

Screenshots: A Glance beyond the Transatlantic

„Open with Caution“.

How Taiwan Approaches Platform Governance in the Global Market and Geopolitics

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Abstract: Originated in the US, platform governance has relied on self-governance. To make GAFAM and other tech companies accountable to values in democratic societies, the EU proposes a more interventionist model. The rise of Chinese platforms has led to new concerns about state censorship and surveillance. Yet, often considered as exotic exceptions, neither paradigm effectively addresses the accountability problems of Chinese platforms. As a major ICT manufacturer and with a peculiar position in global geopolitics, Taiwan finds both models inadequate. This paper explains Taiwan's specific concerns and offers examples of how it seeks to strike a balance between effective platform governance, free speech, industrial growth and national security.

Keywords: platform governance, GAFAM, big tech, Chinese platforms, disinformation campaigns, free speech, infiltration, geopolitics, Taiwan-China relationship, national security

Introduction

In the past years, the European Union has led important discussions on platform governance and introduced new regulations. While the United States has largely relied on platform self-governance and given providers

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much leeway to shape their own terms of content removal and privacy policies, the EU approach tends to intervene more. For example, Germany's NetzDG mandates platforms to set up effective systems to manage complaints regarding hate speech and unlawful content; France introduced new legislation against disseminating disinformation during elections; the EU overtakes the US in terms of setting a higher standard for user privacy (i.e., the GDPR) and seeks to export it as a new paradigm. With Google, Apple, Facebook, Amazon and Microsoft (GAFAM)—all American companies—leading the global market, EU regulators have much concern about the European competitiveness.

Taiwan has mostly followed the US model and has a rather hands-off approach in platform governance. It does share some of the above concerns and has begun to look to the EU as an alternative regulatory model. However, with its own specific socio-political context, its industrial structure and population size, Taiwan may hesitate to accept the European model and will find its own way to position itself in the global market and geopolitics. As the US–China decoupling continues to unfold, TSMC alone has allowed the world to take note of Taiwan's strategic importance in ICT manufacturing. Taiwan's geographical location also gives it a critical role in the submarine cable network, which has been further boosted as Hong Kong's political instability grows. With a close yet thorny relationship with China, Taiwan has been a target for disinformation campaigns. Taiwanese government and civil society share the same goal of fighting disinformation with a robust and free internet. Like other countries, internet platform governance issues intersect various fields: national security, democracy, business opportunities, etc. With Taiwan's unique role in geopolitics, how it approaches platform governance may be of interest to regulators and scholars in other countries.

Chapter 1. Taiwan, geopolitics, internet, and platforms

The current thorny relationship between Taiwan and China began in 1949 when Kuomintang (KMT, the Chinese Nationalist Party) retreated to Taiwan. Towards the end of the cold war, Taiwan lifted the martial law that went into effect in 1947 and gradually opened up cross-strait traffic. Taiwanese investment in China gradually increased and broadened to

include ICT related industries.² Taiwan's capital investment in China gradually increased from 1991 (US\$174 million) and peaked between 2010 and 2012 (US\$12.8–14.6 billion) under the KMT government. After President Tsai Ing-wen (Democratic Progressive Party, DPP) was elected in 2016, the cross-strait tension heightened. Tsai's administration took proactive measures to divest from China, and the number gradually dropped to 4.1 billion US dollars in 2019.³

With the long martial law history under the KMT government and the constant threat from China, the Taiwan–China relationship and the Taiwan identity have been the most paramount issues in the democratization process. The amount of traffic between Taiwan and China has significant impacts on Taiwanese domestic politics. According to China's 2010 official census, more than 1.5 million to 2 million Taiwanese were working, studying or living in China.⁴ During the 2012 presidential election, more than 200,000 Taiwanese expats in China flew back to vote.⁵ (Taiwan does not have absentee ballots.) The number of Taiwanese citizens in China has also declined in the past years. Yet, in 2019, more than half of the Taiwanese working overseas were in China (including Hong Kong and Macau).⁶ Chinese visitors (including Hong Kong) to Taiwan grew from 2.5 million in 2011 to the high point at 5.5 million in 2015, and down to 4.3 million (including 1.6 million from Hong Kong) in 2019.⁷ Until 2016, almost half a million people have immigrated to Taiwan from China (including Hong

2 Lin Chu-chia 林祖嘉, “台商在兩岸經貿發展的過去與未來” [The past and future of Taiwanese merchant in cross-strait trade development], *National Policy Foundation*, March 25, 2011, <https://www.npf.org.tw/2/8948>.

3 Taiwan Ministry of Economic Affairs, Investment Commission, “Investment to Mainland China,” Statistics Chart, https://www.moeaic.gov.tw/business_category.view?seq=3&lang=en (accessed May 7, 2021).

4 *Apple Daily (HK)*, “近 200 萬台灣人居大陸” [Near 2 million Taiwanese lives in mainland], November 25, 2014, <https://collection.news/appledaily/articles/4UIFDGBV6NLHERYKX5JDFDFLVQ> (archived).

