

HUMAN RIGHTS,
DEMOCRACY
AND THE RULE OF LAW

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

DROITS DE L'HOMME,
DÉMOCRATIE
ET ÉTAT DE DROIT

Hertie School of
Governance,
Netherlands and
Hungarian
Helsinki
Committees

Presentation

21 September 2021, The Hague

Recharging advocacy for Rights in Europe (RARE)

New technologies and rights: the Council of Europe approach

Patrick Penninckx

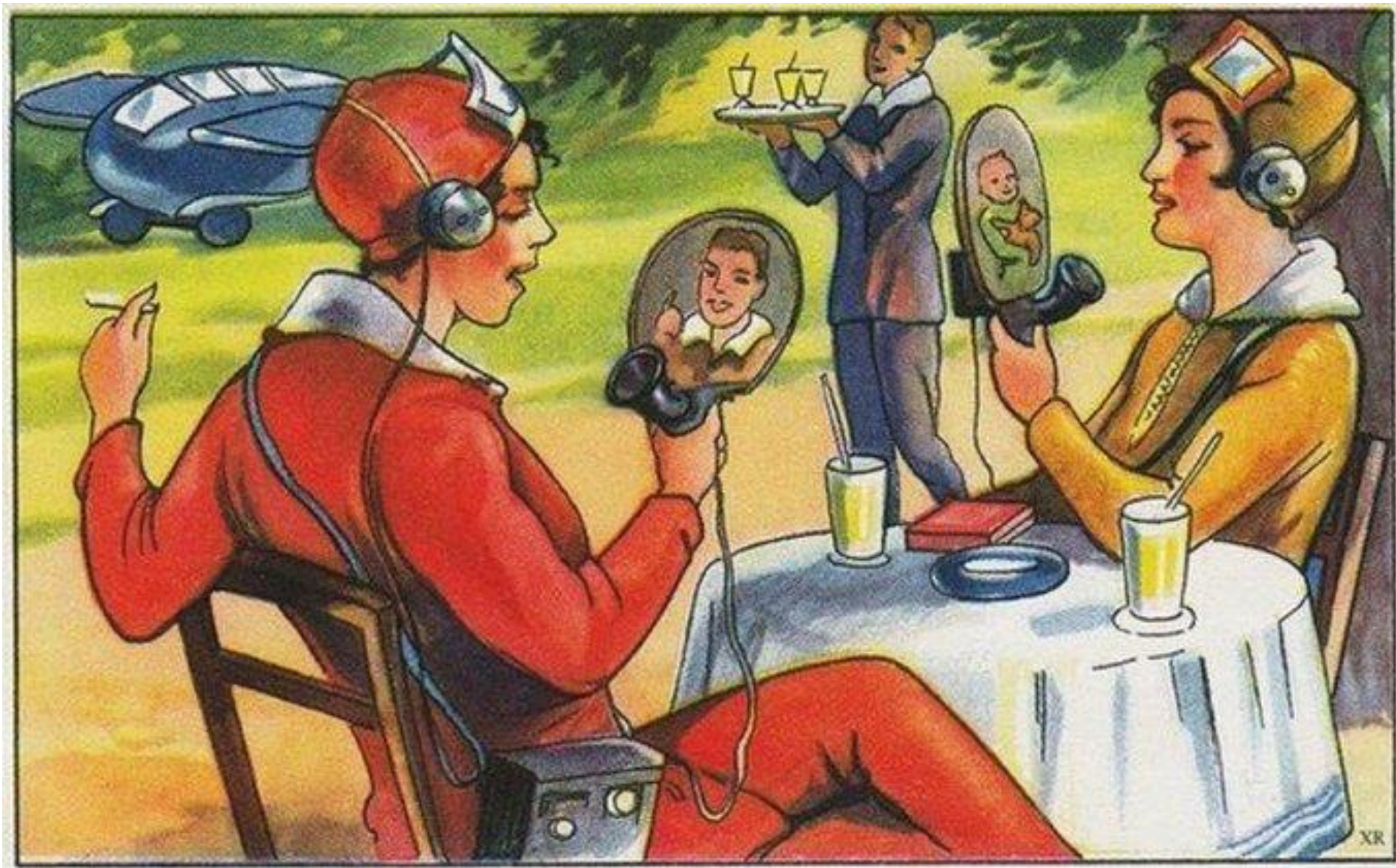
Head of Information Society Department



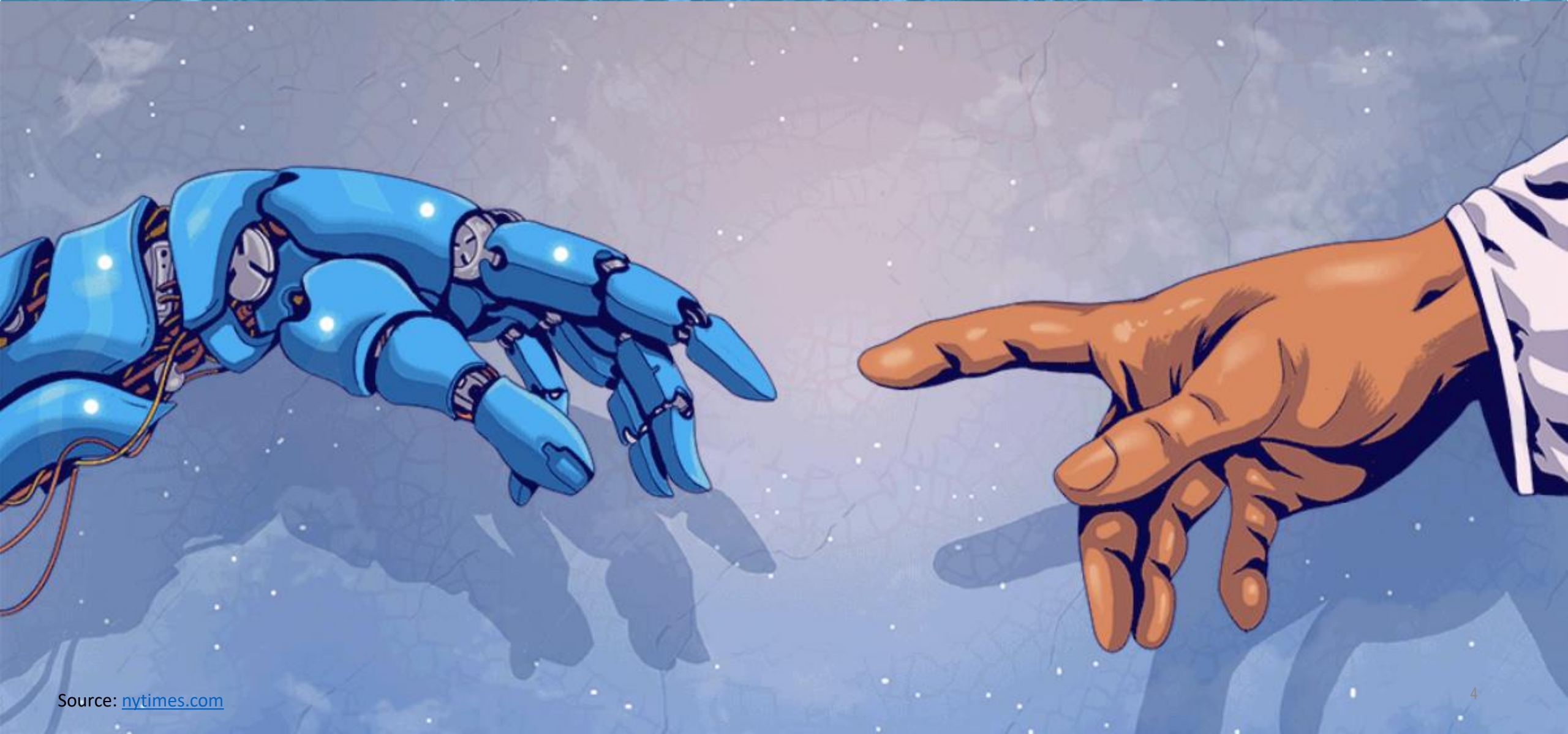
CONTENT

- Technological developments
- Impact on human rights
- Council of Europe response
- Working together with the civil society

1930 vision of the future of communication

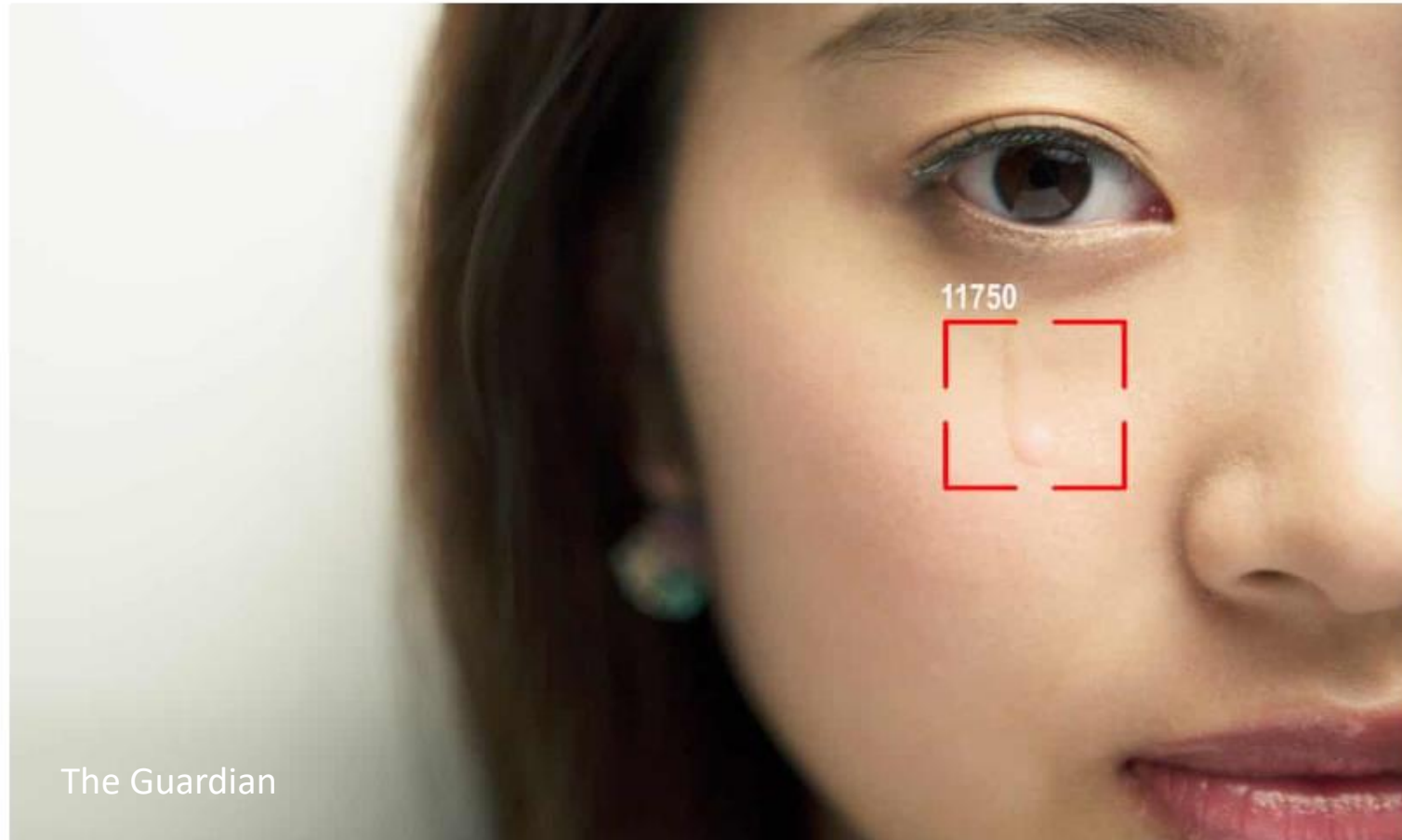


The technological revolution spreads...



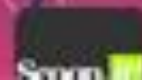
Machines are getting smarter

Machines can now allegedly identify anger, fear, disgust and sadness. 'Emotion detection' has grown from a research project to a \$20bn industry



The Guardian

We all live in a new digital sphere



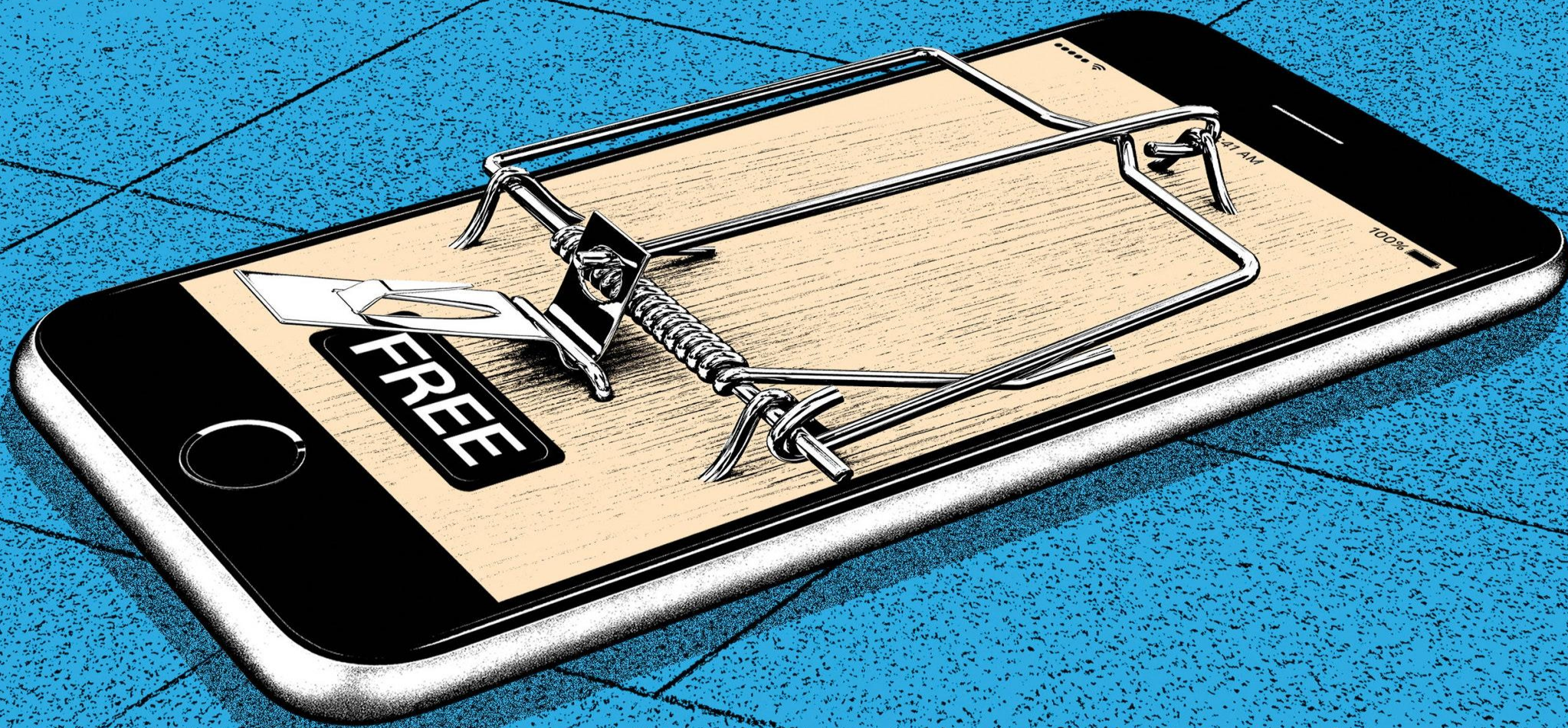
Technology connects more and more



...but technology also divides



Is technology a bounty or a trap?



