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Article

LLMs as media technology: implications under article 10 ECHR

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ABSTRACT

This article suggests viewing LLMs as 'media technology'. This is both a factual and a normative argument. It is factual given the increasing proliferation of LLMs in news content production and distribution routines—even within legacy newsrooms. It is normative because framing LLMs as media technology brings to the fore crucial questions about press freedom in Europe in the age of automated content generation. Taking the demands of media freedom and pluralism as a starting point, the article unpacks the implications of this conceptual shift under art 10 of the European Conventions on Human Rights. The analysis that follows is primarily supported by the case law of the European Court of Human Rights, based on which it will be critically reflected on the EU's regulatory choices in the Artificial Intelligence Act.

Keywords: LLMs; AI Act; Press Freedom; Journalism; Generative AI.

INTRODUCTION

The press in an 'AI continent'

In September 2024, Mario Draghi and his team delivered the much-awaited report on the state of the European Union's global competitiveness to the President of the European Commission.[1] A salient point of Draghi's analysis is how the EU's lack of competitive dynamism is stifling its innovation potential in the field of advanced technologies, in particular

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[1] Mario Draghi, 'The Future of European Competitiveness' (2024) <https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961_en?filename=The%20future%20of%20European%20competitiveness%20_%20A%20competitiveness%20strategy%20for%20Europe.pdf>.

artificial intelligence (AI). The President of the Commission expressed her support for Draghi's vision, conceding that it provided inspiration for the Political Guidelines of her new term.[2] Her appointment of a special Commissioner for 'Tech Sovereignty' and the latter's plans for Europe to turn into an 'AI continent' also seem to confirm the salient role of AI innovation in the new Commission's agenda.[3] More recently, the announcement of 200 billion euro in capital mobilization for the development of European AI, including the construction of computing gigafactories, signals the Commission's concrete commitment on this front.[4]

The push for AI innovation can be seen as the natural follow-up to the creation of a regulatory ecosystem of trust to encourage the uptake of AI in private and public organizations,[5] which culminated in the adoption of the Artificial Intelligence Act (AIA) by the EU legislators in June 2024.[6] As the last implementation details of the regulation are worked out in the background, the Commission's policy discourse indeed seems to be shifting towards fostering the momentum for innovation and competitiveness of the EU in the domain of AI, and especially of large language models (LLM).[7] Although LLMs cannot be defined as a homogeneous category, they can generally be described as a type of deep learning model characterized by a large number of parameters and trained on extensive datasets. In terms of performance, LLMs show impressive capabilities at understanding and generating human-like text across a wide range of tasks.[8]

The press sector, and large publishers in particular, has been an early adopter of LLMs.[9] As with previous digital technologies, LLMs represent both an opportunity for journalism to innovate as well as of significant disruption to its economic stability and institutional identity.[10] Current state-of-the-art models are far from ensuring professional journalistic standards in output quality and present significant constraints in conducting complex reporting.[11] However, hyped expectations and uncertain technological capabilities should not distract

[2] See European Commission, 'Statement by the President: Report on EU Competitiveness' (2024) *European Commission* <https://ec.europa.eu/commission/presscorner/detail/en/statement_24_4601> accessed 2 April 2025.

[3] Cynthia Kroet and Romane Armangau, 'Incoming Tech Commissioner Wants EU to Become 'AI Continent'' (*euronews*, 14:16:47 +02:00) <https://www.euronews.com/next/2024/10/23/incoming-tech-commissioner-wants-eu-to-become-ai-continent> accessed 25 October 2024.

[4] European Commission, 'EU Launches InvestAI Initiative to Mobilise €200 Billion' (2025) *European Commission* <https://ec.europa.eu/commission/presscorner/detail/en/ip_25_467> accessed 25 February 2025.

[5] European Commission, 'A European approach to excellence and trust' (White Paper) COM (2020) 65 final, 19.2.2020, 2.

[6] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonized rules on artificial intelligence (Artificial intelligence Act) OJ L, 2024/1689 (AIA).

[7] Agence France Press, 'Europe Must Up its Game On AI: Von der Leyen' (*Barron's* 16 January 2024) <https://www.barrons.com/news/europe-must-up-its-game-on-ai-von-der-leyen-e1479a9e> accessed 4 April 2025; Klaus Kowalski, Cristina Volpin and Zsolt Zambori, *Competition in Generative AI and Virtual Worlds.* (Publications Office 2024) <https://data.europa.eu/doi/10.2763/679899> accessed 14 October 2024.

[8] Mohaimenul Azam Khan Raiaan and others, 'A Review on Large Language Models: Architectures, Applications, Taxonomies, Open Issues and Challenges' (2024) 12 IEEE Access 26839.

[9] Nicholas Diakopoulos and others, 'Generative AI in Journalism: The Evolution of Newswork and Ethics in a Generative Information Ecosystem' (Associated Press 2024) <https://www.researchgate.net/publication/363475725_Artificial_Intelligence_in_Local_News_A_survey_of_US_newsrooms%27_AI_readiness?channel=doi&linkId=631e6d85873eca0c007d0e91&showFulltext=true> accessed 8 April 2025.

[10] Tomoko Komatsu and others, 'AI Should Embody Our Values: Investigating Journalistic Values to Inform AI Technology Design', *Proceedings of the 11th Nordic Conference on Human-Computer Interaction: Shaping Experiences, Shaping Society* (ACM 2020) <https://dl.acm.org/doi/10.1145/3419249.3420105> accessed 17 April 2024, 3.

[11] Alexander Spangher and others, 'Do LLMs Plan Like Human Writers? Comparing Journalist Coverage of Press Releases with LLMs' in Yaser Al-Onaizan, Mohit Bansal and Yun Nung Chen (eds), *Proceedings of the 2024 Conference on Empirical Methods in Natural Language Processing* (Association for Computational Linguistics 2024) <https://aclanthology.org/2024.emnlp-main.1216/> accessed 2 April 2025; Subramaniam Vincent and others, 'Measuring Large Language Models Capacity to Annotate Journalistic Sourcing' (*arXiv*, 30 December 2024) <http://arxiv.org/abs/2501.00164> accessed 2 April 2025; Miao Li and others, 'NewsBench: A Systematic Evaluation Framework for Assessing Editorial Capabilities of Large Language Models in Chinese Journalism' (*arXiv*, 4 June 2024) <http://arxiv.org/abs/2403.00862> accessed 12 November 2024. See also Felix M Simon, 'Artificial Intelligence in the News: How AI Retools, Rationalizes, and Reshapes Journalism and the Public Arena' (*Columbia Journalism Review*, 2024) <https://www.cjr.org/tow_center_reports/artificial-intelligence-in-the-news.php/> accessed 6 March 2024, 21.

critical eyes from the present reality of the news industry. Notwithstanding the justified scepticism that at the time of writing surrounds the aptness of LLMs in serving journalistic uses, several newsrooms across the world are moving from experimentation to large-scale deployment of LLMs for news content production and distribution. Compared to previous cycles of journalistic innovation,[12] it is striking to observe the quick pace at which newsrooms are implementing LLMs as assistants in a wide range of editorial tasks,[13] interact with readers through chatbot interfaces,[14] and even (almost) autonomously produce simple stories.[15] LLMs may not do away with human agency in journalism but are likely to affect news media broadly,from content production and distribution to its political economy.[16] Considering also the limited prominence of the press in the EU's AI policy discourse, there is ample room for legal discussion.[17]

This article seeks to unpack the legal implications of viewing LLMs as media technology. Here, 'media technology' is understood as any socio-technical artefact facilitating the production, dissemination, and consumption of media (journalistic) content. As detailed below in the second chapter, this is both a descriptive and a normative argument which seeks to align the proliferation of LLMs in the news ecosystem with the legally established role of the press as a 'public watchdog'.[18] The aim of the first part of this paper is to confront the EU legislator's construction of LLMs in the AIA with the one advanced in this article.

The second part of the paper discusses the implications of the first part's framing from a human rights perspective, with a specific focus on the right to media freedom and media pluralism under the European Convention on Human Rights (ECHR). The objective, here, is to understand how the foundational elements of European media law could contribute to a more context-sensitive discussion on the use of LLMs in the press. Tracing the link between emerging communication technologies, media freedom and pluralism in European human rights case law, this part of the article contextualizes the journalistic deployment of LLMs within this set of judicial principles. The analysis spans three pillars. First, the significance of LLM-driven innovation for the negative and positive freedom of the press–respectively, its right not to be subject to state interference and to be able to exercise its legal privileges. Second, the self-regulatory prerogative of the press in stirring its innovation agenda, with particular focus on the implications for the exercise of 'duties and responsibilities' attached to the freedom to use LLMs. Finally, the significance of this new phase of media transformation for

[12] There is plenty of work discussing how the history of technological innovation in the media has always been characterized by initial resistance to socio-technical change by incumbent media gatekeepers. Henrik Örnebring and Michael Karlsson, *Journalistic Autonomy: The Genealogy of a Concept* (1st edn, University of Missouri Press, 2022); Matt Carlson, 'The Robotic Reporter' (2015) 3 Digital Journalism 3; Axel Bruns, 'Media Innovations, User Innovations, Societal Innovations' (2014) 1 The Journal of Media Innovations 13.

[13] See Diakopoulos and others (n 9); Kyle Orland, 'How The New York Times Is Using Generative AI as a Reporting Tool' (*Ars Technica*, 29 October 2024) <https://arstechnica.com/ai/2024/10/the-new-york-times-shows-how-ai-can-aid-reporters-without-replacing-them/> accessed 14 March 2025.

