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## THE ROLE OF SOCIAL NETWORKS IN THE CREATION OF DEMOCRATIC OPINION

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**ABSTRACT:** *The importance of "virtual" publics is growing in the age of the ubiquitous Internet. This is a new space for democratic debate, and it provides new channels for content dissemination for all actors. It also applies to the "average citizen," who, regardless of time or place, has the ability to influence public opinion formation at the micro level through social networks and the personal public sphere. As a result, social networks create a virtual space in which individuals can grow socially and communicatively, as well as participate in democratic opinion formation. However, there are risks associated with such a broad range of potential. In addition to government intervention, measures taken by social network providers ("platform operators") can limit an individual's freedom of communication. The following article is intended to provide a look on the Internet's new structural change in the public sphere and social networks. Therefore, the issue of whether and to what extent a platform operator may enforce communication standards in "his" social network in a democratic social order is addressed. The article concludes with a summary of the viewpoints supported by the arguments presented in the previous parts of the paper.*

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**KEYWORDS:** democratic opinion; platform operators; social networks.

### 1. Introduction

In a digital society, social networks are among the most important communication channels. Every day, over a billion people exchange information through platforms like Facebook, Google and X/Twitter (Funta, 2019). Communication is becoming more prevalent within the (partially) public spheres of social networks. Social networks create a virtual space in which individuals can grow socially and communicatively, as well as participate in democratic opinion formation. As a result, it is easy to view the platforms as one of the many advantages of digitization. However, the diverse potential also carries concerns. In addition to government interference, such as the temporary blockage of platforms in Turkey (restriction of X/Twitter after the prime minister slams the social media site) or Iraq (restriction of Facebook and X/Twitter in an effort to contain Isis), measures imposed by social network providers ("platform operators") can limit users' freedom of communication. In view of the importance of social networks in the digitalised world, this practice appears questionable and inevitably raises the question of whether, in a democratic society, a private, mostly profit-

oriented operator of social networks can act as a guardian of the limits of freedom of expression on its platform. On the other hand, the operator does not see himself as a "censor" who watches over the "proper" exercise of freedom of expression of his users, but as a provider of a platform that is intended to serve the individual for free social and communicative development (Sfetcu, 2024). A closer look reveals a differentiated picture. From the perspective of a platform operator, the establishment of communication rules ("communication standards") is by no means an end in itself, but rather an attempt to balance the diverse interests of different stakeholders by establishing certain rules and thereby ensure a certain degree of coexistence within the respective social network. In doing so, the platform operator is faced with the task to balance the interests of different stakeholders from different cultures in an offer that is mostly aimed at a global market. Until CJEU joined decision in the *LF v Google LLC, YouTube & Ors (C-682/18)* and *Elsevier v Cyando (C-683/18)* it has not been clear whether and to what extent the platform operator can be held liable for the content of its users. Here, the CJEU decided that an online platform cannot rely on the e-Commerce Directive's article 14 exemption from liability if it sends a "communication to the public." Online platforms can only be held liable if they act with "full knowledge" that their services are being used to distribute illegal content. When a platform legitimately and successfully takes action to prevent such violations, such putting in place the proper technological safeguards, it does not have "full knowledge."

## **2. Objective and methodology**

The ongoing process of democratic opinion formation is a critical component of democracy (Ondria, Šimoňák, 2011). Thus, our article is structured around the hypothesis that platform operators have the capacity to standardize and enforce communication standards, within the constraints of democratic legitimacy and commercial interests. We attempted to investigate whether the platform operator - the democratically legitimate state or the primarily commercially focused platform operator - is allowed to self-standardize and enforce communication rules, as well as how much of the user's guaranteed freedom of communication can be taken away, and how may these guarantees be revoked in a way that still serves the platform operator's interests? The research is exploratory and analytical in nature, seeking to understand the dynamics between freedom of communication, platform regulations, and democratic principles. We conducted an extensive review of scientific literature, focusing on existing theories and studies related to platform regulation, democratic communication standards, and the role of social media in the public sphere. We used an analytical approach to investigate the structural changes brought about by the internet and social networks in the public sphere. The synthesis method allowed us to combine information from various sources into a cohesive

understanding. By integrating data from literature and case law we created a comprehensive view of the regulatory landscape and its implications for platform operators. We applied critical analysis to review the legal and regulatory situation, identifying gaps and inconsistencies in the current frameworks. This helped us understand the challenges faced by platform operators and the potential impact on user communication freedoms. The comparative method was used to analyze different perspectives on the role of social networks in shaping democratic opinion. These methods enabled us to thoroughly explore the research questions and provide a detailed examination of the hypothesis.

