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REMEDIS

Online Platform's Liability and
Disinformation in the United States: Insights
from the European Union

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Introduction

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Introduction

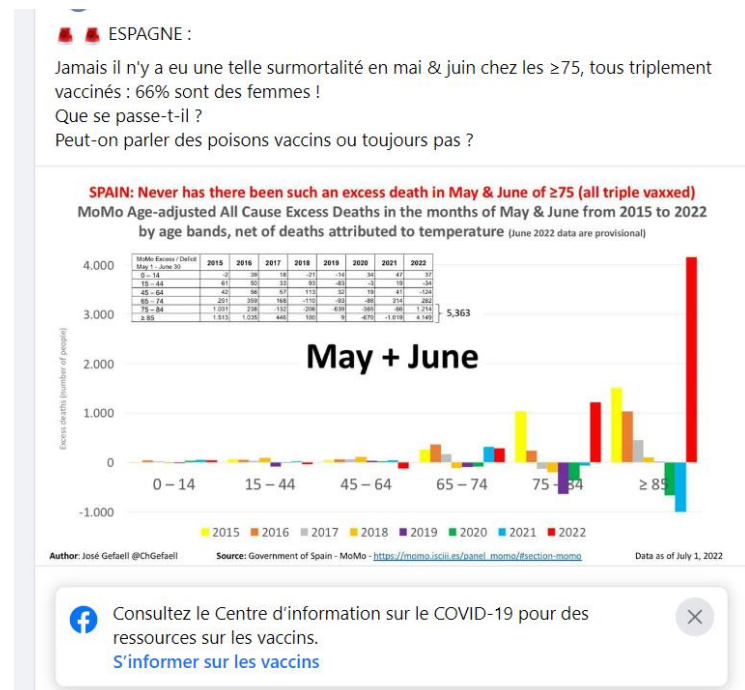
- Dis- and misinformation on online platforms has been identified as a public policy issue, leading to violence, electoral manipulation and slowing down of sanitary policies



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Introduction

- Online platforms are not inactive in the fight against dis- and misinformation.
- Online platforms rely on content moderation to reduce dis- and misinformation on their systems.



This Tweet violated the [Twitter Rules](#). [Learn more](#)

Introduction

- Currently, the fight against mis- and disinformation on online platforms is mostly left in their hands through **self-regulation**.
- Critics have emerged regarding the moderation of dis- and misinformation by online platforms :
 - Platforms decide themselves and can change their policies at any time
 - Lack of transparency and claims from users
 - Contractualization of freedom of expression
- Platforms have been accused to favor polarizing content in order to maximize engagement
- Platforms benefit from a **liability exemption** regarding the content posted by their users:
 - In the US : Section 230 of the Communication Decency Act (1996)
 - In the EU: Article 14 of the eCommerce Directive (2001)

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Introduction

- Response from the EU : the Digital Services Act



Thierry Breton ✓
@ThierryBreton

...

It's time to put some order in the digital "Wild West".

A new sheriff is in town — and it goes by the name [#DSA](#).

[Traduire le Tweet](#)



The Liability Exemption for Online Platforms

Historical perspective

- With the development of the Internet in the late 1990's, questions arose regarding the liability of online intermediaries such as hosting services.
- At the time, hosting services usually had little influence on the content they hosted.
- The tech sector argued that putting too much liability on intermediaries would put high pressure on the sector and prevent the development of the digital industry.

Exemption liability in the US and the EU



US – Section 230, CDA (1996)

- Provider of interactive computer service ≠ publisher
- No liability for :
 - Content provided by third-party
 - Content moderation



EU – article 14, eCommerce Directive (2001)

- No liability for hosting services for content provided by third-party if
 - No knowledge
 - Expedious removal once knowledge is established

Online Platforms : hosting services or publishers?

- Online platforms rely on algorithmic recommender system and curation to maximize the time spent by their users as part of their strategy in the economy of attention
- Does this role entails protection under section 230 of the Communication Decency Act?
- Can this role still be considered neutral, technical and passive, as required by ECJ case law?
 - *YouTube/Cyando*, ECJ (2021) → recommender systems does not entail knowledge of illegal content for YouTube

Recommender system and Section 230 : Google v. Gonzalez

Google v. Gonzalez – Facts of the case

- In 2015, 23-year-old Nohemi Gonzalez was killed during the terrorist attacks in Paris
- Parents sued YouTube (as well as Facebook and Twitter), accusing the platforms of :
 - Allowing Islamic State propaganda videos on the platforms
 - Recommending those videos through their algorithms systems, therefore aiding and abetting terrorism
- The case was dismissed by California courts
 - 22 Octobre 2022 : writ of certiorari granted by SCOTUS
 - 21 February 2023 : oral proceedings in front of SCOTUS

Google v. Gonzalez – Issue presented to the Court

Whether Section 230(c)(1) of the Communications Decency Act immunizes interactive computer services when they make targeted recommendations of information provided by another information content provider, or only limits the liability of interactive computer services when they engage in traditional editorial functions (such as deciding whether to display or withdraw) with regard to such information.