The new world is challenging

Yuval Noah

Harari



21 Lessons
for the
21st Century

**The world has never felt
more unequal.**

Will machine learning and robotics
make humans economically
redundant ?

**Am I moral if I do nothing
when there is a refugee crisis?**

Algorithms already control
much of our daily lives.

Volatile societies...

**No one knows what the future
will look like.**

The new world is unstable



The U.S. dollar and the euro will face threats from digital currencies such as Bitcoin.

Source: [livemint.com](https://www.livemint.com)



AI-powered propaganda, by ratcheting up cognitive manipulation and societal polarization, will increase.

Source: penser-critique.be

Tomorrow will be different...



Artificial intelligence, quantum computing, 5G and the rise of the Internet of Things are just some of the emerging technologies that influence the way our society operates.

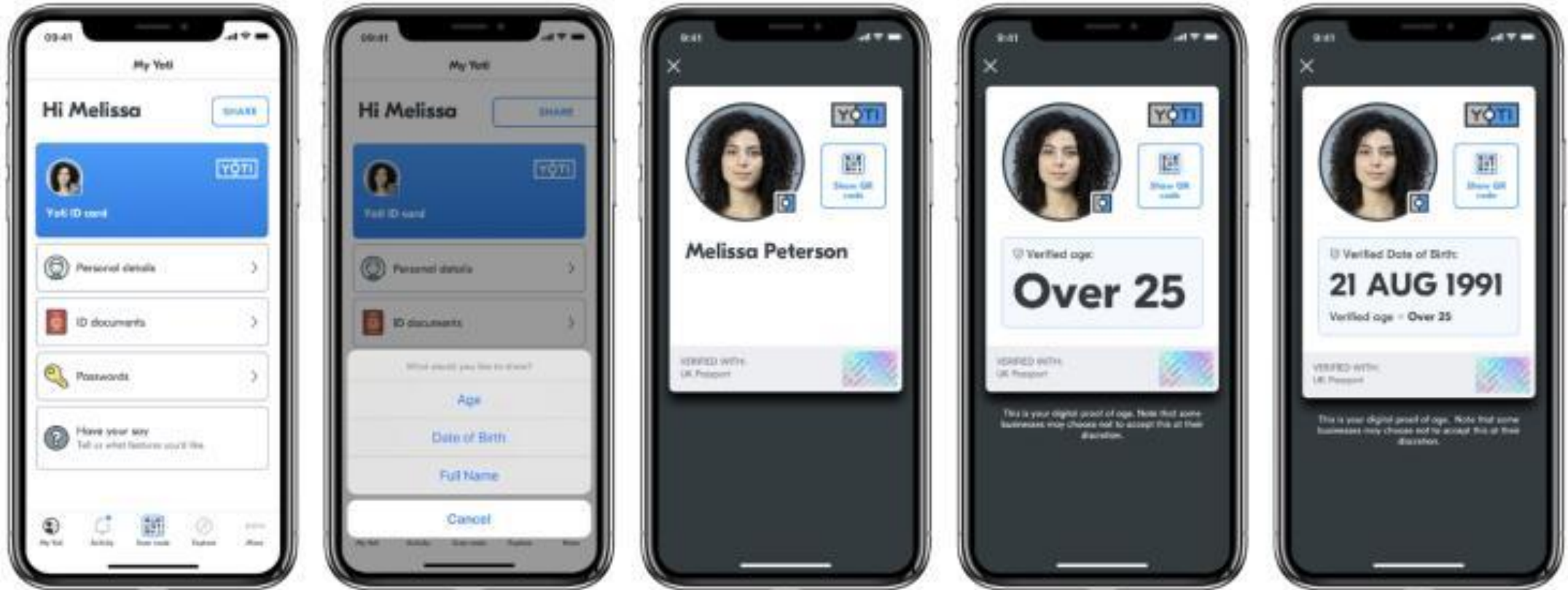
Impact on Human Rights

- ✓ **Privacy**
- ✓ **Surveillance**
- ✓ **The role of internet intermediaries**
- ✓ **Fake news and hate speech**
- ✓ **Elections**
- ✓ **Access to information**
- ✓ **Public trust**
- ✓ **Cybercrime**

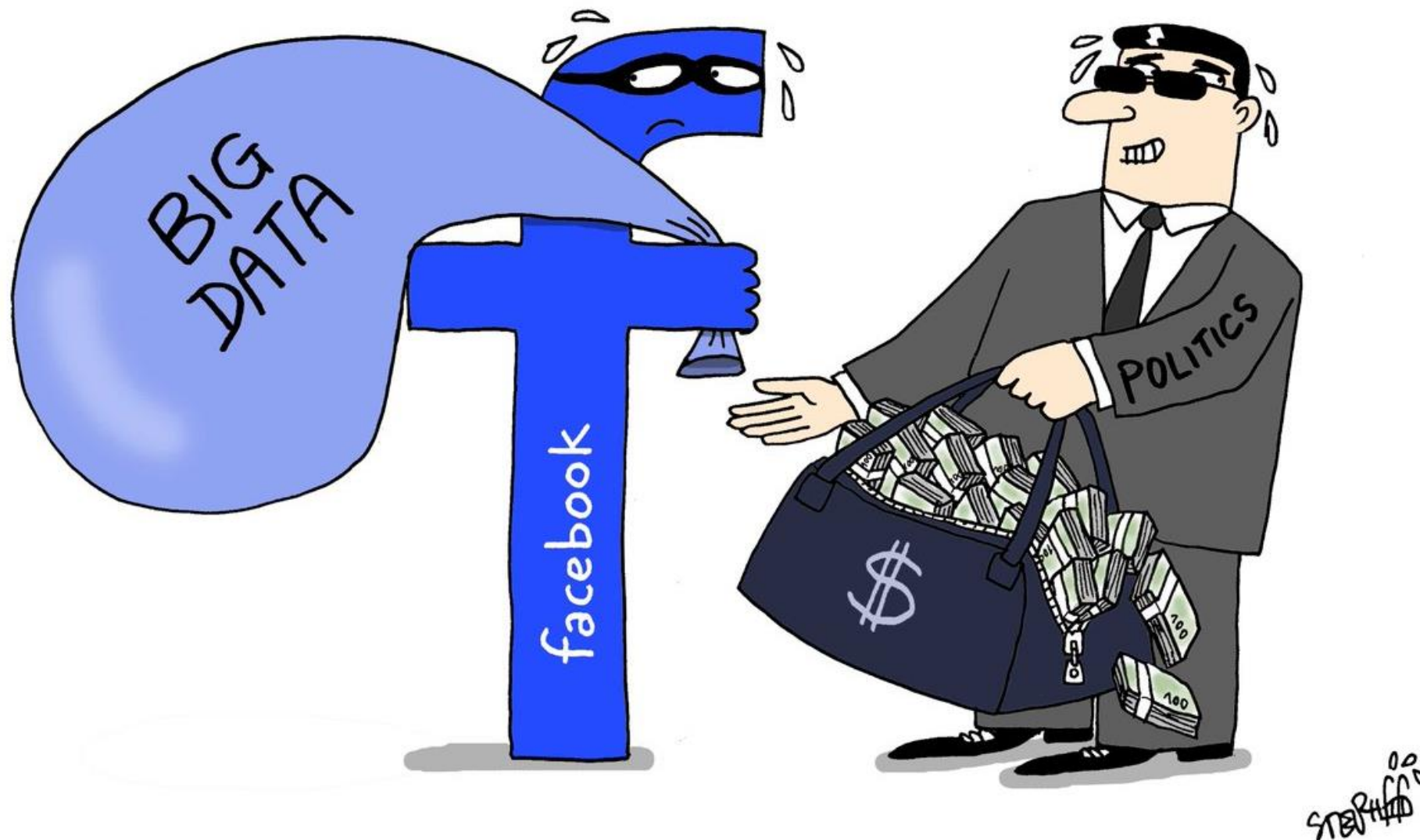
Impact on Human Rights

✓ **Privacy**

My personal data are public



My data becomes a commodity

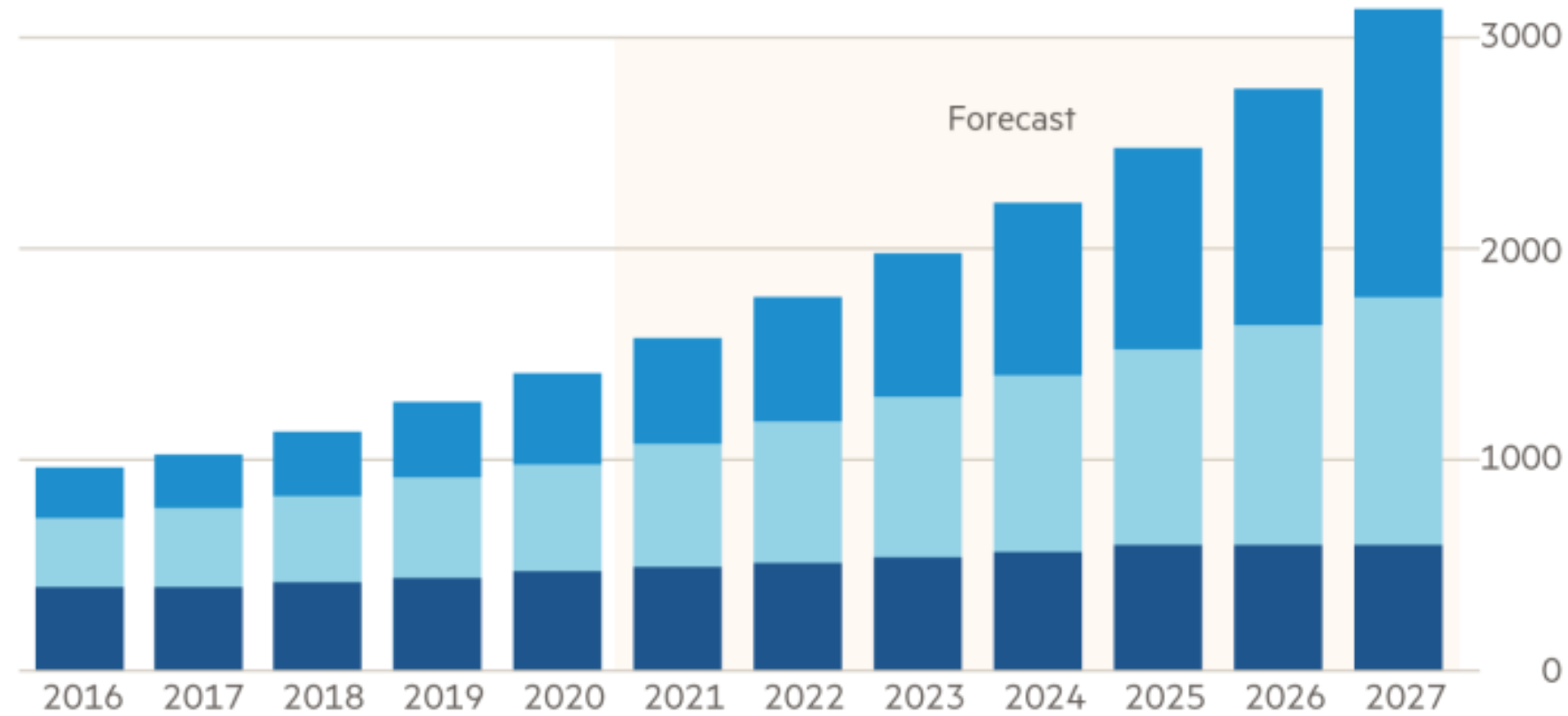


My face is recognised

North America's facial recognition market expected to double in size by 2027

Technology market size (\$m)

■ 2D ■ 3D ■ Facial analytics



Source: Grand view research
© FT

Source: www.ft.com

Privacy and public safety collide



Source: Do not let the spies weaken encryption, [FT](#)

Impact on Human Rights

✓ Surveillance

Your face: a \$20bn industry

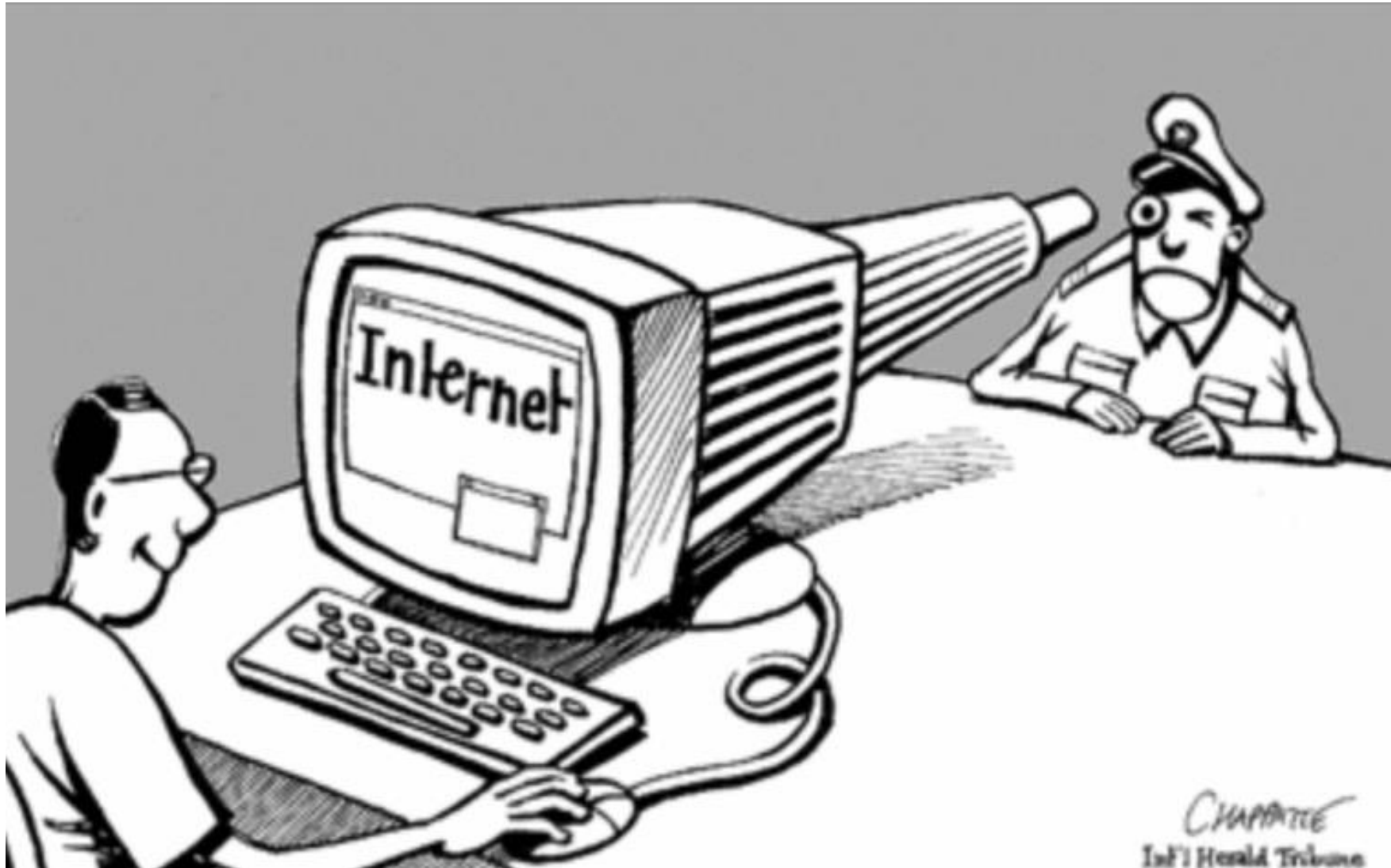
The Guardian



▲ Monitors display a video showing facial recognition software in use at the headquarters of the artificial intelligence company Megvii, in Beijing. Photograph: New York Times/eyevine