5 Peter Shadbolt, “Taiwan's expats seen as key in presidential poll”, CNN, January 14, 2012, <https://edition.cnn.com/2012/01/13/world/asia/taiwan-election/>.

6 Taiwan Directorate-General of Budget, Accounting, and Statistics, “108 年國人赴海外工作人數統計結果” [2019 statistical result of nationals working overseas], news release, December 17, 2020, <https://www.dgbas.gov.tw/public/Attachment/01217147167RLW6M7Z.pdf>. There were more than 739,000 Taiwanese working overseas in 2019. Specifically, 395,000 nationals were working in China (including Hong Kong and Macau), which was about 53.4%.

7 Tourism Statistics Database of the Taiwan Tourism Bureau, “Changes in the number of visitor arrivals from Japan, South Korea, Malaysia, Mainland China and Hong Kong from 2011~2020,” <https://stat.taiwan.net.tw/> (accessed May 7, 2021).

Kong and Macau).⁸ The Taiwanese identity has grown over time. People identifying themselves as Taiwanese grew from 17.6% in 1992 to 67% in 2020, and people identifying themselves as Chinese dropped from 25.5% to merely 2.4%.⁹ This political and demographic context is critical for understanding Taiwan's fight against disinformation campaigns, especially in recent elections.

Despite the instability of being on the seismic belt, Taiwan's location makes it an important node in the submarine cable network. Most of the undersea cables connecting the US to Asia make landfall in Japan, then past Taiwan, across the South China Sea to ASEAN countries. Taiwan's south and east coasts are crowded with submarine cables. An earthquake in southern Taiwan in 2006 caused interruption for several cables in the area, which severely disrupted telecommunication in Southeast Asia. Internet access slowed down as much as 98% for Taiwan, Malaysia, Singapore, Thailand and Hong Kong.¹⁰ With the recent US-China decoupling and the deteriorating political situation in Hong Kong, submarine cable has become a heated issue. In 2020, Washington partially objected to the building of an undersea internet cable that connects the United States and Asia through Hong Kong and instead recommended that it goes through Taiwan and the Philippines to prevent any direct control by China.¹¹

Similar to many European countries, Chunghwa Telecom used to operate as the only national telecommunication carrier until the revision of

8 Taiwan National Immigration Agency“, 大陸地區人民、港澳居民、無戶籍國民來臺居留、定居人數統計表 11001” [January 2021 statistics chart for Mainland China, Hong Kong, Macau resident, and stateless person setting up residence or registering permanent residence], <https://www.immigration.gov.tw/5382/5385/7344/7350/8883/?alias=settledown&cedate=202101>.

9 Lin Kelun 林克倫, “政大民調：台灣人認同感 67% 創歷年新高” [NCCU poll: 67% identify as Taiwanese, a historic high], CNA, July 3, 2020, <https://www.cna.com.tw/news/firstnews/202007030346.aspx>.

10 Winston Qiu, “Submarine cables cut after Taiwan earthquake in Dec 2006”, *Submarine Cable Network*, March 19, 2011, <https://www.submarinenetworks.com/news/cables-cut-after-taiwan-earthquake-2006>.

11 U.S. Department of Justice, “Team Telecom recommends that the FCC deny Pacific Light Cable Network System's Hong Kong undersea cable connection to the United States”, news release, June 17, 2020, <https://www.justice.gov/opa/pr/team-telecom-recommends-fcc-deny-pacific-light-cable-network-system-s-hong-kong-undersea>; Jennifer Elias, “Google gets federal OK to operate subsea cable from Taiwan to US as it nears maximum capacity in Asia”, CNBC, April 8, 2020, <https://www.cnbc.com/2020/04/08/google-gets-federal-ok-to-operate-subsea-cable-from-taiwan-to-us.html>.

the 1996 (Taiwan) Telecommunication Act.¹² After the liberalization in telecommunications, Chunghwa has transitioned into a private company, although the government remains its largest shareholder¹³ and HiNet (a Chunghwa subsidiary) is still Taiwan's biggest internet service provider.¹⁴ The 1996 Act requires the chairperson of a Tier 1 company to be a Taiwan citizen, and foreign institutions or individuals are barred from owning more than 49% of the company's share.¹⁵ The Act also requires communication equipment for Tier 1 and Tier 2 to be government-certified.¹⁶ (The above requirements remain unchanged in the Telecommunication Management Act, which has replaced the Telecommunication Act since July 2010.)¹⁷ In addition, while not explicitly stated in the law, the Taiwan government generally does not allow the deployment of China-manufactured network equipment at the infrastructure level.¹⁸ When 4G was first introduced, operators' attempt to adopt Huawei products was rejected by the Taiwan National Communications Commission (NCC).¹⁹ The three major 5G operators, Chunghwa Telecom, Taiwan Mobile, and Far EasT-one, use either Nokia or Ericsson, which are both European companies.²⁰

12 Chen Wen-sung 陳文生 and Wang San-chi 王三吉, “台灣網際網路發展歷程研究之初探” [A preliminary study on Taiwan's internet development history], in *Proceedings of Taiwan Academic Network Conference (TANet) 2005*, <http://nccur.lib.nccu.edu.tw/handle/140.119/113242>.

