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**TOPICAL ISSUES OF LIMITING RIGHT TO FREEDOM OF EXPRESSION IN THE
INTERNET SPACE**

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LIST OF ABBREVIATIONS

UN - United Nations

ICCPR - International Covenant on Civil and Political Rights

UDHR - Universal Declaration of Human Rights

ECHR - European Convention on Human Rights

EU - European Union

ACHR - American Convention on Human Rights

OAU - Organization of African Unity

UNGA - United Nations General Assembly

HRC - Human Rights Committee

DSA - Digital Services Act

AI Act - Artificial Intelligence Act

IWF - Internet Watch Foundation

INHOPE - International Association of Internet Hotlines

CDA - Communications Decency Act

AOL - America Online

SLAPP - Strategic Lawsuits Against Public Participation

NSDC - National Security and Defence Council

UNHRC - United Nations Human Rights Council

MFA - Media Freedom Act

ISS - Information Society Service

NCCC - National Coordination Center for Cyber Security

UK - United Kingdom

INTRODUCTION

The issue of protecting the right to freedom of expression online is extremely relevant today. With the development of popular online platforms, Internet resources and digital publications, more and more people began to use it as an opportunity to express their views and opinions, especially on topics that concern society.

In reaction to this many countries are establishing and actively developing legislation that would be able to regulate the right to freedom of expression specifically in the Internet space, but this legislation still needs to be improved.

Also, international and national human rights organisations have repeatedly criticised the mass deletion of comments, bans and deletion of social network users' pages, and imposition of fines and other sanctions for expressing opinions on the Internet. The urgent question is to find a balance - where the authorities can intervene and where not, and how this issue should be regulated correctly.

The actuality of this research is also supported by the high relevance of the right to freedom of expression as a fundamental human right. This right is crucial to both individual autonomy and dignity, as well as the basis for free societies. Moreover, in the light of public issues, the right to freedom of expression is the lifeblood of any democracy.

As it is noted in the United Nations Human Rights Committee's General Comment No. 34 on freedom of opinion and expression: "right to freedom of expression is a basis for the full enjoyment of a wide range of other human rights".¹ Then, the United Nations General Assembly recognized this right as "the touchstone of all the freedoms to which the United Nations is consecrated."²

This right includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any other media of his choice.³

¹ UN Human Rights Committee. General Comment No. 34, "Article 19: Freedoms of Opinion and Expression", September 12, 2011, CCPR/C/GC/34, para 4.

² UN General Assembly. Calling of an International Conference on Freedom of Information, (1946), UN Doc A/RES/59(I).

³ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, entered into force March 23, 1976, art. 19.

This thesis will outline that the right to freedom of expression is protected by Article 19 of the International Covenant of Political and Civil Rights and other numerous human rights instruments. For instance, Article 19 of the Universal Declaration of Human Rights,⁴ regional conventions, such as Article 10 of the European Convention of Human Rights,⁵ and others.

The primary challenge in achieving a balanced approach to the right to freedom of speech online lies in the vague wording of its provisions and the overbroad definitions that can be invoked by states. These ambiguities often lead to the arbitrary application of restrictions, undermining the very essence of free expression.

Moreover, the rapid expansion of digital platforms has transformed the way information is created, shared, and consumed, making online spaces central to public discourse. While these platforms provide unprecedented opportunities for free expression and access to information, they also present significant challenges related to content moderation, disinformation, and the spread of harmful speech. This growing complexity makes the issue of platform governance and online speech regulation highly relevant in contemporary legal and political discourse.

At the core of this debate lies a fundamental tension between safeguarding free speech and ensuring effective oversight of harmful online content. The legal and ethical dilemmas surrounding restrictions of free speech are further complicated by the transnational nature of digital platforms, which operate beyond the jurisdictional reach of any single state. As a result, governments, technology companies, and civil society organisations continue to grapple with questions of liability, accountability, and regulatory consistency.

To address these concerns, it is crucial to clarify the legal language governing online speech. Clearer definitions and more precise criteria for what constitutes a threat to national security or public order will help prevent the misuse of restrictions and ensure that limitations on online expression are applied only when necessary and proportionate. This thesis will outline that by developing the legislative framework, we can better protect the fundamental right to freedom of speech while still addressing legitimate concerns about the harmful impact of certain online activities.

This issue has been examined in scientific studies by Jack M. Balkin,⁶ Nikolas Guggenberger,⁷ E.B. Laidlaw,⁸ Lisa O'Carroll,⁹ Kate Klonick,¹⁰ and J. Rowbottom,¹¹ among others. Their works

⁴ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, UNGA Res 217 A(III), art. 19.

⁵ European Convention on Human Rights (ECHR), adopted November 4, 1950, entered into force September 3, 1953, 213 UNTS 1932, art. 10.

⁶ Jack M. Balkin, "Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society," *New York University Law Review* 79 (2004): 1–47.

provide valuable insights into the regulation of freedom of expression in digital spaces, intermediary liability, and the challenges of content moderation. However, several areas remain underexplored, requiring further academic attention.

One critical aspect that necessitates deeper analysis and contributes to the significance of the current research is the proportionality of restrictions on online freedom of expression, particularly within evolving legislative frameworks in Ukraine and European countries. While existing research primarily addresses general principles of free speech and the obligations of digital intermediaries, there is still a need to evaluate the legitimacy, necessity, and proportionality of content restrictions imposed by both state authorities and private platforms. Given the expansion of algorithmic content moderation, the increasing role of legislation such as the EU Digital Services Act, and the ambiguities surrounding intermediary liability in some states, it is crucial to examine how these developments align with international human rights norms and national constitutional protections.

The main task of this thesis is to explore the legal frameworks and practices regulating the right to freedom of expression in the Internet space, identifying the challenges and proposing strategies for improvement. By addressing this task, this research will contribute to the broader discourse on digital rights, platform regulation, and the future of free expression in the online sphere.

Following the task, the research aims to achieve the next purposes:

1. To define the concept and legal nature of the right to freedom of expression, including its scope, significance, and protection under international and national legal frameworks.
2. To analyse judicial practice related to the protection of freedom of expression in the online space, focusing on the jurisprudence of the European Court of Human Rights, the UN Human Rights Committee, and national courts.

⁷ Nikolas Guggenberger, "Moderating Monopolies," *Berkeley Technology Law Journal* 38, no. 1 (2023): 1–35.

⁸ E. B. Laidlaw, "The Responsibilities of Free Speech Regulators: An Analysis of the Internet Watch Foundation," *International Journal of Law & Information Technology* 20 (2012): 329.

⁹ Lisa O'Carroll, "The Digital Services Act: A Groundbreaking Law for Digital Operations in the EU," *The Guardian*, 2023.

¹⁰ Kate Klonick, "Of Systems Thinking and Straw Men," *St. John's Law Review* 93, no. 2 (2019): 487–531.

¹¹ J. Rowbottom, "Media Freedom and Political Debate in the Digital Era," *Modern Law Review* 69, no. 4 (2006): 489–518.

3. To assess the challenges and criteria for imposing legitimate restrictions on online speech, and to develop a balanced approach to limiting freedom of expression in accordance with the principles of legality, necessity, and proportionality.
4. To evaluate the Ukrainian legal framework in the context of digital expression, particularly in light of the country's European integration process, and to propose legislative reforms aimed at aligning national laws with international human rights standards.

As digital platforms continue to shape public discourse, the urgency of these questions becomes increasingly evident. This thesis contributes to the on-going debate by critically assessing the current approaches to platform regulation and proposing legal and policy solutions that balance technological innovation, human rights protection, and regulatory effectiveness in the digital age.

The research methodology employed in this study integrates both theoretical and practical approaches. The first method is theoretical, involving a comprehensive review of all available materials pertinent to the topic. This includes international legal frameworks governing online expression, national laws and bylaws, digital platform policies, and academic literature. The study relies on primary sources such as the ICCPR,¹² ECHR,¹³ UDHR,¹⁴ and national legislative acts. Additionally, it incorporates secondary sources, including policy papers, scientific articles, monographs, annual reports, and media analyses.

The second and primary research method is practical. This aspect focuses on an in-depth examination of judicial practices at both international and national levels. It includes analysing case law from various legal systems to identify patterns in the regulation of online freedom of expression. Additionally, it evaluates existing and developing legislative frameworks, assessing their alignment with international human rights standards and their effectiveness in addressing contemporary digital challenges. By conducting a comparative analysis of relevant court decisions, legal precedents, and regulatory policies, this research aims to provide a detailed understanding of how different jurisdictions approach online speech regulation in practice.

The structure of this thesis consists of an Introduction, three Chapters, eight subchapters, a Conclusion, and a List of Sources. It begins by establishing a theoretical framework that outlines the right to freedom of expression, then delves into an analysis of judicial practices related to

¹² *ibid.*, 4.

¹³ *ibid.*, 5.

¹⁴ *ibid.*, 5.

online speech, followed by an evaluation of legal approaches to balancing speech regulation in the digital space.

Chapter I defines the concept and legal essence of freedom of expression, as well as the international and national legal frameworks governing this right. It provides a theoretical overview of the fundamental principles of free speech, including its protection under international legal instruments and regional agreements. Additionally, it explores the evolution of legal regulations concerning freedom of expression in the digital environment, highlighting key legislative trends and challenges in platform governance.

Chapter II examines judicial practices in protecting online freedom of expression by analysing case law and legal precedents. It presents an in-depth review of decisions made by the European Court of Human Rights concerning online speech limitations, intermediary liability, and the proportionality of content moderation. Furthermore, it discusses United Nations Human Rights Committee rulings on digital expression and state-imposed restrictions, assessing their compliance with international human rights law. This chapter also provides a case study of Ukrainian judicial practice, evaluating the national legal landscape concerning online content regulation, particularly in the context of national security concerns and Ukraine's alignment with EU legal standards.

Chapter III presents a balanced approach to limiting freedom of expression online, focusing on the legal and policy challenges in achieving proportionality in speech regulation. It explores the necessity and legitimacy of restrictions on digital expression, ensuring they align with democratic principles while addressing harmful online content. The chapter also examines potential improvements to Ukraine's legislative framework for digital expression, considering its status as a candidate for EU membership and the need for harmonisation with European legal standards.

The thesis concludes with a summary of key findings, emphasizing the importance of safeguarding freedom of expression while ensuring responsible and proportionate regulation of online speech. The final section includes a comprehensive list of sources, ensuring a strong reference base for the research.

In conclusion, the main defending statements of this thesis are the following:

1. The regulation of online freedom of expression must adhere to the principles of legality, necessity, and proportionality, ensuring that restrictions are clearly defined, justified, and not excessive.

2. Judicial practice demonstrates inconsistencies in balancing fundamental rights with regulatory measures, highlighting the need for clearer legal standards and more transparent enforcement mechanisms.
3. The increasing role of digital platforms in content moderation raises concerns about accountability and due process, as private entities often impose restrictions without sufficient oversight or legal justification.
4. The legislative framework in Ukraine requires further harmonisation with international human rights standards, particularly regarding intermediary liability, automated content moderation, and safeguards against unjustified censorship.

1. THE RIGHT TO FREEDOM OF EXPRESSION AND ITS LEGAL REGULATION

This chapter delves into the concept and legal essence of freedom of expression, examining both international and national legal frameworks that govern this fundamental right. It provides a theoretical overview of the principles underpinning free speech, with a focus on its protection under key international legal instruments. Furthermore, the chapter explores the evolution of legal regulations concerning freedom of expression in the digital environment, highlighting significant legislative trends and challenges in platform governance. This analysis aims to offer a comprehensive understanding of the complexities and dynamics involved in safeguarding freedom of expression in today's interconnected world.

1. 1 THE RIGHT TO FREEDOM OF EXPRESSION: CONCEPT AND ESSENCE

The right to freedom of expression is a fundamental element of human rights. This right ensures that everyone from different backgrounds may freely express their thoughts and beliefs, free from discrimination or prejudice. Freedom of expression is crucial for developing a democratic society and personal fulfilment since it helps to share different points of view and openly discuss ideas.

International human rights rules universally respect freedom of expression, declaring it "crucial and indispensable for the free development of the human person and for creating a democratic society."¹⁵ Comparably, the European Court of Human Rights underlines that it is "one of the essential foundations of a democratic society and one of the basic conditions for each individual's self-fulfilment."¹⁶

Apart from its relevance for personal liberty, the proper functioning of a democratic society depends on freedom of expression. Encouraging free intellectual interchange helps people and societies hold those in charge responsible and defend other human rights. In this sense, the press and media are critical since they act as watchdogs and advance a spectrum of ideas inside a democratic framework. Therefore, implementing transparency and responsibility depends on freedom of expression, which is also fundamental for the progress and defence of human rights.

The right to freedom of expression is recognised in key international legal documents. The International Covenant on Civil and Political Rights (Article 19) defines it as follows: "Everyone

¹⁵ African Charter on Human and Peoples' Rights, 1981, OAU Doc. CAB/LEG/67/3 rev. 5.

¹⁶ European Court of Human Rights. *Handyside v. United Kingdom*, 7 December 1976, Application No. 5493/72.

shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any other media of his choice."¹⁷

Similarly, the European Convention on Human Rights (Article 10) articulates this right: "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."¹⁸

These and other internationally recognised definitions of the right to freedom of expression cover various communication styles, including spoken, written, nonverbal, and artistic expressions. This adequately safeguards not only the content of ideas and simple verbal expressions but also the manner of presentation by which people communicate them. Books, newspapers, pamphlets, posters, banners, clothes, and legal documents constitute means of expression; additionally, they cover all audio-visual and computer forms, including the Internet. It also protects expressions that "may offend, shock, or disturb"¹⁹ since freedom of expression entails the capacity to spread provocative or complex concepts.

ECHR practice has not formally acknowledged the concept of "symbolic speech" in its case law. Nevertheless, it does protect the display and use of a variety of symbols, such as the red star in Hungary²⁰ or the Easter lily in Northern Ireland,²¹ under Article 10.

Moreover, the right to freedom of expression encompasses a variety of communication modes, as General Comment no. 34 on Article 19 of the ICCPR states,²² such as political discourse,²³ commentary²⁴ on public and private matters, canvassing,²⁵ human rights discussions,²⁶

¹⁷ ICCPR, art. 19, *op. cit.* 4.

¹⁸ European Convention on Human Rights, *opt. cit.* 5.

¹⁹ *ibid.*, 10.

²⁰ European Court of Human Rights. Vajnai v. Hungary, Application No. 33629/06, Judgment of 8 July 2008.

²¹ European Court of Human Rights. Donaldson v. the United Kingdom, Application No. 549/10, Decision of 25 January 2011.

²² Human Rights Committee. General Comment No. 34, *opt. cit.* 4.

²³ Human Rights Committee. Mika Miha v. Equatorial Guinea, Communication No. 414/1990, 18 July 1994, United Nations, CCPR/C/51/D/414/1990.

²⁴ Human Rights Committee. Fernando v. Sri Lanka, Communication No. 1189/2003, Views adopted on 31 March 2005, United Nations, CCPR/C/83/D/1189/2003.

journalism,²⁷ cultural and artistic activities,²⁸ education,²⁹ and religious expression. Furthermore, this right includes the ability to participate in commercial advertising.

As incorporated in international human rights legislation, the right to freedom of expression consists of three fundamental elements that ought to be totally safeguarded and upheld: the freedom to hold opinions, the freedom to receive information and ideas, and the freedom to impart information and ideas.

Firstly, the freedom to hold opinions guarantees people the right to develop their own ideas and beliefs free from influence. Since it lets people grow in their views free from coercion or punishment, this is an essential feature of intellectual freedom and personal autonomy.

Secondly, the freedom to receive information and ideas ensures that people can access a wide variety of sources of knowledge and viewpoints. This covers the right to pursue information and interact with many points of view. This right is fundamental for personal growth, wise decision-making, and the operation of a democratic society.

Thirdly, the freedom to impart information and ideas safeguards people's capacity to communicate their points of view and ideas with others through speech, writing, or other forms of expression. This right feature guarantees that everyone can engage in the flow of ideas and contribute to public debate.

The concept of the right to freedom of expression also includes negative form of this right - the right not to speak. It was introduced in the European Commission of Human Rights case law,³⁰ where Commission protected applicant's right against self-incrimination during criminal investigations.

²⁵ Human Rights Committee. Concluding Observations on Japan, CCPR/C/JPN/CO/5, 22 April 2014.

²⁶ Human Rights Committee. Velichkin v. Belarus, Communication No. 1022/2001, Views adopted on 20 October 2005, U.N. Doc. CCPR/C/85/D/1022/2001 (2005).

²⁷ Human Rights Committee. Mavlonov and Sa'di v. Uzbekistan, Communication No. 1334/2004, Views adopted on 19 March 2009, U.N. Doc. CCPR/C/95/D/1334/2004 (2009).

