

Regulating Digital Platforms: A Limitation to Freedom of Expression?

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Introduction

Internet, social media, and digital platforms, which have become a part of daily life thanks to technological developments, are at the centre of some critical discussions regarding both their advantages and disadvantages to society. Undoubtedly, the conversations that dominate the agenda relate to claims that legislative efforts to regulate these platforms represent an attempt at censorship that restricts freedom of expression. Although these debates are often polarised between those who support legal regulations and those who oppose them, in reality the situation is much more complex and multifaceted. In addition to the legal and political implications, these debates also have ideological and philosophical implications. In this context, it is essential to include discussions regarding the meaning of 'freedom', the ownership status of virtual platforms, the social effects of digitalization, and the fundamental rights and duties of citizens. This controversial issue, in which society, governments, media, minorities, non-governmental organizations, children, groups in need of protection, communities, associations, legal organizations, and, of course, big technology companies are the main actors, is discussed with all its aspects in this paper.

Today, it has become possible to transfer large amounts of data quickly, allowing data to access and interact with digital content anytime and anywhere. As a result, radical changes have occurred in society's habits of obtaining information. Instead of the traditional mediums of radio, newspaper, and television, people have started to meet their communication needs on a much different and advanced level through these new digital tools. This situation has also led to a change in society itself with the rise of concepts such as network society and information society, which describe a social

structure that has adopted a lifestyle intertwined with digital technologies. However, while providing many conveniences and opportunities for people, these developments have also brought numerous problems and controversies, such as information pollution,¹ disinformation, manipulation, attacks on personal rights, and violations of privacy.

In this new era, where access to information has become more accessible thanks to digitalization, it has become much easier to both deliberately and unintentionally expose large populations to inaccurate information, misleading and false news, deliberate distortions, and content designed to manipulate. Moreover, privacy rights, and social dignity can be attacked on digital platforms more easily than ever before. It has become possible to obtain personal data without permission, to use it as a means of blackmail and pressure, and to cause material and moral damage through the exploitation of data and digital media. Behaviours such as harassment, humiliation, and discrimination that would not be accepted in the social order and that are legally considered criminal began to take place in virtual environments, and concepts such as cyberbullying came to the forefront. For this reason, legal regulations targeting virtual environments are on the agenda of many countries.

¹ Information pollution includes distracting, incorrect, irrelevant, unnecessary, undesirable, obstructive and low-quality information. Such information harms knowledge, negatively affecting thinking and decision making.

Why do we need legal regulations in the media field?

While there is a multi-layered control structure from the reporter to the editor, from the editor-in-chief to the director in the stages of collecting, processing, and publishing information presented to people in mass media such as radio, newspaper, and television, in digital environments all users, more precisely all content consumers, also play a role as content producers (Ghosh, 2021). In this way, people have become content producers rather than just consumers of digital content. As a result, concepts such as producer-consumer have been put forward (Toffler, 1984). While this opens the door for people to interact with the content they consume and be active users, it also paves the way for uncontrolled, untruthful, or harmful content to spread.

Harmful content on digital platforms may adversely affect children's mental and physical development. All forms of violence, insults, sexual harassment, pornography, extremist discourse, discrimination, and racist content have demonstrable harms to society in one way or another. This content which can be easily accessed on all virtual platforms, may negatively affect social peace and security and cause people to experience insecurity, restlessness, and anxiety disorders. There are also cases where this has led to violence, self-harm, and suicide (Madiega, Car, Niestadt, & Pol, 2022). Social media platforms and communication applications, most notably Facebook, Twitter, and Instagram, which are accessible to millions of users, allow such content to spread quickly and be easily accessible to people of all ages. Even though these platforms are trying to minimize content that may be harmful to individuals and society through the introduction of self-regulatory mechanisms such as community rules and user agreements, it is evident that these measures are insufficient. There is also an effort to prevent content considered harmful through user reporting and feedback, however, this practice is far from providing a solution to the problem in its current form.

Interconnected with the adverse effects at the social and individual level caused by the content they host, it must be emphasized that these digital platforms are profit-seek-

ing companies that generate huge amounts of revenue through the data they collect from users. The economic dimension of the issue raises numerous questions regarding the terms of commercial operation, profit, taxation, earnings, and labour. Moreover, we have not been able to reach a clear and transparent answer regarding the purpose of data collection as well as how they use the data they collect. On a political level, their potential to influence and direct political participation behaviour leads them to be viewed as both a threat and an opportunity for democracies (Cusumano, Yoffie, & Gawer, 2022).

