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**Can't Run; Can't Hide: Extraterritorial  
European Speech Codes**

Before the  
**United States House of Representatives Committee on the  
Judiciary**

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Hearing on Europe's Threat to American Speech and Innovation:  
Part II

## Introduction<sup>1</sup>

In September of 2025, on the last occasion this Committee held a hearing on Europe’s threat to American speech and innovation, it was warned that the European Union’s Digital Services Act (“DSA”) would be used to target and punish American companies as part of the European Commission’s project to build a system of worldwide narrative control via online censorship.

As anticipated, less than two months after this Committee’s last hearing on this subject, the European Commission fined X Corporation (“X”) €120 million (approximately \$140 million) for alleged violations of the DSA.

While these penalties are the first that the EU has imposed under the provisions of the DSA, be under no illusions, they will not be the last. Indeed, at the time of writing, the EU Commission has announced additional investigations into X.<sup>2</sup>

In imposing this enormous fine, the EU Commission has alleged that X has breached its transparency and user-protection obligations, finding that X used a “deceptive design” for verification as the “blue checkmark” verification badge misleads users by implying authenticated accounts without an appropriate system of identity validation, contrary to Article 25 of the DSA.<sup>3</sup>

Additionally, the EU Commission has found that X failed to make advertising transparent as the platform’s advertising repository lacked required information about content and subject matter, contrary to Article 39 of the DSA.<sup>4</sup> Completing this first round of enforcement action was an allegation that X blocked so-called “accredited researchers” from accessing internal company data, contrary to Article 40 of the DSA.<sup>5</sup>

These egregious fines for alleged breaches of the DSA, imposed a little over two years after the legislation came into force,<sup>6</sup> represent the first wave of enforcement actions in what will be a sustained attack on any company that chooses to uphold free speech on its platform. X may challenge the Commission’s findings against it before the Court of Justice of the European Union.

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<sup>1</sup> This written statement should be read in conjunction with the author’s previous written submission to this Committee in September 2025. *Europe’s Threat to American Speech and Innovation*, HEARING BEFORE THE H. COMM. ON THE JUDICIARY, 119th Cong. (Sept. 3, 2025) (Lorcan Price’s testimony available at <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/price-testimony.pdf>).

<sup>2</sup> See European Commission press release of Jan 25, 2026 on further investigations against X Corp. European Commission, *Commission Investigates Grok and X’s Recommender Systems Under the Digital Services Act*, Press Release IP 26 / 203 (Jan. 25, 2026), [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_26\\_203](https://ec.europa.eu/commission/presscorner/detail/en/ip_26_203) [hereinafter European Commission, Further Investigations Against X Corp.].

<sup>3</sup> See European Commission press release of Dec 4, 2025 on fine against X Corp. European Commission, *Commission fines X €120 million under the Digital Services Act*, Press Release IP 25 / 2934 (Dec. 4, 2025), [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_25\\_2934](https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2934).

<sup>4</sup> See *id.*

<sup>5</sup> See *id.*

<sup>6</sup> The Digital Services Act (DSA) entered into force on November 16, 2022. It began applying to Very Large Online Platforms and Search Engines in August 2023.

Furthermore, this latest action by the EU Commission against X is part of a broader campaign of fines and investigations under both the DSA and the Digital Markets Act (“DMA”) which will lead to ongoing financial penalties for U.S. companies.

While the DSA is the most significant censorship development in recent years, it is only part of a darkening picture for freedom of expression in Europe. The DSA is designed to compel U.S. companies, which are the majority of the “Very Large Online Platforms” (VLOPs) regulated under the DSA, to become little more than a censorship squad and play a role in the growing suppression of free speech across Europe.<sup>7</sup> The DSA, such as in Articles 34 & 35,<sup>8</sup> requires companies to address “systemic risks” and “illegal content” across their platforms, and thus imposes de facto censorship on U.S. companies by forcing them to adopt stringent, EU-mandated content moderation standards to avoid massive fines. Because major platforms often maintain uniform global policies, they may censor speech considered legal in the U.S. to comply with strict EU member state definitions of illegal content, hate speech, and disinformation.

The most shocking aspect of the EU’s censorship regime is the sheer extent of European hate speech laws, which censor legitimate political speech and quash dissent. Countries such as France, Germany, and the United Kingdom are engaged in a legal crackdown on speech in Europe, and U.S. companies have been dragooned into this campaign of suppression by legal fiat and regulatory pressure. Article 16 of the DSA prohibits “illegal content” online, thus what is illegal speech in one European Union member state becomes de facto illegal everywhere under the DSA.<sup>9</sup>

Vice President Vance accurately described a situation in Europe where “commissars” suppressing free speech were engaging in “civilizational suicide,”<sup>10</sup> a point noted again in the new United States National Security Strategy which states that Europe is facing “civilizational erasure” within 20 years.<sup>11</sup> The U.S. Administration correctly blames this crisis on the activities of the European Union, which undermine “political liberty and sovereignty,” create “censorship of free speech and suppression of political opposition,” resulting in “cratering birth rates, and loss of national identities.”<sup>12</sup>

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<sup>7</sup> See European Commission enforcement framework under the Digital Services Act, *Supervision of the designated very large online platforms and search engines under DSA*, (Jan. 26, 2026), <https://digital-strategy.ec.europa.eu/en/policies/list-designated-vlops-and-vloses>.

<sup>8</sup> See DSA Articles 34, 35. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act). Available at: <https://eur-lex.europa.eu/eli/reg/2022/2065/oj/eng> [hereinafter DSA].

<sup>9</sup> *Id.*

<sup>10</sup> Andrew Buncombe, *JD Vance said Europe ‘was engaging in civilisational suicide’*, THE TELEGRAPH (JULY 30, 2025) <https://www.telegraph.co.uk/us/news/2025/07/30/jd-vance-europe-is-engaging-in-civilisational-suicide/>.

