

A New Fairness Doctrine or Something Else?

By: Sipho C. Langa

Over the last decade, few issues in American public discourse have persisted and evolved as significantly as those concerning an individual's right to access information, particularly polarization, personalization, misinformation, and disinformation. These issues have helped guide the nation's attention to where it rests today, squarely on those responsible for the governance of artificially intelligent systems and social media platforms. For this group, there is little solace to be found in ideological division, as questions like who sees what information and when, whether that information is biased or incendiary, and what either of these things means for society at large have become commonplace across ideological perspectives.¹ Inspired by these questions is an emerging consideration of whether the abundance of algorithmically curated content has weakened the potential for common knowledge, and whether that weakening calls for a new legal, institutional, or civic commitment to ensure access to information.² Given all of this, it certainly seems worth exploring the history of these issues beyond the last decade, recent events related to this discourse, and what solutions might be of interest to the country going forward.

Long before the year 2000, questions concerning the public's access to unbiased information had already made their way into the U.S. zeitgeist. One prominent artifact of this is the Fairness Doctrine, a policy that grew out of broadcast regulation following the creation of the Federal Radio Commission (FRC) in 1927 and was later continued by its successor, the Federal Communications Commission (FCC).³ The goal of this policy was to ensure that broadcast stations' coverage of controversial issues was balanced and fair. Unfortunately, this policy was not met with sweeping acceptance, as many journalists and broadcasters opposed this aim on the basis that it violated First Amendment rights to free speech and a free press. As time went on, the Fairness Doctrine became more fortified, most notably in 1969 with the Supreme Court's decision in *Red Lion Broadcasting Co. v. Federal Communications Commission*, in which the Court upheld the FCC's authority to require a Pennsylvania broadcasting station to grant airtime for a response to an author who had been personally attacked by a guest on a previous broadcast.⁴ This decision then helped reinforce additional requirements for stations, including

¹ Monica Anderson, "Americans' Views of Technology Companies," Pew Research Center, April 29, 2024, <https://www.pewresearch.org/internet/2024/04/29/americans-views-of-technology-companies-2/>. Pew found that 93 percent of Republicans and Republican-leaning independents and 74 percent of Democrats and Democratic-leaning independents said it was likely that social media sites intentionally censor political viewpoints they find objectionable.

² Henrik Metzler, et al., "Social Drivers and Algorithmic Mechanisms on Digital Media," *Perspectives on Psychological Science* 19, no. 5 (2024): 735-748, <https://journals.sagepub.com/doi/10.1177/17456916231185057>. The authors describe how recommendation algorithms and social dynamics interact through feedback loops that affect individual and collective outcomes.

³ Audrey Perry Martin, "Fairness Doctrine," *The First Amendment Encyclopedia*, Free Speech Center, Middle Tennessee State University, January 1, 2017, last updated July 5, 2024, <https://firstamendment.mtsu.edu/article/fairness-doctrine/>. Martin explains that the Fairness Doctrine took effect after the creation of the Federal Radio Commission in 1927, was continued by the FCC, and was rooted in the view that limited broadcast frequencies justified public-interest obligations for broadcasters.

⁴ *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969). See also Martin, "Fairness Doctrine."

later obligations to report their efforts to address issues of concern to the community. By the 1980s, however, the policy was losing favor. Combined with the deregulatory orientation of the period and technological advances that weakened the spectrum-scarcity rationale,⁵ this shift eventually led the FCC to abolish the doctrine in 1987.⁶ Despite the time that has passed, some people still support arguments rooted in scarcity and the related implications for a modern version of the Fairness Doctrine.

