

2021

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Recommended Citation

Zahra Takhshid, Regulating Social Media in the Global South, 24 *Vanderbilt Journal of Entertainment and Technology Law* 1 (2022)

Available at: <https://scholarship.law.vanderbilt.edu/jetlaw/vol24/iss1/1>

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Regulating Social Media in the Global South

Zahra Takhshid*

ABSTRACT

In recent years, the disinformation crisis has made regulating social media platforms a necessity. The consequences of disinformation campaigns are not only limited to election interferences or political debates, but have also included fatal consequences. In response, scholars have generally focused on regulating social media companies in the United States without paying much attention to these companies' global impact, particularly in the Global South. Lost in the quest to fight disinformation is addressing the social media companies' neglect of consumer rights in the Global South.

Countries in the Global North, such as the United States, have the power to regulate social media companies should they choose to do so. However, the current power asymmetry between major social media companies and countries in the Global South limits the ability of many of such countries to have any meaningful bargaining power to advocate for their citizens' consumer rights and their ability to manage misinformation campaigns in their sovereign territories. In some countries, it is even unclear if there is any political will from their respective government to advocate for consumer rights. This problem will not be resolved by relying on corporate social responsibility or corporate self-governance. Thus, this Article argues that unless countries in the Global South act collectively, they should not expect any major change from powerful social media companies in handling misinformation in their countries or promoting their citizens' consumer

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rights. Regional treaties among countries, as a form of collective action, could push social media companies to be more attentive to their actions outside the Global North and bear responsibility in a transnational space. Ultimately, collective action in the Global South could inspire a global coalition and promote global accountability.

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I. INTRODUCTION

In Sri Lanka, disinformation on Facebook has had devastating consequences.¹ In one post, a Muslim pharmacist was accused of plotting to use twenty-three thousand sterilization pills to sterilize the Buddhist (Sinhalese) population.² A mob beat up a twenty-eight-year-old employee, “destroyed the shop, and set fire to [a] local mosque.”³ Following the false accusations, hateful posts took over Facebook, one of which declared, “[k]ill all Muslims, don’t even save an

1. See Amanda Taub & Max Fisher, *Where Countries Are Tinderboxes and Facebook Is a Match*, N.Y. TIMES (Apr. 21, 2018), <https://www.nytimes.com/2018/04/21/world/asia/facebook-sri-lanka-riots.html?action=click&module=RelatedCoverage&pgtype=Article®ion=Footer> [https://perma.cc/34GZ-TDRC].

2. *Id.*

3. *Id.*

infant.”⁴ While the company Meta (formerly known as Facebook)⁵ claims it responds to such false accusations and hate effectively, this is not the reality in many developing countries.⁶ For example, according to Facebook’s transparency report on governmental requests, it only took down a total number of nine items in Sri Lanka.⁷ Another example of Meta’s inaction or delayed actions in the Global South has been in the Philippines, another country struggling with misinformation and defamation.⁸ In the Philippines, the internet has become “an outlet for threats and deceit.”⁹ According to the *New York Times*, nearly 97 percent of internet users in the Philippines access the web through Facebook.¹⁰

The social media company’s facilitation of the chaos is no surprise. After all, one of Facebook’s primary goals, similar to many other social media platforms, has been to promote engagement and increase time spent on the platform.¹¹ Recently, the *Wall Street Journal*

4. *Id.*

5. Shannon Bond, *Facebook Is Rebranding as Meta — but the App You Use Will Still Be Called Facebook*, NPR, <https://www.npr.org/2021/10/28/1049813246/facebook-new-name-meta-mark-zuckerberg> [<https://perma.cc/ZK54-6FBJ>] (Oct. 28, 2021, 3:30 PM). In October 2021, Facebook changed its name to Meta. *Id.* The social media platform called Facebook will keep its name. *Id.* In this Article, when “Facebook” is used, the specific platform is intended. The company is referred to as Meta throughout this Article. Meta is the owner of Facebook and Instagram.

6. *See id.* (noting that despite numerous reports of the violent posts, Facebook only responded that it did not violate its community standards).

7. *See, e.g., Content Restrictions Based on Local Law: Sri Lanka* for Jan.–June 2018 Update, FACEBOOK TRANSPARENCY CTR., <https://transparency.fb.com/data/content-restrictions/country/LK/?from=https%3A%2F%2Fgovtrequests.facebook.com%2Fcontent-restrictions%2Fcountry%2FLK> (last visited Feb. 20, 2021). The 2018 report states: “We restricted access in Sri Lanka to nine items reported by the President’s Office and the National Centre for Cybersecurity alleged to be illegally contributing to offline violence during an emergency situation, but which did not violate the Facebook Community Standards.” *Id.*; *see also* Sheera Frenkel, *Facebook to Remove Misinformation that Leads to Violence*, N.Y. TIMES (July 18, 2018), <https://www.nytimes.com/2018/07/18/technology/facebook-to-remove-misinformation-that-leads-to-violence.html> [<https://perma.cc/KB57-EK24>].

8. *See* Alexandra Stevenson, *Soldiers in Facebook’s War on Fake News Are Feeling Overrun*, N.Y. TIMES (Oct. 9, 2018), <https://www.nytimes.com/2018/10/09/business/facebook-philippines-rappler-fake-news.html> [<https://perma.cc/4B2J-XMAJ>].

9. *Id.*

10. *Id.*

11. *See* Keach Hagey & Jeff Horwitz, *Facebook Tried to Make Its Platform a Healthier Place. It Got Angrier Instead.*, WALL ST. J. (Sept. 15, 2021, 9:26 AM), <https://www.wsj.com/articles/facebook-algorithm-change-zuckerberg-11631654215> [<https://perma.cc/3T73-NU56>]. Although, in 2018, the move to “time well spent” created an incentive for major social media companies to deploy features that allowed users to be more aware of their time on the platforms, like the “You’re All Caught Up” message on Instagram. *Introducing “You’re All Caught Up” in Feed*, INSTAGRAM (July 2, 2018), <https://about.instagram.com/blog/announcements/introducing-youre-all-caught-up-in-feed>

investigative series “The Facebook Files” revealed how Meta was aware of the drug cartels and human trafficking in developing countries that used its platforms to facilitate their horrific agenda, yet it failed to respond adequately, leaving many related posts on their platforms.¹² A Meta (Facebook) whistleblower’s testimony before the US Senate further highlighted the company’s inaction in light of reports of various harms on its social media platforms.¹³

Social media platforms based in the United States have become private regulators due to a broad immunity embedded in section 230(c) of the Communications Decency Act of 1996 (CDA), along with companies’ ability to grant themselves power via writing their own terms of use.¹⁴ Meta best demonstrates the risks of relying solely on self-regulation. According to a recent report, Meta is the number one social network for disinformation.¹⁵ The social media giant owns

[<https://perma.cc/AM5B-CF33>]. However, the impact of this movement on Instagram was short-lived. By rolling out “suggested posts” on Instagram, the company found a way to “keep you glued to your feed” yet again. Ashley Carman, *Instagram Rolls Out Suggested Posts to Keep You Glued to Your Feed*, THE VERGE (Aug. 19, 2020, 11:00 AM), <https://www.theverge.com/2020/8/19/21373809/instagram-suggested-posts-update-end-feed> [<https://perma.cc/K5B3-F9TM>]. The term “time well spent” was coined by Joe Edelman in a conversation with Tristan Harris. Casey Newton, *‘Time Well Spent’ Is Shaping Up to be Tech’s Next Big Debate*, THE VERGE (Jan. 17, 2018), <https://www.theverge.com/2018/1/17/16903844/time-well-spent-facebook-tristan-harris-mark-zuckerberg> [<https://perma.cc/5UGG-HWXN>]. Harris later co-founded the Center for Humane Technology. *See id.*; *Who We Are*, CTR. FOR HUMANE TECH., <https://www.humanetech.com/who-we-are#our-story> [<https://perma.cc/CX3M-VP4L>] (last visited Mar. 1, 2021).

12. Justin Scheck, Newley Purnell & Jeff Horwitz, *Facebook Employees Flag Drug Cartels and Human Traffickers. The Company’s Response Is Weak, Documents Show.*, WALL ST. J. (Sept. 16, 2021, 1:24 PM), <https://www.wsj.com/articles/facebook-drug-cartels-human-traffickers-response-is-weak-documents-11631812953> [<https://perma.cc/EWX7-PQXL>].

13. Bobby Allyn, *Here Are 4 Key Points from the Facebook Whistleblower’s Testimony on Capitol Hill*, NPR, <https://www.npr.org/2021/10/05/1043377310/facebook-whistleblower-frances-haugen-congress> [<https://perma.cc/3MSL-4ZLY>] (Oct. 5, 2021, 9:30 PM) (noting that Facebook was aware about the harm of Instagram to teen girls including worsening eating disorder and body image issues).

14. *See* Hannah Bloch-Wehba, *Global Platform Governance: Private Power in the Shadow of the State*, 72 SMU L. REV. 27, 30 (2019); Kate Klonick, *The New Governors: The People, Rules, and Processes Governing Online Speech*, 131 HARV. L. REV. 1598, 1602 (2018); 47 U.S.C. § 230(c) (2018).

15. Davey Alba & Adam Satariano, *At Least 70 Countries Have Had Disinformation Campaigns, Study Finds*, N.Y. TIMES (Sept. 26, 2019), <https://www.nytimes.com/2019/09/26/technology/government-disinformation-cyber-troops.html> [<https://perma.cc/UPD8-QK6Z>]; Samantha Bradshaw & Philip N. Howard, *The Global Disinformation Order: 2019 Global Inventory of Organised Social Media Manipulation 2* (Oxford, UK: Project on Computational Propaganda, Working Paper No. 2019.2, 2019), <https://demtech.oi.ox.ac.uk/wp-content/uploads/sites/93/2019/09/CyberTroop-Report19.pdf> [<https://perma.cc/WU98-C3QM>].

Facebook, Instagram, Messenger, and WhatsApp, to name a few.¹⁶ Facebook alone has over 2.79 billion active users monthly.¹⁷ Additionally, Instagram has one billion users of its own.¹⁸ With such a large user base, the dangers and consequences of misinformation on its platforms are much more pronounced.¹⁹

But how is this company regulated outside of the United States, more specifically, outside of the Global North? Many scholars have explored the ways that modern tech companies are influencing the internal affairs of other countries, including speech across borders.²⁰ However, many of these articles focus on US First Amendment doctrine and pay little attention to the different sets of values protected by laws in other countries.²¹

Furthermore, social media companies in the Global South have provided forums for speech not otherwise protected.²² The problem of suppressing free speech in some Global South countries is so profound that it sometimes overshadows other important issues not within the scope of free speech concerns.²³ However, social media companies are long past the days of claiming to be only a force of promoting good in

16. Mike Isaac & Sheera Frenkel, *Gone in Minutes, Out for Hours: Outage Shakes Facebook*, N.Y. TIMES, <https://www.nytimes.com/2021/10/04/technology/facebook-down.html> [<https://perma.cc/4X4E-CYTY>] (Oct. 8, 2021).

17. *Number of Monthly Active Facebook Users Worldwide as of 4th Quarter 2020*, STATISTA (Nov. 1, 2021), <https://www.statista.com/statistics/264810/number-of-monthly-active-facebook-users-worldwide/> [<https://perma.cc/S888-Z7H7>].

18. Ashley Carman, *Instagram Now Has 1 Billion Users Worldwide*, THE VERGE (June 20, 2018, 2:02 PM), <https://www.theverge.com/2018/6/20/17484420/instagram-users-one-billion-count> [<https://perma.cc/5V6W-7ZZD>].

19. See Zara Abrams, *Controlling the Spread of Misinformation*, AM. PSYCH. ASS'N (Mar. 1, 2021), <https://www.apa.org/monitor/2021/03/controlling-misinformation> [<https://perma.cc/U283-2RZ7>].

20. See, e.g., Bloch-Wehba, *supra* note 14, at 27; Daniel Keats Citron, *Extremist Speech, Compelled Conformity, and Censorship Creep*, 93 NOTRE DAME L. REV. 1035, 1035 (2018); Jennifer Daskal, *Borders and Bits*, 71 VAND. L. REV. 179, 181–82 (2018) [hereinafter *Borders and Bits*]; Jennifer Daskal, *Speech Across Borders*, 105 VA. L. REV. 1605, 1605 (2019) [hereinafter *Speech Across Borders*]; Jack M. Balkin, *Free Speech in the Algorithmic Society: Big Data, Private Governance, and New School Speech Regulation*, 51 U.C. DAVIS L. REV. 1149, 1153 (2018).

21. See *Borders and Bits*, *supra* note 20, at 197–98; Balkin, *supra* note 20, at 1154.

22. See Ashutosh Bhagwat, *The Law of Facebook*, 54 U.C. DAVIS L. REV. 2353, 2355–56 (2021).

23. See Eden Lapidor, *Out of the Spotlight: COVID-19 and the Global South*, JUST SEC. (July 23, 2020), <https://www.justsecurity.org/71570/out-of-the-spotlight-covid-19-and-the-global-south/> [<https://perma.cc/A3M4-R7G8>].

the world.²⁴ Meta, for example, is now a Delaware corporation.²⁵ The seemingly “free” service it offers is based on a business model that strives to enhance profits by tracking and collecting users’ data to target advertisements.²⁶ One expert notes that we are living in the digital capitalism age where “a seemingly unlimited freedom to speak” comes with forfeiture of “the right to surveil and manipulate end-users.”²⁷

Some scholars have approached the issue by focusing on free speech from a human rights angle.²⁸ They have noted that unifying around international freedom of expression standards “[is] virtually the only conceptual framework for assessing the boundaries of acceptable speech which transcends national law.”²⁹ These discussions are

24. Lindsay Smith, *Opinion: Social Media Has Completely Lost Sight of Its Original Purpose*, SUNFLOWER (Oct. 17, 2019), <https://thesunflower.com/45848/opinion/opinion-social-media-has-completely-lost-sight-of-its-original-purpose/> [<https://perma.cc/S9PF-LXLC>]. In 2020, hateful posts on Facebook were a major contributor of violence in Ethiopia. See David Gilbert, *Hate Speech on Facebook Is Pushing Ethiopia Dangerously Close to a Genocide*, VICE (Sept. 14, 2020, 12:54 PM), <https://www.vice.com/en/article/xg897a/hate-speech-on-facebook-is-pushing-ethiopia-dangerously-close-to-a-genocide> [<https://perma.cc/L9HX-92VX>]; The New Yorker Radio Hour & Radiolab, *Facebook’s Supreme Court*, WNYC STUDIOS (Feb. 12, 2021), <https://www.wnycstudios.org/podcasts/radiolab/articles/facebooks-supreme-court> [<https://perma.cc/TF7Q-7DE8>] (reporting on the influence of Facebook in spreading hate and causing violence in Ethiopia). For another example, despite the Rohingya genocide in 2017, it took Facebook five years to bar Myanmar Military on its platforms. See Paul Mozur, Mike Isaac, Davis E. Sanger & Richard C. Paddock, *Facebook Takes a Side, Barring Myanmar Military After Coup*, N.Y. TIMES, <https://www.nytimes.com/2021/02/24/technology/facebook-myanmar-ban.html> [<https://perma.cc/ET96-EY5V>] (Mar. 3, 2021). Myanmar military spread hatred on Facebook against the Rohingya, a minority, and turned Facebook “into a tool for ethnic cleansing.” Paul Mozur, *A Genocide Incited on Facebook, with Posts from Myanmar’s Military*, N.Y. TIMES (Oct. 15, 2018), <https://www.nytimes.com/2018/10/15/technology/myanmar-facebook-genocide.html> [<https://perma.cc/2NJU-7SHG>].

25. Facebook, Inc., Eleventh Amended and Restated Certificate of Incorporation (Form S-1/A) (Feb. 8, 2012).

26. Ezra Klein, *Mark Zuckerberg on Facebook’s Hardest Year, and What Comes Next*, VOX (Apr. 2, 2018, 6:00 AM), <https://www.vox.com/2018/4/2/17185052/mark-zuckerberg-facebook-interview-fake-news-bots-cambridge> [<https://perma.cc/CA8Z-9GSQ>]. In an interview, Mark Zuckerberg said:

The reality here is that if you want to build a service that helps connect everyone in the world, then there are a lot of people who can’t afford to pay. And therefore, as with a lot of media, having an advertising-supported model is the only rational model that can support building this service to reach people.

Id.

27. Jack M. Balkin, *The First Amendment in the Second Gilded Age*, 66 BUFF. L. REV. 979, 981 (2018).

28. See generally Evelyn Douek, *The Limits of International Law in Content Moderation*, 6 U.C. IRVINE J. INT’L TRASNAT’L & COMPAR. L. 37 (2021).

29. Michael Karanicolas, *Squaring the Circle Between Freedom of Expression and Platform Law*, 20 PITT. J. TECH. L. & POL’Y 177, 200 (2020).

necessary and important. However, focusing only on freedom of speech fails to recognize and address the wide array of harm that can result from the lack of adequate supervision of social media companies in the growing attention market economy.³⁰

Other scholars advocate for an open-source approach.³¹ Michael Kwet, for example, has written that “digital colonialism” results from the prevalence of US-based social media platforms in the Global South.³² Criticizing the antitrust movement,³³ he has proposed an open software model that would address some of the challenges and risks (such as data collection) that many people outside of the United States face using social media platforms.³⁴ Some social media companies have also become interested in exploring decentralized platform governance.³⁵ In 2019, Twitter announced an initiative called Bluesky to develop a decentralized standard for Twitter.³⁶ The progress has been very slow, yet it remains a project to watch.³⁷ In this approach, the advocates are thinking creatively to move the regulatory mechanism away from governmental control.³⁸

30. For history on the economy of attention, see Agnès Festré & Pierre Garrouste, *The Economics of Attention: A History of Economic Thought Perspective*, 5 *ECONOMIA* 3 (2015); Emmanuel Kessous, *The Attention Economy Between Market Capturing and Commitment in the Polity*, 5 *ECONOMIA* 77 (2015).

31. See Micheal Kwet, *Digital Colonialism: US Empire and the New Imperialism in the Global South*, *RACE & CLASS*, Apr.–June 2019, at 3, 20.

32. *Id.* at 20–21.

33. Michael Kwet, *Fixing Social Media: Toward a Democratic Digital Commons*, 5 *MKTS. GLOBALIZATION & DEV. REV.*, no. 1, 2020, at 1, 2.

34. *Id.* at 7.

35. For an introductory discussion on decentralized social networks, see *What You Need to Know About Decentralized Social Networks*, TUL. UNIV. SCH. OF PRO. ADVANCEMENT, <https://sopa.tulane.edu/blog/decentralized-social-networks> [<https://perma.cc/26RY-T4SL>] (last visited July 28, 2021).

36. Kurt Wagner, *Twitter Finds Leader for ‘Decentralized’ Social Media Project Bluesky*, *BLOOMBERG*, <https://www.bloomberg.com/news/articles/2021-08-16/twitter-ceo-jack-dorsey-s-bluesky-project-hires-jay-graber> [<https://perma.cc/5GEW-3NAT>] (Aug. 16, 2021, 3:28 PM); @jack, *TWITTER* (Dec. 11, 2019, 8:13 AM), <https://twitter.com/jack/status/1204766078468911106> [<https://perma.cc/W8K5-BVRY>]; Parag Agrawal (@paraga), *TWITTER* (Dec. 11, 2019, 8:13 AM), <https://twitter.com/paraga/status/1204766188074459136> [<https://perma.cc/83TT-JPMT>].