<sup>11</sup> *National Security Strategy of the United States of America* at 25, THE WHITE HOUSE (Nov. 2025) <https://www.whitehouse.gov/wp-content/uploads/2025/12/2025-National-Security-Strategy.pdf>.

<sup>12</sup> *Id.*

## I. Incoming Enforcement – The Next Round of Punishment

The manner in which the European Commission has recently dealt with X offers a clear and unambiguous view of how the Commission proposes to deal with companies that do not comply with their onerous demands in relation to censorship of speech.

This Committee’s Interim Staff Report has already catalogued<sup>13</sup> how the Commission targeted X and its owner, Elon Musk. European officials quickly singled out X and commenced formal investigations only five months after the DSA came into force.

### A. Punishing Dissent

It is readily apparent that the Commission’s investigations and fines are undoubtedly connected with the fact that X has prioritized free speech on their platform. The message is clear to other platforms that choose to maximize free speech: disobey the EU and you will suffer similar consequences.

As of December 2025, X was reported to be the most downloaded news app across various European countries on the Apple App Store,<sup>14</sup> demonstrating that a pro-free speech approach is not only good for democracy but also good for business. Yet, the evident popularity of a free speech platform as a source of news and venue for public discussion and debate is precisely what the EU has set out to undermine. The EU’s obsession with harmonization and regulation is at odds with the values of free speech and a free press. Those are supposed to be universal human freedoms as well as European values, in theory protected by Article 11 of the Charter of Fundamental Rights of the European Union and Article 10 of the European Convention on Human Rights (“ECHR”). In practice, the DSA undermines the right to express opinions, the freedom to receive and impart information, and the respect for media freedom and pluralism inherent in European human rights law.

The next phase of the EU Commission’s campaign against free speech online will most likely focus on the “systemic risks” provisions of the DSA. Pursuant to Article 34(1) of the DSA, VLOPs are required to identify, analyze, and assess “any systemic risks in the Union stemming from the design or functioning of their service and its related systems,” or “from the use made of their services.”<sup>15</sup>

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<sup>13</sup> *The Foreign Censorship Threat: How the European Union’s Digital Services Act Compels Global Censorship and Infringes on American Free Speech*, INTERIM STAFF REPORT OF THE COMMITTEE ON THE JUDICIARY OF THE U.S. HOUSE OF REPRESENTATIVES, July 25, 2025. p.16 *et seq.*, [https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/2025-07/DSA\\_Report%26Appendix%2807.25.25%29.pdf](https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/2025-07/DSA_Report%26Appendix%2807.25.25%29.pdf).

<sup>14</sup> Shaurya Shubham, ‘*X is now number one news source in every EU country*’, MONEY CONTROL (Dec. 8, 2025) <https://www.moneycontrol.com/europe/?url=https://www.moneycontrol.com/technology/elon-musk-says-x-is-now-number-one-news-source-in-every-eu-country-calls-eu-rule-of-the-unelected-bureaucrat-article-13714808.html>

<sup>15</sup> DSA Art. 34(1). *See also* Articles 34(2) and 35(1) for further details on this system.

As it relates to free speech, this means that VLOPs and Very Large Online Search Engines (VLOSEs)<sup>16</sup> must assess these “systemic risks” stemming from the “design or functioning of their systems,” including risks related to (i) the “dissemination of illegal content through their services;” (ii) the “exercise of fundamental rights,” namely “human dignity,” “respect for private and family life,” and “freedom of expression and information;” (iii) “negative effects on civic discourse and electoral processes, and public security;” and (iv) “negative effects in relation to gender-based violence [and] the protection of public health and minors . . . .”<sup>17</sup>

The DSA also requires companies to “put in place reasonable, proportionate and effective mitigation measures. . . with particular consideration to the impacts of such measures on fundamental rights.”<sup>18</sup> Such measures may include, “adapting content moderation processes, including the speed and quality of processing notices related to specific types of illegal content” and at times “the expeditious removal of, or the disabling of access to,” certain content, “in particular in respect of illegal hate speech or cyber violence, as well as adapting any relevant decision-making processes.”<sup>19</sup>

## **B. More Punishment for Free Speech Platforms**

On January 25th, the European Commission launched an additional formal investigation against X under the DSA and extended its ongoing investigation launched in December 2023 into X’s compliance with its “systemic risk” obligations.<sup>20</sup> The Commission announced that it will “now carry out an in-depth investigation as a matter of priority.”<sup>21</sup>

As noted above, the “systemic risk” that X must address across its platform encompasses “illegal content,” which is defined as posting or permitting “any information that . . . is not in compliance with [European Union] law or the law of any Member State.”<sup>22</sup> This opens the prospect of worldwide enforcement of draconian European hate speech laws, such as the law against insulting public figures in Germany. That German law was used in 2025 to sentence a man to a seven-month suspended prison sentence for spreading a fake meme of German Interior Minister Nancy Faeser holding a sign saying “I hate freedom of expression” on social networks.<sup>23</sup>

Such absurd European laws abound. The effect of the DSA is to require U.S. companies to apply the lowest common European legal denominator to police memes, jokes, and controversial commentary across the globe. For companies with 6% of global revenue at stake, complying with such draconian speech laws is not truly voluntary. Now that the Commission has begun enforcing

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<sup>16</sup> Currently, the two VLOSEs are Google and Microsoft’s Bing.

<sup>17</sup> DSA Art. 34 (emphasis added).

<sup>18</sup> DSA Art. 35.

<sup>19</sup> *Id.*

<sup>20</sup> *See supra* note 2, European Commission, Further Investigations Against X Corp.

<sup>21</sup> *Id.*

<sup>22</sup> DSA Art. 3(h).

<sup>23</sup> Perkin Amalara, *German right-wing journalist is given seven-month sentence for meme mocking government’s ‘hatred’ of free speech*, DAILY MAIL (April 10, 2025) <https://www.dailymail.co.uk/news/article-14594629/German-right-wing-journalist-given-seven-month-sentence-meme-mocking-governments-hatred-free-speech.html>.

the DSA with zeal, American companies will have to take notice of the legal attack on X—and thus be compelled to stop innovating and start policing speech.

