The changing paradigm in media and information:

Standards to protect human rights and democracy in policy-making

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Summary

- It is now widely accepted that information disorder is a challenge to the protection and enjoyment of human rights, democracy and the rule of law in Council of Europe member states.
- Information disorder is associated with a decline in trust in information and the media, which relates to a major long-term shift in media consumption.
- Media industries and governments are responding to information disorder, developing new structures of co-regulation with new media platforms to encourage ethics and verification.
- Co-regulation can undermine trust in democracy however, and result in opaque reciprocities that undermine the rule of law and human rights such as freedom of expression.
- The Council of Europe should assist democracies in this important area of policy-making by providing standards for impact assessments of new laws and codes, and monitoring of best practices.

Introduction and Overview

Antidemocratic movements have benefited from a widespread lack of trust, including a lack of trust in information and expertise. This lack of trust is associated with a shift to a new information paradigm based on social media distribution. This has led democratic countries to bring forward urgent proposals for reform of their media systems. These involve various forms of automated moderation of content, ethical codes and principles, and new legal frameworks to incentivise "responsible" behaviour. Whilst reform is necessary, these reform processes bring with them challenges to human rights, democracy and the rule of law. The Council of Europe should take a proactive role in ensuring that new frameworks for self- and co-regulation promote rather than undermine democracy and human rights.

I. The Trust Crisis

All democracies are undergoing unprecedented levels of media change. This change is accompanied by a gradual decline of trust in news sources.[1] According to the Oxford Reuters Foundation, today 44% of survey respondents claim that in general they trust the news. However, levels of trust in new media are lower than those in traditional media. Only 34% of respondents say they trust news they find via search and fewer than a quarter (23%) say they trust the news they find in social media (Newman et al., 2018, 16). On the other hand, brands with a broadcasting background and long heritage tend to be trusted most, followed by upmarket newspaper brands, whereas digital-born and popular newspaper brands tend to be trusted least (Newman et al., 2018, 16). Based on a 'Net Trust Index',[2] among the broadcast media, on average radio appears to be the most trusted media in Europe (European Broadcasting Union (EBU), 2018, 17). Public broadcasters score best in countries where they are seen to be independent of government, but in countries like Italy and Spain they have lower scores in absolute terms but also in relation to certain flourishing digital-born brands (Newman et al., 2018, 18).

Declining trust in news often seems to be linked to political tensions at national level. While Finland is holding steady at the top (62%) along with Portugal (62%), trust is down 7 points in Spain (44%) as the media have become caught up in the wider splits in Spanish society after the Catalan referendum. It is also down in Austria (-4) following a divisive series of elections and in Poland (-5) where the government has been accused of cracking down on private media in the name of combating 'fake news. (Newman et al., 2018, 17).

Trust in news sources (2016-2018)

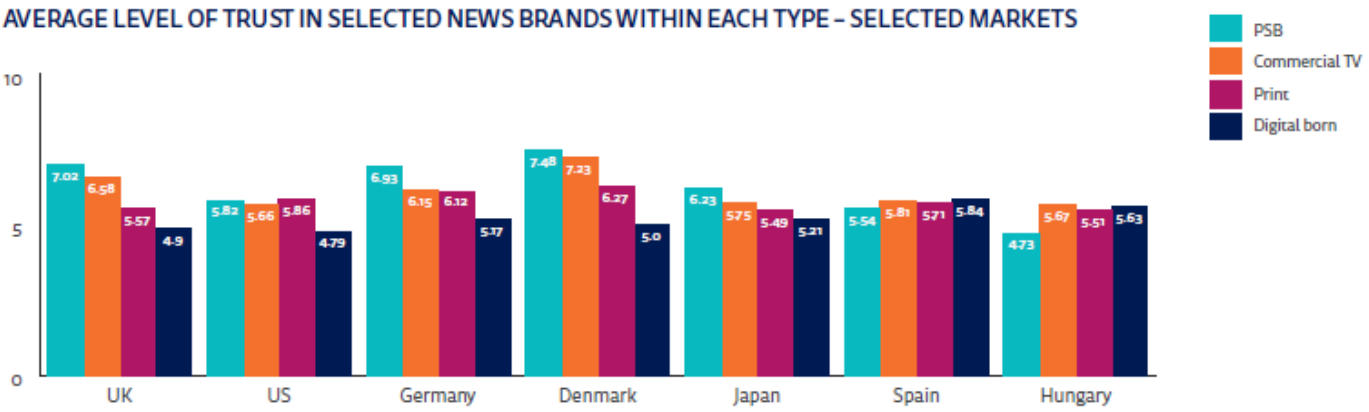
The Reuters Institute for the Study of Journalism publishes annual editions of the Digital News report, providing insights on news consumption based on comparative data obtained from comprehensive surveys. In the last years the report has been focusing, among other, on the issues of declining trust in the media.

[1] https://news.gallup.com/poll/1663/media-use-evaluation.aspx

[2] The Net Trust Index is obtained by the difference between the percentage of people who tend to trust a certain news source or medium, and the percentage of people who do not tend to trust. The results on EU level represent a weighted average across the 28 EU Members States applying official population provided by Eurostat. Source: EBU Media Intelligence Service, based on Eurobarometer 88.

IMAGE 1. Source: Reuters Digital News Report, 2018, p. 16[3]

IMAGE 2. Source: Reuters Digital News Report, 2018, p. 41[4]



[3] Question 6_2018_1/2/3/4: *Please indicate your level of agreement with the following statements. I think you can trust 'most news'/'news I consume'/'news in social media'/'news in search engines' most of the time*. Base: Total sample in all markets = 74194.

[4] Question 6_2018: *How trustworthy would you say news from the following brands is? Use the scale below, where 0 is 'not at all trustworthy' and 10 is 'completely trustworthy'*. Base: Total sample in each market. Note: People who indicated that they have not heard of a brand were excluded.

IMAGE 3. Source: Reuters Digital News Report, 2018, p. 42[5]