13 See generally Taiwan Directorate-General of Telecommunications, “我國電信自由化效益分析研究報告” [Analysis report on the benefits of domestic telecom liberalization], 2003, https://www.ncc.gov.tw/chinese/news_detail.aspx?site_content_sn=475&sn_f=955.

14 “About HiNet”, HiNet, last modified March 18, 2021, <https://www.hinet.net/globe/en/about.html>.

15 Telecommunications Act art. 12 (1996) (Taiwan).

16 See *id.* art. 13, 18, 39, 40, 46, and 52.

17 See Telecommunications Management Act (Taiwan), <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=K0060111>. Citizenship requirement of the chairperson for a public telecom operator is in art. 36. Specifications for core communication equipment are in art. 37, 38, 40, 53, and 81 respectively.

18 See, e.g., *Asia Times*, “Taiwan may ban all Chinese equipment, apps”, March 12, 2019, <https://asiatimes.com/2019/03/taiwan-may-ban-all-chinese-equipment-apps/>.

19 Keoni Everington, “After report on Huawei's 'Trojan Horse,' Taiwan retains ban on China-made gear”, *Taiwan News*, December 10, 2018, <https://www.taiwannews.com.tw/en/news/3593407>.

20 Nokia, “Nokia wins exclusive Taiwan Mobile 5G deal”, news release, June 29, 2020, <https://www.nokia.com/about-us/news/releases/2020/06/29/nokia-wins-exclusive-taiwan-mobile-5g-deal/>; Ericsson, “Far EasTone Taiwan expands exclusive Ericsson 5G partnership”, March 2, 2021, <https://www.ericsson.com/en/press-releases/2021/3/far-eastone-taiwan-expands-exclusive-ericsson-5g-partnership>.

Unlike in the field of telecommunications, Taiwanese regulations about platforms are rather scant. Three of the top five websites in Taiwan are owned by foreign companies (Google, YouTube, and Yahoo HK).²¹ The top two food delivery platforms are Foodpanda (79.6%) and UberEats (60.8%),²² both foreign companies. Shopee and Ruten (Chinese and Japanese companies respectively) are among the top online shopping websites. Shopee also takes the lead in mobile shopping.²³ With a reach rate of 98.5%, Facebook is the top social media platform, followed by Instagram (38.8%). LINE is the most popular mobile communication app (99.2%), followed by Messenger (26.8%) and WeChat (21.4%). As previously mentioned, a considerable portion of Taiwanese population has maintained close ties with China. They rely heavily on Chinese apps, such as WeChat,²⁴ Weibo (microblogging), Baidu Map, Taobao (online shopping), or Didi (the Chinese version of Uber). Although the Taiwan government has been able to ban Chinese telecom equipment in the public infrastructure and prohibit using Chinese apps in public offices,²⁵ such hardline approaches are rarely taken for Chinese apps and platforms.²⁶

21 Alexa, “Top Sites in Taiwan”, <https://www.alexa.com/topsites/countries/TW> (accessed May 7, 2021).

22 Xiao Junhui 蕭君暉, “foodpanda 市占率達八成 穩坐美食外送龍頭” [foodpanda holds its throne on food delivery industry with 80% market share], *Economic Daily News*, August 5, 2020, <https://money.udn.com/money/story/5612/4756742>.

23 U.S. International Trade Administration, “Taiwan – ECommerce,” last modified November 8, 2019, <https://www.export.gov/apex/article2?id=Taiwan-e-commerce>.

24 Yujie Chen, Zhifei Mao, and Jack Linchuan Qiu, *Super-Sticky WeChat and Chinese Society* (Emerald Publishing, 2018). WeChat began as a messaging app like WhatsApp, but has gradually become a mega gateway platform that connects many other third party providers and serves different parts of users' daily activities.

25 Ku Chan 顧荃, “公務資通訊禁中國產品 政院：國安無灰色地帶” [Chinese products banned from official ICT duty; Executive Yuan: no gray area on national security], CNA, January 24, 2019, <https://www.cna.com.tw/news/aipl/201901240160.aspx>.

26 Cf. BBC News, “Zoom banned by Taiwan’s government over China security fears”, April 7, 2020, <https://www.bbc.com/news/technology-52200507>. One special case may be Zoom. Although Zoom is an American company, its Chinese connection raised national security and censorship concerns. When the Covid-19 pandemic began to unfold in Spring 2020, Zoom quickly became a popular online meeting platform. Since April 2020, the Taiwan government has prohibited public offices, universities and schools from using Zoom. This might have been a less controversial case, as Zoom was not yet widely adopted among Taiwanese users.