²⁸ Human Rights Committee. Shin v. Republic of Korea, Communication No. 926/2000, Views adopted on 16 March 2004, U.N. Doc. CCPR/C/80/D/926/2000 (2004).

²⁹ Human Rights Committee. Ross v. Canada, Communication No. 736/97, Views adopted on 18 October 2000, U.N. Doc. CCPR/C/70/D/736/1997 (2000).

³⁰ European Commission of Human Rights. K. v. Austria, Application No. 1191/81, Decision of 4 April 1984.

Still, right to freedom of expression is not unbridled. International protections, including those under the ECHR,³¹ may not cover some kinds of expression, including anti-Semitic remarks, Holocaust denial, or incitement to violence. These restrictions aim to achieve a balance between the preservation of individual freedoms and the necessity of maintaining public peace and order.

States' responsibility is to respect, defend, and secure their citizens' right to freedom of expression by international human rights law. This responsibility encompasses all branches of government—executive, legislative, and judicial—at the national, local, and regional levels.³² It implies that States must establish domestic laws consistent with their obligations under international treaties and provide access to remedies to individuals who have been violated. Regional and international tribunals typically only intervene when all local remedies have been exhausted, even though domestic laws are typically the initial point to turn to for individuals seeking justice.

States have positive and negative obligations regarding freedom of expression. While the positive obligation demands that states defend individuals from threats to their right to free speech that result from private entities, the negative obligation requires them to prohibit unjustifiable limits or penalties on expressive activities.

In the modern world significance of the right to freedom of expression is growing. However, the increasing relevance of the Internet as a platform for free expression generates fresh difficulties, especially when private companies control access to online environments. States should thus support an autonomous and varied media environment to guarantee that everyone, especially those from ethnic and linguistic minorities, has access to a broad spectrum of knowledge and ideas.

Though a fundamental right, freedom of expression is qualified in nature. This implies that states may justify limits on this right in some conditions, such as public health or national security—many discussions about freedom of expression focus on balancing conflicting rights and interests. Usually, two categories define infractions of freedom of expression: previous constraints and later penalties. Prior restraints—such as court orders or publishing bans—search to stifle expression. Later penalties, however, apply fines or damages, either civil or criminal, following the expression that has occurred.

³¹ European Court of Human Rights. *Garaudy v. France*, Application No. 65831/01, Judgment of 24 June 2003, para. 10.

³² United Nations General Assembly. Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, A/RES/53/144, 9 December 1998, Article 1.

Freedom of expression is a subjective right that enables individuals to act and express themselves in any way they choose. It comprises the autonomy to express oneself or refrain from doing so, which is crucial for fully realising the right.

The frequency with which state officials undermine a fundamental human need—communication—has been demonstrated by historical events. Individuals are unable to flourish or develop harmoniously in the absence of the freedom to convey themselves. This is especially important in the political sphere, where freedom of expression is regarded as one of the fundamental freedoms of society. The Preamble of the Universal Declaration of Human Rights³³ emphasises its importance as the most aspired goal of humanity. This is why many legal systems worldwide acknowledge the necessity of safeguarding this right.

Ultimately, freedom of expression is a fundamental right that promotes personal autonomy, dignity, and the functioning of a democratic society. While not without limitations, this right—protected by national legal systems and international agreements—remains a vital component of human rights law. Upholding freedom of expression is crucial for fostering transparency, accountability, and the protection of human rights. Therefore, a robust legal framework at both national and international levels is essential for its preservation.

1.2 CURRENT INTERNATIONAL LEGAL FRAMEWORKS REGULATING THE RIGHT TO FREEDOM OF EXPRESSION

As already outlined, the fundamental need for communication and intellectual interaction is precisely why the right to freedom of expression is enshrined in international human rights instruments. This ensures that people may fully engage in their countries' political, social, and cultural life.³⁴ Thus, different international legal acts introduce the right to freedom of expression and provide legal frameworks for its protection.

Adopted by the UN General Assembly on December 10, 1948, the meaningful document known as the Universal Declaration of Human Rights³⁵ marks the first international agreement committing the right to freedom of expression. Article 19 of the UDHR underlines that "everyone has the right to freedom of opinion and expression," including seeking, receiving, and imparting information and ideas through any media and regardless of frontiers. Although the

³³ United Nations General Assembly. Universal Declaration of Human Rights, *opt. cit.* 5.

³⁴ Varvara Licuța Coman, "The Right to Freedom of Expression and its Regulation in National and International Legislation," *Acta Universitatis Danubius. Juridica* 1 (2021): 102-110.

³⁵ United Nations General Assembly. Universal Declaration of Human Rights, *opt. cit.* 5.

UDHR is not legally enforceable, it is regarded as the basis for worldwide human rights protection and has dramatically influenced international human rights norms and their further development.

Following that, ICCPR,³⁶ adopted by the UN General Assembly on December 16, 1966, is another international treaty governing the right to freedom of expression. Reiterating the freedom of opinion and speech in two different paragraphs, this legal instrument outlines the right to freedom of expression in Article 19, which subsequently reflects the Universal Declaration of Human Rights clauses. The ICCPR upholds people's freedom to express and hold opinions free from intervention freely. It also emphasizes, among other issues, that freedom of expression can be subject to limitations required to protect public order, the rights of others, and national security.

By means of General Comment No. 34,³⁷ the UN Human Rights Committee has expanded on the reading of Article 19 of the ICCPR. This General Comment underlines that freedom of expression depends on the whole development of the person and the operation of a democratic society. This document clearly states that restrictions on freedom of expression should be closely examined to guarantee they align with international law norms.

Less than two years after the UDHR was adopted, on November 4, 1950, the ECHR³⁸ also provided the right to freedom of expression. Legislation inside the European Communities finds structure in Article 10 of the ECHR. Although the ECHR acknowledges that freedom of expression might be subject to limitations, it underlines that these restrictions have to be required in a democratic society, linking it to the balancing approach in the rights limitations.

Similarly, the European Union Charter of Fundamental Rights³⁹ declared at the Nice European Council in December 2000 has clauses on freedom of expression, specifically Article 11. While paragraph 2 mainly preserves media plurality and the freedom of the press, paragraph 1 secures the freedom to hold and express ideas: “This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises”.

³⁶ United Nations. International Covenant on Civil and Political Rights, *opt. cit.* 5.

³⁷ Human Rights Committee. General Comment No. 34, *opt. cit.* 4.

³⁸ European Convention on Human Rights. 4 November 1950, as amended by Protocol No. 11, Council of Europe, European Treaty Series No. 5, Article 10.

³⁹ European Union. Charter of Fundamental Rights of the European Union, 7 December 2000, OJ C 364, 18 December 2000, Article 11.

Adopted November 22, 1969, in San José, the American Convention on Human Rights (ACHR) regulates Article 13's right to freedom of expression. It states that "everyone has the right to freedom of thought and speech".⁴⁰ Additionally, other regional legislations, including the Universal Islamic Declaration of Human Rights, adopted in 1981,⁴¹ and the Declaration of Fundamental Duties of Asian Peoples and States, adopted in Jakarta on December 9, 1983,⁴² reaffirm the right to freedom of opinion and speech, including the freedom of the press.

The right to freedom of expression, in addition to being broadly enshrined in international law, is also reflected in the constitutions of various countries. For example, the First Amendment⁴³ guarantees the freedom of the press and liberty of speech in the United States. The French Constitution relates to the Declaration of the Rights of Man and the Citizen of 1789 in Europe, emphasizing that "free expression of thought and opinion is one of the most precious human rights".⁴⁴

Article 25 of the Constitution of the Republic of Lithuania guarantees individuals in Lithuania their right to freedom of expression, enshrining the fundamental provision: "A person shall have the right to freely express his thoughts in speech, writing, and other forms".⁴⁵ Similarly, Article 34 of the Constitution of Ukraine⁴⁶ guarantees freedom of thought, speech, and expression, safeguarding the right to freely express opinions and beliefs while ensuring that this right does not violate the rights and liberties of others in Ukraine.

Still, the Ukrainian Constitution offers some restrictions on this freedom, just as international law does. Article 34 describes the limitations, allowing constraints on freedom of expression in circumstances including:

1. Preservation of national security;
2. Protection of public order;
3. Defence of the rights and reputation of others;

⁴⁰ Organization of American States. American Convention on Human Rights, 22 November 1969, OAS Treaty Series No. 36, Article 13.

⁴¹ Islamic Council. Universal Islamic Declaration of Human Rights, 19 September 1981.

⁴² Regional Council on Human Rights in Asia. Declaration of Fundamental Duties of Asian Peoples, 9 December 1983.

⁴³ United States. Constitution of the United States, Amendment I, ratified 15 December 1791.

⁴⁴ France. Constitution of France, 4 October 1958, Preamble, incorporating the Declaration of the Rights of Man and the Citizen of 1789.

⁴⁵ Lithuania. Constitution of the Republic of Lithuania. 25 October 1992, Article 25.

⁴⁶ Ukraine. Constitution of Ukraine, 28 June 1996, Article 34.

4. Prevention of the spread of information that could lead to the destruction of the state or public morality.

Apart from the constitutional clauses, Ukrainian law comprises thorough rules controlling the media, namely the Law on Information (1992),⁴⁷ the Law on the Press (1991),⁴⁸ and the Law on Audio-visual Media Services (2018).⁴⁹ These rules control the distribution of information, guaranteeing that the media runs unhindered and imposes limits on materials that can compromise national security, support hate speech, or inspire violence.

These examples show how firmly ingrained the right to freedom of expression is in the constitutions and legal systems of democratic nations. It is not only controlled by international legislation. Under several names—freedom of speech, freedom of expression, the right to freedom of expression—and in many forms of content, some legal frameworks control the freedom of opinion, freedom of information, and freedom of the press. In contrast, others separately enshrine these three components in their legislation.

1.3 SPECIFIC ASPECTS OF LEGAL REGULATION OF THE RIGHT TO FREEDOM OF EXPRESSION IN THE INTERNET SPACE

The Internet has become an essential and crucial element of contemporary life, greatly enhancing the availability and accessibility of information. It is critical to establishing political communities and promoting social and political dialogue engagement.⁵⁰ Its transformative impact has redefined worldwide collaboration and communication, although this substantial power also has inherent risks. As a global communication platform, the Internet presents new issues necessitating enhanced human rights protections that extend beyond traditional rules governing freedom of expression.

Social media platforms like Facebook and Twitter have become essential spaces for individuals to assert their right to free expression.⁵¹ These platforms offer an accessible venue for

⁴⁷ Ukraine. Law on Information, adopted by the Verkhovna Rada of Ukraine, 2 October 1992.

⁴⁸ Ukraine. Law on the Press, adopted by the Verkhovna Rada of Ukraine, 16 November 1991.

⁴⁹ Ukraine. Law on Audiovisual Media Services, adopted by the Verkhovna Rada of Ukraine, 3 December 2018.

⁵⁰ E.B. Laidlaw, "The Responsibilities of Free Speech Regulators: An Analysis of the Internet Watch Foundation," *International Journal of Law & Information Technology* 20 (2012): 329.

⁵¹ Jelena Vučković, and Sonja Lučić, "Hate Speech and Social Media," *Teme - Časopis za Društvene Nauke* 1 (2023): 191-207, <https://www.cceol.com/search/article-detail?id=1124234>.

exchanging ideas, rendering them fundamental to online public discourse.⁵² Users depend on these platforms' safety, security, and anonymity, enabling them to participate freely in online conversations. The anonymity of the Internet also allows the dissemination of detrimental content, such as hate speech, which can profoundly affect the lives of its targets. Hate speech, encompassing racist, abusive, and derogatory comments aimed at particular groups, has become more pervasive and is a significant danger to individual dignity and rights. This creates a substantial conflict between freedom of expression and the necessity to regulate harmful content online.⁵³

Simultaneously, online platforms may be curtailing discourse through unjust censorship of information. The problem becomes worse because of the possible absence of international governance frameworks that may establish definitive norms for regulating illicit content and activities online. Consequently, there is an increasing belief that the Internet necessitates a careful balance, wherein corporations and governments must maintain adequate autonomy to leverage its potential for their objectives.⁵⁴ At the same time, individuals anticipate safeguarding their private rights.

The discourse on Internet freedom is a worldwide concern, characterized by diverse regulatory methods among nations. Google has articulated worries that the U.S. government's initiatives to address terrorist threats in cyberspace constitute a violation of privacy and pose a risk to democracy. Turkey's attempt to restrict access to Twitter ('X') was perceived as an infringement on individual rights.⁵⁵ The contrasting methodologies underscore the intricacy of preserving the balance between state objectives and safeguarding freedoms for individuals in the digital world.⁵⁶

⁵² Naganna Chetty and Sreejith Alathur, "Hate Speech Review in the Context of Online Social Networks," *Computers & Security* 40 (2018): 108–118, <https://doi.org/10.1016/j.cose.2013.04.001>.

⁵³ Jack M Balkin, "Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society," *New York University Law Review* 79 (2004): 1-47; J. Rowbottom, "Media Freedom and Political Debate in the Digital Era," *Modern Law Review* 69, no. 4 (2006): 489-518.

⁵⁴ Yuriy Onishchyk, and Liudmyla L. Golovko, and Vasyl I. Ostapiak, and Oleksandra V. Belichenko, and Yurii O. Ulianchenko. "International Experience of Legal Regulation of Freedom of Speech in the Global Information Society." *Springer Nature* (2023), published online May 3, 2023; accepted: April 13, 2023, p. 1326.

⁵⁵ "Turkey's Twitter Ban Backfires," *LegalBrief*, March 26, 2014, <http://legalbrief.co.za/story/turkeys-twitter-ban-backfires>.

⁵⁶ J. Nguyen, "Internet Privacy Class Actions: How to Manage Risks from Increasing Attacks Against Online and Social Media," *Computer & Internet Lawyer* 28, no. 8 (2011): 11.

International organizations, such as the United Nations Human Rights Council, underscore the significance of maintaining free speech in the digital era while acknowledging that limitations may be essential to protect public order, the rights of individuals, and national security.⁵⁷ This necessitates carefully evaluating the effects of constraints on freedom of expression and the requirement for a system of checks and balances to prevent overreach.

The Human Rights Committee, in its revised General Comment on Article 19, has emphasized the growing importance of the Internet and digital media for safeguarding free speech. The Committee underscores the right to access information, acknowledging that freedom of speech includes the right to disseminate and receive information. The Internet's expanding importance in communication emphasises the dual character of expression, as its interactive features transform the exchange of ideas. The Committee declares:

"States parties should take account of the extent to which developments in information and communication technologies, such as the Internet and mobile-based electronic information dissemination systems, have substantially changed communication practices around the world."⁵⁸

Given these developments, the Committee advises states to act pro-actively to protect digital media's independence and provide access to individuals, therefore underlining the need to customize conventional human rights standards to the changing digital scene.

Frank La Rue, UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, has underlined the need to control freedom of expression, particularly in the internet environment. The Special Rapporteur notes in their report that the Internet is among the most effective tools of the twenty-first century for improving openness, granting access to data, and enabling active citizen involvement in creating democratic societies.

The Special Rapporteur's report even underlines how "the Internet has become a key means by which individuals can exercise their right to freedom of opinion and expression, as guaranteed by Article 19 of the ICCPR."⁵⁹

This emphasizes the need for particular attention to how freedom of expression is used in the digital era since online platforms have become essential places for people to participate in public debate and share their opinions. The development of digital platforms requires a legislative

⁵⁷ United Nations Human Rights Council. The Promotion, Protection and Enjoyment of Human Rights on the Internet, Resolution 47/L.22, Forty-seventh session, June 21–July 13, 2021, A/HRC/47/L.22.

⁵⁸ United Nations Human Rights Committee. General Comment No. 34, *opt. cit.* 4.

⁵⁹ Frank La Rue, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, A/HRC/17/27 (May 16, 2011).

framework that strikes a compromise between safeguarding free expression and the necessity to stop offensive material and guarantee access to information.

The resolutions of the United Nations Human Rights Council represented the first major actions toward protecting free speech online. The UN Human Rights Council adopted its first resolution in July 2012,⁶⁰ aiming to defend people's online right to free expression. Privacy organizations generally praised this development as a major step in the right direction.

Adopting a Resolution on the Promotion, Protection, and Exercise of Human Rights on the Internet in 2016,⁶¹ the UN Human Rights Council made still another significant move. This fix aimed to guarantee the defence of the right to freedom of expression in the digital sphere even more. Adopting documents, especially addressing harmful content, also clearly reflects the earlier growing concern of the world society over online speech even. Especially the Additional Protocol to the Convention on Cybercrime⁶² forbids any written or other content encouraging discrimination, violence, or hatred against any person or group based on any reason since it addresses the criminalization of racist and xenophobic acts executed through computer systems.