37. Adi Robertson, *Twitter’s Decentralized Social Network Project Takes a Baby Step Forward*, *THE VERGE* (Jan. 21, 2021, 3:34 PM), <https://www.theverge.com/2021/1/21/22242718/twitter-bluesky-decentralized-social-media-team-project-update> [<https://perma.cc/J6LC-UBVK>].

38. See *What You Need to Know About Decentralized Social Networks*, *supra* note 35.

But the world, however, is messy and currently operated by governments and their interactions amongst one another.³⁹ Finding a way to balance the power of private companies with that of governments requires an approach that involves both parties, rather than the elimination of one.⁴⁰ As big data becomes even more central in modern societies, unchecked surveillance by social media companies (and other Big Tech companies, for that matter) will only further the power imbalance between the Global South and North, weaken national sovereignty in the Global South, and create a dependency on foreign social media companies for a country's basic needs.⁴¹ Moreover, while social media companies claim to abide by local laws, as this Article illustrates, the reality is far more complex.⁴² In light of these concerns, the looming question is how international organizations or governments should contain the unwatched and ever-growing power of private social media companies, in the Global South, and promote consumer rights without giving up or hindering the benefit of free speech enabled by the platforms.

This Article argues that the problem of regulating social media platforms in the Global South goes far beyond content moderation. It illustrates some of the challenges that consumers in the attention economy face in the Global South when using social media platforms. Similarly, it addresses consumer rights in the new markets created by platforms. This Article argues that countries in the Global South should form coalitions to gain negotiating power and ensure citizens maintain access to their nationally established rights. Regional and global alliances between countries in the Global South can also test social media companies on their promises to promote freedom of expression when faced with the challenge of also offering consumer protections. Big social media companies will also be able to negotiate for their freedom of speech standards while accepting the obligation of protecting consumer rights. In the bigger picture, such coalitions and forums can

39. D. Alan Heslop, *Political System*, BRITANNICA, <https://www.britannica.com/topic/political-system> [<https://perma.cc/N36E-CJP3>] (Oct. 30, 2020).

40. Deirdre White, *Business Collaboration with Government: Does Reward Outweigh Risk?*, STAN. SOC. INNOVATION REV. (Nov. 14, 2016), https://ssir.org/articles/entry/business_collaboration_with_government_does_reward_outweigh_risk [<https://perma.cc/KJE7-BVV6>].

41. See Niels Nagelhus Schia, *The Cyber Frontier and Digital Pitfalls in the Global South*, 39 THIRD WORLD Q. 821, 824 (2018).

42. See Jason Koebler & Joseph Cox, *The Impossible Job: Inside Facebook's Struggle to Moderate Two Billion People*, VICE (Aug. 23, 2018, 12:15 PM), <https://www.vice.com/en/article/xwk9zd/how-facebook-content-moderation-works> [<https://perma.cc/3YBQ-ZEZR>].

ultimately lead to global public accountability for companies working on such a scale.

Part II explores some of the impacts of social media companies in the Global South, particularly in collecting data, facilitating the violation of laws, and undermining privacy. Part II further illustrates how the lack of adequate regulatory regimes of social media companies in many of the countries in the Global South has impacted citizens' rights.

Part III discusses several solutions that commentators and companies have explored. It focuses on corporate social responsibility and the reliance on the corporate conscience to act. Part III illustrates that such reliance, despite its hype and optimism, is inadequate. Many times, corporations fail to take actions that can threaten their business models. This Part then discusses the Oversight Board, the so-called "Supreme Court." It argues that the undemocratically chosen advisory board carries the stain of corporate authority. The Oversight Board's limited jurisdiction in content moderation also renders it an inadequate tool for addressing many other business aspects of Meta's operations in the Global South, such as data collection and privacy concerns.

Part IV argues that an effective response for countries in the Global South is only possible if action is taken collectively. This Article suggests collective action either through a regional treaty-based approach, the establishment of new international organizations, or the expansion of the authority of current international organizations. By forming alliances (similar to the early rise of international organizations after the wave of decolonization of Asia and Africa in the 1940–60s)⁴³ countries in the Global South that suffer from a common problem and lack sufficient power to act alone can collectively push social media companies to invest more money in the accountability and transparency of their business and promotion of consumer rights.

Forming alliances can also be beneficial for the big social media companies and the promotion of freedom of expression enshrined in Article 19 of the Universal Declaration of Human Rights.⁴⁴ With the global attention that such regional treaties bring about, countries will be vigilant not to have radical demands that may hurt their image and

43. VOLKER RITTBERGER, BERNHARD ZANGL, ANDREAS KRUCK & HYLKE DIJKSTRA, *INTERNATIONAL ORGANIZATION* 47 (3d ed. 2019).

44. G.A. Res. 217 (III) A, *Universal Declaration of Human Rights* (Dec. 10, 1948) ("Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.").

reputation around the globe.⁴⁵ More likely than not, countries will not demand strict compliance with their political agendas when negotiating with a social media company under a transnational spotlight, the way they may do so behind closed doors.⁴⁶ Lastly, this Article recommends moving away from a one-size-fits-all approach and towards a standard by which social media platforms would consider regional, cultural, and social values, of a particular country, to reduce local tension.

II. THE IMPACT OF SOCIAL MEDIA IN THE GLOBAL SOUTH

The influence of social media platforms on the way people think, talk, and act is unquestionable.⁴⁷ The popularity of these platforms also shows the degree to which social media companies have been successful.⁴⁸ They have become not only a major channel of entertainment but also sources of news, family connections, commerce, group mobilization, and the epicenter of political debates.⁴⁹

This multidimensional nature of social media platforms has made it difficult for law and policy makers to agree on the best way to regulate them.⁵⁰ For example, Meta currently provides free internet for

45. Alex Geisinger & Michael A. Stein, *Rational Choice, Reputation, and Human Rights Treaties*, 106 MICH. L. REV. 1129, 1139 (2008).

46. See Adrian Shahbaz & Allie Funk, *Freedom on the Net 2021: The Global Drive to Control Big Tech*, FREEDOM HOUSE 12–14, https://freedomhouse.org/sites/default/files/2021-09/FOTN_2021_Complete_Booklet_09162021_FINAL_UPDATED.pdf [<https://perma.cc/YR87-8GMV>] (last visited Oct. 21, 2021).

47. See, e.g., W. Akram & R. Kumar, *A Study on Positive and Negative Effects of Social Media on Society*, 5 INT'L J. COMPUT. SCIS. & ENG'G 347, 347 (2017); Robert Gebelhoff, *Here's How Social Media Could Threaten Democracy—Even Without the Help of Russians*, WASH. POST (Sept. 11, 2019), <https://www.washingtonpost.com/opinions/2019/09/11/heres-how-social-media-could-threaten-democracy-even-without-help-russians/?arc404=true> [<https://perma.cc/4NRS-5N39>].

48. *The Worldwide Social Networking Platforms Industry Is Expected to Reach \$939+ Billion by 2026*, BUS. WIRE (Aug. 27, 2021, 11:11 AM), <https://www.businesswire.com/news/home/20210827005308/en/The-Worldwide-Social-Networking-Platforms-Industry-is-Expected-to-Rreach-939-Billion-by-2026---ResearchAndMarkets.com> [<https://perma.cc/E2UB-CE7D>].

49. See Geoff Desreumaux, *The 10 Top Reasons why We Use Social Networks*, WERSM (Oct. 14, 2018), <https://wersm.com/the-10-top-reasons-why-we-use-social-networks/> [<https://perma.cc/3QNA-H7DT>].

50. See Chris Fox, *Social Media: How Might It Be Regulated?*, BBC NEWS (Nov. 12, 2020), <https://www.bbc.com/news/technology-54901083> [<https://perma.cc/88Z5-HYQ3>]. For example, some scholars argue that social media platforms constitute public forum, while others disagree. See Dawn Carla Nunziato, *From Town Square to Twittersphere: The Public Forum Doctrine Goes Digital*, 25 B.U. J. SCI. & TECH. L. 1, 4 (2019). This debate intensified after Twitter and Facebook deplatformed several top US officials including the President of the United States. See, e.g., Professor Anupam Chander on *Regulating—and Decolonizing—the Internet*, GEO. L. (Feb. 1, 2021), <https://www.law.georgetown.edu/news/professor-anupam-chander-on-regulating-and->

many countries in Africa and plans to expand its infrastructure.⁵¹ No one argues against connectivity, but should there not also be accountability? The following sections focus on some of social medias' general impacts and then describes the consequences felt specifically by countries in the Global South.

A. Data Collection and National Security

Social media users are generating data like never before.⁵² As a result, scholars are discussing social media mining: a field similar to data mining but limited to social media platforms.⁵³ Apart from the publicly shared data that users generate,⁵⁴ social media companies can also collect sets of data to target advertisements and generate revenue.⁵⁵ The companies are protective of such data sets as their business model depends on them.⁵⁶ For example, in *Facebook, Inc. v. Power Ventures, Inc.*, Meta sued Power Ventures (“Power”) to stop the company from accessing its users’ information.⁵⁷ Power provided a platform through which its users, “Power users,” could access all of their

decolonizing-the-internet/ [https://perma.cc/HK52-FJ4L]; The Lawfare Podcast, *Jonathan Zittrain on the Great Deplatforming*, LAWFARE (Jan. 14, 2021, 5:01 AM), <https://www.lawfareblog.com/lawfare-podcast-jonathan-zittrain-great-deplatforming> [https://perma.cc/B3SN-9TWZ].

51. See Maeve Shearlaw, *Facebook Lures Africa with Free Internet - but What Is the Hidden Cost?*, GUARDIAN, <https://www.theguardian.com/world/2016/aug/01/facebook-free-basics-internet-africa-mark-zuckerberg> [https://perma.cc/8AXC-WBSF] (Feb. 21, 2017); Najam Ahmad & Kevin Salvadori, *Building a Transformative Subsea Cable to Better Connect Africa*, FACEBOOK ENG’G (May 13, 2020), <https://engineering.fb.com/2020/05/13/connectivity/2africa/> [https://perma.cc/8QTC-V4DJ].

52. See, e.g., Jacquelyn Bulao, *How Much Data Is Created Every Day in 2020?*, TECHJURY, <https://techjury.net/blog/how-much-data-is-created-every-day/#gref> [https://perma.cc/JZ76-BDK8] (Nov. 1, 2021) (“Facebook generated 4 petabytes of data every day in 2020.”).

53. See Abby McCourt, *Social Media Mining: The Effects of Big Data in the Age of Social Media*, YALE L. SCH.: CASE DISCLOSED (Apr. 3, 2018), <https://law.yale.edu/mfia/case-disclosed/social-media-mining-effects-big-data-age-social-media> [https://perma.cc/4HKH-ABXM].

54. What can be publicly shared is up for debate. See, e.g., *hiQ Labs, Inc. v. LinkedIn Corp.*, 938 F.3d 985, 989 (9th Cir. 2019) (addressing how hiQ, a data analytics company and rival of LinkedIn, sued to “obtain[] a preliminary injunction forbidding LinkedIn from denying [the company] access to publicly available LinkedIn member profiles” and used the scraped data to sell to its business clients).

55. See Marcy Gordon, *Agency Homing in on Social Media Companies’ Data Collection*, AP NEWS (Dec. 14, 2020), <https://apnews.com/article/media-data-privacy-social-media-6a66d543701f0c792eaf8907e34a7a52>.

56. See Rob Sobers, *Social Media Security: How Safe Is Your Information?*, VARONIS: INSIDE OUT SEC. BLOG, <https://www.varonis.com/blog/social-media-security/> [https://perma.cc/CW8B-42CP] (Mar. 29, 2020).

57. *Facebook, Inc. v. Power Ventures, Inc.*, 844 F.3d 1058, 1062 (9th Cir. 2016).

social media accounts' contacts in one single platform.⁵⁸ Power users could access each individual website by clicking on the links generated on the company's website.⁵⁹ This required the Power users to provide Power their username and password.⁶⁰

Meta sent a cease and desist letter to Power to end its activities or sign its Developer Terms of Use Agreement required to enroll in Facebook Connect—a program that allowed third parties to register with Meta by agreeing to additional terms.⁶¹ Once Power declined, Meta sued, claiming that Power was, among other things, violating the Computer Fraud and Abuse Act of 1986 (CFAA).⁶² The US Court of Appeals for the Ninth Circuit agreed that Power had violated the CFAA by committing the act of computer trespass as defined by the CFAA.⁶³ It concluded that Facebook had suffered losses within the meaning of CFAA which permitted the private right of action.⁶⁴ The court ruled that:

[F]or Power to continue its campaign using Facebook's computers, it needed authorization both from individual Facebook users (who controlled their data and personal pages) and from Facebook (which stored this data on its physical servers). Permission from the users alone was not sufficient to constitute authorization after Facebook issued the cease and desist letter.⁶⁵

The court ruled, in part, granting damages for the period after which Power had received the cease and desist letter but continued to access Meta's data.⁶⁶

The extent to which social media platforms will go to protect their data is no surprise.⁶⁷ Yet, the many ways that social media platforms may use the data they collect from users only made global headlines when the story of Cambridge Analytica broke.⁶⁸

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.* at 1063.

62. *Id.* at 1062. Facebook also claimed that Power violated the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM), and California Penal Code section 502. *Id.*

63. *See id.* at 1065–66.

64. *Id.* at 1066.

65. *Id.* at 1068.

66. *See id.* at 1070.

67. *See hiQ Labs, Inc. v. LinkedIn Corp.*, 938 F.3d 985, 990–92 (9th Cir. 2019) (discussing LinkedIn's lawsuit against hiQ Labs to stop the company from using its data).

68. *See* Nicholas Confessore, *Cambridge Analytica and Facebook: The Scandal and the Fallout So Far*, N.Y. TIMES (Apr. 4, 2018), <https://www.nytimes.com/2018/04/04/us/politics/cambridge-analytica-scandal-fallout.html> [<https://perma.cc/HG4L-43UY>].

In March 2018, the *New York Times* reported that the data firm, Cambridge Analytica, misused personal data obtained from tens of millions of Facebook users to influence the 2016 US general elections.⁶⁹ “Cambridge paid to acquire the personal information through an outside researcher who, Meta says, claimed to be collecting it for academic purposes.”⁷⁰ The scandal put Meta in the spotlight.⁷¹ It was evidence that social media data can be used beyond product sales and services; it can impact national security.⁷² If such data can influence the US presidential elections or Brexit,⁷³ despite the advanced security measures and democratic institutions in place in these countries, what kind of impact can data collected by social media giants have in countries where the social, economic, and political infrastructures are not as established?

National security is not limited to elections.⁷⁴ The progress and growth of cities are also becoming dependent on data.⁷⁵ Technologies that are enabling the use of so-called big data are creating opportunities for governments to remodel cities.⁷⁶ The processing of big data “involves

69. *Id.*

70. Matthew Rosenberg, Nicholas Confessore & Carole Cadwalladr, *How Trump Consultants Exploited the Facebook Data of Millions*, N.Y. TIMES (Mar. 17, 2018), <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html> [<https://perma.cc/8Y9Z-9EKL>].

71. *See* Confessore, *supra* note 68.

72. *See id.*

73. Yuriy Gorodnichenko, Tho Pham & Oleksandr Talavera, *Social Media, Sentiment and Public Opinions: Evidence from #Brexit and #USElection* 1–5 (Nat'l Bureau of Econ. Rsch., Working Paper No. 24631, 2018), https://www.nber.org/system/files/working_papers/w24631/w24631.pdf [<https://perma.cc/DT3G-SW2V>].

74. For an example of how national security could be implicated by new exercise bikes, see Bruce Schneier, *The Government Will Guard Biden's Peloton from Hackers. What About the Rest of Us?*, WASH. POST (Feb. 2, 2021, 10:12 AM), <https://www.washingtonpost.com/outlook/2021/02/02/biden-peloton-internet-security/> [<https://perma.cc/4PU8-358H>].

75. *See* Alan Wilson, *The Future Will Be Data-Driven*, PROSPECT (Sept. 10, 2017), <https://www.prospectmagazine.co.uk/politics/the-future-will-be-data-driven> [<https://perma.cc/6Q2B-G632>].

76. *See, e.g., id.* Although this Article only focuses on social media platforms, the threat of data collection from new data-driven technologies is not limited to social media platforms. For example, recently, Peloton's internet-driven bicycle and exercise scheme created a buzz around security in the White House—specifically, the risks that this type of equipment posed to the President's safety. *See* Schneier, *supra* note 74. What about the rest of us? And, from the angle embodied in this Article, what about the countries in the Global South? For further discussion on the cybersecurity implications of Peloton, see Sheryl Gay Stolberg, *Biden Has a Peloton Bike. That Raises Issues at the White House.*, N.Y. TIMES,

mining the data for patterns, distilling the patterns into predictive analytics, and applying the analytics to new data.”⁷⁷

The availability and use of big data promise more accurate predictions for many aspects of life, including combating climate change and allowing many businesses to design their products with more accuracy and target their audience with efficiency.⁷⁸ However, big data also “represents the de facto privatization of human subjects research, without the procedural and ethical safeguards that traditionally have been required.”⁷⁹ Although many Big Tech companies have promoted ethical artificial intelligence (AI) use,⁸⁰ lack of accountability and oversight of such companies continues to linger in many countries in the Global South.⁸¹ Nevertheless, the economic growth of countries will heavily depend on data that social media companies have collected for years.⁸² Having such a crucial asset in hand, such companies will have leverage over not only other private companies, but also governments who may not have recognized the potential importance of the data social media companies collect.⁸³

The value of data harvested from people in the Global South becomes even more important when one thinks about the structure of the flow of personal data cross-border.⁸⁴ As Julie Cohen writes: “[d]ifferences in data protection obligations create incentives for organizations to collect and process data in jurisdictions with more lenient rules and to transfer data collected elsewhere to those

<https://www.nytimes.com/2021/01/19/us/politics/biden-peloton.html> [https://perma.cc/JFV4-DRCC] (Mar. 16, 2021).

77. Julie E. Cohen, *What Privacy Is For*, 126 HARV. L. REV. 1904, 1920 (2013).

78. *See id.* at 1921.

79. *See id.* at 1925.

80. *But see, e.g.*, Cade Metz, *A Second Google A.I. Researcher Says the Company Fired Her*, N.Y. TIMES (Feb. 19, 2021), <https://www.nytimes.com/2021/02/19/technology/google-ethical-artificial-intelligence-team.html> [https://perma.cc/DU8G-52JC] (discussing how some companies, such as Google, continue to battle internal quarrels over bias in A.I.); Cade Metz, *Is Ethical A.I. Even Possible?*, N.Y. TIMES (Mar. 1, 2019), <https://www.nytimes.com/2019/03/01/business/ethics-artificial-intelligence.html> [https://perma.cc/AUF7-RR6F] (“Google, Microsoft, [Meta] and other companies have created organizations like the Partnership on A.I. that aim to guide the practices of the entire industry. But these operations are largely toothless.”).

81. *See* Taub & Fisher, *supra* note 1.

82. *See* Wilson, *supra* note 75.