The Commission is currently subjecting X to a legal campaign of evidence gathering, peppering it with additional requests for information, staff interviews, systems inspections, and a constant stream of threats involving interim measures “in the absence of meaningful adjustments” to X’s terms of service.<sup>24</sup>

Remarkably, this ongoing harassment of X can continue without any real end in sight, as the Commission itself states that the “DSA does not set any legal deadline for bringing formal proceedings to an end.”<sup>25</sup> The Commission itself has stated that the “duration of an in-depth investigation depends on a number of factors, including . . . the extent to which the company concerned cooperate[d] with the Commission.”<sup>26</sup> In other words, drop your commitment to free speech and the harassment will end.

This is the kind of treatment that the unelected European Commission is now poised to impose on any American company that dares to allow criticism of politicians, criticism of immigration policies, criticism of gender ideology, and any other departure from the restrictive legal orthodoxy of the European speech laws. In an Orwellian use of language, the DSA is the primary vehicle for this sweeping censorship in the name of “public safety” and “democracy.” The Commission has designed a complicated system of reporting obligations and technical design requirements that, in effect, allow the Commission to pull the strings of censorship, making private enterprises complicit and forcing them to comply with the threat of draconian fines.<sup>27</sup>

We can confidently predict that the Commission’s next steps will be to announce another round of massive fines targeted at X for allowing “illegal content.” This will continue until it succeeds in forcing X to ban free speech or financially crippling the company.

### C. The Cost of the EU Enforcement Apparatus

The cumulative effect of over regulation by EU agencies and laws constitutes a structural barrier for American companies. In the last decade, we have seen the rise of significant quantities of EU legislation regulating online business activity.<sup>28</sup> The annual costs of compliance with these legal provisions that target online digital service providers have increased massively since 2015. The

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<sup>24</sup> *Commission opens formal proceedings against X under the Digital Services Act*, (Dec 17, 2023) [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_6709](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6709); see also Bruno Waterfield, *Elon Musk faces EU investigation over Grok sexual deepfakes*, THE TIMES (Jan. 26, 2026) <https://www.thetimes.com/business/companies-markets/article/elon-musk-grok-ai-eu-investigation-deepfake-3b22m3rfc>.

<sup>25</sup> *Commission opens formal proceedings against X under the Digital Services Act*, (Dec 17, 2023) [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_6709](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6709).

<sup>26</sup> *Id.*

<sup>27</sup> ADF International, *Unpacking the EU Digital Services Act*, ADF INT’L (Apr. 17, 2025), <https://adfinternational.org/article/digital-services-act-unpacked>.

<sup>28</sup> Such as the E-commerce Directive e-Privacy Directive, General Data Protection Regulation (GDPR), Audio-Visual Media Directive (AVMD), Cybersecurity Act, Copyright Directive, Platform to Business Regulation (P2B), Digital Markets Act (DMA), Digital Services Act (DSA), Data Act, AI Act, among others.

Computer & Communications Industry Association (CCIA) estimated that in 2024 alone the average annual cost of complying with the regulatory provisions of the EU digital regulations for large U.S. tech company is approximately \$430 million annually *per company*.<sup>29</sup>

The same study estimated that it costs a relevant company an estimated \$150 million each year to comply with the DSA.<sup>30</sup> It should be noted again that the administrative and compliance requirements fall primarily on U.S. companies.

Recently on Truth Social, President Trump shared a chart showing that in 2024, the EU collected more revenue from fines imposed on U.S. technology companies than from taxing all European public tech firms combined. U.S. firms were hit with roughly €3.8 billion in penalties, with major fines against Apple, Meta, LinkedIn, and Uber all contributing to the EU's bottom line. In his post, President Trump correctly described this situation as "very unfair for American tech companies and the U.S. as a whole."<sup>31</sup>

The 2024 bonanza of fines imposed on U.S. companies' global, not just European, revenue represented a sum (€3.8 billion) exceeding 10% of some member states' contributions.<sup>32</sup> This annual windfall is now tantamount to a line item in the EU budget. The sum will only continue to grow as EU laws expand.

Notably, the €3.8 billion in fines from 2024 is higher than the roughly €3.2 billion in income tax paid by all publicly listed European internet companies, including SAP, Spotify, and Zalando.<sup>33</sup> The magnitude of fines paid by American tech firms highlights why reform is urgently needed, as the EU is intent on building a regulatory environment hostile to the companies that drive technological progress.<sup>34</sup>

#### **D. The DSA Enforcement Process and Punishment**

As alluded to above, the investigatory powers of the European Commission (taken together with the procedural requirements of the DSA) create powerful incentives for service providers to comply with the censorship demands of the EU. The ever-present threat of the DSA's enforcement regime is no longer a theoretical concern in light of the penalization of X in recent months. The

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<sup>29</sup> See Carl Schramm, *Costs to U.S. Companies from EU Digital Services Regulation* at 8, COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (July 25, 2025), <https://ccianet.org/research/reports/costs-to-us-companies-from-eu-digital-services-regulation/>.

<sup>30</sup> *Id.* at 9.

<sup>31</sup> See: @realDonaldTrump, Truth Social Post (Jan. 15, 2026 at 10:55 am) <https://truthsocial.com/@realDonaldTrump/posts/115899928012071589>.

<sup>32</sup> Daniel Castro, *Europe's GDPR Fines Against US Firms Are Unfair and Disproportionate*, CENTER FOR DATA INNOVATION (April 17, 2025), <https://datainnovation.org/2025/04/europes-gdpr-fines-against-us-firms-are-unfair-and-disproportionate/>.