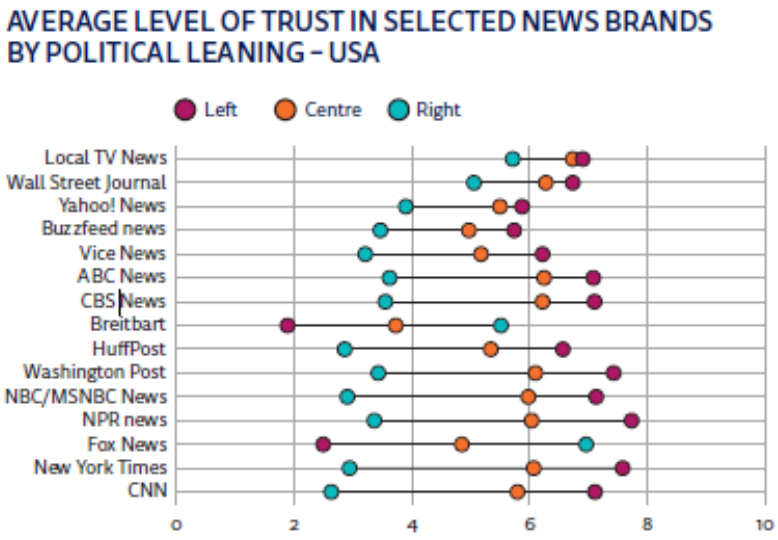
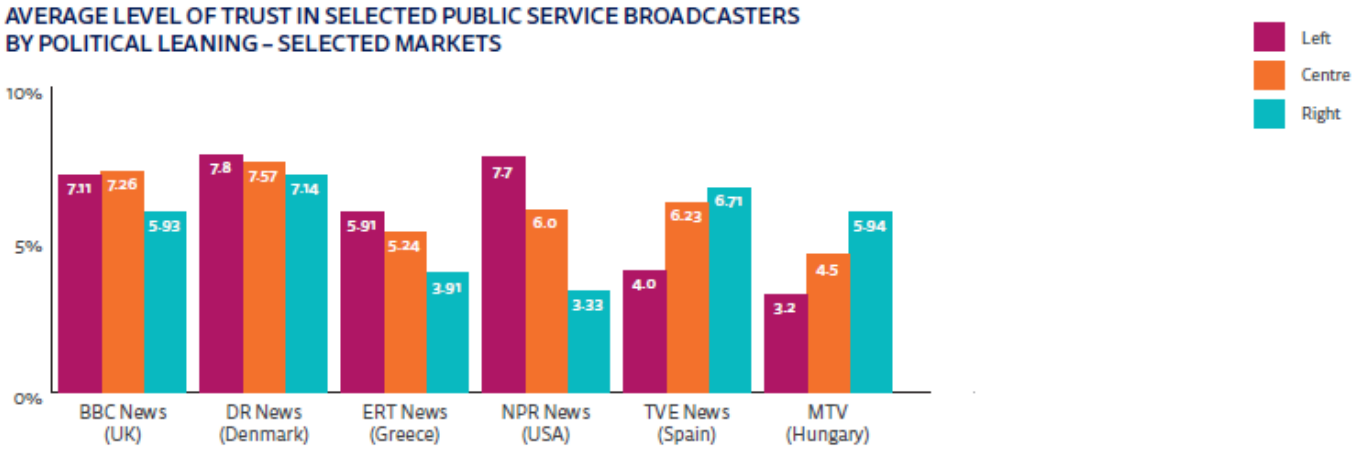


IMAGE 4. Source: Reuters Digital News Report, 2018, p. 43[6]

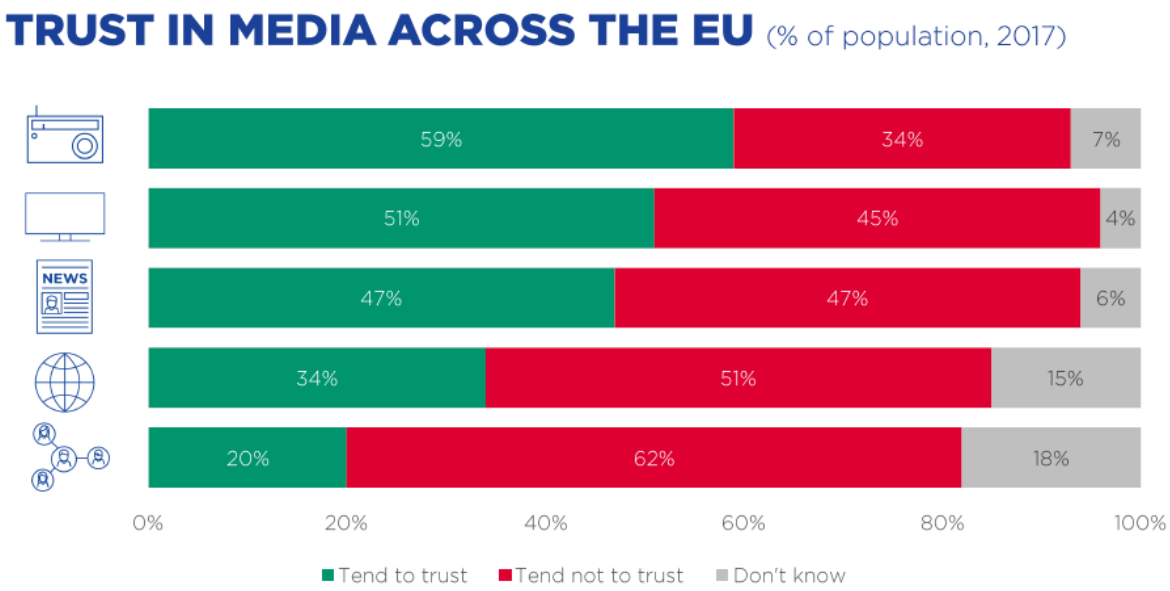


[5] Question 1F: *Some people talk about 'left ', 'right', and 'centre' to describe parties and politicians. With this in mind, where would you place yourself on the following scale?* Question 6_2018*. How trustworthy would you say news from the following brands is? Use the scale below, where 0 is 'not at all trustworthy' and 10 is 'completely trustworthy'.* Base: Left/Centre/Right: US = 567/970/550. Note: People who indicated that they have not heard of a brand were excluded.

[6] Question 1F: *Some people talk about 'left ', 'right', and 'centre' to describe parties and politicians. With this in mind, where would you place yourself on the following scale?* Question 6_2018: *How trustworthy would you say news from the following brands is? Use the scale below, where 0 is 'not at all trustworthy' and 10 is 'completely trustworthy'.* Base: Left /Centre/Right: UK = 523/1018/292, Denmark = 345/1108/351, Greece = 336/1196/192, Spain = 587/1097/142, USA = 526/801/450, Hungary = 195/1162/314. Note: People who indicated that they have not heard of a brand were excluded.

The European Broadcasting Union, an alliance of public service media, addressed the issue of trust in the media in its report "Trust in Media 2018"[7], acknowledging that maintaining a high level of trust is more and more challenging also because of the phenomenon of disinformation.