Chapter 2. Why do Taiwan's approaches (must) differ from the EU?

Section 1. GAFAM is only part of the problem

For regulators in EU, a key policy goal is to release EU countries from the dominance of GAFAM. There is no doubt that these global tech giants are also major players in Taiwan.²⁷ However, as a significant number of the population constantly travels across the Taiwan Strait, there is heavy reliance on major Chinese platforms as well. Of the top messaging apps, the reach rate of Facebook Messenger (26.8%) is only slightly higher than WeChat (21.4%). LINE, the most popular messaging app, is ultimately a Japanese company. While LINE may be more willing to adopt the US model of self-regulation (e.g., issuing transparency reports) and comply with European laws that are more intervening,²⁸ it is less likely to see WeChat joining the course. In fact, neither of these regulatory frameworks has shown efficacy when it comes to regulating Chinese platforms—even though the GDPR has set a higher standard for user privacy, it does not address the potentially regular access of private platforms' user data by the government, as what can happen in China.²⁹ This kind of data access by the Chinese government is of particular concern for Taiwan, as it may lead to cyber security and national security issues, as well as arrest and detention of Taiwanese citizens by the Chinese authorities. For example, the 2020 Hong Kong National Security Law criminalizes secession and sedition. As the law applies to people who do not reside in Hong Kong, China could theoretically charge Taiwanese citizens who supported Hong Kong protesters on social media platforms for violating this law. When a government requests user data, platforms often have to comply with local laws. Even if Taiwanese citizens might bet on GAFAM to decline unreasonable data requests by the Chinese government, the same cannot be said for WeChat and Weibo. In Taiwan's threat model, Chinese platforms and services pose much bigger problems than GAFAM. Nevertheless, with

27 Taiwan Network Information Center (TWNIC), “2018 年台灣網路報告” [2018 Taiwan Internet Report], December 2018, https://www.twnic.tw/doc/twrip/201812_e.pdf.

28 See, e.g., “Transparency Report”, LINE Corporation, <https://linecorp.com/en/security/transparency/>.

29 Wang Zhizheng, “Systematic Government Access to Private-Sector Data in China”, in *Bulk Collection: Systematic Government Access to Private-Sector Data*, ed. Fred H. Cate and James X. Dempsey, 241–58 (New York: Oxford University Press, 2017), <https://doi.org/10.1093/oso/9780190685515.003.0011>.

part of its population locked into Chinese platforms, banning Chinese companies for failure of compliance is usually not an option for the Taiwan government.

The oligarchy of GAFAM presents only one set of problems in Taiwan's internet governance. The various efforts to address privacy and ethics in ICT development (e.g., whether to restrict the application of facial recognition, how to avoid algorithmic discrimination) have appeared to be addressing the "western" platforms, leaving out the Chinese platform ecosystem.³⁰ The fact that these approaches are not effective in regulating Chinese platforms may be particularly problematic for Taiwan, but it is certainly not a Taiwan-only issue. As the traffic between the EU and China continues to grow, and as Chinese platforms seek to expand in the global market, EU countries may also face the same regulatory obstacle. The ban of WeChat and TikTok in the US app stores in 2020 had already met with criticisms for causing hardship for American citizens and residents with connections in China.³¹ The rationale for the ban may not have received the credit it should have, partly because the ban was issued by the Trump administration. EU countries may have to tackle the privacy and national security concerns accompanying these platforms in the future.

Section 2. GAFAM as potential partners

Taiwan shares the concerns about GAFAM with EU. But on the other hand, Taiwan also sees business opportunities with big tech. Taiwan is well known for its strength in ICT hardware, and big tech companies heavily depend on Taiwanese manufacturers. In nano-electronics, TSMC dominated the market in both quality and quantity.³² Most advanced

30 José van Dijck, Thomas Poell, and Martijn de Waal, *The Platform Society: Public Values in a Connective World* (New York: Oxford University Press, 2018). The online geopolitics is roughly divided into two platform ecosystems, the Western and the Chinese, each is completed with separate infrastructure and sectoral platforms, and operates with different political and ideological views.

31 Ana Swanson, David McCabe and Jack Nicas, "Trump administration to ban TikTok and WeChat from U.S. app stores", *New York Times*, September 18, 2020, <https://www.nytimes.com/2020/09/18/business/trump-tik-tok-wechat-ban.html>.

