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Regulatory Modeling. Tracking the Influence of the Digital Services Act in Latin America*

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Abstract

This article discusses the Digital Services Act (DSA) of the European Union as a possible candidate for a process of regulatory modeling, one of the mechanisms through which the laws of a country or a region migrate to other countries. It is a relatively usual global phenomenon, in which it is possible to expect certain dynamics, such as the prevalence of central countries or the advantages of first movers. In this work we argue that Latin American legislators are showing signs of wanting to imitate the DSA, through bills presented in recent years in which traces of the DSA can clearly be found. We present evidence in that sense and identify future challenges that migration and regulatory modeling processes always pose.

Keywords regulation; Internet governance; Digital Services Act; co-regulation; human rights

Since its inception, the Internet has operated in a decentralized manner under the premise that the less regulated it is, the greater the proliferation of ideas and innovation. That architecture and original design always made its regulation difficult (Lessig 2006, 32) though not impossible (Goldsmith and Wu 2006). However, the regulatory paradigm that governed its early years leaned toward innovation and the free flow of information, postulating that this was necessary for its growth and to generate a true industry providing goods and services (Zittrain 2008; Kosseff 2019). That model is now in crisis. The original *laissez-faire* approach of the United States has given way to a different model,

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which is now emerging as a contrary or complementary paradigm centered on the European Union (Laidlaw 2019; Frosio 2021).

This article analyzes European regulation, focusing on the Digital Services Act (European Commission 2022b). We believe that this law has the potential to become a true regulatory model that other countries may follow to modernize their outdated legal frameworks. This would follow the pattern Anu Bradford called the “Brussels Effect”—the European Union’s (EU) ability to successfully export its regulations or standards to other countries, whether because certain states explicitly adopt them or because companies voluntarily align with EU norms due to the dynamics of economies of scale (Anupam 2022). In the first section, we describe the core features of the DSA. In the second, we review the literature on *regulatory modeling*, which fits into a broader conceptual and theoretical framework related to processes of regulatory globalization (Braithwaite and Drahos 2000). We outline the theory and argue that the DSA is a strong candidate to become a model in the region, a point we examine through the analysis of legislative bills introduced in recent years in Latin America. We conclude with some warnings regarding the risks of importing the European regulatory framework without thorough reflection on the legal and institutional infrastructure that would receive such transplants.

The DSA and the Paradigm Shift

In the 2000s, the European Parliament enacted the E-Commerce Directive 2000/31/EC to harmonize the conditions under which intermediaries could be held liable for third-party content within EU territory (Tusikov 2016). This Directive sought to standardize rules that would facilitate the cross-border provision of online services and define the limitations of liability for service providers and Internet intermediaries. The regulation incorporated some aspects of the 1996 *Communications Decency Act*, the seminal U.S. legislation that had established the principle of intermediary “non-liability” for user-generated content.

The DSA emerges twenty years later as an alternative and complementary model that moves in a more regulatory direction and appears intent on leaving behind the previous *laissez-faire* approach. It does so for two main reasons. On the one hand, the continued growth of e-commerce and the digital economy globally has increased the importance of Internet companies, both for purchasing and selling goods and services and for the dissemination of information and public discourse. On the other hand, the disinformation crisis, which emerged prominently in 2016 around electoral processes with unexpected outcomes—the election of Donald Trump as President of the United States and the Brexit referendum in the United Kingdom—generated high levels of anxiety among

Western elites, who responded with strict and punitive legislation, such as the *NetzDG* (Bundestag 2017) in Germany and the *Loi Avia* (Legislature du France 2020) in France. The growing pressure from Western governments, academics, and sectors of global civil society led the European Union to innovate, giving rise to the *Digital Services Act* (European Commission 2022b).

This new regulation aims to provide better protection for users and fundamental rights online, establish a solid framework for transparency and accountability for intermediaries, and create a single and uniform framework across the EU (European Commission 2024). The draft legislation was introduced in December 2020 and approved by the European Parliament in October 2022 as Regulation 2022/2065 on a single market for digital services. Its provisions have been implemented gradually and are still being phased in at the time of writing. The DSA has not replaced or repealed the E-Commerce Directive, which remains in force.

The DSA defines distinct categories of regulated entities, which can be summarized as follows: (a) intermediary services, (b) hosting services, (c) online platforms—including those that facilitate the execution of distance contracts, and (d) very large online platforms and search engines (encompassing hosting, caching, and mere conduit services). We refer to the latter as VLOPs and VLOSEs. The criterion distinguishing very large platforms and search engines from the other categories is quantitative: the number of active monthly users. Those with more than 45 million active monthly users in the EU are considered very large, while those with fewer are classified as micro, small, or medium-sized enterprises. This size-based distinction is a key consideration because the obligations imposed by the regulation are cumulative depending on the type of obligated subject, and the more prominent the actor, the more burdensome the obligations—and the shorter the timeframes for compliance.

Similar to the E-Commerce Directive 2000/31/EC, the DSA maintains the principle of no *general monitoring obligation*, meaning platforms are not required to actively seek out illegal content. (European Commission 2022b, Article 8). It also establishes obligations regarding orders to act against illegal content (European Commission 2022b, Article 9) and orders to provide information (European Commission 2022b, Article 10). A substantive change introduced by the DSA—one not included in the Directive—is the *Good Samaritan* exemption, typical of the U.S. CDA, which was included in Article 7. This provision exempts intermediary services from liability when they conduct investigations and take measures to detect, identify, and remove illegal content or block access to it. The DSA defines illegal content as follows:

“‘illegal content’: any information that, in itself or in relation to an activity, including the sale of products or the provision of services, is not in

compliance with Union law or the law of any Member State which is in compliance with Union law, irrespective of the precise subject matter or nature of that law” (European Commission 2022b, Article 3.h).

The law incorporates general obligations applicable to all types of intermediaries regarding due diligence and transparency; points of contact with Member State authorities, the European Commission, and contact points for service recipients; designation of legal representatives; general terms and conditions; and transparency obligations for intermediary service providers. It also establishes liability exemptions for third-party content in cases of *mere conduit* (European Commission 2022b, Article 4), *caching* (European Commission 2022b, Article 5), and *hosting* (European Commission 2022b, Article 6). These exemptions are similar to those found in the E-Commerce Directive.

In the first and second cases, the exemption applies only if the service provider (1) does not modify the content, (2) complies with access and updating rules, (3) avoids interfering with lawful tracking technologies, and (4) promptly removes or blocks access to the material upon notice. This applies when the provider has actual knowledge that the information at the initial source of the transmission has been removed from the network, access to it has been disabled, or a judicial or administrative authority has ordered its removal or disablement (European Commission 2022b, Article 5). This regulation does not prevent a judicial or administrative authority under the legal system of a Member State from requiring the service provider to terminate or prevent an infringement.

In principle, *hosting* services are not liable for third-party content when they do not have actual knowledge of illegal activity or content or if they act promptly to remove the illegal material or block access to it when they do have knowledge or awareness of it.