83. *See, e.g.*, Olivia Solon & Cyrus Farivar, *Leaked Documents Show Facebook Leveraged User Data to Fight Rivals and Help Friends*, NBC NEWS (Nov. 6, 2019, 9:14 AM), https://www.nbcnews.com/news/all/leaked-documents-show-facebook-leveraged-user-data-fight-rivals-help-n1076986?utm_source=sendgrid&utm_medium=email&utm_campaign=Newsletters [https://perma.cc/Y57D-DNG6].

84. *See* JULIE E. COHEN, BETWEEN TRUTH AND POWER: THE LEGAL CONSTRUCTIONS OF INFORMATIONAL CAPITALISM 214–15 (2019).

jurisdictions for processing.”⁸⁵ While many countries in the Global North have taken strong steps in protecting their citizens’ data, many countries in the Global South lack such protection.⁸⁶ As it stands, for example, Meta processes the data of the citizens of many countries in the Global South (and elsewhere) in the United States.⁸⁷ According to Facebook’s Statement of Rights and Responsibilities: “[U]sers and non-users who interact with Facebook outside the United States . . . consent to having [their] personal data transferred to and processed in the United States.”⁸⁸

The risks in having personal data in the hands of a foreign company, in a foreign country, are worrisome and will fall on the shoulders of the citizens in the Global South over time.⁸⁹ Countries in the Global North have been working on data and privacy issues for years.⁹⁰ They have formed ever-evolving mechanisms such as the EU-US Privacy Shield, which continues to be improved and adapted to the new challenges of data privacy.⁹¹ For example, after General Data Regulation Protection (GDPR) became law,⁹² the Court of Justice of the European Union issued a judgment that declared the Privacy Shield inadequate protection.⁹³ In contrast, there is mostly silence on these data mining issues in many of the countries in the Global South.⁹⁴

85. *Id.* at 215.

86. *See id.* at 215–17. Many of the protective actions have involved trade agreements between countries that consequently apply to companies, such as the US-EU Privacy Shield. *See id.* at 216. For more information, see PRIV. SHIELD, <https://www.privacyshield.gov/welcome> [<https://perma.cc/UXN7-EA27>] (last visited Feb. 20, 2021).

87. *See Statement of Rights and Responsibilities*, FACEBOOK, <https://www.facebook.com/legal/terms/previous> [<https://perma.cc/8GHA-2ZU9>] (Jan. 30, 2015).

88. *Id.*

89. *See generally* Bloch-Wehba, *supra* note 14.

90. *See supra* note 86 and accompanying text.

91. *See supra* note 86 and accompanying text.

92. *See generally* Regulation 2016/679, of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC, 2016 O.J. (L 119) 1 (EU) [hereinafter GDPR].

93. *See* Case C-311/18, *Data Prot. Comm’r v. Facebook Ir. Ltd.*, ECLI:EU:C:2020:559, ¶¶ 199–201 (July 16, 2020). New round negotiations between the United States and the European Union on data governance have been taking place since September 2019. *See* Theodore Christakis & Fabien Terpan, *EU-US Negotiations on Law Enforcement Access to Data: Divergences, Challenges and EU Law Procedures and Options*, 11 INT’L DATA PRIV. L. 81, 81 (2021).

94. *See generally* McCourt, *supra* note 53.

B. Protecting Privacy and Truth

Social media companies have also impacted privacy and the degree of its protection throughout the world.⁹⁵ James Whitman's article titled, *The Two Western Cultures of Privacy: Dignity Versus Liberty*, laid out the foundational difference between what privacy means for two western cultures: the United States and Western Europe.⁹⁶ He notes on various examples of differences and asks: "If privacy is a universal human need that gives rise to a fundamental human right, why does it take such disconcertingly diverse forms?"⁹⁷ Yet, he states, "all the evidence seems to suggest that human intuitions and anxieties about privacy differ."⁹⁸ And the differences are not between two widely different cultures—they are "between the familiar societies of the modern West."⁹⁹ Although the article was written in 2004, the year Facebook was launched,¹⁰⁰ it is even more relevant today. The rise of social media platforms magnified a clash of cultures that is now manifesting as clashes of courts and jurisdictions.¹⁰¹

Today, based on the US Supreme Court decision in *United States v. Alvarez*, the US Constitution protects falsehood.¹⁰² In *Alvarez*, the Court wrote that "the Government has not demonstrated that false statements generally should constitute a new category of unprotected speech" under the First Amendment.¹⁰³ Hence, false statements are also protected speech.¹⁰⁴ As Whitman notes, all institutions are "shaped by the prevailing legal and social values of the societies in which we live."¹⁰⁵ Such protection is also rooted in US legal and social values.¹⁰⁶ But is protecting falsehood the prevailing approach outside of the

95. See generally Confessore, *supra* note 68.

96. See James Q. Whitman, *The Two Western Cultures of Privacy: Dignity Versus Liberty*, 113 YALE L.J. 1151, 1156 (2004).

97. *Id.* at 1154.

98. *Id.* at 1155.

99. *Id.*

100. *This Day in History: February 4, 2004, Facebook Launches*, HIST., <https://www.history.com/this-day-in-history/facebook-launches-mark-zuckerberg> [<https://perma.cc/BW2X-Y95R>] (Feb. 2, 2021) (noting that Facebook, now known as Meta, was launched as The Facebook on February 4, 2004).

101. See Klonick, *supra* note 14, at 1609.

102. See *United States v. Alvarez*, 567 U.S. 709, 722 (2012).

103. *Id.*

104. See *id.*

105. Whitman, *supra* note 96, at 1160.

106. See *Alvarez*, 567 U.S. at 729–30. But see, e.g., Cass R. Sunstein, *On the Wrongness of Lies* 3–6 (Harvard Pub. L. Working Paper No. 21-05, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3594420 [<https://perma.cc/JV8Q-C3D3>].

United States? Moreover, how does this protection affect social media companies, their content moderation, and in return, the right of citizens in countries outside of the United States?

For example, a common theme evident in the history of Facebook, Twitter, and YouTube is that “American lawyers trained and acculturated in American free speech norms and First Amendment law oversaw the development of company content-moderation policy.”¹⁰⁷ Legal scholars in the early days of social media, noted that social media companies reached out to lawyers for advice on content moderation.¹⁰⁸ Kate Klonick comments in an interview with a lawyer and former employee of Google that in 2006, Google hired lawyers to be in charge of “creating and implementing content-moderation policies.”¹⁰⁹ Facebook, too, was on the same track.¹¹⁰ According to Klonick’s interviews with Facebook’s former Head of Content Policy and Safety, Facebook hired twelve lawyers in 2009, five years after the site’s launch, to create its community standards;¹¹¹ a project which the lawyers recognized was “not a cultural neutral mission.”¹¹²

Twitter initially took a different path and decided not to have any form of internal content moderation process.¹¹³ However, it too later reversed course.¹¹⁴ Currently, Twitter maintains “The Twitter Rules,” and its enforcement mechanisms on a separate web page.¹¹⁵ Twitter

107. Klonick, *supra* note 14, at 1621.

108. *Id.* at 1618–20.

109. *Id.* at 1619 & n.139.

110. *Id.* at 1620.

111. *Id.* at 1620 & n.147.

112. *Id.* at 1621.

113. *See id.*

114. *See id.* at 1628–29. Following widespread harassment in the Gamergate controversy, Twitter also became conscious of the need to play an active role in content moderation. *See id.* In 2014, Gamergate became a hashtag used to harass women in gaming and quickly fostered a culture of widespread misogyny and online harassment. *See* Charlie Warzel, *How an Online Mob Created a Playbook for a Culture War*, N.Y. TIMES (Aug. 15, 2019), <https://www.nytimes.com/interactive/2019/08/15/opinion/what-is-gamergate.html> [<https://perma.cc/X2KV-RBLS>].

115. *The Twitter Rules*, TWITTER, <https://help.twitter.com/en/rules-and-policies/twitter-rules> [<https://perma.cc/A99A-H6HW>] (last visited Oct. 19, 2021); *Our Approach to Policy Development and Enforcement Philosophy*, TWITTER, <https://help.twitter.com/en/rules-and-policies/enforcement-philosophy> [<https://perma.cc/UP2H-CXEL>] (last visited Feb. 20, 2021). Prohibited speech includes threats of violence; harassment; hateful content; suicide or self-harm; sensitive media, including graphic violence and adult content; and discussion of illegal or certain regulated goods or services. *The Twitter Rules, supra*. Each category is explained in further detail on separate web pages. *See, e.g., Hateful Conduct Policy*, TWITTER, <https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy> [<https://perma.cc/TV2A-4STS>] (last visited Oct. 17, 2021).

recognizes, in its guidelines and principles, that its global commitment is “in the United States Bill of Rights and the European Convention on Human Rights.”¹¹⁶ But it further notes that the commitment is also informed by “additional sources” including its Trust and Safety Council, composed of organizations from around the world,¹¹⁷ and “works such as United Nations Principles on Business and Human Rights.”¹¹⁸

The idea of US-based companies being rooted in US laws and norms should come as no surprise. All institutions are “shaped by the prevailing legal and social values of the societies in which we live.”¹¹⁹ Cultural norms and their legal implications are widely different from one region to the other.¹²⁰ This is true even between societies that appear to share many cultural and legal institutions.¹²¹ For example, US tort law is heavily rooted in the English common law of torts.¹²² After the American Revolution, “the new states enacted ‘reception statutes’ that explicitly incorporated English law into their laws.”¹²³ Laws change over time and diverge from their historical foundations in response to emerging values.¹²⁴ Even today, “no other Western industrial democracy has adopted rules that are as hard on defamation plaintiffs as those of the United States.”¹²⁵

An interesting example in torts is the phenomenon known as libel tourism.¹²⁶ The narrow possibility of a successful defamation

116. *Defending and Respecting the Rights of People Using Our Service*, TWITTER, <https://help.twitter.com/en/rules-and-policies/defending-and-respecting-our-users-voice> [<https://perma.cc/8EFK-C6YX>] (last visited Oct. 19, 2021).

117. *Trust and Safety Council*, TWITTER, <https://about.twitter.com/en/our-priorities/healthy-conversations/trust-and-safety-council> [<https://perma.cc/2S2L-GK3P>] (last visited Mar. 1, 2021).

118. *Defending and Respecting the Rights of People Using Our Service*, *supra* note 116.

119. Whitman, *supra* note 96, at 1160.

120. See Winston Sieck, *Cultural Norms: Do They Matter?*, GLOB. COGNITION, <https://www.globalcognition.org/cultural-norms/> [<https://perma.cc/GLN3-HRX9>] (Sept. 11, 2021).

121. See Ari Shapiro, *On Libel and the Law, U.S. and U.K. Go Separate Ways*, NPR (Mar. 21, 2015, 7:11 AM), <https://www.npr.org/sections/parallels/2015/03/21/394273902/on-libel-and-the-law-u-s-and-u-k-go-separate-ways> [<https://perma.cc/Y9A3-HSVA>].

122. JOHN C.P. GOLDBERG, ANTHONY J. SEBOK & BENJAMIN C. ZIPURSKY, TORT LAW: RESPONSIBILITIES AND REDRESS 52 (3d ed. 2012).

123. *Id.*

124. See William B. Ewald, *What’s So Special About American Law?*, 26 OKLA. CITY U. L. REV. 1083, 1098, 1100 (2001) (arguing that the significant differences between American law and law everywhere else stem from ideological differences in American society and the values it holds dear); Whitman, *supra* note 96, at 1160.

125. JOHN C.P. GOLDBERG & BENJAMIN C. ZIPURSKY, THE OXFORD INTRODUCTIONS TO U.S. LAW: TORTS 328 (Dennis Patterson ed., 2010).

126. Lili Levi, *The Problem of Trans-National Libel*, 60 AM. J. COMPAR. L. 507, 508–09 (2012).

lawsuit in the United States encouraged plaintiffs, outside of the country, who believed they had been defamed by an American speaker to file their lawsuits outside of the US court system.¹²⁷ Plaintiffs instead searched for jurisdictions that would protect their libel claims against the would-be US defendants.¹²⁸ The United Kingdom, for example, became a hotspot for many defamation suits, when such lawsuits would be unsuccessful if commenced in the United States.¹²⁹

As one commentator noted, it seemed as though a national threat to the US Constitution had commenced,¹³⁰ and as a result, the United States acted swiftly.¹³¹ Consequently, Congress passed the Securing the Protection of Our Enduring and Established Constitutional Heritage (SPEECH) Act in 2010 to counter libel tourism.¹³²

The measures taken to counter libel tourism in the United States and the United Kingdom demonstrate how protective some countries are of their values and the lengths they are willing to go to uphold them.¹³³ If values can contrast so strongly even between two countries so similar in many ways, such as the United States and United Kingdom, what about the difference of values between countries in the Global South? How does the protection of falsehood in the US legal culture, reflected in many of the social media companies' content moderation policies, translate in countries with a different set of values?

The difference in the degree of reputation protection in some of the Muslim majority countries in the Global South can serve as an example of the difference in values and what level of reputational protection should be granted to citizens.¹³⁴ Though by no means can such a topic be covered in only a few paragraphs, the example below provides context for why a one-size-fits-all approach by social media

127. See *id.* at 512, 519; Anthony Lester, *Two Cheers for the First Amendment*, 8 HARV. L. & POL'Y REV. 177, 192 (2014).

128. See Lester, *supra* note 127, at 185.

129. See *id.*

130. See Shapiro, *supra* note 121.

131. See *id.*

132. SPEECH Act, Pub. L. No. 111-223, 124 Stat. 2380 (2010) (codified at 28 U.S.C. §§ 4101–4105). The UK Parliament also moved to limit their wide protection that had resulted in libel tourism by passing the Defamation Act 2013, which is in force in England and Wales. Lester, *supra* note 127, at 186–87; Defamation Act 2013, c. 26, § 17 (UK).

133. See Levi, *supra* note 126, at 507.

134. See Matt J. Duffy & Mariam Alkazemi, *Arab Defamation Laws: A Comparative Analysis of Libel and Slander in the Middle East*, 22 COMM'N L. & POL'Y 189, 204–05 (2017).

companies cannot be successful.¹³⁵ To find the right approach, culturally sensitive methods require an understanding of values on privacy, honesty, and truth.¹³⁶ The holy book in Islam, the Qur'an, draws a comparison between backbiting and eating the dead flesh of another human—your brother.¹³⁷ It states:

O you who believe! Shun much conjecture. Indeed, some conjecture is a sin. And do not spy upon one another, nor backbite one another. Would any of you desire to eat the dead flesh of his brother? You would abhor it. And reverence God. Truly God is Relenting, Merciful.¹³⁸

This verse also further enjoins Muslims from spying on one another.¹³⁹

While some acts are only prohibited and commission of the act is sinning, which is a matter between the sinner and God, there are prohibited acts that the Qur'an has ensured compliance by laying out worldly punishment.¹⁴⁰ As it pertains to this discussion, once the backbiting takes an outward form and amounts to slander, for example falsely accusing women of unchastity,¹⁴¹ it is sanctioned by punishment.¹⁴²

135. See Professor Anupam Chander on *Regulating—and Decolonizing—the Internet*, *supra* note 50.

136. See Douek, *supra* note 28, at 51–52, 54–55.

137. *Qur'an* 49:12.

138. *Id.*

139. *Id.*

140. See *id.*; see also *Qur'an* 24:4. Punishment in Islam falls into two major categories: Hadd (plural *ḥudūd*) and *Ta'zīr*. Nazir Ahmad Zargar, *Islam Classifies Punishments in Three Ways - Hadd, Qisas and Tazir Hadd*, NEW AGE ISLAM (Jan. 29, 2021), <https://www.newageislam.com/islamic-ideology/dr-nazir-ahmad-zargar/islam-classifies-punishments-three-ways-hadd-qisas-tazir-hadd/d/124175> [<https://perma.cc/WY7V-FW46>]. Hadd refers to punishments for acts against the right of God. See *id.* The extent of such crimes is outlined and fixed in the Qur'an. See *id.* *Ta'zīr*, on the other hand, refers to crimes as outlined by the government and the judge, depending on the legal system. *Id.* Governments can layout such crimes and punishments in their penal code according to the needs of the society. See *id.* These crimes can vary from time to time. Adultery is a type of hadd. *Id.* False accusations of adultery are also considered hadd, with a fixed punishment outlined in the Qur'an. See *id.* The differences between *ḥudūd* and *taz'zīr* are prolific and beyond the scope of this Article. See Intisar A. Rabb, *Islamic Legal Maxims as Substantive Canons of Construction: Ḥudūd-Avoidance in Cases of Doubt*, 17 ISLAMIC L. & SOC'Y 63, 65–66 (2010), for a general discussion on the role of doubt in *Hudud*.

141. THE STUDY QURAN: A NEW TRANSLATION AND COMMENTARY 1261 (Seyyed Hossein Nasr, Caner K. Dagli, Maria Massi Dakake, Joseph E. B. Lumbard & Mohammed Rustom eds., 2017). Interestingly, in the United States' common law tradition, accusing a woman of unchastity constitutes slander per se and does not require proof of special damages. GOLDBERG & ZIPURSKY, *supra* note 125, at 316–17.

142. See *Qur'an* 24:4.

The Treatise On Rights of Imam Sajjad, the great-grandson of the Prophet,¹⁴³ has a section on the Right of the Tongue.¹⁴⁴ It states:

And the right of the tongue is that you consider it too noble for obscenity, accustom it to good, direct it to politeness, do not use it except in situations of needs and benefits of the religion and this world, and refrain from any meddling in which there is little to be gained; and there is no security from its harm that accompanies its small benefits. It is the witness to and the evidence of the existence of the intellect. The demonstration of an intelligent person's intellect is through his reputation of good speech. And there is no power but in God the High, the Great.¹⁴⁵

The importance of imposing obligations and rights for words is consequently seen in the laws of many Muslim-majority countries.¹⁴⁶ One study examined the defamation laws of six Arab countries: Egypt, Jordan, Kuwait, Lebanon, Libya, and the United Arab Emirates.¹⁴⁷ The study found that all six countries have criminal charges as penalties for libel or slander.¹⁴⁸ Iran is another Muslim-majority country with criminal penalties for defamation.¹⁴⁹

In the Anglo-American tradition, too, defamatory statements were historically considered an element of incitement of violence.¹⁵⁰ In medieval English law, insulting a person was a sin punishable by the church.¹⁵¹ In the United States, the transition from a sin to a crime, and

143. *Compare Imam Sajjad*, HOLY SHRINE OF LADY FATIMA MASUMA (Aug. 21, 2021), <https://int.amfm.ir/en/imam-sajjad/> [https://perma.cc/4ZX2-8Z5N] (“[Imam Sajjad] is the son of Hussain-ibn-ali”), *with al-Ḥusayn ibn ‘Alī*, BRITANNICA, <https://www.britannica.com/biography/al-Husayn-ibn-Ali-Muslim-leader-and-martyr> [https://perma.cc/TBC4-LXKE] (Jan. 1, 2022) (“al-Ḥusayn ibn ‘Alī . . . grandson of the Prophet Muhammad through his daughter Fāṭimah and son-in-law ‘Alī . . .”).

144. GHODRATULLAH MASHAYEKHI, *Right n. 3: The Right of the Tongue*, in A DIVINE PERSPECTIVE ON RIGHTS 44 (Ali Peiravi & Lisa Zaynab Morgan trans., 2002), <https://www.al-islam.org/printpdf/book/export/html/19698> [https://perma.cc/5DNW-PE64].

145. *Id.*

146. *See, e.g.*, Duffy & Alkazemi, *supra* note 134, at 202–04.