Surveillance becomes widespread



Protesters are being watched and recognised

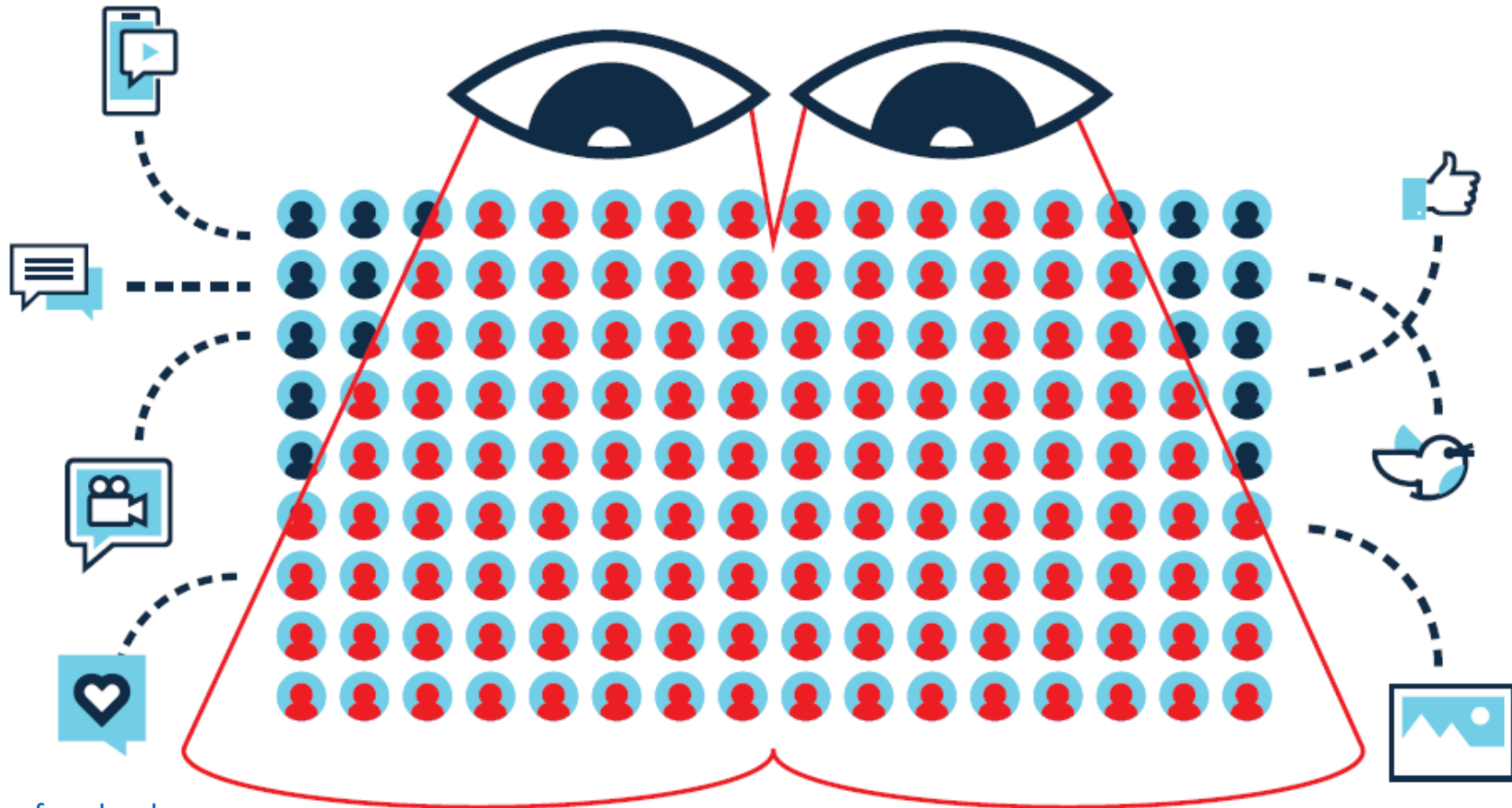


Technology encourages social control



UNDER THE WATCHFUL EYE OF SOCIAL MEDIA SURVEILLANCE

40 of the 65 countries covered by *Freedom on the Net* have instituted advanced social media surveillance programs. That means 89% of internet users—or nearly 3 billion people—are being monitored.



Surveillance hinders transparency



Impact on Human Rights

✓ **The role of
internet
intermediaries**

Platforms influence politics

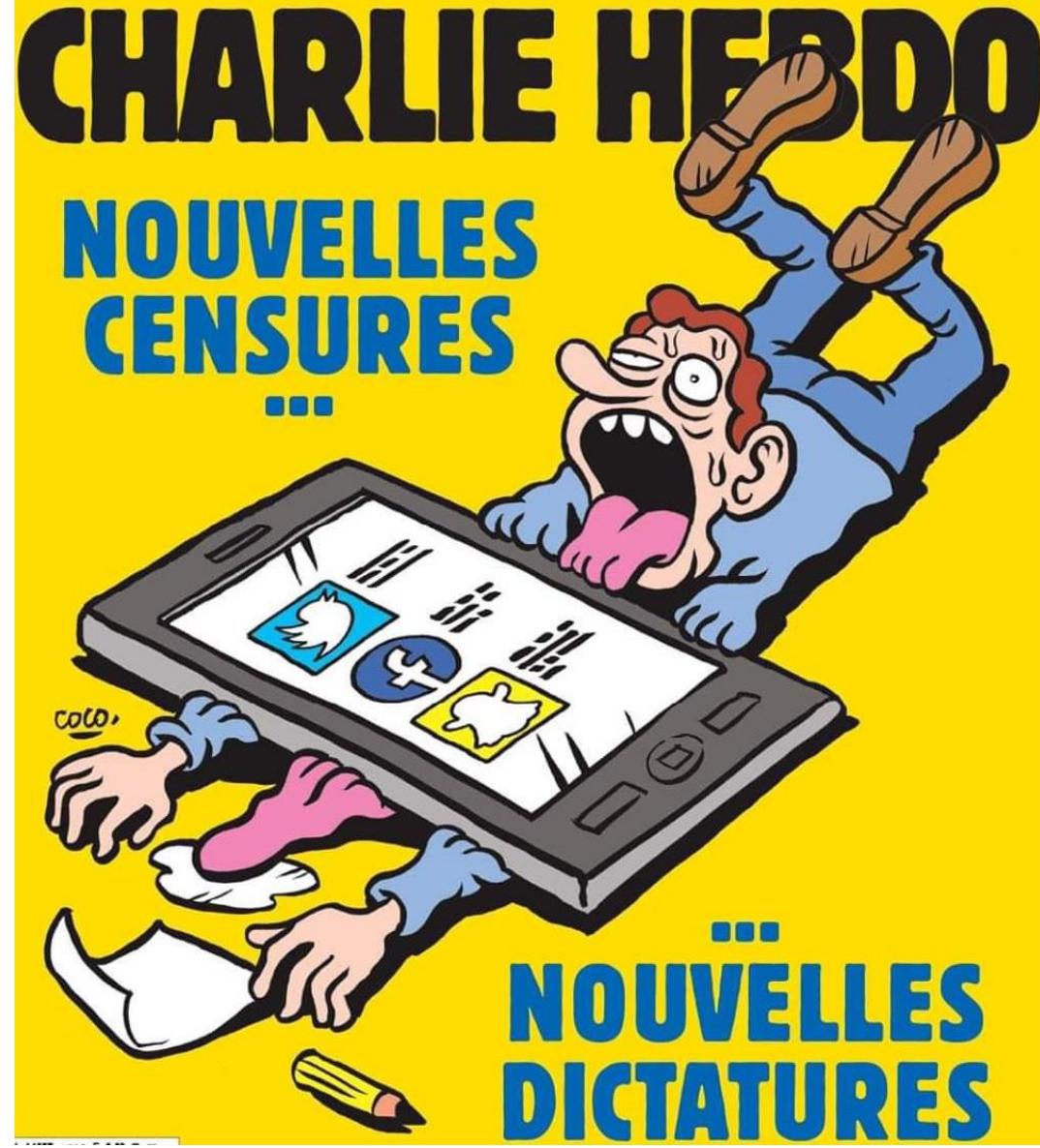


GAFAM are the main lobbyists in Brussels

140 lobbyists are influencing EU policies on behalf of 10 largest tech companies – Google, Apple, Facebook, Amazon and Microsoft and also IBM, Huawei, Vodafone, Qualcomm and Intel.

The Brussels “digital lobby” spent €97 million – 10 times more than that of the automobile industry

In total 1500 lobbyists are mobilised by 612 companies from the technology sector for €32 million annually





1,3 bn
users

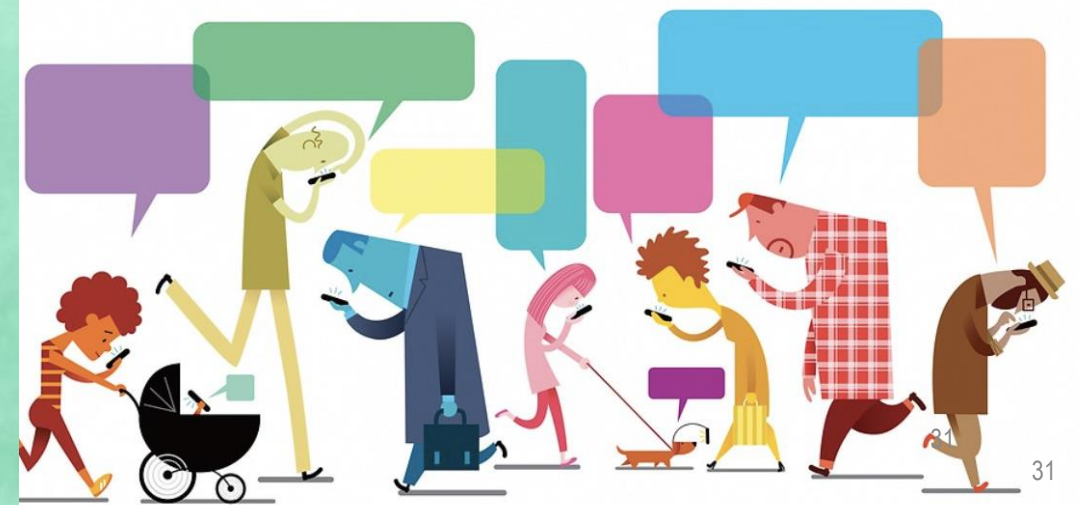
100 mil in Europe

Source: [cisecurity.org](https://www.cisecurity.org)

Why is TicToc considered a threat to Democracy?

- **Collection of PII and User Data** – The App collects sensitive data about users, even when those users neither saved nor shared their content. This presents a security threat for users due to the 2017 Chinese National Intelligence Law, which states that “any organization or citizen shall support, assist and cooperate with the state intelligence work in accordance with the law.”
- **Violations of COPPA** - TikTok collects data from all age groups and, in doing so, regularly violates the Children’s Online Privacy Protection Rule of 1998 (COPPA).
- **Censorship** - the app’s censorship of any content critical of Chinese state interests.

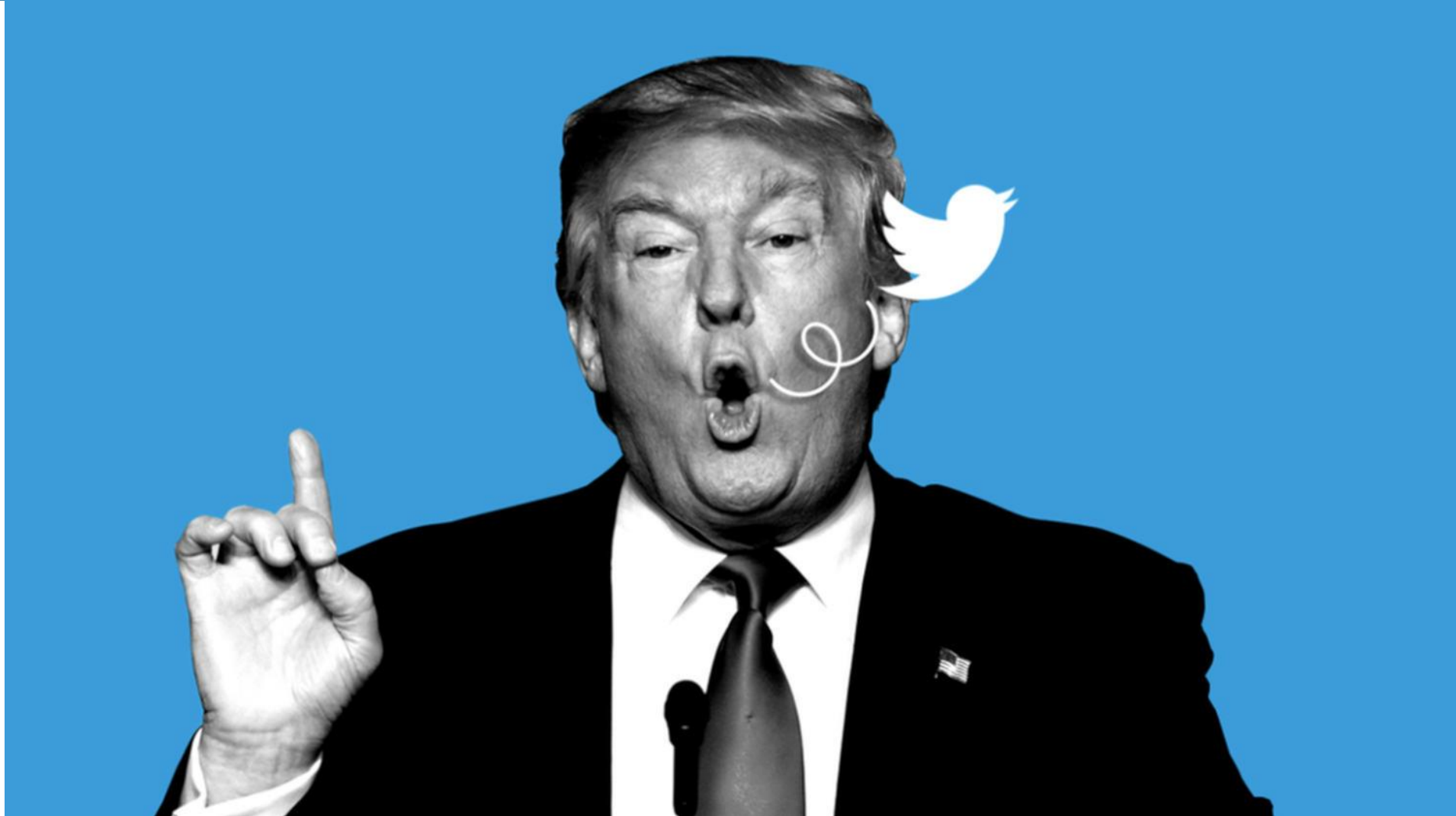
Am I a customer or a product?



