be held liable for user-generated content. However, as the growth and impact of social media evolved, concerning cybersecurity issues such as misinformation, deep fake, hate speech, harassment came under the scrutiny of governments. Governments have a legal duty to protect the safety and security of their citizens on social media. Social media companies' conduct in respect of the protection of users' privacy, personal information, safety, security and liability for privacy and data breaches, became an issue of contention. Today social media platforms provide "terms of service" and indicate which conduct would be tolerated. However, social media companies may not have the determination to enforce these terms and conditions unless a government imposes a legal duty to ensure compliance and non-compliance is linked to a sanction. It could be that only government intervention by means of legislation will incentivise social media platforms to ensure their platform is safe and secure.

When it comes to government intervention by means of legislation, social media can either be viewed as:

- an architecture impacted by design choices; or
- a market governed by incentives.

Lubin et al (2024b) postulates that the framework would be indicative of the purpose of legislative regulation. If social media is viewed as architecture, then regulation is aimed at improving design choices and if it is considered as a market, then it is aimed at correcting market failures. For example, Sperry (2024) views social media as a market governed by incentives. He opines that social media companies are multi-sided platforms that facilitate interaction between advertisers and users by curating user-generated content that drives attention to their platforms. To optimize the platform's value, social media companies' must keep users engaged. Sperry (2024) provides that the incentives may become skewed and lead to situations where social media usage results in negative extremities due to insufficient protection of privacy, too much hate speech, misinformation or harm to children. Although social media platforms provide privacy policies, content moderation standards and special protections for minors, the negative consequences from social media may necessitate legislation.

#### **3.2 Self-regulation Such as the US Federal Law**

The US approach is relevant as it is home to most leading social media platforms. The President-elect, Trump, has promised a regulatory environment that would set free tech companies burdened by government intervention. Trump's administration aims to foster innovation by reducing oversight and promoting a more liberal market.

##### *3.2.1 Impact of the First Amendment on Social Media Platforms*

The First Amendment of the US Constitution provides: "Congress shall make no law... abridging the freedom of speech." The First Amendment free speech guarantee is only applicable to the government. Social media platforms are private companies and are not bound by the First Amendment. In fact, they have their own First Amendment rights, their media rights. They have no First Amendment obligation to protect freedom of speech.

Social media companies self-regulate the content in accordance with their “terms of service”. There is no perfect content moderation; every content moderation decision creates winners and losers. Someone is going to want that content up, and someone else is going to want the content down. In 2024, the Supreme Court in *Moody v Netchoice* and *Netchoice v Paxton* (referred to as the SCOTUS decision) had to decide whether laws in Texas and Florida violated the First Amendment by prohibiting social media from moderating user content. In 2021, Florida and Texas enacted statutes regulating large social media companies and other internet platforms. The states’ laws differ in the entities they cover and the activities they limit. Both curtail the platforms’ capacity to engage in content moderation – to filter, prioritise and label the varied third party messages, videos and the other content their users wish to post. Both laws also include an individualised explanation provision, requiring a platform to provide reasons to a user if it removes or alters their posts. The Supreme Court found that social media companies are private organisations and can decide which speech they wish to host and amplify. The government cannot impose laws that regulate speech because it claims to seek a balance of viewpoints or a diversity of expression.

In the past social media companies have called for legislation that provides guidelines in respect of how they should deal with harmful content. Elon Musk who is a “free speech absolutist” opined in 2018: “I think there should be regulations on social media to the degree that it negatively affects the public good. We can’t have like willy-nilly proliferation of fake news, that’s crazy” (Dempsey, 2023). A year later in 2019, Meta CEO, Zuckerberg, observed “From what I’ve learned, I believe we need new regulation in four areas: harmful content, election integrity, privacy and data portability” (Dempsey 2023). But there is no clarity on the format of such regulation. If the Trump administration does consider legislation, should it encompass legislation that provides for user generated content in general with non-compliance linked to a penalty; or should it be sector-specific, for example, regulate the harmful consequences of social media usage on young people. In this regard, the proposed Kids Online Safety Act (KOSA) serves as a good example (Hagan, 2024). Many of the harms that young people experience online and on social media are the result of deliberate design and it is the architecture and design choices that KOSA targets. Since its introduction in 2022, KOSA has undergone multiple revisions. The bill aims to put in place stricter settings by allowing children and parents to disable addictive features, enable privacy settings and opt out of personalised algorithmic recommendations. In general, online platforms would have to default to the safest settings possible for accounts it believes belong to minors.