[14] See BILD, 'Hey_, der KI-Assistent von BILD—Fragen Sie jetzt!' (*hey.bild.de*) <https://hey.bild.de/experience/einfach-mal-ausprobieren-so-hilft-ihnen-hey_-a5d82531> accessed 2 April 2025; Kim Einder, 'Heb je vragen over de Amerikaanse verkiezingen? Stel ze aan onze chatbot' (*NU*, 28 October 2024) <https://www.nu.nl/over-nu/6333351/heb-je-vragen-over-de-amerikaanse-verkiezingen-stel-ze-aan-onze-chatbot.html> accessed 2 April 2025.

[15] For instance Matthew Conlen, 'We Built a News Site Powered by LLMs and Public Data: Here's What We Learned' (*Medium*, 6 March 2024) <https://generative-ai-newsroom.com/we-built-a-news-site-powered-by llms-and-public-data-heres-what-we-learned-aba6c52a7ee4> accessed 2 April 2025. The statement is also supported by the authors' personal experience in the preliminary phase of this research.

[16] Simon (n 11); Helle Sjøvaag, 'The Business of News in the AI Economy' (2024) 45 AI Magazine 246.

[17] Colin Porlezza, 'Promoting Responsible AI: A European Perspective on the Governance of Artificial Intelligence in Media and Journalism' (2023) 48 Communications 370.

[18] The European Court of Human Rights ('ECtHR') has often referred to the press as a 'public watchdog'. '*Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog"*'. *The Sunday Times v The United Kingdom App* no. 13166/87 (ECtHR, 26 November 1991), para 50.

the states' positive obligations to guarantee media pluralism. These will serve as normative signposts to highlight tensions and loopholes in the EU AIA's regulatory framework for journalistic uses of LLMs.

LLMS AS (ALSO) MEDIA TECHNOLOGY

LLMs under EU law

In his seminal work 'Technologies of Freedom', Ithiel de Sola Pool makes a clear case for rejecting a techno-deterministic understanding of the evolution of communication and media technologies. Pool demonstrates how the technical restructuring of communicative practice always occurs within law's constrained understanding of technological conditions. The relationship between technology and legal institutions, and in particular the right to free speech, cannot possibly be interpreted as simple, unidirectional, or immediate.[19] Technology does not 'structure and restructure our very ability to speak' single-handedly or in a vacuum;[20] the law, with its assumptions, always plays its part.[21] According to Pool, law's understanding of the role of new technologies in the pre-existing socio-technical environment often rests on inaccurate perceptions inspired by the 'early, clumsy form' in which these innovations emerge. This preliminary imaginary about new technologies developed by judges, policymakers, and regulators is liable to create legal and economic path dependencies in which later epiphanies about a technology's communicative affordances may not fit so easily.[22]

Pool's analysis also finds also significance in the present legal debates around AI in Europe. With the adoption of the AIA, the EU has created a harmonised framework for the regulation of a wide range of AI systems.[23] The AIA provides a layered framework defining different compliance burdens for developers, deployers, and other stakeholders seeking to commercialise and use AI systems in the EU market. The allocation of the regulatory burdens is based on a risk factor presented by the AI system, which varies depending on the use case and sector of deployment. LLMs and other generative AI models stand as a separate legal category, subject to specific obligations that exclusively target the models, rather than the systems.[24] The AIA refers to these as 'general-purpose AI models', which can serve for the assembling of 'general-purpose AI systems'.[25] To qualify as 'general-purpose', an AI model has to be trained with a significant amount data through self-supervision at scale, be able to fulfil a wide range of different tasks and allow for integration in downstream systems or applications.[26] Moreover, a general-purpose AI model needs to be versatile enough to perform various tasks.[27]

[19] Ithiel de Sola Pool, *Technologies of Freedom: On Free Speech in an Electronic Age* (Belknap Press of Harvard Univ Press 1983), 5.

[20] Jennifer Petersen, *How Machines Came to Speak: Media Technologies and Freedom of Speech* (Duke University Press 2022), 5.

[21] See also Margot E Kaminski and Meg Leta Jones, 'Constructing AI Speech' (2024) 133 The Yale Law Journal Forum 1212. Michael Birnack also contends that select assumptions about technology are always embedded in the law regulating it, even if implicitly. See Michael D Birnhack, 'Reverse Engineering Informational Privacy Law' (2012) 15 Yale Journal of Law and Technology 24, 91; Marco Antonio Lasmar Almada, 'Delegating the Law of Artificial Intelligence' (European University Institute, 2024), 38.

[22] Pool (n 19), 7.

[23] For a more detailed overview see European Commission, 'Approval of the content of the draft Communication from the Commission—Commission Guidelines on the definition of an artificial intelligence system established by Regulation (EU) 2024/1689 (AI Act)' (Annex to the Communication to the Commission) C(2025) 924 final, 6.2.2025.

[24] Claire Boine and David Rolnick, 'General Purpose AI Systems in the AI Act: Trying to Fit a Square Peg Into a Round Hole' (30 June 2023) <https://papers.ssrn.com/abstract=4644701> accessed 25 June 2024.

[25] AIA, art 3(63)-(66).

[26] AIA, art 3(63).

[27] AIA, art 3(66).

Under the AIA, the compliance burden varies depending on whether the model presents a 'systemic risk'. This means that an LLM has the potential to affect the EU market due to its scale of reach or any reasonably foreseeable adverse impact on health, safety, public security, fundamental rights, or society as a whole.[28] This qualification is either based on a LLM's 'impact capabilities' assessed on the basis of specific methodologies and technical tools,[29] or on an *ad hoc* decision by the European Commission.[30] The AIA currently presumes a model's high impact capabilities when the computational power used for its training exceeds 10(^25) floating point operations.[31] The obligations for model providers mainly consist in ex-ante disclosures of the models' technical documentation related to the training and testing process and of its capabilities and limitations, as well as certain accountability measures to ensure compliance with copyright law.[32] Additionally, providers of models presenting systemic risks must conduct continuous risk-monitoring and -mitigation activities, as well as ensure sufficient cybersecurity standards.[33] The AIA also offers the option for model providers to commit ex ante to a Code of Practice detailing the relevant standards of compliance, including for the assessment and mitigation of systemic risks.[34] Model providers are involved in the drafting process of the Code of Practice, together with national authorities, scientific experts, and civil society stakeholders.[35]

Like the whole AIA is shaped by explicit risk-management objectives, so does Chapter V of the regulation revolve around the construction of LLMs as risky systems. This choice aligns with the emerging trend in EU law to resort to tools of risk regulation for the governance of digital technologies.[36] We note that the very choice of resorting to a systemic risk approach is interlinked with that of relying on a general-purpose definition of the technology. Risk regulation is deployed for the prevention of disproportionate harm in the face of uncertainty. More specifically, systemic risk approaches in digital governance are designed to prevent and mitigate diffused harm on society at large stemming from a socio-technical system's design and characteristics.[37] LLMs' predisposition for widespread deployment across different sectors and unclear potential raise exactly the kind of uncertainty that (systemic) risk approaches seek to tackle.

It is pointed out in the technology regulation literature how risk-based approaches do not come free of inherently normative choices about AI and the harms the law should seek to protect from.[38] When deployed as a governance mechanism for the information environment, it might be inadequate for comprehensively meeting the positive demands of freedom of expression and information enshrined in the European legal order.[39] Central to these, for example, is the principle that states should sustain the public debate's accessibility to a plurality of

[28] AIA, art 3(65).
[29] See Annex XIII to the AIA.
[30] AIA, art 51 (1)b.
[31] AIA, art 51 (2).
[32] AIA, art 53.
[33] AIA, art 55.
[34] AIA, art 56.
[35] AIA, art 56(3).
[36] Kaminski and Jones (n 21), 1250–1.
[37] Alice Palmieri, Konrad Kollnig and Aurelia Tamò-Larrieux, 'Systemic Risks of Dominant Online Platforms: A Scoping Review' (2024) Social Science Research Network <https://papers.ssrn.com/abstract=5002743> accessed 16 December 2024, 7–8.
[38] See Rachel Griffin, 'The Politics of Algorithmic Censorship: Automated Moderation and its Regulation' in James Garrat (ed.) *Music and the Politics of Censorship: From the Fascist Era to the Digital Age* (Brepols, in press); Margot E Kaminski, 'Regulating the Risks of AI' (2023) 103 Boston University Law Review,1352.
[39] Natali Helberger, 'FutureNewsCorp or How the AI Act Changed the Future of News' (2024) 52 Computer Law & Security Review, 12; See Kaminski and Jones (n 21), 1253.

political views and opinions.[40] The systemic risk approach under chapter V of the AI Act instead implies making normative judgments from the outset with respect to the issues that should be tackled, the population that should be protected, and the evidence that should be used to those ends.[41]

LLMs as media technology

This article argues that rather than solely looking at LLMs as general purpose, risk-bearing artefacts, we should be able to also see them as media technology.[42] Our claim here is both descriptive and normative. Descriptive, because LLMs are currently also being deployed across news organizations as part of content production and distribution routines. Normative, because resorting to a particular conceptualization for LLMs not only determines the way we interact with or place our trust in them, but also of how we construct regulation and policy around the new technology.[43] Classification and categorization are indeed enactments of political and moral judgments, even though they may come in the guise of technical or semantic decisions.[44] Framing LLMs as a media technology allows us to fit LLMs on the legal-historical continuum recognizing emerging media technologies (potentially) as tools of press freedom.[45] The objective is to stress the fundamental rights value of the information which the press may wish to impart through LLMs, and, consequently, the constitutionally protected function of LLMs in facilitating that communication.[46]

Gilad Abiri suggests that accepting LLMs as a media technology means seeing them as 'the next phase in the steady progression of algorithmic mediation over our information', and we agree with this formulation.[47] His argument, however, goes in the direction of addressing LLMs as an issue of 'speech-at-scale'.[48] This choice places the technology into the platform regulation discourse as the solution to securing the trustworthiness of the digital public sphere.[49] We do not deny that platform regulation instruments are useful in dealing with the dissemination of artificially generated content. It is also true that providers of online platforms still play a significant role in developing state-of-the-art models and have been deploying them across their services.[50] However, Abiri's argument does not consider the increasing experimentation occurring within established newsrooms of (especially large) media companies through the uptake of LLMs for the production and distribution of news content. As such, it overlooks the foundational questions attached to the choice of framing LLMs as a media technology, that, in our view, should serve as the starting point for any meaningful discussion on the regulation of automated speech. As LLMs widen journalistic imaginaries beyond mere

[40] See more about state positive obligations to safeguard pluralism in Section 3.3.