<sup>33</sup> Aiden Wegener, *Brussels Exploits American Tech Companies by Enforcing Heavy Fines for Regulatory Non-Compliance* (Jan. 15, 2026) [https://atr.org/brussels-exploits-american-tech-companies-by-enforcing-heavy-fines-for-regulatory-non-compliance/#:~:text=In%202024%2C%20U.S.%20tech%20companies,and%20Uber%20\(%E2%82%AC290M\)](https://atr.org/brussels-exploits-american-tech-companies-by-enforcing-heavy-fines-for-regulatory-non-compliance/#:~:text=In%202024%2C%20U.S.%20tech%20companies,and%20Uber%20(%E2%82%AC290M)).

<sup>34</sup> *Id.*

manner in which the Commission can expand and add investigations on a whim, and often in response to political pressure, means that when an investigatory proceeding is initiated, the Commission (and, in parallel, national-level regulators) can engage in almost limitless invasive actions against target companies. If a DSA violation is found, or the service provider is not sufficiently responsive, the DSA allows the Commission and its member states to discipline the service provider with massive fines, exclusion from the EU market, and even criminal sanctions.

As can be seen in the ongoing series of investigations against X, the DSA permits the Commission to send VLOPs and VLOSEs the equivalent of a subpoena, conduct interviews, and inspect the service provider's premises. The enforcement action against X under Article 39 and Article 40 of the DSA starkly illustrates the Commission's power. It can require the service provider to document and explain their internal systems, including sensitive commercial information like algorithms, and even seal the premises of the VLOP or VLOSE.<sup>35</sup>

In parallel with the proceedings taken by the Commission from its HQ in Brussels, companies may also be subject to proceedings by national-level regulators, called *Digital Services Coordinators*. That's because the DSA permits each EU member state to implement its own rules and procedures for investigating and imposing penalties for infringements. An EU member state's Digital Services Coordinator may enforce the DSA against service providers in that state.

This is happening to X. The European Commission has been in ongoing close collaboration with Coimisiún na Meán, the Irish Digital Services Coordinator.<sup>36</sup> Coimisiún na Meán is now engaged in its own legal proceedings against X under Irish law—while it is simultaneously cooperating with X pursuant to Article 66(3), as the national Digital Services Coordinator in the country of establishment in the EU.<sup>37</sup>

Thus, the nightmare scenario X currently finds itself in includes active parallel investigations by two regulatory bodies, under differing procedures and in different legal contexts, both using sweeping powers to scrutinize the company and levy enormous fines against it. This fate will befall any company that refuses to bend the knee to the Commission's demands.

While it is readily foreseeable that X faces additional significant fines, the European Commission retains the ultimate power to exclude the company from the EU market entirely. In that scenario the European Commission, acting through the Irish regulator, Coimisiún na Meán, may request the Irish High Court, as the judicial authority in the EU member state where the service provider resides, to restrict access to the service provider or seek assistance from other intermediaries, such as ISPs, to prevent access to the service provider. This is the most drastic option if the EU is unable to break a company's resolve through ongoing investigations, enforcement actions, and even fines.

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<sup>35</sup> The two VLOSEs are both American companies (Google and Bing), and most VLOPs are American. For the updated list, *see supra*, note 7.

<sup>36</sup> *See supra* note 2, European Commission, Further Investigations Against X Corp.

<sup>37</sup> *Id.*

While we have not reached that point in the ongoing campaign against X, the prospect of X having to exit the market due to the Commission’s predatory practices is not entirely unrealistic.

As X is established in Ireland, it may appeal to the Irish Courts for judicial review of the actions of the domestic regulator, but not of the European Commission, as the DSA prohibits EU member state courts from contradicting the Commission.<sup>38</sup> Instead, appeals must go to the Court of Justice for the European Union, a complex and expensive proposition that generally takes at least 1-2 years to reach a decision. This is the only route now open to X to challenge the Commission’s recent enforcement decisions.

## **II. Extraterritoriality: The Global “Brussels Effect” in Action**

The December 2025 announcement of the European Commission’s first ever fine under the DSA against X demonstrated that the global reach of the DSA was no longer just theoretical. We now see the Commission’s global censorship tool in action.

### **A. Data Access and Sovereignty**

The Commission ruled that X breached its obligations to make advertising transparent as the platform’s advertising repository allegedly lacked required information about the content and subject matter of advertisers, in breach of Article 39 of the DSA.<sup>39</sup> Closely related to the requirement to keep advertiser data in an accessible manner is the requirement under Article 40 of the DSA that X allow “accredited researchers” to access internal company data.<sup>40</sup> On this aspect, the Commission found that X was in breach of its obligations under the DSA.<sup>41</sup>

The implications of the Commission’s findings are clear: advertiser data and other metadata collected by the company across its global operations must be made accessible to “researchers,” meaning that Americans’ online information will be accessible to the EU’s “accredited researchers.” The identity of the “accredited researchers” is left to the national Digital Services Coordinator; it can thus be inconsistent across Europe. Platforms will be forced to respond to numerous, vaguely defined, or overly broad research requests, and refusal to do so invokes the enormous penalties under the law. The insistence on enforcing the Article 40 information-sharing element of the DSA as the first part of its enforcement campaign against X shows that the Commission is not concerned about extraterritorial effect. The sheer disproportionality of a €35 million fine for a breach of Article 40 shows how determined the Commission is to force U.S. companies to share information about U.S. users with “researchers” in a manner that is a clear attack on U.S. sovereignty.

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<sup>38</sup> DSA Art. 82.

<sup>39</sup> See *Commission fines X €120 million under the Digital Services Act*, EU COMMISSION, (Dec. 4, 2025) [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_25\\_2934](https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2934).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

Another extraterritorial aspect of the DSA is what has been termed the due diligence obligations for a transparent and safe online environment.<sup>42</sup> Obligations therein apply to all providers, who are required to include in their terms and conditions “information on any policies, procedures, measures and tools used for the purpose of content moderation,” which must be set out in “user-friendly and unambiguous language” per Article 14.<sup>43</sup> Notably, this is not restricted to terms and conditions for only European users. And when read in conjunction with Article 16 (paragraphs 1 and 5) the platforms are required to have a mechanism allowing for allegedly “illegal content” to be brought to their attention by users who, subsequently, “without undue delay,” must be notified of the providers’ decision regarding this content.<sup>44</sup> This means that European users can complain about content uploaded by U.S. users in breach of global terms and conditions, and that the companies are obliged to investigate these complaints.

