

Recommender systems, platform power and the case Google LLC and others v Russia

How a recent case of the European Court of Human Rights, in which Russia was found guilty, might have an undesired effect on the protection of freedom of expression against platform power in liberal democracies

Luigi Muraca ¹

¹ University of Bologna, Italy

Abstract: This article examines the impact of platform power on freedom of expression, as guaranteed by Article 10 of the European Convention on Human Rights, with a particular focus on one of the key tools through which this power manifests: recommender systems.

It then analyzes a 2025 judgment by the European Court of Human Rights, *Google LLC and others v. Russia* (Application no. 37027/22, ECHR-2025), whose reasoning—used to find Russia guilty—could, if applied in democratic states, lead to an interpretation that is counterproductive for protecting freedom of expression from private platforms’ abuses. This contradiction is effectively highlighted in the concurring opinion of Judge Pavli, which the article discusses in detail.

Keywords: European Convention on Human Rights, Recommender Systems, Google LLC v Russia

1 Introduction

The idea that the digital transformation has significant implications for fundamental rights—and that legal scholars must therefore direct substantial attention to the intersection of technology and these rights—is now widely recognized. Among the technologies at the heart of this transformation, **recommender systems** stand out as particularly impactful. These are the tools employed by social media platforms, e-commerce sites, and search engines to determine *what* content a user sees and *in what order* it appears. These systems analyze users’ past behaviors and, through a combination of various techniques, determine what each individual will see in their social media feed or in their search results list.

In a society where citizens spend a significant portion of their lives online, any tool capable of determining what people see is a tool of immense power—one currently concentrated in the hands of large private corporations that pursue profit with little regard for the negative externalities recommender systems can create, not only for the health and proper functioning of markets but also for the integrity of democracies themselves. That is especially true in liberal democracies, but on the other hand, in autocratic regimes, it is the *control exerted by states* over recommender systems and platform feeds that may pose serious threats to fundamental rights.

The European Convention on Human Rights (ECHR)—issued by the Council of Europe—contains several provisions that are relevant to understanding the impact of platform power and recommender systems on human rights, and recently, the Court has ruled on a case, **Google LLC and Others v. Russia** (application no.

✉ luigi.muraca3@studio.unibo.it (Luigi Muraca);

🔗 <https://orcid.org/0000-0002-1825-0097> (Luigi Muraca);

37027/22), that indirectly sheds light on the distinct challenges of addressing this issue in **liberal democracies** as opposed to **autocratic regimes**. Although the judgment does not focus specifically on recommender systems, it's reasoning could be exploited by platforms to justify undesirable conduct in **managing speech on their platforms**—and, by extension, in how they deploy recommender systems—by framing such behavior as an exercise of **freedom of expression**. In other words, an interpretation of the Convention designed to protect fundamental rights in an **illiberal regime** could have unintended consequences if applied to a democratic context (this point has been well raised by Judge Pavli, who wrote an insightful concurring opinion in the judgement at hand—a topic that will be analyzed in the last paragraph.).

2 Recommender systems as a display of the power of internet platforms, and the nature of it

The first point to be made is this: recommender systems are a form of power. More precisely, they are among the most significant instruments through which Big Tech companies—namely, the owners of the largest online platforms—exercise their vast influence in contemporary western society. To fully grasp this dynamic, we must now turn our attention to platform power itself. In recent decades, platforms have acquired significant power—first and foremost, as market actors. When discussing platforms, it is essential to remember that, at their core, they are intermediaries—entities whose primary function is to facilitate interactions between different actors.¹

This intermediation has become nearly indispensable in today's economy: the sheer volume of value exchanges occurring on—or enabled by—platforms, combined with the strength of network effects, has rendered society increasingly dependent on them.²

Recommender systems play a central role in this “brokering function” of platforms, serving as the primary mechanism through which users are matched with content, products, or even other users, and that is why they have been defined the “backbone of the commercial strategy of platforms and valuable commercial assets”³

It is essential to understand that the tech giants, who now own social media and other major platforms, possess gatekeeping power⁴, meaning they effectively control access to the digital spaces that truly matter. Being a gatekeeper means having the authority to set the “rules of the game”—an authority that has largely been exercised through self-regulation and internally defined rule systems.⁵ It means being “the player and the referee”.⁶