[41] Compare to Griffin's discussion of systemic risk governance in the Digital Services Act. Rachel Griffin, 'EU Platform Regulation in the Age of Neo-Illiberalism' (Social Science Research Network, 29 March 2024) <https://papers.ssrn.com/abstract=4777875> accessed 4 December 2024.

[42] The concept is borrowed from Petersen (n 20).

[43] Melanie Mitchell, 'The Metaphors of Artificial Intelligence' (2024) 386 Science 6723 <https://www.science.org/doi/full/10.1126/science.adt6140> accessed 2 April 2025.

[44] Petersen (n 20), 6.

[45] See Pool (n 19).

[46] Eugene Volokh, Mark A Lemley and Peter Henderson, 'Freedom of Speech and AI Output' (2023) 3 Journal of Free Speech Law, 658.

[47] Gilad Abiri, 'Generative AI as Digital Media' (2024) 15 Harvard Journal of Sports and Entertainment Law 2, 281.

[48] See Kaminski and Jones (n 21), 1242.

[49] Abiri (n 46), 44.

[50] Paddy Leerssen, 'Embedded GenAI on Social Media: Platform Law Meets AI Law' (2024) (DSA Observatory, 2024) <https://dsa-observatory.eu/2024/10/16/1864/> accessed 2 April 2025>; Felix M Simon, 'Uneasy Bedfellows: AI in the News, Platform Companies and the Issue of Journalistic Autonomy' (2022) 10 Digital Journalism, 1837–8.

optimization of 'artisanal news production' to also alternative conceptions of workflows, content delivery, and business models,[51] it seems intuitive to linger on those fundamental aspects of the normative conversation.

We acknowledge the dis- and misinformation risks associated with the scalability of content production and distribution through LLMs, also considering their tendency to generate inaccurate content. At the same time, we must caution against one-sided and empirically unsupported narratives around their negative impact on the European information ecosystem.[52] History is replete with similar claims raised to discredit new technologies of mass communication.[53] The printing press, the telegraph, film, the radio, and television eventually all proved instrumental to the exercise of freedom of expression–they are 'technologies of freedom', to draw again from Pool. We should therefore be reminded also of the role of new media technologies in contributing to open spaces of political deliberation.[54] Contrary to Pool's claim, this is not to imply that these technologies are *inherently* conducive to freedom.[55] There is enough evidence from the last hundred years to acknowledge the inadequacy of unfettered market logics for the effective exercise of press freedom.[56] The corporate capture of foundational LLM research and development in the hands of few technology providers should be worrying from this perspective.[57] However, whether and how LLMs will realise press freedom expectations in the EU also hinges on the pursuit of adequate legal avenues. Even though they may not be the end point, media law, and fundamental rights are possibly the right place to start.

ARTICLE 10 ECHR AS THE NORMATIVE FRAMEWORK FOR LLMS IN THE MEDIA

We dive now into the normative implications of viewing LLMs as media technology. The central argument, elaborated below, is that this framing of LLMs leads necessarily to the application of European fundamental rights protection for journalistic uses of LLMs, in particular media freedom and pluralism. Media regulation and policy are a prerogative of the EU Member States.[58] This does not mean that the role of supranational authorities is irrelevant.

[51] David Caswell, 'Audiences, Automation, and AI: From Structured News to Language Models' (2024) 45 AI Magazine 174.

[52] See Sayash Kapoor and Arvind Narayanan, 'We Looked at 78 Election Deepfakes. Political Misinformation Is Not an AI Problem.' (18 December 2024) <https://www.aisnakeoil.com/p/we-looked-at-78-election-deepfakes> accessed 2 April 2025; Clara Murray, 'How We Were Deepfaked by Election Deepfakes' *Financial Times* (27 December 2024) <https://www.ft.com/content/62d81e6c-eec0-4d09-a71f-6aba579912dd> accessed 28 December 2024; Felix M Simon, Sacha Altay and Hugo Mercier, 'Misinformation Reloaded? Fears about the Impact of Generative AI on Misinformation Are Overblown' (2023) Harvard Kennedy School Misinformation Review <https://misinforeview.hks.harvard.edu/article/misinformation-reloaded-fears-about-the-impact-of-generative-ai-on-misinformation-are-overblown/> accessed 4 March 2024. For the opposite perspective see Louis Rosenberg, 'Generative AI as a Dangerous New Form of Media' (2023) <https://www.iiis.org/DOI2023/HA408FU> accessed 24 September 2024.

[53] Örnebring and Karlsson (n 12), 239.

[54] Andreas Jungherr, 'Foundational Questions for the Regulation of Digital Disinformation' (2024) 16 Journal of Media Law 8.11. See also the Joint Dissenting of Opinion in Delfi v Estonia: '[…]The Internet is described as an 'unprecedented platform' and while there is reference to benefits, it is described as posing 'certain dan-gers', the advantages being scarcely mentioned. We disagree. The Internet is more than a uniquely dangerous novelty. It is a sphere of robust public discourse with novel opportunities for enhanced democracy. Comments are a crucial part of this new enhanced exchange of ideas among citizens.' *Delfi v Estonia,* No. 64560/09, (ECtHR, Joint Dissenting Opinion of Judges Sajò and Tsotsoia, 16 June 2015).

[55] Pool (n 19), 226; Julie E Cohen, *Between Truth and Power: The Legal Constructions of Informational Capitalism* (Oxford University Press, 2019), 5.

[56] Victor Pickard, 'Restructuring Democratic Infrastructures: A Policy Approach to the Journalism Crisis' (2020) 8 Digital Journalism 704.

[57] Amba Kak, Sarah Myers West and Meredith Whittaker, 'Make No Mistake—AI Is Owned by Big Tech' (*MIT Technology Review*) <https://www.technologyreview.com/2023/12/05/1084393/make-no-mistake-ai-is-owned-by-big-tech/> accessed 4 March 2024.

[58] András Koltay, *Media Freedom and the Law: The Regulation of a Common European Idea* (1st edn, Routledge, 2024), 72.

Despite the lack of specific competences to regulate the media under the EU Treaties, the EU has increasingly done so through its internal market competences.[59] The ECtHR, instead, has a long-standing judicial history defining benchmarks for media-relevant human rights, to which the Court of Justice of the EU (CJEU) often refers when interpreting the EU Charter of Fundamental Rights (CFR).[60] We shall therefore devote particular attention to the ECtHR's case law.

The driving normative force of European media law is the right to freedom of expression, which enjoys both constitutional protection at the national level as well as fundamental rights status in the EU CFR and the ECHR.[61] Notwithstanding its universal character, the right to freedom of expression is no monolith, but rather confers a multiplicity of legal entitlements for different societal stakeholders. In its basic form, it entails the right of natural and legal persons to impart both factual and opinionated information. Moreover, both the EU CFR and the ECHR expand protection to the right to receive information, which in the relevant case law has been mostly construed as both a general right of the public to be properly informed as well as of media to gather information.[62] Finally, there is the right to media freedom, or press freedom, whose substance remains ambiguous and a contentious subject.[63] In broad terms, media freedom can be defined as both subset of the right to freedom of expression protecting the media's exercise of its editorial activities and a set of legal privileges beyond those of ordinary speakers for 'responsible, truth seeking, public interested' natural or legal persons engaged in journalistic activity.[64] Importantly, the ECtHR and the CJEU have both stirred away from a purely industry-centred view in defining who should benefit from its protection.[65]

The flip side of the coin of media freedom is media pluralism, which also enjoys fundamental rights status under art 10(1) ECHR, through the interpretation of the ECtHR, and 11(2) EU CFR. Technically, one cannot speak of 'a right to media pluralism'—it is not a subjective right.[66] Media pluralism entails a cultural policy or a 'principle' safeguarding the freedom of expression of all components of Member States' polities, and especially of minorities affected by structural inequalities in media markets.[67] That is also why the pursuit of media pluralism often also serves as a legitimate aim to justify limitations to the exercise of media freedom in European jurisprudence, more in the broadcasting than the press sector.[68] The case law of the

[59] Respectively through art 114 TFEU and art 167 TFEU. Consolidated Version of the Treaty on the Functioning of the European Union [2012] OJ C326/13.

[60] Art 52(3) of the Charter provides that 'rights which correspond to rights guaranteed by' the ECHR 'the meaning and scope of those rights shall be the same as those laid down by the said Convention.' Charter of Fundamental Rights of the European Union [2012] OJ C326/02 (CFR). See C–345/17 *Buvids, 14 February 2019,* ECLI:EU:C:2019:122, para 65.

[61] European Convention of Human Rights (ECHR), art 10; CFR, art 11(1); German Basic Law, art 5(1); Dutch Basic Law, art 7.

[62] *The Sunday Times v United Kingdom* (n 18), para 6.

[63] Jan Oster, *Media Freedom as a Fundamental Right* (1st edn, Cambridge University Press, 2015); Damian Tambini, 'A Theory of Media Freedom' (2021) 13 Journal of Media Law 135; Judit Bayer, *Digital Media Regulation within the European Union: A Framework for a New Media Order* (1st edn, Nomos, 2024); Ian Cram, *Liberal Democracy, Law and the Citizen Speaker: Regulating Online Speech* (1st edn, Hart Publishing, 2022); Koltay (n 58).

[64] Oster (n 61), 48–51; Tambini (n 61), 146.