32 Kathrin Hille, "TSMC: how a Taiwanese chipmaker became a linchpin of the global economy", *Financial Times*, March 24, 2021, <https://www.ft.com/content/05206915-fd73-4a3a-92a5-6760ce965bd9>. TSMC has 90% of the global market share in the 5–10nm category, 70% in 12–32nm, and 45% in 45–90nm. The car industry mostly uses chips in the 28–65nm category.

chips are heavily used in 5G, smartphones, high-performance computing, cloud computing and machine learning. Apple, AMD, and Qualcomm are among TSMC's top customers.³³ Since March 2021, TSMC has begun to manufacture CPU chips for Intel.³⁴ Aside from TSMC, MediaTek is also a major player and has become the biggest smartphone chipset vendor in 2020.³⁵ Five Taiwanese major IT companies manufacture almost 90% of the notebooks in the world.³⁶ Taiwanese companies supply over 80% servers to Google, Facebook, Amazon, and Microsoft for their public cloud data centers worldwide.³⁷ Taiwan is also a data hub for GAFAM companies. Two of three Google's data centers in Asia are already located in Taiwan, and the company announced a plan to build a third one.³⁸ Google acquired HTC mobile design talents for US\$1.1 billion and made Taiwan its main hardware R&D hub outside the US.³⁹

The EU has sought to contain the big tech with various approaches, e.g., setting and exporting new legal frameworks, developing EU's own platforms, and having EU's own cloud and data centers. For example, the

- 33 Whitney Huang, "AMD is becoming TSMC's second largest customer", *TechOrange*, March 23, 2021, <https://buzzorange.com/techorange/en/2021/03/23/amd-tsmcs-customer>.
- 34 Paul Alcorn, "Intel to outsource some key CPU production for 2023 chips to TSMC", *Tom's Hardware*, March 24, 2021, <https://www.tomshardware.com/news/intel-to-outsourcesome-key-cpu-production-for-2023-chips>.
- 35 Ankit Malhotra, "MediaTek becomes biggest smartphone chipset vendor for first time in Q3 2020", *Counterpoint*, December 24, 2020, <https://www.counterpointresearch.com/mediatek-biggest-smartphone-chipset-vendor-q3-2020/>.
- 36 Wang Yulun 王郁倫, "鴻海、和碩領電子 6 哥 2020 年營收創新高、4 家入兆元俱樂部" [Foxconn, Pegatron lead the electronics Big Six to record high earnings in 2020, 4 made it to trillion], *Business Next*, January 11, 2021, <https://www.bnnext.com.tw/article/60891/2020-6-ems-companies-revenue-shipment-comparison>.
- 37 Wang Yihong 王宜弘, "伺服器產業牛氣沖天" [The server industry is as bullish as the sky], *United Daily News*, January 27, 2021, <https://udn.com/news/story/6851/5205451>.
- 38 Yu Nakamura, "Google embraces Taiwan as Asia hub with third data center", *Nikkei Asia*, September 4, 2020, <https://asia.nikkei.com/Business/Technology/Google-embraces-Taiwan-as-Asia-hub-with-third-data-center>.
- 39 Chris Welch, "Google is buying part of HTC's smartphone team for \$1.1 billion", *Verge*, September 20, 2017, <https://www.theverge.com/2017/9/20/16340108/google-htc-smartphone-team-acquisition-announced>; Cheng Ting-fang and Lauly Li, "Google to make Taiwan its main hardware R&D hub outside US," *Nikkei Asia*, January 27, 2021, <https://asia.nikkei.com/Business/Technology/Google-to-make-Taiwan-its-main-hardware-R-D-hub-outside-US>.

Gaia-X project is to provide a federated data infrastructure for Europe.⁴⁰ Taiwan does have a government cloud, but other than that,⁴¹ Taiwan approaches platform governance differently from the EU. While having local platforms as alternatives to the big tech is ideal, as a late starter and with a rather small domestic market on the global scale, such an ideal is not very realistic. With the small domestic market and without an attempt to become a competing alternative, Taiwan does not pose itself as a potential exporter of normative frameworks. Unlike the EU, Taiwan may see GAFAM more as potential business partners than foe, and is less likely to challenge GAFAM like the EU does.

Chapter 3. The uneven regulatory landscape in Taiwan

Taiwan does not yet have a well-charted legal framework for platform governance.

There were isolated attempts to regulate internet companies and transactions in the early days. Recent administrative and legislative efforts seek to update the regulatory framework on a larger scale but the progress remains sectorial. Aside from addressing the issues brought by recent technological developments, the Taiwan–China relation remains one of the most important concerns.

Section 1. Early clashes

Yahoo acquired Taiwan’s major internet portal website in 2000,⁴² its most popular blog platform in 2006,⁴³ and one of the top eCommerce com-

40 “GAIA-X: A Federated Data Infrastructure for Europe”, accessed May 7, 2021, <https://www.data-infrastructure.eu/GAIAX/>.

41 E.g., Chunghwa Telecom, “行政院及所屬委員會雲端資料中心傲視亞洲 首座榮獲國際雙認證之政府雲端資料中心” [Executive Yuan and affiliated commissions take pride in their cloud datacenter among Asia: first government cloud datacenter with two international certifications], news release, October 24, 2014, <https://www.cht.com.tw/zh-tw/home/cbt/messages/2014/msg-141024-152141>.