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Google v. Gonzalez – Arguments from both parties

Arguments from the plaintiffs

- Use of a recommender system means YouTube has an **active** role in relation to the terrorist videos
- Section 230 should not apply when platforms rely on algorithms to **choose how they display content.**

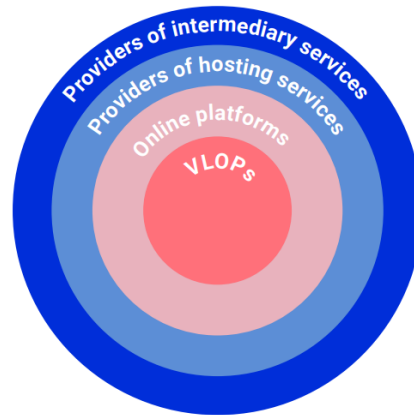
- Section 230 protects platforms from a massive amount of lawsuits
- Removing Section 230 protection would restrict online **freedom of speech** through over-censoring and possible automatic filtering of content
- Reform should come from Congress, not the judiciary

Arguments from the defendants

The Digital Services Act

European initiatives in order to curb disinformation – the Digital Services Act

- Part of EU strategy regarding platforms together with the Digital Markets Act
- First version unveiled in December 2020 by the EC. Final text was voted by the EP in July 2022 and approved by the Council in October 2022 -> entry into force : 1/1/24 (earlier for large platforms)
- Tiered structure : more obligations for large platforms (VLOPs: >45M EU users)



(Strowel and Somaini, 2021)

European initiatives in order to curb disinformation – the Digital Services Act

- Objectives :
 - Protecting rights of users online
 - Ensuring a safe, predictable and trusted online environment
 - Provide the appropriate supervision of digital services
- No major change regarding online platforms' liability but :
 - Introduction of a good samaritan clause
 - Strengthened transparency obligations for online platforms
 - Strengthened due diligence obligations for VLOPs

European initiatives in order to curb disinformation – the Digital Services Act

- Terms and condition
- Notice & Takedown
- Statement of reasons
- Recommender systems
- Data access for researchers

**Transparency &
users' rights**



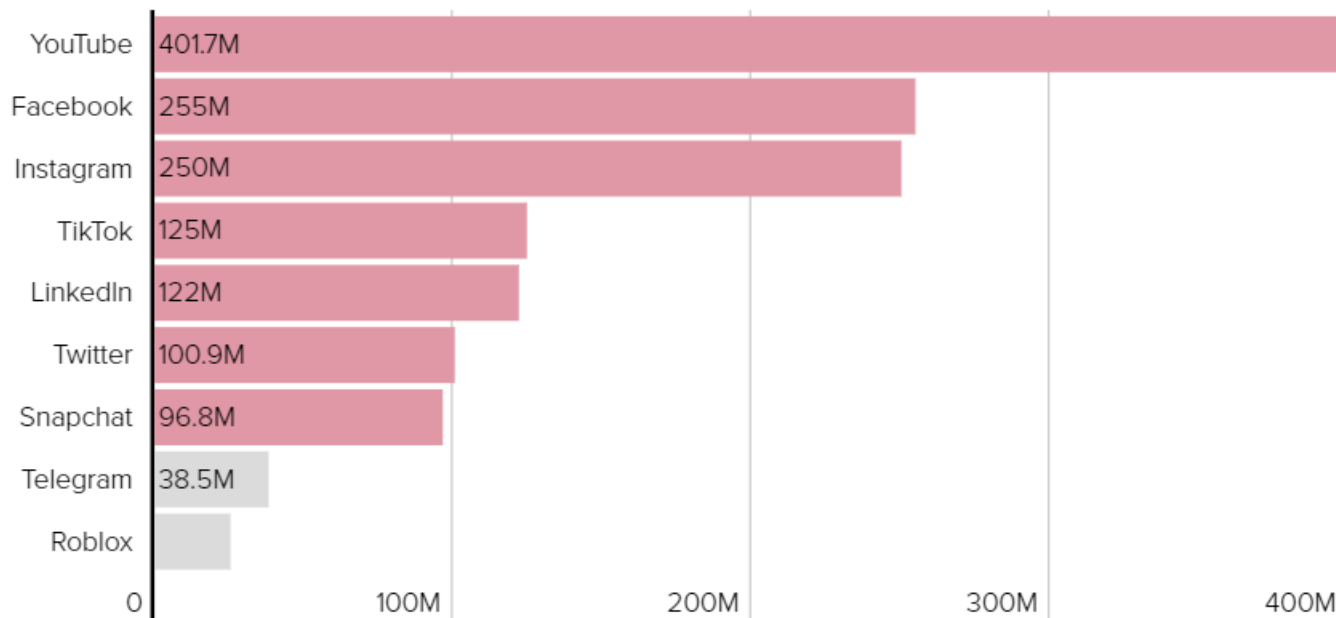
- Risk assessment
- Risk mitigation
- Independent audits

Due Diligence



**Conclusion : global
standards for platform
regulation?**

Most (very large) online platforms are US based



(TikTok, Twitter, Facebook set to face EU crackdown on toxic content – POLITICO)

Future questions and challenges

- Legal question in the US : will platform regulation survive 1st Amendment scrutiny?
 - *Netscape* litigation in Florida and Texas
- Regulation on liability alone won't be sufficient to tackle disinformation :
 - Data privacy
 - Media literacy
 - Media concentration
- Brussels effect : potential globalization of EU standards

Thank you
Questions?