[65] The ECtHR has also expanded the personal scope of this right beyond legacy media organizations, to also include 'bloggers and popular users of social media', whistleblowers, and civil society organizations. See *Magyar Helsinki Bizottság v Hungary* no. 18030/1 (ECtHR, 18 November 2016), para 168; *Steel and Others v UK* no. 24838/94 (ECtHR, 23 September 1998); *Hertel v Switzerland* no. 25181/94 (ECtHR, 25 August 1998); *VGT Verein gegen Tierfabriken* v Switzerland no 24699/94 (ECtHR, 28 June 2001); *Bucur and Toma v Romania* no. 40238/02 (ECtHR, 8 January 2013). The CJEU has made similar decisions. See for instance, C-73/07 *Tietosuojavaltuutettu v Satakunnan Markkinapörssi Oy and Satamedia Oy* [2008] EU:C:2008:727 ECR I-09831.

[66] Although art 3 of the European Media Freedom Act seems to create the legal basis for a statutory right. Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU OJ L, 2024/1083 (EMFA).

[67] Case C-288/89, *Stichting Collectieve Antennevoorziening Gouda and others v Commissariaat voor de Media* [1991] ECLI:EU:C:1991:323 ECR I-04007; Oster (n 61), 257.

[68] ibid, 257–9.

ECtHR on art 10 ECHR also serves as an important source of legitimacy for state interferences with media freedom for the sake of pluralism. The ECtHR has indeed referred to pluralism as a condition for the existence of democracy.[69] On the other hand, it has also recognized that proactive endeavours on the part of the State may be needed to guarantee a pluralistic media environment. Hence, not only does the State bear the ultimate responsibility to guard pluralism in the media market;[70] it also has a positive obligation to foster it.[71]

Media technology as a protected object of media freedom

The first implication of viewing LLMs as media technology is that access to and use of LLMs should be subject to media freedom protection according to the standards of art 10(1) ECHR. Consequently, we should be reminded that national and supranational regulations, as in the case of the EU AIA, as well as enforcement thereof need to be sensitive to these standards.

The link between media freedom and technology has also been a subject of European case law. Across decades of judicial writing on the subject, the ECtHR has not explicitly defined what media technology is. Rather, in dealing with legal disputes linked to their access or use under art 10 ECHR, the Court has focused on how these technologies enable natural and legal persons to freely transmit and receive information. Besides acknowledging the special protection enjoyed by 'substance of the ideas and information expressed', the Strasbourg Court has often recognised its extension to 'the form in which these are conveyed' and 'the means of dissemination' employed.[72] States must therefore refrain from interfering with citizens and media's access to and use of new technologies unless this can be justified under the exceptions provided in art 10 (2) ECHR.

The ECtHR initially expanded the scope of art 10 ECHR from content to the technical means of expression in a series of decisions involving legal and natural persons' claims to operate broadcasting equipment for the reception of foreign transmissions.[73] With the turn of the century, it had to adapt these findings to the growing role of the Internet as a public source of information.[74] Hence, it began to reject any unjustified repression of journalistic gathering of online data.[75] A similar conclusion was reached in relation to a news outlet's freedom to hyperlink third-party content.[76] Later on, the ECtHR would make the same considerations with regard to a state's blocking of online platforms and search engines within its jurisdiction.[77] In light of the press' special status under fundamental rights law, it should be intuitive to think of a state's margin of appreciation to interfere with media's access to these technologies as even more restricted than in the case of other natural or legal persons.

Three salient aspects should be highlighted from this strand of case law. First is the ECtHR's wariness of arbitrary restrictions on the use of media technology. Art 10(2) ECHR requires that interferences with the rights enshrined in art 10(1) ECHR must be 'prescribed by law'. In its assessments, the ECtHR interprets this question as also pertaining to the 'quality of the law in question', its accessibility, foreseeability as to its effects, and its

[69] *NIT S.R.L. v The Republic of Moldova* no 28470/12 (ECtHR, 05 April 2022) para 185.
[70] *Informationsverein Lentia and others v Austria* no 13914/88, 15041/89, 15717/89, 15779/89, (ECtHR, 24 November 1993), para 38.
[71] *Manole and Others v Moldova* no 13936/02 (ECtHR, 17 September 2009), para 107.
[72] *Jersild v Denmark* no 15890/8 (ECtHR, 23 September 1994), para 31; *Oberschlick v Austria* no 11662/85 (ECtHR, 23 May 1991), para 57.
[73] *Autronic AG v Switzerland* no 12726/87 (ECtHR, 22 May 1990).
[74] *Times Newspapers Ltd v UK* nos 3002/03 and 23676/03 (ECtHR, 10 March 2009), para 27.
[75] *Editorial Board of Pravoye Delo v Ukraine* no 33014/05 (ECtHR, 5 May 2011).
[76] *Magyar Jeti Zrt v Hungary* no 11257/16 (ECtHR, 1 December 2014).
[77] *Cengiz and Others v Turkey* no 48226/10 (ECtHR, 12 December 2015); *Ahmet Yildirim v Turkey* no 3111/10 (ECtHR, 18 December 2012).

compatibility with the rule of law.[78] Robin Herr already noted the Court's aversion to interferences that deviate significantly from a state's usual policy on the use of media technologies, particularly when such deviations are motivated on unreasonable grounds.[79] The Court has maintained this stance also in its more recent judgments involving the internet and online platforms.[80]

Second is the Court's interpretation of the ECHR as a 'living instrument'. Accordingly, the Court evaluates the scope of protection for the use of new media technologies in light of current legal and technical circumstances.[81] This can be observed in its persistent emphasis on the irreplaceability of new technologies for effective participation in the public debate, for both media and non-media actors. Just like newspapers or the radio could not provide suitable alternatives to television 20 years ago,[82] state interferences with the use of the internet and of online platforms at present cannot qualify as 'necessary' solely due to the availability of more legacy technologies.[83]

Third, next to preventing states from arbitrarily hampering access to new media technologies, the Court has also recognized their proactive role in safeguarding said access. To date, this positive obligation has only been applied in the context of a private dispute triggered by a private landlord's prohibition on the installation of broadcasting reception equipment by the tenant family.[84] Although similar conclusions have not been drawn in the domain of digital technologies, as far as the authors are aware, there is no reason preventing it. The private sector's increasingly consolidated gatekeeping position in developing and controlling access to state-of-the-art digital technologies makes this argument even more compelling.[85]

LLMs and article 10 ECHR

The ECtHR case law acknowledges the instrumental function of technological innovation for the advancement of media freedom and pluralism. The ECtHR's approach coupled with its attention for the evolving nature of the information environment, and the need to guarantee the effective exercise of fundamental rights, should lead to the acceptance of new technological frontiers of information production, distribution, and access as part and parcel of art 10 ECHR/art 11 CFR' s remit. This is also the case for LLMs.[86]

The weight of this argument is not on the freedom of expression or economic rights of LLM providers.[87] There is certainly room under art 10 ECHR for the protection of a legal person's freedom to access and use new technologies, as it was the case in *Autronic*.[88] Whether this

[78] *Dink v Turkey* nos 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09 (ECtHR, 14 September 2010), para 114.

[79] Robin Elizabeth Herr, 'Can Human Rights Law Support Access to Communication Technology? A Case Study under Article 10 of the Right to Receive Information' (2013) 22 Information & Communications Technology Law 1, 8.

[80] See *Cengiz and Others v Turkey* (n 77); *Ahmed Yildirim v Turkey* (n 77).

[81] Thus, in *Autronic AG v Switzerland* (n 73), the Court rejected the Swiss government's request that the state's margin of appreciation be assessed based on the legal and technical circumstances in which the restriction occurred, regardless of subsequent development related (ie) to the expansion of the broadcasting market. Herr (n 79), 4.

[82] *Kurshid Mustafa and Tarzibachi v Sweden* no 2383/06 (ECtHR, 16 December 2008), 45.

[83] See, *Cengiz and others v Turkey* (n 75), para 52. For a similar CJEU perspective see also C-392/19, *VG Bild Kunst* EU:C:2021:181, para 49.

[84] See *Kurshid Mustafa and Tarzibachi v Sweden* (no 80).

[85] Herr (n 77), 9.

[86] See Volokh, Lemley and Henderson (n 46), 658–9. 'The "press" itself refers to one such technology, the printing press, which was of course both immensely valuable and immensely disruptive. Since then, the Court has recognized such protection for film, cable television, the Internet, social media, and more. The same should apply to generative AI. Just as the internet and social media have become "the most important places…for the exchange of views," are thus fully protected by the First Amendment, so AI programs are likely to be among the most important tools for people to be able to speak (as well as to listen)'.

[87] See analogous an analogous discussion with respect to social media platforms in Koltay (n 56), 283; See also van Hoboken's discussion of search engine freedom, Joris van Hoboken, *Search Engine Freedom: On the Implications of the Right to Freedom of Expression for the Legal Governance of Web Search Engines* (Wolter Kluwer 2012).

[88] See *Autronic AG v Switzerland* (n 73).

should extend to a media-like protection for LLM providers is more controversial and an unlikely outcome.[89] Both LLM providers and European policymakers have stressed the unviability of this legal route.[90] In any case, questions as to the scope of legal protection for AI companies may be sidelined if the focus ultimately lies on the rights of the users of these tools–the media and the wider public's freedom to impart and access information.[91] In taking the latter perspective, the focus of the discussion should be on how current legal frameworks, like the EU AIA, can impact press freedom and pluralism, even if these laws do not directly or explicitly target journalistic practice.[92]

The AIA's systemic risk approach through the lens of article 10 ECHR

Considering the extensive resources required for the development of a LLM, we assume that even large news organizations will rarely resort to in-house development.[93] Under the AIA, this means that the press will likely act as either a provider or a deployer of *AI systems* built on LLMs. This subjects them merely to (some of) the obligations applicable to limited-risk AI systems under art 50.[94] The regulatory measures applicable to (the underlying) LLMs instead exclusively target upstream providers, as already seen above.