147. *Id.* at 197.

148. *Id.* at 202.

149. TA’AZIRAT [PENAL CODE] 1996, arts. 697–700 (Iran). Interestingly, even in the United States, defamation still remains in the criminal codes of several states. *See* Conor Friedersdorf, *The ACLU Takes Aim at Criminal-Defamation Laws*, ATLANTIC (Dec. 18, 2018), <https://www.theatlantic.com/ideas/archive/2018/12/aclu-test-case-takes-aim-criminal-defamation-laws/578383/> [https://perma.cc/2ZC2-LHHU].

150. *See* DAN B. DOBBS, PAUL T. HAYDEN & ELLEN M. BUBLICK, HORNBOOK ON TORTS 936 (2d ed. 2015). The authors cite to an English case from 1605, *Coke’s De Libelis Famosis*, in which the court noted that “the capacity of libel to incite a breach of the peace” is one reason for imposing criminal liability for libel. *Id.* at 936 n.10 (citing *Coke’s De Libelis Famosis* (1605) 77 Eng. Rep. 250; 50 Co. Rep. 125a).

151. DOBBS ET AL., *supra* note 150, at 937.

recently to a civil action, did not come overnight.¹⁵² In 1917, the United States, through the Espionage Act of 1917, imposed criminal liability, *inter alia*, for speech critical of the First World War.¹⁵³ Even the US Supreme Court in *Schenck v. United States*, authored by the famous Justice Holmes, upheld the Act against the First Amendment free speech constitutional claims.¹⁵⁴ The Sedition Act of 1918 further reinforced criminal liability until Congress repealed the Act in 1920.¹⁵⁵ To this day, more than twenty US states continue to impose criminal liability for the common law tort of libel.¹⁵⁶

This Article does not advocate for the criminalization of defamation. Criminalizing online libel will not solve the problem of online hate speech and defamation.¹⁵⁷ Yet, outright freedom to defame, based on US law and the protection of false speech it offers, is also not the way to go in the eyes of many nations outside of the United States.¹⁵⁸ Each country's right to self-determination should be respected. Countries in the Global South should be given the time, if desired, to naturally evolve their ideas, norms, and priorities rather than being coerced by an outside force or a fake push; unlocalized pressure will only

152. *See id.* There are jurisdictions, in the United States and abroad, that continue to impose criminal sanctions for harm to one's reputation. *See* Friedersdorf, *supra* note 149; Duffy & Alkazemi, *supra* note 134, at 202–04.

153. Philip A. Dynia, *World War I*, MIDDLE TENN. STATE UNIV.: FIRST AMEND. ENCYC., <https://www.mtsu.edu/first-amendment/article/1102/world-war-i> [<https://perma.cc/7BVD-NXY3>] (last visited Oct. 17, 2021).

154. *Schenck v. United States*, 249 U.S. 47, 48–49, 53 (1919). The cases the Supreme Court heard fall into two categories: the first group includes cases decided in March 1919, and the second group encompasses those decided from late 1919 through the 1920s. NEIL RICHARDS, *INTELLECTUAL PRIVACY: RETHINKING CIVIL LIBERTIES IN THE DIGITAL AGE* 33 (2015). It was not until the second series of cases that Justice Brandeis and Justice Holmes began vigorously dissenting and raising free speech concerns. *See id.*

155. Sedition Act of 1918, Pub. L. No. 65-150, 40 Stat. 553 (repealed 1920); *See* Christina L. Boyd, *Sedition Act of 1918 (1918)*, MIDDLE TENN. STATE UNIV.: FIRST AMEND. ENCYC., <https://www.mtsu.edu/first-amendment/article/1239/sedition-act-of-1918> [<https://perma.cc/HG23-3E9V>] (last visited Oct. 17, 2021).

156. *See* Friedersdorf, *supra* note 149. In 2018, the ACLU initiated a lawsuit challenging the constitutionality of state laws that impose criminal sanctions for the common law tort of libel. *See* *Frese v. MacDonald*, 425 F. Supp. 3d 64, 68–70, 80 (D.N.H. 2019). *See* *Map of States with Criminal Laws Against Defamation*, ACLU, <https://www.aclu.org/issues/free-speech/map-states-criminal-laws-against-defamation> [<https://perma.cc/9DPH-AUJE>] (last visited Feb. 21, 2021), for an interactive map of criminal defamation laws across the United States.

157. ALICE E. MARWICK & ROSS MILLER, *FORDHAM CTR. ON L. & INFO. POL'Y, ONLINE HARASSMENT, DEFAMATION, AND HATEFUL SPEECH: A PRIMER OF THE LEGAL LANDSCAPE* 3 (2014).

158. Whitman, *supra* note 96, at 1160–61. The creation of the Advisory Board was an attempt to tackle this issue. *See infra* Parts III, IV.

backfire if attempted without the support of necessary social institutions.¹⁵⁹

The dilemma here is that social media companies, such as Meta, are not governing their content in “a” country; instead, they are reaching various jurisdictions outside the United States that each has its own legal and social values.¹⁶⁰ Initially, Meta saw no difference in the individual places; rather, there were “just people with different nationalities all interacting in many shared forums.¹⁶¹ Regional rule would make cross-border interactions and communities largely incoherent and moderation very hard if not impossible.”¹⁶² That too, however, changed with the GDPR and Meta’s own actions.¹⁶³

Initially, Meta’s users, regardless of their location, were globally subject to the company’s Terms and Policies in the United States.¹⁶⁴ However, this changed when Meta opened an office in Dublin.¹⁶⁵ Taking advantage of Ireland’s low corporate tax rate,¹⁶⁶ Meta incorporated Facebook Ireland Ltd., now changed to Meta Platforms Ireland Ltd,¹⁶⁷ as a subsidiary and its international headquarters.¹⁶⁸ From that point forward, all users outside of the United States were subject to the Terms of Use of Meta Platforms Ireland Ltd.¹⁶⁹ Yet, when the GDPR took effect, the protections it offered to EU citizens seemed too stringent for Meta to grant to all of its users.¹⁷⁰ Hence, Meta decided that users

159. See *Speech Across Borders*, *supra* note 20, at 1651, 1655–57, 1665–66.

160. Klonick, *supra* note 14, at 1642 n.306.

161. *Id.*

162. *Id.*

163. See David Ingram, *Exclusive: Facebook to Put 1.5 Billion Users Out of Reach of New EU Privacy Law*, REUTERS, <https://www.reuters.com/article/us-facebook-privacy-eu-exclusive/exclusive-facebook-to-put-1-5-billion-users-out-of-reach-of-new-eu-privacy-law-idUSKBN1HQ00P> [<https://perma.cc/2A7Q-NQT3>] (Apr. 18, 2018, 7:13 PM).

164. See Klonick, *supra* note 14, at 1631, 1634.

165. See *id.* at 1634.

166. Ingram, *supra* note 163.

167. See Meta Platforms, Inc., Annual Report (10-K) 9, 36, 46 (Feb. 3, 2022).

168. Ingram, *supra* note 163.

169. *Id.* Facebook’s Statement of Rights and Responsibilities indicates:

If you are a resident of or have your principal place of business in the US or Canada, this Statement is an agreement between you and Facebook, Inc. Otherwise, this Statement is an agreement between you and Facebook Ireland Limited. References to ‘us,’ ‘we,’ and ‘our’ mean either Facebook, Inc. or Facebook Ireland Limited, as appropriate.

Statement of Rights and Responsibilities, *supra* note 87.

170. See Cyrus Farivar, *Facebook Removes 1.5 Billion Users from Protection of EU Privacy Law*, ARS TECHNICA (Apr. 20, 2018, 6:45 AM), <https://arstechnica.com/tech-policy/2018/04/facebook-removes-1-5-billion-users-from-protection-of-eu-privacy-law/>

outside of the European Union would be once again subject to the US headquarters' terms of services.¹⁷¹ Even after the UK referendum and the decision to leave the European Union, Meta took no chances, and subjected UK users to California's terms and conditions.¹⁷² Google, too, took a similar approach.¹⁷³

In spite of the above, the story is not all gloomy. Meta has taken steps to abide by national laws in different countries.¹⁷⁴ It now has offices in seventy cities worldwide, including in the Middle East, utilizing content moderators who speak the local language and better understand contexts of different posts.¹⁷⁵

Additionally, there are ways to report defamation or harassment through Meta.¹⁷⁶ On the surface, these reporting options are good measures, however, the reporting system is not efficient.¹⁷⁷ In the defamation reporting section of the website, one question asks if the individual has a court order establishing the unlawfulness of the reported content.¹⁷⁸ Rarely do users succeed at recognizing who is attacking them, let alone suing them.¹⁷⁹ In cases where someone seeks a declaratory judgment for offensive content, Meta can be persuaded to take down the content in that geographical location.¹⁸⁰ However, if Meta

[<https://perma.cc/JBL9-9B9V>]. Facebook attributed its leeway in handling data of foreign users to "terminology" differences. Ingram, *supra* note 163.

171. Ingram, *supra* note 163; Farivar, *supra* note 170.

172. Joseph Menn, *Exclusive: Facebook to Move UK Users to California Terms, Avoiding EU Privacy Rules*, REUTERS, <https://www.reuters.com/article/uk-britain-eu-facebook-exclusive/exclusive-facebook-to-move-uk-users-to-california-terms-avoiding-eu-privacy-rules-idUSKBN28P2HM> [<https://perma.cc/EQ95-75EP>] (Dec. 15, 2020, 1:02 PM).

173. Joseph Menn, *Exclusive: Google Users in UK to Lose EU Data Protection - Sources*, REUTERS, <https://www.reuters.com/article/us-google-privacy-eu-exclusive-idUSKBN20D2M3> [<https://perma.cc/8TUY-TBXZ>] (Feb. 19, 2020, 1:55 PM).

174. *See Content Restrictions Based on Local Law*, FACEBOOK TRANSPARENCY CTR., <https://transparency.fb.com/data/content-restrictions/> [<https://perma.cc/M7PF-QYVP>] (last visited Oct. 4, 2021).

175. *The People Behind Facebook's Review Teams*, FACEBOOK TRANSPARENCY CTR., <https://transparency.fb.com/enforcement/detecting-violations/people-behind-our-review-teams/> [<https://perma.cc/E2EW-M7HT>] (June 11, 2021).

176. For one way to report this behavior, see *Defamation Reporting Form*, FACEBOOK, <https://www.facebook.com/help/contact/732748663560891> [<https://perma.cc/6W78-AVC5>] (last visited Feb. 21, 2021).

177. *See* Jason Koebler & Joseph Cox, *The Impossible Job: Inside Facebook's Struggle to Moderate Two Billion People*, VICE (Aug. 23, 2018, 12:15 PM), <https://www.vice.com/en/article/xwk9zd/how-facebook-content-moderation-works> [<https://perma.cc/68E5-5ATT>].

178. *Defamation Reporting Form*, *supra* note 176.

179. Koebler & Cox, *supra* note 177.

180. *Id.*

is not persuaded, then the user is bound by the decision, unless they are among the lucky few whose case gets heard by Meta's Oversight Board—another creation of Meta that aims to be the final arbiter.¹⁸¹

Twitter users, on the other hand, must accept Twitter's decisions regarding a disputed post without any sort of analog to the Oversight Board.¹⁸² It is important to reemphasize here that if Twitter users in the United States must commit to Twitter's decisions, it is because it is permissible under US law for Twitter, as a private company, to require its users to commit to its decisions.¹⁸³ It is not by the force of nature but rather by the various US laws and regulations that protect private companies.¹⁸⁴ Should citizens conclude that this status quo is detrimental, they have the option of voting for representatives who will advocate otherwise and change the laws.¹⁸⁵ They can also sue the companies in the United States and hope for a change through the courts.¹⁸⁶ So what about citizens in the Global South? They are bound by the companies' decisions, period.¹⁸⁷

181. OVERSIGHT BOARD, <https://oversightboard.com> [<https://perma.cc/X7TG-VAKS>] (last visited Feb. 21, 2021).

182. *Hateful Conduct Policy*, *supra* note 115. Facebook's Oversight Board is sometimes referred to as Facebook's Supreme Court. Kate Klonick, *Inside the Making of Facebook's Supreme Court*, NEW YORKER (Feb. 12, 2021), <https://www.newyorker.com/tech/annals-of-technology/inside-the-making-of-facebooks-supreme-court> [<https://perma.cc/WJR4-2EQG>].

183. See Amber Phillips, *No, Twitter Is Not Violating Trump's Freedom of Speech*, WASH. POST (May 29, 2020), <https://www.washingtonpost.com/politics/2020/05/29/no-twitter-did-not-violate-trumps-freedom-speech/> [<https://perma.cc/7HEQ-F5QQ>]. For example, by relying on state action doctrine and not expanding First Amendment rights to private companies, US users are bound by Twitter's decisions. *Id.* Another contributing factor to the status quo is 47 U. S. C. § 230(c). See Ryan Tracy, *Section 230: What It Is, and Why Politicians Want to Change It*, WALL ST. J., <https://www.wsj.com/articles/section-230-what-it-is-and-why-politicians-want-to-change-it-11616664601> [<https://perma.cc/27UN-Q6UF>] (Mar. 25, 2021, 9:22 AM).

184. *Id.*

185. *See id.*

186. *Id.*

187. See Maya Villaseñor, *Revisiting Section 230: The Implications Are International*, COUNCIL ON FOREIGN RELS.: NET POL. (Nov. 16, 2020, 11:09 AM), <https://www.cfr.org/blog/revisiting-section-230-implications-are-international> [<https://perma.cc/W8X6-TXWD>].

III. CURRENT OPTIONS AND DEBATES

To control the rising power of social media companies in the United States, scholars and advocates have put forward numerous proposals.¹⁸⁸ Some scholars, such as Lina Khan,¹⁸⁹ have helped spark an antitrust movement to break up Big Tech's monopoly.¹⁹⁰ Under such approach, Meta will no longer own and operate Instagram, Whatsapp, and Facebook (among others).¹⁹¹ Others, such as Jack Balkin, have relied on the fiduciary duties and advocated for an information fiduciary theory.¹⁹² Following this theory, social media companies have a fiduciary duty towards their users too, as compared to only their shareholders.¹⁹³

Scholars have also argued for repealing section 230(c) of the CDA,¹⁹⁴ which gives social media companies immunity over users' activities.¹⁹⁵ These proposals address Meta's power structure within the United States; they are not a response to the rising tensions in the Global South.¹⁹⁶ Other countries in the Global North have also taken

188. For example, see Lina M. Khan, Note, *Amazon's Antitrust Paradox*, 126 YALE L.J. 710 (2017).

189. See generally *id.*

190. Nick Gillespie, *Should Amazon (and Google, and Facebook) Be Canceled by Antitrust Law?*, REASON (Sept. 4, 2019, 4:34 PM), <https://reason.com/podcast/should-amazon-and-google-and-facebook-be-canceled-by-antitrust-law/> [<https://perma.cc/23CP-JLHM>].

191. See Khan, *supra* note 188, at 793.

192. Jack M. Balkin, *Information Fiduciaries and the First Amendment*, 49 U.C. DAVIS L. REV. 1183, 1186 (2016).

193. See *id.* Critics of this approach have argued that corporate laws and fiduciary duties do not allow the theory to be effective towards users. See, e.g., Lina M. Khan & David E. Pozen, *A Skeptical View of Information Fiduciaries*, 133 HARV. L. REV. 497, 504–05 (2019).

194. 47 U.S.C. § 230(c)(2) (“No provider or user of an interactive computer service shall be held liable on account of—(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).”).

195. See, e.g., Olivier Sylvain, *Intermediary Design Duties*, 50 CONN. L. REV. 203, 208 (2018) (“The CDA immunity doctrine, born over two decades ago, is at odds with the world as it is today. Internet intermediaries are structuring online content, conduct, and the entire networked environment in ways that the current doctrine does not contemplate. The consequences of this failing are troubling and require reform.”); Danielle Keats Citron & Benjamin Wittes, *The Internet Will Not Break: Denying Bad Samaritans § 230 Immunity*, 86 FORDHAM L. REV. 401, 401–04 (2017).

196. See Michael Karanicolas, *The Countries Where Democracy Is Most Fragile Are Test Subjects for Platforms' Content Moderation Policies*, SLATE (Nov. 16, 2020, 5:50 AM),

actions of their own.¹⁹⁷ The EU members passed the GDPR, which imposed one of the strictest legal frameworks on companies—including social media companies—for protecting data, privacy, and local laws, among others.¹⁹⁸

China, a country in the Global North, has taken a completely different route.¹⁹⁹ China’s approach has been called the “Great Firewall,” banning all major social media companies such as Meta, YouTube, and Twitter.²⁰⁰ By relying on local products, China has promoted national apps.²⁰¹ For example, WeChat, a Chinese social media company, currently has more than a billion users.²⁰²

However, this is not the ideal approach. Each social media company offers a unique set of features.²⁰³ The ability to easily connect and interact with other people beyond geographical borders is one of the highlights of a modern, globalized world.²⁰⁴ Restricting citizens’ access to such global products and services by allowing and promoting only national versions of such products will, in effect, deprive citizens of their rights to enjoy and access the internet.²⁰⁵ However, providing local counterparts is acceptable if the national and foreign platforms can compete and give the customer a choice.²⁰⁶

<https://slate.com/technology/2020/11/global-south-facebook-misinformation-content-moderation-policies.html> [<https://perma.cc/GQG4-SWDR>].

197. See, e.g., Jyh-An Lee & Ching-Yi Liu, *Forbidden City Enclosed by the Great Firewall: The Law and Power of Internet Filtering in China*, 13 MINN. J.L. SCI. & TECH. 125, 128 (2012).

198. See *Speech Across Borders*, *supra* note 20, at 1619–20.

199. Lee & Liu, *supra* note 197, at 126–27.

200. See *id.*

201. See *id.* at 149. Beyond social media companies, China has also taken other measures to control technology and the internet. China’s Digital Silk Road is China’s major move in this regard. For more information, see *Assessing China’s Digital Silk Road Initiative*, COUNCIL ON FOREIGN RELS., <https://www.cfr.org/china-digital-silk-road> [<https://perma.cc/W9T4-RJ4C>] (last visited Feb. 21, 2020).

202. Arjun Kharpal, *Everything You Need to Know About WeChat — China’s Billion-User Messaging App*, CNBC, <https://www.cnbc.com/2019/02/04/what-is-wechat-china-biggest-messaging-app.html> [<https://perma.cc/Q56C-6RJX>] (Feb. 4, 2019, 2:22 AM) (“WeChat is China’s most popular messaging app . . .”).

203. See Nick Leighton, *Top Five Social Media Platforms for Business Leaders*, FORBES (Mar. 9, 2021, 8:20 AM), <https://www.forbes.com/sites/forbescoachescouncil/2021/03/09/top-five-social-media-platforms-for-business-leaders/?sh=7e85c5ab7e07> [<https://perma.cc/27LW-CDHK>].

204. *Id.*

205. See Paul Mozur, *Forget TikTok. China’s Powerhouse App Is WeChat, and Its Power Is Sweeping.*, N.Y. TIMES (Sept. 4, 2020), <https://www.nytimes.com/2020/09/04/technology/wechat-china-united-states.html> [<https://perma.cc/L4DP-D7CV>].