Thus, by its very nature, the DSA is extraterritorial, as it, by design, imposes on U.S. companies an obligation to assess U.S. speech and divulge information about U.S. users. Further, it covers platforms used by Europeans, regardless of where the companies are based.<sup>45</sup>

It is now undeniable that the reach of the DSA is not just a European problem. The forthcoming enforcement of the “illegal content” and “systemic risk” provisions of the DSA against X will further expand the DSA’s reach across all aspects of online speech. The Commission has fired the first shots in a global struggle over whether people can speak the truth and whether American companies including Google, Bing, and Meta are free to continue to drive Internet innovation or instead be forced to help Europe silence speech worldwide.

## **B. The European Lowest Common Denominator**

The DSA prohibits any speech that violates the laws of the EU or any EU member state. Many of these laws rely on the very sort of vague and arbitrary language that is so offensive to the American Constitution and tradition. By all objective measures, major European countries have in recent years abandoned any commitment to free speech.

Germany, France, and every other European country have all adopted criminal speech offences in vague, overboard, and ambiguously worded laws that are used to prosecute legitimate political speech. At times in a democracy, citizens will use robust, rude, irreverent, and sometimes offensive speech to express themselves on matters of public importance. Tolerating such robust speech is the *sine qua non* of a functioning democracy. The authorities must uphold the right of the citizenry to share not only information or ideas that are favorably received or regarded as inoffensive, but also opinions that “offend, shock or disturb the State or any sector of the population.”<sup>46</sup>

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<sup>42</sup> Wilman, Folkert, Saulius Lukas Kalėda, and Paul-John Loewenthal. *The EU Digital Services Act*. Oxford: Oxford University Press, 2024. pp108-109 et seq.

<sup>43</sup> DSA Art. 14.

<sup>44</sup> DSA Art. 16(1).

<sup>45</sup> DSA Art. 2(1).

<sup>46</sup> *Handyside v. The United Kingdom*, App No 5493/72, (1976) 7 December 1976, European Court of Human Rights (ECHR).

Statistics and case studies clearly demonstrate that governments in the United Kingdom, France, and Germany are abusing state police resources to police speech and intimidate their population. The available figures on the number of arrests for speech offences are considerable and dwarf those of authoritarian states.

On April 4, 2025, U.K. media reported that 30 arrests per day are made under Section 127 of the Communications Act and Section 1 of the Malicious Communications Act.<sup>47</sup> There were 12,437 arrests under the Communications Act in 2022 and 12,183 arrests in 2023.<sup>48</sup> Only 37 out of 45 police forces responded to requests for information, meaning the actual figure is likely higher.<sup>49</sup> The arrests resulted in 1,008 convictions in 2022 and 1,119 convictions in 2023.<sup>50</sup> No data is given for the number of prosecutions.<sup>51</sup>

By comparison, the Net Freedom Project has recorded 882 criminal prosecutions in Russia in 2023 for online publications, posts, and reposts.<sup>52</sup> Of the cases, 150 led to imprisonment.<sup>53</sup> Russia's population is roughly twice that of the United Kingdom, meaning the UK prosecutes under its censorship laws at roughly twice the rate per capita as *Russia*.

The United Kingdom's speech laws are objectively ambiguous and capricious by the standards of international law. Data released in Parliament by Lord Hermer, the current Attorney General of the UK, records prosecutions under sections of the Public Order Act 1986 each year from 2019 to 2025. The figures show 10,490 criminal prosecutions for speech related offences in the year 2019-2020, rising to 11,876 criminal prosecutions in the year 2024-2025.<sup>54</sup>

Europe is rapidly moving towards a form of insidious authoritarianism, and the threshold for state-imposed punitive measures is among the lowest in the world. For example, on June 25, 2025, in

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<sup>47</sup> Charlie Parker, Yennah Smart, George Willoughby, *Police make 30 arrests a day for offensive online messages*, THE TIMES (April 4, 2025) <[www.thetimes.com/uk/crime/article/police-make-30-arrests-a-day-for-offensive-online-messages-zbv886tqf?gaa\\_at=eafs&gaa\\_n=AWETSqcmTEo6SC\\_4Wu3inMevIKVxt\\_C2IAhoKiDbmAvv74ixRJ\\_8JQ4qR0-L&gaa\\_ts=69729f86&gaa\\_sig=wTebQVSugHmVawSPlejRCsGyXVqYXTOaltB9cq9Tmr9TA2zh6dLrTmLcmM6ROQ-wp5vWZKwAlt-X-kiNNIuDPA%3D%3D](http://www.thetimes.com/uk/crime/article/police-make-30-arrests-a-day-for-offensive-online-messages-zbv886tqf?gaa_at=eafs&gaa_n=AWETSqcmTEo6SC_4Wu3inMevIKVxt_C2IAhoKiDbmAvv74ixRJ_8JQ4qR0-L&gaa_ts=69729f86&gaa_sig=wTebQVSugHmVawSPlejRCsGyXVqYXTOaltB9cq9Tmr9TA2zh6dLrTmLcmM6ROQ-wp5vWZKwAlt-X-kiNNIuDPA%3D%3D)> Accessed Jan. 22, 2026.

<sup>48</sup> *Id.*; see also House of Lords Question for Attorney General, tabled on 11 September 2025, UIN HL10453, </questions-statements.parliament.uk/written-questions/detail/2025-09-11/HL10453/> Accessed Jan. 22, 2026.

<sup>49</sup> *Supra* note 47.

<sup>50</sup> House of Lords Question for Attorney General, tabled on 11 September 2025, UIN HL10453, </questions-statements.parliament.uk/written-questions/detail/2025-09-11/HL10453/> Accessed Jan. 22, 2026.