Impact on Human Rights

✓ **Fake news &
Hate speech**

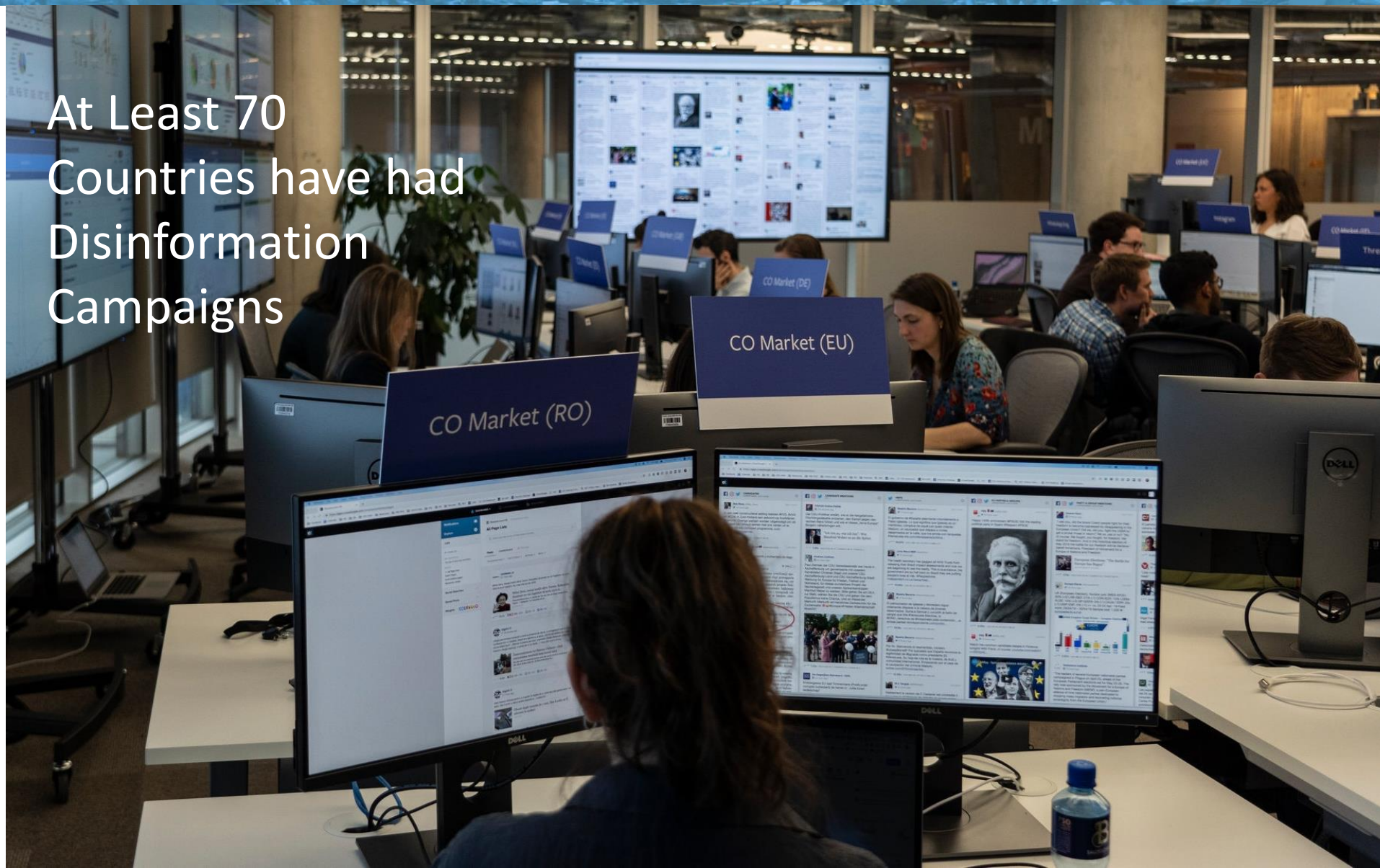
Fake news are spined online



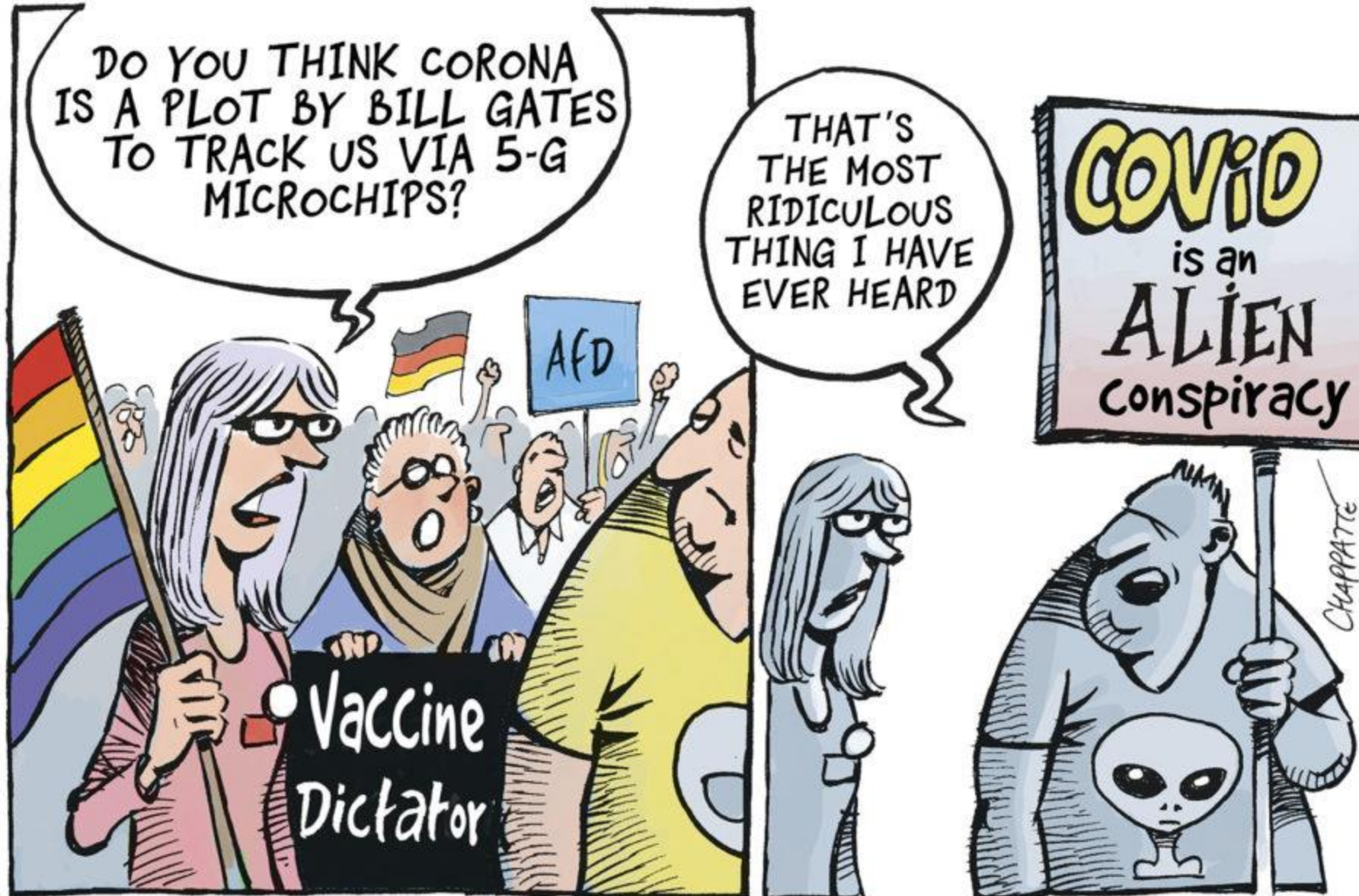
... as well as hate speech



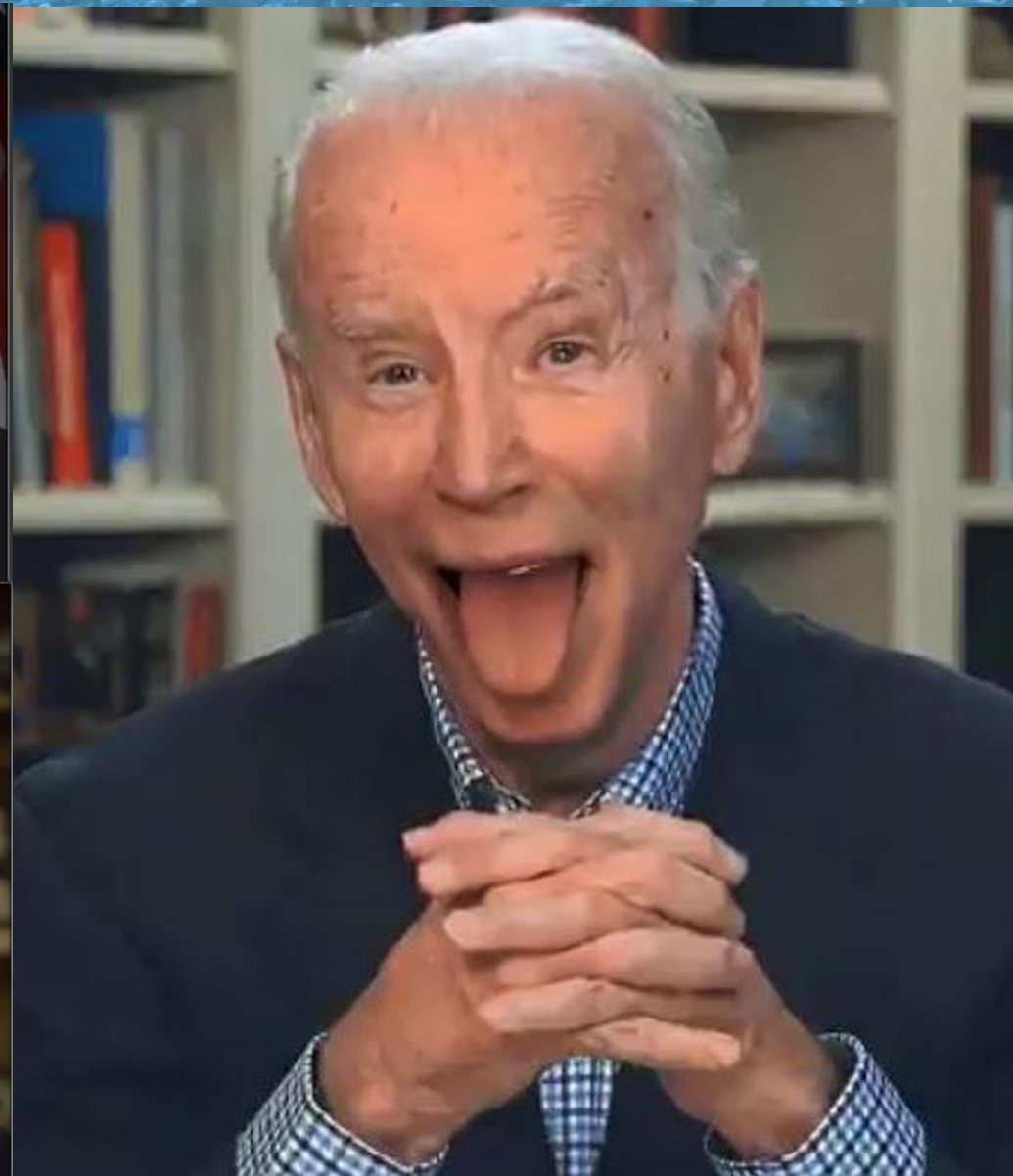
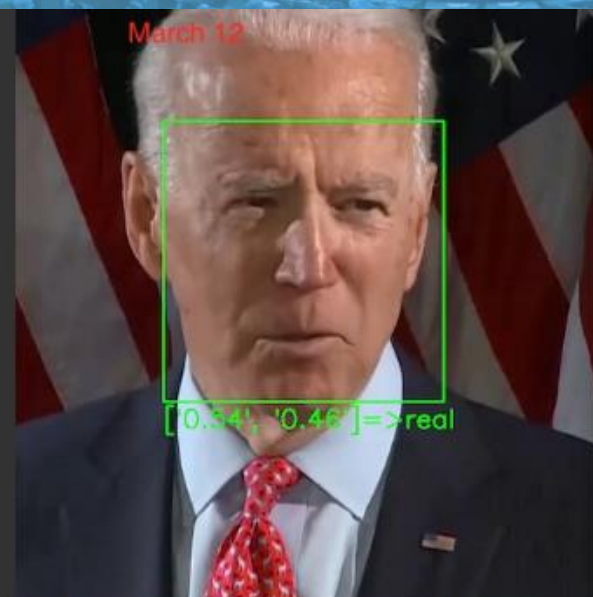
At Least 70
Countries have had
Disinformation
Campaigns



