

USALI Perspectives

The Shared Challenge of Regulating Online Platforms

Taiwan's first attempt failed. Can democracies learn from each other?

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On February 21, 2023, the US Supreme Court heard arguments in [Gonzalez v. Google](#), a pivotal case that asks whether online tech platforms should be held liable for harm caused by their users' posts. The parties' arguments were closely followed in Taiwan, where a similar debate has been playing out.

The US and Taiwan confront a shared challenge: how can democracies appropriately regulate the internet,

especially social media? Social media platforms such as Facebook and Twitter have become essential for individuals to express their opinions. However, these platforms' [lack of appropriate regulation](#) has led to many harmful social impacts, including fake news, employment scams, and election manipulation.

In June 2022, Taiwan's National Communications Commission

(NCC) proposed a [Digital Intermediary Services Act](#) (DISA), taking inspiration from the Digital Services Act of the European Union. The [draft DISA](#) aimed to establish a system to make digital intermediary services providers (DIS providers), including social media platforms, more transparent and accountable. However, the draft triggered an [intense public debate](#), and the NCC withdrew it before it was even submitted to the legislature. This experience is worth sharing with those who care about internet platform governance.

As drafted, the DISA would have established two core mechanisms to regulate DIS providers and balance their interests with those of the public. First, it would have given DIS providers immunity from civil and criminal liability for content not made by them, as long as they comply with DISA requirements. Second, it would have empowered government agencies to apply to a court for “information restriction orders” and “emergency information restriction orders” to compel DIS providers to remove or adopt other restraints on illegal content. Pending the court decision, an agency would have been able to issue an administrative order to force the DIS provider to mark suspect information as possibly untrue.

The DISA also would have required online platforms:

- to establish mechanisms for users to report illegal content,
- to notify users who are suspended or whose postings are removed, and give them an opportunity to respond and have their objections considered,
- to verify sellers’ identities when they conduct business via the platforms,
- to disclose the identity of advertisers who use the platform’s advertising services,
- to annually release a transparency report about the platform’s compliance with DISA (including the number of illegal content reports received and the outcomes), and
- to annually evaluate their system’s risk to society and propose solutions (applicable to designated larger platforms).

We were among the opponents of the draft DISA. While we agree that it is necessary and constitutionally legitimate for the government to take steps to provide a healthy environment for free speech, we believe that the government’s draft went too far and potentially threatened the freedom of speech.

Regulating the free speech environment within the bounds set by the constitution is a difficult but achievable task. We and other DISA opponents agree with the

government on several key points. First, we agree that Taiwan's Constitution guarantees freedom of speech. In addition, the Constitutional Court has said many times that freedom of speech both protects citizens from government infringement and requires the government to provide a healthy environment for free speech. For example, in 2006, in the [Legislative Authority over Executive Personnel Case](#), the Constitutional Court provided that:

[T]he freedom of communications not only signifies the passive prevention of infringement by the state's public authority, but also imposes on legislators the duty to actively devise various organizations, procedures and substantive norms so as to prevent information monopoly and ensure that the pluralistic views and opinions of the society can be expressed and distributed via the platforms of communications and mass media, thus creating a free forum for public discussions.” (Judicial Yuan Interpretation No. 613, 2006)

Thus, preventing public online discussions from being controlled by a small number of big private online platform companies (like Facebook or Google) may be a legitimate reason under the constitution to regulate online platforms.

Second, we agree with the government that online platforms have indeed

harmed the environment for free speech and caused social problems in Taiwan. A typical example was the spread of disinformation via social media, including Facebook and Line, during Taiwan's 2018 local elections and 2020 presidential elections. [Solid evidence](#) supports allegations that China was involved in the disinformation campaigns. Lacking any legal basis to force platforms to take down fake news, social organizations voluntarily established fact-checking mechanisms, such as the Taiwan [FactCheck Foundation](#). In another example, during the height of the COVID-19 pandemic, misinformation about the location of outbreaks made it harder for the government to bring them under control.

Unfortunately, online platforms are profit-making organizations that pursue their own interests. They lack the motivation to police speech that negatively affects society if it brings them more profits. We agree that, without good laws, it is difficult for private organizations to maintain a healthy environment for public discourse.

Nevertheless, when acting to protect the online free speech environment, the government should not excessively restrict the platforms' rights. Platform operators objected that the draft DISA excessively infringed on their freedom of speech and would have imposed too heavy a burden on them. A majority of

Taiwan society supported their argument.

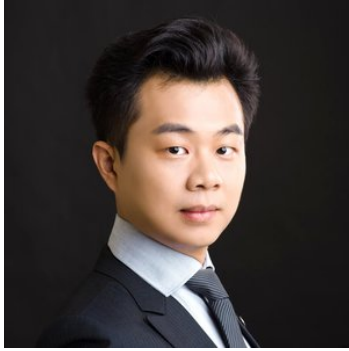
The most controversial part of the draft was the requirement that platform operators establish a mechanism for online users to report suspected illegal content. Platform operators said they would have to expend considerable resources to review such reports, give the content publishers a chance to respond, then further review and adopt appropriate measures that could include removing the content and suspending or terminating the publisher's services. Operators also objected that the law would hinder growth of the digital economy and stifle innovation.

Many citizens worried that the draft law would restrict their free speech as well because the government would be able to require the platforms to take down users' posts. One [survey](#) found that

57.1% of respondents did not support the DISA's approach to managing illegal online information, and only 27.7% of respondents supported it.

Ultimately, the government could not ease the opponents' concerns. The NCC withdrew the draft, saying that it would collect more opinions from society and make revisions. We expect the NCC to propose a new DISA draft soon.

Taiwan is still searching for a balance between regulating internet platforms and protecting free speech. As civil rights advocates, we will closely follow the implementation of the European Union's Digital Services Act, the outcome of *Gonzalez v. Google*, and other countries' experiences. By collecting the internet governance experiences of various countries, we are optimistic that we can find an appropriate answer to this dilemma.



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