Within the European Union framework, the necessity of developing appropriate legislation led to the adoption of several regulations meant to solve the problems of digital governance, content moderation, and online expression.

To start with, one prominent example is the Council of Europe Convention on Cybercrime,⁶³ which came into effect in 2004 as the first international treaty covering crimes carried out via the Internet and other computer networks. The Convention mainly defines issues like copyright infringement, computer-related fraud, child pornography, and network security infractions. It also describes certain authorities and processes, including the capacity to intercept messages and search computer systems.

⁶⁰ United Nations Human Rights Council. Resolution on the Promotion and Protection of Human Rights on the Internet, A/HRC/RES/20/8, adopted July 2012.

⁶¹ United Nations Human Rights Council. Resolution on the Promotion, Protection, and Exercise of Human Rights on the Internet, A/HRC/RES/32/13, adopted July 18, 2016.

⁶² Council of Europe. Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems, ETS No. 189, adopted November 28, 2003.

⁶³ Council of Europe. Convention on Cybercrime, ETS No. 185, signed November 23, 2001, entered into force July 1, 2004, <https://www.coe.int/en/web/conventions/full-list>.

In 2016, the European Commission developed the EU Code of Conduct on Countering Illegal Hate Speech Online⁶⁴ to address online hate speech. This document, which includes major websites, such as Facebook, Twitter, YouTube, and Microsoft, defines "illegal hate speech" in line with the 2008 Framework Decision⁶⁵ and provides recommendations for the quick removal of objectionable information. Platforms must check most legitimate alerts for unlawful content within 24 hours and, if needed, block access to such material.

The EU also adopted the Directive on Audiovisual Media Services,⁶⁶ which enforces rules against hate speech on video-sharing platforms. This ensures that content promoting violence, hatred, or terrorism is removed in accordance with regulations. Furthermore, the EU Code of Conduct⁶⁷ reflects a significant voluntary commitment by these platforms to follow specific guidelines of online behaviour and to track their performance via consistent reports.

Passed in 2022, the Digital Services Act (DSA)⁶⁸ is still another important step towards reforming the legal framework for online platforms and freedom of expression.⁶⁹ By mandating massive online platforms and search engines to evaluate and reduce systemic risk factors connected with their services, the DSA seeks to improve the safety and transparency of the digital world. The DSA's emphasis on "illegal content," including hate speech, terrorist content, and unlawful discriminating material, which platforms must react quickly to address, is a fundamental feature. To guarantee that the process is open and practical, the DSA creates systems for online platforms to engage "trusted flaggers" to help discover and delete damaging

⁶⁴ European Commission. EU Code of Conduct on Countering Illegal Hate Speech Online (2016), accessed February 27, 2025, https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/fighting-racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online_en.

⁶⁵ Council of the European Union. Council Framework Decision 2008/913/JHA on Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law, December 28, 2008, Official Journal of the European Union, L 328/55.

⁶⁶ European Parliament and Council of the European Union. Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the Coordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States Concerning the Provision of Audiovisual Media Services (Audiovisual Media Services Directive), Official Journal of the European Union, L 95/1, May 15, 2010.

⁶⁷ European Commission. "EU Code of Conduct on Countering Illegal Hate Speech Online," 2016.

⁶⁸ European Parliament and Council of the European Union. Digital Services Act (DSA), Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022.

⁶⁹ Lisa O'Carroll, "The Digital Services Act: A Groundbreaking Law for Digital Operations in the EU." The Guardian, 2023.

material. This clause is essential since it lets a system of certified entities with knowledge speed the elimination of illegal content without violating the rights of ordinary consumers.

The DSA also emphasizes the importance of guaranteeing openness in the content moderation process. Therefore, platforms must reveal their rules for content removal to users and authorities. This openness builds confidence in the regulatory system, guaranteeing users that their rights to free expression are safeguarded while damaging content is under appropriate control.

Apart from controlling illicit materials, the DSA clarifies the function of "intermediary services" in digital communication. These services—including video-sharing and social media websites—help host and distribute user-generated content. The DSA stresses the need for these platforms to balance freedom of expression and the avoidance of damage, even while it acknowledges their significant influence in forming public debate. Maintaining this balance is still challenging, and some officials⁷⁰ argue that excessive content control could silence valid expression, especially in cases involving political opposition or minority points of view.

Adopted in 2024, the DSA crosses with the Artificial Intelligence Act (AI Act) of the EU,⁷¹ aimed at controlling very influential AI models. The AI Act requires providers of general-purpose artificial intelligence systems to evaluate and reduce technological risks. The DSA and the AI Act demand businesses to balance competing interests, including user well-being, public security, and freedom of expression. The DSA concentrates on stopping harmful content and manipulative techniques on internet platforms. At the same time, the AI Act tackles the more general problem of AI systems possibly influencing people or misleading consumers. The AI Act is especially significant since it offers a structure for controlling AI systems that can independently create or magnify material, therefore posing issues with the responsibility of automated systems influencing freedom of expression.

Although the DSA and AI Act help the EU harmonize rules, these laws are subject to every member state's different legal frameworks and social contexts. Other national laws fragment the regulations of internet platforms, therefore complicating the control of cross-border online content. For instance, although the DSA requires platforms to respond quickly to delete illegal content, it is unknown how these rules will be applied consistently throughout all EU nations.

⁷⁰ UN Human Rights Council. Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, David Kaye, A/HRC/38/35 (2018).

⁷¹ European Parliament and the Council of the European Union. Regulation (EU) 2024/XX of the European Parliament and of the Council on Artificial Intelligence (AI Act), Official Journal of the European Union, June 2024

Furthermore, under jeopardy are initiatives by countries outside the EU with more stringent standards, therefore stifling online freedom and innovation by imposing their laws on websites.

Thus, maintaining the proper balance in the European Union legislation requires strong legal systems and civil society's participation in forming the regulatory process to guarantee that these rules do not disproportionately affect underprivileged groups or impede free expression.

In Germany, the 2017 adoption of the Act to Improve Enforcement of the Law in Social Networks (Network Enforcement Act)⁷² sought to enforce substantive law on the Internet better. Within 24 hours of getting a complaint, social network operators are required by this regulation to remove illegal content or prevent access to it. Although the law does not particularly address "hate speech," it refers to the relevant provisions in the German Criminal Code.⁷³

The Network Enforcement Act defines social networks as media service providers that, for profit, provide platforms allowing users to share content or make it publicly accessible. This definition excludes platforms meant for individual communication or the distribution of particular information as well as those with journalistic or editorial content, where the obligation resides with the service provider.

Moreover, Section 2(1) of the Act⁷⁴ mandates that social network providers with more than 100 complaints about illegal content produce reports twice a year outlining how they manage issues with illegal content on their websites.

German academics, including Klonick,⁷⁵ Guggenberger,⁷⁶ and Heldt,⁷⁷ have examined ways to handle damaging remarks on the Internet in response to growing worries about online hostility.

⁷² Act to Improve Enforcement of the Law in Social Networks (Network Enforcement Act), 2017, Bundesgesetzblatt I 2017, 3356.

⁷³ Strafgesetzbuch [StGB] [German Criminal Code], §§ 86, 86a, 89a, 91, 100a, 111, 126, 129-129b, 130, 131, 140, 166, 184b, in connection with 184d, 185-187, 241, or 269 (Germany).

⁷⁴ Network Enforcement Act, *opt. cit.* 22.

⁷⁵ Kate Klonick, "Of Systems Thinking and Straw Men," St. John's Law Review 93, no. 2 (2019): 487-531, https://scholarship.law.stjohns.edu/faculty_publications/580.

⁷⁶ Nikolas Guggenberger, "Moderating Monopolies," Berkeley Technology Law Journal 38, no. 1 (2023): 1-35, <https://btlj.org/wp-content/uploads/2023/10/0003-38-1-Guggenberger.pdf>.

⁷⁷ Amélie P. Heldt, "Reading between the Lines and the Numbers: An Analysis of the First NetzDG Reports," Internet Policy Review, July 2, 2019, <https://policyreview.info/articles/analysis/reading-between-lines-and-numbers-analysis-first-netzdg-reports>.

Since the German "Law on Consumer Protection in Social Networks"⁷⁸ was adopted in 2017, one of the first laws in the EU to address such harmful online phenomena, these debates have become especially noteworthy.

In France, aiming to suppress hate speech, the French Criminal Code⁷⁹ and the French Law on the Freedom of the Press⁸⁰ have particular clauses. France passed legislation to combat hate content on internet platforms in the middle of 2019.⁸¹

This law created a specialized prosecutor's office to handle hostile online material. Moreover, it requires that big websites linking people to share or refer to content remove "obviously" illegal content within 24 hours of being informed. Ignoring rules might lead to fines of up to €1.25 million. The statute covers material including racial or religious-based insults, encouragement of hatred, and violence. The removal deadline for materials about terrorism or child pornography is one hour; platforms have one week to delete less graphic content. Users are urged to report materials using the platforms' marked "report" button.

On June 18, 2020, the French Constitutional Council decided against several law's provisions.⁸² It criticised the need placed on websites including Facebook, Twitter, Snapchat, and YouTube to remove hate content within 24 hours, threatening hefty fines should they neglect to comply. Declaring that such a measure was not "necessary, appropriate, and proportionate"⁸³ to countering hate speech, the Constitutional Council concluded that this mechanism, missing legal control, threatened freedom of expression. This criticism also extended to the law's provision mandating social networks to remove reported terrorist material or child pornography within one hour.

Unlike Germany and France, the United Kingdom has not adopted legislation prohibiting hate speech on the internet. Still, the UK government has underlined repeatedly that conduct

⁷⁸ Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken (Netzwerkdurchsetzungsgesetz – NetzDG), 2017, Bundesgesetzblatt I 2017, 3356.

⁷⁹ Code pénal [French Criminal Code], Loi no. 2019-222, 23 mars 2019, art. 222-33-2, 421-2-5, 433-2, 433-3.

⁸⁰ Loi sur la liberté de la presse [Law on the Freedom of the Press], Loi no. 1881-73, 29 juillet 1881.

⁸¹ Loi no. 2019-222 du 23 mars 2019 visant à lutter contre la haine sur internet [Law No. 2019-222 of March 23, 2019, to Combat Hate on the Internet].

⁸² Constitutional Council of France. Decision No. 2020-801 DC, Constitutionality of the Law on the Combat Against Hate Content on the Internet, June 18, 2020, <https://www.conseil-constitutionnel.fr/>.

⁸³ *ibid.*, 24.

considered illegal offline is likewise banned online. The Online Harms White Paper,⁸⁴ published by the British government in April 2019, details ideas for online content regulation, including dangerous content. According to the White Paper, online harm is content or activities that endanger the UK's way of life, especially for children, or compromise national security or erode trust and shared rights, responsibilities, and integration possibilities. Though it hasn't yet been passed, a draft of the Online Safety Bill was released in mid-2021.⁸⁵

It is generally agreed that the Internet is now a necessary venue for free expression. The Internet Watch Foundation (IWF),⁸⁶ a self-regulating body set up by the UK to handle online harm, seeks to lower the availability of child sexual abuse material and other criminally obscene information online. Together with INHOPE hotlines (International Association of Internet Hotlines),⁸⁷ the IWF keeps a blacklist of unacceptable information accessible to national and international law enforcement authorities.

Legislation guiding part of IWF members' obligations in the UK is the Electronic Commerce Directive (E-Commerce Directive).⁸⁸ It became incorporated into UK law with the Electronic Commerce ('EC Directive') Regulations 2002 No. 2013,⁸⁹ which details the circumstances under which liability results for illegal content supplied by a third party under the Information Society Service (ISS). These rules encompass unlawful materials, including obscene material, terrorism-related material, and content encouraging racial or religious hatred.

Expanding the legislative framework, the Online Safety Act 2023⁹⁰ covers a wide spectrum of interactive online services. Its main goals are to control user-generated content, especially in search engines, video-sharing sites, and social media platforms. The law's "user-to-user services," defined as online services wherein content created or shared by one user may be accessed by other users, are a fundamental aspect of it.

⁸⁴ UK Government. Online Harms White Paper, February 2019, <https://www.gov.uk/government/consultations/online-harms-white-paper>.

⁸⁵ UK Government. Online Safety Bill, HC Bill 257, 2021-22, 2021, <https://bills.parliament.uk/bills/257>.

⁸⁶ Internet Watch Foundation (IWF), "About the IWF," <https://www.iwf.org.uk>.

⁸⁷ INHOPE, "About INHOPE," International Association of Internet Hotlines, <https://www.inhope.org>.

⁸⁸ European Parliament and Council. Directive 2000/31/EC on Electronic Commerce, 2000, incorporated into UK law through the Electronic Commerce (EC Directive) Regulations 2002 No. 2013, <https://www.legislation.gov.uk/uksi/2002/2013/contents/made>.

⁸⁹ Electronic Commerce ('EC Directive') Regulations 2002 No. 2013, UK Statutory Instruments, 2002, <https://www.legislation.gov.uk/uksi/2002/2013/contents/made>.

⁹⁰ UK Government, Online Safety Act 2023, <https://bills.parliament.uk/bills/303>.

Now, back to the EU countries, the Law on Provision of Information to the Public⁹¹ governs Lithuania's media law. This legislation regulates the rights, obligations, and liabilities of producers, distributors, journalists, and the institutions controlling their activities, as well as the processes for gathering, producing, publishing, and distributing public information.

Moreover, The Law on Information Society Services⁹² turned the EU Directive on E-Commerce⁹³ into Lithuanian law. Lithuania, as a member of the EU, imposes a particular duty on intermediaries to disclose illegal activity or information about their services.

Specifically, providers of information society services must inform the Information Society Development Committee of any suspected illegal activity by a service recipient or the potentially illegal nature of the acquisition, production, or modification of information provided by the recipient.

In the United States, the regulation of freedom of expression online is significantly influenced by the First Amendment to the U.S. Constitution,⁹⁴ which prohibits government interference with free speech.

However, this protection does not apply to private entities like social media platforms, which are free to use their policies and content moderation regulations. Section 230 of the Communications Decency Act (CDA) of 1996⁹⁵ provides immunity from liability for user-generated content, shielding these platforms from private litigation provided they do not operate as publishers. This clause inspires platforms to support free expression while controlling offensive material free from legal risk.

Former Representative Chris Cox and former Representative and current Senator Ron Wyden, who co-drafted Section 230 of the Communications Decency Act,⁹⁶ said their goal was to encourage free speech by letting interactive computer service providers moderate content without government intervention.⁹⁷ This clause was intended to protect online platforms

⁹¹ Law on Provision of Information to the Public, No. IX-1914, 2000, <https://www.e-tar.lt/portal/lt/legalAct/TAR.95404D92DA14>.

⁹² Law on Information Society Services, No. IX-1945, 2000, <https://www.e-tar.lt/portal/lt/legalAct/TAR.5A0F35A0DE7E>.

⁹³ European Parliament and Council. Directive 2000/31/EC on Electronic Commerce, *opt. cit.* 25.

⁹⁴ U.S. Constitution, amend. I.

⁹⁵ Communications Decency Act of 1996, Pub. L. No. 104-104, § 230, 110 Stat. 133, 138 (1996).

⁹⁶ *ibid.*, 26.

⁹⁷ Christopher Cox, "Testimony of Christopher Cox," in U.S. Congress, Senate Committee on Commerce, Science, and Transportation, Communications, Technology, Innovation, and the Internet, The PACT Act and Section 230: The Impact of the Law that Helped Create the Internet and an Examination of Proposed Reforms for Today's

from accountability for user-generated content, allowing them to act against offensive information while maintaining their capacity to moderate without legal consequences.

Consequently, the way content control on the Internet is shaped significantly by the interpretation of Section 230. Social media platforms now have great freedom to choose what information is allowed, which caused discussions about censorship and the balance between shielding consumers from offensive content and upholding free expression.

Particular academics and legal professionals, including J. Horowitz,⁹⁸ advocate a more complex legislative approach to control online speech, especially in social networks. They underline the need to explicitly define which kinds of speech the First Amendment protects and which do not, as well as the need for more examination of social media platform content moderation policies.

Section 230's dimensions have been partly shaped by US case law, such as *Stratton Oakmont, Inc. v. Prodigy Services Co.*⁹⁹ and *Zeran v. America Online, Inc. (AOL)*.¹⁰⁰ Since *Stratton Oakmont* strongly eliminated entries from its forum, assuming a publisher-like function, the court found Prodigy accountable for user-generated content. Since this case potentially exposed platforms to legal responsibility, it discouraged them from participating in content control. The *Zeran* case, on the other hand, reversed this strategy and gave online intermediaries protection from liability for defamatory material users produced. The court's ruling confirmed a broad reading of Section 230, supporting the view that platforms are not publishers and cannot be held liable for user-generated content.