### 3.2.2 *Impact of Section 230 of the Communications Decency Act on Social Media Liability for User-generated Content.*

In 1996, Congress passed the Communications Decency Act. Section 230 of the Communications Decency Act shields Internet platforms from legal liability over most user content and gives social media companies protection over their decisions to moderate content in certain circumstances. Section 230 has been interpreted to protect platforms from civil liability for leaving content up and also to protect them if they choose to take content down. The aim of section 230 was to promote a then emerging digital economy. Dempsey (2023) postulates “Many would say it more than achieved that but has since had delirious unforeseen consequences”.

In 2023 the Supreme Court in *Gonzalez v. Google (2023)* and *Twitter v. Taamneh (2023)* had to determine whether social media could be held liable for third party user-generated content (Fisher, 2024). Both court cases did not challenge the legality of section 230. At the heart of the *Gonzales* case was a legal nuance: do the protections provided by section 230 extend to the recommendation technologies they deploy? In 2015, Nohemi Gonzalez was among 90 victims of the attack by Islamic State gunmen on the Bataclan theatre in Paris. Another 40 died in other coordinated attacks. Her family launched an action against Google saying that it is liable for promoting ISIS via the algorithms used on its YouTube video channel by allowing ISIS to post videos, communicate its messages and radicalise new recruits. In the *Taamneh* case, Nawras Allassaf died in an ISIS attack at the Reina nightclub in Istanbul on New Year’s Day in 2017. The attack left 39 dead. The point of contention was whether, in spite of section 230, Twitter, Facebook and YouTube could be held liable for its failure to take sufficient steps to prevent use of social media platforms by ISIS to promote its agenda, solicit donations and threaten and intimidate civilian populations. The Supreme Court held that social media platforms, such as, YouTube or Twitter were not liable for content posted by third party users on their platforms (Fisher, 2024).

Over the years, social media liability for user-generated content has evoked many dividing opinions and criticism. On the one hand, activist groups want social media companies to take a tougher stand against harmful content and argue that section 230 need to be modified to mitigate the harmful effects of social media. They argue section 230 makes it impossible to hold social media companies accountable for the harm their platforms cause.

On the other side, free speech advocates opine that social media platforms cannot claim section 230 immunity from liability for others' speech and then demand that they are speakers with full First Amendment rights over others' speech. This argument was raised in the SCOTUS court cases.

### 3.2.3 *Social Media Liability for Privacy and Security Violations*

A social media company is not immune from liability for privacy and data protection violations. Facebook has encountered numerous data privacy and user safety issues over the course of its 20 year existence (Ali, 2024). One of the most notable issues occurred in 2018 when it was revealed that a British consulting firm, Cambridge Analytica used 87 million personal information without permission in early 2014 to build profiles of individual voters in the US to target them with personalised political advertisements (Watney, 2024). The Federal Trade Commission (FTC) showed zero tolerance for such conduct by a social media company and imposed a \$5 billion penalty and provided restrictions which will hold Meta accountable for privacy violations.

### 3.2.4 *Banning of Social Media Platform*

TikTok (known as Doyin in China) is a short-form video-sharing app. Despite only launching in 2017, it is one of the fastest-growing apps in the world (Oladipo, 2024). The future of TikTok, which is owned by ByteDance, is uncertain in the US. In April 2024 a bill was signed into law requiring ByteDance to sell the app to a non-Chinese owner or be banned in 2025 (Kerr, 2024). A federal appeals court ruled in December 2024 to uphold the law that forces TikTok to sell its assets to a non-Chinese company or be barred from the country entirely. The decision is the latest twist in a years-long battle between the US government and TikTok (Kerr, 2024).

The US government under Biden opines that TikTok is a national security threat because China could use the app to access personal data from millions of Americans. Lawmakers also say that they fear China could manipulate what millions of people see on the app and spread propaganda. Trump, who unsuccessfully tried to ban TikTok during his first term in 2020, said before the November 2024 presidential election that he would not allow the TikTok ban. If the law is upheld, it will give the US government sweeping powers to ban other foreign-owned apps that could raise concerns about collection of Americans' data - and it could open the door to a future crackdown on many other foreign owned apps (Shepardson and Scarcella, 2024). Such banning would also contribute to further geopolitical tension.

### 3.2.5 *Concluding Remarks in Respect of Self-regulation*

The US government has allowed social media platforms to self-regulate. As discussed, there have been legal disputes regarding social media responsibility in respect of user-generated content and how they moderate content. These legal disputes have been decided in favour of the social media platforms. It should be noted that not all social media platforms self-regulate; some have a hands-off approach with a free speech absolutist approach.