The DSA includes additional obligations for this type of provider, including *online platforms*, which must establish *notice and action* mechanisms that allow any person to notify them of the presence of illegal content on their service (European Commission 2022b, Article 16). Such notices will constitute *actual knowledge* when they enable a diligent hosting service provider to determine, without a detailed legal analysis, that the relevant information or activity is illegal¹. In addition, providers must issue a clear and specific statement of reasons to any service recipient affected by any restrictions imposed on the grounds that the content provided by the recipient is illegal or incompatible

¹ Recital 22 states that the intermediary may obtain actual knowledge or awareness of the illegal nature of content, among other means, through its “own-initiative investigations or through notices submitted to it by individuals or entities in accordance with this Regulation in so far as such notices are sufficiently precise and adequately substantiated to allow a diligent economic operator to reasonably identify, assess and, where appropriate, act against the allegedly illegal content.” See European Commission (2022b), para. 22.

with the provider's general terms and conditions (European Commission 2022b, Article 17). They must also immediately notify law enforcement or judicial authorities in the affected Member State(s) when they suspect a criminal offense has been committed (European Commission 2022b, Article 18).

In all three cases, when receiving an order to act against one or more specific items of illegal content or an order to provide specific information about one or more individual service recipients issued by the relevant national judicial or administrative authorities, providers must inform the authority that issued the order—or any other authority specified in the order—without undue delay as to whether the order has been complied with and when (European Commission 2022b, Articles 9 and 10).

Online platforms, except for micro and small businesses, are subject to additional obligations, such as establishing an internal complaint-handling system, out-of-court dispute resolution, trusted flaggers, measures and protections against misuse, transparency reporting obligations for online platform providers, the design and organization of online interfaces, advertising on online platforms, transparency of recommendation systems, and the protection of minors online (European Commission 2022b, Articles 21-28). Concerning *online platform providers that allow consumers to conclude distance contracts with traders*, the DSA sets out obligations regarding trader traceability, compliance by design, and the right to information (European Commission 2022b, Articles 29-32).

Very large online platforms (VLOPs) and *very large online search engines* (VLOSEs) must identify and assess the systemic risks posed by the design, functioning, and use of their services; adopt risk mitigation measures; implement crisis response mechanisms; carry out independent audits; fulfill transparency obligations; and provide data access to researchers and Digital Services Coordinators, among other duties (European Commission 2022b, Articles 33-42). While we do not explore this point in depth in this paper, it is important to note that the adoption of the systemic risk model found in Articles 34 and 35 of the DSA has been the subject of criticism by civil society and academia (Zara 2024; Del Campo, Zara, and Álvarez Ugarte 2024). In line with previous and ongoing research by CELE, we highlight the lack of clear definitions regarding systemic risks and the tension this creates with the principle of legality in international human rights law (Global Network Initiative 2024; CIDH 2009, para. 67); the outsourcing of these definitions to private actors with no democratic legitimacy (Del Campo, Zara, and Álvarez Ugarte 2024; Cohen and Waldman 2023); the potential extraterritorial effect of the European regulation (as already occurred with the extension of the DSA to public discourse on the war in Gaza) (Thierry Breton [@ThierryBreton] 2023a, 2023b); and the uncertainty the regulation creates regarding the precise meaning and scope of due diligence obligations. For example, do these obligations require ensuring that the risk does not

materialize, or are they linked to a duty to prevent harm? Are they akin to a safe harbor provision, whereby if the company has made sufficient efforts to reduce (not eliminate) risks, it cannot be held liable? (Ayres and Balkin 2024) Could a company escape liability for inaction by arguing that its efforts would have been equally ineffective—or, conversely, does the obligation require action no matter what, even when such action would be futile? (Pierre d’Argent 2022)

In any case, the model adopted by the DSA retains the principle of conditional liability exemption for intermediaries to avoid infringing on users’ right to freedom of expression through delegated private regulatory powers. However, the law also requires VLOSEs and VLOPs to be transparent, to provide reasons when removing or blocking content, to establish complaint-handling systems, and to implement out-of-court dispute resolution mechanisms. The liability of intermediaries will be structured through regulatory oversight mechanisms as well as potential administrative sanctions (Joan Barata 2023).

In addition to this expansion of regulatory power, the DSA presents significant differences from the E-Commerce Directive. For example, the DSA applies regardless of whether the provider has its legal seat within the EU; therefore, its scope is much broader than that of the Directive. Furthermore, while it sets out common obligations for all intermediaries (including new requirements such as due diligence, transparency, and the designation of legal representatives), it incorporates a scale-based differentiation—that is, more burdensome obligations apply depending on the size of the intermediary or the type of service offered (such as mitigating systemic risks, adopting corrective measures and user redress mechanisms, and providing data access to researchers). Additionally, the DSA adopts a more user-centered approach and declares in Recital 47 that intermediaries must take into account relevant international standards for the protection of the United Nations Guiding Principles on Business and Human Rights. Finally, unlike the Directive, the DSA introduces a system of punitive fines and coercive penalties for intermediaries that fail to comply with the law.

Mechanisms of Regulatory Globalization

In *Global Business Regulation*, John Braithwaite and Peter Drahos identify seven mechanisms through which regulatory frameworks are globalized: military coercion, economic coercion, systems of reward, modeling, reciprocal adjustments, non-reciprocal coordination, and capacity-building (Braithwaite and Drahos 2000, 25–26). These mechanisms spread regulations across borders, creating striking similarities between nations’ rules. To explain why modeling spreads, the authors refer to five agents involved in the modeling process, which we reference here without details for brevity (Braithwaite and

Drahos 2000, 585).

The Internet is a technology that has always been shaped by these dynamics, as illustrated by the migration of limited intermediary liability laws from the CDA (1996) to the E-Commerce Directive (2000) and eventually to international *soft law* and the adoption of interpretive criteria by judges in Latin America in recent years (Álvarez Ugarte and Vitaliani 2022). For example, economic coercion is behind the migration of transparency laws or competitive public procurement processes (such as adapting local regulations to receive international cooperation funds). There are also cases where peripheral states have amended their intellectual property laws at the request of core countries (which are the main producers of patents) under the prospect of receiving rewards—since regulatory adaptation can result in direct or indirect material benefits (Matias Daniel González Mama 2023).

The DSA's global diffusion relies most heavily on *modeling* for three reasons. First, the DSA represents a paradigm shift at a time when there is a growing demand for intervention in the flow of information online in a more effective way (and one that differs from the old paradigm). Europe and other Western countries are demanding alternatives to the early Internet's *self-regulation* approach (Price and Verhulst 2000). Second, the European Union views its model as an alternative and seeks to promote it in other countries (a subtle form of influence and *soft power*, which could conceivably take on more coercive features in some cases) (Keller 2022). Third, several international organizations are promoting regulatory innovation. For example, UNESCO recently published a regulatory guide that local legislators could use as inspiration to draft their own regulatory frameworks. This guide is consistent with the main principles of the DSA.

Within the theoretical framework of Braithwaite and Drahos, *modeling* occurs when a regulation becomes a model to follow, and other countries begin to replicate it. This happens through different mechanisms, but political, economic, and identity-based motivations play a significant role in explaining at least part of these processes (Braithwaite and Drahos 2000, 583). Geographic and linguistic proximity are relevant factors but not decisive. Advancements in communication and the dominance of English as the international *lingua franca* have reduced the importance of these two factors (Braithwaite and Drahos 2000, 583).