Proponents of policies reminiscent of the Fairness Doctrine can draw on several arguments to support their position. Even when confronted with the doctrine's historically unsuccessful implementation, they may reasonably contend that the underlying questions it sought to address remain pertinent today. The issue today, however, extends beyond the broadcast spectrum alone, now involving academic institutions, search engine results, news outlets, and other institutions or systems that shape the public's access to trustworthy information. Consider the COVID-era misinformation concerns that helped give rise to *Murthy v. Missouri* (2024), a case centered on whether federal officials improperly pressured social media platforms to suppress certain forms of speech.⁷ Also consider the disinformation surrounding alleged fraud in the 2020 presidential election, which led to the \$787.5 million settlement in *Dominion Voting Systems v. Fox News Network*, where a media outlet's coverage of election technology became the subject of major defamation claims.⁸ These examples sit alongside broader questions about administrative censorship, platform responsibility, algorithmic feedback loops, and the extent to which private systems now shape public access to information.⁹ As a country, we must ask ourselves whether solutions such as Community Notes, fact-checking efforts, user feed controls, and alternative platforms like Bluesky are sufficient, or whether these recurring controversies point to the need for more durable legal or institutional expectations.

⁵ Audrey Perry Martin, "Scarcity Rationale," *The First Amendment Encyclopedia*, January 1, 2009, updated July 9, 2024, <https://firstamendment.mtsu.edu/article/scarcity-rationale/>.

⁶ Martin, "Fairness Doctrine." By the 1980s, the doctrine was losing force because of deregulatory pressure and technological developments that weakened scarcity-based arguments; the FCC formally abolished it in 1987.

⁷ *Murthy v. Missouri*, 603 U.S. 43 (2024). The Supreme Court held that the plaintiffs lacked Article III standing to seek injunctive relief against federal officials, but the case arose from allegations that those officials pressured social media platforms to suppress certain categories of speech.

⁸ David Bauder et al., "Fox, Dominion Reach \$787M Settlement over Election Claims," Associated Press, April 18, 2023, <https://apnews.com/article/fox-news-dominion-lawsuit-trump-2020-0ac71f75acfacc52ea80b3e747fb0afe>.

⁹ Monica Anderson, "Americans' Views of Technology Companies," Pew Research Center, April 29, 2024, <https://www.pewresearch.org/internet/2024/04/29/americans-views-of-technology-companies-2/>. Pew found that 93 percent of Republicans and 74 percent of Democrats said it was very or somewhat likely that social media sites intentionally censor political viewpoints they find objectionable.

Should these recurring controversies ultimately point to the need for more durable legal or institutional expectations, one option the United States could consider is a transparency doctrine that borrows elements from the Platform Accountability and Transparency Act (PATA) and Article 27 of the European Union's Digital Services Act (DSA).¹⁰ From PATA, the most desirable elements could include expanded data access for journalists and researchers, limited legal safe harbor for automated data collection, and enhanced transparency through disclosures related to viral content, ad libraries, algorithmic design, and content moderation.¹¹ From DSA Article 27, the U.S. could borrow an explicit requirement that companies using recommender systems explain what parameters are being used, how those parameters shape what users see, and what options users have to modify or influence those systems.¹² Rather than dictating what platforms must carry, such a doctrine would require platforms to make clearer how information is ranked, recommended, moderated, and amplified. Still, this approach has limits. As Professor Daphne Keller and others have warned, transparency requirements can become dangerous if they weaken users' privacy protections or create new pathways for state surveillance, especially when laws require platforms to provide researchers or other outside parties with access to user data.¹³ There is also the problem of implementation: early analyses of the DSA suggest that platforms and auditors have interpreted transparency obligations in inconsistent ways, meaning that the same legal mandate can produce compliance systems that are technically lawful but difficult for users, researchers, and regulators to compare across platforms.¹⁴ A transparency doctrine, then, may be useful, but it would not be sufficient on its own unless paired with clear standards, privacy safeguards, and meaningful oversight. Properly designed, such a framework could improve public understanding of how platforms shape access to information without empowering the government to dictate which viewpoints those platforms must promote or suppress.

¹⁰ Platform Accountability and Transparency Act, S. 1876, 118th Cong. (2023); Regulation (EU) 2022/2065 of the European Parliament and of the Council of October 19, 2022, on a Single Market for Digital Services and Amending Directive 2000/31/EC (Digital Services Act), art. 27, 2022 O.J. (L 277) 1.

¹¹ Platform Accountability and Transparency Act, S. 1876, 118th Cong. (2023). See also "Platform Accountability and Transparency Act, S. 1876, 118th Cong. (2023)," *Harvard Law Review* 137 (2024): 2104, <https://harvardlawreview.org/print/vol-137/platform-accountability-and-transparency-act-s-1876-118th-cong-2023/>.