### **3. Social networks in the process of democratic opinion formation**

The constant intellectual confrontation between encountering social forces, interests, and ideas clarifies and transforms political goals that shape public opinion and form political will (Bakkar, Ögcem 2019). The formation of opinion that is free, open, and unregulated is a direct expression of sovereignty and gives every citizen a permanent influence on democratic decision-making even when elections are not held. Freedom of speech or expression, as well as the right to information, are fundamental political rights and an important pillar of a democratic society. They are the expression of the right to freely express and disseminate one's own opinion in a variety of ways (i.e. the right to freedom of expression), as well as the right to freely seek, receive and disseminate information regardless of national borders (i.e. the right to information) (Kováčová, 2018). The primary source of democratic opinion formation is the public spheres, which have various contours. This is where the various social elements collide, exchange positions, and compete for common ground. The importance of "virtual" publics is growing in the age of the ubiquitous Internet. They are a new space for democratic debate and provide new channels for the dissemination of content to all actors in the opinion market. This also applies to the average citizen, who, regardless of time or place, has the ability to influence public opinion formation at the micro level via social networks and the personal public sphere that exists within them.

### **4. New public-sector structural changes**

In addition to being tools, new technologies are a topic of political discussion. A cultural-historical new structural change in the public sphere began with the spread of the Internet and its further development into Web 2.0, against the backdrop of a democratic public sphere shaped by mass media (Berg, Hofmann,

2021). A network publicity emerged, which has provided new opportunities for every citizen to participate in the democratic decision-making process. This shift in the public sphere will be outlined below, along with any side effects such as the digital divide and any signs of convergence.

The democratic public sphere is a complex structure comprised of various interconnected public sphere components (Machowicz, 2022). The mass media public, in addition to presence publics created by parties and social interest groups, is particularly important. Media in democratic societies always possess sufficient capacity to persuade the public about priorities and to focus attention on selected issues, phenomena, and events. In doing so, they at least guide public policy actors, individuals, and groups toward what is considered socially important (Kováčová, N., Králik, 2017). Overall, few have the privilege and capacity to influence the public realm via the mass media. The freedom of the press is the freedom of several wealthy people to express themselves (Kováčik, 2012). The "average" citizen, on the other hand, is largely excluded from active participation and is limited to a passive consumer attitude. To participate in the process of democratic opinion formation, it is necessary to organize in parties and interest groups, as well as shape public opinion about actions in public space, particularly through meetings, information stands, and leaflet distribution (Hale, John, Margetts, Yasseri, 2018). The Internet and its transformation into Web 2.0 have caused yet another noticeable structural change in the democratic public (Buttler, Schultz, 2023). Since then, a new public sphere has been formed on the "virtual" Internet platform, which allows any Internet user to post their own topics, content, and opinions, regardless of time, place, national borders, educational level, or ownership, to spread to a large audience in order to influence the democratic opinion (Fedushko, Mastykh, Syrov, Peráček, 2020). This is accompanied by a softening of the long-held mass media information and opinion-forming monopoly, as well as a widening of the mass media information and opinion-forming monopoly (Saliu, 2022). This groundbreaking development, associated with the emergence of the "www public", was once again spurred on by the participatory, cooperative and interactive elements of Web 2.0. The introduction of Web 2.0 formats triggered a kind of journalistic unleashing, particularly among a broadcast-conscious group of Internet users. In addition to the rapid growth of media content on platforms such as YouTube, a diverse range of blogs emerged in a short period of time, which increasingly addressed current events in society, politics, business, science, sport, and culture. A new type of amateur or citizen journalism emerged, resulting in timely and high-quality offers. In terms of content, many of the new "amateur journalists" focused their blogs on personal experiences or niche topics. Overall, the online public is extremely diverse in terms of the actors involved, the topics addressed, and the variety of offers. To some extent, the flood of information that has come on the Internet, which individual Internet users find difficult to penetrate, is the other side of the coin of the wide range of information offers (Gregušová, Dulak, Chlipala, Susko, 2005). Aside from professional journalistic offerings, only a few contents reach a large audience. On the other hand,