It is important to highlight something that is often taken for granted, yet must always be kept in mind: the situation we are describing stems from a significant power imbalance between platforms and their users.⁷

1. Hacker P., *Teaching Fairness to Artificial Intelligence: Existing and Novel Strategies Against Algorithmic Discrimination Under EU Law*, in *Common Market Law Review*, 2018, pp 1143-1186
2. In the words of Caggiano, “La crescente intermediazione delle transazioni online ha determinato, in molti aspetti della nostra vita, una progressiva dipendenza dalle piattaforme online che dispongono di un proprio ecosistema.”, in Caggiano G, *La proposta di Digital Service Act per la regolazione dei servizi e delle piattaforme online nel diritto dell'Unione Europea*, in I Post di AISDUE, 2021, <https://www.aisdue.eu/giandonato-caggiano-la-proposta-di-digital-service-act-per-la-regolazione-dei-servizi-e-delle-piattaforme-online-nel-diritto-dellunione-europea/> (last accessed on October 1st, 2025)
3. Gillespie T., *Custodians of the internet: Platforms, content moderation, and the hidden decisions that shape social media*, Yale University Press, New Haven, 2018
4. ex multis, Ferri F., *Il bilanciamento dei diritti fondamentali nel mercato unico digitale*, Giapichelli, Torino, 2022, quote from page 59: “le piattaforme online sono [...] “guardiani di internet”, potendo controllare l'accesso alle informazioni, ai contenuti e alle transazioni online”.
5. in Caggiano G, *La proposta di Digital Service Act per la regolazione dei servizi e delle piattaforme online nel diritto dell'Unione Europea*, in I Post di AISDUE, 2021, <https://www.aisdue.eu/giandonato-caggiano-la-proposta-di-digital-service-act-per-la-regolazione-dei-servizi-e-delle-piattaforme-online-nel-diritto-dellunione-europea/> (last accessed on October 1st, 2025)
6. Vestager M., *Speech by Executive Vice President Vestager on technology and politics at the Institute for Advanced Study, European Commission*, 2024, https://ec.europa.eu/commission/presscorner/detail/en/SPEECH/_24/_1927, (last accessed October 1st, 2025).
7. On the concept of information asymmetry, a particular insightful reflection can be found in Turillazzi A., Casolari F., Taddeo M. and Floridi L., *The Digital Services Act: An Analysis of Its Ethical, Legal, and Social Implications*, *Law, Innovation and Technology*

This imbalance is primarily rooted in the asymmetry of information that exists between the two, and it results in structural inequalities, most notably a considerable loss of bargaining power for the weaker parties⁸. Ultimately, this power imbalance plays a decisive role in shaping the architecture of the digital space.⁹

The power imbalance is particularly evident in relation to other companies: big tech firms, by virtue of their quasi-monopolistic position, make it nearly impossible for newer or smaller competitors to challenge them and enter the market, thereby continually accumulating ever greater economic power.

But there is an even more alarming aspect of the power held by online platforms.

In his article *“The New Grey Power”*¹⁰, Luciano Floridi identifies the influence of tech giants like Google and Facebook as a form of grey power—a power that operates in the background, subtly influencing official institutions and shaping societies. Floridi writes that “grey power is like ivy: it grows on the wall of official power and flourishes in full shade.”. The term “grey power” originates from the historical figure François Leclerc du Tremblay, known as l’*eminence grise*, the shadowy advisor to Cardinal Richelieu. Floridi observes that in 17th-century Christian Europe, grey power rested with members of the religious elite; in industrial societies, it belonged to those who controlled the means of production; and in mass-media societies, it lay in the hands of those who controlled information about things. However, Floridi argues that we are no longer living in a mass-media society, and that in today’s society, power lies with those who control “which questions can be asked, when and where, how and by whom, and hence what answers can be received in principle.”¹¹

It is tech corporations who own this power, at least in western democracies, and by determining what can or cannot be seen online, platforms shape not only public discourse but also the very questions that circulate within a society—and, consequently, the answers that are even imaginable. This constitutes an extraordinary form of power in the hands of private actors.

If left unregulated, these platforms hold the power to decide which content can be seen and—when content moderation is involved—which content must be censored. Their decisions often have consequences comparable to those of a court of law, yet they are not courts, nor are they public institutions whose authority derives from the law or a democratic mandate. These decisions are not the outcome of any judicial process that guarantees legal safeguards or the right to a defense for the user or content creator¹².

