

## Facebook may be ordered to remove digital content worldwide, E.U. says By Abhishek Banerji, LL.M Candidate 2020 | October 21, 2019

On October 3, 2019, the European Union Court of Justice (the “ECJ”) ordered Facebook to remove illegal content worldwide. Not only does this [ruling](#) have global implications for other social media platforms, but it gives rise to freedom of speech issues.

According to the facts of the ECJ case, Ms. Eva Glawischnig-Piesczek – a member of the Nationalrat (National Council of Austria) as well as chair and federal spokesperson of the parliamentary party “die Grünen” (the “Greens”) – sued Facebook Ireland in Austria. Glawischnig-Piesczek sought an injunction to force Facebook Ireland to remove an insulting and defamatory comment published by a Facebook user.

Based on these facts, the Oberster Gerichtshof (“Supreme Court of Austria”) sought a ruling from the ECJ interpreting the EU’s Electronic Commerce Directive (“Directive”). Under the Electronic Commerce Directive, a host provider (e.g. Facebook) is not liable for digitally stored information if it has no knowledge of its illegal nature. However, this exemption does not prevent courts from ordering host providers to remove and disable access to illegal information.

Ultimately, the ECJ held that the Directive does not preclude a member state court from ordering a host provider to remove information or block access to information worldwide so long as it was “within the framework of the relevant international law.” The ECJ noted that, in this case, it was up to member states to take that law into account.

The decision by the ECJ has been [heavily criticized](#) by Facebook, primarily on the grounds that “it undermines the long standing principle that one country does not have the right to impose its laws on speech on another country.” Furthermore, “it also opens the door to obligations being imposed on internet companies to proactively monitor content and then interpret if it is ‘equivalent’ to content that has been found to be illegal.”

In the United States, §[230](#) of the Communications and Decency Act protects internet technology companies from liability arising from content created by its users. As a result, this has allowed social media companies to grow. The protection of the Communications and Decency Act encompasses everything from product reviews to political rants. However, this law has been heavily criticized by both [Democrats and Republicans](#).

In response to this criticism, last month, Facebook unveiled a blueprint for an independent [oversight board](#) (“Oversight Board”) The Oversight Board will be responsible for reviewing appeals of the company’s policy decisions regarding posts, photos, and videos it takes down or leaves online. The authority of the prospective Oversight Board is intentionally far reaching. For



example, it will have the authority to override decisions regardless of whether or not Mark Zuckerberg agrees.

The aforementioned decision by the ECJ is just one of many recent examples of [steps](#) taken by the EU to investigate the technology industry's data and privacy practices, and ultimately, regulate the technology sector. For example, European regulators fined Google \$1.7 billion in March based on allegations that its advertising practices violated antitrust laws.

While Facebook is not allowed to appeal the ECJ ruling, individual European countries have the power to ignore the ruling. Moreover, the United States could use trade agreements to pressure the EU to adopt more expansive internet freedom laws that are similar to the Communications and Decency Act.

Nevertheless, this ECJ decision underscores an important international query: what is the best way to regulate technology giants like Facebook and Google in order to curtail online falsehoods (fake news) and protect individual users without infringing upon digital free speech? Unfortunately, the answer is far from simple. With that said, it is apparent that the ECJ decision is largely unenforceable around the globe, as international law does not provide any real enforcement mechanisms. Therefore, it is up to individual countries to create meaningful policy to address these countervailing approaches.