The emphasis under the Trump administration will most probably continue to focus on the protection of free speech with social media companies continuing to self-regulate user-generated content. This does not mean that there are no calls for legislative intervention, especially regarding the harm that social media may cause to young people. In my opinion, government oversight relating to how social media platforms exercise their self-regulation of user-generated content provides not only legal certainty, but it also protects public safety.

## **3.3 Legislative Regulation Such as the EU Digital Service Act (DSA) and UK Online Safety Act (OSA).**

With the adoption of the EU DSA and UK OSA, the EU and UK revised the self-regulatory model where social media platforms were free to define rules and procedures of online content moderation and moderation practices on their own terms. The EU DSA and the UK OSA share the common goal of regulating the digital world, yet they each have distinct characteristics. The DSA takes a comprehensive approach, addressing a wide range of online user concerns, whereas the OSA displays a more specialized focus on combating high-harm illegal content. Furthermore, the OSA emphasizes the importance of proactive monitoring as opposed to the DSA's reactive notice and takedown procedures.

### 3.3.1 *Brief Overview of the EU DSA*

The EU adopted DSA in 2022. The regulation imposes various duties related to content moderation on social media platforms and became fully effective in February 2024. **Every EU Member State must implement regulations** to adapt to the DSA.

There are several ways in which the DSA safeguards users' free speech interests against platforms. It imposes obligations on platforms to include clear information about content restrictions in their terms of service and pay due regard to free speech rights of users when applying and enforcing these restrictions (Art. 14). Platforms must also provide a statement of reasons to users whose content has been restricted or whose account has been suspended or terminated (Art. 17). Furthermore, platforms are required to set up an internal complaint-handling system, which enables users to complain about platforms' decisions to limit their content or accounts (Art. 20).

The French government has made it clear that compliance with its strict moderation laws in line with the DSA is non-negotiable. In 2024, Pavel Durov, Telegram's founder and CEO, was arrested in Paris, France for his platform being used for criminal activity, in other words for non-compliance with France's content moderation laws (Sidley, 2024). He, alongside Elon Musk, are symbols of resistance against government control over digital communications. Durov's arrest highlighted the tension between free speech and government control. It also sparked a global debate on the fine line between freedom of speech and the responsibilities that come with running a social media platform that allows for uncensored and encrypted communication. The charges against him—allegations of enabling criminal activities such as child exploitation, drug trafficking, terrorism, and fraud, as well as refusing to cooperate with authorities—are severe. However, they also raise critical questions about the extent to which a platform owner can or should be held accountable for the actions of its users. Durov opined that to charge a CEO with crimes committed by third parties on the platform he manages is a misguided approach. The French authorities may argue that unfettered speech which allows the commission of crime, cannot be allowed as it affects the safety and security of users within their sovereignty and ultimately negatively impacts on the future of the internet.

### 3.3.2 *Brief Overview of UK OSA*

The Online Safety Act 2023 (the Act) is a set of laws that protects children and adults online (Online Safety Act: explainer; 2024). It comes fully into effect in 2025. It puts a range of new duties on social media companies and search services, making them more responsible for their users' safety on their platforms. Protecting children is at the heart of the Online Safety Act. Although some content is not illegal, it could be harmful or age-inappropriate for children and platforms need to protect children from it. The Office of Communications (Ofcom) oversees the implementation of OSA and is responsible for developing guidance and codes of practice that will set out how online platforms should meet their duties.

Platforms must also remove any other illegal content where there is an individual victim (actual or intended), where it is flagged to them by users, or they become aware of it through any other means. The Act sets out a list of priority offences. These reflect the most serious and prevalent illegal content and activity, against which companies must take proactive measures. The illegal content duties are not just about removing existing illegal content; they are also about stopping it from appearing at all. Platforms need to think about how they design their sites to reduce the likelihood of them being used for criminal activity in the first place. The kinds of illegal content and activity that platforms need to protect users from are set out in the Act. OSA also created new offences.

