

‘Freedom or Responsibility?’: A Transatlantic Analysis of Online Free Speech in the U.S. and the European Union

Kiruthiga Balamurugan

Economics and Government, Georgetown University, Washington, D.C.
Bachelor of Art.

E-mail: kb1359@georgetown.edu

Published January 2026

Editor: Martin Pinzas, IE University

Abstract

This article explores the tensions between U.S. and EU approaches to free speech on global social media platforms. The United States’ free speech tradition is shaped by a historical distrust of government, protecting broad expression through the First Amendment and Section 230, which largely shields online platforms from liability for user-generated content. The European Union’s free speech tradition, however, was influenced by experiences with authoritarian regimes, such as Mussolini’s Italy or Nazi Germany in the 1930s-1940s, and therefore prioritizes preventing harm, imposing active moderation responsibilities on platforms under the Digital Services Act. These differing approaches create inefficiencies for global platforms, including the risk of overremoval of content and cross-border spillover effects that suppress speech. This article argues that while the vast substantive differences between the two speech traditions are unlikely to disappear, procedural coordination between the two regions can help resolve tensions. By drawing on principles already reflected in the U.S.–EU Trade and Technology Council, the US and the EU can create baseline procedural standards for transparency, accountability, and consistency. Such a framework will give both users and platforms clearer expectations on both sides of the Atlantic.

Keywords: freedom of speech, Section 230, Digital Services Act

1. Introduction

The principle of free speech has always been central to democratic society, yet its boundaries and applications are defined very differently across legal systems in the United States compared to those of the European Union. In the United States, the free speech tradition arose from a deep

distrust of government overreach, which was shaped by the experience of American colonists fighting for independence from Britain. This historical experience led to freedom of speech being treated as one of the most important individual rights in America. On the other hand, Europe’s modern understanding of free speech grew

from the long-standing consequences of authoritarian regimes and propaganda during the World Wars. This has prompted a legal culture where free speech is not seen as an absolute right, but one that must be carefully balanced to prevent harm.

Although these contrasting approaches to free speech have coexisted for decades, the rise of social media in the digital age has made the differences between the two increasingly incompatible on a global scale. Social media platforms allow speech to spread across borders instantly, blur national jurisdictional boundaries, and magnify the consequences of that speech in a global context. For example, a single post created within one jurisdiction can instantly circulate and influence public opinion in another jurisdiction. This raises questions about which jurisdictions' legal standards govern and how conflicts should be resolved.

To deal with free speech challenges, the U.S. legal system largely relies on precedent from Section 230 of the Communications Decency Act, which broadly shields online platforms from liability for content created by users. In contrast, the EU recently enacted the Digital Services Act (DSA), which introduces a legal obligation for platforms to moderate content, checking for illegal speech, disinformation, etc., subject to financial penalties. The application of DSA has significant implications for American lawmakers, though, since many major online platforms based in the U.S. may feel pressured to globally conform to the regulations in the DSA to avoid the risk of being penalized. This tension has already surfaced in recent

political debate. During a speech in February 2025 at the Munich Security Conference, U.S. Vice President JD Vance criticized the DSA for imposing expansive obligations on platforms to 'take down content and police so-called misinformation,' arguing that such rules effectively prevent 'a grown man or woman from accessing an opinion that the government thinks is misinformation.'¹ Vance further tied his critiques of the DSA to a broader conversation on the U.S.'s relationship with Europe, by suggesting that the United States may rethink its support for NATO if European countries continue to impose rules that clash with core U.S. ideals such as free expression.² This tension highlights the need for transatlantic coordination to create clear, balanced norms for managing online speech in a shared digital environment.

