Unpacking the implementation of regulating platforms  
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Two minutes Round One
Introduction

The Inter American Press Association appreciates this UNESCO initiative to build a "Model framework for regulating digital platforms and ensuring information as a common good."
We believe that regulation can have risks. In the eagerness to regulate disinformation and other vices that tarnish freedom of expression, abuses can be committed against freedom of the press and journalistic content.

Some examples of these abuses:

In Nicaragua, a handful of laws were passed in a few years that, under the guise of regulating alleged crimes, have been used by the regime to convict, strip nationality, banish opponents, and confiscate their property. The laws used were the Law for the Regulation of Foreign Agents, the Special Law for Cyber Crimes, and the Law for the Defense of the Rights of the People to Independence, Sovereignty, and Self-Determination for Peace.

In Venezuela, the government uses the Cyber Crimes Law and the Law on Protection and Privacy of Communications to spy on, block, and harass the media. *El Nacional* and hundreds of media outlets were expropriated. Journalists were persecuted and expelled from the country.

In Cuba, the regime governs with many laws derived from the Constitution imposed in 2018 and limits all human rights. Decree-Law 35, "On Telecommunications, Information and Communication Technologies and the Use of the Radioelectric Spectrum." It is a legal gag on freedom of expression on the Internet, supported by Decree-Law 370 "On the Informatization of Society in Cuba," in force since July 4, 2019.

In Brazil, an attempt was made to pass the "Brazilian Law of Freedom, Responsibility and Transparency on the Internet" in 2022, which censored content. However, from IAPA, we said that fake news
"should not be fought with censorship mechanisms or criminal sanctions, but rather with the adoption of policies on digital literacy."

We agree that digital platforms should have more editorial responsibility for distributing their content. However, the first line of defense against disinformation and other vices - hate speech, digital harassment, and all kinds of abuses - should be self-regulation in terms of moderation and content curation.

Experience has taught us that governments, both authoritarian and democratic, tend to over-regulate when it comes to information. We fear that governments will use the excuse of disinformation to regulate journalistic content on digital platforms, especially critical content that they were previously unable to control due to media resistance.

In Argentina, in October 2020, the government wanted to create an Observatory of Disinformation and Violence, called NODIO, with the aim of "protecting citizens from false, malicious and fallacious news" circulating on the Internet. However, press and media organizations rejected the seemingly laudable initiative, considering it a subtle method of censorship and disciplining the media.

In 2018 in Uruguay, an attempt was made to penalize electoral disinformation with up to four years in prison. In addition, it proposed to penalize journalistic content, songs, images, and videos that induced to mislead voters. However, the law was not approved due to complaints.

A legitimate regulatory model must meet specific requirements: independent and autonomous, free from economic, political, and government pressures. In addition, platforms must comply with transparency parameters in their self-regulation policies and
algorithms. And the journalistic content distributed by digital platforms should not be regulated.

In this regard, the IACHR’s Office of the Special Rapporteur for Freedom of Expression considered that international human rights law had provided guidelines on the importance of adopting clear, transparent, and pre-established policies on the part of digital platforms. Furthermore, The Special Rapporteur recognized that private content moderation is increasingly relevant in digital governance.

Five Minutes Round Two
Mr Canahuati: Media’s experience of legal regulation in Latin America – what are the positive and negative lessons from this that could apply to state involvement in platform regulation?

The best regulation of freedom of expression in the Americas is expressed in most of the constitutions. They state, almost like a carbon copy of the U.S. Constitution, that Congresses may not enact laws restricting freedom of the press and freedom of expression.

The exception in the Americas is Cuba. The new Constitution reaffirms the irreversible role of the Communist Party as the guide of Cuban society and socialism. Article 55 establishes that "The fundamental means of social communication, in any of its manifestations and supports, are socialist property of all the people or the political, social and mass organizations; and cannot be the object of any other type of property. Therefore, the State establishes the principles of organization and operation for all social communication media."