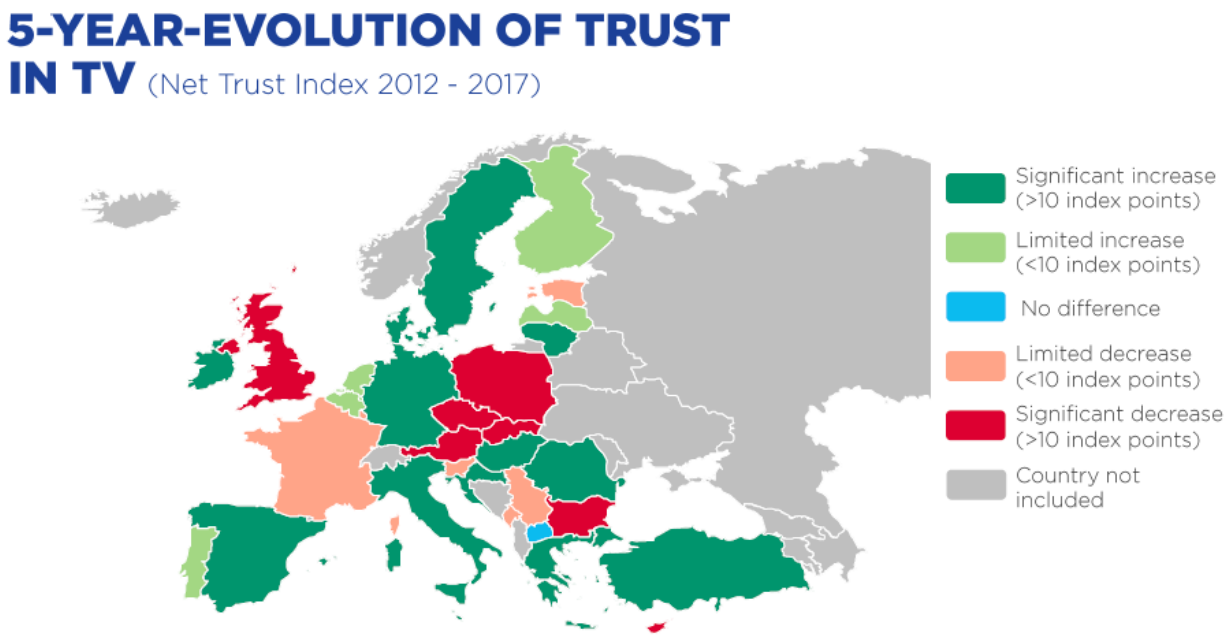
IMAGE 5. Source: EBU Media Intelligence Service Trust in Media 2018, p 15.[8]



[7] Note on methodological context: Data used for the Report was collected from the 88th Eurobarometer database on the 28 EU Member state. Survey results on EU level represent a weighted average across the 28 EU Member States applying official population figures provided by Eurostat

[8] Base: all market (28 EU Member States). Year: 2017. Images represent in order: Radio, TV broadcast, printed press and newspaper, the Internet and social networks. No clear information on which social networks have been selected nor what is defined by "The Internet category".

IMAGE 7. Source: EBU Media Intelligence Service Trust in Media 2017, p. 25[9]



In the longer term, according to the European Broadcasting Union, there is considerable volatility in trust in the media across Europe. [10] Trust in television and other media has declined in many places, but the internet has not improved its trustworthiness in order to fill the gap. The result is a generalised atmosphere of mistrust. In the past five years, trust in the internet has declined considerably in most of Europe.

[9] Base: 27 EU Member States, historical data not available for Albania. Years: 2012-2017.

[10] Base: 27 EU Member States, historical data not available for Albania. Years: 2012-2017. No clear definition on what is included in the category "The Internet".

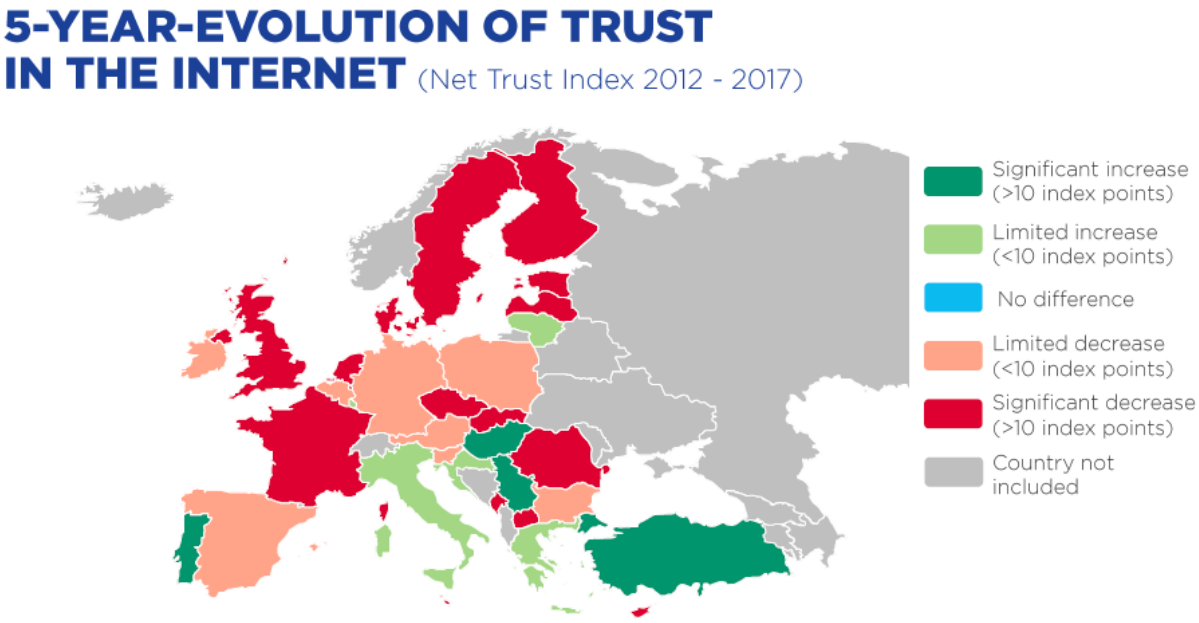


IMAGE 9. Source: EBU Media Intelligence Service Trust in Media 2017, p. 31.

II. The Structural Shift

What explains this decline in trust in media and in wider processes of deliberation in society? Clearly there are wider processes of change in relation to deference and hierarchy in society, as well as general levels of trust, particularly at times of economic hardship. But this does not explain the specific problems of lack of trust in media. Whilst certainty about causation is impossible, evidence suggests that the crisis of trust is associated with long-term structural changes in media institutions and the circulation of news and information in society.

Media Change and Information Disorder 1987-2019[11]

Taking the example of United Kingdom, which has been one of the Council of Europe countries that was quicker to shift news consumption onto the Internet and other digital platforms, the historical data shows that the paradigm shift in news consumption began before the rise of the Internet. Between 1987 and 2000, the proportion of survey respondents that mentioned first newspapers when asked to name their source of world news declined from 25% to 13%. At the turn-of-the-century, consumers first began to regard the Internet as a source of news, which is reflected in this survey data. During this period however, it was TV that gained from the drift away from newspapers: and TV was at that time perceived by audiences as more trustworthy than other media.

TABLE 7.1 **FIRST MENTIONED SOURCE OF MOST WORLD NEWS: TRENDS 1987-2000**

	87	88	89	90	91	92	93	94	95	96	97	98	99	2000
	%	%	%	%	%	%	%	%	%	%	%	%	%	%
Television	65	65	58	69	70	71	69	72	71	68	67	71	67	72
Newspaper	25	25	25	18	19	17	19	15	16	19	20	14	17	13
Radio	9	9	14	11	11	10	11	10	11	8	9	8	11	9
Talking	0	1	1	2	*	1	1	1	1	1	1	1	1	2
Teletext	n/a	n/a	n/a	n/a	n/a	n/a	n/a	1	1	2	2	2	2	2
PC/Internet	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	*	1

Base: All television viewers

At the end of the 1990s beginning of the 2000s, according to the UK Independent Television Commission[12], the most popular programmes among viewers were local and regional news as well as national and international news [13] (Cumberbatch et al., 2000, 53). Moreover, as also illustrated by the images below, the main source of national and international news for 84% of viewers was television followed by newspaper (52%) and radio (33%), while very small numbers mentioned

[11] I am grateful for the research help of Eleonora Mazzoli on this section.