This article argues the need for a coordinated transatlantic procedural framework to address the inefficiencies resulting from the differences in the two approaches. To make this argument, this article will first examine the divergent historical foundations of free speech traditions in the US and EU, then explore the legal frameworks currently in place to govern online free speech

¹ Siladitya Ray, 'JD Vance Knocks EU's Regulation Of US Tech Giants: "America Cannot Accept That"' (Forbes, 11 February 2025)

[https://www.forbes.com/sites/siladityaray/2025/02/11/jd-vance-knocks-eus-regulation-of-us-tech-giants-america-cannot-accept-t](https://www.forbes.com/sites/siladityaray/2025/02/11/jd-vance-knocks-eus-regulation-of-us-tech-giants-america-cannot-accept-that/)

² Rebecca Rommen, 'JD Vance suggested the US's support for NATO could be pulled if Europe tries to regulate Elon Musk's X as free speech debate rumbles on' (Business Insider, 21 September 2024)

<https://www.businessinsider.com/jd-vance-nato-support-eu-regulation-x-musk-free-speech-2024-9>

in both regions, then consider the inefficiencies created by these frameworks, before identifying a potential policy solution to resolve this transatlantic clash.

2. Divergent Historical Foundations

The United State's approach to free speech is grounded in its constitutional tradition that treats speech as an important safeguard against government overreach. This principle is cemented in law in the Constitution's First Amendment stating 'Congress shall make no law... abridging the freedom of speech'.³ The First Amendment's language is intentionally broad and even extends to protect speech that is offensive, harmful, or untrue unless it falls into one of the narrowly defined exception categories (incitement, obscenity, defamation etc).⁴ This broad protection reflects a long-standing distrust of government censorship, reflected by American colonists' experience with political oppression from Britain. First Amendment scholar, David Bogen, explores this concept in his article 'The Origins of Freedom of Speech and Press', writing that 'centuries of press regulation in England and the abolition of prior censorship there impressed upon Americans the need for protection against prior restraints.'⁵ When Congress enacted Section 230 of the Communications Decency Act in 1996, it carried these principles of free speech into the digital era. This law protected online platforms from facing liability for user-generated content.

³ US Constitution amend I.

⁴ University of Southern California Free Expression Project, 'Unprotected Speech' (USC Free Expression, undated) <https://freexpression.usc.edu/about-freedom-of-expression-at-usc/defining-free-speech/unprotected-speech/>

⁵ David S Bogen, 'The Origins of Freedom of Speech and Press' (1983) 42 Md L Rev 429, 441.

In creating this protection, Section 230 builds on the American assumption that regulating speech—even indirectly—by imposing a responsibility on online platforms can risk empowering the government to silence expression.

In the European Union, however, modern understanding of free speech is heavily influenced by the region's experience with fascism, state propaganda, and the horrors of the Holocaust. The consequences of these historical experiences have led to widespread understanding of the link between speech and harm. For example, the United Nations website discusses the impact Nazi hate speech had on fueling the Holocaust, writing, 'the Holocaust did not start with gas chambers, but with hate speech against a minority.'⁶ As a result, European constitutional culture recognizes free expression as a right that must coexist with commitments to human dignity, equality, and democratic stability. This idea is expressed in the European Convention on Human Rights (ECHR), which was ratified by 46 countries in Europe. The ECHR recognizes freedom of expression but writes that this freedom may be 'subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of

⁶ United Nations, 'Hate Speech and Real Harm' (UN, undated) <https://www.un.org/en/hate-speech/understanding-hate-speech/hate-speech-and-real-harm>

information received in confidence, or for maintaining the authority and impartiality of the judiciary.⁷ Moreover, the convention also imposes limits on expression by prohibiting ‘discrimination on any ground such as sex, race, colour, language, religion, political or other opinions, national or social origin, association with a national minority, property, birth or other status.’⁸ In this sense, this reveals how European historical experiences have made the EU more willing to impose stricter obligations on platforms to monitor speech content, in order to prevent greater public harm and discrimination.

3. Legal Frameworks Governing Online Speech: Section 230 vs. DSA

As mentioned before, the primary legal framework used in the United States to govern online speech is Section 230 of the Communications Decency Act. The primary purpose of this statute is to protect online platforms from liability for user-generated content. This core protection appears in § 230(c)(1), which states ‘No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.’⁹ This protection is exemplified in the case *Force v. Facebook (2019)*, where the Court ruled that Facebook could not be held liable for its algorithm promoting extremist content.¹⁰ The lawsuit, filed by victims of Hamas terrorism, argued that Facebook should be held liable for promoting pro-Hamas

user-generated content on its platform. However, the court ruled against this claim since treating Facebook’s algorithm as actionable would essentially treat the provider (Facebook) as the publisher (Facebook users posting pro-Hamas content) which is against Section 230. The reasoning behind this is that courts argue that expanding liability would lead to a chilling effect, where social media platforms are encouraged to default to broad removal of content on their platforms in fear of potential litigation. This form of censorship is fundamentally against the principle of free speech in the American tradition.