Unfortunately, this mandate is far from being fulfilled. Instead, many governments of all political stripes create laws and decrees to limit, prohibit or block information. They illegitimately use rules in defense of
national security and national sovereignty, protection of privacy or against discrimination, on crimes of defamation and contempt or insult to the authorities, to control information and criticism.

**In Nicaragua, the Law for the Defense of the Rights of the People to Independence, Sovereignty, and Self-Determination for Peace was used to reform the Constitution and strip the nationality of journalists and political prisoners released two weeks ago on U.S. soil.**

Years ago, in Bolivia, the Law Against Racism and All Forms of Discrimination contained several articles that the IAPA criticized because, although laudable, they created "serious restrictions to freedom of the press." It held the media responsible for disseminating information the government considered an apology for racism and discrimination.

**In Venezuela, the Law of Partial Reform of the Penal Code increased the penalties for contempt (insult law). This crime disappeared in almost all the countries of the Americas. Now, the Code punishes with imprisonment anyone who offends by word or in writing the President and other high government officials, judges, and legislators.**

Historically, independent media and press associations resist these governmental attacks, aiming to protect the freedom of the press and expression and the Public's right to know.

We believe that government regulation on content moderation may become an indirect but legal, practical, and illegitimate formula to censor journalistic content distributed by the platforms.

For this reason, I insist that any regulatory framework must be applied by independent and autonomous bodies independent of government interests. Furthermore, it should be understood that the self-regulation
of digital platforms is the first source for moderating and curating content.

Of course, such self-regulation must comply with accepted international standards that can be agreed upon by institutions such as this one. Otherwise, we could end up with self-regulation as a protective shield for the digital platforms' interests, for example, giving them the legitimacy to remove or hide content and information contrary to their interests.

At IAPA, we have established that while we admit that the platforms have been improving this practice, they must create more efficient accountability mechanisms for content moderation, cancellations, and good practices. Facebook's Oversight Board is a positive step, as well as other instances of ombudsman or user ombudsman.

We also believe that beyond the self-regulation of the platforms, those who feel affected by blocking or cancellations should have expeditious, free, or low-cost access to courts in their jurisdiction to amend any excesses in community standards.

Platforms must have high standards of editorial responsibility because they not only distribute journalistic content but also generate their position and recommend it in search results. Therefore, they must comply with transparency policies, especially those related to their algorithms and the use of artificial intelligence. Furthermore, they must comply with explicit guidelines on content and act quickly and efficiently in the event of complaints. Finally, they must put universal principles on human rights and freedom of expression before political, corporate, and commercial interests.

Excessive regulation should not be imposed on digital platforms and other private companies that generate content. Instead, requirements
already established in laws and norms that respect human rights, such as those referring to the apology of violence and hate speech, the protection of minors, and the elimination of malicious information from sources without proper identification should be considered.

In November 2002, nine international organizations (Global Committee) discussing the Information Society, including IAPA, passed a resolution that: "There are many forms of communication on the Internet, and it is important not to confuse them. News, for example, is different from pornography, pedophilia, fraud, conspiracy to terrorism, incitement to violence, incitement to hatred, etc., although there may be news about such problems. Matters such as those listed are usually covered by existing general national legislation and, if appropriate and necessary, may be prosecuted at the national level in the country of origin."

That resolution said, "No new legislation or international treaty is necessary."

We must consider that there are already sufficient laws to regulate illegal content. However, we must emphasize that many governments have designed laws to control critical information, which has an illegitimate origin, as they violate universal principles on human rights, freedom of the press, and freedom of expression.

Five Minutes Round Three
Mr Canahuati: What regulatory support from states could help to rebalance the asymmetry between platforms and news producers? Is the Australian news bargaining code relevant to the Latin American situation?
Content moderation is also linked to other operational aspects of the platforms beyond the opacity of their algorithms, data privacy, and the management of the journalistic content they distribute. It should be considered that they spread not only content but also position and recommend it in search results to retain audiences in their "walled garden" and thus generate more sources of income.

Therefore, moderation also has to do with the accountability of the platforms on economic aspects, as their commercial policies have a substantial impact on the sustainability of the media and professional journalism. Media generate much of the relevant content that the platforms distribute.