Legal obligations imposed on upstream providers may still entail a form of interference with press freedom, where this results in the limitation or suppression of journalistic content generated through LLMs.[95] This could be the case for the systemic risk-monitoring and -mitigation obligations under art 55 AI addressed at providers of larger and more impactful models. At the time of writing, the provision has not yet entered into force, and hence we have no insights into its practical implications. From the outset, however, it may create the conditions for unaccountable and systemic censorship of lawful speech.

In media, the EU inaugurated the systemic risk approach with art 34 and 35 of the Digital Services Act (DSA). These provisions impose systemic risk-assessment and -mitigation

[89] For instance, the case law of the CJEU does not explicitly acknowledge the freedom of expression of digital technology providers despite the 'structural importance as continuous speech infrastructure' of search engines and social media platforms. Martin Husovec, *Principles of the Digital Services Act* (Oxford University Press 2024), 51.

[90] Jorge Jimenez, 'EU Commissioner Calls for AI Regulations: "I Don't See Any Right of Machines to Freedom of Expression"' *PC Gamer* (7 June 2023) <https://www.pcgamer.com/eu-commissioner-calls-for-ai-regulations-i-dont-see-any-right-of-machines-to-freedom-of-expression/> accessed 12 July 2024; See how model providers are strategically taking distance from the content produced through their models. Lilian Edwards and others, 'Private Ordering and Generative AI: What Can We Learn from Model Terms and Conditions?' in Mimi Zou (ed), *The Cambridge Handbook of Generative AI and the Law* (Cambridge University Press, 2025).

[91] Volokh, Lemley and Henderson (n 46), 653; See Council of Europe, Guidelines on the Responsible Implementation of Artificial Intelligence Systems in Journalism (Adopted by Steering Committee on Media and Information Society on 30 November 2023) <https://rm.coe.int/cdmsi-2023-014-guidelines-on-the-responsible-implementation-of-artific/1680adb4c6> accessed 3 April 2025.

[92] This is not only true of state-enacted regulation, but also of model providers' terms and conditions as well as technical standards produced by quasi-private bodies. Stanislaw Piasecki and Natali and Helberger, 'A Nightmare to Control: Legal and Organizational Challenges around the Procurement of Journalistic AI from External Technology Providers' (2025) 0 The Information Society 1; Alicia Solow-Niederman, 'Can AI Standards Have Politics?' (2024) <https://papers.ssrn.com/abstract=4714812> accessed 22 April 2024. See also for instance how the type of authorial rights conferred under Chinese copyright law for AI-generated works can have significant impact on journalistic freedom. Joanne Kuai, Raul Ferrer-Conill and Michael Karlsson, 'AI≥Journalism: How the Chinese Copyright Law Protects Tech Giants' AI Innovations and Disrupts the Journalistic Institution' (2022) 10 Digital journalism 1893, 1895.

[93] As far as the authors are aware, Bloomberg is the only news organization to have developed its own LLM from scratch. The vast majority of media companies resorts to models made available by third parties on the market. Shijie Wu and others, 'BloombergGPT: A Large Language Model for Finance' (2023) *arXiv* <http://arxiv.org/abs/2303.17564> accessed 12 November 2024.

[94] See Section 3.2.

[95] Martin Husovec explains that 'any risk mitigation restriction on content that is lawful [...] inevitably means some type of restriction of the freedom of expression of someone'. Martin Husovec, 'The Digital Service Act's Red Line: What the Commission Can and Cannot Do about Disinformation' (2024) 16 Journal of Media Law, 53; see on the relationship between the freedom of the press and of providers of intermediary technology Christina M Mulligan, 'Technological Intermediaries and Freedom of the Press' 66 SMU Law Review 5. Compare also to C-401/19 Republic of Poland v European Parliament and Council of the European Union EU:C:2022:297, para 58.

obligations on providers of very large online platforms and search engines to hold them accountable, among other things, for their content moderation practices. Compared to individual redress mechanisms, systemic risk governance tackles the more structural issues of privatized online speech governance, including the very design of the underlying algorithmic infrastructure, its amplification of content, and the general impact on civic discourse.[96] Moreover, it is meant to relieve individual users from the burden of holding the platforms accountable on their own.[97] Despite formal constraints preventing the EU Commission from single-handedly obliging providers to tackle lawful content,[98] the DSA's systemic risk approach has already received extensive criticism for its proneness to political weaponization at the cost of freedom of expression and pluralism.[99]

The transposition of systemic risk governance from the DSA to Chapter V of the AIA is even more problematic, in our understanding. The first source of concern is the vagueness of the legal mechanism. The AIA does not include a legally binding definition of 'systemic risk' that is specific enough to meet the requirement of foreseeability in light of human rights standards. Rather, the AIA merely provides a non-exhaustive list of systemic risks relevant for media practice. These are defined as 'any actual or foreseeable effect on [...] society as a whole',[100] including the proliferation of 'false content' and negative impact on democratic processes,[101] whose interpretation, if not their very existence, is already the object of political contestation. Under human rights law, even information or expressions that may 'offend shock, or disturb the State or any sector of the population' deserve protection, and especially where it is the press imparting them.[102]

Secondly, the centralization of supervisory and enforcement powers in the hands of the European Commission, and in particularly of the *ad hoc* set up AI Office, on this front should not go unobserved.[103] The AI Office retains exclusive competences to monitor providers' compliance efforts, request relevant documentation and access to the models, investigate their systemic risks, and request the implementation of mitigation measures from providers.[104] The European Commission has to establish a panel of scientific experts to independently support the enforcement activities of the AI Office, including the development of relevant methodologies for the evaluation of model capabilities and alert the AI Office of possible systemic risks.[105] Critiques of systemic risk approaches and technocratic governance of digital speech have already been outlined in Section 2.1 and should apply also to this context. The involvement of the independent scientific panel in an advisory role may provide nuance to this concern, just like the multi-stakeholder approach mandated under the AIA for the drafting of the aforementioned Code of Practice and other public consultation efforts by the AI Office.[106] Still, the current enforcement framework leaves in practice wide power for the AI Office and model providers to determine risk acceptability, and therefore the contours of acceptable

[96] Niklas Eder, 'Making Systemic Risk Assessments Work: How the DSA Creates a Virtuous Loop to Address the Societal Harms of Content Moderation' [2024] German Law Journal 1, 6–7.
[97] Ibid.
[98] See Husovec (n 95).
[99] Joan Barata and Jordi Calvet-Bademunt, 'The European Commission's Approach to DSA Systemic Risk Is Concerning for Freedom of Expression | TechPolicy.Press' (*Tech Policy Press*, 30 October 2023) <https://techpolicy.press/the-european-commissions-approach-to-dsa-systemic-risk-is-concerning-for-freedom-of-expression> accessed 4 December 2024. Griffin (n 41).
[100] AIA, art 3(65).
[101] AIA, recital 110.
[102] *Handyside v UK* no 5493/72 (ECtHR, 7 December 1976), para 49; See also *Leroy v France* no. 36109/03 (ECtHR, 6 April 2009), para 40.
[103] AIA, art 88.
[104] AIA, art 89–93.
[105] AIA, art 68, 90.
[106] See AIA, art 46 (3).

(lawful) speech generation. The lack of transparency offered so far by the European Commission in its management of enforcement actions under the DSA has raised concerns as to the normative and methodological solidity of the systemic risk approach.[107]

Furthermore, the AIA's systemic risk approach does not build on complementary mechanisms. Unlike the DSA, Chapter V of the AIA omits any reference to fundamental rights safeguards that LLM providers should observe when complying with their risk-mitigation duties.[108] On the other hand, no legal route is provided for speedy and efficient individual redress for downstream actors–from developers or deployers of systems built on an LLM (ie a newsroom deploying a chatbot) to the general public interacting with the generated content (ie news readers). The lack of a harmonized framework for individual rights weakens democratic influence on governance and oversight of content moderation processes, besides representing a general weak spot of the whole regulation.[109]

From a European human rights perspective, there is certainly a role for the State in ensuring meaningful exchange of information and ideas amid prospects of a digital ecosystem flooded with generated content. However, co-opting of model providers' legal and infrastructural power in making normative decisions as to the acceptability of lawful content without effective democratic accountability is not a sustainable route for media freedom.[110] While much will depend on the actual operationalization of the legal provisions, for example through the Code of Practice currently being drafted, the choices made in the AIA currently hint in that direction.[111]

In sum, we argue that the current framework envisaged under the AIA for the governance of LLMs should raise concerns from a media freedom perspective.

Duties and responsibilities of the press in the use of LLMs

The second implication arising from this article's framing is that the institutional framework upholding media freedom and pluralism–specifically, the self-regulating press–should ensure responsible and accountable use of LLMs.

While states have historically enjoyed wider margins of intervention in broadcast journalism, in particular through media regulatory authorities, the same is not true for the regulation of the press.[112] Press freedom, however, does not entail the release of journalistic activities from the binding force of law. The press is still obliged to comply with generally applicable obligations of private and public law, such as defamation law, tax law, and data protection law.[113]

[107] Michele Loi, Andrea Ferrario and Matteo Fabbri, 'Regulating the Undefined: Addressing Systemic Risks in the Digital Services Act (with an Appendix on the AI Act)' (2025) SSRN <https://www.ssrn.com/abstract=5116070> accessed 25 February 2025.

[108] Art 35(1) of the DSA still requires platforms to impose reasonable and proportionate measures when tackling systemic risks. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC OJ L 277 (DSA).

[109] Nathalie A Smuha, 'From a "Race to AI" to a "Race to AI Regulation": Regulatory Competition for Artificial Intelligence' (2021) 13 Law, Innovation and Technology. L Metikoš, 'De AI Wet: Zwak, Zwakker, Zwakst' (2024) 36 Mediaforum <https://dare.uva.nl/search?identifier=78badd9c-7aea-434f-a926-189a3417c5db> accessed 3 April 2025.