42 Hong Shuzhen 洪淑珍, “雅虎買下台灣人的眼珠—奇摩” [Yahoo bought Kimo, the eyes of Taiwanese people], *Global Views*, December 1, 2000, <https://www.gym.com.tw/article/6566>.

43 Dan Nystedt, “Yahoo given go-ahead to buy Taiwanese blog site”, *Network World*, March 29, 2007, <https://www.networkworld.com/article/2297219/yahoo-given-go-ahead-to-buy-taiwanese-blog-site.html>.

panies in 2008.⁴⁴ As worrying as these mergers might seem, The Taiwan Fair Trade Commission nonetheless approved all of them (the last one was approved on condition),⁴⁵ securing Yahoo's dominance in the Taiwanese market in the upcoming years. It achieved near-monopoly in the domestic online auction and web portal market, coining iconic social platform services like Yahoo Answers.⁴⁶

Around the time Yahoo took over Taiwanese' digital life, digital content vendors and app stores ran into obstacles. The Consumer Protection Act poses a mandatory 7-day rescind period for all goods purchased through door-to-door or distance selling.⁴⁷ In July 2011, The Taipei City government found Google's Android Market⁴⁸ and Apple's iTunes Store⁴⁹ non-compliant to this statute, fining the former for only offering a 15-minute refund window.⁵⁰ While Apple swiftly revised its terms,⁵¹ Google delisted all paid apps in Taiwan and filed suit to appeal the fine. The court ruled in favor of Google on jurisdictional grounds, although it agreed with the city that the refund window was insufficient.⁵² The incident led to criticism from app developers and the IT industry, denouncing governmental bodies for their obliviousness and "risking the opportunity of industrial

44 Zhao Yuzhu 趙郁竹, "Yahoo!奇摩將併購興奇科技 加碼電子商務" [Yahoo Kimo is acquiring MONDAY Tech, staking on e-commerce], *iThome*, April 8, 2008, <https://www.ithome.com.tw/node/48346>.

45 Liao Qianyin 廖千瑩 and Wang Peihua 王珮華, "雅虎奇摩併興奇科技 公平會有條件同意" [Yahoo Kimo's merger with MONDAY Tech conditionally approved by Fair Trade Commission], *Liberty Times*, June 19, 2008, <https://ec.ltn.com.tw/article/paper/220767>.

46 Wang Xiaowen 王曉玟, "Yahoo!奇摩巨人 主導全民生活" [Internet giant Yahoo Kimo dominates the peoples' lives], *CommonWealth*, April 21, 2012, <https://www.cw.com.tw/article/5032228>.

47 Consumer Protection Act art. 19 (Taiwan), <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcodes=J0170001>.

48 "Android Market Business and Program Policies", *Android Market*, Google, 2011, <https://web.archive.org/web/20110902130151/http://www.google.com/mobile/android/market-policies.html> (archived on September 2, 2011).

49 "Mac App Store, App Store and iBookstore Terms and Conditions", *Terms and Conditions*, Apple, last updated June 21, 2010, <https://web.archive.org/web/20110521103525/http://www.apple.com/legal/itunes/us/terms.html#APPS> (archived on May 21, 2011).

50 Jason Tan, "Google, Taipei City still at apps odds", *Taipei Times*, July 16, 2011, <http://www.taipeitimes.com/News/front/archives/2011/07/16/2003508342>.

51 *Id.*

52 Under the Act, local and municipal governments do not have jurisdiction on this particular issue.

upgrading and the nation's economic benefits in general.”⁵³ This strong public outcry perhaps has contributed to a long period of regulatory inertia, in which agencies turned a blind eye to companies that are too big to regulate.

Section 2. Updating the legal framework for ICT innovations

This passive attitude shifted in 2014, when Uber began to operate in Taiwan. Taxi drivers and cab companies, a heavily-regulated industry and a traditionally significant voter base, raged to demonstration and blocked the street in protest.⁵⁴ Instead of giving Uber a free pass, the Ministry of Transportation and Communication (MOTC) kept ordering Uber to register as a taxi service,⁵⁵ fining the firm and its drivers for illegal operation per ride. The legislature further revised the Highway Act in 2016, increasing the maximum penalty for Uber to NT\$25 million (US\$780,000) and threatening to revoke the driving license of those who drove Uber without a taxi operator permit. Despite the sanctions, Uber kept rolling the wheels until it accumulated US\$10 million in fines.⁵⁶ It even orchestrated a huge media campaign to pressure Taiwan to “progress together.”⁵⁷

53 Zheng Shaofan 鄭少凡, “北市府與 Google 的 Android Market 消保大戰” [The consumer protection war between Google's Android Market and Taipei City government], *WatChinese*, February 5, 2013, <https://www.watchinese.com/article/2013/4936>.

54 Josh Horwitz, “Uber hits first backlash from taxis in Asia as Taipei cabbies block streets in protest”, *Tech in Asia*, July 8, 2014, <https://www.techinasia.com/taipei-taxi-industry-drivers-protest-uber-backlash-in-asia>.