<sup>51</sup> *Id.*

<sup>52</sup> Sonja Tutty, *Fact check: International data on 'online comments' arrests not comparable*, THE INDEPENDENT (Jan. 14, 2026) <[www.independent.co.uk/news/uk/home-news/wales-england-germany-freedom-house-ministry-of-public-security-b2900316.html](http://www.independent.co.uk/news/uk/home-news/wales-england-germany-freedom-house-ministry-of-public-security-b2900316.html)> Accessed Jan. 22, 2026.

<sup>53</sup> *Id.*

<sup>54</sup> HL Question for Attorney General, tabled on 11 September 2025, UIN HL10453, </questions-statements.parliament.uk/written-questions/detail/2025-09-11/HL10453/> Accessed Jan. 22, 2026.

what it called a “day of action against hate-posts,” the German Federal Criminal Police Office raided at least 65 homes for cases of “hate speech” or criminal insults to politicians.<sup>55</sup>

And in Finland, Dr. Päivi Räsänen, who is a member of the Finnish parliament, has faced trial three times for tweeting a Bible verse, peacefully arguing that marriage should be between one man and one woman.<sup>56</sup>

Supporters of speech regulation online in Europe demand that “what is illegal offline should be illegal online.”<sup>57</sup> Appendix A sets out examples of the staggering extent to which European hate speech laws censor and oppress speech “offline.” Therefore, the prospect of a global standard of content moderation based on European law should terrify any defender of free speech.

The standardization and harmonization created by the DSA means that online speech is limited by the most restrictive law—the lowest common denominator—of any EU member state. This standard is being forced on U.S. companies by the EU’s censorship regime. The ongoing investigations and legal proceedings against X are designed to force a popular U.S. company to become a censor for, among others, the German state via its proxy the EU.

### **III. The United Kingdom Regulator Ofcom Flexing Its Power**

Not to be outdone by the European Commission, the authorities in the United Kingdom have decided to begin their own investigations of X for alleged breaches of the Online Safety Act of 2023 (OSA) by the domestic regulator, the Office for Communications (Ofcom).

Thus, X is now facing multiple investigations by European regulators, all with the possibility of additional crippling fines. In the UK context, if X is found to have broken the law, Ofcom can potentially impose a fine of up to 10% of X’s worldwide revenue or £18 million, whichever is greater.<sup>58</sup>

In relation to the basis for the current Ofcom investigation, X has stated that “[a]nyone using or prompting Grok to make illegal content will suffer the same consequences as if they upload illegal content.”<sup>59</sup>

However, it is notable that other providers of generative AI products<sup>60</sup> have not been subjected to the same level of public criticism and official investigation. One can speculate that the speedy

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<sup>55</sup> O. Moodey, *Raid on Germany’s ‘digital arsonists’ feeds row over free speech*, THE TIMES (June 25 2025) < [https://www.thetimes.com/world/europe/article/raid-on-germanys-digital-arsonists-feeds-row-over-free-speech-pq6dxlkxq?gaa\\_at=eafs](https://www.thetimes.com/world/europe/article/raid-on-germanys-digital-arsonists-feeds-row-over-free-speech-pq6dxlkxq?gaa_at=eafs) >.

<sup>56</sup> *Bible-tweet Case Reaches Final High-Stakes Battle at Finnish Supreme Court*, ADF INTERNATIONAL, <https://adfinternational.org/campaign/free-speech-on-trial>.

<sup>57</sup> *Id.*

<sup>58</sup> Schedule 12, Section 4, Online Safety Act 2023 (UK). Available at ; <https://www.legislation.gov.uk/ukpga/2023/50>.

<sup>59</sup> Laura Cress, *Ofcome investigates Elon Musk’s X over Grok AI sexual deepfakes*, BBC (Jan. 12, 2026), <https://www.bbc.com/news/articles/cwy875j28k0o>.

<sup>60</sup> Such as OpenAI, known for ChatGPT and DALL-E, Google known for the Gemini and Imagen models, and Anthropic, the creator of the Claude family of AI models.

opening of an investigation into X is not entirely dissociated from the extensive criticism of the company by various political figures in the UK for its failure to censor speech.

The current investigation into X by Ofcom is a timely reminder that the OSA poses many of the same threats to free speech as the DSA. While framed as a safeguard against harmful online content, this law, when combined with existing UK communications and public order statutes, poses serious risks to open debate, particularly around controversial political and religious issues.

UK criminal speech laws have been rightly criticized as punitive.<sup>61</sup> In that context, using the mantra of “what is illegal offline should be illegal online,” the OSA imposes restrictive UK laws, such as the Public Order Act 1986, on online speech. On that basis, the OSA requires internet service providers to remove content that falls within the scope of legitimate political speech. Ofcom has the power under the OSA to issue fines to internet providers that fail to comply with the Act’s specifications for restricting and moderating content.

The most concerning provisions are the requirements to remove “illegal” speech content. In particular, Section 10 of the Act requires platforms to take “proportionate measures” to prevent adults from encountering illegal content, with “priority illegal content” defined in Schedule 7.<sup>62</sup> This includes offences from the Public Order Act 1986, many of which are ambiguously worded. Because of the vague definitions, companies are likely to err on the side of over-censorship, blocking content even when its legality is unclear. This could mean that UK residents may be restricted from viewing political content created abroad, including from the United States.

A characteristically vague provision is found in Section 179 of the OSA, which criminalizes sending a message that conveys information the sender knows to be false, with the intent of causing “non-trivial psychological harm” to an audience, and without a “reasonable excuse.” This provision effectively criminalizes “disinformation,” a concept that is open to broad interpretation. Notably, Section 180 exempts “recognized news organizations” from liability,<sup>63</sup> raising questions as to why large media outlets with greater reach are immune, while ordinary citizens face criminal penalties.

Concerns about the OSA’s overreach are not merely theoretical. In 2024, Dmitri Stoica was sentenced to three months in prison after creating a satirical video claiming he was being chased by rioters during the August 2024 riots.<sup>64</sup> This case shows how the OSA is being abused to suppress satire and political speech, rather than narrowly targeting genuinely harmful falsehoods.