At this point, just as in real life, specific rules, legal regulations, and protective and preventive practices are an inevitable necessity for the digital world, which has now become an integral part of the world we all inhabit (Ghosh, 2021). It is generally accepted legal regulations are a necessity for virtual environments. The main issue and the focus of the discussions are on who will formulate these regulations and how they will be implemented (Coldewey, 2020). For this reason, the issue of legal regulations for virtual platforms is discussed in the shadow of many socio-political, ideological, geographical, and economic factors. As a result, it has become challenging to deal with it on a rational and logical ground. Moreover, it has thus far proven all but impossible to reach a consensus and reach a beneficial and inclusive solution for both the individual and society. That is why attempts have been made in many countries to focus on different sensitivities, and some regulations have been put into practice as a result. In nearly every country, concerns that governments would be able to manipulate these legal arrangements to protect its power is the most common objection to the politically-based approach to the issue (Susskind, 2022).

Furthermore, there are criticisms² that the relevant legal regulations are not clear enough or cannot be realistically applied, both technically and because of the relative nature of the content to be considered criminal or harmful³. In addition, criticisms include those that argue that while proposed penalties will not cause significant harm to the virtual platform giants, they will cause the disappear-

² For examples of criticisms of regulatory efforts see: Melissa Eddy & Mark Scott, (2017), Delete Hate Speech or Pay Up, Germany Tells Social Media Companies, The New York Times, <https://www.nytimes.com/2017/06/30/business/germany-facebook-google-twitter.html>

³ Federico Guerrini, (2020), The Problems With Germany's New Social Media Hate Speech Bill, Forbes, <https://www.forbes.com/sites/federicoquerrini/2020/03/03/the-problems-with-germanys-new-social-media-hate-speech-bill/?sh=4148eb21592a>



ance of small platforms from the market over time. Thus, monopolization in the digital sphere will grow even more strongly.

Although there is a certain degree of justification in all of the criticisms, none offers a comprehensive solution for

these evident and apparent damages that everyone accepts. And at this point, criticisms of legal regulations give the appearance of rejecting attempts to take a legal step against all existing negative situations and effects in virtual environments due to a possible concern for the future (censorship).

Which countries regulates in what ways?

In many countries, attempts have begun to make social media and other virtual environments subject to legal regulation. Among European countries, Germany started preparations for legal regulation in this regard in 2015. While the legal regulation package known as the Network Enforcement Act (NetzDG), which came into force in 2017, imposes some obligations on virtual platforms, it includes steps to protect personal rights (Böttcher, 2018).

In Germany, the government was criticized for their inaction on the use of social media by far-right groups to spread fake news with the intention of whipping up xenophobic sentiments in the country. faced Anti-immigrant rhetoric, death threats, terrorist propaganda and efforts of various extremist groups to organize through virtual

platforms increased the sense of urgency for the need to develop legal regulations for these platforms. It also paved the way for the imposition of fines on relevant platforms in order to sanction them for not preventing the dissemination of content aimed at disrupting social peace. Social media platforms that operate within the borders of the Federal Republic of Germany and have more than two million subscribers are now obliged to remove illegal content within a certain period as stipulated by legal regulation. They are also required to forward the information of the users who share the content upon the request of the legal authorities. If the necessary actions are not taken, individuals who share illegal content may be punished with a fine of 5 million euros and social media companies up to 50 million euros. In 2019, Facebook was the first social media



(Yasin Öztürk - Anadolu Agency)

platform to face a sanction as stipulated by the law in Germany. According to the NetzDG, every six months Facebook is obligated to report to the relevant legal authorities what action they took on complaints about illegal content. However, according to the ruling Facebook failed to establish a sufficient complaint mechanism, nor was their report sufficiently transparent. As a result, the company, which was fined 2 million euros, claimed that the law was not clear enough (BBC, 2020). Speaking about the fine, a Facebook official said: "We are confident that our NetzDG reports published are legal, but as many critics have pointed out, this law lacks clarity."