[110] Katja de Vries, 'Let the Robot Speak! AI-Generated Speech and Freedom of Expression' in Steffen Hindelang and Andreas Moberg (eds), *YSEC Yearbook of Socio-Economic Constitutions 2021: Triangulating Freedom of Speech* (Springer International Publishing 2022) <https://doi.org/10.1007/16495_2021_38> accessed 29 April 2024, 109.

[111] European Commission, 'Third Draft of the General-Purpose AI Code of Practice' (European Commission, 2024) < https://digital-strategy.ec.europa.eu/en/library/third-draft-general-purpose-ai-code-practice-published-written-independent-experts> accessed 3 April 2025.

[112] See 'Regulation of the press' in Koltay (n 58).

[113] See *Stoll v Switzerland* no. 69698/01 (ECtHR, 10 December 2007), para 102; *Amaghlobeli and Others v Georgia* no. 41192/11 (ECtHR, 20 May 2021). Though under art 85 of the General Data Protection Regulation of the EU, Member States must provide significant room for exemptions for journalistic processing activities. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC OJ L 119 (GDPR).

The possibility of state interference with press freedom is also sanctioned under Article 10(2) of the ECHR, subject to the requirements of legal certainty, necessity, and proportionality.[114] The same article makes clear that the exercise of press freedom also calls for the bearing of 'duties and responsibilities'. These expectations are the *quid pro quo* of press freedom: as long as the press acts in line with its duties and responsibilities, the margin of state interference remains constrained.[115] Although these duties and responsibilities find grounding even in several national media law systems,[116] the debate as to what these concretely entail is far from settled.[117] There is at least common understanding with respect to their ethical, rather than legal, character, for substantive legally binding standards of journalistic output and conduct would prejudice the self-regulatory prerogative of the press.[118] This ethicality of journalistic conduct does not relate to truthfulness of press content but rather to the process followed by journalists in gathering, processing and conveying information.[119] These professional standards of 'responsible journalism' are often corroborated by more formal structures of self-regulation, which may materialise in the establishment of press councils or of specific or general codes of conduct for individual or multiple newsrooms.[120]

Self-regulation and accountability of the press' use of technology

The ECtHR has included the exercise of these duties and responsibilities as a relevant factor in its evaluation of state interferences with press freedom, despite their merely ethical character. It has indeed repeatedly referred to the press' duty to 'act in good faith' or 'on an accurate factual basis', and 'to provide reliable and precise information in accordance with the ethics of journalism'.[121] In practice, journalists' failure to observe these ethical standards in the publication process has led the ECtHR to provide wider margin for legitimate state interference.

The availability of increasingly powerful technological means for content production and dissemination has been a catalyst for the ECtHR's development of a social responsibility doctrine for the press. In championing access to new media technologies as essential for freedom of expression, the ECtHR has also shown wariness of their potential to amplify harm, from television broadcasting to the internet.[122] The scope of the press' ethical responsibility may consequently differ based on the mode of mass communication employed. Risks of privacy harm and information overload would for instance justify the stricter 'monitoring of compliance with journalistic ethics' in the press' use of internet publishing instead of traditional print.[123]

When it comes to the substance of press responsibility in the deployment of LLMs, similar questions are raised as in other sectors. Concerns as to LLMs' impact on privacy,

[114] ECHR, art 10(2).
[115] Oster (n 61), 34.
[116] For a sample, see Koltay (n 58), 96–7.
[117] For instance, Judith Bayer argues that when talking of media duties, we are essentially referring to the very content of media freedom–the service the media does to public discourse. Andras Koltay instead disputes this understanding, asserting that a duty to act in the public interest cannot be mandatorily imposed by legal means on the media if not in outright contradiction of its freedom. Bayer (n 63), 47; Koltay (n 58), 80.
[118] van Hoboken (n 87), 85.
[119] Bayer (n 63), 47.
[120] van Hoboken (n 87), 84.
[121] *Fressoz and Roire v France* no 29183/95 (ECtHR, 21 January 1999), para 54; *Stoll v Switzerland* (n 113), para 103; *Monnat v Switzerland* no 73604/01 (ECtHR, 21 September 2006).
[122] *Jersild v Denmark* (n 72); *Delfi AS v Estonia* (n 54).
[123] *M.L. and W.W. v Germany* no 60798/10 and 65559/10 (ECtHR, 28 September 2018), para 91–2; *Delfi v Estonia* (n 54), para 113; *Editorial Board of Pravoye Delo and Shektel v Ukraine* (n 75), para 63; *Stoll v Switzerland* (n 113), para 104.

discrimination, accuracy, and institutional trustworthiness have spread consistently across the board, from education to the administration of justice.[124] Compared to other domains, however, what makes the debate around responsible journalistic use of the technology unique is the press' constitutionally mandated autonomy in defining its duties and responsibilities. Any attempt to vertically mandate 'proper deployment' of the technology in journalistic reporting would entail an interference with press freedom requiring a valid justification under fundamental rights law.

The institutional setting enabling technological innovation in journalism rests therefore on the assumption that the press will keep fulfilling its public interest function–that is, applied to the context of this article, using LLMs to enrich the public discourse with accurate and relevant contributions–in order to exercise its privileges free from state intervention. This assumption, however, has come under scrutiny already for several years. Already two decades ago, Jo Bardoel and Leen D'Haenens highlighted the misalignment between the normative grounding of press freedom and the reality of a concentrated market for (online) news content in the hands of media conglomerates.[125] They disputed whether the press could still be trusted with securing a sufficient share of social and ethical responsibility in the sector in the face of increasing capture by commercial interests.[126] They therefore pointed to a need for a shift from attempting to define duties and responsibilities to the manners in which the press can account for their fulfilment vis-à-vis other societal stakeholders. Accordingly, this would require the integration of journalistic activities in a framework of 'organizational accountability 'to sustain the press' public watchdog function.[127] Later work also considered advancement in media technology as a key factor to observe in devising media accountability frameworks.[128] This has been explored more consistently in light of the increasing deployment of AI in media. For instance, Damien Tambini calls for the establishment of 'new checks and balances' for the press' deployment of AI applications.[129] The Steering Committee on Media and Information Society of the Council of Europe also stresses the need for a 'mission-driven' approach to AI innovation in journalism to promote, among other things, the media public watchdog's function, human rights, and journalistic ethics.[130]

The AI act and accountability for the press' deployment of LLMs

In line with the foregoing, the AIA does not impose specific legal requirements for the press' development and deployment of LLM-based systems. Most of the AIA's regulatory substance targets AI *systems* operating in high-risk scenarios, which do not include journalistic applications.[131] Other applicable European and national legislation, of course, may have ethically

[124] See for instance Taner Kuru, 'Lawfulness of the Mass Processing of Publicly Accessible Online Data to Train Large Language Models' (2024) International Data Privacy Law 013; Enkelejda Kasneci and others, ChatGPT for Good? On Opportunities and Challenges of Large Language Models for Education' (2023) 103 Learning and Individual Differences 102274; Joschka Haltaufderheide and Robert Ranisch, 'The Ethics of ChatGPT in Medicine and Healthcare: A Systematic Review on Large Language Models (LLMs)' (2024) 7 NPJ Digital Medicine 183.

[125] Jo Bardoel and Leen d'Haenens, 'Media Responsibility and Accountability. New Conceptualizations and Practices' (2004) 29 Communications <https://www.degruyter.com/document/doi/10.1515/comm.2004.007/html> accessed 3 September 2024, 15.

[126] ibid.

[127] ibid.

[128] Torbjörn van Krogh, 'Changing Political Attitudes towards Media Accountability in Sweden' (2012) 5 Central European Journal of Communication 204.

[129] Damian Tambini, *Media Freedom* (1st edn, Polity Press, 2021), 130.

[130] Steering Committee on Media and Information Society of the Council of Europe (n 91), 13.

[131] In theory, the press could still be subject to the obligations applicable to high-risk AI systems where it developed or deployed an AI system for the purpose of biometric identification, categorization, or emotion recognition. Other high-risk scenarios listed in Annex III of the AIA would not be applicable. See AIA, Annex III.

relevant impact on journalistic processes involving the use of LLMs, such as the requirement of fair processing of personal data under the General Data Protection Regulation.

The AIA does also not establish a vision for the press' accountable deployment of AI. Accountability remains a general goal of the EU AIA, though this is only implicitly and broadly defined. The accountability framework devised for LLMs mirrors (in part) that applicable to other risk categories under the AIA. This approach integrates elements of proactive accountability, that is grounded in compliance and oversight mechanisms, with an exclusive focus on upstream providers.[132] This is seen in the (limited) transparency requirements imposed on LLM providers regarding the training data and model architecture under art 53 AIA (in conjunction with Annex XI). Algorithmic transparency is often considered a precondition for effective accountability; after all, without access to relevant information on model behaviour, legally and ethically meaningful debates are unlikely to extend beyond the confines of providers' office premises.[133]

Notably, the press is even exempted from fundamental transparency obligations towards its readership when providing synthetic textual content. Article 50 AIA requires deployers of AI systems, including those built on LLMs, to disclose the artificiality of AI-generated or manipulated text when disseminated to the public. However, the provision explicitly excludes natural and legal persons holding editorial responsibility and exercising editorial control over the publication of the text output–exempting the press, in practice.[134] The exemption stands in contrast to empirical evidence revealing European news readers' expectations for comprehensive disclosures regarding AI use in content creation.[135] The EU legislators here underscore the self-regulatory privilege of the press by deferring to it not only the definition of its ethical and professional responsibilities in the use of LLMs but also the manner in which it can demonstrate the fulfilment of these standards.

