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INTRODUCTION

A few days ago, Mark Zuckerberg, the CEO of Meta, which is the holding company for Facebook and Instagram, posted a video on his social media to explain to the users of the platforms that these would soon undergo huge revisions in their community and policy guidelines. These consist in widening the window of free expression by reducing the moderation on the Meta platforms. Zuckerberg explains that he wants the moderation and the fact-checking to be replaced by community notes, which are a form of civic moderation, by other users, who can post rectifications under the initial post as it already exists for Wikipedia for instance. The CEO mentions the reasons behind this important change ; he wants to give more space to diverging and new ideas to emerge without them risking being shut down by the moderators before being even published on the platforms. So from now on, Facebook and Instagram will be moderated by their users, for their users, allowing the companies to save huge amounts of money, spent to this day on paying the moderators and the fact-checkers. Some important personalities of the Silicon Valley reacted to Zuckerberg's announcement, alleging that this form of moderation, isn't moderation at all and that it allows for outrageous ideologies to be born¹.

In this paper, I will argue that this Zuckerberg's post is an alarming proof that we are witnessing a core change of the definition of free speech and that if we, Europeans, do not want to be affected by it, the European Union will have to revisit the DSA and make it more binding for the Very Large Online Platforms (VLOP) and the Very large Online Search Engines (VLOSE). To do that, I'll first develop the idea that freedom of speech has become a concept that can be shifted to the will of the political power and the big companies in the US, before I develop the possible solutions I see for the EU to revisit the DSA and prevent this change from reaching our continent. To conduct my research I have gone through the new modification that Meta will implement in their community guidelines and collected information from several reports from newspapers and reports made by NGOs, specialized in digital matters.

¹ 'Yoel Roth (@yoyoel.com)' (*Bluesky Social*, 7 January 2025)
<<https://bsky.app/profile/yoyoel.com/post/3lf5wicyx6225>> accessed 10 January 2025.

I - LESS MODERATION, MORE HATE SPEECH ; LESS FREEDOM, MORE MONEY

In this part we'll first discuss the meaning of "free speech" in the US, mostly understood as a right to spread misinformation and hate speech (A), before tackling with the shift in its definition caused by political changes in the US (B).

A – THE FREEDOM OF SPEECH, INITIALLY A PROTECTION OF POLITICAL MINORITIES

In the US, the Freedom of Speech is protected under the first amendment of the US Constitution². It is probably the most sacred right for American people since it's part of their cultural ethos to believe that free speech is the base on which relies democracy itself. Americans considered that their ability to speak out loud whatever they believe in politically is the reason they can reach the truth regarding what they need as governing power, and therefore, how they reach a democratic system. So free speech at first was a way to protect the people that were part of political minorities. This idea that truth can only be reached if everyone's discourse is heard is called the theory of the marketplace of ideas and it was developed in the US by the famous John Stuart Mill in *On Liberty*.

In Europe, Freedom of Speech is also a very important principle that it is protected under article 10 of the ECHR but the issue resides in the fact that it is not understood the same; for us Europeans, this right is limited by the respect of all the freedoms of other European citizens, which is not true for the American conception of it. It means that the European way limits more the freedom to "speak freely" than the American way does. For instance, free speech in the US protects the right to use certain offensive words to convey a political message (*Cohen v. California*, 1971), or the right to advertise commercial products, with some few restrictions only such as obscene materials or child abuse material (*Roth v. United States*, 1957)³⁴. For the last two decades or so, this right as usually been expressed on social media under the protection of section 230 of the Communications Decency Act which protects the platforms on which content is posted from being found liable for any type of illegal content that they would shelter. Platforms have then been able to run away from any of their responsibilities, allowed to spread shelter misinformation or hate speech without any consequences. But since 2022 and the Digital Service Act, the European policies are tougher on them and allow them

² 'U.S. Constitution - First Amendment | Resources | Constitution Annotated | Congress.Gov | Library of Congress' ; "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

³ 'What Does Free Speech Mean?' <<https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does-free-speech-mean/>>.

⁴ 'What Is Not Protected Speech' <<https://sgp.fas.org/crs/misc/IF11072.pdf>>.

to be found liable for that same illegal content, under article 6 of the DSA⁵. Platforms, known as VLOP and VLOSE in the texts, have been trying to regulate more and moderate any form of content, in the entire world, that would be seen as illegal under the European conception of what is “allowed speech”, and that can differ from the American conception. Regardless of how we Europeans would think it’s better this way since we consider it to be morally and ethically better, some Americans have started to feel in the recent years that they were being censored and that this moderation, applied by the platforms, was a form of censorship going against their right to free speech.

