

MULTILATERALISM AND THE  
DIGITAL ECONOMY:

# Regulating Global Platforms

Prepared by: Armaan Sahgal, Weidi Nie, Madison Hollington,  
& Nathan Gueidon



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# Issue Statement



How can the Department of Canadian Heritage promote a multilateral approach to regulating content on social media platforms?



# Background

What is the current state of affairs of platforms regulation?

- **Industry Self-Regulation**
  - Platforms have asserted the power to self-regulate through their own community guidelines and similar policies.
- **Jurisdiction Based on *Platform* Location**
  - Jurisdictions where major platforms are based have global governance over platforms
- **Jurisdiction Based on *Consumer* Location**
  - Jurisdictions where foreign platforms dominate have attempted to assert consumer-side jurisdiction regardless of platforms' home base



# Key Considerations

What are the main areas to consider when trying to regulate platforms?

## Contrasting Policies

- Often contradiction & rivalry between platforms setting their own rules and governments attempting to enforce laws.
- Further conflicts exist between different governments asserting jurisdiction

## Different Purposes for Regulation

- Intellectual property
- Censorship/free speech
- Privacy
- Offensive material

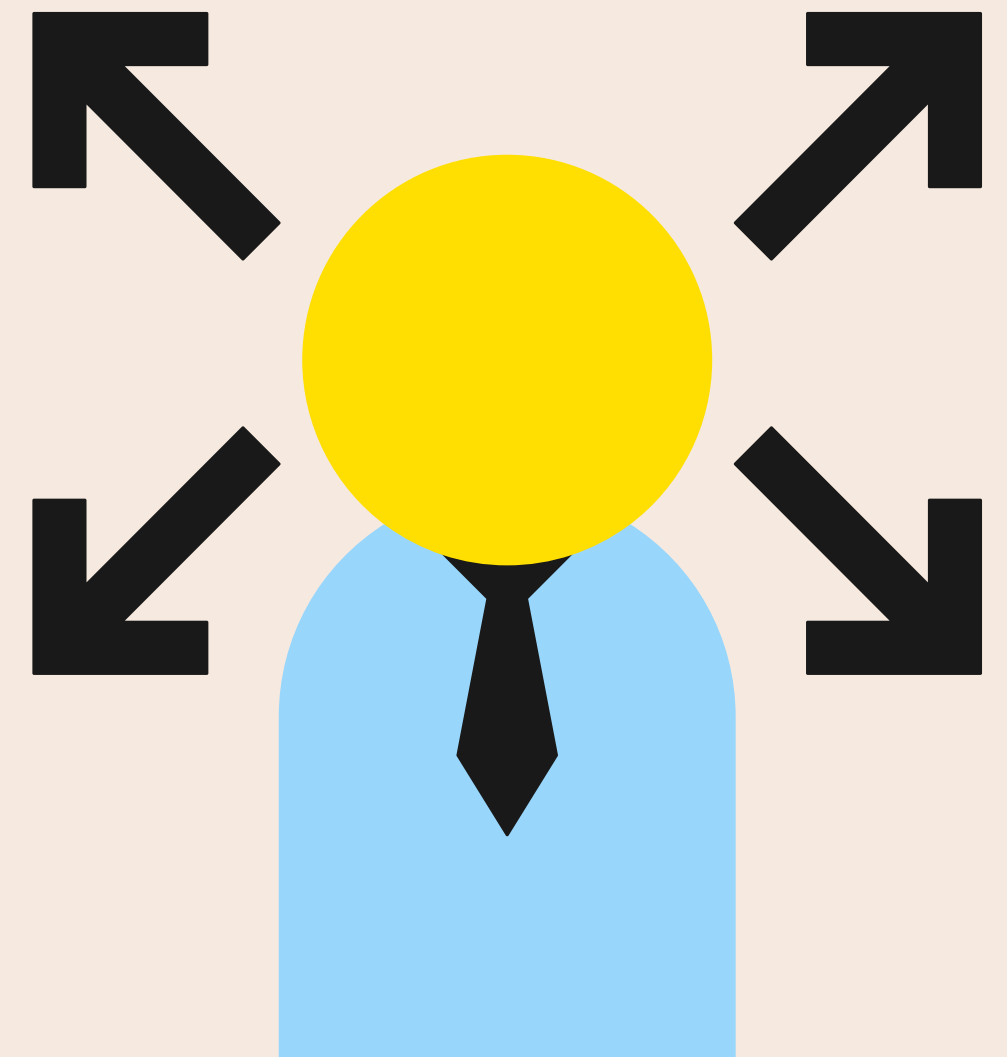
## Jurisdictional Reach and Clash

- Whose domestic laws triumph when social media platforms have a global reach?
- Legitimacy of cyberspace management by governments of different countries

# Stakeholders

Who is concerned by the multilateral regulation of platforms?