The *center-periphery* dialectic is fundamental to modeling dynamics: the former produces regulatory frameworks, while the latter imports them. However, local traditions and geopolitical considerations tend to shape processes that are never linear—significant adaptations take place during the migration process (Braithwaite and Drahos 2000, 583). The economic hegemony of producing countries plays a key role, as it acts as an incentive for adopting models developed there (based on the belief—whether accurate or not—

that the model may be linked to desired economic development or that its adoption may yield spillover benefits through closer ties with those countries, etc.) (Braithwaite and Drahos 2000, 542). Core countries also enjoy more resources and develop more sophisticated levels of *expertise*, which facilitate regulatory migration: importing countries may draw on that experience and prior knowledge to, for example, shorten the learning curve during implementation.

This dialectic also involves issues tied to the cultural hegemony of core countries, which are *in themselves* models to follow or emulate. In Latin America, for instance, debates on economic development are heavily marked by the vague idea of *resembling* already-developed countries (Trubek and Trubek 2006). When some of those countries serve as reference models within that paradigm, their regulatory frameworks exert special influence: those promoting them project an image of legitimacy, quality, and rigor onto them in the local context, which supports their efforts.

While the *center-periphery* dynamic is easy to observe through numerous examples, it need not be treated as a rigid law of history. In Latin America, for example, there are cases of migration of legal concepts—such as the court protection *amparo*—that are entirely local: products made by and for Latin Americans, which experienced modeling processes without the *center-periphery* dynamic being especially present (Zamudio 1981). Similarly, the expansion of access to information laws in Latin America followed a logic deeply rooted in local contexts (even if the original influence of the U.S. Freedom of Information Act is undeniable) (Alianza Regional por la Libre Expresión e Información 2016).

Less powerful actors can use foreign models as leverage to advance local regulatory agendas that face strong opposition (Braithwaite and Drahos 2000, 594). In this regard, it is essential to identify local actors who act as *norm entrepreneurs* and promote the adoption of foreign models (Braithwaite and Drahos 2000, 591). Their identities may vary widely: agents of foreign companies, local legislators seeking inspiration, local NGOs participating in transnational legal activism networks, local activists who view the model as progress (and seek to capitalize on the symbolic power the *center* holds in some contexts), among others. To explore this point, we examine, for instance, the adoption process in Latin American countries of the principles of limited intermediary liability.

This process occurred primarily through the judiciary. In various countries and numerous cases, Latin American judges presided over lawsuits against Internet intermediaries accused of being liable for content created by their users. Armed only with traditional civil liability rules and constitutional free speech principles, they invoked the latter to limit broad interpretations of the former (which were often promoted, in turn, by norm entrepreneurs seeking to entrench expansive views of civil law and damages).

Those who relied on local precedents for freedom of expression to resist excessive expansions of civil liability—for instance, under theories of strict liability—drew upon constitutional arguments previously developed in core countries (primarily, the United States)(Rabinovich and Álvarez Ugarte 2009). They acted as local *entrepreneurs* and undoubtedly influenced the case law. But this evolution also prominently featured inter-judicial dialogue between judges from different courts and levels, who helped shape a unified response—led, in Argentina’s case, by the Supreme Court (Álvarez Ugarte and Vitaliani 2022). Similarly, those who promoted Brazil’s *Marco Civil da Internet* also had the *limited liability* model in mind and crafted provisions that, while not identical, were clearly aligned.

The example is significant because the migration of regulatory models is always subject to tensions that can alter the original. When the principles of the CDA migrated to Europe, they did so under the influence of the *notice and takedown* model that the U.S. Congress had developed—specifically for copyright matters—in the *Digital Millennium Copyright Act* of 2000. The E-Commerce Directive thus rejected a principle of immunity and adopted one of limited liability. Similarly, when Argentine judges had to develop their own standard, they accepted the principle of limited liability but differed in cases where judicial intervention was necessary to determine whether the content was unlawful—holding that such intervention was not required in cases of *manifest unlawfulness* (CSJN 2014, Rec. 18). Models travel—and as they do, they change. In this sense, the interaction of multiple actors can lead to deep, not merely superficial, changes—even at the risk of misrepresenting the original model.

We understand the *Brussels effect* studied and theorized by Anu Bradford as a case of *modeling* (which includes elements of other mechanisms) under Braithwaite and Drahos’s paradigm (Bradford 2020). Regulatory harmonization within the Union was the primary motivation behind this expansive process to improve the functioning of the single market and facilitate cross-border trade (seeking to minimize the need for companies to adapt their products or services to the requirements of each country). That harmonization process sought to prevent the very internal fragmentation that the single market intended to avoid (Bradford 2020, 19). However, the projection beyond the Union’s borders soon became a desired objective, as can be inferred from several documents from that period (European Parliament 2017). As early as 2007, the Commission stated in the document *The External Dimension of the Single Market Review* that the European Union had a window of opportunity to lead global solutions by promoting its modern regulatory frameworks internationally in sectors such as environmental protection and personal data protection (European Commission 2007). The DSA appears to be following that same path.

Behind the Brussels effect lie dynamics that go beyond *modeling* processes. According to Bradford, the effect is characterized by the concurrence of five factors: the EU's market size, which compels companies to comply with its standards to gain access; strict regulatory standards, which pressure companies to follow them rather than others; the EU's regulatory capacity—technical, administrative, and in terms of enforcement; inelastic regulatory goals such as consumer protection; and the indivisibility of a company's product or behavior, which leads companies to adopt EU rules as a global standard, since splitting their business models across different regulatory regimes would be costly and complicated (Bradford 2020, 25).

Two clear examples of the Brussels effect are the Data Protection Directive 95/46/EC and the subsequent General Data Protection Regulation (GDPR), which replaced it. With the Directive, the EU opened the door for non-EU countries to obtain adequacy certifications to allow more flexible cross-border data flows. The design of the GDPR continues that idea in relation to adequacy certificates. As Arturo Carrillo and Matías Jackson explain, while the DSA retains many of the issues addressed by the Directive, it also seeks to strengthen and expand its predecessor's legal framework. Additionally, it aims to resolve the problem of conflicting legal interpretations within the EU that the Directive had created. In doing so, it attempts to address the fragmentation of European national data privacy laws (Carrillo and Jackson 2022).

Another relevant factor is the institutional architecture developed as a consequence of the market's size, which proves attractive to peripheral countries with fewer resources and weaker administrative capabilities in bureaucratic terms.

“In particular, the highly specific nature of EU regulations makes them easier to emulate for developing countries, which may have less qualified administrative and judicial agencies. In these low-income countries, detailed and codified legal rules can serve as substitutes for human capital and are thus preferred over more flexible standards (...) EU regulations are not only more precise templates and therefore more accessible, but they also carry the additional advantage of being published in several languages, including French, Portuguese, and Spanish. This facilitates the copying of European regulations, particularly in Latin America and Francophone Africa. Moreover, countries with strong cultural and historical ties to the EU (or, as is often the case, to its former colonial powers) tend to look to the laws of individual EU member states for guidance” (Bradford 2020, 79).

Among those historical ties is the civil law tradition (generally more detailed and specific in its formulation of regulatory instruments than common law) that many Latin

American countries share with the European Union, which may also help explain the copying and adoption of European regulations. Also at play are the well-known *soft power* mechanisms described by Joseph Nye, which the EU—like the United States—exerts in its interactions with other countries (Joseph S. Nye Jr 2002). As Manners explains, the power Europe exerts over other countries is normative and ideological and presents itself as a regulatory model to follow (Ian Manners 2002). Bendiek and Stuerzer, for their part, argue that the EU’s internal decision-making structure plays a fundamental role in its ability to project regulations globally, in addition to the role played by its market size (Annegret Bendiek and Isabella Stuerzer 2023).

