Online Platforms' Moderation of Illegal Content Online

Laws, Practices and Options for Reform

The original full study reviews and assesses the EU regulatory framework on content moderation and current practices by key online platforms. It assesses the regulation in six countries/regions and makes recommendations to improve the EU legal framework on content moderation in the context of the forthcoming Digital Services Act.

Background

Online platforms have created content moderation systems, particularly to tackle illegal content online. Such systems can include depublication, delisting and downranking usually based on an alleged violation of their Community Standards/Guidelines. However, the tools that online platforms use to moderate harmful or illegal content can also silence content relevant to the public. As well as this, the co-existence of different moderation practices at national level could affect the functioning of the Internal Market.

Key findings

The EU regulatory framework on content moderation is increasingly complex and has been differentiated by category of the online platform and the type of content.

The e-Commerce Directive of 2000 provides the baseline regime applicable to all categories of platforms and all types of content. It is complemented by the revised Audio-Visual Media Services Directive of 2018, which imposes more obligations on Video-Sharing Platforms to protect the public from illegal content and minors from harmful content. These rules are strengthened by stricter rules for four types of content for which illegality has been harmonised at EU level: the Counter-Terrorism Directive, the Child Sexual Abuse and Exploitation Directive, the Counter-Racism Framework and the Copyright in Digital Single Market Directive.

These laws are complemented by self-regulatory initiatives agreed by the main online platforms. Furthermore, several Member States have adopted national rules with respect to content moderation. However, the legal compatibility of these initiatives with the EU framework is sometimes unclear and the multiplication of national laws risks undermining the Digital Single Market.

In practice, platforms rely on Terms of Service or similar codes of conduct as a basis for content moderation and user regulation. The main tools used to this end are notice-and-takedown/flagging by users, keywords/filters and Artificial Intelligence tools based on machine learning models. All
Online platforms have also implemented transparency policies on how they operate and respect fundamental rights, and have complaint mechanisms to allow users to report illegal content online. However, these measures are often referred to as insufficient in moderating illegal content online and striking a balance with the protection of fundamental human rights. The main challenges relate to the large quantity of content on platforms as well as the fragmentation of laws and practices regarding content moderation across Member States.

Stakeholders suggested to put in place harmonised and transparent notice-and-action processes. Some suggested strengthening networks of fact-checkers and hotlines across the EU, while others recommended to enforce existing EU rules and to make them more consistently interpreted across Member States.

Policy recommendations for the Digital Services Act

The revised EU regulatory framework for online content moderation could be based on the following objectives and principles:

- sufficient and effective safeguards to protect fundamental rights;
- a strengthening of the Digital Single Market;
- a level playing field between offline and online activities;
- technological neutrality;
- incentives for all stakeholders to minimise the risk of errors of over and under removal of content;
- proportionality of the potential negative impact of the content and the size of the platforms; and
- coherence with existing content-specific EU legislation.

Using a harmonised set of rules on procedural accountability, the baseline regulatory regime could strengthen the responsibility of online platforms to ensure a safer internet. This could be complemented with stricter rules imposing more obligations when the risk of online harm is higher and according to the size of the platform. Effective enforcement is vital and should be ensured by regulatory authorities and judicial courts.


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