a large portion of the offers are only seen by a small group of people. However, because of the Internet's extraordinary permeability, certain content can quickly reach a large audience. If, for example, content is "clicked" by a large number of Internet users and shared via social networks, the content in question can spread like a highly infectious virus due to the Internet's network-like linked structure and reach a large network public in an instant. The algorithms of information intermediaries such as search engines and social networks amplify this effect. Because these give priority to frequently clicked content, so that other groups are primarily informed of this content and can in turn act as a multiplier. If the level of interest exceeds a critical mass, the content may even reach the general public through the mass media. As "gate watchers," the news media monitors the topics and developments on the internet (Jakab, Könczöl, Menyhárd, Sulyok, 2021). They then select relevant content and streams of opinion from this and prepare them for the general public in the mass media public. Following a media report about an allegedly sexist statement made by a top politician, the topic of "sexism in society" made its way into the mass media public through the active participation of the network community, resulting in a public debate about sexism. This example is one of many that demonstrate how quickly and decisively opinions and topics spread through social networks can influence public opinion formation. Individuals will not be able to set the agenda of the (network) public or even the mass media public on a permanent basis due to the vast number of websites and the limited capacity to receive information from the (network) public. Rather, every content provider is constantly competing for perception and resonance. Despite all of the criticism leveled at the debate culture in social networks, it should be emphasized that the opportunities for participation made available by the Internet and social media represent a tremendous benefit to the democratic social order. Every citizen has the opportunity to express his or her opinion unfiltered to a large number of people, thereby influencing the democratic opinion-forming process in his or her favor (Gayo-Avello, 2015).

The online public is by no means purely made up of users influenced by content generated by individual users or even a public that crowds out the mass media public, but a product of professional-journalistic and user-generated content, which are connected to each other on different communication levels. In addition, it should be considered that the traditional media companies have a certain "perception or reputation advantage" that is also transferred to their broad-based network formats. This is precisely what strengthens their key position as gatekeepers and agenda-setters, since both blogs and other media formats use the content of traditional media providers as a source or starting point for their content. The same can also be stated for the discussions in social networks, which are often based on the content prepared by the mass media. Unlike before, however, users do not remain in their passive-consuming attitude but can actively deal with the content and enter into an open discourse with the author or with other Internet users.

## 5. The public internet as a result of the digital divide

The Internet and the various Web 2.0 offerings are technologies whose functions and potential have not yet penetrated society as a whole. The democratic formation of opinion in the Internet public is also influenced by society's shared participation on the Internet in general, and in social networks in particular. For the time being, large parts of society are avoiding online advertising. In this regard, online publicity, including social media, has so far only represented a subset of the population. This not only jeopardizes the plurality of topics, ideas and opinions brought forward, but can also lead to a distorted focus, a narrowing of the range of opinions or a disproportionate perception of certain content, including extremist content. All of the potential dangers arising from this should not be overestimated, however, since the broad impact of professional journalistic offers on the Internet in particular should counteract a narrowing of the view. One of the most visible structural changes associated with the Internet is described with the term of "convergence". This involves several, quite complex phenomena, which are presented below as convergence of technology (a), convergence of offers (b) and convergence in user behavior (c), in line with the differentiation that is common in scientific discourse. In addition, the convergence in social networks is examined as well (d).

### a) technology convergence

The phenomenon of "technology convergence" is rooted in the information technology process of digitization. Data, whether image, sound, text, or video, is transmitted as a uniform binary code and transformed into the appropriate output format. As a result, regardless of the hosting service, all content can be transmitted using the same transmission networks (radio, television, telephone, Internet). Unlike in the past, radio, television, and telephone cannot be distinguished based on transmission infrastructure because all services can be delivered via the same digital networks. In addition to this "convergence of transmission paths," there is also a "convergence of end devices." (Šramel, Horváth, 2021) Smartphones and tablets, which easily enable telephone, television, radio, and the consumption of press-like Internet offerings via an output device, can be used to illustrate this point.

### b) convergence of offers

The "technology convergence" encouraged the "convergence of offers." Because a large portion of the content is processed in a combination of texts, images, videos, or audios, the exact contours between traditional print providers' and broadcasters' offers are becoming increasingly blurred, particularly on the Internet as a multimedia platform (Funta, 2019).