[12] ITC Research Publication, 2000. Note on methodological context: Television: The Public's View 2000 is the 30th in a series of comprehensive annual surveys; a unique monitor of changes in the broadcasting environment over the years. The current survey takes, as its focus, the ITC's responsibilities under the Broadcasting Act 1990 to track shifts in public attitudes, including concerns about broadcasting, as well as considering opinions about the newer forms of broadcasting becoming available. The sample is drawn randomly from the Electoral Register Enumeration Districts and respondents recruited on the basis of a pre-specified quota such as the number of males and females, those working or unwaged and age band. Finally, the sample is reweighted to ensure that it is representative of known demographics. Total respondents= 1,173. The survey covers 14 ITV region.

[13] Data relatively consistent across all demographic categories (gender, age, social grade and type of viewer)

teletext (8%) Internet (3%) and magazine (1%), which were the least cited (Cumberbatch, Wood, & Littlejohns, 2000, 53). However, already in 2000-2001, it emerged that 'new' forms of news, such as 24-hour television news and news on the internet may be playing a larger role as more traditional news genres started to slowly decline (Hargreaves & Thomas, 2002, 5). Nevertheless, the perceived standard of quality of factual news and information programmes remained high with the advent of multichannel programmes and services (Cumberbatch, Wood, & Littlejohns, 2000, 46).

From the baseline in the year 2000 therefore, when 1% of users interviewed mentioned first the internet when asked where they got their news, the internet has emerged as the principal source of news for many people. For younger people, the internet is now the main source of news. [14]

Proliferation of technology, devices and content over time has also allowed media to reach more of us each week than ever before. Within each country though, the benefits of the last ten years of connectivity have not been distributed equally. Nowadays, mobile phones and TVs are the only communications devices with near universal reach in the UK (96% and 95% of households), however, lower-income households and over-54s are less likely to have smartphones, laptops and tablets, but are as a likely to have a TV (Ofcom, 2018).

Conflicting trends are emerging today with regard to the use of social media as source of news. Overall, Facebook is by far the most important network for finding, reading, watching and sharing news, however, its use as source of news has started to fall in a number of key markets (especially in the US, UK and France), after years of continuous growth (Newman et al., 2018). This is partially due to the fact that consumers are being put off by toxic debates and unreliable news, and therefore they are turning to alternative networks which offer them more private and less confrontational spaces to communicate. This trend is reflected by the significant rise in the use of messaging apps, such as WhatsApp, Snapchat and Instagram, for news as consumers and particularly younger users, look for more private (Newman et al., 2018, 11-12). To some extent these increases have also been driven by publishers changing their strategies in a bid to become less dependent on Facebook.

Television remains a critical source of news for many, but declines in annual audience continue to raise new questions about the future role of legacy television providers and their ability to attract the next generation of viewers. However, legacy players such as public service media are embracing the digital transformation shift and strengthening their presence online by providing news content across different platforms and investing in cross-industry collaborations, innovative services and digital technologies (European Broadcasting Union (EBU), 2018a).

[14] https://www.ofcom.org.uk/__data/assets/pdf_file/0024/116529/news-consumption-2018.pdf

IMAGE 1. Source: Television: The Public's View 2000, An ITC Research Publication, 2000, p.54[15]

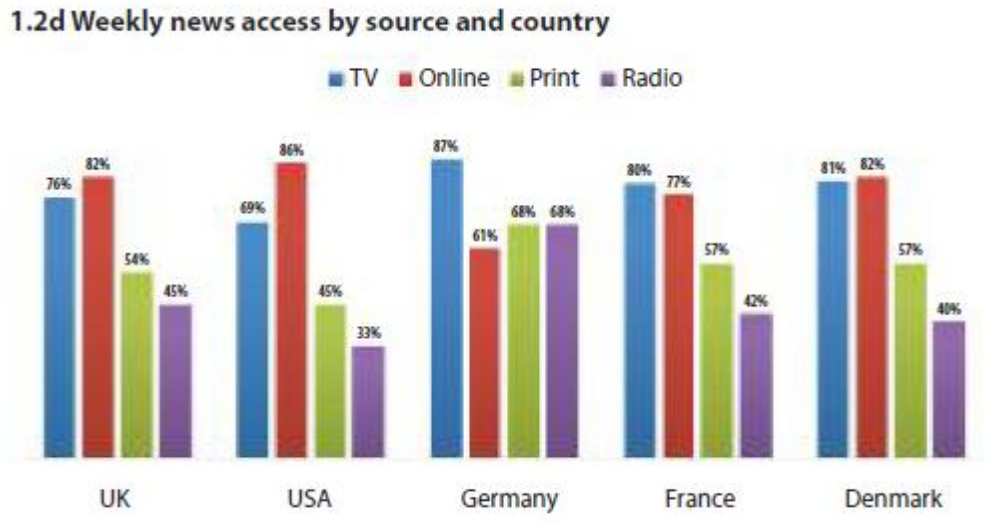
Figure 2.2

Use of main platforms for news nowadays 2018 - by demographic group

All adults 16+

	Total	Male	Female	16-24	65+	ABC1	C2DE	EMG	Non-EMG
Television	79%	79%	80%	57%	94%	79%	80%	69%	81%
Internet (any device)*	64%	64%	64%	82%	38%	68%	59%	73%	62%
Radio	44%	45%	43%	24%	54%	47%	40%	35%	46%
Newspapers (printed)	40%	41%	38%	21%	60%	43%	36%	40%	40%

Source: Ofcom News Consumption Survey 2018
Question: C1. Which of the following platforms do you use for news nowadays?
Base: All Adults 16+ 2018 - Total=4618, Male=2194, Female=2417, 16-24=631, 65+=990, ABC1=2502, C2DE=2110, EMG=722, Non-EMG=3880
Green shading indicates significant differences between groups * Internet figures include use of social media and all other internet sources accessed via any device 15



[15] Base: all television viewers. Notes: 1) "don't knows' not shown; 2) *denotes less than 0.5%; 3) n/a Not asked.

International data confirm that there has been a fundamental shift in news consumption across the EU in the past decade. The rate of change is not in one direction however, and there are reasons to be more optimistic about the future of established media. For example, whilst young people list the internet as their first or main source of news, they do also continue to use other sources of news. Very few only use one medium, and it is important to remember that the internet is often used as a gateway to news published also on other platforms.