B – A SHIFT OF THE UNDERSTANDING OF FREE SPEECH, IN LIGHT OF THE RECENT POLITICAL CHANGES IN THE US

Recently, Donald Trump, former and future POTUS, started calling for a boycott of certain mainstream platforms because of their so-called liberal censorship, saying that social networks had been promoting “woke ideologies” by moderating anti-trans and antifeminist, racist and antisemitic content and discourses. The problem here resides in the fact that D. Trump has shown before to the platforms that if social networks were to stand against him, moderating his problematic posts, he would toughen the legislation on them in order to get in the way of their business model, as he intended to do already in 2020 by trying to revisit section 230 CDA, after Twitter partially censored him for posting some antidemocratic posts. We can then easily assume that the platforms, feeling threatened by him being in power again, decided to go with his flow and get in line with his beliefs regarding what should be possible and not possible to say on them. Moreover, these platforms profit from a lesser important moderation as chocking content usually generates more impressions and therefore, more money for them⁶. As a result, Zuckerberg’s post on last Tuesday must be understood considering these explanations; the CEO invoked the idea that moderation was getting in the way of some prevailing discourses on the political scene, referring to the anti-trans, antifeminist and else ideologies spreading in the US and mostly in the conservative party, considered unlawful until now to be spoken about on the platforms. This brings us back to a great difference between the American and the European conceptions of free speech: truth. For the American people, truth as to be heard as the prevailing discourse and that doesn’t necessarily what reason or science proved to be true. So, because of this widening of the Overton window⁷, free speech is no longer a form of

⁵ ‘Article 6, the Digital Services Act (DSA)’ <https://www.eu-digital-services-act.com/Digital_Services_Act_Article_6.html> .

⁶ ‘Pay-to-Play: Meta’s Community (Double) Standards on Pornographic Ads’ <<https://aiforensics.org/work/meta-porn-ads>>.

⁷ ‘The Overton Window’ (Mackinac Center) <<https://www.mackinac.org/OvertonWindow>>; “The Overton Window is a model for understanding how ideas in society change over time and influence politics. The core concept is that politicians are limited in what policy ideas they can support — they generally only pursue policies that are widely accepted throughout society as legitimate policy options. These policies lie inside the Overton Window. Other policy ideas exist, but politicians risk losing popular support if they champion these ideas. These policies lie outside the Overton Window”.

protecting political minorities for the good of democracy but a right for any American to spread hate speech and to trash talk anyone, and this shift as occurred for some people to make more money and some other to spread their fascist ideologies.

Obviously us, as Europeans, have higher standards in terms of respecting our next of keen. The problem is that our regulation system of the VLOP and VLOSE is too weak now for it to stop big platforms to operate the same change on our continent.

II - THE IMPACT ON THE EUROPEAN SYSTEM AND THE NEED FOR A DSA REVISION

In this part, we will first discuss the risks for our system if these ideologies were to spread to our continent (A), before mentioning some necessary revisions of the text that would potentially prevent it to happening (B).

A – THE RISKS FOR OUR SYSTEM

Because the European Union is based on a very protective system for Human Rights, the risks of witnessing the same shift happening here must be tempered. Though, a lack of care could still have an impact on many levels. First, we could possibly witness an erosion of the hate speech regulations with an increase of harmful rhetoric and discrimination, especially since we're already struggling with the slow rise of fascism in Europe. It could also allow an increasing in misinformation leading to the erosion of democratic discourse; indeed, as presented by Habermas in *The structural transformation of public sphere*, the democratic discourse relies on deliberation and it can only be effective with thorough justification of each argument, which is not possible when fake news is spread since it can't be justified with facts. Moreover, it would impact political and public discourse as it would prioritize sensational and divisive content over reasoned debate and compromise which are essential principles for any democratic governance. But the EU has the power to regulate once again to prevent these catastrophic changes to happen.

B – THE NECESSARY REVISIONS OF THE DSA, NEEDED TO MITIGATE THE RISKS

As a disclaimer, we want to address the fact that these are propositions are only ideas and that we can't measure the effectiveness of them if they were to be put in place. One of the primary areas where the DSA could be strengthened is in its definitions of "harmful content". Currently, the DSA provides a framework for the removal of illegal content, but it could benefit from a more explicit categorization of hate speech and misinformation. By establishing clear

definitions and standards for what constitutes harmful content, the EU can create a more robust mechanism for holding platforms accountable for their moderation practices. This approach would ensure that American platforms operating within the ZU adhere to the same standards that European companies, promoting a level playing field. Additionally, the DSA could incorporate mechanisms for user empowerment, allowing individuals to report instances of hate speech and misinformation more effectively. Finally, the EU must engage in a dialogue with companies such as Meta to ensure that they understand the respect of our dignity and right to not be insulted or attacked on the Internet is more important for us than our right to go after people that don't share our ideology; only when we'll be considered equal and be given a neutral space will we actually be able to properly discuss and find common ground.