### c) convergence of use

The convergence of use considers the effects of convergence from the user's point of view and

describes a development that works in tandem with the convergence of end devices and the convergence of offers, allowing the consuming Internet user to query all multimedia services without having to choose or switch between media. Given the recent but very successful history of smartphones and tablets, as well as the widespread use of converged services, the previously only assumed convergence of use now appears to be increasingly coming true.

d) convergence and social networks

Social networks are convergent services that can be used on a number of devices from a technology standpoint (PC, tablet, smartphone). Social networks also serve as a platform for convergent services that enable the interchange of any type of content, including text, images, and videos. Additionally, the example of social networks can be used to illustrate the convergence, or to put it more figuratively, the blurring of the precise contours of individual and mass communication. Users within social networks can also transmit information, which is different from the previously known modes of individual and mass communication. Until recently, these new modes of communication were virtually impossible, but they are now causing more and more difficulties for the conventional categorisation.

## **6. Social networks in the changing public sphere**

Social networks play an important role in today's changing public. They are havens for newly formed "personal publics" and, not least, a centre for virtual gatherings due to their widespread use. The various functions of social networks provide users with a variety of communication channels and spaces for discourse, which can eventually be significant as a site for virtual protest marches. However, as with any innovation, social networks can be abused to cause harm to others (Benton, Schmidt, 2024). The platforms are not only a place for critical discursive debate, but also a platform for spreading false reports and hatred, as well as extremist and terrorist content.

## **7. "Personal public" as a new element of the democratic public**

Social networks are communication platforms that allow users to communicate not only privately via chat, but also within a personal public. This qualitatively new (partial) public is primarily composed of the user's circle of contacts, but it varies depending on a variety of factors, including the user's contact management (contact policy, list grouping, etc.), the adjustment of privacy settings (public access), the communication

function used (commenting, sharing), the platform algorithm, or the settings of potential addressees (blocking of certain contacts). (Šmejkal, 2019) In a nutshell, the "personal public" is a (partially) public sphere that has been pre-contoured by the user's contact management and fine-tuned by the platform operator's "code." The exchange via the news feed is an example of communication in a "personal public." In contrast, communication via chats and within closed or secret groups, where the communicated content is only accessible to the members of the respective group, is usually just private communication. Within the personal public, users can communicate by, among other things, writing posts or commenting, sharing, and liking third-party actions. Every action taken by a user is linked to his profile and displayed in the news feed of the confirmed contacts based on the (privacy) settings. They can then comment, share, or like the action again. Because this action is linked to the respondent's profile, content rarely remains in the communicator's personal public sphere, but rather spreads out into different personal public spheres. This functional link is the reason why content spreads "virally" on social networks: if user A comments on a post, the post is no longer only in A's personal public, but also visible to B. If C likes this post, the range expands to C's personal public, and so on. With each action, another member of the general public is "infected." Because of this functional link, a post within social networks that is promoted by the algorithm can reach a large number of addressees in a very short period of time. A constant role change of the user between communicator and recipient, similar to other Internet formats, is also typical for communication in the personal public sphere. When communicating in the personal public sphere, the traditionally drawn boundaries between individual and mass communication are blurred even more than with other Internet offerings. It appears as if a new, hybrid form of communication has crystallized, containing elements of both individual and mass communication but differing from communication in the purely private environment and communication in the mass media public. Users typically address their more or less large social environment, rather than a small, selected private circle or a completely anonymous and unspecific audience. The possibilities for communication in the "personal public" expand every citizen's ability to participate in the process of democratic opinion formation (Sitek, 2017). Away from the constraints of space, time, and personnel, each individual can now sensitize their personal public to specific topics, promote their positions, or simply question other content, regardless of time, place, education, or economic prosperity. The range of individual content can be far greater through the network-like linking of countless personal public spheres and the associated exchange between the personal public spheres, even to the point of viral infection of the network and reception by the mass media. A look at the numerous freedom movements in recent years in the world demonstrates the potential to promote or preserve democracy inherent in these seemingly banal statements (Smuk, 2014). Every citizen can use social media to publish content that expresses freedom or to spread images of allegedly disproportionate state power. It is no longer necessary to rely on the mass media, which is frequently easier for the government to monitor (Tucker, Theocharis, Roberts,

Barberá, 2017). Rather, every citizen is free to report on demonstrations, reveal their own ideas, or act as a filter and multiplier.