206. See Chris Fuchs, *Chinese Americans Look to New Platforms as WeChat’s Future Remains Uncertain*, NBC NEWS (Sept. 26, 2020, 11:26 AM), <https://www.nbcnews.com/news/asian-america/chinese-americans-look-new-platforms-wechat-s-future-remains-uncertain-n1241027> [<https://perma.cc/G59X-BS72>].

The next Section discusses several possible avenues for countries in the Global South.

A. Private Regulations, Corporate Social Responsibility, and the Oversight Board

In 2019, the Business Roundtable (BRT) redefine[d] the purpose of a corporation.²⁰⁷ Since 1997, the BRT's position has been that corporations exist to serve shareholders.²⁰⁸ The new statement, however, announced that “[w]hile each of our individual companies serves its own corporate purpose, we share a fundamental commitment to all of our stakeholders.”²⁰⁹ Those who believe corporations should bear more responsibility for what happens in their communities welcome the shift of companies committing to all stakeholders, rather than the traditional shareholder primacy.²¹⁰ A list of 181 CEOs signed the statement, which included big names such as Apple’s Tim Cook and, at the time, Amazon’s Jeff Bezos, although Meta’s CEO, Mark Zuckerberg, was missing.²¹¹

The “belief that corporations have a responsibility towards society,”²¹² or in modern terms, corporate social responsibility (CSR), is not a new concept. As a category of corporate governance,²¹³ CSR has become more popular in recent decades due to shifting norms and expectations.²¹⁴ In the 1990s, consumer groups “began to invoke the notion of CSR in order to convey their normative expectations from

207. *Business Roundtable Redefines the Purpose of a Corporation to Promote ‘an Economy that Serves All Americans’*, BUS. ROUNDTABLE (Aug. 19, 2019), <https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans> [https://perma.cc/W5SV-69CG].

208. *Id.*

209. *Id.*

210. See Elizabeth Dilts, *Top U.S. CEOs Say Companies Should Put Social Responsibility Above Profit*, REUTERS, <https://www.reuters.com/article/us-jp-morgan-business-roundtable/top-u-s-ceos-say-companies-should-put-social-responsibility-above-profit-idUSKCN1V91EK> [https://perma.cc/78FF-PHG2] (Aug. 19, 2019, 11:03 AM).

211. *Statement on the Purpose of a Corporation*, BUS. ROUNDTABLE (Aug. 19, 2019), <https://s3.amazonaws.com/brt.org/BRT-StatementonthePurposeofaCorporationJuly2021.pdf> [https://perma.cc/UJU3-NUQ3].

212. Mauricio Andrés Latapí Agudelo, Lára Jóhannsdóttir & Brynhildur Davídsdóttir, *A Literature Review of the History and Evolution of Corporate Social Responsibility*, 4 INT’L J. CORP. SOC. RESP., no. 1, 2019, at 1, 1.

213. See Brian Jones, Ryan Bowd & Ralph Tench, *Corporate Irresponsibility and Corporate Social Responsibility: Competing Realities*, 5 SOC. RESP. J. 300, 301 (2009), for a more in-depth discussion on competing definitions of corporate social responsibility.

214. See Ronen Shamir, *Socially Responsible Private Regulation: World-Culture or World-Capitalism?*, 45 LAW & SOC’Y REV. 313, 313 (2011).

corporations, often in respect to the latter’s commercial operations in underregulated countries.”²¹⁵ CSR has now “become associated with transitional regulatory frameworks,” which “signal[s] a major relocation of political authority.”²¹⁶

CSR is broader than just environmental protection measures and includes delivering social benefits and ethical standards.²¹⁷ One example of such a voluntary CSR tactic is the Oversight Board.²¹⁸ Meta announced in 2018 that it would create an independent oversight board.²¹⁹ The board was created to, in simple terms, “help Facebook [now known as Meta] answer some of the most difficult questions around freedom of expression online: what to take down, what to leave up, and why.”²²⁰ To ensure the Board’s independence, Meta created a trust that would fund the Oversight Board.²²¹ The Board has corporate trustees and individual trustees appointed by Meta.²²² To guarantee autonomy, the Oversight Board, as an entity, was established as a Delaware limited liability corporation.²²³

As for the Board’s members, Meta selected an initial group of twenty individuals who had the ability to select additional members and grow the Board to forty individuals.²²⁴ Meta also emphasized the

215. *Id.*

216. *Id.*

217. See Jones et al., *supra* note 213, at 302.

218. See, e.g., Chinmayi Arun, *The Facebook Oversight Board: An Experiment in Self-Regulation*, JUST SEC. (May 6, 2020), <https://www.justsecurity.org/70021/the-facebook-oversight-board-an-experiment-in-self-regulation/> [<https://perma.cc/3JR2-WRMY>] (explaining the self-regulating aspect of the board).

219. See Kate Klonick, *The Facebook Oversight Board: Creating an Independent Institution to Adjudicate Online Free Expression*, 129 YALE L.J. 2418, 2425–27 (2020), for a complete account of how the Board came to be.

220. Home, OVERSIGHT BD., <https://oversightboard.com> [<https://perma.cc/M3XD-EANR>] (last visited Feb. 10, 2022). The Oversight Board Charter’s introduction states that “[t]he purpose of the board is to protect free expression by making principled, independent decisions about important pieces of content and by issuing policy advisory opinions on Facebook’s content policies.” Governance, OVERSIGHT BD., <https://oversightboard.com/governance/> [<https://perma.cc/2798-U2WW>] (last visited Feb. 10, 2022).

221. *Id.* at 2467–68.

222. *Id.* at 2468.

223. *Limited Liability Company Agreement of Oversight Board LLC*, FACEBOOK (Oct. 17, 2019), <https://about.fb.com/wp-content/uploads/2019/12/LLC-Agreement.pdf> [<https://perma.cc/C5EY-LP6S>].

224. Jessica Bursztynsky & Sam Shead, *These Are the People Facebook Put in Charge of Deciding Whether to Delete Controversial Posts*, CNBC, <https://www.cnbc.com/2020/05/06/facebook-names-first-members-of-oversight-board-for-content-moderation.html> [<https://perma.cc/VK5N-U9HG>] (May 6, 2020, 2:10 PM); see *Oversight Board Charter*, FACEBOOK 2 (Sept. 2019), https://about.fb.com/wp-content/uploads/2019/09/oversight_board_charter.pdf [<https://perma.cc/Y925-P2SL>].

diversity of the members and stated in its charter that “[f]or the board to serve its purpose effectively, members must possess and exhibit a broad range of knowledge, competencies, diversity, and expertise.”²²⁵

An important aspect of the Board’s independence allegedly lies in its power to determine its own docket.²²⁶ In other words, Meta is the defendant in all actions, and the Board selects “its cases from those appealed by users.”²²⁷ The Board also has the ability to issue policy recommendations and changes to the Community Standards for Facebook.²²⁸

The first round of decisions by the Board was announced in January 2021 and included controversies from across the globe.²²⁹ The Board applied Facebook and Instagram’s Community Standards, Values, and lastly, a touch of human rights instruments as its standard of review.²³⁰ Take the Board’s decision on an image widely circulated in 2015 of a drowned three-year-old Syrian toddler whose body was found on the shores of Turkey.²³¹ A Facebook user in Myanmar, the country notoriously known for the genocide against Rohingya Muslims,²³² used the image and posted it in a Facebook group to say that the user lacked empathy for the child’s death.²³³ The post allegedly implied that the child would have possibly grown to be a Muslim man and, according to the Board’s translator, “[t]hose male Muslims have something wrong in

225. *Oversight Board Charter*, *supra* note 224, at 3.

226. See Evelyn Douek, *What Kind of Oversight Board Have You Given Us?*, UNIV. CHI. L. REV. BLOG (May 11, 2020), <https://lawreviewblog.uchicago.edu/2020/05/11/fb-oversight-board-edouek> [<https://perma.cc/4B9H-5VWW>].

227. Klonick, *supra* note 219, at 2465.

228. *Facebook Oversight Board for Content Decisions: What to Know*, FACEBOOK JOURNALISM PROJECT (Aug. 22, 2019), <https://www.facebook.com/journalismproject/facebook-oversight-board-for-content-decisions-overview> [<https://perma.cc/EE6X-5S7G>].

229. See *Board Decisions*, OVERSIGHT BD., <https://oversightboard.com/decision/> [<https://perma.cc/VY83-JGSY>] (last visited Feb. 21, 2021). The board continues to accept new cases. See *id.* In March 2021, they accepted two new cases for review. See *Announcing the Board’s Next Cases and Changes to Our Bylaws*, OVERSIGHT BD. (Mar. 2021), <https://oversightboard.com/news/288225579415246-announcing-the-board-s-next-cases-and-changes-to-our-bylaws/> [<https://perma.cc/QL6E-EJZU>].

230. See *FB-I2T6526K: Case Decision 2020-002-FB-UA*, OVERSIGHT BD. (Jan. 28, 2021), <https://oversightboard.com/decision/FB-I2T6526K/> [<https://perma.cc/FD6X-2ZBV>] [hereinafter *Oversight Board Decision*].

231. See *id.*; Joe Parkinson & David George-Cosh, *Image of Drowned Syrian Boy Echoes Around World*, WALL ST. J., <https://www.wsj.com/articles/image-of-syrian-boy-washed-up-on-beach-hits-hard-1441282847> [<https://perma.cc/EE3D-AUD5>] (Sept. 3, 2015, 7:28 PM).

232. *Myanmar Rohingya: What You Need to Know About the Crisis*, BBC NEWS (Jan. 23, 2020), <https://www.bbc.com/news/world-asia-41566561> [<https://perma.cc/E5UP-XEXN>].

233. *Oversight Board Decision*, *supra* note 230.

their mindset.”²³⁴ Facebook had initially removed the post; however, the Board overturned Facebook’s decision.²³⁵

The Board stated that, among other things, Facebook’s translator used a different translation.²³⁶ Facebook’s translator had translated the comment as “[i]t’s indeed something’s wrong with Muslims psychologically.”²³⁷ The Board ruled that the comment did not amount to hate speech “within the relevant Community Standard.”²³⁸

While the Board seemed to sympathize with the context and Facebook’s awkward situation in having played a role, although not intentionally, in the Rohingya’s Muslim genocide, it sided with Facebook’s users.²³⁹ It is doubtful that this decision, even though it was decided by an “independent” body separate from that of itself, would help with Meta’s reputation and its challenges in the Global South, including in many Muslim-majority countries.²⁴⁰

In citing its decision and compliance with Human Rights Standards, the Board states:

The Board acknowledges that online hate speech in Myanmar has been linked to serious offline harm, including accusations of potential crimes against humanity and genocide. As such, the Board recognized the importance of protecting the rights of those who may be subject to discrimination and violence, and who may even be at risk of atrocities. Nonetheless, the Board concludes while some may consider the post offensive and insulting towards Muslims, the Board does not consider its removal to be necessary to protect the rights of others.²⁴¹

The Board “recogniz[es] the harm of online hate speech” but clearly stops at that threshold.²⁴² Although the Board has tried to make globally recognized instruments of human rights part of its decisions, the Board applies them against the backdrop of Facebook’s Community Standards.²⁴³ The Board has a globally diverse group as the body of the Oversight Board; however, the Board members are part of what is legally a Delaware corporation (incorporated by another Delaware

234. *Id.*

235. *Id.*

236. *See id.*

237. *Id.*

238. *Id.*

239. *Id.*

240. *See* Press Release, Muslim Advoc., Facebook Oversight Board ‘Bent over Backwards’ to Protect Anti-Muslim Hate (Jan. 28, 2021), <https://muslimadvocates.org/2021/01/facebook-oversight-board-bent-over-backwards-to-protect-anti-muslim-hate> [<https://perma.cc/SAP3-CNR2>].

241. *Oversight Board Decision*, *supra* note 230.

242. *Id.*

243. *See id.*

corporation (Meta)), paid through a trust that this latter corporation has created to help the Delaware corporation (Oversight Board).²⁴⁴

Moreover, the parameters set out by Meta's bylaws charge the Board with very limited jurisdiction, though Meta has left open the option to reassess the bylaws and potentially amend its current limitations.²⁴⁵ There are currently three categories not eligible for the Board's review: content types, decision types, and services.²⁴⁶ Article 1.2.1 of the bylaws notes the restrictions on review for the following: "Content types: content posted through marketplace, fundraisers, Facebook dating, messages, and spam. Decision types: decisions made on reports involving intellectual property or pursuant to legal obligations. Services: content on WhatsApp, Messenger, Instagram Direct, and Oculus."²⁴⁷ These restrictions leave many problems unaddressed related to social media platforms' presence in the Global South.²⁴⁸

More importantly, the Board has no legal authority globally.²⁴⁹ A company cannot simply undertake authority over the internal affairs of a country—for example, what content in a country should be visible and what should not—by announcing a board.²⁵⁰ Skepticism toward

244. See *Oversight Board Charter*, *supra* note 224, at 3; Evelyn Douek, *The Facebook Oversight Board's First Decisions: Ambitious, and Perhaps Impractical*, LAWFARE (Jan. 28, 2021, 11:23 AM), <https://www.lawfareblog.com/facebook-oversight-boards-first-decisions-ambitious-and-perhaps-impractical> [<https://perma.cc/387B-HYDH>] ("It is not clear how the FOB should reconcile applying Facebook's private set of rules and values with paying attention to the public law body of rules known as international human rights law. These cases do not answer the thorniest parts of this question. Instead, in every case, the FOB first assessed Facebook's decisions against Facebook's own standards and then separately against international human rights law. But in all of them, the FOB came to the same conclusion under each set of norms, and in no case did the FOB confront the question of what happens if Facebook's rules conflict with international human rights law. This interesting 'jurisprudential' question of the FOB's ultimate source of authority has been kicked down the road for now.").

245. See *Oversight Board Bylaws*, OVERSIGHT BD. 19–20 (Jan. 2021), <https://oversightboard.com/sr/governance/bylaws> [<https://perma.cc/TC29-PV86>].

246. See *id.* at 19.

247. *Id.*

248. See Douek, *supra* note 226 (criticizing the narrowness of Facebook's Oversight Board's jurisdiction).

249. See Evelyn Douek, *Somebody Has to Do It*, ATLANTIC (May 6, 2021), <https://www.theatlantic.com/ideas/archive/2021/05/facebook-oversight-board-trump-democracy/618825> [<https://perma.cc/N7CZ-263T>]; Shannon Bond, *In 1st Big Test, Oversight Board Says Facebook, Not Trump, Is the Problem*, NPR (May 7, 2021, 10:54 AM), <https://www.npr.org/2021/05/07/994436847/what-we-learned-about-facebook-from-trump-decision> [<https://perma.cc/V2XB-W89W>].

250. See Daphne Keller, *Facebook Restricts Speech by Popular Demand*, ATLANTIC (Sept. 22, 2019), <https://www.theatlantic.com/ideas/archive/2019/09/facebook-restricts-free-speech-popular-demand/598462/> [<https://perma.cc/7MD7-EZS9>].

CSR is strong outside of the United States,²⁵¹ especially in the Global South.²⁵² Critical studies that examine CSR from a postcolonial perspective see CSR “as a set of Western-centric discourses and practices that do not take into account the peculiarities of the Global South and quite often create more harm than benefit in Southern communities.”²⁵³ CSR initiatives are laudable; however, they should not be viewed as sufficient measures. Corporations are businesses that need regulations.²⁵⁴ For better or worse, the lack of ability to effectively regulate such companies in the Global South has also prompted some countries to take different measures, including blocking platforms altogether.²⁵⁵

B. Blocking Social Media and Promoting National Alternatives

An extreme measure that governments may take in response to frustration caused by the social media platforms’ lack of abidance of national laws and regulations, and the sense of threat from the presence of foreign corporations, is banning or blocking access.²⁵⁶ Countries in the Global South are not the only governments contemplating blocking social media as an option.²⁵⁷ For instance, with the rise of TikTok in the United States and national security concerns, the US administration announced plans in 2020 to ban TikTok in the United States.²⁵⁸ Although a federal judge ruled that the TikTok ban could not go into

251. See *Russia Could Ban Facebook, Twitter, YouTube for ‘Censoring’ Content*, FIN. EXPRESS (Dec. 26, 2020, 3:11 PM), <https://www.financialexpress.com/industry/technology/russia-could-ban-facebook-twitter-youtube-for-censoring-content/2157891> [https://perma.cc/88HK-ML4G].

252. See Rafael Alcadipani & Cíntia Rodrigues de Oliveira Medeiros, *When Corporations Cause Harm: A Critical View of Corporate Social Irresponsibility and Corporate Crimes*, 167 J. BUS. ETHICS 285, 288 (2020).

253. *Id.*

254. See Deborah Doane, *The Myth of CSR*, STAN. SOC. INNOVATION REV., Fall 2005, at 23, 28–29.

255. See Christopher Giles & Peter Mwai, *Africa Internet: Where and How Are Governments Blocking It?*, BBC NEWS (Jan. 14, 2021), <https://www.bbc.com/news/world-africa-47734843> [https://perma.cc/6A3E-A9JT].

256. See Shahbaz & Funk, *supra* note 46.

257. See Press Release, U.S. Dep’t of Com., Commerce Department Prohibits WeChat and TikTok Transactions to Protect the National Security of the United States (Sept. 18, 2020), <https://content.govdelivery.com/accounts/USDOC/bulletins/2a14c6c> [https://perma.cc/N9VV-TSFR].

258. See *id.*; Ana Swanson, Mike Issac & Paul Mozur, *Trump Targets WeChat and TikTok, in Sharp Escalation with China*, N.Y. TIMES, <https://www.nytimes.com/2020/08/06/technology/trump-wechat-tiktok-china.html> [https://perma.cc/UU7A-FVFS] (Sept. 18, 2020).

effect,²⁵⁹ the case showed that blocking foreign apps is an option on the table in the minds of politicians in the Global North, even if only as a warning mechanism.²⁶⁰

It is important to recount the plan to ban TikTok in the United States for national security concerns. Meta and Twitter are both US-based companies and are therefore subject to the jurisdiction of the United States.²⁶¹ The US government has the ability to request user information from these companies and impose its laws through the US court system.²⁶² When the United States faced a foreign company it did not fully trust, it was quick to react to it.²⁶³ This distrust of a government toward foreign platforms is exacerbated when a country's policies are not aligned with those of the United States where the big social media platforms are mainly based.²⁶⁴ This lack of trust can cause some countries in the Global South to have a love-hate relationship with the platforms.²⁶⁵

On the other hand, social media companies have also resorted to restricting access to their platforms in response to adverse government action.²⁶⁶ This approach made headlines in a dispute between Meta and Australia on a new proposed law that would have required Meta to pay for news content.²⁶⁷ Meta did not agree with the Australian law at the time and failed to reach an agreement with the Australian government.²⁶⁸ In response, Meta banned “publishers and people in

259. TikTok Inc. v. Trump, 490 F. Supp. 3d 73, 76 (D.D.C. 2020).

260. Mike Isaac & David McCabe, *TikTok Wins Reprieve from U.S. Ban*, N.Y. TIMES, <https://www.nytimes.com/2020/09/27/technology/tiktok-ban-ruling-app.html> [<https://perma.cc/NWW5-3GMH>] (Oct. 8, 2020).

261. See Facebook, Inc., Restated Certificate of Incorporation (Form S-1/A) (Apr. 23, 2012); Twitter, Inc., Restated Certificate of Incorporation (Form S-1) (Oct. 3, 2013).

