

# The New Order of Global Tech Policy

February 19, 2026

*For his second video essay in MediaWell's series on transnational digital governance, law and technology expert Dr. Ivar Hartmann (Insper, Brazil) highlights key issues for U.S. media and civil society - at a time when many countries, especially across the Global South, are looking elsewhere for regulatory inspiration. Watch or read the transcript below.*

## The post-US regulatory landscape

There are a couple of issues that I feel U.S.-based media and civil society should pay more attention to.

One of them - and I think this is one of those where I can talk about the example of my own country, but I believe that this is true for many other countries in the Global South - the first one is the extent to which the United States is losing its leadership status in the area of regulation of technology. And it's losing that status specifically to Europe.

So one area where this has become clear in the last 15 years is privacy and personal data protection. Of course, you have countries that decided on an approach that might be akin to that of the U.S. in terms of laissez-faire and self-regulation.

But for those countries that *did* decide to have some kind of regulatory framework for data protection, Europe has almost always been the inspiration - to the point where (and this goes well beyond the so-called ["Brussels Effect"](#)) certain countries like Brazil modeled the principles and the basic rules on personal data protection in their own legal framework, in light of the one in Europe.

Another clear example is AI. So again, you have countries in the Global South that, so far, have adopted a self-regulatory stance. But out of those that have decided that there needs to be legislation on AI, you see almost copies - statutes and bills that are almost a copy of the AI legislation in the European Union. Brazil, for instance, was [on the verge of passing a bill](#) on the regulation of AI that looked almost exactly like what the European Union has passed.

Now this, in my view, should be considered an important issue. Because by losing its

leadership in this area of tech regulation, the U.S. is actually getting into a place where there's not going to be much dialogue between the legal systems of the U.S. and these countries that have, for the most part, have gone down the road of adopting European-style regulation.

So to the extent that legal systems become more and more different - incompatible to some extent, and sometimes even opposing views of how to regulate technology - this means there will be less dialogue. There's going to be less people - researchers, civil society, even civil servants, public servants in these countries - looking to the U.S. for inspiration, even for isolated challenges or solutions.

## Procedural rights in content moderation

That relates to a second issue that I feel civil society and media in the U.S. should pay attention to, which is the [potential role for courts](#) in ensuring safeguarding procedural rights for social media users. This [focus on protecting procedural rights] is [very different](#) from the approach that we've seen, especially in state laws in the U.S., of the idea of "must-carry" - which is one way to protect social media users against unfair censorship, especially when there are monopolies or near-monopolies by media companies; they are forced to publish certain types of speech, and social media platforms are not allowed to moderate content. That idea of must-carry has not been very popular worldwide. And we see already examples that not only have been tried, but are almost to a point where you can say they have been tried and tested.

The idea of procedural rights for social media users is, of course, not new: it goes back to at least the [Santa Clara Principles](#) (which is ironic that they were put down on paper in Santa Clara). But this relates to the notion that, regardless of whatever analysis one could make of the merits of the content in that picture - in that text, in that post, that video - that there are certain rights regarding the *procedure* of content moderation that users have that should be protected.

One obvious example that people should be familiar with at this point is, regardless of whether your post was legal or illegal, that fact that it was removed should mean that the user gets a notification. That they receive information about *why*. Not only that some action was taken - some kind of content moderation action, for instance that it was removed - but receiving *notification* of that.

But also in certain cases, especially if the decision to remove [content] was made by the platform because it violates their terms of service, another procedural obligation or right - the obligation that the platform has, and the procedural right of the user - is that [users]

can appeal, and that their appeal will mean a review of that decision by a human, not by AI moderation software.

If you look at this [procedural rights-based approach] at its face value, it might not mean much. And it certainly might not look like something that has the impact in terms of preserving online speech that must-carry, in its ideal format or version, would have. But there is actually a profound impact here. And we have seen especially the Digital Services Act sort of bet on this type of system, with [certain obligations of transparency](#). We had seen in the [2018 German law for social media](#) as well. So there are many concrete examples of this being put in legislation.

And then once legislation has enshrined that right for social media users, then that's an easy case, where you could say that the stakeholders who should be reviewing this - who should be enforcing this - are the courts.

That is a much different scenario or context for some kind of court involvement in online content moderation. Of course that's certainly not something that civil society in the U.S. would ever dream of asking for; you wouldn't want courts stepping in to say, "TikTok did good or bad in removing this specific video."

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But by enforcing procedural rights, courts never have to say anything about the merits of that specific video or that picture or that post. So it's a very different role for courts. And so it creates space for an actual governance framework, allowing for less concentration of power at the hands of Big Tech.

It does not mean that there needs to be necessarily any kind of involvement by the administrative branch, which is obviously a big plus - even if it's just procedural rights. So this [approach] is much better. It has much more of an impact in terms of protecting users' rights, on what the quality of the debate is on social media, and on what the *content* of the debate is on social media; it's also much, much less problematic, at least from a legal standpoint, than must-carry. I believe that this is often overlooked by U.S.-based media and civil society.