Delegating these decisions to sectorial deliberation could in practice be the optimal route. Top-down legal demands for accountability may fail to grasp the sector's needs and sensitivities, resulting in the chilling of innovation strategies, besides adding oversight burdens on authorities. However, this choice brings its challenges.

On the one hand, the ineffectiveness of pure self-regulatory approaches is not rare, including in the press sector.[136] A lack of legal requirements for accountability may give way to a unilateral perspective–that of information-hungry, uncritical, and profit-oriented media–on journalistic ethicality in the information environment, as well as the acceptable trade-offs.[137] The political economy of European journalism, marked by increasing concentration and firms' scaling ambitions, is fertile ground for the prioritization of techno-solutionist strategies driven by commercial logic than adherence to professional standards and accountability to the European public.[138] In practice, news organizations and journalist unions in Europe and

[132] See Claudio Novelli, Mariarosaria Taddeo and Luciano Floridi, 'Accountability in Artificial Intelligence: What It Is and How It Works' (2024) 39 AI & Society 1871.

[133] Nicholas Diakopoulos, 'Accountability, Transparency, and Algorithms' in Markus Dirk Dubber, Frank Pasquale, and Sunit Das (eds.) *The Oxford Handbook of Ethics of AI* (Oxford University Press, 2020), 198.

[134] AIA, art 50(4).

[135] Stanislaw Piasecki and others, 'AI-Generated Journalism: Do the Transparency Provisions in the AI Act Give News Readers What They Hope For?' (2024) 13 Internet Policy Review <https://policyreview.info/articles/analysis/ai-generated-journalism-transparency-provisions> accessed 25 October 2024.

[136] Susanne Fengler and others, 'How Effective Is Media Self-Regulation? Results from a Comparative Survey of European Journalists' (2015) 30 European Journal of Communication 249; See Koltay (n 58), 122.

[137] David Erdos, 'The Future Shape of European Data Protection Regulation and Professional Journalism' in David Erdos (ed), *European Data Protection Regulation, Journalism, and Traditional Publishers: Balancing on a Tightrope?* (Oxford University Press, 2019) <https://doi.org/10.1093/oso/9780198841982.003.0009> accessed 11 April 2024, 8.

[138] Konrad Bleyer-Simon and others, 'Monitoring Media Pluralism in the Digital Era: Application of the Media Pluralism Monitor in the European Union, Albania, Montenegro, the Republic of North Macedonia, Serbia and Turkey in the year 2021' (Centre for Media Pluralism and Media Freedom 2021), 50; See for a taxonomy of media accountability, Bardoel and D'Haenens (n 125).

around the world have been adopting institutional policies and guidelines defining their ethical and professional boundaries of AI use.[139] Despite the vagueness and redundancy of these documents, their focus on, among other things, accountability and safeguards for professional values reflect a formal commitment to responsible innovation.[140] How these are translating into the concrete allocation of responsibilities between newsrooms and the different operational departments within the individual corporate entities is unclear. The ethical nature of the 'duties and responsibilities' to which the press is bound under art 10 ECHR raises an expectation that the press should exceed mere compliance with existing legal standards, especially where these frameworks fall short.

On the other hand, demands for organizational accountability or the responsible organization of journalistic processes[141] might only circumvent the issue without really addressing it. As human judgment in news making becomes diluted with externally procured AI models, ensuring accountability may not even boil down to a matter of individual or organizational willingness. The proprietary regimes linked to the most popular LLMs on the market, and enforced through unilaterally imposed terms and conditions,[142] preclude comprehensive insight of their training data, functioning, and value-chain.[143] Open-source competitors also do not necessarily offer the 'openness' one would expect.[144] Downstream decision-makers, such as editors and journalists, may struggle accounting for responsible use when navigating this opacity.[145] The AIA seeks to remedy these imbalances through select information disclosures on providers, allowing downstream actors to 'have a good understanding of their capabilities and limitations'.[146] However, it is to be seen how exhaustive these will be in practice, considering also the EU legislators' explicit reference to the need to protect model providers' trade secrets.[147]

Summing up, the AIA does not impinge on the self-regulatory prerogative of the press in defining substantive standards of responsible innovation and accountability processes with respect to the use of LLMs. The Regulation assumes that the news industry is adequately positioned to make those decisions independently. However, we invite careful consideration of those assumptions, in light of the increasing influence of corporate logics in the innovation of journalistic processes, as well as persistent legal and technical obstacles to understand the inner workings of the models.

Guaranteeing pluralism amid another phase of media transformation

So far, we have seen how conceptualising LLMs as media technology calls for legal frameworks that are sensitive to journalistic freedom in the use of the technology and to the socio-

[139] See for instance Le Monde, 'La Charte d'éthique et de déontologie du groupe Le Monde' (3 November 2010) <https://www.lemonde.fr/actualite-medias/article/2010/11/03/la-charte-d-ethique-et-de-deontologie-du-groupe-le-monde_1434737_3236.html> accessed 24 February 2025.Swedish Journalist Association, 'Guidelines on Generative AI in Newsrooms <https://www.sjf.se/aktuellt/202312/riktlinjer-om-generativ-ai-pa-redaktioner> accessed 4 April 2025; Condé Nast, 'How WIRED Will Use Generative AI Tools' (*WIRED*) <https://www.wired.com/about/generative-ai-policy/> accessed 24 February 2025.

[140] See Mathias Felipe de Lima Santos, Wang Ngai Yeung and Tomàs Dodds, 'Guiding the Way: A Comprehensive Examination of AI Guidelines in Global Media' (2024) *arXiv* <http://arxiv.org/abs/2405.04706> accessed 24 February 2025.

[141] Natali Helberger and others, 'Towards a Normative Perspective on Journalistic AI: Embracing the Messy Reality of Normative Ideals' (2022) 10 Digital Journalism 1605.

[142] Piasecki and Helberger (n 92).

[143] Jennifer Cobbe, Michael Veale and Jatinder Singh, 'Understanding Accountability in Algorithmic Supply Chains', *Proceedings of the 2023 ACM Conference on Fairness, Accountability, and Transparency* (Association for Computing Machinery 2023) <https://dl.acm.org/doi/10.1145/3593013.3594073> accessed 1 March 2024.

[144] ibid.

[145] For a similar argument in the judicial sector, see Irina Carnat, 'Addressing the Risks of Generative AI for the Judiciary: The Accountability Framework(s) under the EU AI Act' (2024) 55 Computer Law & Security Review 106067, 9.

[146] AIA, art 53(b).

[147] Ibid.

technical conditions enabling ethical innovation. We proceed to sketch the final implication deriving from this article's conceptualization. This concerns the role that states are expected to fulfil under human rights law as AI-generated content claims its share of the news ecosystem, in particular through the aforementioned state positive obligations.[148]

State positive obligations have emerged in the ECtHR's case law as a mechanism to secure the effective enjoyment of ECHR rights when this is not threatened directly by the state, but rather by the action of other private parties or natural phenomena.[149] State parties to the ECHR, and hence all EU Member States, may therefore be liable when failing to protect victims' rights due to an omission to act. As briefly mentioned in Section 3.1, this doctrine has also found application under art 10 ECHR. Most relevantly for this article is the ECtHR's development of a positive obligation to protect pluralism, of which the state is the 'ultimate guarantor'.[150]

Attempting detailed predictions on the impact of LLMs on the pluralism of the European press is beyond the authors' ambitions. Much uncertainty surrounds technical, functional and economic developments of LLMs, even in the short term. However, our purpose here is to map sources of concern stemming from current trends which, in our view, should inform the debate as to the state's intermediation in guaranteeing effective pluralism. On this front, the ECtHR does not take a siloed view.It does not assess the pluralistic quality of individual outlets in isolation from that of the media system in which they operate. Internal and external pluralism need to be jointly considered when assessing the impact of state interferences or obligations to guarantee media pluralism.[151] The pluralistic value of individual LLMs should therefore be assessed also with respect to their broader ecosystem.

Pluralism in the age of LLMs

State-of-the-art research and development on LLMs are currently in the hands of few companies, and the prospect for a relevant increase in competition is not very rosy.[152] Plenty of alternative open-source models, on the other hand, are constantly updated on hosting platforms such as Hugging Face. Still, competition authorities across Europe are worried that consolidation in the high-end market remains inevitable as mainstream LLM providers benefit from integration in digital ecosystems and network effects, becoming highly effective in an increasingly wider range of tasks.[153] This upstream oligopoly could be a harbinger of reduced pluralism, but this does not necessarily have to be the case.

Critical perspectives on pluralism have indeed shifted the focus of the policy discourse from ensuring content heterogeneity and variety of political perspectives to the evolving power relationships between different actors in the media system.[154] Structural constraints enforced by these power dynamics on media practice are, from this perspective, a more suitable indicator

[148] See Section 3.

[149] Vladislava Stoyanova, *Positive Obligations under the European Convention on Human Rights : Within and Beyond Boundaries* (Oxford University Press 2023), 11.

[150] See above *Informationsverein Lentia v Austria* (n 70).

[151] *NIT S.R.L. v The Republic of Moldova* (n 67), para 190.

[152] Thibault Schrepel and Alex 'Sandy' Pentland, 'Competition between AI Foundation Models: Dynamics and Policy Recommendations' (2024) Industrial and Corporate Change, 8; Pierre Azoulay, Joshua L Krieger and Abhishek Nagaraj, 'Old Moats for New Models: Openness, Control, and Competition in Generative AI' (National Bureau of Economic Research, May 2024) <https://www.nber.org/papers/w32474> accessed 17 January 2025.

[153] Competition & Markets Authority, 'AI Foundation Models: Initial Report' (*GOV.UK*) <https://www.gov.uk/government/publications/ai-foundation-models-initial-report> accessed 2 May 2024, 52; Kowalski, Volpin and Zambori (n 7), 5; See also Autoridade da Concorrência Português, 'Competition and Generative AI: Opening AI Models' <https://www.concorrencia.pt/sites/default/files/processos/epr/AI%20short%20paper%20-%20Opening%20AI%20models%20-20EN.pdf> accessed 4 April 2025.