55 Aries Poon, “Uber fights to stay on the road in Taiwan”, *Wall Street Journal*, Dec 22, 2014, <https://www.wsj.com/articles/uber-fights-to-stay-on-the-road-in-taiwan-1419243209>.

56 Reuters, “Uber will suspend service in Taiwan after being slapped with over \$10 million in fines”, *Fortune*, February 2, 2017, <https://fortune.com/2017/02/02/uber-suspend-service-taiwan-fines/>. Uber encouraged users through email and on their app to voice their dismay toward the government.

57 *Up Media*, “好諷刺！不繳稅卻砸重金買廣告 Uber 「想和台灣一起進步」” [How ironic! Squandering on ads while not paying taxes, Uber ‘seeks to progress with Taiwan together’], November 28, 2016, https://www.upmedia.mg/news_info.php?SerialNo=8134; *Sharing Economy Industry Association*, “你的力量，帶領台灣前進” [Your power leads Taiwan to move forward], <https://web.archive.org/web/20170509032014/http://www.movingtaiwan.com/petition> (archived on May 9, 2017). The website was featured several times in Uber's newspaper campaign, urging the public to join the petition against “obsolete transport regulations and

Standing firm on its assertion to “regulate, insure, and tax” Uber, MOTC nevertheless admitted the potential of a sleek and streamlined taxi experience as represented by Uber. Starting from 2015,⁵⁸ the agency had worked rigorously with the public to relax the Regulations Governing Motor Carriers, establishing a new category of “diversified taxi services.”⁵⁹ Uber was actively involved in the drafting process.⁶⁰ Ultimately, Uber complied with the new rule and began working with only this new category of drivers.⁶¹ Uber was a case where new foreign actors accelerated the overhaul of the legal framework for ICT innovation.

Taiwan enjoyed its own Personal Data Protection Act since 1995 (limited to computer-processed information) and 2000 (for personal information in general),⁶² but the lack of civic awareness and enforcement had sidelined the law until the EU introduced the GDPR. Since 2018, the National Development Council (NDC) and Taiwan’s industry at large have put heavy efforts to achieve compliance.⁶³ Further protections and a new data protection authority is expected to be introduced in an upcoming amendment bill.⁶⁴

conservative government attitude” and “bring Taiwan back among the tiers of Asian Tigers.”

58 Audrey Tang, “Uber responds to vTaiwan’s coherent blended volition”, *Pol.is Blog*, May 23, 2016, <https://blog.pol.is/uber-responds-to-vtaiwans-coherent-blended-volition-3e9b75102b9b>.

59 See Regulations Governing Motor Carriers art. 91 (Taiwan), <https://law.moj.gov.tw/LawClass/LawSingle.aspx?pcodes=K0040003&flno=91>.

60 “UberX private car taxi service”, vTaiwan, <https://vtaiwan.tw/topic/uberx/>; Richard D. Bartlett, “How Taiwan solved the Uber problem”, Medium, June 12, 2016, <https://richdecibels.medium.com/how-taiwan-solved-the-uber-problem-29fd2358a284>.

61 J.R. Wu, “Uber resumes ride-hailing service in Taiwan after talks with authorities”, *Reuters*, April 13, 2017, <https://www.reuters.com/article/us-uber-tech-taiwan-idUSKBN17F0KB>.

62 Personal Data Protection Act (Taiwan), <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcodes=I0050021>.

63 Chen Meiyan 陳梅英, “國發會力拼 2 年內取得歐盟 GDPR 適足性認定” [NDC strives to obtain EU GDPR adequacy decision in 2 years], *Liberty Times*, July 4, 2018, <https://ec.ltn.com.tw/article/breakingnews/2478465>. Note that the Ministry of Justice handed over its jurisdiction to the NDC in 2019. (See “Legislative History”, Personal Data Protection Act (2015) (Taiwan), Taiwan Laws & Regulations Database, <https://law.moj.gov.tw/ENG/LawClass/LawHistory.aspx?pcodes=I0050021>.)

64 Taiwan National Development Council (NDC), “國發會推動個資法修法，力拼 GDPR 適足性認定”[NDC pushes for PDPA amendment, striving to obtain EU

As for telecommunication regulations, the NCC proposed two notable bills: (1) the Digital Communications Act (will be further discussed in chap. 4), and (2) the Internet Audiovisual Service Management Act, which will put Netflix and over-the-top (OTT) media services under scrutiny.⁶⁵ The bill was introduced to address illegally operating Chinese OTT operators, e.g., iQiyi.com and Tencent Video. The former has accumulated about 6 million subscribers in Taiwan.