In September 2021, together with 18 international media associations, IAPA issued a statement - as established in the IAPA's Salta Declaration. In that statement, IAPA said: "Actors in the digital ecosystem must achieve an adequate balance between freedom of expression and intellectual property rights and copyrights, as well as concerning any benefits that may be generated in that ecosystem. They must also avoid abusive practices that may impact competition, innovation, and the free flow of information."

And Unesco's own Windhoek + 30 Declaration, in expressing its concern about "the severe economic crisis that represents an existential threat to media...", recalls that "economic sustainability" is "a key prerequisite for their independence." Accordingly, it calls on governments to "guarantee (...) funding from public sources to the media." And asks digital companies to support journalism in various ways; for example, through "inclusive partnership" agreements and "financial measures."

We hope Australia's mandatory negotiation model in 2021, which obliges digital platforms to pay the media for the content they use,
distribute, and generate profits, will be expanded to other countries, as could happen in Canada soon.

**Canadian Bill C-18** is about "an Act respecting online communications platforms that make news content available to persons in Canada." It proposes a collective and voluntary negotiation between media and digital platform managers so that the platforms pay the media for the use of their content.

The initiative includes opening 12 months of voluntary negotiation between platforms and media. Still, if no agreements are reached, it establishes a mandatory negotiation through the Canadian Radio-television and Telecommunications Council (CRTC). The imposed criteria mandate ensures independence, freedom of expression, and support for local and national news production with an inclusive character for different population groups.

Large or small media registered in the tax registry as a journalistic organization and having at least two employees could participate and will benefit from this law.

**Its approval could occur before the Canadian Congress goes into recess next June.**

This negotiation is derived from the directive reached by the European Union in 2019. It asks its countries to create legislation to balance the information market in the digital system and to counteract the abuse of the dominant position of the platforms in the advertising market and that there is due competition.

Platforms are referees and players at the same time. In recent years, their unilateral commercial policies, driven by the algorithms with which they manage the database obtained from the user and consumer
journeys, allowed Google and Meta to keep almost 80% of the advertising market worldwide at the expense of the media.

Without these large global companies competing for advertising, media revenue would not have fallen so quickly and intensely. It would not have caused the expansion of information deserts.

Defending journalistic content, not regulating it, and allowing it to grow by recognizing its intellectual property, is a direct formula to counteract the disinformation and false news that corrode a society.

As U.N. Secretary-General Antonio Guterres and UNESCO Director-General Audrey Azoulay put it so well, the world cannot afford to continue to lose professional journalism. The consequences will be devastating.

António Guterres said: "Some fear that the pandemic could become a media extinction event. We cannot afford to let this happen. Maintaining independent, fact-based journalism is an essential public and global good and key to building a safer, healthier, and greener future. Securing sufficient funding and support is crucial to ensure the long-term future of independent media organizations, especially in low- and middle-income countries." May 3, 2021

Audrey Azoulay: "Journalism is a public good that we must defend and support as such... Digital technologies further revolutionize this landscape, enabling unprecedented information exchanges and favoring journalism without borders. But these opportunities also bring with them new challenges. The emergence of online platforms has challenged the economic viability of independent and pluralistic media, drastically altering existing value chains and business models. And because these technologies are rarely transparently regulated and subject to accountability, perpetrators of violence act with
impunity, often without a trace. This situation must be brought to an end. Technological advances must be based on respect for journalists' freedom, privacy, and safety. Social networks must make special efforts to combat widespread misinformation and hate speech while protecting freedom of expression. UNESCO is firmly committed to these goals. To meet the new challenges, UNESCO endorsed adopting a new Windhoek Declaration on Information as a Public Good in the Digital Age, 30 years after the first one. I invite Member States, technology companies, the media community, and the rest of civil society to join together to create a new digital configuration that protects journalism and journalists. " May 3, 2022

In this context, the new regulatory framework on moderation and content curation cannot ignore these economic aspects that impact content creators and society.