## **8. Social networks as a center of communicative gathering**

Social networks serve as a digital meeting place. The importance of platforms is demonstrated not least by the increased activity of all players in the opinion market over the years. Governments, mass media, associations, and businesses have long been active in social networks because a large portion of the population communicates there (Klein, Šebesta, 2024). Thus, in the digital age, social networks have evolved into an important communication forum where citizens and social interest groups can meet and communicate with one another. They play an important role not only in the individual's communicative development, but also in democratic opinion formation. The central position of social networks is further strengthened by versatile interlocking between the platforms and the other offers on the web. Because social networks are not only the central platform for the exchange of web content, but also – beyond their own platform – a large number of components of third-party websites. Examples of this are the "Like" and "Share" buttons or the "Comment field", which are already widespread on the web. Such "social plugins" are regularly provided free of charge by the platform operators and can be easily integrated into their own websites and thus linked to the social network. For example, if a user clicks on the "Like" button embedded in a third-party website, the third-party website and the "Like" action are displayed as a new status message in the news feed of the confirmed contacts. Opinion formation within social network (sub-)publics is not isolated or even limited to the platform. Rather, the topics, content, and positions discussed find their way into the next stage of democratic opinion formation through the users. Politicians, for example, use social media to not only express their views on specific issues, but also to solicit feedback from interested citizens. The media not only distributes their own content through social networks, but they also act as gatekeepers, observing dynamic discussion processes and drawing conclusions about the relevance of topics. How lively the exchange between the (partial) publics of social networks and the other (partial) publics of the democratic public is also shown by the use of social networks at meetings. The enormous importance of social networks in democratic public and opinion formation is also reflected in the way restrictive states treat their operators (Kovalenko, 2022).

## 9. Communication channels and discourse spaces in social networks

Social networks serve as central information intermediaries for the internet public, connecting information supply and demand through a variety of mechanisms. The news feed, the (fan) profile, and social search are the primary intermediary functions. These provide users with important distribution and information channels to the online public, as well as versatile "virtual" spaces for discourse, which is why social networks can be viewed as a type of "communication apparatus".

### a) The news feed

In the centre of the home page of many social networks, the user is presented with a backwards chronological "news overview". This "news feed" is a summary of the most recent events from the personal public, which is increasingly peppered with advertising. However, due to the large amount of information this news overview also necessitates a decision. Depending on the platform, the user is given "manual" selection options (e.g. blocking or highlighting certain profiles). Furthermore, the platform's algorithm performs a significant portion of the selection automatically. On Facebook, this is done by the so-called EdgeRank algorithm, which selects based on the factors of topicality, affinity, and weighting (Peráček, 2022). Individual criteria and their relationships to one another, on the other hand, are largely hidden and differ from other social networks. The newsfeed, from the standpoint of a communicator, is an important distribution channel through which the one can convey his own content, opinions, or offers to the public. To achieve the best possible perception, the time and duration of the display, as well as the placement within the news feed, are all important, in addition to reaching as many users as possible. Because the display is controlled centrally by the platform operator's algorithm, the communicator can usually only have a minor influence on all of this. The news feed, on the other hand, is a new type of information channel that provides the receiving user with an up-to-date overview of the events, topics, and opinions that are considered relevant in their personal public. In addition to this intermediary service, interactive elements such as the comment field or the share and like button encourage users in the personal public to engage in direct follow-up communication (Sararu, 2019). In this regard, the news overview creates a virtual discourse space in which users can exchange information about their topics and points of view.

### b) Profile or fan page

Every user has its own profile page where it can present themselves to the personal public or the entire online public. Platform providers provide a variety of versatile functions for the individual design of your own profile page for this purpose. In addition to personal profiles reserved for non-commercial natural persons,

companies, organizations, or public figures can maintain a "fan page." Away from their own website, this user group has a channel within social networks through which they can present themselves to their own target group in a "more personal" setting. The supposedly familiar environment in particular makes it possible to address the addressees directly, far removed from the anonymity of the Internet. However, the personal profile and the fan page are much more than a simple platform for self-portrayal. They enable the interested public to access an information page that is maintained by the respective user himself and is therefore authentic. In addition, by "following" a profile or a fan page, users can be continuously informed about current developments and activities of the profile owner on their news overview. Depending on the perspective, the profile or the fan page is an important distribution channel or a meaningful source of information. Depending on the (privacy) settings of the profile owner, users can make a (partially) public statement in the form of posts, likes or comments on the fan page.

#### c) Social Search

"Social Search" is a search function. Unlike the previously established search engines, the search algorithm when answering the search query is not based on a presumed relevance based on general or user-specific criteria, but also includes the content, recommendations and ratings of network contacts in addition to user interests. The hit list is thus significantly influenced by the social environment of the user.