Conspiracies and fake news thrive



Deep fakes distort reality

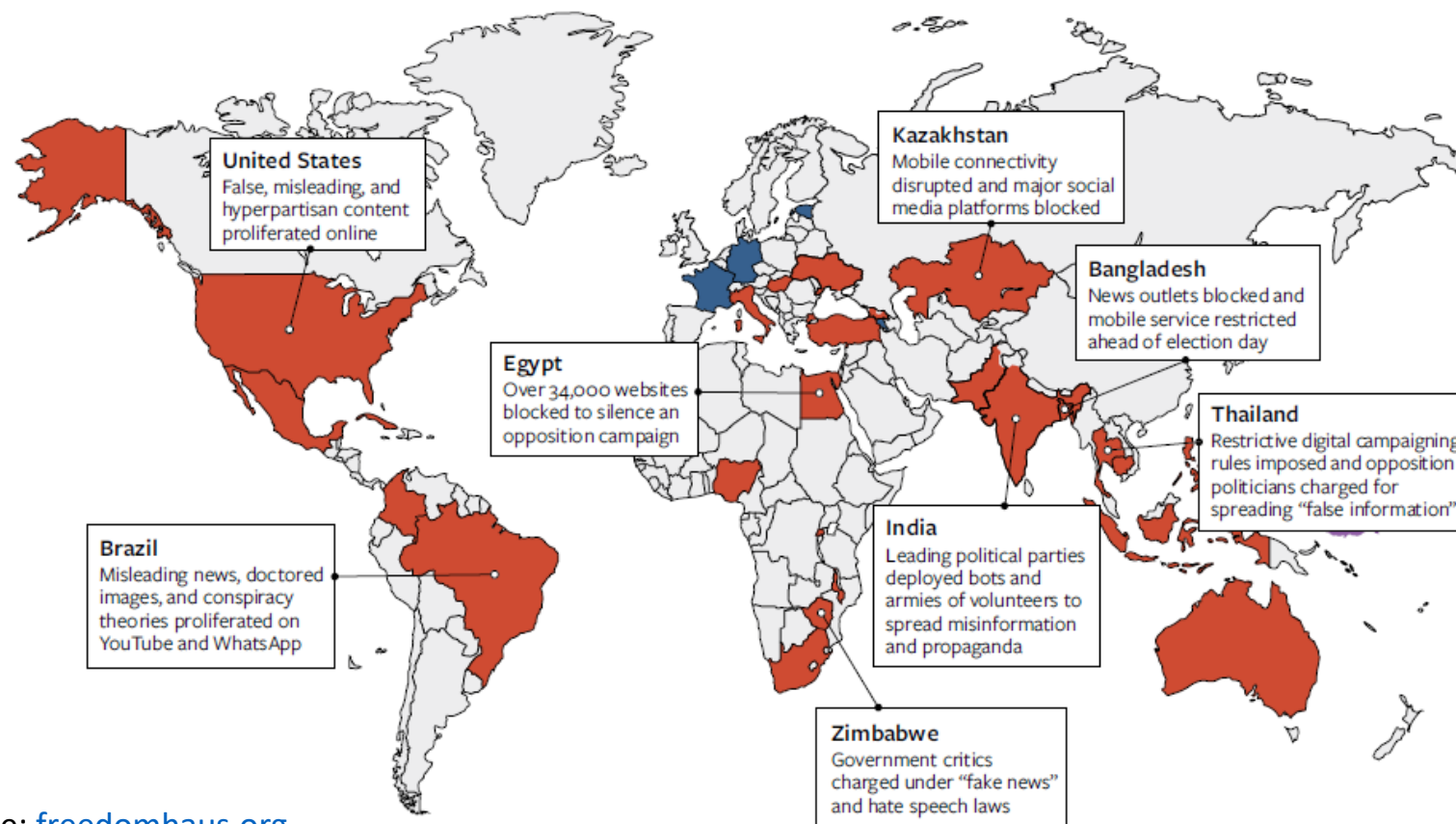


Impact on Human Rights

✓ Elections

THE GLOBAL PHENOMENON OF DIGITAL ELECTION INTERFERENCE

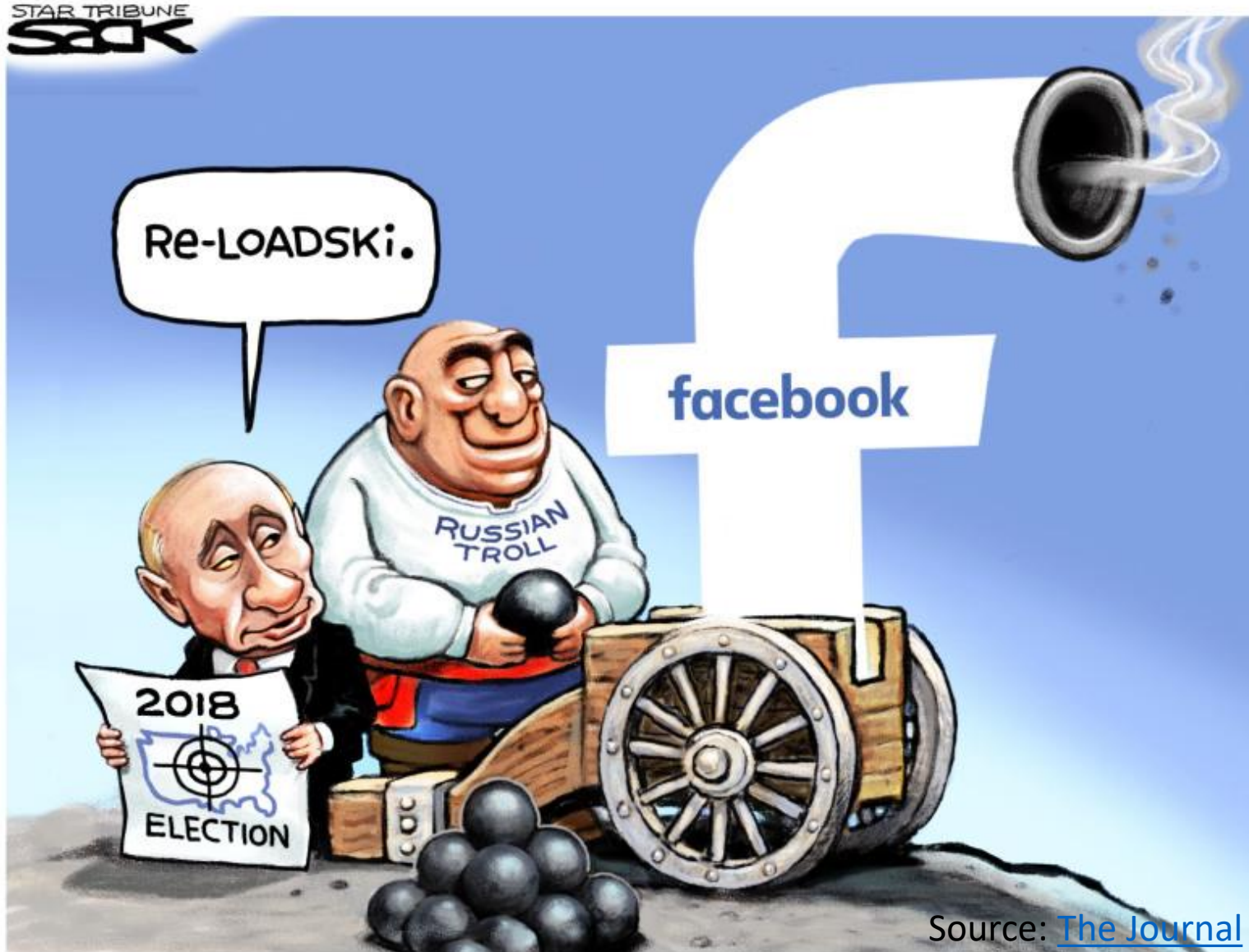
Domestic actors interfered online in 26 of 30 countries that held elections or referendums over the past year.



Source: freedomhaus.org

■ With Election Interference ■ Without Election Interference ■ No Data

Disinformation rigs elections

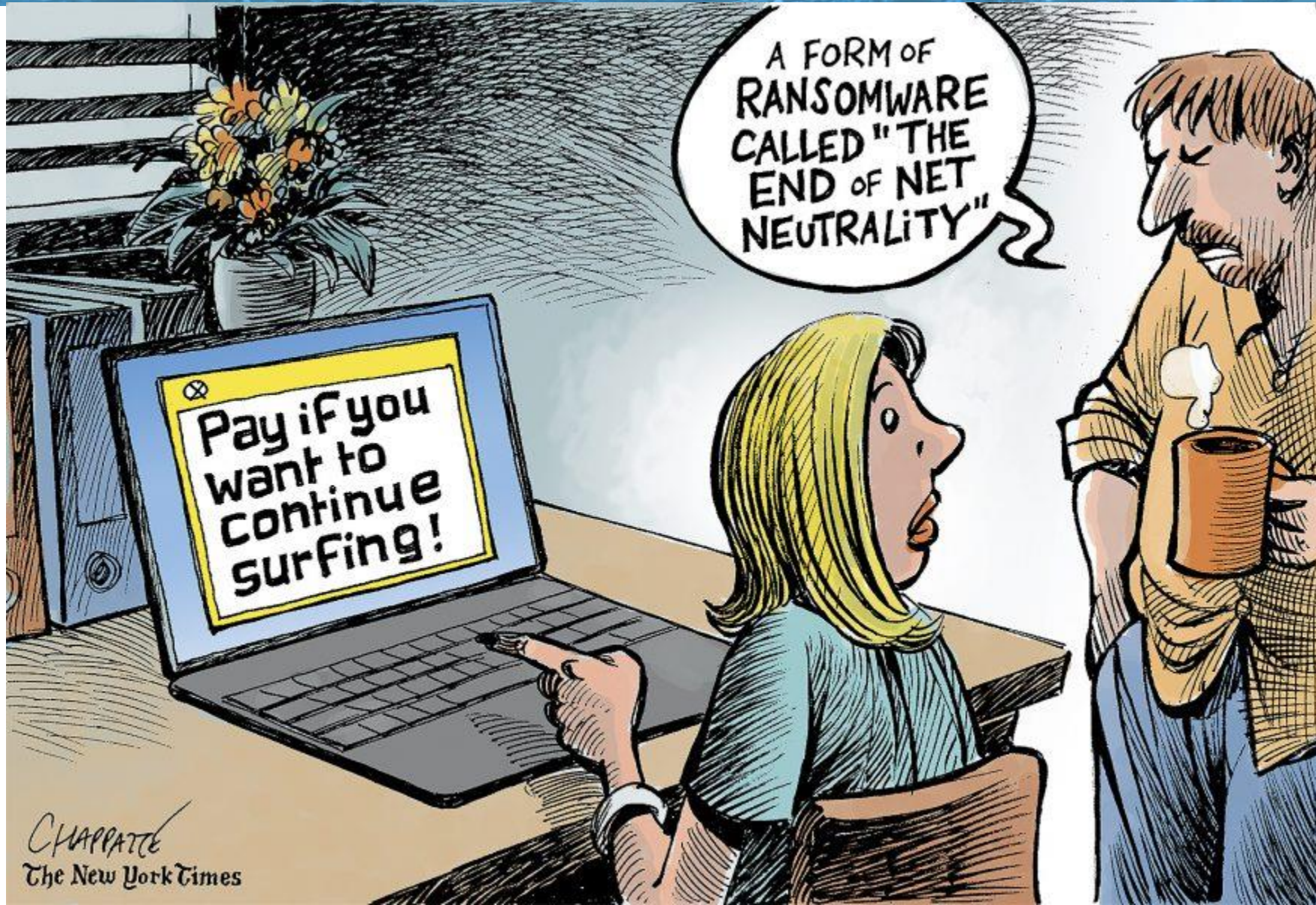


Source: [The Journal](#)

Impact on Human Rights

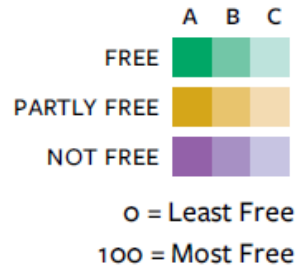
✓ **Access to
information**

The access to the net is not free

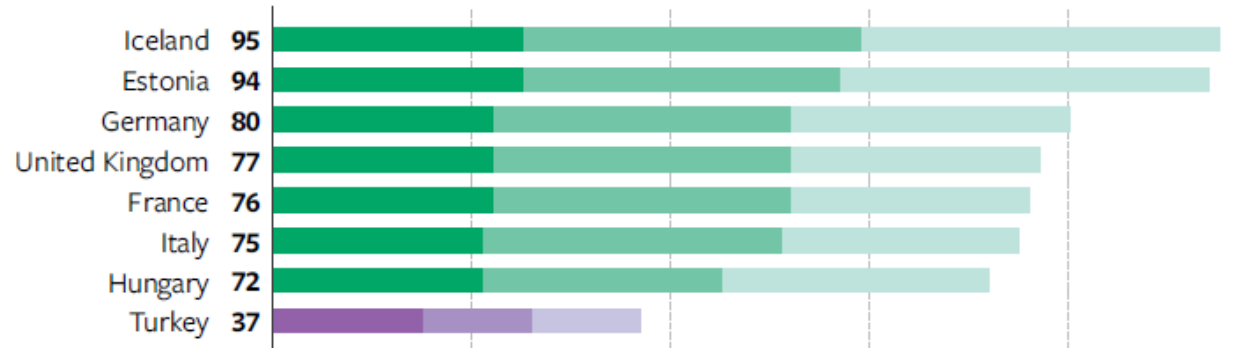


Internet freedom is challenged

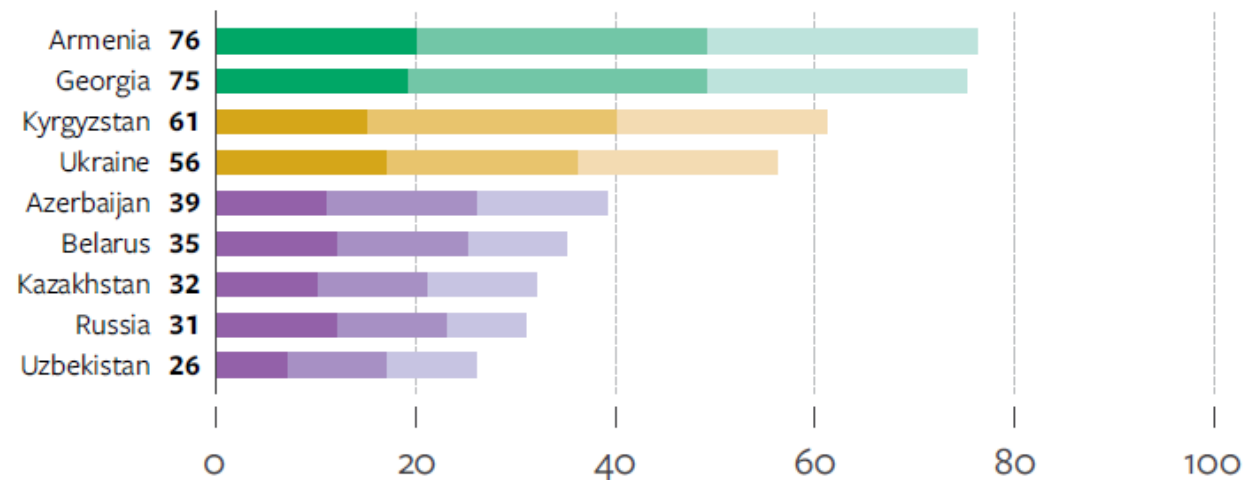
- A. Obstacles to Access
- B. Limits on Content
- C. Violations of User Rights