- Governments across the world that have jurisdiction over the matter (including the EU).
- International and multilateral organizations such as the United Nations and its family of organizations (G7, UNESCO, OECD).
- Tech companies and social media platforms with global reach (Meta, Twitter, WeChat, etc).
- Consumers and consumer groups
- Human rights organisations and activists





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# Jurisdictional Differences

How do different jurisdictions' legal approaches compare to one another?



## CHINA

Administration of Information Services of the Internet Law: Regulates nationalism & hatred



## UNITED STATES

47 U.S. Code § 230 (Section 230): Regulates offensive material & enforces copyright law



## EUROPEAN UNION

The E-commerce Directive: Prevents viewpoint discrimination (at cost of lower user expression)

# Policy Options

How can the Department of Canadian Heritage tackle this global issue?

1

## Self-Regulation

Digital platforms adopt their own “community guidelines” & review mechanisms to determine whether those guidelines have been violated – this is the preferred option for digital platform operators

2

## Multilateral Regulation Framework

Create a universal set of rules and priorities for the regulation of digital platforms, displacing both national frameworks and digital platform operators’ “Community Guidelines”

3

## Conflict of Laws Framework

Create a set of procedural rules to determine which jurisdiction’s laws apply to: user content, interactions/communications between users, and user activity depending on factors such as the residence & location of users

# Policy Option 1 – Self-Regulation

## Outline

- Digital platform operators becoming the de facto law governing digital activity via Community Guidelines
- **Risk:** Community Guidelines are especially vulnerable to instability and poor corporate governance creating uncertainty among users
  - Ex: Twitter post-acquisition by Musk

## Stakeholders

- Users
  - Pro: Avoids inconsistent rules
  - Con: Minimal legal recourse against digital platform operators
- Platforms
  - Pro: Minimises cost of compliance
  - Con: Assume responsibility
- Governments
  - Pro: Minimises cost of regulation
  - Con: Forfeit ability to regulate



# Policy Option 2 – Multilateral Regulation Framework

## Outline

- Creating a universal set of rules and priorities for the regulation of digital platforms
  - Displaces both national frameworks and digital platform operators' Community Guidelines

## Stakeholders

- Users
  - Pro: Avoids inconsistent rules and legal recourse is available
- Platforms
  - Pro: Minimises cost of compliance
  - Con: Erodes control over activity
- Governments
  - Pro: Maximises ability to regulate
  - Con: Must compromise with other jurisdictions

# Policy Option 3 – Conflict of Laws Framework

## Outline

- A framework allocating jurisdiction over digital spaces would resemble existing examples:
  - Insolvency law: The UNCITRAL Model Law on Cross-Border Insolvency
  - Arbitration, Mediation, Recognition of Foreign Judgments:

## Stakeholders

- Users
  - Pro: Legal recourse is available
  - Con: Different laws for different activity
- Platforms
  - Pro: Minimises responsibility
  - Con: Erodes control over activity, and increases cost
- Governments
  - Pro: Maximises ability to regulate
  - Con: Must compromise with other jurisdictions



# Recommendation

Which policy option maximizes *feasibility* and *stakeholder outcomes*?

3

## Conflict of Laws Framework

- Develop a conflict-of-laws framework to determine which national laws apply to particular users or content
- Most feasible: Agreeing upon a conflict-of-laws framework requires a lower threshold of agreement among participating jurisdictions
- Provides greater oversight and certainty than self-regulation through Community Guidelines

# Key Challenges



## Multilateral

Balancing different viewpoints on what constitutes jurisdiction

- Balancing jurisdiction over users (priority for the EU) and jurisdiction over platforms based within a country (priority for the US)
- Addressing content and interactions taking place between users in different jurisdictions
- Establishing a framework through which Conflict of Laws can be enforced and disputes rectified



## Domestic

Revisiting domestic policies

- Resolving disputes between Federal & provincial jurisdictional priorities
- Clearly delineating the boundaries of acceptability under Canadian hate speech, copyright, & other prohibited content laws
- Developing an approach to personal data collection, misinformation, harassment, and other aspects of digital regulation that will be enforceable and accord with local values



# Outlook

With appropriate implementation, what *impact* would a Conflict of Laws Framework have for Canada?

- Facilitates enforcement of Canadian law and the department's priorities in online settings
- Enables Canadian Heritage to combat serious forms of harmful online content, and hold social media platforms and other online services accountable for the content they host, in alignment with its priorities.
- Creates more consistent experience with platform rules and legal recourse for consumers



# Implementation

What steps toward implementation can Canada take to position itself as a leader in this space?

- Create a taskforce with Federal, provincial, industry, & consumer group representatives to develop a framework to address domestic challenges
- Promote a conflict of laws approach in forums such as the OECD, the Commonwealth of Nations, & L'Organisation internationale de la francophonie