

Ensuring Democracy and Freedom of Speech Online - a need for a Balanced Regulation of Social Networks

Position Paper

Schibsted is a leading group of publishing operations and digital consumer brands in the Nordics. Rooted in democratic values, Schibsted has a long heritage of contributing to society. Millions of people interact with Schibsted companies every day to become empowered in their daily lives.

Schibsted has developed its values through 170 years of free and independent newspapers, founded on a strong awareness of the social responsibility that characterizes publishers' activities. A key guarantor for upholding these values is the principal owner, Tinius Trust, which is also making sure that the values are brought forward into a complex digital world.

Schibsted wants to contribute to the debate on the regulation of platform liability by bringing a publisher's perspective to the discussion. The necessity to protect democracy against the worst effects of disinformation and hate, whilst ensuring it is done in a way that does not unacceptably restrict freedom of expression, is the guiding principle for our position on regulating social networks.

Background

The rise of social networks has revolutionized and transformed the information sphere. Social networks have given people new means of expressing themselves, and of accessing information. But they have also created problems, that our societies need to deal with.

The trends we see in today's connected world have severe consequences. Disinformation campaigns conveyed through social networks may interfere with elections, incite violence and even genocide, paralyze democratic institutions and silence politicians and public-sector employees.

Looking ahead, the improved quality of personal data accessible to social networks, the development of AI, more technically sophisticated possibilities for manipulation (deep fakes), will in all likelihood contribute to an escalation of the negative trends we identify in this report. It is urgent to address the problems at hand while it is still possible.

The discussion about regulating platform liability and tackling digital manipulation in Europe is ongoing in many Member States and has also occupied the EU institutions during the last years. As the EU Commission is thinking about its future approach on this matter, Schibsted wants to contribute to the debate by issuing this report. Our objective with the report is to describe our view on these matters and propose regulation of social networks that reduces the negative impact for democracy and democratic institutions, without compromising the freedom of expression of citizens, or leading to regulatory overreach for publishers with editorial responsibility.

Our position

Schibsted believes that in order to limit the consequences of these problems it is necessary to define social networks as a new category in mass communication, with a specific type of secondary liability. Social networks are not publishers and lack editorial responsibility. Therefore, they should not be regulated as publishers, but as a new category of players placed between publishers of journalistic content with full responsibility for the content they produce, and telecom companies, that are merely distributing content.

We believe that this central part of the connected society cannot be left to voluntary systems of company-level self-regulation but should be subject to legal accountability and regulatory scrutiny in order to protect democracy and freedom of speech online.

In this report Schibsted acknowledges that there are many rules already in place for social networks, both on EU and national level. National criminal codes regulate many aspects of harm affecting democratic institutions and free elections, but the networks' responsibilities under these sections are in many aspects still unclear and there is almost no court practice in this field.

In addition, there is a need to enhance rules for liability and transparency of these networks in order to have a functional online space for democracy and freedom of speech. **Schibsted therefore sets out proposals for new regulation that we believe need to be enshrined in EU law and scrutinized on national level.**

1. In order to regulate social networks, **the term 'social network' must be clearly defined** on EU level. The definition could be based on existing definitions of social media or similar players. The definition should take into account the size and market share of the networks with a view to tackle the most harmful consequences for democracy.

2. In addition to defining social networks as a new category, the EU should establish a **principle of secondary liability for user-generated content** for these networks; including an obligatory notice - take down - stay down regime.
3. Furthermore, requirements for proper functionalities on the networks for **flagging illegal content** should be set.
4. In order to add clarity and transparency for the users of these networks, there needs to be an **obligation to inform users**, who have already received illegal content, that the content has been removed and why.
5. Publishers with editorial responsibility are already regulated by law and adhere to national press-ethical codes. Social networks should therefore **not modify or remove content produced under editorial responsibility** on their platform.
6. The regulation should introduce **new transparency requirements** in order for individual users to understand why they are presented with a certain type of flow of content and business users to see how their content is presented on the platform.
7. **Restrictions on freedom of speech should not be set on the EU level.** Therefore, we need a combination of EU measures and national regulation.
8. The above-mentioned proposals on secondary liability and transparency obligations of the social networks must be regulated at EU level, but **regulatory scrutiny should be left to national authorities.** In particular decisions related to content generated and uploaded by users should be taken in line with cultural differences and national rules for freedom of speech.

National criminal laws in our markets already cover several harms against elections, democratic institutions, politicians and civil servants. Unfortunately, these rules are not always upheld. Member States therefore need to review their national legislation and if necessary, update it with the aim of making networks liable for the legal provisions laid down in national law. Member States should also guarantee supervision of new and existing rules.

We hope that these proposals can be taken into account in the future work of the EU Commission and want to actively participate in forthcoming discussions on these important aspects in order to ensure democracy and freedom of speech online.