In its current form, NetzDG⁴ makes it mandatory for content that falls under certain categories to be monitored and reported. These include; incitement to hatred, rewarding and approving crimes, disrupting public peace through the threat of crime, forgery within the scope of treason, incitement or preparation for a severe crime that jeopardizes the survival of the state, use of symbols of unconstitutional organizations or making their propaganda, insulting religion and ideological organizations. Currently, regulations task relevant social media platform with removing illegal content and informing legal authorities. Moreover, in cases that fall under the scope of serious crimes such as murder or terrorist attacks, information such as IP, location, and passwords must be shared with legal authorities following judicial approval.

Australia is another country that followed the path of legal regulation for social media platforms after tragic events in the country. The suicide of the presenter and model Charlotte Dawson, who killed herself as a result of the cyberbullying she was exposed to on Twitter in 2014, and the live broadcast of the terrorist attack targeting two mosques in New Zealand, on Facebook attracted attention. As a result of these events, legal regulation initiatives started in 2015. The Sharing of Abhorrent Violent Material Act and Enhancing Online Safety Act has been implemented with some expansions until today. In 2019, the law enacted both a fine and a prison sentence of up to three years for the person responsible for the management of the technology company (legal manager) if violent content is not removed from the platform. In addition, a financial penalty of 10% of the profit of the relevant platform may be applied, and the person sharing the content may be fined up to 105 thousand Austrian dollars and the company up to 525,000 Austrian dollars (BBC, 2020).

Türkiye has been seeking to implement regulations on virtual environments and social media platforms for some time. The proliferation of insults, discrimination, threats, humiliation, terrorist propaganda, incitement to crime, and hate speech on social media platforms in Türkiye have kept discussions regarding the need for legal regulation on the agenda. Türkiye is one of the countries most exposed to fake news and disinformation content in the world. Ac-

⁴ Help Centre. (2022). Network Enforcement Act "NetzDG". Facebook. <https://www.facebook.com/help/285230728652028>

According to the results of a study conducted by Reuters Institute of Oxford University in 2018 that measured the frequency of exposure to fake news, Türkiye was the country that is most exposed to such content.⁵ Moreover, Türkiye, which hosts the largest number of refugees in the world, has severe problems with hate speech and distorted news directed against migrants.⁶ In 2020, attempts were made to ensure social media platforms had legal representation present in the country in order to ensure their compliance with Turkish law. Accordingly, social media companies with more than one million users were required to appoint a representative, and open an office in the country. Content that could constitute a crime and be considered a violation of the right to privacy would have to be removed from the platform within four hours. Otherwise, sanctions such as fines, bandwidth reduction, and advertising bans would be imposed by the authorities. Additional regulations, which can be considered as the continuation of these legal regulation initiatives, and new legal articles expanded the responsibility areas of social media platforms.

In addition, new responsibilities and rights have been introduced regarding media activities on virtual platforms in October 2022 (Sabah, 2022). For example, websites that carry out news activities over the internet can now receive official advertisements and official announcements, that means, these announcements and advertisements, which the state has regularly given to press organizations to inform the public, can now be extended to media organizations broadcasting exclusively over the internet. Moreover, the employees of these news site have been granted the right to receive a press card. It offers some advantages to facilitate access to information for journalists whose duty is to inform the public. Thanks to this card, besides accreditation, free transportation, participation in official events, free entry to museums, galleries, stadiums and hippodromes, and obtaining a service passport have now been extended to employees of digital platforms. In other words, rights that offer advantages to traditional media workers have also been given to organizations that exclusively publish on the internet. Within the scope of combating disinformation with additional legal regulations, social media companies are required to keep the data of individuals within the country. Furthermore, they are required to monitor illegal content that may harm children and provides a safe service. In addition, if content produced with the purpose of spreading fake news and harm is shared publicly to spread fear and panic a prison sentence of 1 to 3 years is possible for the offender.