The Digital Services Act in Europe takes a different approach for platform liability by imposing specific, enforceable duties for platforms to comply with. The act specifies an explicit process that platforms must abide by when users report harmful or illegal content. Article 16 states that when a user reports content, the platform must send a ‘confirmation of receipt without undue delay.’¹¹ Once the platform makes a decision on whether the content violates EU or member-state law, the user must be notified of the decision and ‘avenues for redress’.¹² For very large online platforms (such as Facebook, Google, X, etc.), the DSA imposes even greater responsibility. Article 34(1) requires the platforms to identify systemic risks arising from the design of their services, including risks to disinformation, impacts on fundamental rights, and

⁷ European Convention on Human Rights (opened for signature 4 November 1950, ETS No 5) art 10.

⁸ European Convention on Human Rights (opened for signature 4 November 1950, ETS No 5) art 14.

⁹ 47 USC § 230(c)(1) (1996)

¹⁰ *Force v. Facebook, Inc.*, No 18-397 (2d Cir 31 July 2019)

¹¹ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act) art 16(4)

¹² Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act) art 16(5)

threats to democratic processes.¹³ Under Article 35, they must then adopt ‘reasonable, proportionate and effective’ measures to mitigate those risks.¹⁴ These measures are then subject to annual independent audits under Article 37, to ensure that platforms are not merely gesturing at compliance, but are actually meaningfully reducing harm on their systems.¹⁵ Together, these provisions reflect an idea that platforms are active participants in creating a safe environment online, rather than merely hosts for their users. These requirements mark a clear departure from the hands-off approach that platforms experienced under Section 230.

4. Inefficiencies for Global Platforms

These two major diverging traditions can have implications for free speech on a global level. The first inefficiency is that speech may be restricted due to over-compliance. Under DSA law, if a platform is made aware of potentially illegal content through a user report but fails to take proper action against it, the platform can be directly liable. This means the platform risks being penalized with fines of up to 6% of its annual global turnover.¹⁶ As Richard Wennberg from the Center for Strategic & International Studies explains, ‘faced with this

risk and the administrative costs of assessing flagged content, intermediaries may err on the side of caution and restrict or remove material more broadly than required. This over-removal, sometimes called “collateral censorship,” can, in the worst case, create a chilling effect that limits diverse opinions and undermines democratic discourse.¹⁷

Secondly, although DSA law only requires content to be taken down in jurisdictions where it is illegal, implementing region-specific geoblocking tools can be costly for companies to implement. This is because it requires complicated technical systems, adds another layer of legal and regulatory work that companies have to keep up with, and it often means losing users and revenue when content becomes harder to access.¹⁸ Moreover, geoblocking is also not very effective since users can easily bypass restrictions with VPNs or proxies.¹⁹ This may lead to platforms choosing global removal to simplify compliance with the DSA. This can create problems because content what is found to be illegal in even just one EU member state may be removed from other regions where it is legal.

¹³ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act) art 34(1)

¹⁴ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act) art 35

¹⁵ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act) art 37

¹⁶ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act) art 74(1)

¹⁷ Richard Wennberg, ‘Does the EU’s Digital Services Act Violate Freedom of Speech?’ *CSIS Europe Corner* (CSIS, 22 September 2025)

<https://www.csis.org/blogs/europe-corner/does-eus-digital-services-act-violate-freedom-speech>

¹⁸ ThemeWagon, ‘Optimizing User Experience for Global Audiences: How to Tackle Location-Based Content Restrictions’ (ThemeWagon Blog, 2025)

<https://themewagon.com/blog/optimizing-user-experience-tackle-location-based-content-restrictions/>

¹⁹ Karthick, ‘The Ultimate Guide to Geo-Blocking: How It Works, Its Implications, and How to Bypass’ (Flicknexs Blog, 20 January 2025)

<https://blog.flicknexs.com/the-ultimate-guide-to-geo-blocking-how-it-works-its-implications-and-how-to-bypass/>