Europe



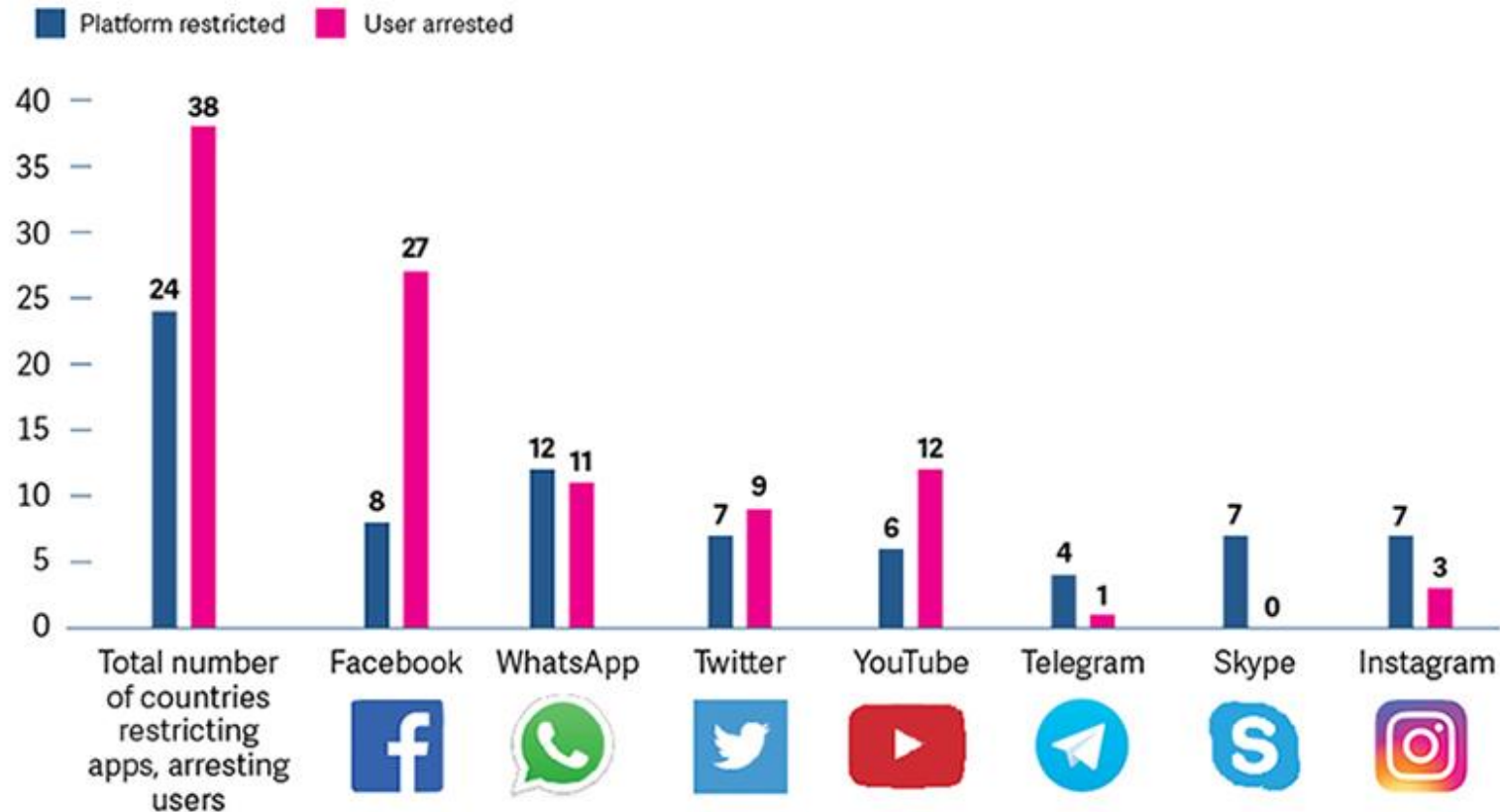
Eurasia



Policing of internet is spreading

NUMBER OF COUNTRIES WHERE POPULAR APPS WERE BLOCKED OR USERS ARRESTED

WhatsApp was blocked more than any other tool, while Facebook users were arrested for posting political, social, or religious content in 27 countries.



The Freedom of Press declines

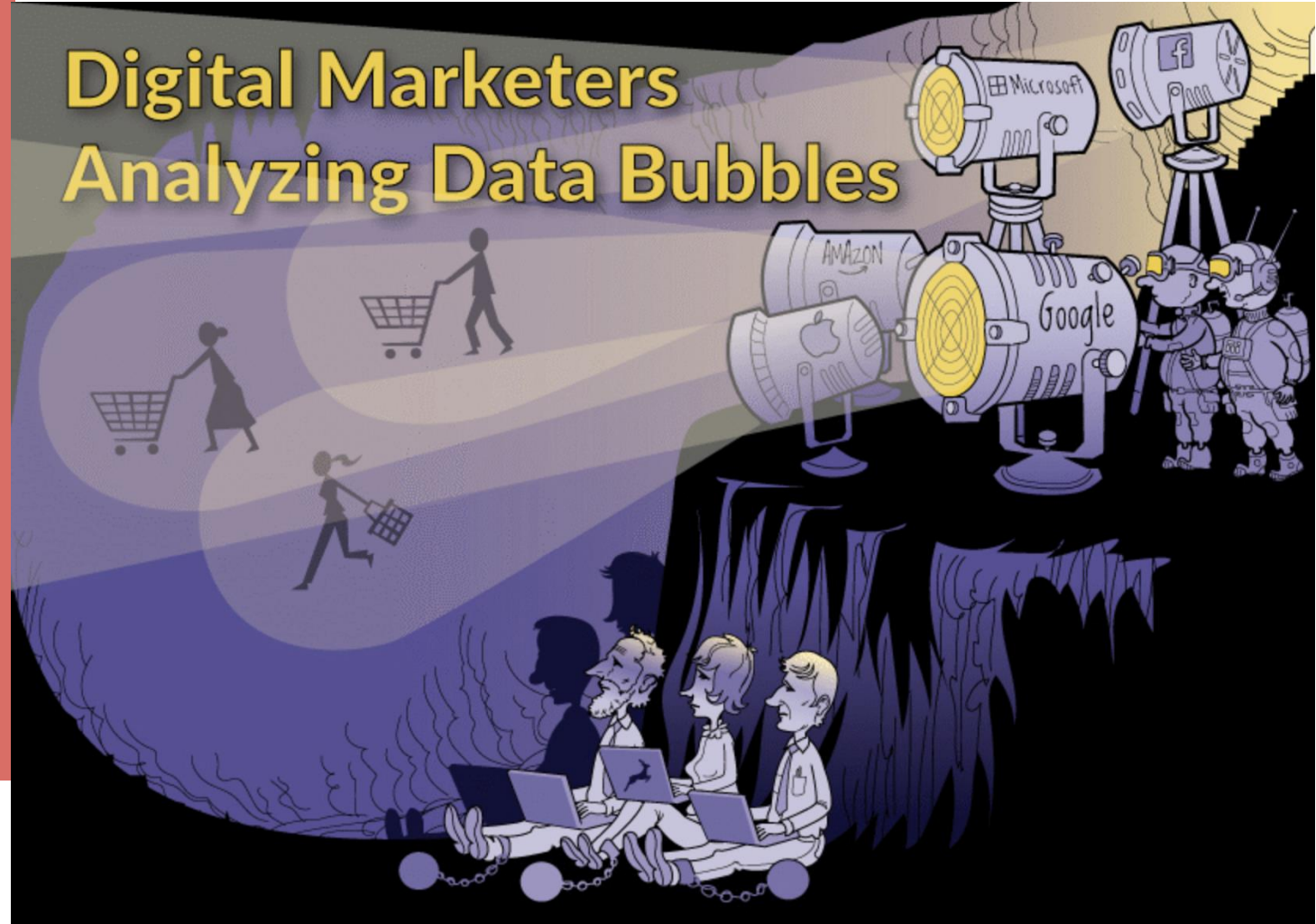


Freedom of the Press Worldwide 2021

- GOOD SITUATION
- SATISFACTORY SITUATION
- PROBLEMATIC SITUATION
- DIFFICULT SITUATION
- VERY SERIOUS SITUATION

Do I still have access to information?

Digital Marketers Analyzing Data Bubbles



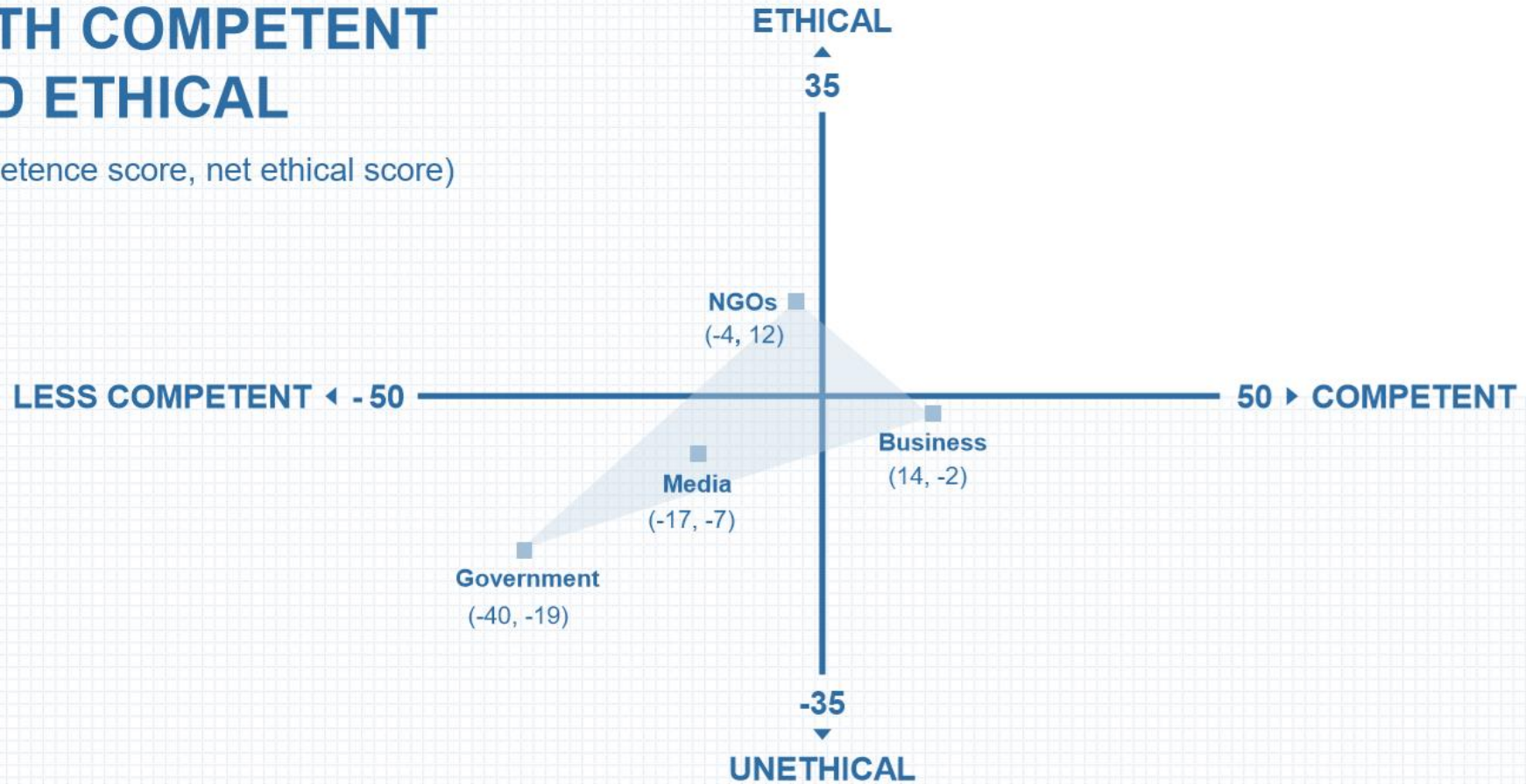
Impact on Human Rights

✓ **Public trust**

Disinformation brings distrust

NO INSTITUTION SEEN AS BOTH COMPETENT AND ETHICAL

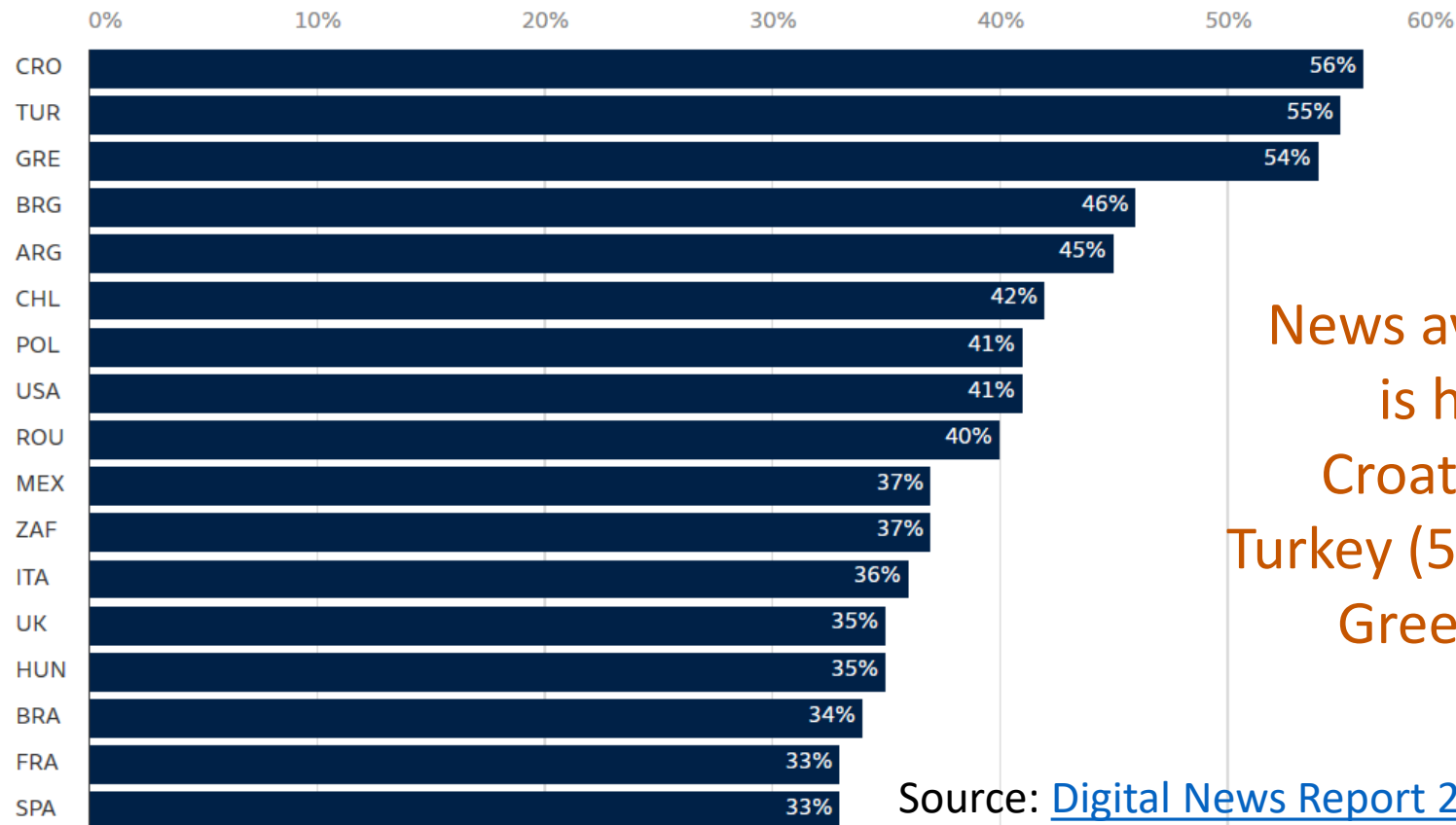
(Competence score, net ethical score)



News avoidance extends

PROPORTION THAT OFTEN OR SOMETIMES ACTIVELY AVOIDS THE NEWS

All markets



News avoidance is highest in Croatia (56%), Turkey (55%), and Greece (54%)

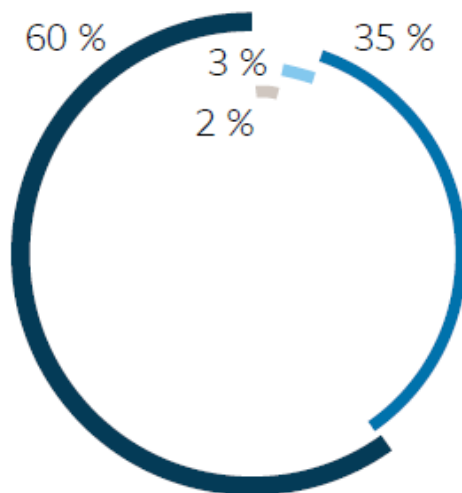
Source: [Digital News Report 2020](#), Reuters Institute

Distrust in Internet increases

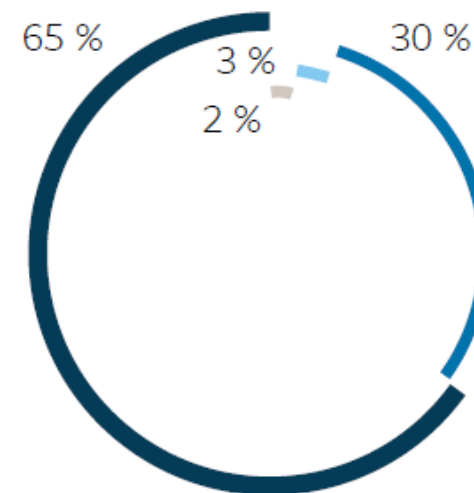
European caution when using the internet,* 2021, percent

● More cautious ● No difference ● Less cautious ● Don't know

Compared to five years ago, are you more or less cautious regarding...



the security of your devices and accounts



the reliability of information online

Source: [Munich Security Brief](#)

Data: Kekst CNC, commissioned by the Munich Security Conference.