The NetzDG implemented by Germany has been a source of inspiration for many countries, and similar legal regulations have also begun to be implemented elsewhere, including France, the United Kingdom, Singapore, Malaysia, India, and the Philippines. In the United States, especially after the US presidential elections in 2016, discussions on increasing legal controls on Facebook (now Meta) and its other platforms continue. The Cambridge Analytics affair provides a good example of why these discussions came to the forefront of the policy agenda. Following the 2016 US Presidential elections Facebook became embroiled in a scandal after it was revealed that the platform was used to influence people's political orientations through personalized messages. The data of approximately 87 million Facebook users was collected without permission and these users, from which psychographic profiles were created, then became the target of specially designed advertisements. This data scandal involving Facebook, Cambridge Analytica and politicians has highlighted the importance of data security and privacy issues, in addition to the obvious implications for democratic processes and the problem of targeted influence campaigns.

Frances Haugen, a Facebook product manager, who resigned from Facebook last year, claimed that the company cares more about profits than people's safety and that it provides visibility to applications that will increase the addiction level of young people, especially to content that incites hate speech and other harmful content (Perrigo, 2021). Following the death of 14-year-old Molly Russell, who committed suicide after experiencing cyberbullying she was exposed to in the United Kingdom, the detection of self-harm and suicide-inducing content on her Instagram account increased the criticism of these virtual platforms in the country. Of course, the focus of regulatory efforts on social media platforms is not only related to harmful or illegal content (Reuters, 2022). How companies using the data they collect from users is considered to be at least as important as the issue of harmful content. In this context, the European Union has imposed rules on how the collected data can be stored and used (BBC, 2020) How the data collected from people will be used and whether it is deployed for various forms of manipulation, from shopping habits to political participation, are essential issues that should be seriously considered in terms of the functioning of democracies (Ashton & Cruft, 2022). Moreover, further steps have been taken with regards to the responsibility of platforms regarding copyright. Previously, they were only responsible for taking action on the relevant content in case of

⁵ Servet Yanatma, (2018), Digital News Report 2018, Reuters Institute, <https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2018-11/Digital%20News%20Report%20-%20Turkey%20Supplement%202018%20FINAL.pdf>

⁶ The UN Refugee Agency, (2022), Refugee Data Finder, <https://www.unhcr.org/refugee-statistics/>

complaints, but now they are required to take precautions against content that may be infringe on copyrights regardless of a specific complaint (Böttcher, 2018).

In 2021, a new user agreement was published for WhatsApp⁷, which is owned by Facebook's parent company Meta. Users who disagreed with this confidentiality agreement, which stipulated that the data collected would be shared with Meta, would no longer be able to use WhatsApp. However, the most interesting aspect of this agreement, which includes the sharing of WhatsApp data such as messages, contacts, photos, location, and device information with Meta, was the double standard between countries. Accordingly, users living in many countries outside of Europe would no longer be able to use the application if they did not approve the agreement. Still, EU citizens could continue to use it even if they disapproved. In response to this double standard, campaigns have been launched to delete WhatsApp. Furthermore, the relevant legal institution in Türkiye has launched an investigation against Facebook to step back from this imposition.⁸ Ultimately, Facebook had to take a step back; however, this sit-

uation rekindled the discussions on data security and the need for legal regulation for social media companies.

Although there are some differences according various countries, it can be said that the common purpose of the legal regulations made in almost all of them is the protection of both the individual and society from the harms of virtual environments. In today's world, where the virtual and real worlds are increasingly blended, the activities carried out in virtual environments do not just stay there and can directly affect people's daily lives (Keenan, 2022). As seen in the examples above, content that may negatively affect social peace, such as hate speech, the tendency to violence, and incitement to commit crimes, can directly impact lives (Siripurapu & Merrow, 2021). People may be pushed commit suicide because of cyberbullying, self-harm, or suicidal content. Acts of terrorism, incitement to terrorism and crime, and their encouragement and radicalization of people can be carried out through virtual platforms.

Who are the laws in place for?

Certain rights and responsibilities for the content and programs produced in traditional media organs are determined by law (Koltay, 2022). For television, warning signs should be displayed to show for which target audience it is suitable, before the content is broadcast. The audience is informed whether the content contains elements such as sexuality, violence, fear, etc. This has long been enforced as a legal requirement and is generally accepted.

It can be stated that such measures are adequate to some extent in real life, at least under the control of parents, children can be protected against harmful content to some extent, but it is not possible to say the same when it comes to virtual environments. Media and information literacy skills, arguably the most effective way to protect against the harms of content in traditional or digital media platforms, are often suggested as a solution (Mchangama, 2019). Many people who criticize regulatory initiatives argue that protecting against harmful content is possible by increasing media literacy rather than through legal mechanisms that could lead to censorship. However, media and information literacy is unfortunately not a skill that can be quickly and widely acquired.