The control of internet communication depends much on this immunity from accountability. Section 230 helps platforms avoid harsh censorship by relieving them of content moderation obligations and safeguarding free speech. However, it also gives platforms significant influence over the material produced, which begs questions about "collateral censorship." This happens when platforms like Facebook or Twitter censor or remove material viewed as harmful or undesirable but might not precisely break laws.

The balance between safeguarding free speech and controlling offensive material online remains essential in the United States. Section 230 encouraged a more extensive discussion of these

Online World, 116th Cong., 2nd sess., July 28, 2020, <https://www.commerce.senate.gov/services/files/BD6A508B-E95C-4659-8E6D-106CDE546D71>.

⁹⁸ Jeff Horowitz and Deepa Seetharaman, "Facebook Executives Shut Down Efforts to Make the Site Less Divisive," *Wall Street Journal*, May 26, 2020, <https://www.wsj.com/articles/facebook-knows-it-encourages-division-topexecutives-nixed-solutions-11590507499>.

⁹⁹ *Stratton Oakmont, Inc. v. Prodigy Services Co.*, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995).

¹⁰⁰ *Zeran v. America Online, Inc. (AOL)*, 129 F.3d 327 (4th Cir. 1997).

businesses' responsibility to guarantee that their policies are transparent, accountable, and in line with international human rights standards, even while it has given platforms the freedom to operate free from excessive government intervention.

After analysing the freedom of expression online legislative framework worldwide, it can be seen that the growing popularity of the Internet and the rise of new social media platforms have opened up fresh avenues for communication.

However, the global character of the Internet and the simplicity with which illicit materials may be generated, shared, and accessed across many nations have presented a significant challenge for governments and consumers. Online hate speech is one of the fresh avenues for criminal activity. The Internet has brought difficulties. Appropriate actions are needed to control the Internet properly and stop the spread of online hate speech to address this problem. Laws aimed at preventing internet material make it abundantly evident to possible violators that their behaviour will not go unpunished. This has to be discussed by the problems presented by the new technologies.

This analysis highlights the need to acknowledge that current legal frameworks governing freedom of expression in online spaces demonstrate considerable inconsistencies, requiring re-evaluating their proportionality. International human rights law establishes clear principles for balancing freedom of speech with legitimate restrictions; however, implementing these standards is incoherent. The comparison reveals that both European and Ukrainian legislation encounter challenges in achieving consistency among content moderation, intermediary liability, and state-imposed restrictions. Therefore, it is essential to establish a single regulatory framework that reconciles national and international obligations while maintaining the democratic role of digital platforms.

The primary concern in the existing legal framework is the increasing influence of private digital platforms in the regulation of online speech. According to the research of Jack Balkin,¹⁰¹ Nikolas Guggenberger,¹⁰² and Kate Klonick,¹⁰³ entrusting content moderation to private organisations poses risks of excessive removal of lawful speech, especially when such decisions are made through automation. Self-regulation is frequently regarded as a protective measure against undue state interference; however, it requires the addition of independent oversight mechanisms to avert arbitrary censorship. It can be recommended to establish transparent and accountable

¹⁰¹ Balkin, *opt. cit.* 6.

¹⁰² Guggenberger, *opt. cit.* 6.

¹⁰³ Klonick, *opt. cit.* 6.

content moderation standards that are essential to prevent private actors from unilaterally determining the limits of free expression.

The role of artificial intelligence in content moderation introduces a novel aspect to the legal discourse. Automated systems intended for the detection and removal of harmful content often exhibit an absence of contextual comprehension, resulting in excessive limitations on freedom of speech. Regulatory frameworks must incorporate proportionality assessments into AI-driven content moderation, considering the intersection of the DSA and the AI Act. Platforms must implement effective appeal mechanisms for users and ensure that automated decisions undergo human review when necessary.

The jurisdictional fragmentation of digital governance is another fundamental concern. The enforcement of EU regulations, such as the DSA, is inconsistent, despite the efforts to harmonise content moderation across member states. The risks of excessive state control that may impinge upon legitimate expression are illustrated by the French and German models of online speech regulation, which mandate swift content removal under strict liability regimes. In contrast, the U.S. approach, as outlined in Section 230 of the Communications Decency Act, provides platforms with extensive protection, frequently resulting in a lack of accountability for harmful content. We can conclude that a more balanced approach is required, ensuring that state-imposed regulations do not incentivise excessive censorship, while still holding platforms responsible for unlawful speech.

In light of Ukraine's EU accession process, it is essential to enhance domestic legislation regarding digital speech regulation to align with European legal standards. Ukrainian legislation pertaining to information and media is lacking in providing explicit regulations regarding intermediary liability and constraints on online expression. It is essential to enhance judicial oversight of content removal decisions and ensure compliance with the jurisprudence of the European Court of Human Rights to prevent state overreach while preserving protections against hate speech and disinformation. This analysis indicates the necessity for various legislative improvements:

1. Establish clearer criteria for the removal of online content, ensuring adherence to the principles of proportionality and necessity.
2. Setting up independent oversight mechanisms for private platforms to mitigate arbitrary censorship.
3. Building a framework for AI-driven content moderation grounded in human rights, with an emphasis on transparency and accountability measures.

4. Aligning national legislation with international human rights obligations while ensuring that limitations on digital expression are lawful, necessary, and proportionate.

In conclusion, legal responses to online speech must balance the protection of freedom of expression with the need to mitigate the risks associated with harmful content. Digital governance necessitates a multi-stakeholder approach that includes state authorities, digital platforms, civil society, and international organizations. Adopting a coherent and rights-oriented regulatory framework can enhance legal certainty and accountability while safeguarding freedom of expression in the evolving digital environment.

2. ANALYSIS OF PRACTICES IN PROTECTING THE RIGHT TO FREEDOM OF EXPRESSION

This chapter scrutinizes judicial practices in safeguarding online freedom of expression through a detailed analysis of case law and legal precedents. It offers an in-depth review of decisions made by the European Court of Human Rights regarding online speech limitations, intermediary liability, and the proportionality of content moderation. Additionally, it examines rulings by the United Nations Human Rights Committee on digital expression and state-imposed restrictions, evaluating their adherence to international human rights law. The chapter also includes a case study of Ukrainian judicial practice, assessing the national legal landscape concerning online content regulation, especially in the context of national security concerns and Ukraine's alignment with EU legal standards. This analysis aims to provide a comprehensive understanding of the judicial approaches to protecting freedom of expression in the digital age.

2.1 EXAMINATION OF THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

To comprehensively understand and analyse the European Court of Human Rights' approach to the restrictions on the right to freedom of expression, we must explore the three part test it uses: (1) the restriction must be provided by law, (2) it must pursue a legitimate aim, and (3) it must be necessary in a democratic society. The Court has elaborated on these requirements in its landmark cases regarding the right to freedom of expression, and analysis of these cases offers valuable insights into the application of these criteria.

The fundamental requirement that a restriction must be "provided by law" is indispensable. The law must be accessible, precise, and sufficiently clear to allow individuals to foresee the possible consequences of their conduct.

According to the ECHR, restriction of the free speech is considered "prescribed by law" when it is sufficiently accessible to the public. In the important ruling *Sunday Times v. United Kingdom*¹⁰⁴ the ECHR emphasised that laws restricting free speech should not be hidden or inaccessible, as this would leave citizens unable to predict the legal consequences of their actions.

¹⁰⁴ European Court of Human Rights. *Sunday Times v. United Kingdom*, App. No. 6538/74, , April 26, 1979.

The law must not only be accessible but also sufficiently precise to provide individuals with details on restrictions. In *Gorzelik and Others v. Poland*,¹⁰⁵ the Court emphasized that the legislation must offer a sufficiently clear definition of limitations, allowing limited scope for subjective interpretation. Ambiguities in the law might result in inequitable restrictions on freedom of expression.

A law limiting freedom of expression must also be foreseeable, indicating that persons should be able to anticipate how the law would be enforced concerning their conduct. For instance, in *Yavuz and Yaylali v. Turkey*,¹⁰⁶ the ECHR questioned the foreseeability of legislation prohibiting the propagation of terrorist organizations.

The second part of the test is whether the restriction pursues a legitimate aim, such as national security, public order, or the protection of others' rights. The Court has consistently stated that right to freedom of expression can be restricted when it serves these legitimate aims and be carefully balanced.

The landmark case *Handyside v. UK*¹⁰⁷ emphasised that freedom of expression is not an absolute right. In this case, the Court allowed the restriction of obscene publications, noting that it is necessary to protect public morals, even though it limits free speech.

In another important ruling, *Perincek v. Switzerland*¹⁰⁸ the Court reviewed a defamation lawsuit based on comments that denied the Armenian genocide. The Court found that the restriction pursued the legitimate aim of protecting the reputation of others. However, the Court also outlined the need to balance this with the right to freedom of expression, which led to a complex assessment of the proportionality of the restrictions in this case.

In *Leroy v. France*,¹⁰⁹ the ECHR upheld a restriction on the applicant's right to free speech, who had published a cartoon in a politically sensitive region. The publication provoked a public reaction that the state deemed capable of "stirring up violence." The Court found that the interference with the applicant's right was justified by the legitimate aim of preventing violence and hatred.

It is also important to note the Court's emphasis on the need to assess the nature of the speech, the context, and the words used to determine whether it is likely to incite violence. In cases involving online content or social media posts, the Court takes into account not only the words

¹⁰⁵ European Court of Human Rights. *Gorzelik and Others v. Poland*, App. No. 44158/98, May 17, 2004.

¹⁰⁶ European Court of Human Rights. *Yavuz and Yaylali v. Turkey*, App. No. 74135/01, April 20, 2006.

¹⁰⁷ European Court of Human Rights. *Handyside v. United Kingdom*, App. No. 5493/72, December 7, 1976.

¹⁰⁸ European Court of Human Rights. *Perincek v. Switzerland* [GC], App. No. 27510/08, October 15, 2015.

¹⁰⁹ European Court of Human Rights. *Leroy v. France*, App. No. 36109/03, February 2, 2007.

used but also the context in which they are published, as this can affect whether the content is deemed to incite violence or hatred. For example, in several cases against Turkey, such as *Sürek and Özdemir v. Turkey*¹¹⁰ and *Ozgur Gundem v. Turkey*¹¹¹ the Court underscored the need to assess the context of the speech, including the platform and the broader social or political context to understand whether speech incites violence.

Turning to the proportionality requirement in the ECHR jurisprudence, it must be noted that it is a critical element in ensuring that any restriction on freedom of expression is justified, necessary, and in line with democratic principles in society.

In crucial for the right to freedom of expression case *Kokkinakis v. Greece*¹¹² the Court held that the restriction of speech based on religious intolerance was disproportionate to the aim of maintaining public order. This case highlights the Court's careful consideration of whether the restriction on speech is the least restrictive means of achieving the intended outcome. The Court ruled that interference with the applicant's freedom of expression was not necessary in a democratic society.

In *Zana v. Turkey*,¹¹³ the Court ruled that restrictions must meet the pressing social need test, defining that the interference must be justifiable by a real need in a democratic society. For example, in the *Lyashko v. Ukraine*¹¹⁴ ruling, where the also Court found that the interference should not unduly restrict the freedom to express opinions on matters of public interest. The Court highlighted the importance of protecting political discourse, even when it involves harsh criticism of public figures.

The ECHR also emphasises that the context and timing of the expression are critical factors when evaluating whether a restriction is proportionate. In particular, provocative speech made in the context of a tense political or security situation may have greater potential to incite violence, which justifies a stronger state response. In the case *Savva Terentyev v. Russia*¹¹⁵ the Court noted that provocative speech made in the context of a tense political or social climate can be subject to greater scrutiny. The Court found that the Russian authorities had failed to demonstrate that the restriction was proportionate to the threat posed by the speech.

¹¹⁰ European Court of Human Rights. *Sürek and Özdemir v. Turkey*, App. No. 23927/94, July 8, 1999.

¹¹¹ European Court of Human Rights. *Özgür Gündem v. Turkey*, App. No. 23144/93, March 16, 2000.

¹¹² European Court of Human Rights. *Kokkinakis v. Greece*, App. No. 14307/88, May 25, 1993.

¹¹³ European Court of Human Rights. *Zana v. Turkey*, App. No. 18954/91, November 25, 1997.

¹¹⁴ European Court of Human Rights. *Lyashko v. Ukraine*, App. No. 1322/07, February 15, 2012.

¹¹⁵ European Court of Human Rights. *Savva Terentyev v. Russia*, App. No. 11199/04, December 9, 2010.

The concept of a chilling effect refers to the potential deterrence of individuals or organisations, particularly journalists, from freely exercising their rights to freedom of expression due to the fear of legal consequences or governmental action. In cases such as *Dmitriyevskiy v. Russia*,¹¹⁶ the Court emphasised that there should be no risk of a chilling effect that would dissuade journalists from engaging in free expression, particularly when it concerns topics of public importance.

Referring to the ECHR practice, particularly in the field of protection of the right to freedom of expression in the online sphere, the Internet's distinct role as a communication tool compared to traditional print media was recognised in the case *Editorial Board of Pravoye and Shtekel v. Ukraine*.¹¹⁷ The Court noted that the Internet's capacity to store and transmit information requires specific policies that protect rights and freedoms in ways distinct from the print media.

If we are looking through the ECHR practice, it can be seen that during the last decade, the Court developed a list of important rulings analysing regulation of freedom of expression in the online sphere and measures that can be found inappropriate when States restrict this important right.

In *Cengiz and Others v. Turkey*,¹¹⁸ the Court held that prior restraints, such as blocking websites, are not inherently incompatible with the ECHR but must be framed within strict legal controls and effective judicial review to prevent abuses.

This decision followed the earlier ruling in *Ahmet Yildirim v. Turkey*,¹¹⁹ where the Court found that blocking websites could have significant collateral effects, making large volumes of information inaccessible. In this landmark case, the Court recognised access to the Internet as a fundamental right under Article 10 of the Convention.¹²⁰ It was addressed that a blanket ban of Google sites due to content considered offensive to the memory of Atatürk affected Mr Yıldırım's ability to access his website. The Court ruled that restrictions on online access must be accompanied by a clear legal framework and effective judicial review to prevent arbitrary measures. As a result, the lack of precision in Turkish law, coupled with the absence of court proceedings against the specific websites blocked, led to the Court's finding that the measure was arbitrary and lacked proper judicial review.

¹¹⁶ European Court of Human Rights. *Dmitriyevskiy v. Russia*, App. No. 42168/06, May 3, 2011.

¹¹⁷ European Court of Human Rights. *Editorial Board of Pravoye and Shtekel v. Ukraine*, App. No. 22222/05, May 5, 2011.

¹¹⁸ European Court of Human Rights. *Cengiz and Others v. Turkey*, App. No. 48226/10, December 1, 2015.

¹¹⁹ European Court of Human Rights. *Ahmet Yildirim v. Turkey*, App. No. 3111/10, December 18, 2012.

¹²⁰ ECHR, *opt. cit.*, 5.

The right to access to the Internet as a part of the right to freedom of expression also was defined in the case *Kalda v. Estonia*,¹²¹ where a prisoner complained that the authorities denied him access to three specific websites, including state-run and Council of Europe sites containing legal information. The prisoner argued that the denial of access violated his right to receive information via the Internet, which hindered his ability to conduct legal research for on-going court proceedings. The Court emphasised that while states are not required to grant prisoners access to the Internet, the denial of access to specific websites containing legal information interfered with the applicant's ability to exercise his right to receive information, particularly in the context of his legal proceedings.

According to the ECHR approach, the Internet is recognised as an essential tool for public access to information and news. However, content on the Internet is persistent, making it difficult to remove. The Court has addressed the issue of publishers' responsibilities regarding content in their online archives, particularly when it comes to materials that may violate individuals' right to reputation.

In *Times Newspapers Ltd v. the United Kingdom (Nos. 1 and 2)*,¹²² the Court dealt with a case where a newspaper had lost a defamation case concerning an article in its archives. The Court ruled that the newspaper was required to add an appropriate note to the online version of the article, stating that the article had been subject to defamation proceedings. This ruling reflects the Court's acknowledgement of the important role of archives in maintaining historical records and the press's responsibility to ensure accuracy. In this case, the Court found that the domestic court's requirement to add a notice rather than remove the article entirely was not a disproportionate interference with the right to freedom of expression under Article 10.