Companies operating within the European Union also become agents in the *modeling* processes and the Brussels effect because by adapting to the regional framework, they end up replicating those rules globally for economic reasons (Bradford 2020). The functioning of this mechanism is easy to understand based on simple cost-benefit logic: in some cases, it is more rational and less costly for companies to comply with the European standard and harmonize their terms and conditions, content moderation practices, and so on. For example, Bendiek and Stuerzer mention that “given that digital services are ‘indivisible’ (...) U.S. companies updated their terms of service following the GDPR, as it would simply be too costly to offer a different service model across different countries” (Annegret Bendiek and Isabella Stuerzer 2023, 5). This distinction is important because in this article we focus exclusively on modeling carried out by the importing country, not on the *de facto* modeling carried out by companies. The European Union benefits internationally from this effect because, in order to secure access to the EU market, companies adapt and then lobby other countries to adopt regulations convergent with the European framework, thereby ensuring legal certainty for their operations (Annegret Bendiek and Isabella Stuerzer 2023, 5).

Signs of DSA-Inspired Modeling in Latin America

Since the approval of the DSA, several regulatory proposals have been introduced in Latin America that are inspired by the regulation and incorporate similar language to the EU law. In this section, we examine some of these initiatives to highlight elements that appear to be influenced by the DSA and identify points of convergence and divergence.

Brazil

In 2014, Brazil passed Law No. 12,965/2014, known as the Marco Civil da Internet (MCI). This legislation is unique in the region, as it includes provisions related to intermediary liability. Its importance is also tied to the drafting process, which followed a

collaborative approach aligned with *multistakeholderism*. It included a public consultation, discussion forums, and the establishment of a special commission in Congress to examine the issue (Gutiérrez-Albarracín, Mancilla-Gaona, and Tibiriçá 2018).

Article 19 of the MCI establishes, as a general rule, a liability exemption system for service providers through a notice-and-takedown mechanism for third-party infringing content, similar to the model in the DMCA and the E-Commerce Directive 2000/31/EC, though with modifications: it requires that the notice be issued by a court (Article 19 2012; Del Campo et al. 2021). Only when these safeguards are not met may the intermediary be held civilly liable for damages resulting from third-party content, except in the case outlined in Article 21 (CIDH 2017a, para. 111). That provision states that, in cases of privacy violations involving the disclosure of images, videos, or other materials containing scenes of nudity or private sexual acts without the consent of those involved, the notification may be submitted by the affected individual or their legal representative, without the need for judicial intervention. Upon receipt, the intermediary must block the content. To prevent negative impacts on freedom of expression, the MCI requires—under penalty of nullity—that any person requesting removal of content provide elements that enable the specific identification of the material alleged to violate privacy and verify the legitimacy of the requester. This regulatory framework includes an explicit reference to the protection of the human rights of Internet users, particularly the right to freedom of expression (Laidlaw 2019).

However, in 2020, Bill No. 2630 (PL 2630) was introduced to regulate disinformation on social media. The bill emerged in a specific context in Brazil, shaped by growing concerns over the spread of disinformation during electoral campaigns, the COVID-19 emergency, and conflicts involving WhatsApp in 2018, which raised questions about whether the liability granted to intermediaries under the MCI should be maintained (Matías González Mama and Belén Portugal 2022). In 2021, then-President Jair Bolsonaro issued Provisional Measure No. 1068/21, which sought to amend the Marco Civil da Internet by prohibiting social media services from engaging in content moderation or limiting the reach of publications in ways that could be interpreted as political or ideological censorship, among other concerns. The measure also established that platforms would only be allowed to delete, suspend, or cancel user services or accounts when there was just cause (as specified in the same decree) (Lina Paola Velázquez and Nicolás Zara 2023). The Congress deemed this measure unconstitutional and overturned it. Legislative Bill 2630 was submitted to the Brazilian Congress for debate and underwent several modifications from its original draft.

Legislative Bill 2630 repeatedly references the European Union’s Digital Services Act in its preamble and incorporates provisions similar to those of the European legislation,

including transparency and assessment obligations, systemic risk analysis by intermediaries, and data access for academic research. The bill further aligns with the EU model on intermediary liability for harmful third-party content—particularly when disseminated as advertising or when platforms violate duty-of-care protocols for security. It also includes the obligation to remunerate authors for artistic and journalistic content disseminated through these platforms (Lina Paola Velázquez and Nicolás Zara 2023).

Unlike the DSA, the bill does not distinguish between online service providers and very large search engines, but it does adopt a scale-based approach: it establishes that its provisions will apply only to platforms with more than ten million monthly users in the country. The bill also adopts the “systemic risks” framework outlined in the DSA, dividing it into five categories: (a) dissemination of illegal content, (b) freedom of expression, access to information, and media pluralism, (c) violence against women, racism, public health, protection of children, adolescents, the elderly, and other situations of significant physical and mental harm, (d) protection of the democratic rule of law and electoral integrity, and (e) unlawful or abusive discrimination in the use of sensitive personal data.

The Brazilian bill requires companies to conduct independent audits to verify compliance with its provisions and to implement transparency mechanisms in digital advertising. It also obliges companies to develop Codes of Conduct, in line with guidelines issued by the Internet Steering Committee (CGI), to uphold the principles and objectives outlined in Articles 3 and 4 of the bill (Câmara dos Deputados 2020). These codes of conduct mirror Article 45 of the DSA. The bill also includes—in Chapter X—specific provisions for the protection of children and adolescents, which closely resemble Article 28 of the DSA. These provisions require providers to ensure a high level of privacy protection for minors, to actively prevent them from using services not designed for their age group, to establish age verification and parental control mechanisms, and to prohibit behavioral profiling. Interestingly, although the bill’s preamble references Article 25 of the DSA concerning *dark patterns*, it does not include this provision in its operative section.

Bill 2630 experienced a tumultuous journey through the Brazilian Congress. It advanced and stalled multiple times, and several versions of the bill were introduced, which was sometimes difficult to track even for actors directly involved in its development. However, in April 2024, it was withdrawn from parliamentary discussions. The conflict between Brazil’s Supreme Federal Court (STF) and Elon Musk in mid-2024 played a significant role in shaping the bill’s trajectory. The STF had ordered X to suspend accounts under investigation for their alleged involvement in disseminating disinformation and hate speech for political purposes during the 2022 elections (Mariangeli 2024). When X Brazil failed to comply with these orders, STF President Alexandre de Moraes imposed

a daily fine. In response, Musk decided to shut down X’s local subsidiary in Brazil and not pay the imposed fines, which culminated in De Moraes ordering the freezing of accounts belonging to another Musk-owned company—*Starlink*—and the suspension of X Brazil’s operations. Although this is an extreme case, both in terms of the scope of the measures requested by Brazilian authorities and the resistance from the company involved, it is worth noting that all of the court’s decisions were enabled by the MCI. While the legality of the STF’s measures is not the focus of this paper, this case is relevant because it suggests that Brazil possesses a certain degree of enforcement capacity comparable to that envisioned by the DSA. The power of Brazil’s judiciary and the size of its market may serve as sufficient incentives to subject major tech companies to the authority of its national legal system.