Even for traditional media that have been part of social life for decades, it has not yet been possible to reach a high level of media literacy. In countries such as Türkiye, the US, Canada, UK, Germany, Italy, the Netherlands, Scotland, Spain, Sweden, France, Denmark, Finland, Austria and Australia, media literacy courses are taught in schools with the support of governments. Although countries are attempting to develop courses and seminars and adding classes in this direction to the education curriculum, a highly conscious audience of the social impacts of media content is an ideal that no society has yet fully achieved. Thus, it does not make much sense to rely solely on media literacy skills as a solution to the challenges posed by digital platforms, while these efforts, which have been undertaken for almost a century for traditional media, have not yet been fully successful. At this point, it is arguably an inevitable necessity to establish legal regulations, control mechanisms, and rules in these new environments, just as it is for traditional media tools (Joshi, 2020).

Social order emerged as a necessity for all people living in groups throughout history. States, the most extensive systemized examples of social organizations, have taken

⁷ WhatsApp. (2021). WhatsApp Privacy Policy. <https://www.whatsapp.com/legal/privacy-policy?lang=en>

⁸ Gökhan Ergöçün. (2021). Turkey suspends new WhatsApp policy rules. AA. <https://www.aa.com.tr/en/science-technology/turkey-suspends-new-whatsapp-policy-rules/2105817>

Worldwide social media usage



TIME SPENT ON INTERNET ON MOBILES

(Average time per among users aged 16 to 64)



MOST USED SOCIAL MEDIA PLATFORMS IN THE WORLD

(Active social media users in billions)



TIME SPENT ON SOCIAL MEDIA APPS

Average time per month (across all Android users)



(Anadolu Agency)

their place in history precisely as an evolution of this need. As a necessity of living together around different forms of government, people needed an order, a set of rules, laws, or constitutions. Kingdoms or empires, monarchies, constitutional monarchies, and democracies, although the authority and the way of governing vary based on all forms of government and different state structures, economic, political, and social order needs to be ensured and maintained. People can continue their lives in a healthy, harmonious, and collective way only by determining these rules, laws, rights, as well as freedoms and their inevitable limits. The laws that people must obey also function as a guarantee for people to live together in relative harmony.

Legal regulations pertaining to traditional media outlets, attributed to main functions such as informing, educating, and entertaining the public, also emerged as initiatives for the same purpose mentioned above. In theory, the media, considered as a guarantor of democratic practices, contributes to the functioning of democracies by informing people in an accurate and timely manner. Similarly, the primary purpose of legal regulations regarding virtual environments should undoubtedly be to protect the public interest. States and constitutional bodies should protect society and individuals against the problems that may arise in virtual platforms, as they do with traditional media.

With the realization of the potential of these activities to harm people in their real lives, the need to make legal arrangements for virtual environments has accelerated (Prapapati, 2018). Governments have responded to increased public awareness of these harms and relevant authorities have implemented these legal regulations, which differ from country to country (BBC, 2020). Content suggesting violence, self-harm, revenge porn, sexual harassment, and rape adversely affect people's psychological and mental states, something that has increasingly been in the public eye.

The harm that virtual environments can cause to society is not only based on individuals but also interferes with the right of the people to receive accurate information by mediating the rapid dissemination of false, fake, and intentionally deceitful information. Disinformation, misinformation, and mal-information, among the biggest problems of the information society, also represent existential threats to democracies. In an age when it is so easy to access information, it is possible to quickly spread news that is inaccurate, distorted, and deliberately produced to mislead. Therefore, it is evident that clarification of the rights and responsibilities of virtual platforms through regulating virtual environments, like all laws put into practice by considering the public interest, will contribute to the continuity of the democratic process.

The test of traditional media with new media legislation

Another problematic element in the legal regulation initiatives for virtual environments is manifested in how traditional media organizations deal with this issue. In particular, how legal regulations in different countries are reflected in news coverage show that Western media organizations approach this issue through what can best be understood as an orientalist perspective. Data security, privacy, prevention of hate speech, and measures against terrorist threats are treated as essential for European countries. Unfortunately, the same is difficult to say for much of the rest of the world. Therefore, when legal regulations regarding virtual platforms are made in European countries, it is easy to come across news with positive language that a supervisory mechanism has been established for these platforms. As can be seen, some similar legislative efforts have emerged in many countries. Likewise, in almost all countries, favourable and unfavourable statements have

been made regarding the legal regulation efforts. These initiatives have entered society's agenda after some tragic events mediated by social platforms in all these countries, and the need for legal regulation has been expressed.