¹² Digital Services Act, art. 27. Article 27 requires providers of online platforms that use recommender systems to explain, in plain and intelligible language, the main parameters used in those systems and any options available to users to modify or influence those parameters.

¹³ Daphne Keller and Max Levy, "Getting Transparency Right," *Lawfare*, July 11, 2022, <https://www.lawfaremedia.org/article/getting-transparency-right>. See also Daphne Keller, "User Privacy vs. Platform Transparency: The Conflicts Are Real and We Need to Talk About Them," Stanford Center for Internet and Society, April 6, 2022, <https://cyberlaw.stanford.edu/blog/2022/04/user-privacy-vs-platform-transparency-conflicts-are-real-and-we-need-talk-about-them-0/>.

¹⁴ Peter Chapman, "From Ambiguity to Accountability: Analyzing Recommender System Audits under the DSA," Knight-Georgetown Institute, February 28, 2025, <https://kgi.georgetown.edu/research-and-commentary/dsa-ambiguity-to-accountability/>.

Another option would be to regulate social media platforms more like common carriers, limiting their ability to discriminate among users or viewpoints when providing access to their services. Florida's SB 7072 and Texas's HB 20 reflect versions of this approach.¹⁵ Whereas a transparency doctrine would focus on disclosure, explanation, and access to platform data, a common-carrier-style approach would ask whether dominant platforms should be limited in their ability to deplatform, censor, shadow ban, or otherwise discriminate against lawful user speech. One state-level example of this approach is Florida's SB 7072. Although the law focused most directly on preventing platforms from deplatforming political candidates, it also included several provisions with broader relevance. These required platforms to publish and consistently apply their moderation standards, notify users of changes to platform rules, explain censorship or deplatforming decisions, provide information about the reach of users' content, allow users to opt out of certain post-prioritization or shadow-banning algorithms, and preserve access to user data after deplatforming.¹⁶ Texas's HB 20 offers a more expansive version of this approach. Whereas Florida's law placed particular emphasis on political candidates and procedural protections for users, HB 20 prohibited large social media platforms from censoring users based on viewpoint and grounded the state's intervention in its interest in protecting the free exchange of ideas among Texas residents.¹⁷ Together, these bills represent a camp of thought that views large platforms less like ordinary private publishers and more like infrastructure for public discourse. The difficulty, however, is that protecting users' speech in this way may also limit the editorial discretion of the platforms themselves.¹⁸ This creates a hard question with no easy answer: whether the federal government should be in the business of balancing the exchange of ideas among private speakers, especially when doing so may require treating private platforms as public-facing infrastructure while still respecting their own First Amendment interests.

A third approach would involve codifying broader public-interest obligations for social media platforms, including duties related to recommender systems, content amplification, product design, and user safety. This approach would align more closely with the Kids Online Safety Act (KOSA), the SAFE TECH Act, and the emerging theory of platform responsibility reflected in *K.G.M. v. Meta*.¹⁹ Unlike a modernized version of the Fairness Doctrine, this approach would not necessarily require platforms to carry particular viewpoints or balance competing perspectives. Instead, it would focus on whether platforms and AI systems have duties related to the design, recommendation, amplification, and monetization of information environments. KOSA offers one version of this idea by requiring covered online platforms to

¹⁵ Fla. S.B. 7072, 2021 Leg., Reg. Sess. (2021); Tex. H.B. 20, 87th Leg., 2d Called Sess. (2021).

¹⁶ Florida Senate, "SB 7072 — Social Media Platforms," 2021, <https://www.flsenate.gov/Committees/BillSummaries/2021/html/7072>. See also Fla. S.B. 7072, 2021 Leg., Reg. Sess. (2021), <https://www.flsenate.gov/Session/Bill/2021/7072/BillText/er/HTML>.

¹⁷ Tex. H.B. 20, 87th Leg., 2d Called Sess. § 7 (2021), <https://capitol.texas.gov/tlodocs/872/billtext/html/HB00020F.HTM>. The bill defines "censor" to mean blocking, banning, removing, deplatforming, demonetizing, de-boosting, restricting, denying equal access or visibility to, or otherwise discriminating against expression.