Another bill worth mentioning is Bill 4691/2024, introduced by legislators Silas Câmara and Dani Cunha in December 2024 (Câmara and Cunha 2024). The bill aims to protect constitutional freedoms and fundamental rights on digital platforms, services, and markets on the Internet. It would apply to all digital platforms providing services within Brazilian territory with an active user base equivalent to 5% or more of the Brazilian population (Câmara and Cunha 2024, Article 1). The bill reiterates the prohibition of anonymity in any form of expression (Câmara and Cunha 2024, Articles 4 and 5). Under the law, covered Internet service providers must verify users’ real identities while ensuring confidentiality, disclosing this information only when mandated by a judicial authority. It also expands the scope of corporate civil liability. Companies may be held liable for content produced by third parties if they fail to identify the author or if the content is distributed through online advertising and propaganda. Platforms may be held liable for fraudulent or illicit accounts impersonating others—unless the content qualifies as criticism, tribute, or parody—if they fail to promptly disable such accounts after being notified by the affected user or their legal representative.

Although this bill does not explicitly reference the DSA, we can identify the modeling effect of the European regulation in several provisions. For instance, some of the content blocking or removal mechanisms appear to emulate Article 16 on notice and takedown from the DSA (Câmara and Cunha 2024, Articles 6 and 10). Likewise, the bill mirrors the DSA’s risk-based approach, with obligations to mitigate such risks (Câmara and Cunha 2024, Articles 7 and 8), including the use of concepts such as “systemic risks” and the requirement to submit self-assessments annually to the regulatory authority. It also imposes an obligation to provide the regulatory authority with access to information related to systemic risk monitoring upon request. Article 8, for its part, outlines actions that platforms must adopt to mitigate identified risks and reserves the authority’s right to impose additional measures. At this point, we find a significant difference with

the DSA, which does not foresee the expansion of regulatory authority in this manner (European Commission 2022b, Article 35.3). Furthermore, the bill requires companies to implement preventive measures under regulatory oversight when notified of content that “clearly constitutes” crimes, including but not limited to: incitement to suicide or self-harm; copyright infringement; public health offenses; international child trafficking and sexual exploitation material involving minors; crimes against the Democratic Rule of Law; harassment, coercion, or threats against electoral candidates; discrimination or hate speech based on race, ethnicity, religion, or nationality; trademark violations; animal abuse or mutilation; software piracy; and terrorism (Câmara and Cunha 2024, Article 10). Several of these provisions—such as the offense of harassment against female candidates or incitement to self-harm—do not have an explicit or express counterpart in the DSA and are rather vague in their description.

The bill also imposes a series of obligations, compliance with which will be overseen by the regulatory authority (Câmara and Cunha 2024, Article 10). It also authorizes platforms to take measures to prevent the mass dissemination of intentional disinformation.

If our modeling hypothesis holds, Bill 4691 is a relevant piece of evidence: we can find echoes of Article 9 on orders to act against illegal content, Article 10 on orders to disclose information, as well as Article 18 on the notification of suspected criminal offenses, Article 28 on the protection of minors online, and Article 35 on risk mitigation. In turn, the bill also incorporates transparency obligations reminiscent of Article 14 on “terms and conditions” of the DSA (Câmara and Cunha 2024, Articles 11-13). Article 11 establishes that platforms must provide, in an accessible format and using clear, public, and objective information, their terms of service in Portuguese, which must meet specific requirements detailed in items I to IX. Article 12 places on platforms the duty to disclose in their terms of service the governance measures adopted in the development and use of automated systems. Finally, Article 13 introduces the obligation for platforms to produce semiannual transparency reports, which must be accessible on their websites and in Portuguese, to report on online content moderation procedures. This article appears to be inspired by Article 15 of the DSA, which sets out transparency obligations for intermediary service providers (European Commission 2022b, Article 15). Similar patterns are found in Articles 16, 20, 26, 38, and 39.

One notable innovation found here is Chapter IV on Economic Order, which in Article 14 includes provisions related to competition law. It states that platforms, as well as their affiliates and subsidiaries, are subject to controls and procedures to prevent economic concentration and ensure a free competition environment. Any merger, acquisition, or business partnership process must be approved by the Administrative Council

for Economic Defense (CADE) and other regulatory bodies, which will be responsible for evaluating the impact of such operations on the market. Here we see the effects of modeling dynamics—not from the DSA but from the Digital Markets Act (DMA), another regulatory instrument with the potential influence that this paper discusses. Among the innovations worth highlighting is Chapter V on Regulated Self-Regulation, which allows digital platforms to create a self-regulatory entity that must comply with the powers described below (Câmara and Cunha 2024, chap. V). This authority would have broad oversight powers over the companies (Del Campo 2022).

While the DSA acknowledges self-regulation in its recitals and allows platforms to adopt codes of conduct, the provisions on regulated self-regulation appear to break new ground. In some respects, it seems to incorporate characteristics from the DSA’s Article 21 on out-of-court dispute settlements, functions of the DSA’s Board for Digital Services, and the codes of conduct described in Article 35 (European Commission 2022b, Article 35). Finally, Article 19 establishes a series of administrative sanctions—isolated or cumulative—for providers that fail to comply with the provisions of the law, which resembles Articles 51, 52, 74, and 75 of the DSA. The future of the bill remains uncertain at the time of writing.

Some reports indicate that the Brazilian Executive Branch would not support this legislative proposal and is currently working on two bills to be submitted to Congress, which have not yet been published (Caetano 2025b). One is reportedly being developed by the Ministry of Justice and Public Security and adopts a consumer protection approach. The other is being led by the Ministry of Finance and is based on competition law to prevent monopolies (similar to the Digital Markets Act) (Caetano 2025a). The Ministry of Finance outlined its reasoning in a report published in 2024 (Ministério da Fazenda 2025).

Costa Rica

The case of Costa Rica is also worth mentioning, where a bill was introduced to regulate the *Governance of Digital Services and Electronic Commerce* (Kattia Cambronero Aguiluz et al. 2024). This legislative development predates the enactment of the DSA. Therefore, it is based on the draft version of the European Union’s Digital Services Act, not its final version. It includes an explicit reference to the DSA in its preamble. The Costa Rican bill has a section titled “Legal Regime of Intermediary Services of the Information Society (Articles 31 to 46),” which is practically a word-for-word copy of Chapter II on Intermediary Liability of the DSA (Articles 4 to 18)². The bill will apply to two

² Here we refer to the comments made by Access Now on the aforementioned proposal: <https://www.accessnow.org/wp-content/uploads/2023/07/Comentarios->

main areas³: (1) information society services—especially intermediary services—and (2) electronic commerce as a manifestation of those services.

In line with the DSA, the Costa Rican bill includes, in Article 35, a general clause stating that intermediary companies have no obligation to monitor or actively search for facts and must protect users' encryption and privacy. It also creates an obligation for intermediaries to maintain an internal procedure for handling complaints related to the existence of illegal content, following the DSA's approach. This includes establishing notice-and-action mechanisms that allow users to report such content and requires companies to provide clear and detailed justification for removing posts, in addition to granting affected users the right to challenge the decision through an internal procedure. Likewise, Article 46 of the bill mandates intermediary companies to report to authorities if they suspect crimes are being committed via their platforms.