Furthermore, these corporations have progressively become the primary actors governing the respect of human rights online. It is important to stress this point: they are private entities managing fundamental rights issues through internal corporate policies, rather than through laws.¹³

This is deeply problematic, of course. As profit-driven entities, their objectives do not always align with the effective protection of fundamental rights. If the governance of human rights online is entirely delegated to private corporations, how can we ensure that their commercial interests will not, at times, prevail over the rights and freedoms of users?

15(1), 2023, p 83–106

8. Leczykiewicz D., *Judicial Development of EU fundamental rights law in the Digital Era- A Fresh Look at the Concept of ‘General Principles*, in *General Principles of EU Law and the EU Digital Order*, edited by Bernitz U., Groussot X., Paju J., and de Vries S., Wolters Kluwer, Alphen aan den Rijn, 2020

9. Binst B., & Vandenbroucke H., & Li D., Puskas I., & Van der Elst P., & Smets A., *Towards a Pragmatic Approach for studying Normative Recommender Systems: exploring Power Dynamics in Digital Platform Markets*, CEUR workshop proceedings-17th ACM Conference on Recommender Systems, 2023

10. Floridi, L. *The New Grey Power*, *Philos. Technol.* 28, 2015, pp. 329–332

11. idem

12. Tim Wu, *Will Artificial Intelligence Eat the Law? The Rise of Hybrid Social-Ordering Systems*, *Columbia Law Review*, 2019, pp. 2001–2028

13. In the words of Shaelou & Razmetaeva “*It seems that the deeper problem here is the governance of human rights issues by companies through corporate policies rather than based on rights-based provisions enshrined in European and national laws.*”, in Shaelou S.L., Razmetaeva Y., *Challenges to Fundamental Human Rights in the age of Artificial Intelligence Systems: shaping the digital legal order while upholding Rule of Law principles and European values*, in *ERA Forum* 24, 2023, p567–587, quote from page 577

For all these reasons, many scholars have argued that platforms now exercise their power in a manner akin to that of public actors. De Gregorio refers to the “quasi-public function” of these corporations;¹⁴

Casolari describes their role as “*para-statale*”¹⁵; and Pollicino observes that platforms can now be regarded as “*spazi pubblici*”.¹⁶

Now, this is far from reassuring. If we reconnect these reflections to recommender systems, we must remember that these tools determine what a user sees—and, equally important, what she does not see. In doing so, they can shape her perception of society and reality. This raises a crucial question: Who should wield the power embedded in recommender systems? Should it be left entirely to private actors, who may use it as they please? Or should public authorities pay close and deliberate attention to this matter?

Like many scholars¹⁷, we are inclined to believe that, in liberal democracies, public institutions must regain power in relation to Big Tech and what Floridi calls the new grey power.

And this new grey power is well aware of it—they know that regulation is a threat to their dominance, and they do everything in their power to prevent it. As Floridi notes, for example, Google spends vast sums lobbying the US Congress.¹⁸

It is clear that we are dealing with an issue of public interest. For this reason, it is likely a mistake to leave private actors unchecked in managing such a powerful societal function.

As De Minico aptly said,

*“[...]”private stakeholders, left by themselves, have shown time and again that they pursue only egotistical interests. Therefore, the achievement of the common good depends on chance, whenever it happens to correspond with private interests, and it has frequently proven to be unable to build the consensus necessary to condense and shape the common good in a supranational synthesis.”*¹⁹

Now, this approach can surely be adequate regarding the digital platform scenario in liberal democracies. What happens in autocratic countries is very different. In countries where political freedoms are restricted, and among those, freedom of expression and information, is the State whose grasp on the digital sphere is frightening, not that of private companies.

The case Google LLC and Others v Russia highlights this difference in a plastic manner.

