

Written Testimony of David Kaye

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“Europe’s Threat to American Speech and Innovation”

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Chairman Jordan, Ranking Member Raskin, Members of the Committee:

Thank you very much for the invitation to appear before you today. My name is David Kaye. I am a law professor at the University of California, Irvine, School of Law, where I conduct research and teach courses and a clinic in public international law, international human rights and humanitarian law, freedom of expression, and human rights and technology.

I want to start by emphasizing censorship as a serious violation of human rights. From 2014 to 2020, I served as the United Nations (UN) [Special Rapporteur](#) on freedom of opinion and expression. In that role, I monitored the growing global assault on free speech. In hundreds of communications each year, a dozen reports to the UN, and numerous country visits, I documented the practice, law and increasingly sophisticated mechanisms of state censorship.

I led a landmark UN effort to call out [China’s broad attack](#) on civil society through censorship, propaganda, and surveillance. I detailed repression of media and criticism in [Putin’s Russia](#). I condemned [Iran’s](#) pervasive [suppression of dissent](#) and transnational repression and called out the government of Saudi Arabia when they jailed [poets](#) and [murdered](#) writers like Jamal Khashoggi. I documented the rise of internet shutdowns, the use of [spyware](#) against reporters and civil society, and the jailing of advocates for tweets and posts. I spotlighted the [rise of incitement](#) and harassment on social media, the failure of companies to address them, and the overreaching steps often taken by governments in response to such harmful but often lawful speech. I also issued firm critiques when democratic governments, [like Germany](#), sought to force tech companies to take down legitimate speech, or when others, [like Singapore](#), enacted laws to criminalize disinformation.

All countries, including the United States and its democratic allies, are bound by strong standards of human rights law that guarantee everyone’s freedom “to seek, receive and impart information and ideas of all kinds, regardless of frontiers.” This language comes from Article 19 of the [International Covenant on Civil and Political Rights](#), a treaty the United States helped draft and ratified, in 1992, upon the recommendation of President George H.W. Bush. It guarantees a speaker’s rights, to be sure, but it also guarantees the right of everyone to access information, to become educated voters, citizens, parents, kids, consumers. Censorship condemns us not only to be less free but also to be less informed and less safe.

So it saddens me that the United States, the country that had my back in fighting attacks on freedom of expression, is now the tip of the spear leading the charge to undermine it. If I were Special Rapporteur today, the situation in the United States would raise the most serious alarms. The threat here is real and live. This is a shocking state of affairs given our free speech

tradition, a national belief in and legal protection, if not celebration, of dissent, protest, and difference of opinion.

This administration is turning its back on that tradition. We now face unprecedented hostility toward freedom of expression. To name just a handful of examples:

- Silencing science and public health: The administration is silencing scientists and public health officials. Just last week, the head of the Centers for Disease Control was fired because she would not agree to change her scientifically acquired conclusions about appropriate vaccine policies. The administration has scrubbed websites of information, from health to environmental safety to climate change. The result: less information available to all who require it for their health and the health of their loved ones.
- Intimidating media: The White House has not only banned media outlets from the press pool. The President has brought non-meritorious lawsuits against outlets, pressuring the outlets to settle. In the case of CBS and Paramount, the White House implicitly conditioned their merger on settling the suit in the President's favor.
- Weaponizing the FCC: The Federal Communications Commission has been weaponized, pressuring YouTube to carry specific religious programming in its streaming service, investigating NBC over Kamala Harris' appearance on Saturday Night Live, accusing several platforms of "censorship" for partnering with NewsGuard, a recognized expert on disinformation. It has launched investigations of most major networks, with the curious exclusion of Fox News. The President has urged the FCC to revoke media licenses, calling ABC and NBC "biased".
- Weaponizing the FTC: The Federal Trade Commission, in a clear breach of free speech standards, held up a merger of major advertising firms, Omnicom and Interpublic, until they committed to run ads on X, a gift to Elon Musk.
- Censoring and punishing speech of visitors: The administration has made clear that it will investigate the content of one's opinions when seeking a visa to enter the United States. In visa interviews and at the border, there are increasing reports of officers screening visitors according to their social media activity. We have already witnessed the arrest and jailing of at least one student solely on the basis of an opinion essay she co-wrote for a campus newspaper.
- Flag burning ban: The President issued an Executive Order purporting to ban the burning of the American flag, an issue the Supreme Court found to be a violation of the First Amendment in 1989.
- Limiting economic and security analysis: The President has fired officials when they exercise their responsibility to provide the public – and lawmakers – with honest information. The President fired the principal official at the Bureau of Labor Statistics when he did not like the jobs statistics. The administration fired the head of the U.S. Defense Intelligence Agency following an intelligence assessment of the U.S. attacks on Iran that was not on the same political page as the White House.
- Censoring history and art: In a move that rejects artistic freedom and fidelity to American history, the administration has demanded the removal of Smithsonian exhibits that fail to meet political criteria.