¹⁸ John Villaseñor, "Texas's New Social Media Law Is Likely to Face an Uphill Battle in Federal Court," Brookings Institution, November 9, 2021, <https://www.brookings.edu/articles/texas-new-social-media-law-is-likely-to-face-an-uphill-battle-in-federal-court/>.

¹⁹ Kids Online Safety Act, S. 1748, 119th Cong. (2025); Safeguarding Against Fraud, Exploitation, Threats, Extremism, and Consumer Harms Act (SAFE TECH Act), S. 560, 118th Cong. (2023).

exercise reasonable care in the design and use of features that increase minors' online activity, provide safeguards for minors and parents, allow users to switch away from certain personalized algorithmic systems, and submit to oversight through enforcement by the Federal Trade Commission and states.²⁰ The SAFE TECH Act takes a different route by narrowing Section 230 protections in certain contexts, including paid speech, speech created or funded by the platform, requests for injunctive relief, and claims involving areas such as civil rights, antitrust, harassment, wrongful death, and international human rights.²¹ Meanwhile, *K.G.M. v. Meta* suggests that courts may be increasingly willing to treat some platform harms as questions of product design rather than merely questions of third-party content, especially where features like autoplay, infinite scroll, and recommendation systems are alleged to contribute to addiction or mental health harms.²² The appeal of this camp is that it addresses the architecture of information access more directly than transparency alone. Its drawback, however, is that public-interest obligations can quickly become difficult to define and may create free speech, innovation, and enforcement concerns. KOSA's critics at EFF and R Street warn that even child-safety duties can become tools for censorship or overbroad age-gating, while EFF has also argued that the SAFE TECH Act could create broad litigation risks and pressure platforms to remove lawful speech.²³ This approach may therefore be the most responsive to the design-level harms of recommender systems, but it would also require careful drafting to avoid turning product-safety obligations into vague speech-control mandates.

Lastly, there is the option of developing a new Fairness Doctrine altogether. Given the scope of information mediums such a doctrine would have to cover, it would almost certainly need to look materially different from the original. Arguments from voices like John Villasenor capture the difficulty well, noting that an internet Fairness Doctrine would likely backfire because the internet already provides access to countless viewpoints, while government efforts to force online neutrality would raise serious First Amendment concerns and risk giving the state too much control over the online information ecosystem.²⁴ This may be true, but if the spirit of the

²⁰ Congressional Research Service, summary of the Kids Online Safety Act, S. 1748, 119th Cong. (2025), Congress.gov, <https://www.congress.gov/bill/119th-congress/senate-bill/1748>.

²¹ Congressional Research Service, summary of the SAFE TECH Act, S. 560, 118th Cong. (2023), Congress.gov, <https://www.congress.gov/bill/118th-congress/senate-bill/560>.

²² Caroline Rollheiser, "K.G.M. v. Meta Platforms, Inc.: The Landmark Verdict Redefining Responsibility for Social Media Addiction," *The Race to the Bottom*, April 16, 2026, <https://www.theracetothetopbottom.org/rttb/2026/4/16/kgm-v-meta-platforms-inc-the-landmark-verdict-redefining-responsibility-for-social-media-addiction>. See also Clay Calvert, "A Landmark Tech Ruling and What Lies Ahead," American Enterprise Institute, April 24, 2026, <https://www.aei.org/articles/a-landmark-tech-ruling-and-what-lies-ahead/>.

²³ Aaron Mackey and Jason Kelley, "Analyzing KOSA's Constitutional Problems in Depth," Electronic Frontier Foundation, March 15, 2024, <https://www.eff.org/deeplinks/2024/03/analyzing-kosas-constitutional-problems-depth>; Spence Purnell, "KOSA's Re-Animated Threat to Free Speech and Innovation," R Street Institute, May 21, 2025, <https://www.rstreet.org/commentary/kosas-re-animated-threat-to-free-speech-and-innovation/>; Aaron Mackey, India McKinney, and Jason Kelley, "The SAFE Tech Act Wouldn't Make the Internet Safer for Users," Electronic Frontier Foundation, February 25, 2021, <https://www.eff.org/deeplinks/2021/02/safe-tech-act-wouldnt-make-internet-safer-users>.