The Costa Rican bill includes transparency obligations for intermediary companies, similar to the provisions in Articles 24 to 28 of the DSA. Articles 52 and 53 specify that companies must ensure that users know the identity of the natural or legal person responsible for each advertisement and the criteria used to determine the target audience, among other aspects. In addition, there are special provisions to regulate advertising directed at minors, strengthening the protection of this vulnerable group. Article 18 on e-commerce includes provisions prohibiting the use of automatic mechanisms or auto-subscription features to obtain user consent for receiving commercial and/or advertising information, as well as mechanisms designed to mislead users into giving such consent—including the use of dark patterns intended to deceive, steer, or manipulate users into behaviors that are directly or indirectly profitable for a service provider or merchant, but also harmful or contrary to the users' intentions. Article 43 replicates the prohibition on manipulative designs and dark patterns. However, this time it applies to intermediary services that harm, affect, or limit users' ability to make free, autonomous, and informed decisions. The article also includes descriptions of practices that companies must refrain from. Articles 18 and 43 are modeled after—and, in some subsections, directly replicate—Article 25 of the DSA.

Furthermore, Article 49 of the Costa Rican bill regulates a set of measures against the abusive and improper use of notice-and-action mechanisms and internal complaint-handling systems. The potential measures include: (i) the suspension of users who repeatedly post illegal content, following a prior warning; (ii) the authority to suspend unfounded claims submitted repeatedly by individuals or entities, also after warning them; (iii) the assessment of complaints filed by users, taking into account the provisions of

Proyecto-de-Servicios-Digitales-Costa-Rica.pdf

³ The word “temas” [areas] is the one used by the bill on page 8.

points (i) and (ii); and (iv) the obligation to include in the platform’s terms and conditions a clear explanation of points (i) and (ii). In this regard, the bill also aligns with Article 23 of the DSA, which addresses measures and protections against misuse.

Finally, Article 54 states that the State of Costa Rica shall promote the development and implementation of voluntary codes of conduct by service providers under Article 45 of the DSA.

Argentina

On July 8, 2024, Senator Antonio J. Rodas introduced Bill No. S-1193/2024 to establish the scope of freedom of expression, the circulation of information, and the exchange of data on social media (Rodas 2024). While this is not the first bill seeking to regulate the role of intermediaries on digital platforms, its analysis is especially significant as it is the most recent legislative proposal at the time of writing.

The bill references various regulatory approaches in comparative legal systems but does not explicitly mention the DSA. It does note, however, that within the European Union, “various policy measures and legislative initiatives” have been introduced.

The bill distinguishes between “horizontal” and “vertical” social networks (Article 2). It states that the former are those that openly offer a platform and/or tools for interactions between individuals and/or groups in a general manner without limiting the service to specific categories of users, topics, or issues. Vertical networks, by contrast, restrict their services to specific categories of users, topics, and/or issues. This typology of networks is unclear, and it is not evident from the text which category would apply to different types of social networks. The bill seeks to move toward a *scaling* of services but with a criterion that is not clearly defined.

Article 3 of the bill is the most noteworthy, as it establishes the circumstances under which intermediaries may remove user-generated content. It mandates that intermediaries delete content either pursuant to a court order or in response to a substantiated third-party claim of unlawful violation of personal rights. In these cases, intermediaries must remove specified content upon notification.

It also establishes that intermediaries may remove content when it is “evident and indisputable” that such content, or its publication, constitutes a criminal offense. The provision’s ambiguous wording fails to specify whether platforms bear an affirmative duty to remove this content (as with court orders) or face potential liability for non-removal. In the case of vertically oriented social networks, they may remove content when it is “manifestly and indisputably irrelevant” to the purpose and objective of the network. Interestingly, the bill refers only to the act of removal and does not mention

any other action related to content moderation. The preamble suggests that the legislator is concerned about an increasing trend of online content removal, which impacts both individual and collective dimensions of freedom of expression. This may explain why Article 6 specifies that removal shall be merely precautionary and temporary, except in cases involving a court order. In that case, the effect will depend on whether the judicial order is provisional or final.

The bill also does not establish any obligation for intermediary companies to implement mechanisms that allow anyone to report the presence of content they consider illegal or the commission of a crime—something explicitly required by Article 18 of the DSA.

The bill further provides that intermediary companies must notify users when the content they have published is removed, specifying in that notice the reasons for removal in a “clear, precise, and complete” manner. It also grants users the right to challenge removal decisions before the company, provided such removal was not the result of a judicial order. These provisions appear to echo Articles 17 and 20 of the DSA. The bill specifies that this internal appeal process does not limit the parties’ right to approach the relevant administrative or judicial authorities. In the same vein as Article 21 of the DSA, it declares that users affected by an intermediary company’s decision may bring their claims to judicial or extrajudicial dispute resolution bodies, even if their internal complaint remains unresolved.

The bill omits any explicit intermediary liability provision, as well as a general non-monitoring clause. Such vagueness risks obscuring both the provisions’ applicability and the thresholds for intermediary liability.

Unlike the DSA, this bill refers only to judicial and administrative bodies, omitting any mention of extrajudicial mechanisms. This could pose challenges for affected users who wish to access alternative dispute resolution mechanisms such as arbitration.

In this case, we find signs of incomplete and imperfect modeling by including provisions similar to some in the DSA. At the same time, it is clear that other elements of that model have been omitted for unknown reasons—possibly due to a lack of familiarity with the subject or technical limitations during the legislative drafting process.

The case of Bill No. 1225-D-2024, introduced by Deputy Micaela Morán in August 2024, is different as it explicitly mentions the DSA (Marziotta 2024b). The bill seeks to protect consumers from misleading or manipulative advertising disseminated on social media by influencers. Its rationale states that more than 10 European regulations, including the DSA, were used as references, proving that some Argentine legislators are using European regulation as a model for digital platform legislation.

Despite explicitly mentioning the DSA, the bill does not incorporate any of its specific articles. For example, Article 12 addresses the liability of intermediary companies and establishes that “sanctions against *influencers* who violate the provisions of this law shall also extend to intermediaries and companies that hire their services.” However, this provision has no direct counterpart in the DSA. Article 7 mandates that the advertising nature of mentions or digital content disseminated by influencers must be clearly identifiable to their followers through tags or other appropriate measures. This provision could be inspired by the DSA’s transparency requirements, as we will see more explicitly referenced in the next bill.

In October 2024, Deputy Gisela Marziotta submitted a bill to Congress that promotes identity-based labeling on mass social media platforms—a measure with potentially negative impacts on freedom of expression (Marziotta 2024a). In its rationale, the bill cites as precedents the measures adopted under the DSA of the European Union to increase transparency and accountability of digital platforms in content management and the identification of automated accounts. Curiously, alongside the DSA, it also references the measures adopted by China to control the use of digital technologies to avoid public opinion manipulation and ensure social stability. The bill claims—without evidence—that European and Chinese regulations have successfully mitigated disinformation and manipulation campaigns, serving as models for similar initiatives globally.

In conclusion, these three bills show that there are some examples of regulatory modeling in Argentina. The first is likely a case of implicit modeling that has partially drawn on European regulatory expertise, attempting to replicate some standards concerning intermediaries. In the other two cases, the reference to modeling is explicit, but the bills do not incorporate any provisions from the DSA. Therefore, the modeling appears to be more motivated by a projected image of legitimacy, quality, and rigor—one that may serve in the local context to promote the bill or to advance a parallel agenda (Braithwaite and Drahos 2000, 591). These bills seem to signal the emergence of a modeling mindset within the Argentine legislature.