### **10. Social networks as a platform for virtual protest marches and socially harmful statements**

Social networks have established themselves as a significant communicative center in the changed democratic public. Given the widespread usage, particularly among the younger generation, and the growing familiarity with the various functions, this position is likely to become more permanent in the future. However, the opportunities for greater individual participation in the process of democratic opinion formation are accompanied by risks. The following sections will concentrate on addressing the risks to a more open and undistorted democratic opinion-forming process that can arise from the establishment of communication standards, the design of codes, and the ubiquitous data collection.

The phenomenon of the so-called "private-public space" is a problem area that has been known to legal science and practice for decades and is highly controversial in terms of legal policy. This means cases in which a private legal entity is the owner of a space that has been opened up to the general public and is therefore "public". In this respect, private shopping centers or marketplaces are prime examples. These are basically freely accessible to everyone and therefore sometimes develop into the central meeting place.

Individuals meet so that an open network of communication similar to the public street space is created. As a place of general communication, they can also gain importance as centers for democratic opinion-forming. This has the potential for conflict, as evidenced by the legal-historical case *Marsh v. Alabama* (*Marsh v. Alabama* - 1946) decided by the United States Supreme Court. In this instance, the private owner of a business settlement prohibited an activist from distributing religious literature in "his" public street space. This implicitly raised the question of whether and to what extent the private owner of a generally accessible space may restrict the exercise of freedom of communication in these "private-public spheres". Far away from the physical space, a large number of private-public spaces have also developed in the virtual spheres of the World Wide Web, albeit still largely unnoticed by jurisprudence ("asleep"). This means all those privately operated web offerings that are basically made available to every internet user and enable them to engage in a (partially) public exchange. In addition to internet forums and media share platforms such as YouTube, social networks can also be cited as examples of this. However, the latter should be of particular importance due to the high level of user activity and the opportunity for social development. Although the "virtual" private-public spaces that comprise a social network differ from the physical public spaces, certain similarities can be identified. For example, on the "virtual" meeting place "Newsfeed," different users and user groups can meet at random and publicly discuss (partially) the content of a "shared" (media) post or the photo of one mutual friend.

## **11. Potential risks in the changing public sphere**

In the changing democratic public sphere, social networks have established themselves as an important communicative center. Given their high prevalence, especially among the younger generation, and increasing habituation with their diverse functions, this position is likely to continue to consolidate in the future. However, the opportunities this offers, including greater participation by individuals in the process of democratic opinion-forming, are associated with risks. In practice we no longer only identifies the state or content providers as a source of danger for a free market of opinion, but also the operators of search engines and other "gatekeepers" such as social networks. The latter in particular are increasingly under observation. Aside from the debates about how to deal with hate speech and fake news, the most popular platform operator Facebook, for example, was confronted with the suspicion that some Facebook editors on the "Trending Topic Team" deliberately influenced the "Trending Topics" to the detriment of conservatives - during the US primary campaign (Vaidhyanathan, 2018). Although Facebook founder Marc Zuckerberg immediately rejected this accusation and Facebook later changed its practice, this example clearly shows the way in which social networks can influence democratic opinion-forming.

In practice, all operators of major social networks have codified communication standards for their platform. The "private-public space" of social networks is therefore by no means a "lawless" space in which information and opinions can be exchanged without restrictions. However, the establishment of communication standards takes place in a conflict-prone area of tension in which the sometimes conflicting interests of platform operators, users and nation states come together (Woosub, Seong-Gyu, Beom Jun, 2022). Here are some examples. First, after a critical, or at least insensitive, comment by the US film critic Roger Ebert on the occasion of Ryan Dunn's death, Facebook temporarily blocked his profile due to numerous negative feedback on the alleged misconduct. In 2011, a post by Ebert was also blocked due to alleged "abusive content", although the post only contained information and pictures after his thyroid surgery. Second, the organizers of a meeting against the US surveillance program "PRISM" created a Facebook event page to draw the attention of broad population to the event and thus achieve the greatest possible mobilization. A few days before the planned meeting, the organizer had to identify himself separately on Facebook. He then received a notice that the page in question had been deleted for violating Facebook's principles. Third, in the run-up to the Turkish local elections in 2014, a number of government-critical profiles published telephone recordings of Turkish Prime Minister Recep Tayyip Erdoğan, which were intended to expose him to accusations of corruption. After the platform operator X/Twitter had previously refused to "cooperate" with the Turkish authorities, the Turkish government blocked the service in the middle of the election campaign. This was later overturned by the Turkish Constitutional Court. X/Twitter later blocked government-critical profiles within Turkey, including that of RedHack with more than 750.000 followers. Because the blocking was only carried out as a "local take down", it can be assumed that X/Twitter did not view this as a violation of its own terms of use, as otherwise they would have removed the content or profile entirely. In this respect, it can be assumed that the blocking was carried out on the instructions of Turkish government authorities.