262. See, e.g., *Government Requests for User Data: United States*, FACEBOOK TRANSPARENCY CTR., <https://transparency.facebook.com/government-data-requests/country/US> [<https://perma.cc/5FHT-EL85>] (last visited Feb. 21, 2021).

263. See Isaac & McCabe, *supra* note 260.

264. See *id.*

265. See Aasha Mehreen Amin, *The Love-Hate Relationship with Social Media*, DAILY STAR, <https://www.thedailystar.net/opinion/no-strings-attached/news/the-love-hate-relationship-social-media-1679302> [<https://perma.cc/59LN-PSZW>] (Dec. 27, 2018, 1:43 PM).

266. See James Crowley, *Facebook Bans News Content in Australia After Proposed Law Would've Forced Company to Pay Media Outlets*, NEWSWEEK (Feb. 17, 2021, 3:09 PM), <https://www.newsweek.com/facebook-announced-it-will-stop-sharing-news-australia-law-pay-media-outlets-1569997> [<https://perma.cc/PT65-Y33S>].

267. *Id.*

268. See *id.*

Australia from sharing or viewing Australian and international news content.²⁶⁹

While some countries have left platforms open and unregulated, others have banned the platforms altogether, or have blocked a certain platform while leaving the others accessible.²⁷⁰ African countries are increasingly relying on blocking access to social media platforms, or blocking the internet altogether.²⁷¹ In the Middle East, Iran has currently taken a middle-ground approach blocking Facebook and Twitter but leaving Instagram and WhatsApp accessible.²⁷² As a result, Instagram, although owned by Meta, gained one-of-a-kind popularity in Iran.²⁷³ However, that may change as Iran's parliament is considering taking the extreme measure of eventually banning all foreign applications and service providers should they not abide by Iranian laws.²⁷⁴

But is blocking an ideal approach to counter the unwanted impact of such platforms? The most important reason why blocking is not a good tool for countering the influence of social media platforms in a country is its implication on limiting the freedom of expression.²⁷⁵ Scholars have primarily focused on studying the limits on freedom of expression and the right to free speech when it comes to governmental blockage of a platform.²⁷⁶ Acknowledging the importance of the attention given to free speech, this Section contributes to the reasons why blocking is not the right approach by viewing the issue from the standpoint of users as consumers and how restricting platforms takes a heavy toll on them.

269. William Easton, *Changes to Sharing and Viewing News on Facebook in Australia*, FACEBOOK: NEWSROOM (Feb. 17, 2021), <https://about.fb.com/news/2021/02/changes-to-sharing-and-viewing-news-on-facebook-in-australia> [<https://perma.cc/745F-YXK4>].

270. See Giles & Mwai, *supra* note 255.

271. *Id.*

272. See Maziar Motamedi, *Iran Blocks Signal Messaging App After WhatsApp Exodus*, AL JAZEERA (Jan. 26, 2021), <https://www.aljazeera.com/news/2021/1/26/iran-blocks-signal-messaging-app-after-whatsapp-exodus> [<https://perma.cc/8CTG-P67K>]. While many state officials maintain a social media presence on Twitter, it ironically remains blocked. See Golnaz Esfandiari, *Iranian Politicians Who Use Twitter Despite State Ban*, RADIO FREE EUR./RADIO LIBERTY (Aug. 28, 2017, 12:07 PM), <https://www.rferl.org/a/iranian-politicians-twitter-ban/28701701.html> [<https://perma.cc/2YUB-S4X8>].

273. See Mehr Nadeem, *Selfies and Sharia Police*, REST OF WORLD (Nov. 9, 2020), <https://restofworld.org/2020/selfies-and-sharia-police/> [<https://perma.cc/X62N-CWEQ>].

274. See Maziar Motamedi, *Under Pressure, Iranian MPs Postpone Internet Restriction Bill*, AL JAZEERA (July 26, 2021), <https://www.aljazeera.com/news/2021/7/26/under-pressure-iranian-mps-postpone-internet-restriction-bill> [<https://perma.cc/8ZVY-DNNK>].

275. See Shahbaz & Funk, *supra* note 46.

276. See *id.*

Iran is an interesting case for this study. Instagram and WhatsApp are owned by Meta and continue to operate in Iran, while Facebook remains blocked.²⁷⁷ It is important to note that due to US imposed sanctions, Meta does not have the legal capacity to officially operate in Iran and conduct business;²⁷⁸ it does so however, unofficially.²⁷⁹ Based on the latest polling released in Iran, more than 73.6% of people above the age of eighteen use social media platforms.²⁸⁰ Among this number, 64.1% use WhatsApp, and 45.3% use Instagram.²⁸¹ The national platforms EITAA and Soroush have 4.8% and 4% of the users in the country, respectively.²⁸²

Several factors have led to the popularity of Instagram in Iran.²⁸³ First, as mentioned above, the only non-Iranian social media platforms currently accessible without proxy are Instagram and WhatsApp.²⁸⁴ Next, Instagram's user-friendly interface has also made it a popular app among all ages.²⁸⁵ Sanctions have also limited the official presence of many tech companies in Iran.²⁸⁶ Consequently, there is a lack of access to many popular online shops, such as eBay and Amazon, and an overwhelming presence of small shops on Instagram.²⁸⁷

277. See Nadeem, *supra* note 273.

278. See Williams Mullen & Thomas McVey, *Understanding the OFAC Sanctions Laws: Requirements for U.S. Companies*, JD SUPRA (Dec. 18, 2020), <https://www.jdsupra.com/legalnews/understanding-the-ofac-sanctions-laws-66379/> [<https://perma.cc/WRZ6-SBWC>].

279. See Adam Jezard, *Facebook May Be Banned in Iran – but It's Not Stalling the Country's Digital Revolution*, WORLD ECON. F. (Oct. 20, 2017), <https://www.weforum.org/agenda/2017/10/facebook-banned-in-iran-digital-revolution/> [<https://perma.cc/8P9L-XQWD>].

280. For more information on the survey conducted in February 2021, see *Iranian Students Polling Agency, an Introduction*, IRANIAN STUDENTS POLLING AGENCY, <http://ispa.ir/Default/page/en/aboutus> [<https://perma.cc/76K9-RUW4>] (last visited Oct. 17, 2021); Iranian Students Polling Agency (@ispa_polling), INSTAGRAM (Feb. 17, 2021), <https://www.instagram.com/p/CLZyyCBhPo9/?igshid=m8pzvjgkb35t> [<https://perma.cc/D2L5-72JA>] [hereinafter ISPA Instagram].

281. ISPA Instagram, *supra* note 280.

282. *Id.*

283. See Nadeem, *supra* note 273.

284. See Motamedi, *supra* note 272.

285. See James Cole, *Why Is Instagram So Popular? We Asked Active Users to Explain*, THOUGHT CATALOG, <https://thoughtcatalog.com/james-cole/2018/09/why-is-instagram-so-popular/> [<https://perma.cc/3EHS-CGRD>] (Sept. 11, 2018).

286. See Wis. Project on Nuclear Arms Control, *Why Companies Around the World Are Reversing Course on Iran Business*, IRAN WATCH (May 18, 2021), <https://www.iranwatch.org/our-publications/policy-briefs/how-companies-around-world-are-reversing-course-iran-business> [<https://perma.cc/X6G9-2AB4>].

287. See Fariba Parsa, *Forget Telegram: Iranians Are Using Instagram to Shop*, ATL. COUNCIL (Oct. 17, 2019), <https://www.atlanticcouncil.org/blogs/iransource/forget-telegram->

bad actors.²⁹³ They are helping businesses grow.²⁹⁴ Nevertheless, some influencers may use deceptive advertising tactics such as dark patterns to trick the user into thinking the influencer is not an advertiser but rather an actual personal user of a product.²⁹⁵ Without proper oversight, many influencers do not disclose their partnerships for advertisements in Iran.²⁹⁶ This is unlike the strict regulation from the Federal Trade Commission (FTC) in the United States that requires social media influencers to disclose advertisements²⁹⁷ or the Advertising Standard Authority (ASA) in the United Kingdom, which published “Influencer’s guide to making clear that ads are ads.”²⁹⁸ Iran and many other countries in the Global South remain an open field for influencer manipulation and little consumer protection.²⁹⁹

Moreover, many of the products and services advertised on Instagram are those which would otherwise be illegal to advertise according to Facebook’s own policies.³⁰⁰ For example, gambling is illegal in Iran.³⁰¹ Facebook’s policies also restrict gambling advertisements on its platform, stating:

293. See Rachel Hosie, *Being an Instagram Influencer Is Hard Work, and People Who Hate on Them Are Just Jealous*, INSIDER (Sept. 2, 2019, 8:27 AM), <https://www.insider.com/being-an-instagram-influencer-is-harder-than-it-seems-2019-8> [<https://perma.cc/3LRY-6RHV>].

294. See Reza, *supra* note 292.

295. See, e.g., Ryan Nephew, *Why Do Influencers Promote Products that They Don’t Use?*, MEDIUM: PLUS MKTG. (Nov. 20, 2020), <https://medium.com/plus-marketing/why-do-influencers-promote-products-that-they-dont-use-887ba80c09cc>.

296. See Megha Rajagopalan & Soudeh Rad, *Meet the Iranian Influencers Whose Livelihoods Will Be Stripped Away by a Ban on Instagram*, BUZZFEED NEWS (Jan. 29, 2019, 9:04 AM), <https://www.buzzfeednews.com/article/meghara/iran-instagram-ban-women-influencers> [<https://perma.cc/Y5JH-QLB8>].

297. See FED. TRADE COMM’N, DISCLOSURES 101 FOR SOCIAL MEDIA INFLUENCERS 3 (2019), https://www.ftc.gov/system/files/documents/plain-language/1001a-influencer-guide-508_1.pdf [<https://perma.cc/7BA4-6PV7>]; see also Paulo Zialcita, *FTC Issues Rules for Disclosure of Ads by Social Media Influencers*, NPR (Nov. 5, 2019, 4:57 PM), <https://www.npr.org/2019/11/05/776488326/ftc-issues-rules-for-disclosure-of-ads-by-social-media-influencers> [<https://perma.cc/PNH3-YGHY>].

298. See *Influencers’ Guide to Making Clear that Ads Are Ads*, ADVERT. STANDARDS AUTH. 2 (2020), <https://www.asa.org.uk/uploads/assets/uploaded/3af39c72-76e1-4a59-b2b47e81a034cd1d.pdf> [<https://perma.cc/TD8Z-SPBW>].

299. See *Online Consumer Protection Legislation Worldwide*, UNITED NATIONS CONF. ON TRADE & DEV. (Feb. 4, 2020), <https://unctad.org/page/online-consumer-protection-legislation-worldwide> [<https://perma.cc/5WJ9-9F88>].

300. See *Advertising Policies*, FACEBOOK, <https://www.facebook.com/policies/ads/> (last visited Oct. 17, 2021).

301. Dominic Dudley, *Iran Struggles to Clamp Down on Illegal Online Gambling*, FORBES (Sept. 23, 2021, 6:00 AM), <https://www.forbes.com/sites/dominicdudley/2021/09/23/iran-struggles-to-clamp-down-on-illegal-online-gambling/?sh=34739480df9e> [<https://perma.cc/4JK5-PW8V>].

Ads that promote online gambling, and gaming where anything of monetary value (including cash or digital/virtual currencies, e.g., bitcoin) is required to play and anything of monetary value forms part of the prize, are only allowed with our prior written permission. This includes games where purchases are required to continue game play and/or provide advantage in winning prizes, in cases where the prize is of monetary value. Authorized advertisers must follow all applicable laws, including targeting their ads in accordance with legal requirements. At a minimum, ads may not be targeted to people under 18 years of age.³⁰²

Nevertheless, a series of fraudulent advertisements for online gambling caused a crisis in Iran.³⁰³ Many Iranian users reported fraud as they were unable to redeem their money due to fake Instagram accounts and bank account numbers that claimed to be authentic gambling services.³⁰⁴ Some influencers who live outside Iran, such as singers,³⁰⁵ take advantage of the gambling ban in Iran by advertising and promoting their gambling sites on their Instagram pages with no governmental oversight or regulation to access users based in Iran.³⁰⁶ Meta's neglect and failure to address such advertisement issues are only to the detriment of users and provide more incentives for governments to advocate for shutting down a platform such as Instagram.³⁰⁷ Of course, this would be an unhelpful response and result in depriving the citizens of the benefits of such platforms.³⁰⁸

302. See *Advertising Policies*, *supra* note 300.

303. See Arash Aalaei, *Iran's Underground Las Vegas*, WASH. INST. FOR NEAR E. POL'Y (Apr. 16, 2021), <https://www.washingtoninstitute.org/policy-analysis/irans-underground-las-vegas> [<https://perma.cc/CX4M-2DXX>].

304. See *id.*

305. See *Iranian Police Seek to Arrest 'Godfather' of Gambling Sites in Turkey*, BBC NEWS (Dec. 9, 2020), <https://www.bbc.com/persian/iran-55249004> [<https://perma.cc/QB6A-QW8L>].

306. Nima Karimi, *Riddle of Betting Sites in Iran; Gambling or Money Laundering?*, BBC NEWS (May 26, 2020), <https://www.bbc.com/persian/iran-features-52634789> [<https://perma.cc/DBU3-WY5B>].

307. See *Facebook Response on Advertising: A Failure to Acknowledge Responsibility*, PRIV. INT'L (Sept. 24, 2020), <https://privacyinternational.org/news-analysis/4171/facebook-response-advertising-failure-acknowledge-responsibility> [<https://perma.cc/FT8W-GDLH>]. At times, Facebook takes local, culturally sensitive laws seriously. For example, Facebook does not allow advertisements of alcohol in countries in which alcohol advertisement is prohibited. See, e.g., *Advertising Policies*, *supra* note 300 ("Ads that promote or reference alcohol must comply with all applicable local laws, required or established industry codes, guidelines, licenses and approvals, and include age and country targeting criteria consistent with Facebook's targeting requirements and applicable local laws. Note that our policies prohibit ads promoting or referencing alcohol in some countries, including but not limited to: Afghanistan, Brunei, Bangladesh, Egypt, Gambia, Kuwait, Libya, Lithuania, Norway, Pakistan, Russia, Saudi Arabia, Thailand, Turkey, United Arab Emirates and Yemen.")

308. See Miriam Berger, *Bill to Restrict Internet in Iran Could Threaten Pandemic-Era Instagram Commerce Boom*, WASH. POST (Aug. 7, 2021, 8:00 AM), <https://www.washingtonpost.com/world/2021/08/07/iran-instagram-pandemic-economy-ban/> [<https://perma.cc/3EEJ-SNM3>].

Meta's lack of oversight is also evident from the misinformation in health advertisements on the site.³⁰⁹ For example, cosmetic surgeries in Iran are not a luxury anymore.³¹⁰ Currently, Iran ranks as the twenty-seventh country in the world for the most plastic surgeons.³¹¹ Instagram has, unfortunately, only exacerbated the craving for plastic surgeries by facilitating mental health issues related to body image;³¹² a negative impact not confined to Instagram alone.³¹³ However, without proper oversight from Meta on these advertisements in the Global South, unauthorized advertisements on nose jobs, injections, Botox, and similar procedures offering before-and-after pictures have taken over many Iranian Instagram users, regardless of age.³¹⁴

These advertisements are against Facebook's own policies.³¹⁵ Facebook's Prohibited Content policy on advertisements states: "Ads must not contain 'before-and-after' images or images that contain unexpected or unlikely results. In addition, ad content must not imply or attempt to generate negative self-perception in order to promote diet, weight loss, or other health-related products."³¹⁶ An example of a

309. See Shayan Sardarizadeh, *Coronavirus: Misinformation and False Medical Advice Spreads in Iran*, BBC NEWS (Feb. 29, 2020), <https://www.bbc.com/news/world-middle-east-51677530> [<https://perma.cc/Y565-2V45>].

310. See generally Nahid Mozaffari Niya, Majid Kazemi, Farrokh Abazari & Fazlollah Ahmadi, *Iranians' Perspective to Cosmetic Surgery: A Thematic Content Analysis for the Reasons*, 8 WORLD J. PLASTIC SURGERY 69, 70 (2019).

311. ISAPS International Survey on Aesthetic/Cosmetic Procedures Performed in 2019, INT'L SOC'Y OF AESTHETIC PLASTIC SURGERY 38 (2019), <https://www.isaps.org/wp-content/uploads/2020/12/Global-Survey-2019.pdf> [<https://perma.cc/QU22-KLSV>].

312. See Simon Chandler, *Instagram's Filter Ban Isn't Enough to Stop Rise in Cosmetic Surgery*, FORBES (Oct. 23, 2019, 10:42 AM), <https://www.forbes.com/sites/simonchandler/2019/10/23/instagrams-filter-ban-isnt-enough-to-stop-rise-in-cosmetic-surgery/?sh=13276057532c> [<https://perma.cc/2CZY-UXWX>].

313. See Joshua Zitser, *Insider Created a TikTok Account and Set the Age at 14 to Test How Long Before a Plastic Surgeon's Promotional Video Appeared. It Only Took 8 Minutes.*, INSIDER (Jan. 10, 2021, 9:14 AM), <https://www.insider.com/rhinoplasty-is-being-promoted-to-teenagers-nose-job-tiktok-2020-12> [<https://perma.cc/K24N-QE8R>] (reporting on the concerning trend of plastic surgery videos on TikTok).

314. See Kamaljit Kaur Sandhu, *Nose Job a Rage in Iran*, INDIA TODAY (Nov. 16, 2019), <https://www.indiatoday.in/world/story/nose-job-iran-plastic-surgery-1619523-2019-11-16> [<https://perma.cc/5HEE-9YXV>]. Facebook's policies do not allow targeted ads for cosmetic procedures to users under 18 years old. *Advertising Policies*, *supra* note 300.

315. *Advertising Policies*, *supra* note 300. See Dr. Hamidreza Hosnani (@dr.hosnani), INSTAGRAM, <https://www.instagram.com/dr.hosnani/>, for one example of an account that posts before-and-after images of nose jobs and boosts over 220,000 followers. You can find many more accounts by simply running a search on Instagram of "nose job" in Farsi. INSTAGRAM, <https://www.instagram.com/> (follow "Instagram" hyperlink; then search "nose job" in Farsi [عمل بینی]).

316. *Advertising Policies*, *supra* note 300.

prohibited advertisement on Facebook's site is a hair growth treatment with a before-and-after picture.³¹⁷ Although such an ad is banned by Facebook's policies,³¹⁸ running a search in Farsi with the keywords "hair transplant" continues to generate many advertisements from doctors in Iran performing the surgery.³¹⁹

The crisis that resulted from such advertisement in Iran prompted the Ministry of Health and Medical Education (MOHME) of Iran to issue a statement on the illegality of such advertisement by doctors on social media platforms.³²⁰ MOHME announced that any such advertisement from doctors requires permission from the Iranian Medical Council.³²¹ The presence of troubling ads on Meta's platforms in Iran also suggests that Meta is either not prioritizing users in certain countries or is not prioritizing actions against unauthorized ads when it is not getting paid for the ad.³²²

The examples here are not confined to Iran.³²³ Without enough motivation, social media companies will not allocate their limited resources to the countries in the Global South.³²⁴ What should these

317. See *id.*

318. See *id.* Not every before-and-after ad is problematic. This Article focuses on the types of ads that are exaggerated, false, misleading, and cause body image issues.