14. De Gregorio G., *The rise of digital constitutionalism in the European Union*, International Journal of Constitutional Law, 2020, pp. 41-70

15. Casolari F., *Il Digital Services Act e la costituzionalizzazione dello spazio digitale europeo*, Giurisprudenza Italiana, 2024, pp. 462-465

16. Pollicino O., *Verso il Digital Services Act: problemi e prospettive. Presentazione del simposio*, Media Laws, 2023, <https://www.medialaws.eu/verso-il-digital-services-act-problemi-e-prospettive-presentazione-del-simposio/> (last accessed on October 1st, 2025)

17. ex multis, Naudts, L., Helberger, N., Veale, M. et al., *A Right to Constructive Optimization: A Public Interest Approach to Recommender Systems in the Digital Services Act*, in Journal of Consumer Policy, Volume 48, 2025, pages 269–296, quote from page 274, where the authors affirm “[...]VLOP recommends not only gate-keep people’s access to and enjoyment of their democratic freedoms and fundamental rights. They also have a substantial public function. Moreover, due to this public function, their optimization should not be a matter for platforms to decide, even if these are proprietary systems and part of the commercial business strategy of a platform.”

18. On page 332 of the cited paper (The New Grey Power), Floridi reported about the great amounts of money that Google spends to lobby the U.S. Congress and several federal agencies: “According to the government transparency group MapLight [...], during the first quarter of 2015 Google became, for the first time, the company that spends the most money on lobbying the US federal government, surpassing defence contractors like Lockheed Martin or energy firms like Exxon Mobil Corp.”

19. De Minico G., *Fundamental rights, European digital regulation and algorithmic challenge* in ASTRID RASSEGNA ,2, 2021, pp. 1-39, quote from page 14

2.1 Freedom of information under article 10 of the European Convention on Human rights, and recommender systems.

Before diving into the case at hand, a brief stepback: the Convention's relevant article on this matter, is article 10 ECHR, who famously protects freedom of expression, but also specifies that this right includes "freedom to hold opinions and to **receive** and impart information". Recommender systems can profoundly shape users' perceptions of reality by selectively displaying only a sub-set of the content available online—often privileging a narrow set of items, such as content from one political orientation or, more generally, limiting diversity in viewpoints. This dynamic can significantly affect users' freedom of information in its passive dimension—that is, **the right to receive information**. In this sense, we could reasonably argue that such a right entails access to a pluralistic, unbiased, and diverse information environment. The repercussions for both individuals and society at large are substantial: in an increasingly digitized public sphere, where users consume the majority of their information through social media platforms, the indiscriminate and unchecked use of recommender systems has the potential to exacerbate social divides and reinforce political polarization.

In this context, Article 10 ECHR must be seen as playing a crucial role, not only in safeguarding individual rights, but also in protecting the democratic fabric of society itself.

3 Google LLC and Others v. Russia (application no. 37027/22) and the concurring opinion of judge Pavli

As anticipated, it is particularly interesting to focus on a recent judgment of the European Court of Human Rights that concerns both freedom of expression and Big Tech providers, namely Google. The case in question is Google LLC and Others v. Russia (application no. 37027/22). It is particularly insightful, because reading it from the perspectives of an observer based in a European liberal democracy feels a little uncomfortable, especially in light of the perspective on private platform's power that we analyzed in the previous chapters. It feels uncomfortable, because the judgment protects a big tech platform against the censorship of a State, (and rightly so, one might say) but in doing so it affirms a principle that might be conflicting with the perspective of freedom of expression and information **from** the power of platform, that we are now craving in liberal democracies. But we are going to get there.

3.1 The case

Although Russia is today no longer a member of the Council of Europe, the Strasbourg Court asserted jurisdiction nonetheless, on the grounds that the facts at the core of this case occurred while Russia was still a member of the organisation.

This ruling has been recognised as a landmark decision for the interpretation of freedom of expression in the digital environment²⁰, and rightly so. The facts of the case can be briefly summarised as follows: the dispute concerns legal actions taken by Russian authorities against Google, on two main fronts.

- On the one hand, the Russian authorities demanded the removal of certain political content from YouTube; on the other, they contested Google's decision to suspend monetisation for the YouTube channel Tsargrad TV, a channel known for its political alignment with the Russian government and owned by a Russian oligarch subject to international sanctions. Google applied to the Court against the measures taken by the Russian authorities, and as a result, the Court was required to assess two distinct types of potential violations of freedom of expression.

The first is a rather traditional scenario: a government requests the removal of content that challenges the official narrative, and the Court must evaluate whether such a measure constitutes an unjustified infringement of freedom of expression or a legitimate limitation in accordance with the law and with the Convention.