²⁴ John Villasenor, "Why Creating an Internet 'Fairness Doctrine' Would Backfire," Brookings Institution, June 24, 2020, <https://www.brookings.edu/articles/why-creating-an-internet-fairness-doctrine-would-backfire/>.

doctrine is what persists, rather than the exact mechanism of the original, a new Fairness Doctrine might look less like forced viewpoint balancing and more like the proposed “Awareness Doctrine” introduced in the *Harvard Law Review*.²⁵ Rather than requiring platforms or broadcasters to present contrasting viewpoints on controversial issues, an Awareness Doctrine would require content distributors to help distinguish factual reporting from opinion, ideally through a quasi-self-regulatory system approved by the FCC.²⁶ The appeal of this approach is that it looks to address one of the central problems of the modern information environment without forcing direct viewpoint balancing: people are not merely lacking access to opposing sides, but are often consuming information environments where fact, opinion, commentary, and persuasion blur together. In that sense, a new doctrine could be less about compelling platforms to host or elevate particular viewpoints and more about making the character of information clearer to the public. Unfortunately, even this approach has pitfalls, especially given the complexity of journalism itself, which can encompass reporting, analysis, commentary, and opinion at once. This concern is not solely hypothetical. In 2024, the SEC allowed Fox Corporation to exclude a shareholder proposal asking the company to report on the risks of inadequately distinguishing its on-air news content from its opinion content.²⁷ Now imagine this same issue applied to AI output and social media posts. Clearly, there is no silver bullet.

Whether any of these potential paths ultimately proves to be the right one, one thing is certain: the country cannot avoid deciding how it wants to govern access to information in an algorithmic age. Whatever option is pursued must be contextualized within history, recent events, current concerns, and the downstream consequences that may follow. The Kids Internet and Digital Safety Act (KIDS Act), passed by the House, offers one indication of what such an approach might look like. The bill combines elements of transparency, platform-design obligations, user controls, content restrictions, and public enforcement. Its provisions include safeguards for minors, parental controls, limits on compulsive-use features and certain communications with minors, restrictions on ephemeral messaging, disclosures that AI chatbots are not human, crisis-intervention information in certain chatbot interactions, and studies examining the effects of social media on minors.²⁸ It would also authorize enforcement by the Federal Trade Commission and state attorneys general. In this way, the KIDS Act draws together several of the approaches considered throughout this paper and may help shape future efforts to impose broader public-interest obligations on digital platforms. At the same time, important vulnerabilities remain, including concerns about privacy, age verification, overbroad content restrictions, inconsistent implementation, and the extent to which child-centered

²⁵ “The Awareness Doctrine,” *Harvard Law Review* 135, no. 7 (May 2022): 1907–1941, <https://harvardlawreview.org/print/vol-135/the-awareness-doctrine/>.

²⁶ “The Awareness Doctrine,” 1928–29. The note proposes an FCC-approved quasi-self-regulatory system under which content distributors would use a rating system to distinguish reporting from opinion and inform audiences which type of content they are consuming.

²⁷ U.S. Securities and Exchange Commission, Division of Corporation Finance, “Fox Corporation,” no-action letter, September 19, 2024, <https://www.sec.gov/files/corpfm/no-action/14a-8/cheveddenfox91924-14a8.pdf>. See also Ross Kerber, “SEC Rules Fox Can Skip Vote on Labeling TV Opinion Shows,” Reuters, September 20, 2024, <https://www.reuters.com/business/media-telecom/sec-rules-fox-can-skip-vote-labeling-tv-opinion-shows-2024-09-20/>.

²⁸ Congressional Research Service, summary of the Kids Internet and Digital Safety Act, H.R. 7757, 119th Cong. (2026), Congress.gov, <https://www.congress.gov/bills/119th-congress/house-bill/7757>.

protections can be extended to adults without infringing upon constitutional rights. Whether the country gets this balance right on its first attempt is uncertain. What is nonnegotiable, however, is the need to think beyond the protections we want now and consider the information environment those protections may ultimately create.