In 2024 the UK experienced anti-immigrant protests which erupted in at least 15 cities across Britain, leading to the most significant civil disorder since 2011. The unrest began after a stabbing at a Taylor Swift-themed dance class in Southport, England, which resulted in the deaths of three young girls. Allegedly, false information spread online suggesting the attacker was an illegal Muslim immigrant. However, the suspect, Axel Rudakubana, is a 17-year-old born in Cardiff, Wales, with unknown religious affiliation, though his parents are from predominantly Christian Rwanda. Despite the facts, anti-immigrant rioters targeted mosques and hotels housing asylum seekers, with much violence directed at the police. The riots highlighted the role of platforms like X and Meta in both facilitating and exacerbating social unrest. While Meta took a more proactive approach to content moderation, removing inflammatory material and attempting to prevent the spread of misinformation, X's more relaxed policies allowed a more comprehensive range of content to circulate (Markovic, 2024). Such an approach included not just legitimate protest organisations but also harmful rhetoric that fuelled violence and division. The contrast between the two platforms is stark. Meta, with its more stringent content policies, was criticised

for stifling free speech and suppressing dissenting voices. Yet, in the context of the British riots, its approach may have helped prevent the situation from escalating further (Markovic, 2024). On the other hand, X was lauded for its commitment to free expression, but this freedom came at a price with some accusing it of enabling the violence. In future, the OSA will hopefully prevent such unfettered speech on a social media platform and prevent disinformation from spreading.

### 3.3.3 Concluding Remarks Regarding Government Regulation

Many countries are considering how to make the internet safer. Some countries have implemented legislation to tackle harmful and illegal content, especially in respect of vulnerable users such as young people. There is a fine balance between freedom of speech and public safety, but legislation may be the only way in which the public safety can be guaranteed. The 2024 UK riots is a clear illustration of what happens when there is no speech restriction and accountability.

## 4. The Struggle Between Free Speech and Public Safety

Sidney (2024) postulates the following questions:

- When does the state have a right to insist on reasonable moderation of digital content?
- When does the state have a right to demand access to information which may help them with the investigations of cybercrime and extremist communications?
- When is free speech less than free?
- To what extent should users trade their freedom for security?

The above-mentioned questions are not new but the solutions are still being debated. There is no consensus on the extent of government control of social media.

The internet was designed to be borderless. Initially countries paid little notice at the outset because the internet was small until, suddenly, it was everywhere as the preferred warehouse and transmission technology for all information (Sidley, 2024). The growth of social media has been phenomenal, for example at the end of 2004 Facebook (now Meta) had over 1 million users and 20 years later 3 billion users (Oladipo, 2024).

But over the years it became clear that the dark side of social media necessitate attention as social media misuse impacts negatively on the internet to the detriment of all who are dependent on it. Social media platforms should have some responsibility for the content posted on their sites to protect public safety and prevent the spread of harmful material, such as misinformation and hate speech. The question of content control on social media platforms is a complex one. However, this responsibility must be balanced with the need to protect free speech, as overregulation could lead to censorship and stifle open communication. Content moderation is an enormous task, given the billions of daily words and pictures they have to filter. Platforms use artificial intelligence to look for certain markers and humans to make the more difficult decisions, but it is a system prone to error, with much indecent material slipping through and good material being blocked. Striking the right balance between free expression and preventing harmful content is a significant challenge. It is crucial for platforms to have guidelines and policies to maintain a safe and respectful online environment. However, transparency, fairness, and accountability in content moderation are equally important. The debate should focus on finding the right mechanisms to ensure responsible content control without infringing on freedom of speech.

The internet may be global but countries are asserting their sovereignty and are demanding obedience in respect of compliance with their domestic laws. No platform is above a country's laws which was clearly illustrated with the arrest of the CEO of Telegram for non-compliance with the French user-generated content moderation laws. In 2024 Brazil – the country with the fifth largest digital population – blocked the social media platform, X after Elon Musk refusal to comply with local laws (Philips, 2024). A social media platform must follow the laws of the country in which it provides a service, even if it does not agree with the laws of the country otherwise it must withdraw its services. In 2024 the Turkish government blocked Instagram for nine days after the platform failed to comply with its domestic laws (Markovic, 2024). The move came after a senior Turkish official accused the platform of blocking condolence posts following the assassination of Ismail Haniyeh, leader of Palestinian militant group Hamas. The Turkish government considered such blocking by Instagram as censorship. Whether non-compliance should result in the arrest of the CEO of a social media platform for third party conduct or the banning of a platform are controversial issues. The increase in social media shutdowns is a worrisome trend. The legal position becomes even more murky if a country decides to ban a platform because it presents a threat to national security. Such a ban could further contribute to the geopolitical tension that exists.

## 5. Conclusion

Cybersecurity and online safety continue to be top priorities for governments.

When it comes to the future of the internet, and specifically to social media, I concur with Sidney (2024) who opines: “Earlier in my life, I would have rooted for unadulterated freedom of speech but, given the ease with which the internet has been exploited by a seemingly endless parade of miscreants, I’d rather give up some freedoms and allow some very careful oversight of information where necessary”. There are instances that speech needs policing in accordance with strict guidelines which balances free speech with public safety.

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