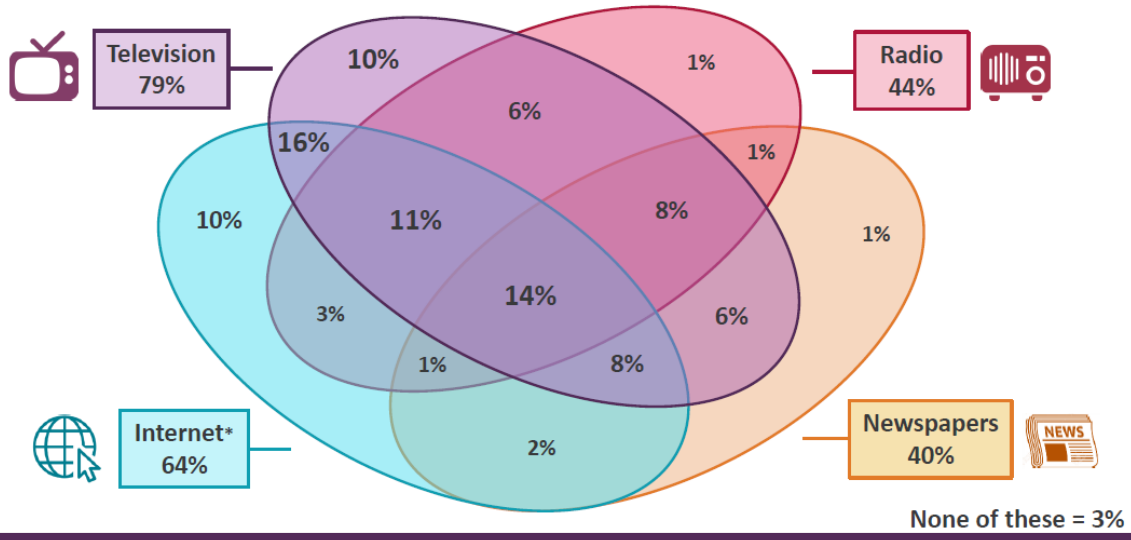
One in seven adults claim to use all four of the main platforms for news, while one in ten use only the TV or only the internet for news.

Ofcom
making communications work for everyone

Figure 2.3

Cross-over use of four main platforms for news nowadays - 2018

All adults 16+

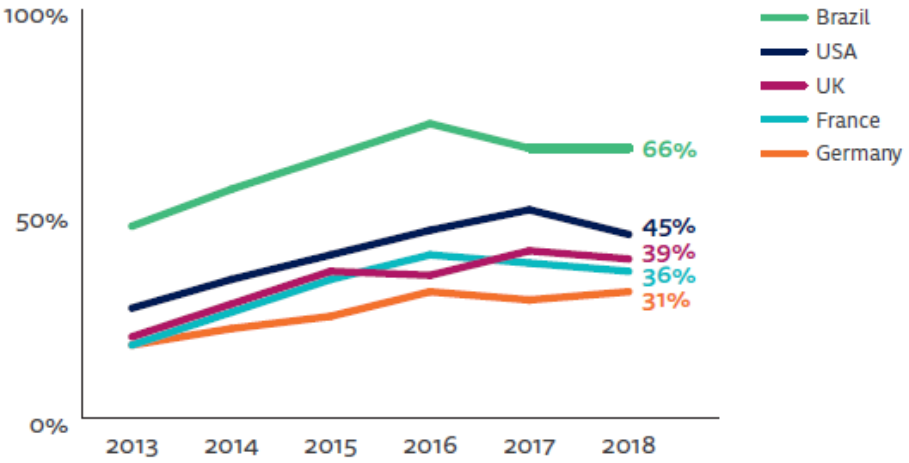


Source: Ofcom News Consumption Survey 2018
Question: C1. Which of the following platforms do you use for news nowadays?
Base: All Adults 16+ 2018 - Total=4618
* Internet figures include use of social media and all other internet sources accessed via any device

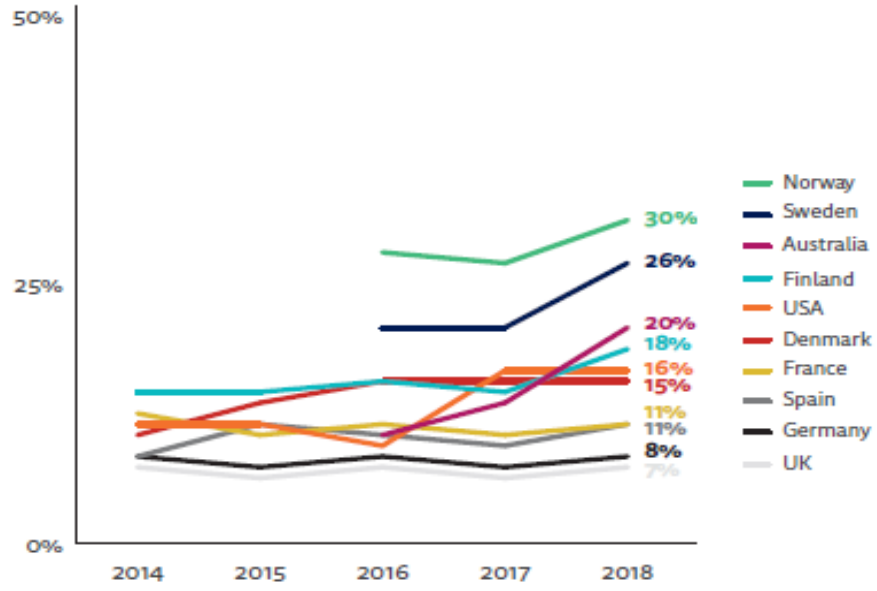
16

Though there is some exaggeration in some accounts of media change, when one considers the complex ecology of journalism funding, ethics and regulation that has developed over previous centuries, this rapid, two-decade historical shift has been revolutionary. The bulk of the rise of social media intermediaries and Web 2.0 has occurred in the last 10 years, and whilst direct causation will never be established, it is widely associated with the rise of a more polarised, populist politics.