## **12. Public internet communication channels managed by private providers**

The Internet offers every Internet user free access to information of any interest and opens up various publication channels. The resulting dependency can endanger the free communicative development of the individual and his or her participation in the process of democratic opinion-forming (Sawicka, 2019). The flood of information is not only problematic for the publishing internet user. From the point of view of the recipients, too, the benefit of the mass of offers can at best be assessed as ambivalent. The flood of information, which is difficult to cope with, promotes the feeling of being overwhelmed and at the same time increases dependence on information intermediaries. These services have a key position in the online public sphere by

combining the enormous information supply with the corresponding information demand. Depending on the respective service, the core activity is the independent or user-based finding, selecting, structuring and/or presenting of Internet offers. A wide range of intermediary services can be found on the Internet. In addition to search engines (Google, Bing, Yahoo), social networks in particular are becoming increasingly important as social filters. Media portals (YouTube), micro-blogging services (X/Twitter) and common web catalogues should also be mentioned. In addition, topic-specific discussion and evaluation portals can become very important in the long tail of the internet public.

However, the lack of state influence should not lead to the conclusion that freedom on the Internet is not guaranteed without limits. On closer inspection, one can see that the freedom on the Internet is most likely a borrowed one. Private organizations decide to a large extent on the architecture of the “space of freedom” of the Internet. They determine the existence, structure, and opportunities for participation in the public and private realms. The web stream recording can help the user or customer understand how data anonymization and non-collection can both ensure privacy on the Internet. The type and scope of freedom that can be exercised are thus largely determined by the design of the specific offer and, as a result, by the will of the respective provider. However, unlike a law, its code operates on a "can" rather than a "should" basis. As a result, individuals have no choice but to comply with the regulations or even to oppose them. Rather, the "code" establishes factual boundaries that individuals cannot overcome. The "freedom" of the Internet is largely defined by the software of the providers, which is built on the physical foundation of the hardware. Computer knowledge is thus required to help shape the Internet by programming own functions on the one hand, and to understand and control the operation of the programs used on the other. However, in a highly specialized society, only a few have these skills, while large part of the population have only rudimentary computer skills. As a result, the average Internet user and citizen is limited to the formats available. From a global standpoint, this "master knowledge" is primarily in the hands of various private companies. Some players are particularly significant due to the breadth of their product offering and the market position they have attained. This is especially true for the five largest US corporations: Apple, Facebook, Google, Amazon, and Microsoft. These characterize elementary computer and internet offers in many segments, sometimes across several levels (server, end device, operating system, browser, website). In many respects, computer science “master knowledge” is concentrated in these companies. This power structure is manifested by the fact that the corresponding source codes are protected as business and trade secrets and, as a result, are largely removed from public control. With regard to social networks, the problem of the "code is law" can be illustrated using the example of the "dislike button" on Facebook, which has not been implemented to date. Because although many users have been calling for the introduction of a “dislike button” for a long time, the only option on the Facebook platform is to position yourself favorably by clicking the “like button” or by

selecting a specific emoticon to express emotion. However, there is no “dislike button” to express a negative attitude. This example illustrates the problem of the "code is law" in social networks in miniature format: the platform operator decides on the options for action available to the user through the design of the "code".