20. 49 Scarcella for example, affirmed that "*Essa rappresenta un monito contro la deriva autoritaria mascherata da legalità e un invito a ripensare il ruolo delle piattaforme digitali come 'garanti – e non solo vettori – del pluralismo democratico.*", in Scarcella A., *Multe e sanzioni contro Google hanno violato il suo diritto alla libera espressione*, in *Quotidiano Giuridico*, 2025, <https://www.altalex.com/documents/2025/07/28/multe-sanzioni-google-violato-diritto-libera-espressione>, [last accessed 28/9/2025]

- The second type of violation is more complex and nuanced. In this case, the Court had to assess whether the freedom of expression of the platform owner (Google) had been violated, on the grounds that it was being compelled **to give visibility to content it did not wish to host**. This situation raises the question of whether freedom of expression also includes the “freedom not to express” certain opinions.

I intend to focus particularly on this second aspect: the right not to be compelled to express oneself, and the consequences that the Court’s ruling on this matter could have for the role of platforms as public spaces, especially in liberal democracies. This includes the potential implications for future rulings, even those arising from events that take place within liberal democracies.

Indeed, the Court found that there had been violations of the right to freedom of expression in both respects. Regarding the second aspect, the one that is particularly relevant to the present discussion, the Court explicitly affirmed that the right to freedom of expression, as protected under Article 10 of the Convention, also encompasses a negative dimension, the right not to express oneself. In the words of the Court,

“The Court has consistently held that measures compelling someone to publish specific statements constitute an interference with the right to freedom of expression (see *Kaperzynski v. Poland*, no. 43206/07, § 58, 3 April 2012, and *Hachette Filipacchi Associés v. France*, no. 71111/01, § 27, 14 June 2007). It has also found that a holistic protection of freedom of expression should necessarily encompass both the right to express ideas and the right to remain silent: otherwise, the right to freedom of expression under Article 10 cannot be practical and effective. [...] In the present case, the judicial decisions enjoined Google LLC to host Tsargrad’s content on the YouTube platform, thereby overriding its decision not to do so. The Court considers that this compulsion to host specific content, backed by financial penalties, directly impacted Google LLC’s right to determine what content it was prepared to host on its platform”²¹

While such an outcome was certainly desirable in a case involving an authoritarian state, where the measures were clearly put in place to push the regime’s propaganda, the Court’s reasoning raises a broader issue that could become increasingly significant in liberal democracies as well. Indeed, digital platforms have often—also in recent times—been accused of favoring content aligned with certain political perspectives over others, thereby failing to fulfill the role they increasingly occupy in democratic societies: that of functioning as a digital public square, a space where individuals can freely express and confront diverse opinions. Suspensions of platforms may have altered—or are currently altering—their algorithmic architecture to favor certain political perspectives over others as widespread and could potentially affect any side of the political spectrum. A recent and particularly controversial case involves Meta, which has faced strong accusations of having modified its recommender systems in the aftermath of the Hamas attack on October 7, 2023. According to a report from Human Rights Watch²² these changes—combined with content takedowns and shadowbanning—are said to have disproportionately penalized pro-Palestinian voices, including those that explicitly distanced themselves from or even condemned Hamas.

The risk emerging from this ruling is that companies such as Google, X, or Meta may invoke it to justify practices such as shadowbanning, content removal, or account suspension, potentially under the pretext of exercising their own freedom not to disseminate certain views.

The ruling invites a deeper reflection on the very nature of digital platforms and, consequently, on the scope and limits of freedom of expression in the digital age. Should the freedom of expression of platforms—as private business entities—prevail, thereby allowing them to freely choose what content to allow or prohibit on their services? Or, conversely, should greater weight be given to the *de facto* public function these platforms now perform, especially given their central role in facilitating public discourse? In this latter view, the freedom of expression of users—who rely on these platforms as primary spaces for accessing and sharing information—would deserve stronger and more structured protection.

21. Judgment July the 8th 2025, *GOOGLE LLC AND OTHERS v. RUSSIA*, (Application no. 37027/22), ECHR-2025, paragraph 90 of the judgment.

22. Human Rights Watch, *Meta’s Broken promises-Systemic Censorship of Palestine Content on Instagram and Facebook*, in *Human Rights Watch*, 2023, <https://www.hrw.org/report/2023/12/21/metass-broken-promises/systemic-censorship-palestine-content-instagram-and> (last accessed October 2nd, 2025).