This cross-border spillover effect is known as the ‘de facto Brussels effect’ and explains why many American lawmakers oppose the DSA.²⁰ Moreover, Articles 34 and 35, which require large platforms to mitigate systemic risks, go beyond the removal of illegal content and also encompass content that can be considered harmful. Since harmful content can be defined very differently across states, this also poses a threat for platforms to err on the side of caution, which may suppress speech further. Despite these regulatory burdens that the DSA imposes, it would be not optimal for U.S. platforms to simply leave the European market. Research from the Jacques Delors Institute shows that Europe is one of the world’s strongest importers of digital services. For example, “according to their recent annual reports, Meta and Apple obtain 22 per cent and 24 per cent of their revenue from Europe—second only to the U.S. Other large U.S. tech firms do not isolate their European revenues in public reporting, but their published figures are consistent with Europe being their most important foreign market.”²¹ In this sense, U.S. platforms are left in an uneasy position, where they are compelled to comply with regulations that are opposed to their preferred approach towards speech governance.

²⁰ Richard Wennberg, ‘Does the EU’s Digital Services Act Violate Freedom of Speech?’ *CSIS Europe Corner* (CSIS, 22 September 2025) <https://www.csis.org/blogs/europe-corner/does-eus-digital-services-act-violate-freedom-speech>

²¹ Zach Meyers, ‘If the “Brussels effect” fades in tech markets, the EU will only have itself to blame’ (Centre for European Reform, 3 January 2025) <https://www.cer.eu/in-the-press/if-%E2%80%9Cbrussels-effect%E2%80%9D-fades-tech-markets-eu-will-only-have-itself-blame>

5. Towards a Shared Transatlantic Framework

Now that inefficiencies that arise from these two varying free speech traditions have been identified, what can be done to mitigate these implications? While it is unlikely that the US and the EU are going to be able to agree substantively on free speech rules, given both regions’ differing historical influences, they should aim to agree on procedural standards that will minimize legal tension and protect users on both sides of the Atlantic.

The US and EU should work together to create minimal procedural standards for how platforms handle content disputes and removals. Doing this would not force either side to abide by the other’s substantive rules when it comes to free speech, but rather establish a universal due-process foundation. To create these procedural standards, the US and EU can take inspiration from existing due-process protections already reflected in the US-EU Trade and Technology Council (TTC). While the TTC is not a binding regulatory regime, its joint statements reflect a baseline that the US and EU already agree upon, making it easier for the regions to codify these agreements into law that will help resolve tensions between the two free speech traditions. For example, a few due-process expectations reflected in the TTC that can be applied to create procedural standards are already visible in its calls for greater transparency, accountability through human oversight, and protection against arbitrary or inconsistent moderation practices. Importantly, the goal of this kind of procedural baseline is not to smooth out the substantive differences between the two speech traditions,

as this is something that neither side would realistically agree to. Instead, this baseline would offer a set of steady guidelines that make it easier for platforms to navigate both legal environments while still allowing each region to maintain control over its own approach to regulating speech.

Firstly, in regards to transparency, the TTC's 2022 joint statement emphasizes the need for 'greater transparency into platform policies and practices, including clear reporting on content moderation decisions and the use of automated systems.'²² Translating this TTC principle into a formal standard would ensure that, regardless of whether content takedown is driven by EU or US speech standards, platforms must notify users when content is removed, explain the specific policy applied, and disclose whether AI played a role.

As for accountability, the TTC's 2023 joint statement stresses the importance of users being able to challenge or appeal decisions made by platforms regarding their content. The statement also specifically endorses that automated tools should be accompanied by 'human review mechanisms appropriate to the risk and context.'²³ Embedding this principle within a transatlantic framework for free speech could prevent the over-compliance issue that American lawmakers fear.

Lastly, the TTC also calls for moderation systems that are 'consistent, predictable, and explainable.'²⁴ Doing so would create a template for shared due-process decision-making. This way, regardless of which regions substantive speech standards are applied, platforms must ensure that they are applying those rules in a stable, non-discriminatory way. Together, these TTC principles can help build a procedural baseline for the US and EU to commit to. Codifying such a baseline would avoid forcing the US and the EU to align their underlying speech standards, but it would still ease many of the tensions present. Platforms' users would be provided with dependable protections regardless of which jurisdiction applies, and a shared procedural framework would also make compliance easier for platforms stuck between Section 230's freedoms and the DSA's obligations. In this sense, the result of transatlantic coordination is a procedural harmonization that will be practically beneficial to both sides.