Illustration: Munich Security Conference.

*General population in France, Germany, Italy, Poland, Sweden, and the United Kingdom.

Impact on Human Rights

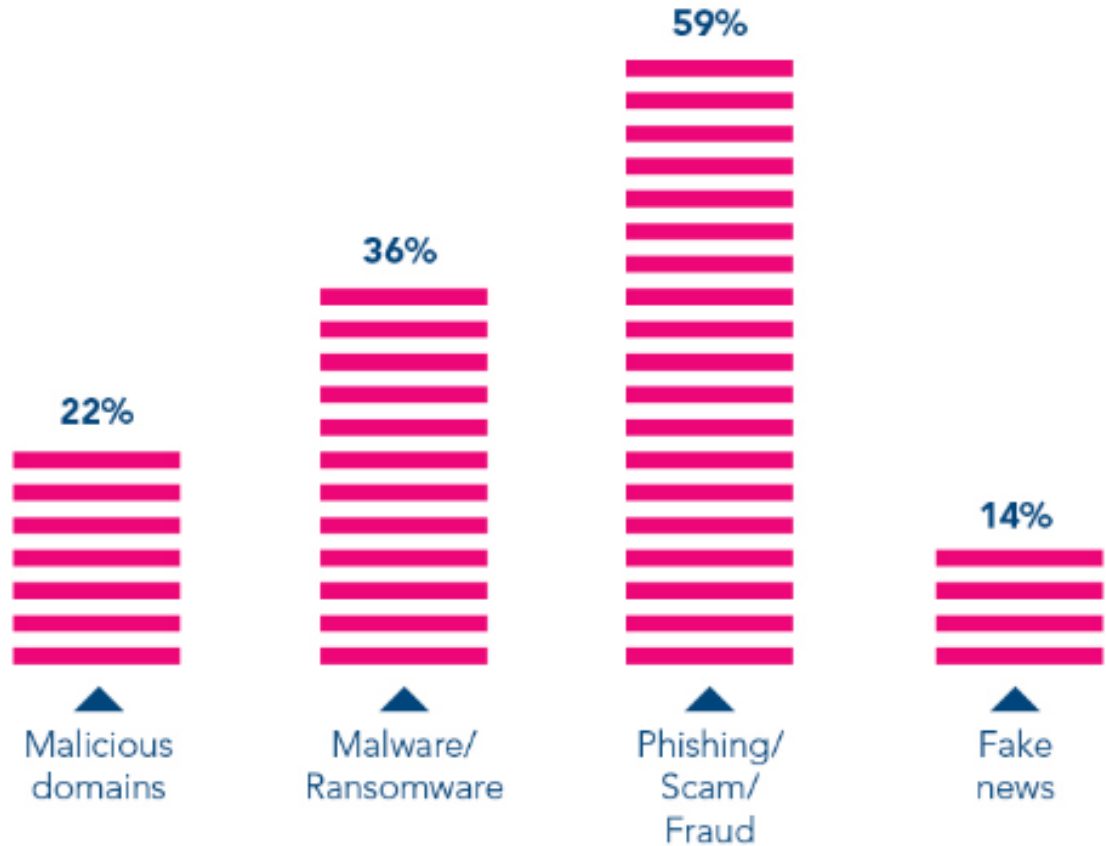
✓ Cybercrime

Cybercrime proliferates



COVID-19 increases cyberthreats

Distribution of the key COVID-19 inflicted cyberthreats based on member countries' feedback



Source: [interpol.int](https://www.interpol.int)

moderna



- **European Medicines Agency (EMA)** documents on Moderna's COVID-19 vaccine candidate were unlawfully accessed in a cyberattack.
- **The EMA**, had been targeted in a cyberattack, which also gave hackers access to documents related to the development of the Pfizer Inc and BioNTech COVID-19 vaccine.
- **Moderna** said its submission to the EMA did not include any information identifying individual study participants and there is no information at present that any participants had been identified in any way.

Fake vaccine certificates are sold online



Fraudsters sell forged COVID-19 vaccination certificates on the dark web in a fast-growing pandemic scam, cyber security analysts say

OUR OBJECTIVE

Assist and cooperate with member States to change their policy, legislation and practice to effectively protect and promote freedom of expression, media freedom and data protection, in line with Council of Europe standards

TRIANGULAR
Methodology

STANDARDS
Recommendations
Conventions

Projects
Programmes
ASSISTANCE

Surveys
Mechanisms
MONITORING



Safeguarding
**Freedom of
Expression**

Developing
**Digital
Governance**



Protecting **Privacy**

Combating
Cybercrime

Framing
**Artificial
Intelligence**



Awareness raising

- Study “Information Disorder”

Standards

- ✓ Convention on **Access to Official Documents**
- ✓ Recommendation on promoting a **favorable environment** for quality journalism in the digital age
- ✓ Recommendation on the roles and responsibilities of **internet intermediaries**
- ✓ Recommendation on the human rights impacts of **algorithmic systems**



Standards

- ✓ Recommendation on “hate speech”
- ✓ Recommendation on the media and the promotion of a culture of tolerance
- ✓ Recommendation on blasphemy, religious insults and hate speech against persons on grounds of their religion

IN PREPARATION

- ✓ Draft Recommendation on a **Comprehensive approach to Combating Hate Speech**

Awareness raising

- “Addressing hate speech in the media: **the role of regulatory authorities and the judiciary**”, Regional conference, Zagreb 2018



Standards

- ✓ Recommendation on **safety of journalists** and other media actors
- ✓ **Guidelines to states** on how to protect journalists

Awareness raising

- ✓ European survey of **“Journalists under pressure”**
- ✓ **Qualitative study of journalists’ experiences and responses** **“Mission to inform: journalists at risk speak out”**
- ✓ Platform for the **Protection of Journalism and Safety of Journalists**

Standards

- Recommendation on **media pluralism and transparency of media ownership**
- Recommendation on the **roles and responsibilities of internet intermediaries**



Awareness raising

- “Media Pluralism – How can we deliver?“, International Conference, Strasbourg, 2019



Standards

- ✓ Declaration on the **financial sustainability** of quality journalism in the digital age
- ✓ Draft Recommendation on promoting a **favorable environment** for quality journalism in the digital age

Awareness raising

- ✓ “(Last) call for quality journalism?”
International conference, Ljubljana, 28-29 November 2019
- ✓ Study on supporting quality journalism through **media and information literacy**



Standards

- ✓ Guidance Note on **Content Moderation**

IN PREPARATION

- ✓ Draft Recommendation on **principles for media and communication governance**
- ✓ Draft Recommendation on **electoral communication and media coverage of election campaigns**

Awareness raising

- ✓ Study “**The Discoverability of Public Interest Content Online**”

Standards

- ✓ Recommendation on **media pluralism and transparency of media ownership**
- ✓ Recommendation on **media pluralism and diversity of media content**
- ✓ Declaration on the role of community media in promoting social cohesion and intercultural dialogue

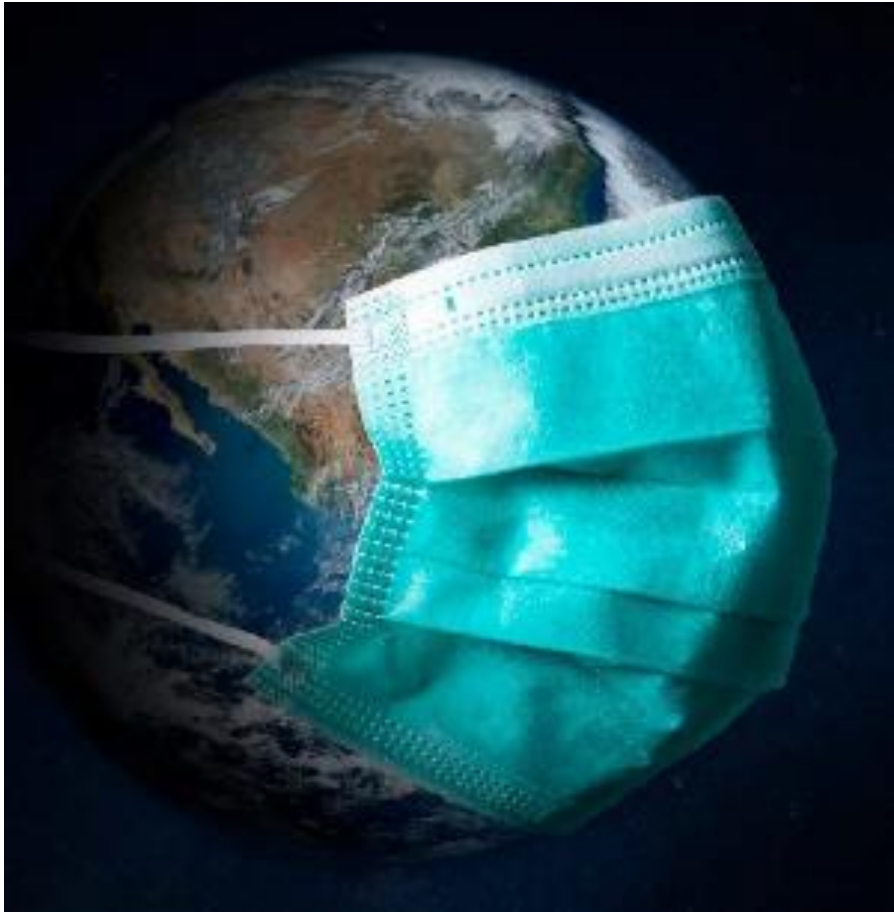
Awareness raising

- ✓ Study “**SPACES OF INCLUSION - needs of refugees and migrants in the domain of media communication and community media**”
- ✓ Study “**MEDIA LITERACY FOR ALL - Supporting marginalised groups through community media**”

Media and Information Literacy projects

presented at the Ministerial Conference, 10-11 June, Nicosia





- **Report on the impact of Covid-19 on free speech** and ensuing measures on freedom of expression in Council of Europe member states;
- **Guidelines of the Committee of Ministers** of the Council of Europe on protecting freedom of expression and information in times of crisis
- **Toolkit by the Secretary General** on the impact of the sanitary crisis on freedom of expression and media freedom.



Cooperation

- ✓ Partnership with Digital Companies
 - 25 companies and associations

Standards

- ✓ Recommendation with regard to **network neutrality**
- ✓ Recommendation on **Internet freedom**
- ✓ Recommendation on the **roles and responsibilities of internet intermediaries**

IN PREPARATION

- ✓ a draft recommendation on **the impacts of digital technologies on freedom of expression**

DEMOCRATIC PROCESSES AND MICRO-TARGETTING

- New tools aim to provide transparency and integrity to election processes
- E-voting still lacks trust
- More balanced newsfeeds

DATA PROTECTION

- AI requires Big Data
- The risk of bias is embedded in the data used to train algorithms
- Use of Big Data in justice systems poses challenges in terms of equality before the law
- Strengthening the rights of data subjects is necessary



CONTENT MODERATION

- Increasingly performed by AI (99% for Facebook)
- A human-rights based approach to the removal of illegal content is required
- Transparency and fairness of algorithms is necessary

CYBER SECURITY

- AI is sensitive to cyber-threats
- Cyber-security services and education become increasingly important
- Holistic stakeholder forums are needed

Protecting Privacy

➔ Data Protection Convention

✓ 80 participating countries

➔ Convention Committee

set international standards in areas of:

- Artificial Intelligence
- Big data
- Health related data
- Media and privacy
- Data processing by the police




Data Protection Convention reach

55 Parties
25+ Observers

 Observer Countries/DPAs

 Acceding countries

 Parties to Convention 108

Protecting Privacy



Data protection principles must be understood and applied in all the different sectors. Current work is being done on their practical translation in the areas of:



- education, children, sport,
- automatic data exchange, especially for tax purposes,
- digital identifiers,
- justice, law enforcement,
- cybercrime,
- terrorism,
- use of personal data analysis in the context of political campaigns and elections,
- bioethics,
- fight against trafficking in human beings.

Budapest Convention on Cybercrime

- **A framework for effective cooperation** with the necessary rule of law safeguards available to 66 states parties.
- **An efficient criminal justice response** against cybercrime and other crimes involving electronic evidence.
- **A well established and functioning system** used as a guideline by almost 80% of States worldwide.