The OSA poses a major threat to free speech online. And as shown by the recent investigation of X, Ofcom is prepared to use its extensive censorship powers through vague and broad definitions of illegal or harmful content. By empowering Ofcom to issue sweeping sanctions, the law risks

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<sup>61</sup> See 2024 Country Reports on Human Rights Practices: United Kingdom, U.S. Department of State. Available at: <https://www.state.gov/reports/2024-country-reports-on-human-rights-practices/united-kingdom/>.

<sup>62</sup> Online Safety Act 2023 (UK). See n. 50.

<sup>63</sup> *Id.*

<sup>64</sup> Greig Watson, *TikToker jailed over hoax riot claim*, (Aug. 12, 2024) <https://www.bbc.co.uk/news/articles/czrg70xgm5zo>.

chilling debate and limiting public access to legitimate political and religious discourse. Moreover, just like the DSA, the OSA has extraterritorial effects: it threatens American companies operating in the UK with harsh penalties and compels them to censor speech that would otherwise be protected under the U.S. Constitution. As with the DSA, the Act's censorious demands will spill over and harm American speech.

### **Conclusion**

Last fall, when this Committee met to debate the threat posed by European regulation to American Speech and Innovation, we warned of the coming threat the DSA poses to free speech in the U.S. Unfortunately, that threat of censorship has now become a reality. A U.S. company has been fined €120 million for a series of technical breaches of the DSA. This law threatens sovereignty, the fundamental right to speech, and the ongoing commercial viability of any company that commits itself to free and open expression.

This is only the beginning of a series of actions coordinated across jurisdictions designed to single out, target, and eviscerate a company for maximizing freedom of expression for its users. In doing so, X builds a successful model for others to follow. However, the European Commission's actions show that it will not tolerate a free speech platform operating in the European market.

Rather, the EU wants to transform successful American companies into a free speech Stasi, making those businesses the censorship enforcers for the ruling elite of Europe—a group increasingly afraid of their own people speaking their minds. The fact that the Commission has chosen to make an example of X through a regulatory pincer movement involving the Irish authorities and the Commission itself, shows a determined and coordinated effort to force the U.S. company to bend the knee at the altar of censorship.

Looking at the wider context, it is clear that the cumulative burden of EU regulation on U.S. companies is massive and growing. The EU is now engaging in an annual shakedown of any successful American company that wants to do business in Europe and offer European consumers choice and innovation.

Americans must remain vigilant. They must protect their economic interests and prevent the EU from globalizing its model of conformity and censorship.

## **Appendix A: Examples of European Hate Speech Laws**

This Appendix lists a collection of egregious laws in the United Kingdom, Germany, and France that are applicable under the rubric of “illegal content” as set out in both the Online Safety Act in the UK and the Digital Services Act in the EU.

### **I. United Kingdom**

#### **Public Order Act 2023 section 9**

It is an offence for a person who is within a safe access zone to do an act with the intent of, or reckless as to whether it has the effect of—

- (a) influencing any person’s decision to access, provide or facilitate the provision of abortion services at an abortion clinic[.]

#### **Anti-Social Crime and Behaviour Act 2014 section 59**

A local authority may make a public spaces protection order if satisfied on reasonable grounds that two conditions are met.

(2) The first condition is that—

- (a) activities carried on in a public place within the authority’s area have had a detrimental effect on the quality of life of those in the locality, or
- (b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.

#### **Communications Act Section 127**

A person is guilty of an offence if he sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; . . . or for the purpose of causing annoyance, inconvenience or needless anxiety to another, he persistently makes use of a public electronic communications network.

#### **Malicious Communications Act Section 1**

Any person who sends to another person—

- (a) a letter, electronic communication or article of any description which conveys—
  - (i) a message which is indecent or grossly offensive;

(b) any article or electronic communication which is, in whole or part, of an indecent or grossly offensive nature,

is guilty of an offence if his purpose, or one of his purposes, in sending it is that it should, so far as falling within paragraph (a) or (b) above, cause distress or anxiety to the recipient or to any other person to whom he intends that it or its contents or nature should be communicated.

### **Public Order Act sections 4A and 5**

**Section 4A:** A person is guilty of an offence if, with intent to cause a person harassment, alarm or distress, he—(a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting,

**Section 5:** A person is guilty of an offence if he—(a) uses threatening or abusive words or behaviour, or disorderly behaviour, or (b) displays any writing, sign or other visible representation which is threatening or abusive. . . within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

### **Public Order Act sections 19-29**

**Section 19:** A person who publishes or distributes written material which is threatening, abusive or insulting is guilty of an offence if—

(a) he intends thereby to stir up racial hatred, or

(b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.

**Section 29B:** A person who uses threatening words or behaviour, or displays any written material which is threatening, is guilty of an offence if he intends thereby to stir up religious hatred, or hatred on the grounds of sexual orientation.

### **UK Statistics:**

- On April 4, 2025, information was released in the UK media showing that there are 30 arrests per day under the Communications Act section 127 and the Malicious Communications Act section 1. There were 12,437 arrests under the Communications Act in 2022 and 12,183 arrests in 2023. Only 37 out of 45 police forces responded to requests for information, meaning the actual figure is likely higher.<sup>65</sup>

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<sup>65</sup> *Supra* at note 47.

- The arrests resulted in 1,008 convictions in 2022 and 1,119 convictions in 2023. No data is given for the number of prosecutions.<sup>66</sup>
- Data released on Hansard by Lord Hermer records prosecutions under sections 4A and 5 of the Public Order Act 1986 each year from 2019 to 2025. The figures show a relatively consistent figure of 10,490 in 2019-2020 and 11,879 in 2024-2025 for section 4A. For section 5, the figures record 8,917 prosecutions in 2019-2020 and 7,371 in 2024-2025.<sup>67</sup>
- There were a record 44 prosecutions in 2024 under section 19 of the Public Order Act 1986 (publishing material likely to stir up racial hatred). This is an increase from 22 in 2023. In 2012, 2013, 2014, 2016, and 2020, there were no prosecutions under this law. No data is immediately available for the number of arrests or successful convictions.<sup>68</sup>
- Whilst the number of prosecutions is smaller than the other free speech provisions, the offence carries the considerably more serious penalty of up to 7 years in prison.