Another important part of protection of free speech online is the definition of intermediary liability. The ECHR has emphasized that intermediaries, like platforms hosting user-generated content, can be held liable for disseminating posts. In the important ruling *Delfi AS v Estonia*,¹²³ the Court highlighted the commercial interest of intermediaries in hosting such posts, which leads to their involvement in the advocacy of content. In such cases, intermediaries' role in distributing content may affect their liability.

As a part of the intermediary's liability question, content moderation also remains a pressing issue. Platforms, like Facebook, can be unable to flag certain posts that incite violence. Even if

¹²¹ European Court of Human Rights. *Kalda v. Estonia*, App. No. 17429/10, February 16, 2016.

¹²² European Court of Human Rights. *Times Newspapers Ltd v. the United Kingdom (Nos. 1 and 2)*, App. Nos. 3002/03 and 23676/03, April 10, 2009.

¹²³ European Court of Human Rights. *Delfi AS v. Estonia*, App. No. 64569/09, June 16, 2015.

such posts can be considered political speech, the language used may exceed the margin of tolerance afforded to political speech under freedom of expression law, as seen in ECHR cases like *Kudrevicius v Lithuania*¹²⁴ and *Frumkin v Russia*.¹²⁵

The *Sanchez v. France*¹²⁶ case is significant for the protection of freedom of expression online as it addressed the responsibility of individuals for third-party content posted on their social media accounts. The applicant, Sanchez, was found liable for defamatory comments made by others on his Facebook page. The ECHR focused on the limited duration the post was visible (less than 24 hours) and the applicant's immediate action in removing the content once he became aware of it. The Court considered these factors when assessing the proportionality of the interference with his freedom of expression under Article 10 of the European Convention. The Court found that the French courts did not properly balance the applicant's rights and the public interest in protecting their reputation, leading to an excessive interference with his freedom of expression.

The case *NIT S.R.L. v. the Republic of Moldova*¹²⁷ is important for its exploration of the balance between freedom of expression and the regulatory measures that affect entities providing platforms for communication, such as OneAI in the context of this analysis. In this case, the Court ruled that the restriction of OneAI's ability to transmit information through the platform violated its freedom of expression under Article 10 of the ECHR. The Court compared the regulatory action to the revocation of a broadcasting license, underscoring the profound impact such measures have on entities that act as intermediaries or platforms for expression.

The Court's ruling emphasised that platforms facilitating the transmission of information have a critical role in enabling freedom of expression, much like traditional media outlets such as television or radio broadcasters. Thus, when the regulatory measures restrict or prevent these platforms from performing their functions, the effect on freedom of expression can be severe.

Concluding the analysis of the ECHR practice under the right to freedom of expression, the Court's approach to restrictions on this right underscores the importance of a balanced and proportional application of law. The Court's three-part test—requiring that restrictions must be prescribed by law, pursue a legitimate aim, and be necessary in a democratic society—guides its decisions. Through its case law, the Court has emphasised the need for clarity, precision, and

¹²⁴ European Court of Human Rights. *Kudrevicius v. Lithuania*, App. No. 37553/05, October 15, 2015.

¹²⁵ European Court of Human Rights. *Frumkin v. Russia*, App. No. 74568/12, January 5, 2016.

¹²⁶ European Court of Human Rights. *Sanchez v. France*, App. No. 45581/10, January 10, 2012.

¹²⁷ European Court of Human Rights. *NIT S.R.L. v. the Republic of Moldova*, App. No. 18443/06, April 19, 2017.

foreseeability in laws that limit free speech, ensuring individuals understand the potential consequences of their actions.

The ECHR's recognition of the Internet as a vital tool for public access to information and expression has led to a nuanced approach to online speech. The Court has addressed the responsibilities of intermediaries and the need for clear legal frameworks governing online content while safeguarding access to information as a fundamental right.

Ultimately, the ECHR's decisions reflect a commitment to upholding the fundamental right to freedom of expression while carefully balancing it with other competing interests, ensuring that any restriction is both necessary and proportionate within the context of a democratic society.

2. 2 REVIEW OF THE PRACTICE OF THE UN HUMAN RIGHTS COMMITTEE

According to the UN Human Rights Committee, violations of political rights and freedom of expression have been increasingly common in recent years, with a clear focus on the digital domain. This trend was formally acknowledged in February 2024, when the Committee noted that the number of individual complaints brought before it had reached an all-time high.¹²⁸

The HRC examined 54 cases during its most recent session in November 2023, bringing the overall count of cases examined in 2023 to 163. With complaints made by people from 20 States parties, these cases covered a wide spectrum of human rights concerns, including linguistic rights, electoral rights, the right to a fair trial, freedom of expression, the right to peaceful assembly, and more. Out of the cases considered, the Committee identified violations in 22 cases, including seven concerning freedom of expression or the right to peaceful assembly, and four cases related to political rights.

With 268 new cases recorded in 2023, reflecting a consistent rise over the past five years, 1,321 individual complaints under the Committee's examination as of the most recent report. Under the Optional Protocol,¹²⁹ the HRC is mandated to receive and examine allegations of violations of the International Covenant on Civil and Political Rights¹³⁰ by individuals or groups claiming

¹²⁸ UN Human Rights Office. "Rising Trend of Violating Freedom of Expression and Political Rights: UN Human Rights Committee." OHCHR, February 2024. <https://www.ohchr.org/en/press-releases/2024/02/rising-trend-violating-freedom-expression-and-political-rights-un-human>.

¹²⁹ United Nations. Optional Protocol to the International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, December 16, 1966, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

¹³⁰ United Nations. International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, December 16, 1966, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

State party violations. Given this alarming rise in cases, it is crucial to examine and analyse the violations of the right to freedom of expression as adjudicated by the HRC.

The UN Human Rights Committee, alongside the European Court of Human Rights, asserts that limitations on freedom of expression must be prescribed by law, pursue a legitimate aim, and be proportional and necessary. These principles are essential for ensuring that limitations on free speech do not unduly infringe upon individuals' rights.

Assessing limits on freedom of expression under Article 19 of the ICCPR,¹³¹ the UN Human Rights Committee examined *Amelkovich v. Belarus* case.¹³² Belarus argued that public order required the limitations on protests. The Committee found, nevertheless, that the fines and detentions imposed for attending nonviolent demonstrations were too harsh in respect to the objective of preserving public order. Since the protests were peaceful and did not pose a legitimate threat to national security or public safety, the sanctions were deemed disproportionate. This decision underlined that such limitations may have a chilling effect, discouraging people from taking part in subsequent protests or engaging in political debate. Consequently, this would severely limit the public's ability to express dissent and engage in political debate, which is essential for the functioning of a democratic society.

In *Gasparini v. Argentina*,¹³³ the UNHRC similarly addressed the issue of defamation laws and their potential to unjustifiably restrict freedom of expression. In this case, the Committee underscored the necessity of applying defamation laws in a manner that does not impede freedom of expression, particularly when the speech pertains to public interest matters. The government must prevent the use of defamation laws to censor discussions on critical societal issues, such as human rights violations or corruption. The UNHRC determined that the civil sanctions imposed on Gasparini infringed upon his freedom of expression, thereby emphasising the necessity of safeguarding investigative journalism on public-interest issues. The Committee highlighted that actions that discourage journalists from reporting on such topics are in direct opposition to the protections of freedom of expression and that restrictions aimed at journalists must be substantiated by clear and legitimate reasons.

The HRC has consistently reinforced key principles regarding freedom of expression in the context of both traditional media and online platforms, emphasising that these protections apply

¹³¹ United Nations. International Covenant on Civil and Political Rights, *opt. cit.* 4.

¹³² Human Rights Committee. *Amelkovich v. Belarus*, Communications Nos. 2720/2016, 2721/2016, 2722/2016, and 2723/2016, U.N. Doc. CCPR/C/125/D/2720/2016 et al. (2019).

¹³³ Human Rights Committee. *Gasparini v. Argentina*, Communication No. 4035/2021, U.N. Doc. CCPR/C/141/D/4035/2021 (2024).

equally in digital spaces. In *Katorzhevsky v. Belarus*,¹³⁴ the Committee affirmed that freedom of expression is not limited to traditional forms of speech but extends to online platforms, such as social media, blogs, and websites, which are increasingly important for the dissemination of ideas and political discourse.

In this case, the Committee found that the law under which the applicant was fined for sharing an article on social media lacked the necessary clarity and failed to define what constitutes "extremist content", rendering the restriction unjustifiable. This ruling underlined the importance of individual content assessment when imposing restrictions on online speech, stressing that restrictions must be carefully evaluated on a case-by-case basis, considering the context, the content's actual potential to incite harm, and the public interest in allowing such speech, especially when the speech is political or addresses public concerns. Ultimately, the decision underlined that, as Article 19 of the ICCPR guarantees, individuals enjoy the same protections online as they do in traditional media.

In this regard, the HRC rejected the idea of automatic censorship of online content, as seen in both *Katorzhevsky v. Belarus*¹³⁵ and *Nikolaichik v. Belarus*.¹³⁶ The Committee emphasised that an article should not be automatically classified as extremist or harmful to public order merely because it was shared online. Instead, any restriction should be based on an individualised examination of the content's actual harm or risk to legitimate objectives. This approach serves to prevent overbroad and arbitrary censorship, which can stifle political speech and public discourse, essential components of a democratic society.

Furthermore, the HRC has underscored that political speech is of the highest importance and enjoys the strongest protection under international human rights law. As seen in cases such as *Mika Miha v. Equatorial Guinea*,¹³⁷ this form of speech is crucial as it allows the general public to express their opinions and provide feedback on the actions of their government, ensuring that the government is held accountable for its conduct.

The Committee's decision in *Nikolaichik v. Belarus*¹³⁸ confirmed that political expression is a fundamental tool for ensuring government accountability and should not be excessively limited.

¹³⁴ Human Rights Committee. *Katorzhevsky v. Belarus*, Communication No. 3095/2018, U.N. Doc. CCPR/C/139/D/3095/2018 (2024).

¹³⁵ *ibid.*, 37.

¹³⁶ Human Rights Committee. *Nikolaichuk v. Belarus*, Communications Nos. 3056/2017, 3100/2018, 3130/2018, and 3134/2018, U.N. Doc. CCPR/C/138/D/3056/2017, 3100/2018, 3130/2018, and 3134/2018 (2023).

¹³⁷ Human Rights Committee. *Essono Mika Miha v. Equatorial Guinea*, Communication No. 414/1990, U.N. Doc. CCPR/C/51/D/414/1990 (1994).

¹³⁸ *ibid.*, 38.

Nikolaichik's freedom to participate in political expression was violated when the Belarusian courts relied on the general classification of material as extreme without evaluating the particular content produced by him.

Similarly, in *Maslova v. Kyrgyzstan*,¹³⁹ the HRC emphasised that public figures, particularly heads of state, must tolerate a higher level of scrutiny and criticism. In this case, the Committee found that the editor-in-chief of a news portal should not be penalised for publishing an article critical of the President, as the article contributed to a legitimate public debate on human rights issues in Kyrgyzstan. The UNHRC also emphasised the deteriorating environment for freedom of expression in Kyrgyzstan, citing the widespread application of restrictive laws against independent journalists and media outlets.

The Committee warned that imposing sanctions on journalists for reporting on public interest issues, such as corruption and human rights violations, creates a chilling effect, discouraging journalists from fulfilling their essential role in public discourse. In *Maslova v. Kyrgyzstan* and *Gasparini v. Argentina* cases, the HRC emphasised that investigative journalism on matters of public interest must be safeguarded, and restrictions that hinder journalists from reporting on these issues must be justified by clear and legitimate reasons.

In summary, the protections of freedom of expression apply to both traditional media and digital platforms. In addition, the UNHRC has underscored the significance of protecting investigative journalism, particularly in the context of human rights violations and corruption, to guarantee that journalists can report without fear of arbitrary sanctions. Consequently, the UNHRC's ongoing attention to these matters and the increasing number of cases underscore the urgent necessity of striking a balance between the safeguarding of fundamental freedoms and the required restrictions on speech.

2.3 ANALYSIS OF THE SPECIFICS OF JUDICIAL PRACTICE RELATED TO THE PROTECTION OF THE RIGHT TO FREEDOM OF EXPRESSION IN THE INTERNET SPACE IN UKRAINE

As previously mentioned, the right to freedom of expression is guaranteed to all Ukrainian citizens under Article 34 of the Constitution of Ukraine.¹⁴⁰ However, this right may be restricted in the interests of national security, public order, protection of the rights of others, public morality, and public health.

¹³⁹ Human Rights Committee. *Maslova v. Kyrgyzstan*, Communication No. 3252/2018, U.N. Doc. CCPR/C/139/D/3252/2018 (2023).

¹⁴⁰ Constitution of Ukraine, *opt. cit.* 16.

In response to Russia's full-scale military invasion of Ukraine in February 2022, the Ukrainian government declared martial law. Martial law, as permitted by the Constitution, enables the government to enforce specific limitations on rights, including the right to freedom of expression. It specifically confers onto the government the power to "regulate the media," forbids "public demonstrations and other mass assemblies," and transfers civilian governance to military oversight.¹⁴¹

In April 2024, Ukraine presented a revised list of derogation measures to the Council of Europe,¹⁴² some of which are authorised by the European Convention on Human Rights during periods of martial law. Certain Ukraine laws specifically criminalise online behaviours, whereas others do not directly pertain to online conduct but have been utilised to penalise persons for their acts on the Internet.

In light of these circumstances, it is imperative to examine current cases to comprehend how Ukrainian courts are resolving the necessity to safeguard national security during conflict with the right to freedom of expression, particularly in the context of the Internet.

Individuals have been accused under a variety of Criminal Code articles since 2022. Included in this are Article 109, which criminalizes actions that are intended to violently alter the constitutional order or seize state power; Article 110, which prohibits public calls to violate Ukraine's territorial integrity; Article 111-1, which criminalizes collaborationism or high treason; and Article 436-2, which criminalizes the justification, legitimization, or denial of Russia's armed aggression against Ukraine.¹⁴³ In certain instances, these charges are exclusively associated with online activities, while in others, they also entail material collaboration with Russian military or intelligence agencies.

For instance, a resident was convicted of collaborationism under Article 111-1 by a district court in Khmelnytskyi in March 2024 for posting on Odnoklassniki in support of Russia's invasion. The court subsequently imposed a 10-year prohibition on the individual from holding any civil

¹⁴¹ Decree of the President of Ukraine No. 64/2022, "On the Imposition of Martial Law in Ukraine," February 24, 2022.

¹⁴² Permanent Representation of Ukraine to the Council of Europe, Notification of Partial Withdrawal of Derogation, Ref. JJ9614C Tr./005-325, April 8, 2024, submitted to the Secretary General of the Council of Europe, concerning the derogation measures under the Convention for the Protection of Human Rights and Fundamental Freedoms, Strasbourg, April 4, 2024.

¹⁴³ Criminal Code of Ukraine, Art. 109, 110, 111-1, and 436-2, Law of Ukraine No. 2341-III, as amended, 5 April 2001.

servant positions.¹⁴⁴ Another individual was convicted under Article 111-1 by the same court in February of the same year and was subsequently prohibited from holding any managerial or administrative positions for ten years.¹⁴⁵

In December 2023, a court in Vinnytsia convicted a freelance journalist, who had been working for a pro-Russian propaganda website, of high treason and sentenced him to 14 years in prison, along with the confiscation of his property.¹⁴⁶ Moreover, courts started punishing those who published information on the sites where draft summonses were issued under the criminal code for hindering the authorized operations of the armed forces from 2024. A woman in Lutsk was sentenced to five years in prison in March for running a Telegram group alerting locals about the locations of the draft notification distribution. Later the Telegram channel was closed and a two-year probation term was substituted for the prison term.¹⁴⁷

Another woman was accused under Articles 109, 110, and 436-2 in February 2024 of planning anti-Ukrainian interviews and commentary for Russian media as well as for coordinating pro-Russian propaganda messaging from former prime minister Mykola Azarov on his Telegram channel and social media. With the accused woman still under custody, the matter remained under active court review at the end of the coverage period.¹⁴⁸

Shifting the focus to the protection of journalists' right to freedom of expression, in 2023, the Institute of Mass Information (IMI) recorded 150 incidents of "violations of freedom of speech" against both online and offline journalists, which represents a nearly fourfold decrease compared to 2022. Of these violations, 67 were attributed to Russia. Meanwhile, the number of violations

¹⁴⁴ Khmelnytskyi City-Raion Court of Khmelnytskyi Oblast. "Sentence in the Name of Ukraine From Law No. 686/5876/24", Unified State Register of Court Documents, March 6, 2024, <https://reyestr.court.gov.ua/Review/117469319>.

¹⁴⁵ Khmelnytskyi City-Raion Court of Khmelnytskyi Oblast. "Sentence in the Name of Ukraine From Law No. 686/27433/23", Unified State Register of Court Documents, February 8, 2024, <https://reyestr.court.gov.ua/Review/116862073>.