Budapest Convention on Cybercrime (2001):

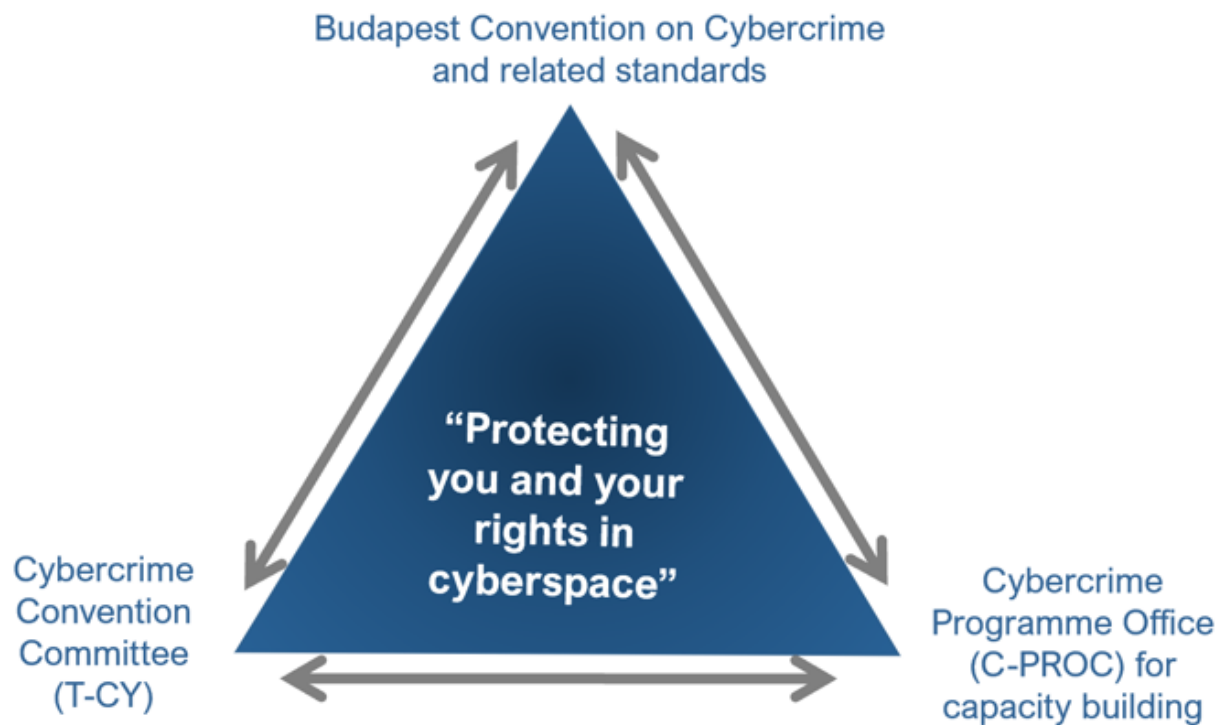
1. Specific offences against and by means of computer systems
2. Procedural powers with safeguards to investigate cybercrime and collect electronic evidence in relation to any crime
3. International cooperation on cybercrime and e-evidence

+ 1st Protocol on Xenophobia and Racism via Computer Systems

+ Guidance Notes

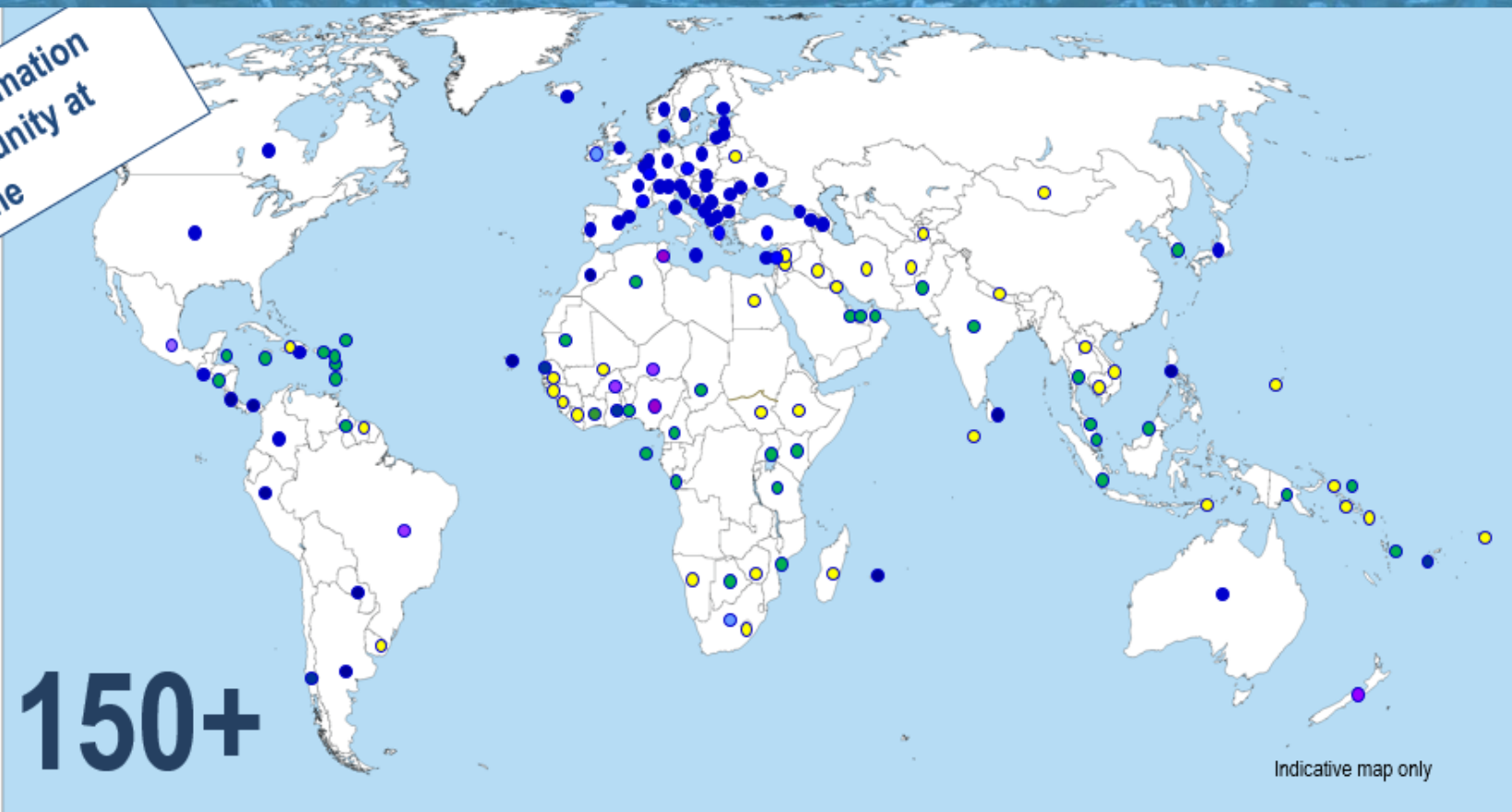
+ Draft Protocol on enhanced cooperation on cybercrime and electronic evidence

By June 2021: 66 Parties and 11 Observer States



Combating Cybercrime

For country-specific information
 see the Octopus Community at
www.coe.int/cybercrime



Reach of the Budapest Convention

| | | | | | |
|---------------------------|----|---|---|-------|---|
| <u>Parties:</u> | 66 |  | Other States with laws largely in line with Budapest Convention | = 20+ |  |
| <u>Signed:</u> | 2 |  | Further States drawing on Budapest Convention for legislation | = 50+ |  |
| <u>Invited to accede:</u> | 9 |  | | | |
| = | 77 | | | | |



Transversal approach:

- ✓ Data processing and human rights
- ✓ **Use of AI by the Judiciary**
- ✓ Criminal law implications of AI
- ✓ **Bioethics and AI**
- ✓ Environment
- ✓ **Education**
- ✓ Gender equality, Youth
- ✓ **Children**, Anti-discrimination
- ✓ Culture, Eurimages
- ✓ **Elections**
- ✓ Freedom of expression



Standards

- ✓ Declaration on on the manipulative capabilities of algorithmic processes
- ✓ Recommendation on the human rights impacts of algorithmic systems
- ✓ **IN PREPARATION: a legal framework for the development, design and application of artificial intelligence** based on Council of Europe standards

Awareness raising

Study: “Algorithms and Human Rights”

Study: “Responsibility and AI”

CAHAI - Ad hoc Committee on Artificial Intelligence

- Identify major opportunities and negative impacts on human rights, democracy and the rule of law.
- Discover gaps in the current level of protection provided by existing international and national instruments.
- Propose an appropriate legal framework consisting of a combination of binding and non-binding legal instruments, that complement each other.
- **Council of Europe** is the organisation that could bring the « brick » of regulation to create trust based on human rights, democracy and the rule of law.

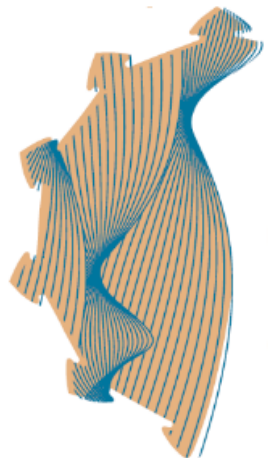
131st Session of the Committee of Ministers (Hamburg (videoconference), 21 May 2021)

- ✓ decided to give priority to the work on an **appropriate legal framework** for the development, design and application of **artificial intelligence**
- ✓ reiterated the importance of a speedy accession to the **modernized Convention 108 in order to facilitate the formation of an all-encompassing legal regime on data protection**
- ✓ encouraged the completion of the **Second Additional Protocol to the Convention on Cybercrime, which aims at enhancing the efficiency of co-operation on cybercrime and electronic evidence** in time for the 20th anniversary of the Convention on Cybercrime in November 2021
- ✓ took note of the preparation of a new and comprehensive recommendation by the Committee of Ministers on **combating hate speech, online and offline**, to protect human dignity while respecting freedom of expression

Source: [coe.int](https://www.coe.int)



The Ministerial Conference
“Artificial intelligence -
Intelligent politics:
Challenges and opportunities
for media and democracy”
(10-11 June 2021)



COUNCIL OF EUROPE
**Conference of Ministers
responsible for Media
& Information Society**
N I C O S I A 2 0 2 0

four resolutions:

- the impact of AI-powered products and processes on freedom of expression;
- possible regulation to ensure more transparency in the dissemination of news and information;
- safety of journalists and other media actors;
- impact of the COVID-19 pandemic on freedom of expression.



Civil society organisations, NGOs and human rights defenders (HRDs):

- **important partners and beneficiaries** of the Council of Europe media/freedom of expression programmes
- **involved with co-operation** projects implemented in different CoE member states/non-member states
- **instrumental in raising public awareness** and lobbying for FOE reforms in line with the CoE standards



Civil society involvement

- Numerous civil society organisations are observers in the [Steering Committee on Media and Information Society \(CDMSI\)](#):
 - Participate in CoE standard setting.
 - Provide information on situation on the ground.
- New policy recommendations are put up for [public consultation](#).
- 14 journalists' associations are partners to the [Platform for the Protection of Journalism and Safety of Journalists](#)
 - Bring alerts on violation of media freedom and journalist's safety.



Civil society engagement varies from country to country

- In Georgia, Armenia and Ukraine, civil society/NGO sector is **well-developed, respected** by general public and plays significant positive role in reforms process;
- In Azerbaijan and Turkey independent NGOs and HRDs are **suppressed and persecuted**, and not let much even to try to gain trust with public.

Challenge: working with pro-governmental NGOs may negatively affect the outcome of CoE interventions.



Council of Europe partners:

- **Media watchdogs**, which monitor various aspects of freedom of expression (Western Balkans and Turkey, Ukraine, Moldova, Morocco).
- **Self-regulatory Press Councils** (Western Balkans, Georgia, Azerbaijan and Armenia).
- **NGOs with a legal background** which promote legislation reforms concerning freedom of expression (all countries).
- **HRDs in the area of safety of journalists** (Georgia, Tunisia, Ukraine).
- **Representatives of these civil society organisations are members of Steering Committees** of CoE co-operation projects in the region and involved/consulted in developing projects' workplans.



Activity involvement/commitment and engagement:

- promoting and addressing **safety of journalists**
- defamation, **fighting censorship** (including freedom of internet)
- **legislative reforms**, public broadcasting, transparency of media ownership, access to information, **protection of privacy**
- **fighting disinformation**, hate speech, whistleblowing and protection of sources
- **representation of vulnerable groups** in the media
- investigative journalism
- **challenges posed by technological development** and also COVID-19 crisis
- **gender equality** in media



Key condition – presence of a positive environment:

- being **free from government interference**
- having a **sustainable financial independence** and access to logistical facilities
- a record of **democratic freedoms and pluralism** in the society

Current situation:

Lack of a positive environment - Azerbaijan, Belarus, Russia, Turkey and MENA region.

Fragile democracies with a declining environment - Armenia, Georgia, Ukraine.



The task of the Council of Europe:

- **Engage member States** (and non-member States) to better comply with the existing standards and their treaty law obligations that would have a nexus with NGOs and civil society.
- **Ensure better communication** on the expected impact of Council's interventions and support (programmes and activity) as a tool to raise interest and trust.
- **Establish mutual trust** between CoE and NGOs/CSOs at the institutional level as the key for involvement in polarised societies.
- **Increase the CSO and PDs awareness** by enriching their training/education on advocacy over the relevant topics and their ability to advocate and steer public consultations over legal and policy issues.



Cooperation on Freedom of Expression:

- **Safety of journalists** in Azerbaijan, Belarus, Russia, Turkey and Ukraine, and more recently in Georgia.
- **Growing challenge of hate speech** - Western Balkans, Georgia, Armenia, Azerbaijan.
- **Disinformation and information disorder** - Ukraine, MENA.
- **Restrictions of freedoms in internet** - Azerbaijan and Armenia.
- **Restrictions for broadcasting** - Ukraine.
- **Deteriorated system of access to public information** - Moldova.



Cooperation on Freedom of Expression:

- Protection of rights in an **online environment**.
- Challenges posed by rapid technological development, **artificial intelligence** and machine learning.
- The role of technology giants when it comes to content moderation, filtering and online **information disorder**, especially during electoral campaigns.
- Continuous and increasing **challenges posed by COVID-19 crisis** (and Vaccination processes), which includes increased violence against journalists, economic difficulties for media outlets, restrictions with access to information etc.
- **The need to balance** the openness guaranteed by social media and its role in fostering democracy and the spread of hate speech and disinformation.

Thanks for your
attention !



further resources:

www.coe.int/freedomofexpression

www.coe.int/internetgovernance

www.coe.int/dataprotection

www.coe.int/cybercrime

www.coe.int/AI

Facebook Page

Information Society Group

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|  Albania - Albanie Tirana |  Estonia - Estonie Tallinn |  Lithuania - Lituanie Vilnius |  San Marino - Saint-Marin San Marino - Saône-Marin |
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|  Armenia - Arménie Yerevan - Erevan |  France Paris |  Malta - Malte Valletta - La Vallette |  Slovakia - Slovaquie Bratislava |
|  Austria - Autriche Vienne - Vienne |  Georgia - Géorgie Tbilisi - Tbilissi |  Republic of Moldova - République de Moldova Chişinău |  Slovenia - Slovénie Ljubljana |
|  Azerbaijan - Azerbaïdjan Baku - Bakou |  Germany - Allemagne Berlin |  Morocco - Maroc Marrakech |  Spain - Espagne Madrid |
|  Belgium - Belgique Brussels - Bruxelles |  Greece - Grèce Athens - Athènes |  Montenegro - Monténégro Podgorica |  Sweden - Suède Stockholm |
|  Bosnia and Herzegovina - Bosnie-Herzégovine Sarajevo |  Hungary - Hongrie Budapest |  Netherlands - Pays-Bas Amsterdam |  Switzerland - Suisse Bern - Berne |
|  Bulgaria - Bulgarie Sofia |  Iceland - Islande Reykjavik |  Norway - Norvège Oslo |  "The former Yugoslav Republic of Macedonia" "L'Ex-République yougoslave de Macédoine" Skopje |
|  Croatia - Croatie Zagreb |  Ireland - Irlande Dublin |  Poland - Pologne Warsaw - Varsovie |  Turkey - Turquie Ankara |
|  Cyprus - Chypre Nicosia - Nicosie |  Italy - Italie Rome |  Portugal - Portugal Lisbon - Lisbonne |  Ukraine - Roumanie Bucharest - Bucarest |
|  Czech Republic - République tchèque Prague |  Latvia - Lettonie Riga |  Romania - Roumanie Bucharest - Bucarest |  United Kingdom - Royaume-Uni London - Londres |
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