Chile

In 2024, Senators Ximena Rincón, Pedro Araya, Iván Flores, and Matías Walker introduced a bill to reduce the information disorders to which people are exposed due to the creation, publication, dissemination, promotion, or financing of false, harmful, or illegal content, or hate speech on digital platforms, and to protect individuals or groups affected by such content (Ximena Rincón et al. 2024). This legislative proposal establishes, among other things, the duties and responsibilities of intermediary companies.

Article 4 provides that the regulation will apply to digital service providers operating in Chile or with a “substantial connection” to the country. To meet this threshold, providers must either be established in Chile or, failing that, maintain a significant local user base. The only reference to the DSA in the bill appears in a footnote to this article, which cites the European Commission document that served as the draft proposal for revising the Electronic Commerce Directive 2000 and ultimately became the DSA. The article also includes the obligation to designate a legal representative and a point of contact enabling direct electronic communication, in Spanish, with state authorities when service providers have a substantial connection to Chile but are not established in the country. This provision appears to be a simplified version of Articles 11 and 13 of the DSA.

Article 5 enshrines the principle of net neutrality and states that disinformation, misinformation, illegal information, and hate speech are unlawful content and uses not protected by that principle (Ximena Rincón et al. 2024, Article 2). Article 6 of the bill requires intermediary companies to adopt appropriate filtering or blocking measures that are limited to illegal content and do not affect the freedom of expression of other users. It also states that content filtering systems imposed by commercial service providers that are not controlled by the end-user constitute a form of prior censorship and do not represent a justified restriction on freedom of expression and information. Article 7 further requires service providers to implement a transparent policy and procedure for complaints and for the blocking and removal of illegal content, as well as for the suspension or termination of services, applicable to all individuals—whether or not they are users of the services—that is accessible and easy to use.

This provision mirrors Article 16 of the DSA on notice and action but alters its language—replacing the DSA’s “any individual or entity” with “users and non-users.” Unlike the DSA, the bill omits criteria tied to actual knowledge, instead relying generically on complainant-submitted evidence and imposing a 48-hour deadline for companies to assess content illegality after receiving a complaint. Once the review process begins, the company must label the publication with the tag “observed post.” Upon receiving the complaint, the company will notify the accused party, who may use the same tool to present evidence proving the legality of their publication. In this brief mention alone, it appears that the Chilean legislator modeled this provision after Article 20 of the DSA. Once the content is found to be illegal, the company must notify both the complainant and the accused party of the decision and replace the label “observed post” with the warning “fake news” or “hate speech.”

If the service provider’s decision is not properly substantiated, or if either the complainant or the accused party considers the criteria used to classify the content to be sub-

jective, they may appeal to the Court of Appeals that has jurisdiction. Unlike the DSA, this bill does not allow for out-of-court settlement as per Article 21 of the European law.

Regarding transparency obligations, Article 8 of the bill requires that when companies receive more than 50 complaints per year, they have to prepare and publish a report in Spanish on their platform detailing their complaint-handling procedures, blocked content, number of claims, and more. The article also includes transparency obligations toward users regarding automated tools and decisions involving content moderation, relevance rankings, ad selection and distribution, and content recommendation. These provisions are similar to Article 15 of the DSA, which requires intermediaries to publish clear and comprehensible annual reports on content moderation activities conducted during the reporting period. The bill also includes transparency obligations for online advertising activities on platforms in Article 10 and provisions on advertising-related risks that resemble measures included in the DSA on this topic.

Article 11 introduces the obligation to develop Codes of Good Practices on Disinformation to mitigate the risks posed by creating and disseminating false content or hate speech. These codes must include indicators for transparency, content visibility and quality, user education, monitoring, cooperation and collaboration, and independent audits. The mention of risks is also reminiscent—though with some differences—of the systemic risk approach adopted in Articles 34 and 35 of the DSA. This reference appears inspired by the European Union’s Code of Practice on Disinformation, mentioned in Recital 106 of the DSA (European Commission 2022a).

Regarding corporate liability, the bill states that intermediary companies shall be liable for non-compliance with the provisions established in the regulation. Although the bill is not entirely clear, it appears to refer to non-compliance with obligations related to the publication or dissemination of the previously described illegal content. The Court of Appeals will assess liability and, upon confirming non-compliance, may impose fines and mandate a public apology from the company. The Court may double sanctions for repeat offenses and even order the service’s suspension or cancellation. It remains unclear whether this is personal or strict liability or whether it involves an obligation of means/result.

There are certain similarities with Articles 74 to 78 of the DSA concerning the imposition of fines, enhanced supervision, interim measures, and periodic penalty payments. However, the Chilean bill lacks the procedural and investigative framework present in European law. Moreover, under the DSA, the suspension measures outlined in Articles 51(3) and 82 are treated as last-resort measures—applicable only in extreme cases where prior remedies have been exhausted and specific conditions are met, such as systematic failures to address violations involving incitement to violence or homicide (European

Commission s.f.). Former Commissioner Thierry Breton clarified this in a letter to civil society in July 2023 (Access Now 2023).

According to Article 13, Internet service providers shall not be held liable or required to compensate for damages, provided they comply with the provisions set out in Articles 85 L to 85 U of Chapter III of Intellectual Property Law No. 17,336, as amended by Law No. 20,435 of 2010. That legislation incorporates the obligations assumed by the country under the Free Trade Agreement with the United States and imports the standards established by the DMCA. However, it goes a step further by adopting a restrictive approach in its definition of notice for removing or blocking content, as it requires such notice to be judicial (Alberto Cerda 2014).

Conclusion

Regulatory modeling is a complex mechanism that can be explained by various causes, as previously discussed. Some of the reasons behind the adoption of foreign models may be related to market access opportunities, economic coercion or reward systems, or modeling driven by any of the five types already mentioned. The *lobbying* carried out by some think tanks, organizations, and companies (acting as *missionaries of the model*) to advance regulatory frameworks that benefit online service providers based in the Global North—such as Google, Meta, and Microsoft, among others—also helps explain these processes, as the adoption of similar regulatory frameworks provides legal certainty for offering their services abroad (Han-Wei Liu 2022).

We believe that the DSA is a strong candidate to become a regulatory model in Latin America, partly for a simple reason: it represents a regulatory innovation in a field that for decades was shaped by the apparent *laissez-faire* approach of Section 230 of the U.S. CDA. That model is increasingly perceived as inadequate for a changing and uncertain world, in which the Internet appears to lie at the root of problems that some governments, bureaucracies, academics, the press, and civil society consider central to the functioning of democratic systems. In the search for new approaches, the DSA holds a comparative advantage over other alternatives: it is a functioning system that exerts a decisive influence on transnational Internet companies due to the importance of the European market, and it offers a different approach to the status quo. In other words, it is a very tempting and seemingly easy-to-model option for Latin American lawmakers, given the prestige of the EU, its—at least professed—primacy of human rights, and because it addresses anxieties that many Latin American interest groups share with their European counterparts. Recent statements by Mark Zuckerberg regarding changes at Meta and its alignment with a parochial view of freedom of expression and the Republican Party—

which included an explicit reference to “Latin American courts”—may incentivize this process of bringing the region closer to European regulation (Hendrix 2025).

Incorporating foreign regulatory models raises several issues.