319. See Tehran Hair Transplant (@tehran_hair_transplant), INSTAGRAM (Dec. 9, 2020), <https://www.instagram.com/p/CIEquulDcB/?igshid=1d5cohokyoqpm> [<https://perma.cc/SV4F-N75D>].

320. See *How Doctors Advertised on Instagram Was Announced*, IRANIAN STUDENTS' NEWS AGENCY, <https://www.isna.ir/news/98053014737/> [<https://perma.cc/VUJ6-FJB9>] (last visited Nov. 17, 2021); *Monitor Doctors' Ads on Instagram*, DONYA-E-EQTESAD, <https://donya-e-eqtasad.com/بخش-سایت-خوان-3562823/62-نظارت-بر-تبلیغات-بزرگان-در-اینستاگرام/> [<https://perma.cc/29SF-LXMB>] (last visited Oct. 17, 2021).

321. See *How Doctors Advertised on Instagram Was Announced*, *supra* note 320.

322. See Shannon Bond, *Just 12 People Are Behind Most Vaccine Hoaxes on Social Media, Research Shows*, NPR, <https://www.npr.org/2021/05/13/996570855/disinformation-dozen-test-facebooks-twitters-ability-to-curb-vaccine-hoaxes> [<https://perma.cc/CC37-ZPWK>] (May 14, 2021, 11:48 AM) (explaining how after the COVID-19 pandemic, anti-vaccination campaigns on Facebook created a crisis in the United States). When such disinformation campaigns run wild on Facebook in a country like the United States, where Facebook dedicates so much of its attention and resources, the depth and severity of COVID-19 disinformation campaigns in non-English speaking countries in the Global South is unimaginable. See *id.*

323. See *id.*

324. See Fekitamoeloa Utoikamanu, *Closing the Technology Gap in Least Developed Countries*, UNITED NATIONS, <https://www.un.org/en/chronicle/article/closing-technology-gap-least-developed-countries> [<https://perma.cc/F4E5-9EZU>] (last visited Nov. 7, 2021). For example, in December 2020, a woman joined a male teenager on a public Instagram Live video and began talking to him about his sexual experiences. *Controversial Live Story of a 14-Year-Old Boy with a Famous Blogger: Live to Which the Young Minister Reacted*, HAMSHAHRHI ONLINE (Dec. 17, 2020), <https://www.hamshahrionline.ir/news/573484/ماجرای-لایو-جنجالی-پسر-۱۴ساله-با-بلاگر-معروف-لایوی-که-وزیر> [<https://perma.cc/F52N-JLPJ>]. The woman asked the boy's age, to which he responded fourteen.

countries do? A total ban of such platforms is not what any country would want. Overall, citizens worldwide enjoy the many benefits of global connectivity through social media platforms such as Instagram that have a one-of-a-kind presence in the world.³²⁵ Blocking such a platform is hurtful in many ways, as explained earlier.³²⁶ Keeping in mind that the livelihood of many small businesses relies on a platform like Instagram,³²⁷ countries should instead find ways to balance their own interests with the presence of foreign global social media platforms. The next Part looks at the success of GDPR in Europe and how countries in the Global South can be inspired by taking similar collective actions.

IV. REGIONAL ALLIANCE

One successful example of social media oversight has been the EU's GDPR.³²⁸ This Part briefly explains GDPR's success and then discusses similar approaches that are possible in the Global South.

A. GDPR and Social Media

The European Union initiated the GDPR in 2016 to limit the power of Big Tech, protect consumers' rights, and place an oversight system.³²⁹ The GDPR took effect in 2018 and centralized the data protection authority in the European Commission.³³⁰ The EU members' national regulators continue to have enforcement authority but lack the power to impose new substantive requirements; they cannot lower

Id. But, the disturbing encounter does not end there. *Id.* She continued to inquire about his dad's age, his mom's age, their locations, and other personal information, all just to ask the boy, "Are you not scared that your parents would see this live?" *See id.* The boy innocently responded, "They won't see it, they are sleeping." *See id.*; *More Horrific Consequences than the Controversial Live of a 14-Year-Old Boy on Instagram*, IRANIAN STUDENTS' NEWS AGENCY (Dec. 19, 2020), <https://www.isna.ir/news/99092921962/> [<https://perma.cc/3PD9-EGKS>].

325. *See Social Media – Statistics & Facts*, STATISTA (Feb. 25, 2021), <https://www.statista.com/topics/1164/social-networks/> [<https://perma.cc/69RD-YVFM>].

326. *See Berger*, *supra* note 308.

327. *See id.*

328. *See Hayley Tsukayama, Facebook's Privacy Changes Look Different For Europeans and Americans*, WASH. POST (Apr. 20, 2018), <https://www.washingtonpost.com/news/the-switch/wp/2018/04/20/facebooks-privacy-changes-look-different-for-europeans-and-americans/> [<https://perma.cc/29QG-VXZF>]. *See generally* GDPR, *supra* note 92.

329. *See The History of the General Data Protection Regulation*, EUR. DATA PROT. SUPERVISOR, https://edps.europa.eu/data-protection/data-protection/legislation/history-general-data-protection-regulation_en [<https://perma.cc/BUY4-B8HM>] (last visited Oct. 17, 2021).

330. *See id.*

European data protection standards, or attempt to raise them.³³¹ The details of the many protective measures that GDPR offers EU citizens, from data privacy to the right to erasure, are outside the scope of this Article.³³² However, this Section will recount the case of *Eva Glawischnig-Piesczek v. Facebook Ireland Limited* to demonstrate how EU's GDPR has empowered citizens and local laws as it applies to social media platforms.³³³

When a Facebook user shared an article from an Austrian online news magazine, the link created a “thumbnail” of the original site, which contained a photograph of Ms. Eva Glawischnig-Piesczek.³³⁴ The user also published a comment about Glawischnig-Piesczek. Glawischnig-Piesczek, a public person and a member of the National Council of Austria, chair of the parliamentary party [The Greens] and the federal spokesperson for that party, informed Meta Platforms Ireland, which operates Facebook in the European Union, of the issue by letter and requested that content be taken down.³³⁵

When Facebook ignored the request to remove the comment, Glawischnig-Piesczek sued Meta Platforms Ireland in the Commercial Court of Vienna.³³⁶ Following the court's ruling in favor of the plaintiff, Facebook disabled access to the content in Austria.³³⁷ On appeal, the Higher Regional Court of Vienna approved the lower court's ruling but added that Facebook was obligated to remove the dissemination of allegations of equivalent content only “as [it] regards to those brought to the knowledge of Meta Platforms Ireland by the applicant in the main proceedings, by third parties or otherwise.”³³⁸ Both parties appealed to the Supreme Court of Austria.³³⁹

The Supreme Court of Austria referred to the European Court of Justice to interpret the relevant EU laws applicable to the case.³⁴⁰ The Court asked whether an EU Member State could:

331. See Tsukayama, *supra* note 328.

332. See GDPR, *supra* note 92. See also ONETRUST DATAGUIDANCE & FUTURE OF PRI. F., COMPARING PRIVACY LAWS: GDPR V. CCPA (2019), for a helpful guide on comparing the GDPR with the California Consumer Privacy Act of 2018 (CCPA).

333. See Case C-18/18, *Glawischnig-Piesczek v. Facebook Ir. Ltd.*, ECLI:EU:C:2019:821, ¶¶ 105–09 (Oct. 3, 2019).

334. *Id.* ¶ 12.

335. See *id.* ¶¶ 10, 13.

336. See *id.* ¶ 14.

337. See *id.* ¶ 15.

338. *Id.* ¶ 16.

339. *Id.* ¶ 19.

340. *Id.* ¶ 20.

1. order a host provider to remove information which it stores, the content of which is identical to the content of information, which was previously declared to be illegal, or to block access to that information, irrespective of who requested the storage of that information;
2. order a host provider to remove information which it stores, the content of which is equivalent to the content of information, which was previously declared to be illegal, or to block access to that information; and
3. extend the effects of that injunction worldwide.³⁴¹

Under EU law, “service providers have a duty to act, under certain circumstances, with a view to preventing or stopping illegal activities.”³⁴² The limited liability of intermediary service providers does not exclude “injunctions of different kinds,” including issued “by courts or administrative authorities requiring the termination or prevention of any infringement, including the removal of illegal information or the disabling of access to it.”³⁴³ The law also gives the Member States the ability to “apply duties of care” to service providers as specified by national law to “detect and prevent certain types of illegal activities.”³⁴⁴ The European Union also notes that it is imperative to ensure that the rules “are consistent with international rules.”³⁴⁵

As to the first question listed above, the court noted that although based on Article 15(1) of the GDPR, a “general obligation” on host providers is prohibited, and a specific obligation for a specific case is not against the EU law.³⁴⁶ For example, as in the case at hand, when a certain user takes their request to a court in a Member State, and the court declares the content in question illegal, the web host can be directed to act upon the court’s ruling.³⁴⁷ In this case, the court continues to say that it is also permissible for the court to order the host provider to block access to not only the content itself, but also to “the content of which is identical to the content previously declared to be illegal, or to remove that information, irrespective of who requested the storage of that information.”³⁴⁸ This, to the court, is not a general obligation.³⁴⁹

341. *See id.* ¶ 22.

342. *Id.* ¶ 40.

343. *Id.* ¶ 45.

344. *Id.* ¶ 48.

345. *Id.* ¶ 58.

346. *Id.* ¶ 34.

347. *See id.* ¶ 35.

348. *Id.* ¶ 37.

349. *See id.*

On the second issue, the court noted that to prevent “the person concerned having to initiate multiple proceedings in order to bring an end to the conduct of which he is a victim,”³⁵⁰ the “injunction must be able to extend to information, the content of which, whilst essentially conveying the same message, is worded slightly differently, because of the words used or their combination, compared with the information whose content was declared to be illegal.”³⁵¹ The court goes on to explain the meaning of the same message.³⁵² It stated that while the order cannot impose an obligation on the host provider to generally monitor the information or actively seek facts or circumstances related to the illegal content,³⁵³ the host provider can, for example, watch out for the name of the person or other elements “properly identified in the injunction.”³⁵⁴

Lastly, the court ruled that there was no prohibition on an injunction of this nature to have a worldwide effect.³⁵⁵ Therefore, as long as the injunction is “consistent with the rules applicable at international level,” as are the EU rules, its global effect is not a problem.³⁵⁶

This case illustrates that enforcement of the EU’s judgment is not a challenge for the parties because Meta Platforms Ireland Ltd’s location enables the court to effectively enforce its judgment.³⁵⁷ This kind of lawsuit, where a user can successfully sue Meta, is a luxury not available in other parts of the world.³⁵⁸ In many countries in the Global

350. *Id.* ¶ 41.

351. *Id.*

352. *See id.* ¶¶ 42–45.

353. *Id.* ¶ 42.

354. *Id.* ¶ 45.

355. *Id.* ¶ 50.

356. *Id.* ¶ 50–51.

357. *See id.* ¶ 58.

358. *See What We Do*, FED. COMM’NS COMM’N, <https://www.fcc.gov/about-fcc/what-we-do> [<https://perma.cc/75WR-NMN9>] (last visited Oct. 5, 2021). Given that the First Amendment does not apply to private companies, going to court may be challenging for many private citizens in the United States. However, there are still many institutions that hold companies like Facebook accountable. *See, e.g., id.*; Press Release, Fed. Trade Comm’n, FTC Imposes \$5 Billion Penalty and Sweeping New Privacy Restrictions on Facebook (July 24, 2019), <https://www.ftc.gov/news-events/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-restrictions> [<https://perma.cc/GWP5-63XP>] [hereinafter \$5 Billion Penalty Press Release] (in 2019, the FTC sued Facebook and imposed a \$5 billion fine on the company for violating users’ privacy); Press Release, Fed. Trade Comm’n, FTC Sues Facebook for Illegal Monopolization (Dec. 9, 2020), <https://www.ftc.gov/news-events/press-releases/2020/12/ftc-sues-facebook-illegal-monopolization> [<https://perma.cc/N7RD-PJHE>] (in 2020, the FTC sued Facebook again for illegal monopolization); Press Release, U.S. Dep’t of Just., Justice Department Files Lawsuit Against Facebook for Discriminating Against U.S. Workers (Dec. 3, 2020), <https://www.justice.gov/opa/pr/justice>

South, it is impossible to sue (or effectively sue) any major social media platform in their own countries.³⁵⁹ The previous Sections explained how the Oversight Board was proposed to remedy similar issues;³⁶⁰ however, as discussed, it is not adequately effective as it lacks binding authority and appears to be more of a corporate social responsibility tactic.³⁶¹ The Oversight Board also lacks authority to issue rulings whose implementation would violate the law of any given country.³⁶² Moreover, there is content that cannot be submitted to the Board as indicated in the Board's bylaws.³⁶³

In an op-ed in the *Washington Post*, Zuckerberg stated:

[e]ffective privacy and data protection needs a globally harmonized framework. People around the world have called for comprehensive privacy regulation in line with the European Union's General Data Protection Regulation, and I agree. I believe it would be good for the internet if more countries adopted regulation such as GDPR as a common framework.³⁶⁴

Whether this remains a genuine statement can be tested by countries in the Global South.

department-files-lawsuit-against-facebook-discriminating-against-us-workers [https://perma.cc/EH4C-U9GG] (in 2020, the Justice Department also filed a lawsuit against Facebook for discriminating against US Workers).

359. See Michael Kwet, *Social Media Socialism: People's Tech and Decolonization for a Global Society in Crisis* 66 (Oct. 22, 2021) (unpublished article), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3695356.

360. See Arun, *supra* note 218.

361. See *Announcing the Board's Next Cases and Changes to Our Bylaws*, *supra* note 229 (highlighting that since starting to accept "cases in October 2020, more than 220,000 cases have been appealed to the Board"); *Board Decisions*, *supra* note 229 (noting that the Board has decided eighteen cases thus far). The limited number of cases that the Board accepts, intending to emulate the "Supreme Court" and exercise limited jurisdiction, is inadequate to respond to the global need. See Klonek, *supra* note 182.

362. See *Oversight Board Bylaws*, *supra* note 245.

363. See *id.*

364. Mark Zuckerberg, *The Internet Needs New Rules. Let's Start in These Four Areas.*, WASH. POST (Mar. 30, 2019), https://www.washingtonpost.com/opinions/mark-zuckerberg-the-internet-needs-new-rules-lets-start-in-these-four-areas/2019/03/29/9e6f0504-521a-11e9-a3f7-78b7525a8d5f_story.html [https://perma.cc/KH6P-CL26].

B. Coalitions in the Global South: Transparency, Participation, and Trust

For years now, as one expert notes, US-based social media corporations have “impose[d] their policies on the world’s people, design[ed] their platforms to lock consumers into their walled gardens, manipulate[d] with addictive interfaces that maximize profit, and sp[ie]d on each person every second of the day, inside their platforms and out.”³⁶⁵ This Article argues that in response, governments in the Global South should participate in a collective form to effectively oversee social media companies’ activities in their territories. Regional alliances between countries that face shared emerging risks such as unlimited data collection or privacy breaches can make the oversight a reality.³⁶⁶ Governments can create new international organizations or expand the scope of existing organizations where possible to specifically address the challenges of the social media companies’ activities in their territories.³⁶⁷ Initiating an international network for this purpose, a forum like G20,³⁶⁸ is a great starting point.

The digital revolution, specifically the rise of social media platforms, necessitates a new harmonization on a global scale.³⁶⁹ Historically, new international problems have given rise to new multinational organizations.³⁷⁰ The rise of communication technology in the nineteenth century required harmonization and regulation on a global scale.³⁷¹ Economic crises also led to the creation of international

365. Kwet, *supra* note 359, at 60 (proposing an open, softer model to social media platforms, analogous to efforts from the free software movements, that would address the challenges and risks many people outside of the United States face when using social media platforms).

366. *Id.* at 4.

367. *Id.* at 69.

368. See generally G20, <https://www.g20.org> [<https://perma.cc/GP5Y-QF5D>] (last visited Oct. 6, 2021).

The G20 was born in 1999 as a consultation forum between finance ministers and central bank governors of the world’s major economies. Following the 2008 economic crisis, it became a forum between Heads of State and Government, aimed at improving coordination on the main global issues.

Id.

369. See Charlotte Graham-McLay & Adam Satariano, *New Zealand Seeks Global Support for Tougher Measures on Online Violence*, N.Y. TIMES (May 12, 2019), <https://www.nytimes.com/2019/05/12/technology/ardern-macron-social-media-extremism.html> [<https://perma.cc/W7V2-QPSD>].

370. See RITTBERGER ET AL., *supra* note 43, at 30.

371. See *id.* at 38 (discussing the establishment of the International Telecommunication Union after the Second World War, which was responsible for the telegraph, telephone, radio, and later, the treaty that established what became the Universal Postal Union).

organizations such as the World Trade Organization (WTO) and later agreements on intellectual property issues.³⁷²

Such transnational coalitions can promote transparency from countries, clarity in approach, and the much-needed global conversations at governmental levels.³⁷³ Transparency means that countries will be less inclined to take extreme measures in blocking access to a platform altogether.³⁷⁴ It is true that autocracies are also members of the United Nations.³⁷⁵ Nevertheless, the global stage creates a soft accountability mechanism.³⁷⁶ Having a global audience and a podium to respond to such actions means positive “peer pressure.”³⁷⁷

This is especially important from a human rights perspective. There are countries in the Global South that lack the political will to provide access to such platforms for their people.³⁷⁸ Coalitions can serve to address this challenge of autocratic countries in the following way: in the face of growing coalitions in the region, the pressure will build in a positive way to provide a force for such countries to join coalitions.³⁷⁹ Even if the country’s intention of joining the dialogue is only for good publicity, it will have positive outcomes for their citizens who would otherwise lack access to social media companies.³⁸⁰ In the long term, their presence in the conversation can mean greater transparency in the actions governments are doing (or not doing) to create, uphold, or promote the rights of their citizens while creating a powerful position towards Big Tech.³⁸¹ It will also provide a means for conversation within a country, which will inevitably lead to reform and social change, should

372. See, e.g., *Overview: The TRIPS Agreement*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm [<https://perma.cc/KEF7-YQAW>] (last visited Oct. 12, 2021).

373. See Megan Donaldson & Benedict Kingsbury, *The Adoption of Transparency Policies in Global Governance Institutions: Justifications, Effects, and Implications*, 9 ANN. REV. L. & SOC. SCI. 119, 121 (2013).

374. See Graham-McLay & Satariano, *supra* note 369.

375. See *Member States*, UNITED NATIONS, <https://www.un.org/en/about-us/member-states> [<https://perma.cc/2728-CP8E>] (last visited Oct. 7, 2021).

376. See Graham-McLay & Satariano, *supra* note 369.

377. See *id.*

378. See David Bamman, Brendan O’Connor & Noah A. Smith, *Censorship and Deletion Practices in Chinese Social Media*, FIRST MONDAY, Mar. 2012.