3.2 The concurring opinion of judge Pavli

This dilemma did not escape the attention of Judge Pavli, acting President of the Chamber, who authored a particularly insightful concurring opinion, focusing precisely on this issue. He clearly and unequivocally acknowledges why this ruling is particularly important: *“This appears to be the first judgment adopted by the Court directly implicating the rights and responsibilities of a major online platform under Article 10 of the Convention”*²³ he affirms, before moving on to the core question raised by the Chamber’s reasoning:

“The second free-speech aspect of the present case poses the following twin questions: to what extent may Article 10 of the Convention, or indeed national law, grant users of major online platforms (such as Tsargrad) protections vis-a-vis platform measures that deny or restrict user access to various functionalities? And, inversely, how are those users’ interests to be balanced against the interests of the platform owners in deciding what content to host, whether they consider such content unlawful (within one or multiple jurisdictions) or merely undesirable?”²⁴

While acknowledging that in this specific case the conduct of Tsargrad TV—namely, sponsoring a separatist war in a neighboring country—constituted a legitimate ground for a private platform to restrict user privileges, Judge Pavli raises a broader and more abstract question, one that is likely to become increasingly relevant in liberal European democracies as well:

“Judging from the above trends, however, it is most likely only a matter of time before the Court is called upon to resolve disputes between the conflicting Article 10 and/or commercial interests of private online platforms, on the one hand, and their users, on the other – including the key question whether a right to a forum ought to exist in this context.[...] The Court will be called upon to assess whether major online platforms that are important for the free flow of information in our societies can be assimilated to the kind of public spaces to which everyone must have unhindered access. Whatever the answer to that question – and whatever rights Article 10 itself may (or may not) confer on users in that regard – it seems reasonable to assume that States will have a sufficiently strong interest in requiring large platforms to provide at least certain basic due-process safeguards aimed at protecting users– the powerful, the famous or just ordinary citizens – from arbitrary exclusion from the marketplace of ideas.”

It is clear that Judge Pavli was able to precisely identify what is perhaps the freedom of expression issue of our time: should large digital platforms be treated as ordinary private entities, or are they today’s equivalent of the “marketplace of ideas,” and should therefore be subject to a different standard? It is crucial that this ruling be interpreted in light of Pavli’s concurring opinion. Without taking his reflections into account, there is a real risk that a judgment—rightly condemning the actions of an authoritarian government—could end up backfiring in liberal democracies by further strengthening the position of gatekeeping platforms at the expense of citizens’ freedom of expression²⁵

23. Concurring opinion of Judge Darian Pavli, judgment July the 8th 2025, GOOGLE LLC AND OTHERS v. RUSSIA, (Application no. 37027/22), ECHR-2025

24. Concurring opinion of Judge Darian Pavli, judgment July the 8th 2025, GOOGLE LLC AND OTHERS v. RUSSIA, (Application no. 37027/22), ECHR-2025

25. On the need to differentiate a freedom-supportive approach to platforms depending on whether one is analyzing the situation in a dictatorship or in a liberal democracy—where, on the one hand, the danger lies with the state, and on the other, with tech companies—the opinion of Betzu is particularly illuminating: *“Negli Stati totalitari non vi è un problema di regolazione, ma, all’opposto, di lotta per le libertà. Si pensi al caso della Cina: in forza del regime censorio imposto nel Paese il controllo del Governo cinese sulle informazioni che viaggiano in Rete è capillare, perché nel corso degli anni la Cina ha sviluppato un sistema multilivello di controllo del web [...] Ben diversa è la situazione nelle democrazie occidentali ove, al contrario, non può più essere messa in discussione la necessità di una regolazione che abbia come obiettivo la riaffermazione, anche nel mondo digitale, dei valori e delle libertà costituzionali pensati per il mondo fisico”*, in Betzu M., *Poteri pubblici e poteri privati nel mondo digitale*, GRUPPO DI PISA, Fascicolo 2, 2021, p. 166-191

4 Conclusions

It will be interesting to monitor the impact of *Google LLC and Others v. Russia* on the future case law of the ECHR and, more generally, its influence on the debate about the role of platforms in freedom of expression and information.

The ruling occupies a unique position, straddling the divide between autocracies and liberal democracies, showing how platforms and their recommender systems can be both victims of pressure against freedoms and threats to freedoms themselves.

The concurring opinion of Judge Pavli can certainly help navigate this divide, but further reflection and analysis are certainly needed.

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