Should digital media platforms be regulated at all?
Where is the place of Freedom of Expression in this?

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Freedom of expression – whose right is it?

- Freedom of expression (FoE) is an individual right.

- Legal entities, e.g. media companies can also enjoy this right. Other companies exercise this right by displaying their logos and advertisements.

- Social media platforms claim "not speakers" of the content that they carry. ⟶ They are not subject to FoE regarding third party content.

- Still, they do tailor that content with their governing decisions.

Content governance

- Social media companies do govern content through their **community standards** (behavioural rules, etiquette), and their **content ranking algorithms** which create an individual content offer.
    - The cumulative effect of this practice profoundly effects public discourse.
- Minor alterations on algorithms may create meaningful changes in the content perceived by masses of users.
    - E.g. elections 2012, 2016.

- Algorithms are intransparent.
    - DSA demands a level of transparency
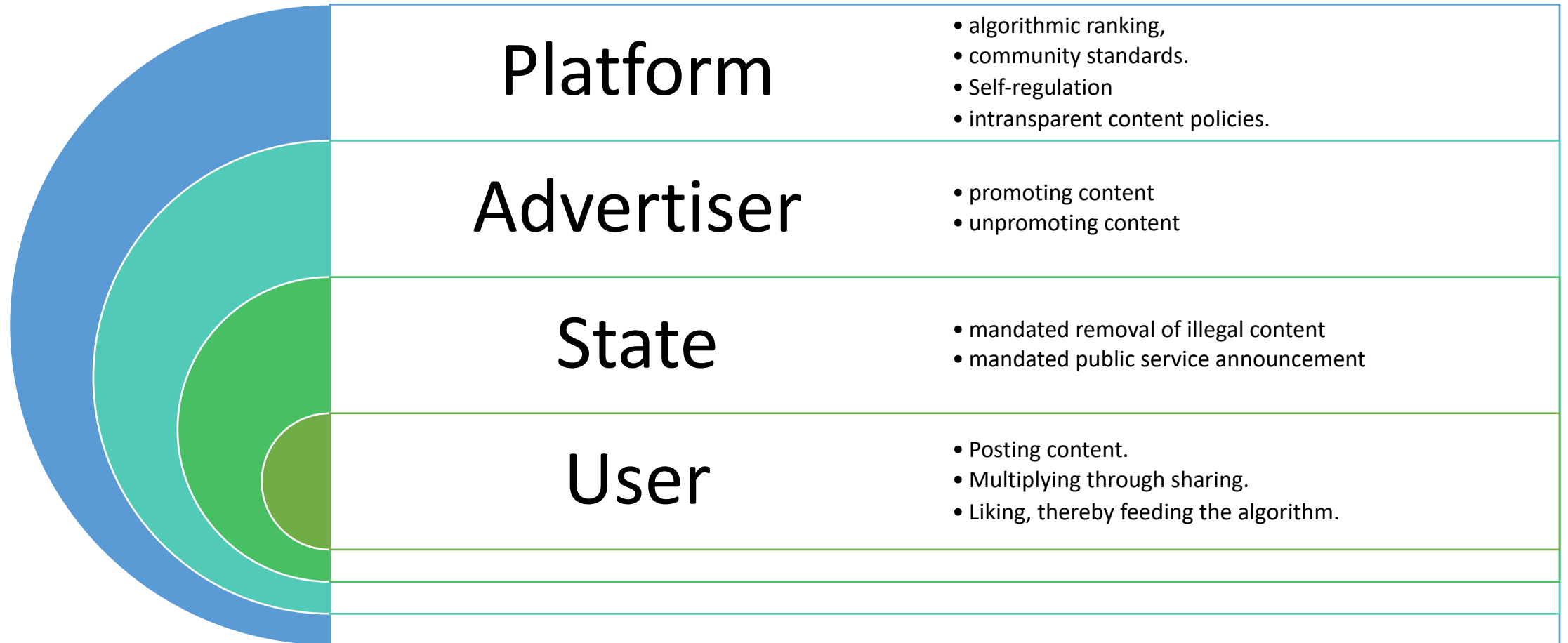   - And some diversity

2012 elections: Facebook showed a a ticker „I voted" with friends faces who already voted. It was an experiment. They found that if people were shown the faces of friends who voted, they were more willing to go and vote and click themselves „I voted" compared to users who were not shown faces of their friends.
Facebook says, the ticker caused 340.000. more people to tick the ticker. Whether they really voted, cannot be proven, but it is assumed.
Source: https://www.vox.com/2014/11/4/7154641/midterm-elections-2014-voted-facebook-friends-vote-polls

Limits of DSA

- Illegal content – notice & action (DSA Articles 14-21)
- Harmful content – self-regulation (DSA Art. 35-36)
- Overseeing self-regulation:
  - Draft together with EC
  - Yearly audit
  - Obligation to react on audit: justify alterations.
  - No sanctioning in the self-regulation mechanism.

Again: Who controls content?

Platform
- algorithmic ranking,
- community standards.
- Self-regulation
- intransparent content policies.

Advertiser
- promoting content
- unpromoting content

State
- mandated removal of illegal content
- mandated public service announcement

User
- Posting content.
- Multiplying through sharing.
- Liking, thereby feeding the algorithm.

Public responsibility with the dominant status

- Inform the user
- Transparency Centre (..)

Transparency

- A wider selection of algorithms
- Break the bubble

Diversity

- Content-neutrality
- Non-discrimination

Neutrality

Transparency:

- **Transparency would** serve to empower users to make their own choices more consciously.

- The algorithms should also be *tested*, prior to mass usage, whether they perform what they are said to. At least those content ranking algorithms should be tested which are used by masses of people, leaving "black box" algorithms to the innovation sandboxes.

- Under the umbrella of the fight against disinformation, the Commission has set out several of these goals in the envisaged, strengthened Code of Practice against Disinformation. It published a Guidance in May, which sets out expectations that the CoP against disinformation should contain. „to make their recommender systems transparent regarding the criteria used for prioritising or de- prioritising information, with the **option for users to customise the ranking algorithms**. All this should be done with due regard to the principle of media freedom (Guidance 7.3.)

- Platforms should maintain a Transparency Centre, where they show the specific policies they adopted to implement each Code commitment they have subscribed to; and KPIs. This appears to serve primarily the enforcement and not the user empowerment.

Diversity and neutrality

- **Diversity**: A wider selection of the algorithms also serves diversity, however, there could be at least one algorithmic tool that serves specifically to increase diversity, by giving counter-intuitive recommendations, in order to break the filter bubble.

- The DSA requires at least two algorithms, one of which should be based on other than behavioural profiling.

- **Neutrality:** the prohibition to apply discrimination between users and between content items.

  - Prioritisation of trustworthy content (see the Guidance) such as information provided by health authorities.

  - non-discrimination of users: DSA lists safeguards against exclusion from the platform, but nothing about content-neutrality. Whether this could be part of the supervised self-regulation, will be seen in the close future.

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Thank you for your attention!

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