- Seeking to destroy public media: The administration, with the support of Congress, is seeking to destroy the Corporation for Public Broadcasting and National Public Radio, major sources of information nationwide, all because of hollow claims of bias.
- An unprecedented attack on higher education: The administration has launched an all-out attack on academic freedom, unlawfully stripping universities of research funding in an effort to force them to adhere to political criteria for admissions, campus protest, curricular design and much else.

This is the tip of an iceberg of censorship that should concern this Committee and every American. All of which makes it simply astonishing that U.S. officials not only claim to be free speech warriors, but they are spending their time looking abroad, criticizing European online speech policies, thinking they can be seen as doing so in good faith.

‘Clean up your own house,’ Europeans might retort, ‘even if we might agree that our own house needs a little dusting.’

To be clear, European and British laws on speech are not perfect. I’ve criticized them in the past, in direct communications and before the United Nations.

Still, the European Union’s Digital Services Act (DSA) and the United Kingdom’s Online Safety Act (OSA) respond to public policy problems most of you, on both sides of the aisle, find serious but have yet to address: the enormous power of a small number of huge technology companies over our information environments. Why should a handful of billionaires from the Bay Area have so much control over speech? And why is this Committee, which claims to be concerned about the rights of Americans to speak freely, not addressing that foundational issue?

The EU answered the question of massive platform power over speech not by claiming new powers to take down content or accounts. Indeed, it is entirely incorrect to say that the EU’s signature digital regulations constitute censorship. Instead, the DSA preserves long-established legal regimes governing online content. It did not establish new rules for speech; it adopted new rules to empower users, including by requiring notice and an opportunity to appeal content moderation decisions. It answered the challenge of unaccountable platform power – one that the U.S. Congress has done virtually nothing to address – by demanding that platforms be transparent about their systems, that they assess the risks they pose to democratic societies, and then mitigate them. Such risks include illegal terrorist content and child abuse material, and difficult-to-define challenges such as interference with elections and public debate, and harassment that can lead to gender-based violence. The DSA is aimed at giving the public the tools to know, and to do something about, what are widely seen as online harms. Again, it provides no *new* rules permitting demands to censor content.

Across the English Channel, the United Kingdom’s Online Safety Act was formulated through a years-long democratic process, adopted and championed by members of the Labour and Conservatives parties, and is widely popular as a response to the perception of unaccountable power of Big Tech. It has elements that concern me and many free speech and privacy experts in the UK, particularly those dealing with age verification and young people’s access to information online, which impact all people in the UK. Yet whatever faults it might have, it, like any other British law, is subject to legal challenge and review by courts for any alleged violation of fundamental rights, just as we would expect of any democracy. The Online

Safety Act has safety valves for democratic accountability and control to protect users' rights, which can hardly be characterized as censorship.

I find it troubling that in both of these cases, we are only discussing these issues now, in the wake of significant fines to major technology companies coming from the European Union for failure to meet the expectations of lawmakers and the public. This hearing addresses mainly harms to *companies*, not to users in Europe and certainly not to the American people. The fact is that both the DSA and the OSA have been discussed for years. The DSA alone had thousands of public comments, more than 2300 amendments submitted by members of every political party. But now, after fines, after tech leaders befriend the White House and donate to inauguration ceremonies and balls, this is when these issues get the attention of this body. It is disingenuous at best. The fact is that US companies do not have the right to operate beyond the law in other countries, something they themselves often acknowledge.

As I conclude, I would encourage Members of this Committee to think about two things. First, instead of merely criticizing the sovereign right of allied democracies to figure out how to address what they see as serious harms caused by Big Tech and the broader digital age, I would ask that you consider the kind of content online that you and your constituents find problematic or concerning. Maybe it's antisemitic content. Maybe it is misogynistic content. Maybe it is content glorifying terrorism or inciting violence against communities, or against journalists. Or content encouraging children to harm themselves or, God forbid, commit suicide. Or content of the ugliest, most heinous kind, involving abuse of children or violence of other sorts. There is a troublingly long list that we could brainstorm. *How do you propose to address those harms?* How do you propose to do that in a way that is consistent with our free speech values and obligations? I strongly doubt that your response would be that each and every one of these harms is the price of free speech, so what would you have the platforms do? Assess the risk of amplification and encourage mitigation, as the DSA requires? Or just do nothing, because free speech?

These are not simple questions with easy answers. Through impressively democratic processes, the EU and the UK have made their initial choices. Do I agree with them all? Maybe not. Were they done in good faith? I believe so. Do they undermine the foundations of democratic life? Not at all. Do they constitute a new form of censoring Americans? It's not even a serious proposition.

Second, I urge this Committee to consider the real threat to Americans' freedom of expression, the one here at home. I have noted a handful of areas where this administration is putting freedom of expression under direct attack. Where is the opposition, let alone outrage, given the attack not only on speakers – journalists, public media, professors, students, whistleblowers, civil servants – but on every American's right of access to information about the issues important to our democracy and to our public's health? That, I would respectfully submit, is the real threat to American speech and innovation, and I look forward to helping this Committee, in any way you see fit, work to address it.

Thank you.