6. Conclusion

The vast differences between the American and European approaches to free speech are unlikely to disappear, but they do not have to continue generating the level of uncertainty on online platforms seen today. A shared procedural framework offers the most realistic pathway forward. It preserves each region's underlying speech standard while reducing the potential for over-removal that is currently at risk. By grounding this framework in principles that the US and EU have already

²² U.S.–EU Trade and Technology Council (TTC), *Joint Statement* (16 May 2022).

²³ U.S.–EU Trade and Technology Council (TTC), *Joint Statement* (Luleå, Sweden, 31 May 2023)

²⁴ U.S.–EU Trade and Technology Council (TTC), *Joint Statement* (16 May 2022).

endorsed through the TTC, both sides can take a realistic step toward a more balanced digital environment. All in all, resolving the underlying philosophical disagreements regarding speech is unlikely. Rather, the US and EU should aim to agree on fair and transparent processes that give both users and platforms clearer expectations on both sides of the Atlantic.

Bibliography

- Bogen, David S, 'The Origins of Freedom of Speech and Press' (1983) 42 Md L Rev 429.
- Communications Decency Act 1996, 47 USC § 230(c)(1).
- European Convention on Human Rights (opened for signature 4 November 1950, ETS No 5).
- Force v Facebook, Inc, No 18-397 (2d Cir 31 July 2019)
<https://law.justia.com/cases/federal/appellate-courts/ca2/18-397/18-397-2019-07-31.html>
- Karthick, 'The Ultimate Guide to Geo-Blocking: How It Works, Its Implications, and How to Bypass' (Flicknxs Blog, 20 January 2025)
<https://blog.flicknxs.com/the-ultimate-guide-to-geo-blocking-how-it-works-its-implications-and-how-to-bypass/>
- Meyers Z, 'If the "Brussels effect" fades in tech markets, the EU will only have itself to blame' (Centre for European Reform, 3 January 2025)
<https://www.cer.eu/in-the-press/if-%E2%80%9Cbrussels-effect%E2%80%9D-fades-tech-markets-eu-will-only-have-itself-blame>
- Ray S, 'JD Vance Knocks EU's Regulation Of US Tech Giants: "America Cannot Accept That"' (Forbes, 11 February 2025)
<https://www.forbes.com/sites/siladityaray/2025/02/11/jd-vance-knocks-eus-regulation-of-us-tech-giants-america-cannot-accept-that/>
- Rommen R, 'JD Vance suggested the US's support for NATO could be pulled if Europe tries to regulate Elon Musk's X as free speech debate rumbles on' (Business Insider, 21 September 2024)
<https://www.businessinsider.com/jd-vance-nato-support-eu-regulation-x-musk-free-speech-2024-9>
- Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act).
- Richard Wennberg, 'Does the EU's Digital Services Act Violate Freedom of Speech?' CSIS Europe Corner (CSIS, 22 September 2025)
<https://www.csis.org/blogs/europe-corner/does-eus-digital-services-act-violate-freedom-speech>
- ThemeWagon, 'Optimizing User Experience for Global Audiences: How to Tackle Location-Based Content Restrictions' (ThemeWagon Blog, 2025)
<https://themewagon.com/blog/optimizing-user-experience-tackle-location-based-content-restrictions/>
- United Nations, 'Hate Speech and Real Harm' (UN, undated)
<https://www.un.org/en/hate-speech/understanding-hate-speech/hate-speech-and-real-harm>
- University of Southern California Free Expression Project, 'Unprotected Speech' (USC Free Expression, undated)
<https://freexpression.usc.edu/about-freedom-of-expression-at-usc/defining-free-speech/unprotected-speech/>
- U.S. Constitution Amendment I.
- U.S.–EU Trade and Technology Council (TTC), *Joint Statement* (16 May 2022).
- U.S.–EU Trade and Technology Council (TTC), *Joint Statement* (Luleå, Sweden, 31 May 2023)