¹⁴⁶ Vinnytsia City Court of Vinnytsia Oblast. "Sentence in the Name of Ukraine, № 1-кп/127/625/22 ", December 7, 2023, <https://reyestr.court.gov.ua/Review/115468651>.

¹⁴⁷ Rozhyshchenskyi District Court of Volyn Oblast. "Sentence in the Name of Ukraine, № 167/279/24", March 28, 2024, <https://reyestr.court.gov.ua/Review/117958284>.

¹⁴⁸ Office of the Attorney General of Ukraine. "An Official of the Capital's District State Administration, Who Ran the Telegram Channel of the Ex-Prime Minister of Ukraine, Will Be Tried", February 8, 2024, <https://gp.gov.ua/ua/posts/suditimut-posadovicyu-stolicnoyi-rda-yaka-ve>.

committed by Ukrainian private and public actors dropped from 97 to 83, with 29 cases involving the obstruction of legitimate journalistic activity.¹⁴⁹

In 2023, police initiated 77 criminal proceedings over infringements of journalists' rights, of which seven were forwarded to court with accusations under Articles 171 (obstruction of lawful journalistic activity) and 345-1 (threats or violence against a journalist). Nonetheless, the quantity of offences probed against journalists indicates a 74 per cent reduction relative to the pre-war period.¹⁵⁰

In May 2024, police commenced criminal procedures about Mykhailo Tkach, the chief investigative journalist for *Ukrainska Pravda*, who received anonymous internet threats following the publication of an inquiry into the travels of wealthy Ukrainians. His colleagues also got analogous threatening emails.¹⁵¹

In addition to the national cases, the case *Boyarov v. Ukraine*¹⁵² is presently communicated to the European Court of Human Rights and exemplifies the prevailing trend in Ukraine of reconciling national security requirements with the protecting of freedom of expression, particularly during wartime regulations. The Presidential Decree enacted on May 15, 2017,¹⁵³ exemplifies the government's imposition of sanctions to restrict access to foreign media and communication platforms considered hostile to Ukraine's national security.

The applicants contend that the sanctions, which blocked access to Russian news portals, mailing services, and social media platforms such as VKontakte and Odnoklassniki, have significantly curtailed their capacity to communicate with family and friends, access news, and exchange information. This is a direct result of the government's efforts to curtail Russian influence in Ukraine, a strategy that has become increasingly prevalent since the start of the Russian aggression in 2014.

¹⁴⁹ Institute of Mass Information. "150 Violations of Freedom of Speech Were Recorded by IMI in Ukraine in 2023. Almost Half of Them Were Committed by Russia", January 12, 2024.

¹⁵⁰ Main Department of the National Police in Kyiv, "Criminal Proceedings Have Been Initiated on the Fact of Obstruction and Threats to the Journalist of the Ukrainian Online Publication", May 14, 2024.

¹⁵¹ *Ukrayinska Pravda*, "Statement of the Editorial Board of 'Ukrainska Pravda' Regarding Threats Against Mykhailo Tkach", May 14, 2024, <https://blogs.pravda.com.ua/authors/pravda/66434cf8531d1/>.

¹⁵² European Court of Human Rights. *Artur Volodymyrovych Boyarov v. Ukraine and 3 Other Applications*, Application No. 79083/17, communicated on August 28, 2024.

¹⁵³ Decree of the President of Ukraine No. 133/2017, "On the Decision of the National Security and Defense Council of Ukraine of April 28, 2017, 'On the Application of Personal Special Economic and Other Restrictive Measures (Sanctions)'.

The broader issue of access to legal recourse and effective remedy, which is particularly challenging under martial law and on-going conflict, is reflected in the complaints of the applicants, which were rejected by Ukrainian courts. They claim that the domestic courts neglected to adequately evaluate their right to freedom of expression and that this failing is a violation of Article 10 of the ECHR, which ensures the right to receive and disseminate information.

This case underscores the persistent issue in Ukrainian legal practice between the state's obligation to safeguard national security in the presence of external threats and the fundamental rights of individuals to communicate freely and access information. The European Court of Human Rights' resolution of this case will be crucial in determining the extent to which restrictions on freedom of expression are justified under the framework of international human rights law, particularly in a wartime context, as Ukraine continues to navigate these complex issues during the on-going conflict.

It can be concluded that the cases analysed illustrate the complex and tension in Ukraine between national security concerns and the protection of freedom of expression, particularly in the context of the war. From one side, Ukraine's actions can be seen as essential for safeguarding the State interests. However, finding the right balance between national security and individual freedoms remains a sensitive matter. Thus, resolving these legal challenges will play a critical role in determining the future of human rights protections in Ukraine.

3. A BALANCED APPROACH TO LIMITING THE RIGHT TO FREEDOM OF EXPRESSION

This chapter presents a balanced approach to limiting freedom of expression online, addressing the legal and policy challenges in achieving proportionality in speech regulation. It explores the necessity and legitimacy of restrictions on digital expression, ensuring they align with democratic principles while effectively addressing harmful online content. Additionally, the chapter examines potential improvements to Ukraine's legislative framework for digital expression, considering its status as a candidate for EU membership and the need for harmonisation with European legal standards. This analysis aims to provide insights into creating a fair and effective regulatory environment that protects freedom of expression while mitigating risks associated with digital communication.

3.1 LEGAL GROUNDS AND CHALLENGES IN ENSURING THE PROPORTIONALITY OF RESTRICTIONS ON FREEDOM OF EXPRESSION IN THE DIGITAL SPACE

The regulation of online platforms and digital intermediaries poses a complex challenge in balancing freedom of expression with the need for oversight of their content and actions. The original concept of the Internet was based on principles of decentralisation and limited government involvement. Digital platforms have increasingly assumed the role of independent structures, implementing their own regulatory frameworks without direct oversight from governmental authorities. The concept of "private ordering," as articulated by Belli and Venturini,¹⁵⁴ highlights how platforms influence user behaviour via self-imposed regulations, frequently functioning outside the jurisdiction of national legal frameworks. The growing regulatory influence of private entities raises concerns regarding transparency, accountability, and the safeguarding of fundamental rights.

A fundamental tension in the regulatory landscape stems from the divergent interests of states and digital intermediaries as online platforms. Platforms typically adopt a permissive position on content moderation to enhance user engagement and promote diverse expression. In contrast, governments are legally required to enforce restrictions on specific types of speech, such as hate speech, support of terrorism, and child exploitation.

¹⁵⁴ Luca Belli, and Julia Venturini. 2016. "Private Ordering and the Rise of Terms of Service as Cyber-Regulation." *Internet Policy Review* 5, no. 4.

In certain cases, such as copyright infringement, intermediaries address complaints via a notice and takedown system. However, other regulatory frameworks necessitate proactive measures to prevent the dissemination of harmful content. This creates a precarious balance: over-censorship risks stifling free speech and diminishing user engagement, while inaction exposes platforms to legal liability and governmental penalties. National regulations, such as previously discussed Germany's 2018 Network Enforcement Act,¹⁵⁵ impose stringent obligations that may conflict with overarching EU principles, thereby complicating regulatory consistency and enforcement. The variation in international standards concerning intermediary liability among states challenges efforts for harmonisation.

Legal precedents provide insight into the challenges faced in defining intermediary responsibilities. The European Court of Justice has ruled that imposing broad pre-emptive filtering obligations on intermediaries violates liability exemptions granted by the E-Commerce Directive. This conflict has been particularly evident in cases such as the Austrian proceedings concerning whether platforms must proactively prevent the re-upload of removed content.¹⁵⁶

The European Commission's 2018 Recommendation on addressing illegal online content¹⁵⁷ advocates for proportionate proactive measures while also requiring safeguards, including human oversight, to mitigate the risk of excessive censorship. However, due to the significant number of removal requests, concerns persist about the practicality of these safeguards and the potential for automated enforcement mechanisms to result in excessive censorship and the disproportionate limitation of lawful expression.

The effects of platform regulation encompass not only legal disputes but also geopolitical factors. Governments globally have utilized platform regulation to influence online discourse. An illustrative case is Turkey's 2007 request for Google to eliminate YouTube videos considered offensive to Mustafa Kemal Atatürk.¹⁵⁸ Turkey imposed a nationwide YouTube ban after Google declined to comply with its request, illustrating the capacity of national governments to influence digital environments via regulatory measures.

Authoritarian regimes have, in more extreme instances, employed content moderation policies to suppress dissent, filter opposition voices, and control public access to information. This practice is particularly prevalent in China and Iran, where platforms like Facebook and Twitter have been

¹⁵⁵ Network Enforcement Act, *opt. cit.* 22.

¹⁵⁶ Court of Justice of the European Union. "Judgment in Case C-18/18, Eva Glawischnig-Piesczek v. Facebook Ireland Limited." October 3, 2019.

¹⁵⁷ European Commission. Commission Recommendation (EU) 2018/334 of 1 March 2018 on Measures to Effectively Tackle Illegal Content Online. Official Journal of the European Union L 63 (March 6, 2018): 50–55.

¹⁵⁸ Tom Zeller Jr., "YouTube Banned in Turkey After Insults to Ataturk." The New York Times, March 7, 2007.

completely prohibited since 2009.¹⁵⁹ Israel's security agencies have similarly criticised Facebook for its perceived delay in removing harmful content, underscoring the contentious role of private entities in moderating politically sensitive material.¹⁶⁰ The implications of government interference in platform regulation are notably significant in fragile democracies, where stringent global moderation policies facilitate censorship masked as adherence to content moderation standards.

The trend toward mandatory regulatory frameworks indicates a belief that voluntary self-regulation by digital intermediaries is inadequate. The EU's Proposed Regulation on Terrorist Content¹⁶¹ illustrates this trend by requiring the removal of identified terrorist content within one hour of notification and establishing a duty-of-care obligation for intermediaries. The regulation imposes financial penalties on platforms that do not comply, reflecting the wider European trend of implementing mandatory regulatory measures for certain types of online expression. It is important to highlight that the broad and ambiguous definitions of "terrorist content" present considerable concerns about the potential for over-removal, especially as platforms may resort to excessive censorship to mitigate liability risks. The Proposed Regulation directly contests the liability protections outlined in the E-Commerce Directive¹⁶² by allowing Member States to impose proactive monitoring obligations on intermediaries. The European Commission's rationale for this shift is grounded in the assertion that terrorist-related content presents a particularly severe threat. However, this deviation from established protections generates significant concerns regarding the legal ambiguity it introduces for both platforms and users. Thus, the question of the legislation's vagueness still arises.

Alongside governmental interventions, significant technology companies have assumed a more prominent role in influencing digital governance. Microsoft revised its policies to ban terrorist content, utilizing the Consolidated United Nations Security Council Sanctions List¹⁶³ to identify terrorist organizations. Facebook has similarly shifted to actively moderating speech by their

¹⁵⁹ Robin Wauters,. "China Blocks Access to Twitter, Facebook After Riots." The Washington Post, July 7, 2009; Leskin, Paige. "Here Are All the Major US Tech Companies Blocked Behind China's 'Great Firewall'." Business Insider, October 10, 2019.

¹⁶⁰ "Facebook Content Management Controversies." Wikipedia: The Free Encyclopedia. Last modified October 16, 2023.

¹⁶¹ European Union. Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online. Official Journal of the European Union L 172, May 17, 2021, pp. 79–109.

¹⁶² European Parliament and Council. Directive 2000/31/EC on Electronic Commerce, *opt. cit.* 25.

¹⁶³ United Nations Security Council, "Consolidated United Nations Security Council Sanctions List." Accessed March 14, 2025.

respective Terms of Service.¹⁶⁴ Corporate initiatives aimed at mitigating harmful online activity reveal the potential dangers of platforms functioning as quasi-regulatory entities, lacking democratic oversight and compliance with established state practices.

As Daphne Keller of Stanford Law School notes,¹⁶⁵ platforms facing potential liability often resort to anticipatory censorship, pre-emptively removing content to mitigate legal risks. This trend raises significant concerns regarding the possibility of disproportionate enforcement against valid expressions of speech. The implementation of algorithmic filtering for the detection and removal of illegal or objectionable content presents significant concerns regarding due process, bias, and accountability. AI-driven moderation often lacks contextual nuance and may disproportionately affect marginalized communities.

The discussion regarding the regulation of digital platforms is closely linked to wider human rights issues. States hold primary responsibility for the protection of human rights; however, private companies are increasingly acknowledged as having obligations within international human rights frameworks. The UN Guiding Principles on Business and Human Rights¹⁶⁶ require businesses to refrain from contributing to negative human rights impacts and to implement proactive measures to mitigate associated risks. The voluntary nature of these guidelines restricts their efficacy in ensuring that platforms adhere to free speech protections.

The Human Rights Council has highlighted that corporate responsibility to uphold human rights is distinct from state obligations; however, platforms continue to be largely unaccountable for their moderation choices. The absence of effective governance renders individuals at risk for unregulated private censorship, frequently characterized by a lack of transparency and due process.

European regulatory models illustrate the opportunities and challenges associated with platform regulation. The E-Commerce Directive¹⁶⁷ offers liability protections for intermediaries under specific conditions, whereas the EU Code of Conduct on Hate Speech¹⁶⁸ requires the removal of

¹⁶⁴ Casey Newton, "Facebook's New Oversight Board is a Wild New Experiment in Platform Governance." *The Verge*, October 23, 2020.

¹⁶⁵ Daphne Keller, "Toward a Clearer Conversation About Platform Liability." Knight First Amendment Institute, April 2018.

¹⁶⁶ United Nations. *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. New York and Geneva: United Nations, 2011.

¹⁶⁷ European Parliament and Council. Directive 2000/31/EC on Electronic Commerce, *opt. cit.* 25.

¹⁶⁸ European Commission. "The EU Code of Conduct on Countering Illegal Hate Speech Online." Last modified January 20, 2025.

flagged content within 24 hours. The Network Enforcement Act in Germany¹⁶⁹ imposes fines of up to €50 million for non-compliance. The UK's Online Safety framework¹⁷⁰ delineates key principles, including the necessity for offline unacceptable behaviour to be mirrored online, the empowerment of users to mitigate risks and the accountability of technology companies in fostering digital safety.

The regulatory measures indicate a trend toward increasing accountability for platforms; however, they may also encourage excessive content removal, which might silence legitimate expression. Consequently, one may contend that the EU's strategy effectively delegates public policy enforcement to private corporations, which raises issues regarding transparency and oversight. The United Nations and human rights advocates¹⁷¹ have cautioned that stringent takedown mandates, exemplified by the EU's Terrorist Content Regulation,¹⁷² could disproportionately limit expression and encourage platforms to implement automated content filtering without proper due process.

The increasing interconnection between governmental entities and private platforms underscores the urgent requirement for a balanced regulatory framework. Legal clarity is essential for establishing explicit guidelines for platforms and preventing arbitrary enforcement. Conversely, regulation should safeguard free expression by ensuring that decisions regarding content removal are necessary, proportionate, and subject to independent review.

Internet shutdowns, typically justified by national security issues, are commonly linked to wider human rights violations. These measures suppress free expression and obscure government actions, hindering the ability of citizens and international observers to evaluate the full extent of on-going conflicts and political developments. Policymakers should focus on addressing the underlying causes of disinformation rather than implementing restrictive measures, while also ensuring the availability and accessibility of high-quality, independent information sources.

¹⁶⁹ Network Enforcement Act, *opt. cit.* 22.

¹⁷⁰ United Kingdom. Online Safety Act 2023, p. 50. Enacted October 26, 2023.

¹⁷¹ David Kaye, and Joseph Cannataci, and Fionnuala Ní Aoláin. "Mandates of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression; the Special Rapporteur on the Right to Privacy; and the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism." United Nations, 2018; "Open Letter on Behalf of Civil Society Groups Regarding the Proposal for a Regulation on Terrorist Content Online." Accessed March 14, 2025.

¹⁷² European Union. Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on Addressing the Dissemination of Terrorist Content Online. Official Journal of the European Union L 172, May 17, 2021.

Turning to the questions surrounding context of the online speech, particularly about hate speech and harmful content, which remains one of the most complex and evolving areas of digital governance.

A fundamental question arises concerning the balance between free speech and the regulation of hate speech. What one individual considers offensive or harmful, another may regard as valid political expression. The risk exists that prohibiting certain speech could be exploited by powerful actors to suppress dissenting opinions. This concern is particularly pronounced in countries where foreign influence over digital platforms has been historically contentious.