The broad impact of information in social networks, like the search engine hit list, is primarily dependent on the placement of the post inside the news feed. In addition, other factors such as the number of users to whom the content is displayed, the length of time or the point in time are important. All of these variables, as previously stated, are influenced by Facebook's algorithm. The social relevance of the post is decisive for the listing within the news feed, which depends, among other things, on the topicality of the content, the affinity of the user to the communicating profile and the weighting of the post. However, the relationship between these factors and the further functioning of the algorithm are largely secret. The individual factors could certainly be subjected to detailed criticism. For example, the "weight" factor seems to give an advantage to content from already known profile owners, such as members of the public or traditional media outlets. This is precisely how the dominance of some players is strengthened, instead of breaking up the opinion-forming process in favor of smaller providers (Šmejkal, 2021). Since neither the individual user nor the democratic public are aware of "filtered out" content, it is not even possible to estimate the extent of the problem. Although the “accusation of censorship” sometimes brought forward in this respect seems premature, especially if it is raised without further evidence. With the increased importance of the newsfeed as an information and distribution channel, the interest of all those involved in democratic opinion-forming to be represented with their content in a central position in the newsfeed has also grown. In order to guarantee this, there is the possibility on almost all platforms to place advertising in a central place in the newsfeed (Funta, Horváth, 2024). Their effectiveness can be increased by target group-specific advertising. Aside from this fee-based variant, the profile owner can also design content in such a way that the Facebook algorithm displays it in a privileged manner. In this way, the profile owner can generate a high level of affinity through targeted interaction with many different users. In addition, a higher weighting of the post can be achieved, for example, by clicking or liking certain content in a targeted manner. The algorithm-based information filtering of social networks also harbors the risk that individuals through abusive behavior – such as buying clicks and likes or using social bots – will have a broader impact in order to influence or manipulate the democratic opinion-forming process in their favor.

### **13. Conclusions**

In a constantly digitizing society, social networks are critical communication platforms. Thus, social

networks serve as a central location for virtual gatherings, where individuals can develop socially and communicatively and influence the democratic opinion-forming process in their own unique way. Unlike in the early days of the Internet, when content distribution was limited to privileged circles with (access to) basic IT knowledge, anyone can now communicate with an almost infinite number of addressees, regardless of education, financial strength, or social background. The media, which has traditionally served as "gatekeepers" to the public, is no longer required. Rather, any actor in the opinion market, whether a party, a government, or an individual citizen, can communicate content to an unfiltered and borderless audience. As a result, social networks create a virtual sphere that provides new opportunities for personal development and participation in the democratic opinion-formation process. The change in communication culture within society that comes with the use of social networks creates both opportunities and risks for the individual and the democratic social order. In addition to individual users disseminating so-called hate speech or fake news, the algorithm-based information section can, for example, encourage fragmentation of personal perception and the democratic public sphere (Zakharchenko, Peráček, Fedushko, Syerov, Trach, 2021). The question is whether and to what extent a social network operator could infringe on the user's constitutionally guaranteed freedom of communication through self-determined standardized communication standards. Or in another words, can a private, mostly profit-driven operator of a central (opinion) forum regulate the content discussed? In essence, this revealed a fundamental rights conflict between the user's right to free communicative development and participation in the process of democratic opinion formation and the platform operator's right to design "its" social network. Because fundamental rights have an indirect third-party effect and the state has an obligation to protect fundamental rights, resolving the conflict of fundamental rights situation is also relevant in the private-law relationship between platform operator and user. Platform operator must always give the user the opportunity to comment when examining a possible violation. Platform operator is constrained in enforcing communication standards by the requirement to be considerate, the prohibition on contradictory behavior, and the prohibition on discrimination under civil law. An arbitrary and disproportionate enforcement of communication standards is thwarted by the commandment of consideration that flows from the special relationship of loyalty. In addition to providing factual justification for any measures, the platform operator must, in general, choose the means that have the least impact on the user, provided that this is reasonable and sufficient to protect his own interests. As a result, removing a user profile for a single minor violation is not permissible if the platform operator can simply remove the problematic content. Termination may also occur only as a last resort and, in general, only after prior notice. If only a suspicion of a violation exists, the platform operator is generally limited to taking temporary measures such as blocking the user content or profile. After considering the above interim results, it can be stated that the area of tension can be appropriately resolved by applying the applicable law. If the preceding considerations are followed, there is no risk of an excessive

restriction of free expression or even a "power" of the democratic opinion-forming process, neither in the context of contract formation nor during contract implementation or termination. This results in new possibilities for the free communicative development of the individual as well as its participation in the process of democratic opinion-forming. The change in the public sphere not only harbors opportunities, but also dangers. With a focus on social networks, the enforcement of communication standards and the filtering of content by the "code" of the platform operators can be identified as sources of danger. Furthermore, the ubiquitous data processing of the operators of social networks can impair the uninhibited and thus free communicative development of the individual. Aside from that, it's critical to keep in mind that platform operators are working in a highly contentious area of tension when it comes to maintaining communication standards, which requires challenging, perhaps hardly universally acceptable, individual decisions.

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