PROPORTION THAT USED SOCIAL MEDIA AS A SOURCE OF NEWS IN THE LAST WEEK (2013–18) – SELECTED MARKETS



PROPORTION THAT HAVE PAID FOR ONLINE NEWS IN THE LAST YEAR (2014–18) – SELECTED MARKETS



III. The Effects of the Structural Shift in the Media Sector

The 5 Giant Evils of the Information Crisis

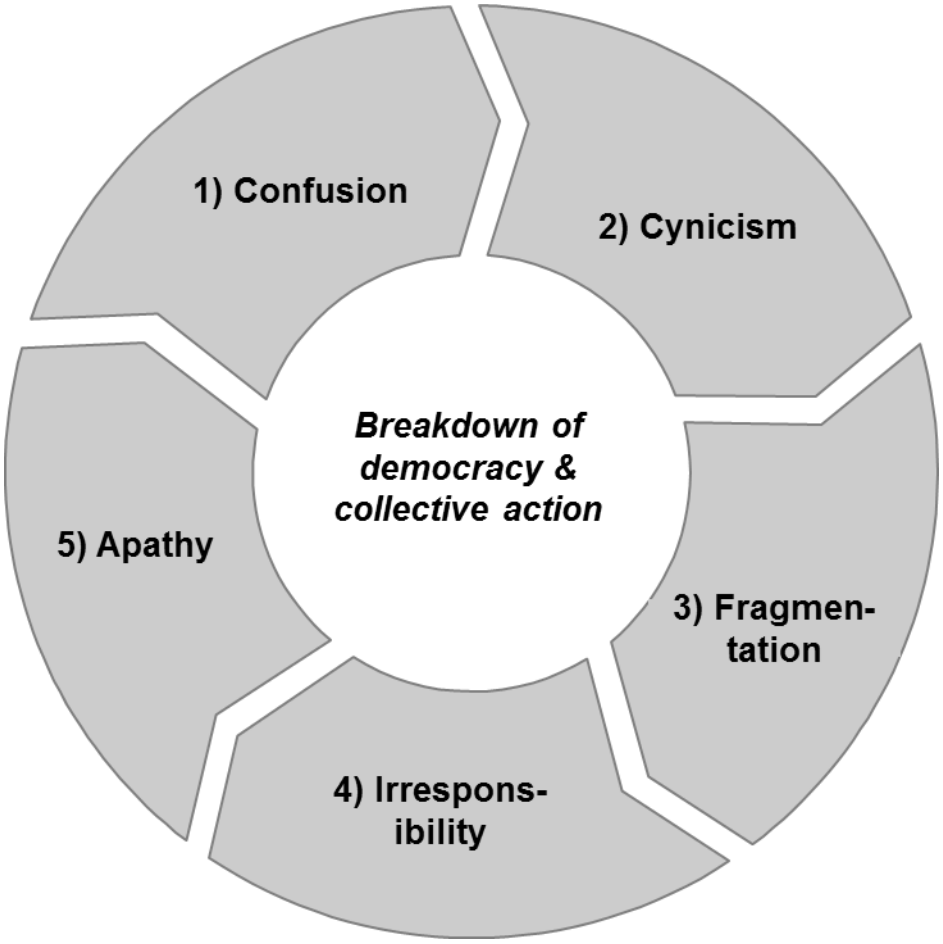


Image 10. The Five Evils of the Information Crisis. (LSE Truth Trust and Technology Commission 2018)

Commentators have attempted to grasp qualitatively the cumulative implications of the paradigm shift in the media, and wider issues of trust and democracy, for example by identifying 'post truth' as a contemporary tendency. The London School of Economics Truth Trust and Tech Commission identified the following elements of the crisis of trust in information and media:

Confusion: citizens are less sure about what is true, and who to believe.

Cynicism: citizens are losing trust, even in trustworthy sources.

Fragmentation: citizens have access to potentially infinite knowledge, but the pool of agreed facts on which to base societal choices is diminishing. Citizens are becoming more divided into 'truth publics' with parallel realities and narratives.

Irresponsibility: power over meaning is held by organisations that lack a developed ethical code of responsibility and exist outside of clear lines of accountability and transparency.

Apathy: as a result, citizens disengage from established structures of society and begin to lose faith in democracy.

Ideally, the media should be the subjects of 'due trust'. In other words, more trust is only appropriate when it is deserved. Initiatives to improve trust in the media should therefore emerge from wider attempts to improve media ethics, professionalism and genuine media literacy. Therefore, recent evidence of a decline in trust may not be a wholly bad thing if it reflects growing awareness of consistently weak ethics and professionalism in news and creates incentives to improve journalism. It is widely recognised that the fake news and online misinformation discussion plays out against: "generalized scepticism toward most of the actors that dominate the contemporary information environment" (Nielsen & Graves, 2017, 1).

IV. The Rush to Multi-stakeholder Co-regulation

As "information disorder" has come to be considered a public policy problem, there have been a series of attempts to create institutional responses to improve performance and trust through professional standards, coordinated private sector self-regulation, and legislative change.

A. Responses of media industries:[16] self-regulation, fact-checking, moderation and trust signalling

To address the aforementioned declining trust in media outlets and respond to the spread of fake news and misinformation online, a number of cross-industry collaborations, codes of practice and guidelines have been developed in the past two years. As highlighted by the European Commission, good industry practices tend to fall into three major categories: transparency, trust-enhancement, and media and information literacy (European Commission, 2018, 15). Within this context, those online platforms and advertising networks that have signed the EU Code of Practice on Disinformation (CoP) have committed to invest in products, technologies and programs to develop and implement effective indicators of trustworthiness in collaboration with the news ecosystem (Multi-stakeholder forum on the Code of Practice, 2018, 7).

Media industries have responded to the crisis, in particular by developing new systems for verifying and curating content and 'credibility signalling'. Because there is evidence that users tend to share content on the basis of its emotional resonance rather than its veracity, media have attempted to assist them by labelling content either in a negative way (raising questions about whether it should be trusted through fact-checking labels for example) or in a positive way through building the news brand and protecting it by self-regulating journalism standards.

News media organisations, broadcasters and civil society organisations are developing and testing fact-checking initiatives in collaboration with online platforms such as Google and Facebook, such as the CrossCheck project developed by network of collaborators of the First Draft News initiative (European Commission, 2018, 15). Moreover, promising collaborative efforts have emerged in the

[16] For a longer discussion see the report of the Truth Trust and Technology Commission. http://www.lse.ac.uk/media-and-communications/truth-trust-and-technology-commission/The-report

bigger Member States[17] and a number of EU-funded projects are also working on verification and fact checking tools.

Credibility signalling involves therefore the development of various trust marks such as NewsGuard and the TrustProject, and the Reporters without Borders' Journalism Trust Initiative. Such initiatives develop brands and trust marks that may be viewed by the users themselves. They may also be machine readable; in other words social media and other intermediaries may set their algorithms to filter or promote content on the basis of such flags and tags. This could potentially have more questionable implications from the point of view of media independence and freedom of expression.

The value of labelling and transparency with regard to the trust that should be invested in news content was proposed by the Philosopher Onora O'Neil, who called in 2002 for media companies to respond to declining trust by investing in the 'assessability' of news and information through provision of contextual information.

Admittedly, there are a number of problems with an approach based on voluntary self-regulation.

First of all, there are problems of competition and co-ordination as self-regulation requires companies to collaborate with one another. If trust marks for news (akin to fair-trade or organic labels) are to be developed independent of other brands, this will require a high level of consumer awareness building and also policing of professional standards. The high level of cooperation required by such developments may be unrealistic in markets where there are high levels of competition. If trust marks are to be programmed into news/relevance algorithms of the main platforms and intermediaries, this will require also cooperation along the value chain, between organisations (take for example News Corporation and Facebook) that are involved in a zero sum competition for revenues.

Another key challenge of self-regulation that concerns primarily user content is volume and scale. Whilst bodies such as the UK Parliament have called for the application of broadcast standards to social media content, there is simply too much content for this to be feasible. Therefore there is a strong impetus to automate takedown and minimise human involvement. Judgements are therefore often made on the basis of word patterns and there may be a tendency to risk aversion (taking down content that is reported) rather than a balancing exercise which includes potentially infringed rights including freedom of expression.

In this light, the use of AI and machine learning entails a danger of what you might term 'machine driven super-cooling' of free speech. Whereas a huge amount of concern was raised in the past about any media law rebalancing that might have resulted in a 'chilling effect' reducing the amount or content of public deliberation, online platforms' non-transparent processes of notification, automated takedown and blocking on an industrial scale have the potential to achieve powerful censorship results without the mechanism or fact of blocking or filtering ever being explicit, nor with the intervention of human ethical restraint, transparency or whistle-blowing.