First, the institutional infrastructure of the European Union is intricate and has no parallel among any other country in the world. The DSA was the product of a complex process spanning several years and involved various stakeholders (EU Member States, European institutions, civil society, and academia), with the goal of harmonizing rules to be applied uniformly across all EU countries. This process required human, financial, and technical resources and a level of *expertise* not readily available in other regions or countries. It is possible to imagine a similar regulatory framework outside the European Union—in fact, the United Kingdom’s Online Safety Act seems to approach the DSA as a model (Parliament of the United Kingdom 2023). However, any such modeled framework would require careful adaptations and precise calculations regarding the amount of human and financial resources needed to implement a *co-regulation* scheme that demands significant monitoring and control from the state.

Latin American countries face a particular challenge in this regard, as they have less developed institutional infrastructures than their Global North counterparts and fewer available resources. While Latin American lawmakers can readily adopt foreign regulatory frameworks, replicating the advanced implementation and oversight systems of more developed nations proves significantly more challenging. Therefore, it is not unreasonable to think that a regulation of this kind could be difficult—or even impossible—to implement. This may occur due to the absence or incapacity of the importing state, a lack of human resources and know-how, insufficient economic resources, limited enforcement capacity, or the absence of an inelastic consumer market (Annegret Bendiek and Isabella Stuerzer 2023), among other factors.

Second, Latin America has its own standards regarding freedom of expression and access to information that distinguish it from the international model (International Covenant on Civil and Political Rights) and the European model (European Convention on Human Rights and DSA). These standards derive from the American Convention on Human Rights and a rich body of jurisprudence and advisory opinions from the Inter-American Court of Human Rights. The inter-American standard prohibits prior censorship and indirect restrictions while imposing subsequent liabilities that must be explicitly defined by law and justified to ensure respect for the rights or reputation of others or the protection of national security, public order, public health, or public morals. In addition, it requires that any restriction on freedom of expression comply with the *three-part test*: they must be established by laws written in clear and precise terms; they must pursue compelling objectives under the American Convention; they must be nec-

essary for a democratic society to achieve those compelling aims, strictly proportionate to their intended purpose, and capable of effectively fulfilling the compelling objective sought (CIDH 2009, para. 67).

The development of inter-American standards by the Special Rapporteurs for Freedom of Expression in their reports suggests both points of convergence and divergence. For example, the inter-American standards hold that strict liability models for intermediaries for third-party content must be rejected, as should any general obligation to monitor (CIDH 2013, 2017b). They also discourage the use of (*private*) *notice and take-down* mechanisms, as these create negative incentives and promote private censorship by encouraging the frequent removal of legitimate content—including content with special protection—while maintaining a preference for judicial notice mechanisms (CIDH 2013, 2017b, 2022).

In the 2024 report *Digital Inclusion and Internet Content Governance*, the Special Rapporteur for Freedom of Expression noted that, for some experts, European regulations have become de facto global standards for companies. He also emphasized that while “countries in the region can learn and capitalize on lessons from international experiences to develop their own strategies,” they must do so “in line with the American Convention and the standards of the inter-American human rights system” and by adapting them to be in accordance with “the principles developed at the regional level for the protection of this right” (CIDH 2024). Indeed, the report highlights specific differences with the European standard that are worth citing at length:

“... although the European Union’s approach is highlighted as a rights-based approach, it should be borne in mind that the inter-American legal framework differs from that applicable under the founding treaties of the European Union and the European Convention on Human Rights in the sense that”the guarantees contained in the American Convention regarding freedom of expression were designed to be more generous and to reduce to a bare minimum restrictions impeding the free circulation of ideas” (...) while Article 10 of the European Convention allows “formalities, conditions, restrictions” that have been interpreted in favor of the imposition of prior censorship under strict scrutiny, Article 13.2 of the American Convention explicitly states that the exercise of freedom of expression “shall not be subject to prior censorship but shall be subject to subsequent imposition of liability.” Likewise, Article 13.3 of the ACHR provides explicit protection against indirect restrictions on freedom of expression, and neither the European Convention nor the International Covenant on Civil and Political Rights contains equivalent provisions. The RELE has also

pointed out distinctions between the provisions of the ACHR and those of other international human rights treaties concerning unprotected speech, such as hate speech, concluding that its application within the Inter-American Human Rights System is stricter (CIDH 2024, para. 199).

Third, importing *recent* regulations can be risky because it may also involve importing problems that have not yet been fully detected. There is growing criticism of the DSA, including issues related to access to data for researchers (Jost 2023), the local presence requirement (Matías González Mama and Belén Portugal 2022), the definition of illegal content (Jacob Mchangama 2022), the concept of actual knowledge, and the lack of a clear definition of systemic risks (Del Campo, Zara, and Álvarez Ugarte 2024; Global Network Initiative 2024), among others. These criticisms are still developing—Latin American lawmakers cannot fully benefit from them, as the implementation experience is still recent and ongoing.

These three considerations should guide but not confine the legislative vision for regional institutions. There is no doubt that there are serious social problems linked to the Internet, and democratic societies have the right and prerogative to address them—even through regulation—so long as such regulations are respectful of human rights. As we have sought to suggest throughout this work, Latin American lawmakers are not entirely free when it comes to drafting regulatory proposals: they do so with precedents, with the experience of other countries, and with the formal and informal pressure of existing regulatory models, which are part of broader processes of regulatory globalization. The regulatory paradigm for the Internet is shifting, and the trend has already reached Latin America. In a sense, the dynamics of regulatory globalization are inevitable. The mechanisms through which it operates are powerful (Braithwaite and Drahos 2000). However, *migration* and *importation* are never linear processes. As Elías Palti explains from the perspective of intellectual history, ideas are never “out of place,” nor do they have a specific geographic locus; ideas are always “partially displaced,” and processes of assimilation are always conflictual due to the presence, within each culture, of a plurality of agents and modes of appropriation (Elias Palti 2006, 38). Regulations similarly function as codified principles for societal governance.

Our analysis has shown that the ideas advanced by the DSA as a framework for Internet regulation are already circulating in Latin America. What remains to be seen is whether the concrete forms of *integration* will take local specificities into account. We believe that Latin American legislators must pay close attention to the alignment of their proposed regulations with inter-American human rights standards and to the presence (or absence) of the institutional infrastructure necessary to implement the proposed frameworks—especially concerning the prevention of abuse. On the first point, we em-

phasize the observation made by the Special Rapporteur, who stated that “while Article 10 of the European Convention permits”formalities, conditions, restrictions,” which have been interpreted in favor of imposing prior censorship under strict scrutiny, Article 13.2 of the American Convention explicitly establishes that the exercise of freedom of expression “shall not be subject to prior censorship but to subsequent imposition of liability.” Likewise, Article 13.3 of the ACHR provides explicit protection against indirect restrictions on freedom of expression, and neither the European Convention nor the International Covenant on Civil and Political Rights contains equivalent provisions. The RELE has also pointed out distinctions between the provisions of the ACHR and those of other international human rights treaties concerning unprotected speech, such as hate speech, concluding that its application within the Inter-American Human Rights System is stricter (CIDH 2024, para. 19). On the issue of institutional infrastructure, it is important to note how some characteristics of our systems—such as the lack of independence in administrative oversight or enforcement authorities when applying complex regulatory frameworks—have historically been exploited for purposes contrary to legislative intent. These concerns raise red flags that will need to be closely monitored in the near future.

Annex

See [here](#) Comparative table of the DSA and the legislative proposals identified in Latin America.

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