## II. Germany

### Criminal Code section 188

If an offence of insult (section 185) is committed publicly, in a meeting or by disseminating content (section 11 (3)) against a person involved in the political life of the nation on account of the position that person holds in public life and if the offence is suited to making that person's public activities substantially more difficult, the penalty is imprisonment for a term not exceeding three years or a fine. The political life of the nation reaches down to the local level.

Malicious gossip (section 186) under the same conditions incurs a penalty of imprisonment for a term of between three months and five years and defamation (section 187) under the same conditions incurs a penalty of imprisonment for a term of between six months and five years.

### Criminal Code section 130

(1) Whosoever, in a manner capable of disturbing the public peace

1. incites hatred against segments of the population or calls for violent or arbitrary measures against them; or

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<sup>66</sup> *Id.*

<sup>67</sup> HL Question for Attorney General, tabled on 11 September 2025, UIN HL10453, </questions-statements.parliament.uk/written-questions/detail/2025-09-11/HL10453/> Accessed Jan. 22, 2026.

<sup>68</sup> Will Bolton, Ollie Corfe, *Social media hate prosecutions hit record high after Connolly conviction*, THE DAILY TELEGRAPH (Aug. 21, 2025) <[www.telegraph.co.uk/news/2025/08/21/social-media-prosecutions-record-high-after-connolly/](http://www.telegraph.co.uk/news/2025/08/21/social-media-prosecutions-record-high-after-connolly/)> Accessed Jan. 22, 2026.

2. assaults the human dignity of others by insulting, maliciously maligning, or defaming segments of the population,

shall be liable to imprisonment from three months to five years.

(2) Whosoever

1. with respect to written materials (section 11(3)) which incite hatred against segments of the population or a national, racial or religious group, or one characterised by its ethnic customs, which call for violent or arbitrary measures against them, or which assault the human dignity of others by insulting, maliciously maligning or defaming segments of the population or a previously indicated group

(a) disseminates such written materials;

(b) publicly displays, posts, presents, or otherwise makes them accessible;

(c) offers, supplies or makes them accessible to a person under eighteen years; or

(d) produces, obtains, supplies, stocks, offers, announces, commends, undertakes to import or export them, in order to use them or copies obtained from them within the meaning of Nos (a) to (c) or facilitate such use by another....

## Statistics

- No official data is available on the number of arrests for speech in Germany. However, in an interview with CBS, state prosecutor Michael Laue stated that his unit of investigators handled 3,500 cases per year. His unit is one of 16 in Germany, on that basis a simple extrapolation could lead to a figure of approximately 56,000 criminal speech cases across Germany. It is unclear whether all of these cases result in arrest, or how many result in prosecutions.<sup>69</sup>
- The CBS interview follows and films nighttime raids on the houses of individuals who are suspected of committing speech crimes. Prosecutor Michael Laue states that the common response of individuals who are raided is shock and that they had no idea they were committing a criminal offence.<sup>70</sup>

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<sup>69</sup> Sharyn Alfonsi, Aliza Chasan, Michael Karzis, Katie Kerbstat, *Germany is prosecuting online trolls. Here's how the country is fighting hate speech on the internet*. CBS NEWS, (Feb. 16, 2025) <[ww.cbsnews.com/news/germany-online-hate-speech-prosecution-60-minutes/](http://www.cbsnews.com/news/germany-online-hate-speech-prosecution-60-minutes/)> Accessed Jan. 22, 2026.

<sup>70</sup> *Id.*

### III. France

#### Article R625-7 of the penal code

‘Non-public incitement to discrimination, hatred or violence against a person or group of persons on the basis of their origin or their membership or non-membership, real or supposed, of a specific ethnic group, nation, alleged race or religion is punishable by the fine provided for class 5 offences.

The same penalty shall be imposed on non-public incitement to hatred or violence against a person or group of persons on the basis of their sex, sexual orientation or gender identity, or disability, as well as non-public provocation, with regard to the same persons, to the discrimination provided for in Articles [225-2](#) and [432-7](#).’

#### Press Freedom Act of the French Republic of 29 July 1881 (as of 2021) (excerpts)

**Article 24** imposes criminal penalties on “those who, by any of the means set out in Article 23\*, incite discrimination, hatred or violence against a person or group of persons on the grounds of their origin or their membership or non-membership of a particular ethnic group, nation, race or religion,” “their sex, their sexual orientation or gender identity or their disability.”

\***Article 23**: “speeches, shouts or threats expressed in public places or meetings, or by writings, printed matter, drawings, engravings, paintings, emblems, images or any other written, spoken or pictorial material, sold or distributed, offered for sale or displayed in public places or meetings, either by posters or notices displayed for public view, or by any means of electronic communication.”

#### Statistics:

- There are few publicly available statistics on arrests, convictions, or prosecutions under speech laws in France.

#### Conclusion:

States are demonstrating considerable use of unnecessary force in the policing of speech matters.

The United Kingdom’s speech laws are objectively ambiguous and capricious by the standards of international law. The UK Law Commission has recommended the repeal of section 127 in 2018, to no avail. The Supreme Court of India struck out a provision almost identical to the Communications Act section 127 after analyzing the concept of “offensiveness” from a case from the UK House of Lords (now Supreme Court) and stating:

If judicially trained minds can come to diametrically opposite conclusions on the same set of facts, it is obvious that expressions such as “grossly offensive” or “menacing” are so vague that there is no manageable standard by which a person can be said to have committed an offence.<sup>71</sup>

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<sup>71</sup> *Singhal v Union of India* [2015] Write Petition (Criminal) No 167 of 2012 at [82].