Lastly, private bodies have made a number of voluntary actions in the specific area of elections. In particular, there is evidence that social media are developing new approaches to their role in elections. Facebook has inaugurated a voluntary repository of all political advertising, and new transparency standards. Initiatives tend however to be based within single corporations rather than industry wide.

[17] Successful experiments at national level include Channel 4 Fact Check, BBC Reality Check and the collaboration between RAI 2 and Pagella Politica that have shown potential over the past years.

B. Responses of policymakers

"Fake news" laws, election security and standard setting

Public authorities have responded by encouraging self- and co-regulation, including by funding it. They have developed new offences and categories of illegal content, and sought to adjust the liability framework including with regard to notice and takedown of various forms of illegal content. In addition they have also attempted to shape the market structure and incentives, including through taxation, levies and competition law.

In 2016 and 2017 policymakers attempted to develop legislative responses to the problem of so-called "fake news", in the context of a wider debate about harmful and illegal content. State actions to control the spread of misinformation and disinformation take the form of (i) new laws on the liabilities of media companies, internet intermediaries, and end-users responsible for spreading misinformation and disinformation; (ii) state-funded agencies that have a remit to identify, sometimes to report and monitor processes of disinformation and misinformation; (iii) standard setting new definitions of misinformation and disinformation including codes of conduct.

Whilst the German Network Enforcement Act (Netzdurchsetzunggesetz, 'Netz DG') is often cited in connection with problems of online misinformation and deception, the law is rather more narrowly targeted and deals with issues of illegal hate speech. Several countries for example France have passed specific new laws against forms of online deception. The French Law to fight the manipulation of information (Loi n° 2018-1202 relative à la lutte contre la manipulation de l'information) was passed in November 2018. This law establishes an obligation for political advertising transparency, and also a new procedure for injunctions permitting material identified as "fake news" to be blocked on order by a judge. In the United States of America, the Honest Ads Act (S. 1989) attempts to provide obligations to support online political ad transparency.

A number of other initiatives have been initiated at the state level in the USA, including the California Bot Disclosure Bill (Senate Bill No. 1001) which makes it unlawful to willingly mislead voters or shoppers through presenting a bot as a human. Also in California, the Office of Election Security (Assembly Bill No. 3075) attempts to counter social media campaigns that intend to confuse voters about voting processes or to discourage them from voting. In Canada proposed Bill C-76 (Elections Modernization Act) reforms election law. The legislation attempts to curb foreign spending on political ads.

In addition, a number of publicly funded, state sanctioned initiatives have emerged to combat so called 'fake news' through executive action. In the Czech Republic Centre against Terrorism and Hybrid Threats counters terrorist content and disinformation campaigns, whilst Italy introduced Postal Police "red button" to report disinformation before the election.

The UK has set up a National Security Communications Unit, tasked with combating disinformation by state actors and others. Sweden's Civil Contingencies Agency (MSB) has set up a task force on protecting integrity of elections; government has adopted broader security strategy (July 2018). A separate "psychological defence authority" was also announced, but not yet inaugurated (2018). Denmark set up an Inter-ministerial task force to counter disinformation and educate soldiers on how to do so effectively (2017). Belgium engaged in an online consultation on proposed solutions to disinformation and public debate (2018), and the UK published a new White Paper outlining proposals for legislating on a new 'Duty of Care' for social media platforms in April 2018.

International organisations have also been centrally involved in the response. The NATO/EU Centre of Excellence for Countering Hybrid Threats researches disinformation campaigns and publishes examples of fake news. The European External Action Service created East StratCom Task Force: EU vs. Disinformation campaign. The European Commission has made proposals for election cooperation, cybersecurity protection, and fighting disinformation at the European Parliament elections in May 2019.

At the international level the special rapporteurs on freedom of expression and freedom of media have issued a joint declaration[18] which establishes shared principles for the limits of state interference and the role of self-regulation. These principles should be debated and updated in line with the action of state and private actors with regard to misinformation and disinformation. Self-regulation should not be a means to close down debate.

Multi-national institutions and standards can act as a check on potential for state capture, private interest capture and public interest eclipse. The Parliamentary Assembly of the Council of Europe has, in its recent Resolution 2254 (2019) Media Freedom as a condition for democratic elections, recommended the review and updating of regulatory frameworks, including strict rules on media coverage of government activities, liability for social media companies, and support for self and co-regulation. Other commentators beyond the Council of Europe go further, calling for strict legal liability of intermediaries for content.

C. The danger of overreaction and 'knee-jerk' regulatory responses

Whilst the dangers of information disorder are real, and these recommendations necessary and correct, there is a potential for capture and abuse in their implementation. Policymakers should be aware of the dangers of responses to information disorder. These include the chilling of speech, the linking of state and algorithmic censorship, and reliance on intermediation by bots or censorship algorithms.

Not only can broadly or vaguely worded categories of harmful or undesirable content (such as fake or hate) be interpreted in a way that will inevitably act as a chilling effect on the expression and dissemination of news, but the increasingly automated, AI driven approaches to moderation can multiply the chilling effect by offering immediately scalable co-regulatory and moderation processes. If word patterns, keywords or even particular people or images are for example blocked by one part of an organization, it may be the case that they are blocked more generally or excluded for an honest mistake. A small alteration in the liability calculation of social media platforms for example, could result in a shift to automated blocking or takedown, or the closing of moderated social media forums.

Rapid media change has often – and justifiably – been used to justify radical changes with regard to the legal and co-regulatory structure for media and communications. Reforms are required, in order to deal with an information deficit, problems of sustainability of quality media, misinformation and the sustainability of public service. But whilst these reforms and updates are necessary, they can also be used against the public interest.

[18] https://www.osce.org/fom/302796?download=true

The dangers of reform are many, and immediate. Given that the processes through which social media filter and surface news are opaque, there is always the potential that new laws and co-regulatory structures will be used in ways that engage new forms of reciprocity with political leaders.

In sum, because the changes in regulatory and liability frameworks impact upon the perception of democratic fairness as well as the reality of potential state and or private control of democratic communication, a very high level of care is required in adjusting to the current challenges, and protecting reliability and trust in information without reverting to excessive state control.

The European Court of Human Rights has long acted as a check on state restrictions of citizens' freedom of expression. The Council of Europe has developed broad standards for media governance including media pluralism and the independence of regulatory authorities.

The protection of democratic values in this sense requires further oversight, transparency and co-regulatory institution building. The EAO should work with academic and other experts to provide new frameworks for monitoring of ever more complex frameworks of co and self-regulation. Criteria for filtering removing and promoting of content should be transparent.