[154] Kari Karppinen, *Rethinking Media Pluralism* (1st edn, Fordham University Press, 2013), 60–7.

than the available individual choices for consumers.[155] Even the ECtHR has acknowledged that state positive obligations cannot be limited to creating the availability of several communication channels; rather, they have to guarantee access for the public to 'accurate information and a range of opinion and comment, reflecting inter alia the diversity of political outlook within the country' and that journalists are not prevented from imparting that information.[156] In the context of this paper, this translates to asking to what extent the press is able to exercise its editorial independence vis-à-vis the world model(s) instantiated through the LLMs it seeks to deploy.[157] Independence should be especially understood in its 'programmatic' sense, namely the ability to autonomously shape a consistent agenda for public interest reporting within the technical, legal, and political constraints of the emerging information environment.[158]

In that respect, the challenges ahead are complex. Control exercised over LLMs and the relevant digital infrastructure by providers and their technology partners is ultimately decisive of the concrete opportunities for downstream influence on content flows. Despite limited technical routes for editorial customization, these companies' promises to deliver 'unbiased'[159] and secure models could thwart lawful expression, most likely of minoritarian nature. From a legal point of view, there is already evidence revealing providers' common tendency to adopt contractual policies with vague and restrictive content moderation clauses falling short of the human rights standards of legal certainty and proportionality.[160] Contemporarily, LLM providers are luring dominant media organizations into lucrative partnerships enabling model training with their news archives and access to state-of-the-art technology for newsrooms.[161] As these large media companies, and especially their corporate managers, claim leadership in repurposing quality and independent journalism amid this innovation cycle, the short-term-oriented and profit-driven nature of these strategies could reinforce long-term dependencies.[162] On the one hand, the uncritical embedding of these tools in newsroom infrastructure may further entrench the values, structure, and logics of journalistic production into 'systemic patterns' of information flows engineered by (emerging) gatekeepers in the digital ecosystem.[163] On the other hand, the nascent 'beautiful friendship' (*sic*)[164] between mainstream media with the LLM industry may put at a disadvantage smaller

[155] Ibid, 64.
[156] See *Manole v Moldova* (n 69), para 100.
[157] Max van Drunen, 'Editorial Independence in an Automated Media System' (2021) 10 Internet Policy Review <https://policyreview.info/articles/analysis/editorial-independence-automated-media-system> accessed 16 January 2025.
[158] Örnebring and Karlsson (n 12), 50–1.
[159] OpenAI, 'AI in America: OpenAI's Economic Blueprint' (13 January 2025) <https://web.archive.org/web/20250113122208/https://cdn.openai.com/global-affairs/ai-in-america-oais-economic-blueprint-20250109.pdf> accessed 4 April 2025.
[160] Jordi Calvet-Bademunt and Jacob Mchangama, 'Freedom of Expression in Generative AI: A Snapshot of Content Policies' (The Future of Free Speech 2024) < https://futurefreespeech.org/report-freedom-of-expression-in-generative-ai-a-snapshot-of-content-policies/> accessed 4 April 2025, 33.
[161] NewsCorp, 'News Corp and OpenAI Sign Landmark Multi-Year Global Partnership' (newscorp 22 May 2024) < https://investors.newscorp.com/news-releases/news-release-details/news-corp-and-openai-sign-landmark-multi-year-global-partnership> accessed 4 April 2025 ; Le Monde, 'Intelligence artificielle : un accord de partenariat entre <<Le Monde>> et OpenAI' (LeMonde, 13 March 2024) <https://www.lemonde.fr/le-monde-et-vous/article/2024/03/13/intelligence-artificielle-un-accord-de-partenariat-entre-le-monde-et-openai_6221836_6065879.html> accessed 4 April 2025; Associated Press, 'Google signs deal with AP to deliver up-to-date news through its Gemini AI chatbot' (APNews, 16 January 2025) <https://apnews.com/article/google-gemini-ai-associated-press-ap-0b57bcf8c80dd406daa9ba916adacfaf> accessed 4 April 2025; Mistral, 'Purr-fectly informed: Le Chat and AFP team up to deliver AI powered by news, providing Le Chat users with richer, more reliable and more accurate responses' < https://mistral.ai/news/mistral-afp> accessed 4 April 2025.
[162] Simon (n 11), 34.
[163] Julie Cohen, 'Infrastructuring the Digital Public Sphere' (2023) 25 Yale Journal of Law and Technology 3, 7–29; Lisa Merete Kristensen and Jannie Møller Hartley, 'The Infrastructure of News: Negotiating Infrastructural Capture and Autonomy in Data-Driven News Distribution' (2023) 11 Media and Communication 307.
[164] See News Corp (n 161).

outlets and independent players.[165] With little to no negotiating power and limited resources, these risk further dissipating minority voices in the ecosystem.

State positive obligations

As engines of automated content, LLMs further narrow the boundaries between the editorial sphere and the material backend of media, protracting debates on the normative role of media technology in shaping the public sphere's pluralism and the necessary legal responses.[166] We have briefly outlined how challenges LLMs pose to pluralism are ultimately linked to concentrated private control and commercially driven decision-making over the technological and legal structures underpinning media.

From a doctrinal perspective, we realise that positive state obligations under European human rights law are not absolute. It cannot be expected of state authorities to ensure the effective exercise of art 10 ECHR even at the cost of impossible or disproportionate burdens.[167] To date, for instance, states have not been required to provide direct financial transfers or investments for the creation of alternative communication infrastructure.[168] Paving further avenues of development for positive obligations under art 10 ECHR is also beyond the scope of this enquiry; the purpose was merely to draw attention to the applicability of the doctrine as a relevant implication of our conceptualization of LLMs as media technology. Acknowledging the role of media (technology) infrastructure and law in shaping public formation, ideal expectations regarding the state's role in guarding pluralism should account for the creation of both legal and infrastructural conditions that support the multiplicity of 'publics' and their different aspirations.[169] Historically, public interventions have sought to ensure the accessibility of infrastructure for democratic debate, and this objective remains essential.[170]

In regulating LLMs, the EU's AIA does not touch on these issues, nor would it be expected to, given its general policy rationale. The enthusiasm of this legislative accomplishment, however, should not obscure the normative gap it leaves in securing pluralism due to its particular framing of LLMs.

CONCLUSION

The hype and half-promises unleashed by LLMs are, to say the least, distracting. Despite inflated industry claims, the technology is still unreliable for the production of consistently qualitative journalistic output with limited human supervision. Significant improvements have been achieved in the last few years, and more could be expected for the time to come. In the

[165] Siho Nam, 'Who Gets Paid (for) What? The Cultural Political Economy of News Content in Generative AI' (2024) 2 Emerging Media 397, 412.

[166] Natali Helberger, 'On the Democratic Role of News Recommenders' (2019) 7 Digital Journalism 993; Kristensen and Harley (n 163); Cohen (n 163).

[167] *Verein Gegen Tierfabriken Schweiz v Switzerland* (n 65), para 81. The ECtHR has, for example, refrained from recognizing a state obligation to secure citizens' access to private fora, unless this would entail the destruction of the enjoyment of their freedom of expression. *Appleby and Others v UK* no 44306/98 (ECtHR, 6 May 2023), para 47; Citizens cannot rely on states' recognition of their unfettered right of access to the media to put forward an opinion. *Saliyev v Russia* no 35016/03 (ECtHR, 21 January 2011), para 52.

[168] Adam Krzywoń, 'Online Communication and States' Positive Obligations: Towards Comprehensive European Human Rights Protection' in Angelo Jr Golia, Matthias C Kettemann and Raffaela Kunz (eds), *Digital Transformations in Public International Law* (Nomos Verlagsgesellschaft mbH & Co KG 2022), 55.

[169] See Benedict Kingsbury and Nahuel Maisley, 'Infrastructures and Laws: Publics and Publicness' (2021) 17 Annual Review of Law and Social Science 353.

[170] Helle Sjøvaag, Raul Ferrer-Conill and Ragnhild Kr Olsen, 'Capture Beyond the Platforms: The Material and Infrastructural Conditions for Digital Journalism' 0 Digital Journalism 1, 14.

meantime, LLMs are playing an increasingly substantive role in journalistic processes and should be viewed as media technology de facto.

This article's underlying objective, however, lies as far from speculating on concrete technological prospects as from supporting the press' ongoing deployment of LLMs. Presenting LLMs as also a media technology is no mere semantic exercise; it is a suggestion for a specific course of normative thinking, grounded in media freedom and pluralism. More concretely, it offers an alternative perspective through which to observe policy developments in the EU and, in particular, to treat with care the EU's politically loaded construction of LLMs as risky systems. Translated into the flesh of the AIA, this has resulted into a questionable framework for the governance of automated speech. The systemic risk approach, with its targeting of legal content and the exclusive repartition of governance responsibilities between the European Commission and LLM providers, lacks formal guarantees for a free and pluralistic press. On the other hand, the AIA's focus on upstream levels of the LLM value chain does little to incentivise and enable transparent and accountable deployment of the technology in journalistic practice. Although much will depend on the operationalization of this particular chapter of the AIA, the legal framework sets the premises for a not-so-virtuous loop of political and technological governance of media innovation unleashed from democratic scrutiny and ethical standards. Finally, looking at LLMs as also media technology calls states to develop a long-term vision for normative pluralism in the emerging media ecosystem.

We should reckon with LLMs' present inadequacy in providing a durable infrastructure for media innovation. But regardless of the type of model architecture(s) that will define the evolution of automated journalism, policy and regulatory interventions should be sensitive to their affordances for press freedom and pluralism. The path traced by the EU so far leaves some doubts in that regard.

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