379. See Donaldson & Kingsbury, *supra* note 373, at 141.

380. See Graham-McLay & Satariano, *supra* note 369.

381. See *id.*

the people become frustrated with their government's actions and inactions.³⁸²

The new coalitions share the same threats and have a better understanding of regional risks.³⁸³ It is important to note that the difference between this proposal and the current status quo—the United Nations—is that powerful countries in the Global North no longer have veto powers or power to prioritize their own interests instead of the interests of the people who live in the Global South.³⁸⁴ Nor are the Big Tech companies the only private power that countries in the Global South would need to say yes to their wishes or turn a blind eye to their harmful activities to be able to benefit from their positive features.³⁸⁵

While there may be disagreements about the best approach for content moderation,³⁸⁶ such coalitions can provide a negotiating table and promote a voice of reason from both sides of the table: Big Tech and countries in the Global South. By partnering with Meta or Twitter, such coalitions can create their own methods of adjudication and accountability, even, if desired, similar to the Oversight Board, with one big difference: genuine influence, trust, and authority.³⁸⁷ Like any negotiation, it takes time and a lot of back and forth, but once the parties have reached an agreement, the product will have a much greater impact than any one-sided corporate decision.

The coalitions will also be helpful in the case of the rise of new apps that gain global attention.³⁸⁸ There is always room for new platforms: TikTok emerged despite the popularity of Facebook, Instagram, and Twitter.³⁸⁹ Clubhouse, an audio chat platform, is also gaining attention.³⁹⁰ There will surely be new platforms in the future.

382. See Kwet, *supra* note 359, at 81.

383. See RITTBERGER ET AL., *supra* note 43, at 46.

384. See *Voting System*, UNITED NATIONS, <https://www.un.org/securitycouncil/content/voting-system> [https://perma.cc/2QZB-BCCN] (last visited Oct. 12, 2021).

385. See Graham-McLay & Satariano, *supra* note 369.

386. See *id.*

387. *Board Decisions*, *supra* note 229.

388. See, e.g., Dan Hughes, *The Rapid Rise of TikTok*, DIGIT. MKTG. INST. (Aug. 26, 2019), <https://digitalmarketinginstitute.com/blog/the-rapid-rise-of-tiktok> [https://perma.cc/J6NQ-AMYG].

389. See *id.*

390. CLUBHOUSE, <https://www.joinclubhouse.com> [https://perma.cc/6LBP-R52S] (last visited Oct. 4, 2021). The app's privacy settings and security breach have already sparked concerns. See Jamie Tarabay & Kartikay Mehrotra, *Clubhouse Chats Are Breached, Raising Concerns over Security*, BLOOMBERG (Feb. 21, 2021, 7:47 PM), <https://www.bloomberg.com/news/articles/2021-02-22/clubhouse-chats-are-breached-raising->

Instead of waiting for a disaster to happen, such platforms can have preassigned rights and obligations in each region and work from there. Moreover, countries in the Global North that are also dealing with consumer rights and protection issues can have the opportunity to align with coalitions in the Global South and further move forward with their policies on social media platforms.³⁹¹

Such coalitions, similar to the GDPR enforcement mechanism,³⁹² should ideally include agreements for the body to have authority to guarantee enforceability. However, even without full enforceability power for their decisions, coalitions have served a positive role on the transnational level.³⁹³ For example, the Non-Aligned Countries were formed in the aftermath of World War II and decolonization. The member states formed a union in 1961,³⁹⁴ it currently holds 120 member states.³⁹⁵ The African Union has also been helpful in Africa, though not perfect, as it strives to be a place for common voices and goals for the people of Africa.³⁹⁶

The Organization of Islamic Cooperation has also provided a table for voices that would not otherwise hear one another.³⁹⁷ Formed in 1969, it now has fifty-seven member states.³⁹⁸ For example, the League of Arab States (also called the Arab League) was formed in 1945 in Egypt by its seven founding members.³⁹⁹ Over the years, additional Arab states joined the League, which aims to work on many goals, including economic, cultural, and social welfare matters.⁴⁰⁰ Although

concerns-over-security [<https://perma.cc/KRC7-9CYN>]; Lily Hay Newman, *Clubhouse's Security and Privacy Lag Behind Its Explosive Growth*, WIRED (Feb. 26, 2021, 1:10 PM), <https://www.wired.com/story/clubhouse-privacy-security-growth/> [<https://perma.cc/V4VZ-GLZP>].

391. See \$5 Billion Penalty Press Release, *supra* note 358.

392. See Ilse Heine, *3 Years Later: An Analysis of GDPR Enforcement*, CTR. FOR STRATEGIC & INT'L STUD.: STRATEGIC TECHS. BLOG (Sept. 13, 2021), <https://www.csis.org/blogs/strategic-technologies-blog/3-years-later-analysis-gdpr-enforcement> [<https://perma.cc/JQ7G-TSPX>].

393. See, e.g., André Munro, *Non-Aligned Movement*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/Non-Aligned-Movement> [<https://perma.cc/R3JB-V2TT>] (last visited Feb. 23, 2021).

394. *Id.*

395. *Id.*

396. *AU in a Nutshell*, AFRICAN UNION, <https://au.int/en/au-nutshell> [<https://perma.cc/LS4H-AKMU>] (last visited Oct. 4, 2021).

397. See *History*, ORG. OF ISLAMIC COOP., https://www.oic-oci.org/page/?p_id=52&p_ref=26&lan=en [<https://perma.cc/TH4A-FWEY>] (last visited Oct. 4, 2021).

398. *Id.*

399. *Arab League*, ENCYC. BRITANNICA (Feb. 5, 2020), <https://www.britannica.com/topic/Arab-League> [<https://perma.cc/68JC-5GZ2>].

400. See Pact of the League of Arab States [LAS] art. 2 (1945), https://avalon.law.yale.edu/20th_century/arableag.asp [<https://perma.cc/3NVD-EVCE>].

the League made adjustments after the Arab Spring, it still remains a functioning body today.⁴⁰¹ As of now, each member has one vote, and decisions are binding on only those states that vote for them.⁴⁰²

Not all unions are a success however.⁴⁰³ Union of South American Nations (UNASUR) is an example of an attempt to form an alliance in South America.⁴⁰⁴ Though it started strong in 2008 with twelve states,⁴⁰⁵ most countries have now suspended their membership.⁴⁰⁶ UNASUR had initially even hoped to move for a common currency but later moved away from the proposal when the EU faced a crisis with Argentina.⁴⁰⁷

As evidenced above, there are challenges that undermine the idea of having a collaboration between countries in the Global South.⁴⁰⁸ Many countries in the South do not have the monetary resources to support such actions.⁴⁰⁹ Moreover, countries in the past have made false promises to international institutions, making a mockery of such unions.⁴¹⁰ The degree of respect and the importance of the rule of law

401. See *Arab League*, *supra* note 399.

402. See *id.*

403. See, e.g., *League of Nations*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/League-of-Nations> [<https://perma.cc/M9GZ-RKZF>] (last visited Oct. 4, 2021) (describing the failure of the League of Nations).

404. See UNION OF S. AM. NATIONS, <http://www.unasursg.org> [<https://perma.cc/N8L7-T93X>] (last visited Oct. 7, 2021); *Union of South American Nations (UNASUR)*, CANCELLERÍA DE COLOM., <https://www.cancilleria.gov.co/en/union-south-american-nations-unasur> [<https://perma.cc/5VVZ-MUZA>] (last visited Oct. 7, 2021).

405. Nathaniel Parish Flannery, *Explainer: What Is UNASUR?*, AMS. SOC'Y/COUNCIL OF THE AMS. (Nov. 30, 2012), <https://www.as-coa.org/articles/explainer-what-unasur> [<https://perma.cc/WJ2Q-DXSF>]. The member states were: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Suriname, Peru, Uruguay, Venezuela, and Paraguay. *Id.* In 2012, Paraguay's membership was suspended after internal conflicts in the country and its president's impeachment. See *id.*

406. See Sean Burges, *UNASUR's Dangerous Decline: The Risks of a Growing Left-Right Split in South America*, AMS. Q. (May 3, 2018), <https://www.americasquarterly.org/article/unasurs-dangerous-decline-the-risks-of-a-growing-left-right-split-in-south-america/> [<https://perma.cc/5ZB3-YXR5>] (indicating that in 2018, Argentina, Brazil, Chile, Colombia, Paraguay, and Peru suspended their membership).

407. *Unasur, Looking at the EU, Freezes Project For Common Currency and Central Bank*, MERCOPRESS (June 13, 2011), <https://en.mercopress.com/2011/06/13/UNASUR-looking-at-the-eu-freezes-project-for-common-currency-and-central-bank> [<https://perma.cc/93WU-2GDW>].

408. See RITTBERGER ET AL., *supra* note 43.

409. See *id.*

410. See, e.g., *League of Nations*, *supra* note 403 (describing Japan's broken promise to the League of Nations to remove troops from Manchuria, which Japan instead annexed as a puppet state).

also varies in developing countries.⁴¹¹ This can make it difficult to take collective action.⁴¹² At times, adding a powerful state to the alliance with positive influence in a certain region or among certain countries can help address some of the challenges.⁴¹³ The country is not meant to have a form of authoritative voice but would be part of the coalition to serve as a consultive voice or motivational force when needed.⁴¹⁴

It is important to keep in mind that there is no perfect solution. Many alliances fail.⁴¹⁵ Many have little impact, especially in the Global South.⁴¹⁶ Some are even difficult to form in the first place.⁴¹⁷ However, countries that want to make a change should consider these forms of alliances as a strong option in achieving their goals, such as promoting citizens' rights and privacy, and protecting data. Citizens can also be involved in advocating for such alliances.⁴¹⁸

Countries in the Global South need the presence of a company like Meta for various reasons that go beyond entertainment.⁴¹⁹ At times, the company is an internet provider and a means for economic prosperity.⁴²⁰ Because of the influence these companies have, countries

411. See Barry R. Weingast, *Why Developing Countries Prove So Resistant to the Rule of Law* 18–21, 37–38 (Stanford King Ctr. on Glob. Dev., Working Paper No. 382, 2009), <https://siepr.stanford.edu/sites/default/files/publications/382wp.pdf> [<https://perma.cc/K5H2-BD4W>].

412. See, e.g., RITTBERGER ET AL., *supra* note 43, at 46 (describing the difficulty in getting countries to obey the orders of international courts).

413. See *id.* at 30 (noting that from realist theory, “the presence of a powerful state, willing to bear the costs of the creation of international organizations, is also often a requirement for cooperation”).

414. See *id.*

415. See, e.g., Burges, *supra* note 406 (discussing the failure of UNASUR).

416. See, e.g., *id.*

417. See, e.g., RITTBERGER ET AL., *supra* note 43, at 38 (describing the difficulty in forming an international organization to facilitate cooperation between postal systems).

418. See, e.g., *id.* at 46 (“Civil society actors were also decisive in the elaboration of the European Social Charter of 1961 and the negotiation of numerous additional protocols to the ECHR.”).

419. See Savannah Wallace, *In the Developing World, Facebook Is the Internet*, MEDIUM: THE STARTUP (Sept. 6, 2020), <https://medium.com/swlh/in-the-developing-world-facebook-is-the-internet-14075bfd8c5e> [<https://perma.cc/6S3F-6YPY>].

420. See *id.* This highlights a stark contrast to countries in the North that may not be as concerned if a social media platform threatens to leave the market. See *id.* For example, Google’s Project Dragonfly, which allegedly was going to offer censored search results in China, was terminated. See *Google’s Project Dragonfly ‘Terminated’ in China*, BBC NEWS (July 17, 2019), <https://www.bbc.com/news/technology-49015516> [<https://perma.cc/8U8Y-CAVT>]. For China, there is no major risk if a company like Google leaves. See Jeb Su, *Confirmed: Google Terminated Project Dragonfly, Its Censored Chinese Search Engine*, FORBES (July 19, 2019, 4:31 AM), <https://www.forbes.com/sites/jeanbaptiste/2019/07/19/confirmed-google-terminated-project-dragonfly-its-censored-chinese-search-engine/?sh=2e0cb0527e84> [<https://perma.cc/DGB8-DFGZ>].

should also be able to impose sanctions for breaches of their citizens' rights. With collective actions and coalitions, such sanctions and oversight on the activities of Big Tech companies can be made possible.⁴²¹ In return, companies can also bargain for a higher degree of freedom of expression in such countries, should they be sincere in their intentions for promoting freedom of speech,⁴²² and not merely driven by the opportunity to profit from a wider user base in the name of freedom of speech.

There may be those who are rightly hesitant about the involvement of governments.⁴²³ This distrust is exacerbated by the involvement of governments with different constitutions and power dynamics, many of which are unfortunately autocratic.⁴²⁴ Even in the United States, with a two-hundred-year-old Constitution, many commentators and scholars are reluctant to fully delegate power to regulate social media companies to the government concerning a range of issues.⁴²⁵

Yet, however old and outdated a government is, it is what we have to work with to be able to keep a balance between private power and public oversight.⁴²⁶ Democratic or autocratic, governments and ruling parties will not last forever; as times change, people change, and

As a result, companies may not have as much leverage to promote freedom of expression. *See id.* However, many countries in the South need these platforms and are willing to embrace the platforms and whatever freedom of speech comes with them in order to help the economy in their respective country. *See* Wallace, *supra* note 419. Thus, negotiations in these situations are more effective and beneficial for both sides, with an emphasis on consumer rights and also the platform's ability to pursue its ordinary function as a forum for speech. *See id.*

421. *See* Tony Romm, *Zuckerberg: Standing For Voice and Free Expression*, WASH. POST (Oct. 17, 2019), <https://www.washingtonpost.com/technology/2019/10/17/zuckerberg-standing-voice-free-expression/> [<https://perma.cc/W8D6-X5H4>].

422. *See id.*

423. *See, e.g.,* Wallace, *supra* note 419 (describing concerns that governments will surveil internet access provided by Facebook's Free Basics program).

424. *See id.*

425. *See e.g.,* Jonathan Zittrain, *A Jury of Random People Can Do Wonders for Facebook*, ATLANTIC (Nov. 14, 2019), <https://www.theatlantic.com/ideas/archive/2019/11/let-juries-review-facebook-ads/601996/> [<https://perma.cc/2VTQ-JJRU>] (arguing that similar to juries, a group of random people should vet ads and decide which ads are false or misleading because the public can't agree on what they want and "we don't trust anyone to give it to us").

426. *See* Edward O. Wilson, Sociobiologist, Debate at the Harvard Museum of Natural History (Sept. 9, 2009), <https://www.oxfordreference.com/view/10.1093/acref/9780191826719.001.0001/q-oro-ed4-00016553> [<https://perma.cc/EPP9-MERH>] ("The real problem of humanity is the following: we have Paleolithic emotions, medieval institutions, and god-like technology.").

with them, their ideas and governments are remodeled.⁴²⁷ Despite any future social and political progress, the companies will be there, unchanged in their ways, if countries take no action.⁴²⁸

The form and shape of the government should ultimately be up to the people to decide to change, reform, and reshape. Social media companies can play an important role in amplifying the voice of the people.⁴²⁹ But social media companies should also be willing to guarantee other rights, including consumer protection rights, that many countries in the Global North enjoy.⁴³⁰ It would be naïve to leave the presence of profit-driven companies unchecked and unregulated.⁴³¹ Harmful aspects of social media platforms should not be neglected at the expense of ordinary citizens and profit-making machines who preach humanitarian goals but fail to act when tested. The role of Meta in Myanmar's genocide is one too many.⁴³² In 2020, Meta posts also fueled the Ethiopian bloodshed, serving as another tragic example of how lies spread on social media platforms can claim lives absent any accountability.⁴³³

The idea of putting aside the government as a regulatory body altogether to respond to the crises social media companies have caused is at odds with the way our modern world functions.⁴³⁴ With governments, even malfunctioning ones, there is a level of delegation and involvement of citizens who would otherwise have no say whatsoever in the way these companies are harvesting their data, influencing their communities, impacting their rights and remedies, and profiting from their activities and surveillance.⁴³⁵ Instead, when

427. See, e.g., Rafal Kiepuszewski, *Poland Blazed the Trail for the Fall of Communism*, DEUTSCHE WELLE (Oct. 10, 2009), <https://www.dw.com/en/poland-blazed-the-trail-for-the-fall-of-communism/a-4809509> [<https://perma.cc/L5HK-36AR>] (detailing the fall of Poland's communist government).

428. See, e.g., Dieter Landenberger, *Porsche History*, PORSCHE, <https://www.porsche.com/international/aboutporsche/christophorusmagazine/archive/379/articleoverview/article14/> [<https://perma.cc/XA98-WMJC>] (last visited Oct. 16, 2021) (describing the history of automobile manufacturer Porsche, which survived through the rise of the Nazi regime and still exists today).

429. See Catherine O'Donnell, *New Study Quantifies Use of Social Media in Arab Spring*, UNIV. OF WASH. (Sept. 12, 2011), <https://www.washington.edu/news/2011/09/12/new-study-quantifies-use-of-social-media-in-arab-spring/> [<https://perma.cc/FE76-QJSH>].

430. See Menn, *supra* note 173.

431. See Zittrain, *supra* note 425.

432. See Gilbert, *supra* note 24.

433. See *id.*; The New Yorker Radio Hour & Radiolab, *supra* note 24.

434. See Bloch-Wehba, *supra* note 14, at 28.

435. See Joseph Postell, *"The People Surrender Nothing": Social Compact Theory, Republicanism, and the Modern Administrative State*, 81 MO. L. REV. 1003, 1003 (2016).

faced with governments with extreme and outrageous suppression of free speech and citizens' rights, such international coalitions in partnership with Big Tech can propose a proper response to the ways social media platforms would ideally operate in such territories.⁴³⁶ In the long run, the coalitions proposed in this Article can lead to accountability of private companies to the global public.

V. CONCLUSION

Accountability for the actions of social media platforms that operate on the international level remains limited.⁴³⁷ With no congressional hearing to subpoena Meta's or Twitter's CEO, many countries in the Global South are mainly left with the companies' own self-regulation endeavors.⁴³⁸ The digital revolution and the rise of social media platforms necessitate a new harmonization on a global scale that includes countries with developing economies in the decision-making processes.⁴³⁹ This Article argues that countries in the Global South should form alliances that can balance the power between them and the powerful social media companies.⁴⁴⁰ Such coalitions provide transparency and prompt conversation from both sides.⁴⁴¹ They could also effectively protect consumer rights while simultaneously promoting free speech in the Global South without sacrificing other rights.⁴⁴² In addition, the coalitions can serve as a starting point for creating a forum at the global level to address and balance the relationship between social media platforms as private regulators and states, promote corporate accountability and transparency, and eventually provide a stage for accountability to the global public.⁴⁴³

436. For example, Taliban gaining control in Afghanistan in August 2021 has led to grave concern about how social media platforms are used in Afghanistan and the best way to respond to the humanitarian crisis there. *See, e.g.*, Paul Mozur & Zia ur-Rehman, *How the Taliban Turned Social Media into a Tool for Control*, N.Y. TIMES (Aug. 20, 2021), <https://www.nytimes.com/2021/08/20/technology/afghanistan-taliban-social-media.html> [<https://perma.cc/3UY4-XDHW>].

437. *See* Arun, *supra* note 218.

438. *See id.*

439. *See* Press Ass'n, *Mark Zuckerberg Calls for Stronger Regulation of Internet*, GUARDIAN (Mar. 30, 2019, 6:57 PM), <https://www.theguardian.com/technology/2019/mar/30/mark-zuckerberg-calls-for-stronger-regulation-of-internet> [<https://perma.cc/WB9D-WYPZ>].

440. *See supra* Part IV.

441. *See* Donaldson & Kingsbury, *supra* note 373.

442. *See supra* Part I.

443. *See supra* Part IV.