The Potential for Negative Consequences for Human Rights and Democracy

Media system reform in response to problems of online hate and disinformation is therefore necessary but it faces a number of common challenges:

- Hate and disinformation are difficult to define and ultimately subjective.
- Standards are contested and change over time and across and within countries.
- Hate and disinformation cover content that is both (i) illegal and (ii) legal (but potentially subjectively undesirable).
- Standards of what is legal vary by country and region.
- Ethical principles of harm also vary, sometimes nationally and within countries.
- Standards relating to free speech, and the philosophical and legal principles that underpin them vary internationally, and particularly between the US and Europe.
- There is a lack of consumer information and understanding about what determines the visibility of content and who receives it.
- Decisions about content moderation need to be taken quickly and at scale and therefore often by machines.
- These policy interventions involve complex interactive effects.

A number of dangers are evident which may in particular impact on freedom of expression:

The intense activity of both private bodies and legislators reflects a high level of goodwill and intent to resolve the problem. However there are dangers inherent in the process of reform, and dangers that could further undermine democracy, and freedom of expression. Some of the key challenges include:

- Regulatory uncertainty with resulting chill of speech;
- Conflict of interest and interest capture leading to bias in filtering and harm definitions;
- A lack of transparency in the process of blocking, filtering and surfacing content;

- Lack of agreed content standards, resulting over-broad discretion and in-transparent administrative fiat in their application;
- Therefore justiciability and therefore legitimacy
- Breaching of fundamental rights (particularly freedom of expression and privacy) in the administration of new forms of arbitrary discretion by private actors and machines
- Lack of long term vision – e.g. regarding whether ethics and codes are platform specific or industry-wide
- Slippery slope effects as institutions are asked to block and filter more categories of content, and lead to progressive slide towards chilling of speech.
- Lack of procedural standards
- Lack of consumer information to facilitate informed switching
- Lack of interoperability and consumer lock-in
- Jurisdiction uncertainty and regulatory arbitrage
- Levelling up: global content moderation policies reflect the most sensitive standards in relation to nudity, violence, blasphemy etc.
- Failure of co-regulation and imposition of licensing and more direct controls on social media
- impact on market structure: i.e. regulation can raise barriers to entry, thus restricting certain interests and voices and leading to dependent monopolies rather than autonomous sustainable service providers.

In this context there is a danger of not only new forms of opaque reciprocities between information gatekeepers and economic and political interests, but of a protracted period of difficult negotiation between platforms and governments which would in itself to further damage to democracy and trust. Attention must be given to the institutional framework for setting out a new settlement for platform responsibility.

The question of the institutional framework also has to take into account the changing security and political environment. New forms of populist government could potentially exploit structures of governance to control opinion, and a change in the security (particularly cybersecurity) context could rapidly change standards of justified restriction of speech online.

V. Development of new principles of communication governance

Given this context there is a need for new principles of communication governance to guide this new period of governance reform.

The European Union Better Regulation Principles stipulate the following standards: decision-making should be open and transparent; citizens and stakeholders should have the opportunity to contribute throughout the policy and law‑making process; EU actions should be based on evidence and understanding of the impacts; and regulatory burdens on businesses, citizens or public administrations should be kept to a minimum.

Current reforms of online content governance raise significant challenges for better regulation. First, governance systems are more complex, multileveled, interjurisdictional. Top-down approaches are very difficult to deploy as no one actor is in a position to design the system, which combines public and private actors and depends on consent of the regulatee. Second, unlike 'better regulation' approaches that are more concerned with economic impacts, communication governance dilemmas engage fundamental rights and in particular free speech.

As a result a *flexible, functional and systemic multi-stakeholder* approach is required. Multiple actors, including states, communication regulators, moderators, publishers, advertisers, platforms, social media, hosts, intermediaries are involved in the ecology of content distribution. The complex co-regulatory framework includes the following generic functions, which can be carried out by government agencies, private companies, independent regulatory authorities, or by civil society organisations.

Regulatory functions	Reform Principles
Content standards setting The process of creating rules and principles about what kind of content should be promoted filtered or blocked and writing these into a code such as producers' guidelines, community standards, moderation principles, licenses or an ethical code.	Should be carried out as locally as possible, and in a way that involves those people that will be subject to the content standards. It should also be done in ways that reflect local laws and fully transparently. Editorial policies and ethical codes should be published in full.
Editorial curation This is the process of deciding in line with a range of values including perhaps commercial, artistic and political concerns, what should be disseminated and publishing it.	Editorial policies and ethical codes should be followed. The Santa Clara Principles on content moderation set out standards for private moderation (Numbers, Notice, Appeal) guard against the potential for a slippery slope to private censorship and should be adopted.
Distribution regulation Applying rules to determine which forms of content will be afforded most prominence and therefore attention.	Platform power to determine audience for a given piece of content should be locally accountable. Regulators should be given powers to require algorithmic disclosure to a regulatory authority to determine whether social media distribution serves competition and media plurality.
Adjudication of complaints Dealing with complaints when people think that content is illegal, or breaches the voluntary code, or that content has been taken down that does not.	There should be the possibility to appeal complaints – either those that require filtering or blocking, or claims that it has been too zealous and penalties both for non-blocking or over-blocking. These should be made in terms of the ethical code. Discretion should initially be with the platform, but with the possibility of appeal to an independent authority such as an ombud.
Transparency This is the process of signalling to the wider public information about the operation of the system and in particular information about the content standards, the processes of filtering and blocking and the rates of takedowns.	All takedowns by platforms (and not just those that result from a formal complaint that is upheld) should be recorded and data on numbers of takedowns, topic and reason (legal or code article) openly published. These transparency and procedural requirements should be subject to independent co-regulatory oversight.

Principles and Objectives of Reform

These basic functions of a communication governance system can be fulfilled by public or private actors, and by actors with a range of relationships to the state, government, parliament and the law. The current period is one of experimentation and realignment of these institutions.

The overall system should enable and incentivise publishers and distributors to act ethically in a way that is autonomous from the state and other interests and able to serve users interests and develop a notion of the public interest. It should contain sufficient safeguards and balances to enable civil society to hold media to account, but ensure that media institutions have the autonomy to hold powerful interests (including one another) to account.

The process of reform contains its own risks of capture, and could itself constitute an improper means for compromise and opaque conflict of interest among the key actors. It is essential that independent, transparent and open forums to articulate a new 'social contract' on social media speech are provided.

Liability

Liability exemptions should be earned by a proven record of behaviour that serves the public interest. Platforms and social media benefit from an exemption from liability for content that they host but are unaware of. There is no 'a-priori' answer to whether this could continue – it depends whether publics and parliaments take the view that the platforms operate in the public interest. It is not possible for the public to determine if platforms serve the public interest without transparency.

Structural Interventions

In addition to these function-specific principles, the following principles apply to the structures of communication ecosystems and to the process of reform:

Competition regulators should work closely with sector specific regulators and be given duties to advise parliaments on market structure and its implications.

Dominant social media platforms should be kept under permanent review, and be subject to more oversight as they have the power to censor and shape public opinion.

If behavioural approaches are not successful in improving the outcomes (particularly as regards hate and disinformation) then structural solutions (including breaking up social media companies) should be considered, but this should be an evidence-based, open and transparent process that includes adequate cost-benefit analyses and civil society consultation.**Conclusion**

The Council of Europe should assist democracies in this important area of policy-making by developing and providing standards for impact assessments of new laws and codes, and monitoring of best practices.