European policymakers have increasingly relied on broad and vague justifications for regulating terrorist-related speech. In 2018, the EU Commissioner for Migration, Home Affairs, and Citizenship stated that "many of the recent attacks in the EU have demonstrated how terrorists exploit the internet to disseminate their messages."¹⁷³ Nonetheless, evidence supporting a direct causal relationship between online terrorist-related speech and the execution of terrorist acts is limited. Although governments assert that heightened content restrictions are essential for public safety, they have predominantly presupposed the existence of harm without providing substantial evidence.

This lack of substantiated proof raises concerns about whether regulatory measures restricting online expression are genuinely necessary or merely politically expedient. Furthermore, some studies indicate that terrorist groups often communicate and organize through encrypted private channels, limiting the effectiveness of content removal efforts targeting public platforms.

The absence of a definitive legal framework results in considerable ambiguity, especially due to the lack of a universal definition of "terrorist content." The EU's Terrorist Content Regulation, enacted in 2021,¹⁷⁴ mandates that online platforms eliminate identified terrorist content within one hour of notification, prompting concerns regarding its feasibility.

A concerning trend in digital regulation is the emergence of "glorification offences," which are legal provisions that criminalize speech viewed as praising or justifying terrorism, even when there is no actual risk of harm. Numerous European nations have broadened their legal interpretations of terrorist speech to encompass expressions that do not explicitly provoke

¹⁷³ European Commission. "State of the Union 2018: Commission Proposes New Rules to Get Terrorist Content off the Web." Press release, September 12, 2018

¹⁷⁴ Regulation (EU) 2021/784, *op. cit.* 46.

violence.¹⁷⁵ The outcome is a legal environment where individuals may be prosecuted for articulating controversial or provocative opinions, despite the absence of demonstrable harm.

As governments implement more stringent regulations on platforms to monitor such content, worries about the diminishing of free speech are increasingly prevalent. The Counter-Terrorism and Border Security Act 2019 in the UK¹⁷⁶ criminalises the single act of accessing terrorist-related content, which could hinder research and journalism.

While the human rights framework remains foundational, it may not be sufficient to address the unique challenges posed by modern digital ecosystems. Human rights principles have, in certain instances, been misappropriated by state actors and further undermined by the monopolistic practices of Big Tech companies. Consequently, although human rights ought to serve as the foundation of digital regulation, their application must be enhanced by a comprehensive public interest strategy that protects media freedom, guarantees fair access to quality information, and fosters open discourse.

A structured regulatory framework must integrate best practices that protect public interest and digital rights. The Manila Principles on Intermediary Liability, established by civil society organizations in 2015,¹⁷⁷ offer a significant framework for advancing freedom of expression and innovation. The principles underscore the protection of intermediaries from liability concerning third-party content, stipulate that content restrictions should be enforced solely via judicial orders, and demand transparency and adherence to due process in content restriction requests. They also require that content regulation be both necessary and proportionate, uphold procedural fairness in moderation decisions, integrate transparency and accountability into content governance frameworks, advocate for user notification and appeal mechanisms regarding content removals, and encourage diversity in content moderation to prevent any single entity from having unchecked control over digital narratives.

The analysis of current issues in online free speech regulation indicates that a primary focus on improving legal frameworks should be the creation of clear and precise legal standards. Current regulatory frameworks often depend on vague definitions of restricted content, such as "glorification of terrorism," resulting in inconsistent enforcement, legal ambiguity, and a

¹⁷⁵ Barak-Erez, and Daphne, and David Scharia. "Freedom of Speech, Support for Terrorism, and the Challenge of Global Constitutional Law." *Harvard National Security Journal* 2, no. 1 (2011): 1-29.

¹⁷⁶ United Kingdom. Counter-Terrorism and Border Security Act 2019. Chapter 3. London: The Stationery Office, 2019.

¹⁷⁷ Electronic Frontier Foundation et al, Manila Principles on Intermediary Liability. March 24, 2015.

heightened risk of unjustly removing legitimate speech.¹⁷⁸ To avoid arbitrary restrictions, legal definitions of harmful content must be clearly defined, ensuring alignment with international human rights law. Criteria for defining illegal speech should be integrated into both domestic and international regulations, ensuring that any restrictions are necessary, proportionate, and subject to judicial review. Moreover, achieving harmonization among diverse national and international legal frameworks would enhance consistency in content moderation and diminish occurrences of conflicting or excessively broad enforcement.

To ensure that the regulation of online speech complies with international human rights standards, particularly Article 19 of the ICCPR, any restriction on freedom of expression must pass the three-part test. This test requires that restrictions must (1) be prescribed by law, (2) pursue a legitimate aim, and (3) be necessary and proportionate in a democratic society.

Firstly, many existing laws regulating online speech contain vague and overly broad provisions, leading to inconsistent enforcement and the risk of arbitrary restrictions. Terms such as "terrorist content," "extremist speech," or "hate speech" often lack clear legal definitions, creating legal uncertainty. For, example instead of a vague restriction on "extremist content," the law should explicitly define "direct incitement to violence" and require evidence of an imminent and likely threat.

Secondly, governments often justify speech restrictions under broad claims of national security, public order, or public morality, sometimes using these justifications to suppress dissent. Thus, it should be established that if a government claims a social media post threatens national security, it must demonstrate a direct, imminent, and specific security threat rather than citing general concerns.

Finally, many speech regulations impose excessive restrictions, such as the mandatory removal of content within one hour, often without providing users the opportunity to appeal or challenge the decision. Instead of immediately removing an account for violating hate speech rules, a proportionate response would involve a warning, a temporary suspension or permanent removal. Moreover, some regulations impose blanket bans on certain words or topics, disregarding the necessity of assessing speech in its specific context. The solution to that problem should be approached when if a government wants to restrict terrorist propaganda, it must order the removal of specific content rather than banning entire social media platforms.

Alongside definitional clarity, it is crucial to address the issues of over-censorship and algorithmic bias in content moderation. Automated enforcement mechanisms, including artificial

¹⁷⁸ Helen Duffy, and Kate Pitcher. "Inciting Terrorism? Crimes of Expression and the Limits of the Law." Grotius Centre Working Paper Series 2018/076-HRL (2018).

intelligence-driven moderation tools, often neglect contextual factors, resulting in the excessive limitation of lawful speech. Legal reforms should mandate human oversight of AI-driven moderation systems to avert unwarranted content removals. Platforms must be required by law to establish appeals mechanisms, enabling users to contest the removal of their content before an independent review body. Additionally, transparency reports must outline the quantity, nature, and rationale for content removals being mandated by law, thereby ensuring that moderation decisions comply with due process principles. These measures will aid in preventing the excessive or discriminatory application of content moderation policies while maintaining fundamental rights.

In addition to legal and regulatory measures, preventing indiscriminate censorship mechanisms, such as internet shutdowns and blanket content bans, is essential. Governments frequently justify large-scale content restrictions on the basis of national security, but such measures often suppress independent media and civil society while obscuring government actions. Legal safeguards must prohibit internet shutdowns and broad-based content blocking except in strictly defined, exceptional circumstances. Large-scale content restrictions must receive prior judicial authorisation and undergo an independent review process to evaluate their proportionality and necessity. This will inhibit states from employing digital censorship as a mechanism for political control, while simultaneously ensuring that national security issues are managed through lawful and proportionate methods.

In conclusion, the analysis of current issues in online free speech regulation leads to several proposals for enhancing the legislative framework in this area:

1. Legal frameworks must explicitly differentiate between content that incites violence and contentious yet lawful political discourse to prevent the potential misuse of regulatory mechanisms.
2. Any removal order ought to undergo a judicial or independent review process instead of being subject to immediate deletion.
3. Platforms should implement graduated enforcement mechanisms, including warnings, temporary suspensions, or targeted restrictions on specific content, rather than resorting to permanent account removals.
4. Human oversight should be required in AI-driven moderation systems to avoid unwarranted removals.
5. Laws must restrict the utilization of AI for pre-emptive filtering in the absence of human verification.

6. Internet shutdowns and comprehensive content blocking must be prohibited, except in narrowly defined emergency circumstances, and should be subject to judicial oversight.

7. In light of the global nature of digital platforms, varying national regulations result in conflicting obligations for both platforms and users. Legal harmonization requires the alignment of national regulations with international human rights law to ensure consistency in the restrictions on speech and the standards of enforcement.

A balanced legal framework for regulating online free speech should ensure legal clarity, proportional enforcement, transparency, and accountability.

3. 2 STRATEGIES FOR IMPROVING LEGISLATION GOVERNING REGULATION OF THE RIGHT TO FREEDOM OF EXPRESSION IN THE INTERNET SPACE IN UKRAINE AS A CANDIDATE STATE TO THE EUROPEAN UNION

As Ukraine officially begins EU accession negotiations, it is actively working to align its legal framework with EU digital governance standards. A negotiation group led by the Cabinet of Ministers has been formed to supervise legislative reforms, specifically regulating online platforms and digital services in alignment with the Digital Services Act¹⁷⁹ and Digital Markets Act.¹⁸⁰ Moreover, Ukraine is dedicated to enhancing media freedom and editorial independence by aligning its policies with the Media Freedom Act and ensuring improved AI governance in media, by the EU Artificial Intelligence Act.¹⁸¹

Ukraine recognises freedom of expression as a constitutional right, however, the complexities of wartime governance, national security issues, and the changing digital environment present challenges in aligning its legislation with EU standards.

Censorship is constitutionally prohibited in Ukraine, with the right to freedom of expression established in Articles 15, 34, and 50 of the Constitution of Ukraine.¹⁸² Moreover, international legal standards and the jurisprudence of the European Court of Human Rights constitute a legal source within the country. Nevertheless, the current imposition of martial law has led to a partial

¹⁷⁹ DSA, *opt. cit.* 21.

¹⁸⁰ European Union. Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on Contestable and Fair Markets in the Digital Sector and Amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act). Official Journal of the European Union L 265, October 12, 2022, pp. 1–66

¹⁸¹ AI Act, *opt. cit.* 22.

¹⁸² Constitution of Ukraine, *opt. cit.* 16.

restriction of the right to freedom of expression, as certain human rights obligations have been suspended.

A primary challenge for Ukraine is to improve mechanisms for safeguarding the national information space while also ensuring the protection of freedom of expression. This issue is especially pressing given the increasing number of online threats, Russian disinformation campaigns, and the intentional dissemination of false narratives designed to undermine public opinion. In contrast to EU member states, which benefit from institutional enforcement mechanisms provided by the DSA and MFA, Ukraine does not possess the regulatory framework required to implement digital regulations on an international scale. This gap hinders engagement with major online platforms like Instagram, TikTok, Facebook, and other social media services that are pivotal in Ukraine's information ecosystem.

The lack of direct access to EU-wide enforcement mechanisms restricts Ukraine's capacity to ensure that major technology companies adhere to the content moderation standards, transparency requirements, and accountability procedures.

In response to these challenges, Ukraine has implemented substantial measures to address digital threats, including proactive legal reforms, international cooperation, and strengthened regulatory oversight. A primary initiative focuses on assisting Ukrainian broadcasters in border regions to provide citizens in areas susceptible to Russian disinformation with access to reliable information. Ukraine has enhanced collaboration with international organisations, promoting collective actions to counter foreign propaganda narratives and strengthening the resilience of democratic media.

The enactment of the Law of Ukraine "On Media"¹⁸³ in 2023 marked a significant reform in Ukraine's media regulation framework. This legislation established new legal mechanisms for the regulation of online platforms, enhanced the role and independence of the National Council of Ukraine on Television and Radio Broadcasting, and created a co-regulatory framework that promotes collaboration between the state and representatives of the media industry.¹⁸⁴

The European Commission's report on Ukraine's accession status indicates that Ukraine has successfully met the step 6 requirement by adopting a media law that aligns its legislation with

¹⁸³ Official Bulletin of the Verkhovna Rada of Ukraine, Law of Ukraine on Media, No. 2849-IX. Adopted December 13, 2022. Effective March 31, 2023.

¹⁸⁴ Dariia Opryshko, 2024. Monitoring Media Pluralism in the Digital Era: Preliminary Study to the Implementation of the Media Pluralism Monitor 2024 in Ukraine. European University Institute, p. 4.

the EU's Audiovisual Media Services Directive and enhances the independence of the media regulator.¹⁸⁵

Draft Law №12111,¹⁸⁶ amending the Law on Media, was adopted in the first reading to strengthen Ukraine's media legislation. This draft presents significant improvements, notably the alignment of dismissal procedures for National Broadcasting Council members with international standards, thereby reinforcing the independence and accountability of the national media regulator. Furthermore, it strengthens content limitations on aggressor-state media, improving legal protections to combat foreign disinformation efforts that threaten Ukraine's information environment. The draft law introduces AI-related provisions designed to assist co-regulatory bodies by establishing guidelines for the ethical and transparent use of AI in media governance.

At the start of 2024, a significant advancement in digital governance occurred with the approval of recommendations for the responsible use of AI in media by Ukraine's Ministry of Digital Transformation.¹⁸⁷

The recommendations highlight the necessity of transparency in AI-driven content moderation, mandating platforms to reveal the impact of algorithms on speech regulation. Additionally, they require the labelling of AI-generated content to mitigate the manipulation of public discourse and the dissemination of misinformation. Ethical data handling in AI applications is essential for compliance with EU privacy standards and user rights, thereby strengthening digital rights protections within Ukraine's developing media environment.

These recommendations, developed with input from a wide range of stakeholders, aim to mitigate risks associated with AI-driven content regulation. The document defines essential principles, such as transparency in AI systems used by media organisations, the identification and labelling of AI-generated content, the verification of information authenticity, and the responsible management of personal data by AI technologies.

The recommendations highlight the importance of editorial accountability, thereby reducing the risk of arbitrary censorship by AI. The implementation of human oversight on AI-generated content mitigates the potential for bias, lack of transparency, or politically driven limitations on free speech. However, a challenge emerges regarding the risk of excessive moderation, which

¹⁸⁵ European Commission. "Ukraine 2023 Report." Enlargement Package 2023. November 8, 2023.

¹⁸⁶ Verkhovna Rada of Ukraine. Draft Law No. 12111 on Amendments to Certain Laws on Media Activity. Registered October 2024.

¹⁸⁷ Ministry of Digital Transformation of Ukraine. Recommendations for the Responsible Use of Artificial Intelligence in the Media Sector. Kyiv: Ministry of Digital Transformation of Ukraine, 2024.

may deter media organisations from disseminating politically sensitive or controversial perspectives due to concerns about AI-imposed penalties.

The document conforms to international best practices regarding the regulation of harmful online speech, hate speech, and misinformation. AI moderation tools are advised for the identification and management of disinformation, fake news, and harmful content while cautioning against the over-removal of lawful expression. Nonetheless, a significant challenge remains—AI moderation tools may find it difficult to distinguish between valid criticism and prohibited speech, resulting in preemptive censorship of politically sensitive discourse.

Ukraine's regulatory framework for digital platforms is influenced by national security considerations, especially in light of the threats from Russian information warfare and cyber operations. On 19 September 2024, the National Coordination Center for Cyber Security implemented restrictions¹⁸⁸ on the use of the Telegram messenger among state authorities, military formations, and critical infrastructure facilities. The decision was based on the premise that Telegram could facilitate unauthorised access to personal communications and even deleted messages, thereby presenting a significant national security threat.

The December 2024 release of Council of Europe recommendations marked a significant milestone in the reform of media law in Ukraine, specifically addressing the issue of SLAPPs (Strategic Lawsuits Against Public Participation).¹⁸⁹ SLAPPs are legal actions frequently used to suppress journalists, activists, and public watchdogs using defamation lawsuits. The implementation of Anti-SLAPP protections in Ukraine's legal framework seeks to harmonise national defamation and civil liability laws with European human rights standards, thereby safeguarding public interest speech from reprisal litigation.

The reforms provide enhanced legal protections for individuals participating in public discourse. The proposed legal amendments establish early dismissal mechanisms, enabling courts to promptly identify and dismiss lawsuits that lack legitimate purpose and are intended solely for intimidation. This reform is essential in Ukraine, where investigative journalists and human rights defenders often encounter legal threats from powerful individuals aiming to silence critical reporting. These measures will mitigate the risk of legal harassment, thereby preventing self-censorship and enabling media professionals and civil society activists to pursue their work without the apprehension of punitive litigation.

¹⁸⁸ National Security and Defence Council of Ukraine, "NCCC Decided to Restrict the Use of Telegram in Government Authorities, Military Formations, and Critical Infrastructure Facilities." Official Website of the NSDC of Ukraine, September 20, 2024. <https://www.rnbo.gov.ua/ua/Diialnist/6994.html>.

¹⁸⁹ Council of Europe. Preliminary Legislative and Policy Proposals for Implementation of Council of Europe and EU Standards to Counter SLAPPs in Ukraine. Strasbourg: Council of Europe, December 10, 2024.