The organization of some acts of violence using these platforms, their use as a means of communication in the planning and implementation of terrorist acts, and the fact that they serve as a tool of hate speech paved the way for legislative initiatives in Germany (Lee, 2017). In the United Kingdom, after the suicide of a 14-year-old child, the necessity of legal regulations was expressed and it was even stated that social media platforms could be banned if necessary (BBC, 2019). The cyberbullying of an adult in Australia, the suicide of an adult, and the live broadcast of a brutal massacre on Facebook paved the way for legal regulations in this country (BBC, 2020). As a result of realizing the neg-

ative effects of virtual platforms such as radicalization, tendency to violence, increases in hate speech, and the spread of fake news, among others, these legal regulations have come to the forefront of national agendas.

Interestingly, legislative efforts are reported differently according to country. For example, German state television DW conveyed Germany's legal regulations to its audience in a positive news language. However, similar legal regulations in different countries were reported as limiting freedom of expression (Chase, 2017). When Türkiye fol-

lowed a similar legislation practice, the narrative emerged that the measures were designed to restrict freedom of speech with phrases such as prohibition and censorship (Heinrich, 2020). Likewise, the BBC pointed out that nearly half of the internet users in the UK are exposed to harmful content, highlighting the reasons for legal regulations (BBC, 2019). However, when it comes to Türkiye, BBC News Türkçe made news as censorship, restriction of freedom of expression for similar legislation (Sayın, 2022). In its news about the regulation, BBC News Türkçe mostly featured news that highlighted the criticisms of censorship.

Conclusion

Discussing the legal regulations and determining the limits and rights through a consideration of the public interest is indispensable (Cruft, 2022). The way to do this is to deliberately create polyphony and discuss the issues in all their aspects. However, in the shadow of political polarisation, it is extremely challenging to do this by displaying a dogmatic opposition. It is imperative that the issue be dealt with legally, technically, psychologically and socially, and driven by the opinions of experts on the subject. Moreover, while legal regulations are considered as necessary step for some countries, for others, they are seen through the lenses of censorship and state control. While there are important considerations with regards to ensuring digital spaces that facilitate free and open discussion, those who dismiss out-of-hand the efforts of non-Western states to regulate digital space as repressive betray a double-standard that often colours international discussions on regulating digital media platforms.

Although the internet, social media and other virtual platforms are areas that provide for freedom of expression, access to information and the sharing of ideas in the fastest and easiest way, they also facilitate harmful and ultimately illegal activities including, hate speech, data security violations, attacks on personal rights, and copyright violations, among others. Just as the physical spaces we populate everyday require laws regulations, so do our virtual environments. This is particular the case in today's world where virtual platforms serve to facilitate very real everyday functions. 'Freedom' functions best when its limits are clear, namely, when one person's freedom does not interfere with that of others. This, of course, presents a number of philosophical conundrums that are not necessarily easy to resolve. However, what is clear is that social life requires a set of rules and regulations to function and the virtual world today is no different. Humiliating, offending, discriminat-

ing against, slandering the beliefs of others can only be defined as aggression, not freedom. This fact applies whether it takes place on virtual platforms or in real life. As much as attacks on social values, public peace, state, and society are unacceptable in real life, they are equally unacceptable on social media platforms.

Although there is already a broad consensus on the need for more robust rules and regulations, it is evident that the discussions about who will make the rules and how they will be implemented can only be beneficial with an objective and non-biased attitude. Moreover, legal regulations can be expressed as an inevitable necessity for some platforms that have made the mistake of seeing themselves as superior to the law and reached a monopoly position thanks to their power today. We are rapidly approaching the days when we have to say that the internet is bigger than five (Alphabet, Meta, Microsoft, Amazon, and Twitter). In other words, the societal interest in the internet should take priority over the profits of big tech and it is only through robust, fair, and accountable regulation that this can be done.

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