The reforms notably align with the standards set by the European Union and the Council of Europe, particularly in the context of Ukraine's European integration process. Compliance with the EU Directive on SLAPPs is crucial for reinforcing media freedom as a fundamental democratic principle.

However, in light of these beneficial advancements, various challenges and risks require attention to guarantee the effectiveness of the suggested reforms. A primary concern is the potential misinterpretation or inadequate enforcement of Anti-SLAPP laws by the Ukrainian judiciary. Courts may face challenges in differentiating between valid defamation claims and unfounded lawsuits, resulting in inconsistent legal applications. Inadequate judicial training and oversight may result in the underutilisation of SLAPP protections, failure to prevent legal harassment, or excessive extension, which could inadvertently protect bad-faith actors from legitimate accountability.

A significant challenge is the lack of a precise legal definition for SLAPP cases. Vague legal criteria may lead to the wrongful dismissal of legitimate defamation claims under the cover of Anti-SLAPP protections. This may lead to a legal imbalance, favouring state officials and influential business entities over independent media and civil society actors. The final legislative framework should establish clear and objective criteria for identifying SLAPP cases, thereby safeguarding public interest journalism while preventing impunity for harmful misinformation or defamatory statements.

The proposed reforms may diminish the chilling effect of legal intimidation, enhance media independence, and align Ukraine's legislation with European human rights standards. Thus, for these protections to be effective, it is essential to establish clear legal definitions, ensure comprehensive judicial training, and implement robust oversight mechanisms.

A great contribution to Ukraine's efforts to align its legislation with EU standards made by the Council of Europe's Legal Opinion regarding Amendments to Certain Laws on Media Activity in Ukraine.¹⁹⁰ This document aims to enhance media governance, secure regulatory independence, and align Ukrainian media law with European standards. The proposed amendments seek to refine legal provisions to improve transparency, simplify administrative processes, and protect media pluralism by democratic values and EU legal standards.

In light of Ukraine's current armed conflict, the amendments establish specific regulations for foreign media and media entities associated with the aggressor state. The new regulations determine more stringent ownership and funding criteria to mitigate the spread of propaganda

¹⁹⁰ Council of Europe. Legal Opinion on the Draft Law of Ukraine "On Amendments to Certain Laws on Media Activity" Reg. No. 12111. Strasbourg: Council of Europe, January 10, 2025.

and disinformation that may jeopardise Ukraine's national security and democratic stability. The law enhances the regulatory framework for addressing hate speech and disinformation, ensuring that content restrictions are proportionate, legally justified, and aligned with human rights standards.

The amendments broaden the scope of co-regulation within the media industry, incorporating specific provisions for the responsible application of artificial intelligence in media governance. This demonstrates a proactive stance, recognising the influence of technological progress on information regulation while maintaining that AI-driven media regulation is transparent, accountable, and sticks to EU legal principles.

In conclusion, these amendments signify a crucial advancement in the modernisation of Ukraine's media laws, aligning them with European legal standards while balancing freedom of expression with essential regulatory oversight. Ukrainian legislators are actively modifying their legal framework to align with EU standards and regulations, thereby strengthening the nation's trajectory toward European accession.

Ukraine must refine its approach to regulating online speech and digital platforms to ensure compliance with EU legal standards while safeguarding national security. In light of the identified challenges and reforms, several strategies can be proposed to improve the laws regulating freedom of expression in Ukraine.

Ensuring compliance with EU digital governance frameworks is a fundamental priority, specifically regarding the Digital Services Act, Digital Markets Act, European Media Freedom Act, and the Artificial Intelligence Act. Ukraine needs to incorporate these legislative frameworks into national law to ensure platform accountability, define liability rules, and improve transparency in content moderation. Incorporating provisions from the MFA will ensure media independence and protect journalists from governmental overreach. Concurrently, AI governance regulations aligned with the AI Act will mitigate algorithmic bias, guarantee human oversight in content moderation, and address the risk of excessive removal of lawful speech.

Ensuring accountability and transparency in platforms constitutes a critical element of a balanced approach. Major online platforms operating in Ukraine, including Facebook, YouTube, and TikTok, should be required to disclose their content moderation practices, publish transparency reports regarding removals and appeals, and create independent appeals mechanisms for users impacted by wrong removals. These obligations must align with the EU's DSA to enhance platform accountability, ensure transparency in content moderation, and uphold procedural fairness. Furthermore, it is essential to establish cooperation agreements between Ukraine and prevalent digital platforms to guarantee adherence to Ukrainian legislation concerning

disinformation, hate speech, and security threats. This approach would enable Ukraine to implement its regulations in the absence of EU-wide enforcement mechanisms.

A significant challenge exists in reconciling freedom of expression with the requirements of national security in wartime context. Enhancing judicial oversight of speech restrictions will promote adherence to international human rights standards, especially those outlined in the ECHR. Content moderation policies require refinement to balance the avoidance of excessive censorship with the effective countering of disinformation, especially foreign propaganda aimed at Ukraine.

An appropriate approach to national security measures is essential to avoid undue constraints on freedom of expression. Temporary content restrictions during wartime or declared emergencies must be strictly necessary, time-limited, and subject to regular review. Instead of implementing comprehensive bans on entire platforms, restrictions ought to focus on particular security threats while ensuring public access to information. In instances where platforms facilitate disinformation campaigns or cyber threats, it is imperative to prioritise the removal of malicious actors over imposing restrictions on the entire platform.

The ethical and transparent application of AI in content moderation represents a significant area for reform. The obligatory disclosure of AI-driven content moderation policies, encompassing algorithmic decision-making processes, will improve transparency and accountability. It is essential for platforms to label AI-generated content to prevent the manipulation of public discourse.

The adoption of the Law on Media and amendments, including Draft Law №12111, by Ukraine signifies substantial advancement in the alignment of media legislation with European Union standards. Additional legislative improvements are required, including clearer regulations on AI-driven content moderation and safeguards to prevent excessive censorship by automated enforcement tools. The AI recommendations from the Ministry of Digital Transformation represent a significant advancement, however, legal requirements for mandatory human oversight in AI content moderation must be established to mitigate algorithmic bias and prevent politically motivated content suppression.

The Council of Europe's Legal Opinion on Amendments to Certain Laws on Media Activity in Ukraine emphasises the necessity for additional reforms in media governance, specifically concerning the independence of the media regulator, transparency in ownership structures, and balanced content moderation measures.

Thus, analysis of the on-going reforms indicates that Ukraine's EU integration depends on a legal framework that maintains freedom of expression while simultaneously addressing national

security concerns and combating disinformation. Legislative improvements, encompassing media law reforms, AI governance initiatives, and Anti-SLAPP protections, position Ukraine by EU standards. Enhancing collaboration with EU regulators, improving content moderation protocols, and clarifying legal frameworks will reinforce Ukraine's dedication to democratic principles, thereby increasing its capacity for EU integration in the digital domain.

CONCLUSIONS

The right to freedom of expression is a cornerstone of democratic societies, underpinning individual autonomy, dignity, and the ability to participate fully in public life. This fundamental human right allows individuals to express their thoughts, opinions, and beliefs without fear of censorship or retaliation. As outlined in this work, this right is enshrined in various international legal instruments, including Article 19 of the UDHR and the ICCPR, which affirm the right to seek, receive, and impart information and ideas through any media and regardless of frontiers.

Moreover, in the digital age, the significance of the right to freedom of expression has been magnified by the transformative impact of the Internet and digital platforms. Social media platforms, blogs, and online forums have become essential spaces for public dialogue, enabling voices from diverse backgrounds to be heard and fostering a more inclusive and participatory public sphere.

However, the digital environment also presents unique challenges that can impact the exercise of freedom of expression. Content moderation practices, aimed at curbing harmful speech, disinformation, and illegal content, can sometimes lead to over-censorship and the suppression of legitimate expression.

It is important to emphasize that ensuring the protection of freedom of expression in the digital sphere is essential for maintaining democratic values and human rights. It requires a balanced approach that safeguards the right to free speech while addressing the legitimate concerns associated with harmful content.

In this thesis it was established that the right to freedom of expression in the digital age is more important than ever. By addressing the challenges posed by content moderation, disinformation, and harmful speech, we can create a digital environment that respects and promotes human rights and democratic values.

Based on the detailed analysis and research conducted in this thesis, the following conclusions can be made:

1. The application of legal frameworks in the digital sphere, especially related to the right to freedom of expression, requires careful consideration to balance the protection of free speech with the need to regulate harmful content. The research confirms that clearer definitions and more precise criteria for what constitutes a threat to national security or public order, what actions fall under this scope, and how courts can interpret them in

practice are essential to prevent the misuse of restrictions and ensure that limitations on online expression are applied only when necessary and proportionate. Definitions such as "national security," "public order," "public morality," "glorification of terrorism," "hate speech," and "extremist content" must be explicitly defined to provide clarity.

2. The European Court of Human Rights and the UN Human Rights Committee have developed significant jurisprudence on the right to freedom of expression. The analysis of case law demonstrates that while these principles are crucial for ensuring that limitations on free speech do not unduly infringe upon individuals' rights, inconsistencies in judicial practices highlight the need for clearer legal standards and more transparent enforcement mechanisms. To achieve consistent judicial practice, it is essential to have clearly defined restrictions. Prohibitive measures, such as blanket bans on the usage of social media websites, must be excluded as they create a chilling effect, deterring individuals from exercising their right to free speech.
3. The regulation of online platforms and digital intermediaries poses complex challenges in balancing freedom of expression with the need for oversight of content and actions. The increasing role of digital platforms in content moderation raises concerns about accountability and due process, as private entities often impose restrictions without sufficient oversight or legal justification. The research underscores the necessity of implementing transparent and accountable content moderation standards to prevent private entities from arbitrarily setting the boundaries of free speech. Furthermore, the integration of artificial intelligence in content moderation adds layers of complexity, making human oversight crucial to ensure that AI-driven moderation tools do not excessively restrict lawful expression.
4. Ukraine faces unique challenges in protecting freedom of expression, particularly in the context of its ongoing conflict and national security concerns. The implementation of martial law and other restrictive measures has led to tensions between safeguarding national security and upholding individual freedoms. The research indicates that enhancing judicial oversight of speech restrictions and ensuring compliance with international human rights standards are essential for addressing these challenges. The legislative framework in Ukraine requires further harmonization with international human rights standards, particularly regarding intermediary liability, automated content moderation, and safeguards against unjustified censorship.
5. To align with European legal standards and enhance the protection of freedom of expression in the digital sphere, Ukraine must implement several legislative improvements. These include developing clearer criteria for the removal of online

content, establishing independent oversight mechanisms for private platforms, and building a framework for AI-driven content moderation grounded in human rights. The research emphasizes the importance of aligning national legislation with international human rights obligations while ensuring that limitations on digital expression are lawful, necessary, and proportionate. Furthermore, enhancing collaboration with international organizations and digital platforms is crucial for countering foreign propaganda narratives and strengthening the resilience of democratic media.

All of the defending statements presented in this thesis have been clearly substantiated through in-depth legal analysis, case law examination, and contextual evaluation. The research provides compelling evidence that current regulatory practices often fall short of the principles of legality, necessity, and proportionality; judicial inconsistencies persist; private platform accountability remains limited; and Ukraine's legislation requires urgent alignment with international standards. Together, these findings firmly validate the thesis's core arguments.

RECCOMENDATIONS

Based on the conclusions drawn from this research, here are actionable proposals that logically stem from these findings:

1. To address the issues identified, it is recommended to amend the EU DSA to enhance clarity and procedural safeguards. Rather than creating new definitions, terms such as "national security threat," "public order," and "glorification of terrorism" should align with existing EU regulations, such as the Terrorist Content Online Regulation. For example, "national security threat" should be interpreted as actions endangering sovereignty through cyberattacks or terrorism. Similarly, "hate speech" should follow the EU Code of Conduct on Illegal Hate Speech to ensure consistency. Additionally, DSA Articles 14-17 should mandate transparency reports from platforms that include detailed metrics on AI moderation accuracy, false positive/negative rates, and bias audits. The EU Artificial Intelligence Act should require Very Large Online Platforms to disclose algorithmic criteria and ensure human oversight in content moderation systems.
2. To prevent disproportionate restrictions such as blanket bans on social media platforms, it is proposed to amend DSA Article 14 to explicitly prohibit indiscriminate shutdowns except in cases of systemic violations or terrorist content removal under the one-hour rule. Similarly, a new DSA appendix could list prohibited restriction types, such as IP-based blocks. These changes will ensure that restrictions are lawful, necessary, and proportionate.
3. To improve transparency and accountability in content moderation practices, it is recommended to expand DSA Article 15 to require platforms to report on key metrics such as AI moderation accuracy, user appeal success rates, and moderator training hours. Platforms should also disclose detailed policies for content removal and provide accessible appeal mechanisms for users.
4. In Ukraine, it is proposed to amend Article 16 of the Law "On Media" by including bloggers under the category of "media actors" or "media subjects." Registration should remain voluntary but incentivized by offering benefits such as source protection and access to mediation services provided by the National Council of Television and Radio Broadcasting. Bloggers meeting criteria such as audience reach (e.g., 10,000 unique monthly visitors) and adherence to a public ethics code could qualify for this status. This approach balances freedom of expression with accountability.
5. To enhance media oversight in Ukraine, Article 22 of the Law "On Media" should be

amended to require state-funded media organizations to undergo biannual audits by independent experts from the Council of Europe. All media organizations should implement transparency reports similar to those required under the DSA, including disclosures on political ad spending and compliance with takedown requests. Public feedback mechanisms should also be introduced to address audience complaints effectively.

6. To clarify prohibitions on propaganda and calls for terrorism in Ukraine, Article 36 of the Law "On Media" should adopt definitions aligned with the EU Terrorist Content Online Regulation. Prohibited content should include material that glorifies terrorist acts with intent to incite violence or provides actionable instructions for attacks. Exceptions should be made for academic or artistic works that lack explicit incitement. Additionally, clear definitions of calls for violent overthrow of constitutional order must ensure proportionality by assessing potential outcomes or real consequences.

In conclusion, the research provided and improvements to the legislation proposed make it important to state that the Internet has revolutionized the way people communicate, share information, and engage in public discourse. In the context of Ukraine, ensuring the right to freedom of speech is crucial for maintaining democratic principles and protecting individual autonomy and dignity. These measures will help foster a more inclusive and participatory public sphere, allowing diverse voices to be heard and contributing to the overall stability and development of the nation.

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ABSTRACT

This master's thesis addresses the topical issues of limiting the right to freedom of expression in the Internet space. It explores the concept and essence of the right to freedom of expression, its legal regulation, and the specific aspects of its application in the digital environment. The thesis examines current international legal frameworks, the practices of the European Court of Human Rights, and the UN Human Rights Committee in protecting this right. It also analyzes the specifics of judicial practice related to the protection of the right to freedom of expression in the Internet space in Ukraine.

The research highlights the challenges in ensuring the proportionality of restrictions on freedom of expression in the digital space and proposes strategies for improving legislation governing this right in Ukraine, especially considering its status as a candidate state to the European Union. This work emphasizes the importance of balancing individual freedoms with the need for responsible digital governance and provides recommendations for developing effective, proportionate, and rights-respecting legal frameworks.

Keywords: freedom of expression, digital space, legal regulation, European Court of Human Rights, UN Human Rights Committee, content moderation, intermediary liability, digital governance.

SUMMARY

This master's thesis is dedicated to the topic of “Topical issues of limiting the right to freedom of expression in the Internet space”. The main objective of this master's thesis is to explore the legal, political, and human rights implications of platform regulation, examining the evolving landscape of content moderation, intermediary liability, and global regulatory frameworks on the right to freedom of expression. It also critically examines the proportionality of restrictions on freedom of expression in the online sphere, exploring the key legal grounds and challenges in defining appropriate limits on digital speech.

An equally important issue addressed in this master's thesis is the analysis of judicial practices related to online speech, including the case law of the European Court of Human Rights and the UN Human Rights Committee. It also provides a detailed analysis of the specifics of judicial practice related to the protection of the right to freedom of expression in the Internet space in Ukraine, especially considering its status as a candidate state to the European Union.

This master's thesis also contains a set of practical recommendations for improving legislative approaches to regulating online expression in Ukraine. These recommendations include the development of clearer criteria for the removal of online content, the establishment of independent oversight mechanisms for private platforms, the creation of a framework for AI-driven content moderation grounded in human rights, and the alignment of national legislation with international human rights obligations.

The findings of this research contribute to the broader discourse on digital rights, platform regulation, and the future of free expression in the online sphere. The thesis emphasizes the importance of balancing individual freedoms with the need for responsible digital governance and provides recommendations for developing effective, proportionate, and rights-respecting legal frameworks governing this sphere.