Section 3. Combating disinformation

Taiwan has been a target for disinformation campaigns from China. As one tool to influence Taiwanese politics, these campaigns tend to escalate during the election seasons and focus on controversial and dividing topics. The impacts felt during the 2018 local elections and referendums sent shock waves to the Tsai administration and Taiwan civil society.⁶⁶ The then upcoming 2020 presidential and congressional elections called for immediate and proactive actions. Like in the US and Europe, social media has become a main channel for disinformation in Taiwan. Meanwhile, eager to get out of the swamp of criticism, major social media platforms and messaging service providers (e.g., Google, Facebook, LINE, Yahoo) has been eager to display a commitment to defend democracy since 2016. New initiatives included better reporting and removal mechanisms, more transparency for political ads, closer collaboration with independent organizations and civil tech communities on fact-check, and so on.⁶⁷ Towards

GDPR adequacy decision], news release, December 29, 2019, https://www.ndc.gov.tw/nc_27_33660.

- 65 Shelley Shan, “Commission bill aims to halt services to illegal Chinese over-the-top providers”, Taipei Times, July 16, 2020, <https://www.taipeitimes.com/News/front/archives/2020/07/16/2003740010>.
- 66 Judit Bayer, Bernd Holznagel, Katarzyna Lubianiec et al, “Disinformation and propaganda: impact on the functioning of the rule of law and democratic processes in the EU and its Member States — 2021 Update”, requested by European Parliament INGE Committee (Brussels: European Union, 2021), PE 653.633.
- 67 Wong Qianru 翁莘儒, “網路平臺聯手打擊不實消息，臉書、Google、Line 皆在臺啟動事實查核，更聯手在地平臺共擬自律準則” [Internet platforms coordinate to fight false information: Facebook, Google, LINE all kicked off fact-checking in Taiwan and even partnered with local platforms to draft self-regulation standards], *iThome*, June 21, 2019, <https://www.ithome.com.tw/news/131416>; Alice Su, “Can fact-checkers save Taiwan from a flood of Chinese fake news?”, *Los Angeles Times*, December 16, 2019, <https://www.latimes.com/world-nation/story/2019/12/16/can-fact-checkers-save-taiwan-from-a-flood-of-chinese-fake-news/5333300/>.

the end of the 2020 election, Facebook even set up a “war room,” which worked around the clock to allow for expeditious responses.⁶⁸ These efforts also help to demonstrate the companies’ willingness and capability to self-regulate, diverting the government from taking heavy-handed approaches.

Disinformation operations pre-exist online platforms. Want Want—a food conglomerate with vested interests in China—acquired the China Times and CTiTV. Both received instructions from the Chinese government on news stories related to cross-strait relations.⁶⁹ Civil society has protested against the “red media” since 2012, when the Want Want Group sought to acquire a cable TV operator. The NCC did not approve the acquisition in the end. Policy debates surrounding this incident have continued and renewed after 2018, resulting in a 2019 NCC-proposed bill on “Media Monopolization Prevention and Diversity Preservation” in 2019.⁷⁰ Congress did not pass the bill until its re-election in 2020, though. In 2014, CTiTV’s license renewal was issued with conditions as it had repeatedly violated regulations. Although CTiTV had a good track record between 2014 and 2017, its violations began to pile up again after 2018, with multiple incidents involving inadequate fact-checks. The NCC refused to renew CTiTV’s license in November 2020.⁷¹ CTiTV has begun to broadcast via YouTube and OTT, moving itself into the less regulated field of platform governance.

019-12-16/taiwan-the-new-frontier-of-disinformation-battles-chinese-fake-news-as-elections-approach.

- 68 Jeffery Wu and Joseph Yeh, “Facebook to establish ‘war room’ in Taipei ahead of elections”, *Focus Taiwan*, December 30, 2019, <https://focustaiwan.tw/sci-tech/201912300015>.
- 69 Kathrine Hille, “Taiwan primaries highlight fears over China’s political influence”, *Financial Times*, July 17, 2019, <https://www.ft.com/content/036b609a-a768-11e9-984c-fac8325aaa04>.
- 70 Lin Shangzuo 林上祚, “反媒體壟斷法捲土重來！NCC 新版草案審查完成 媒金分離不溯及既往” [Anti-media monopolization act comes back! NCC passed the new draft bill; separation of media and financial institutions does not apply retroactively], *Storm Media*, January 16, 2019, <https://www.storm.mg/article/833489>.
- 71 Su Siyun 蘇思云, “NCC 委員一致決議否決中天新聞台換照：違規嚴重 內控失靈” [NCC members unanimously rejected CTiTV’s license renewal: serious violations, failed internal control], *CNA*, November 18, 2020, <https://www.cna.com.tw/news/firstnews/202011185006.aspx>; NCC, “國家通訊傳播委員會決議予以駁回「中天新聞台」衛廣事業執照換發申請” [NCC votes to reject CTiTV’s broadcast service license renewal application], news release, November 18, 2020, https://www.ncc.gov.tw/chinese/news_detail.aspx?site_content_sn=8&sn_f=45332.

Chapter 4. Addressing Chinese infiltration

China sees Taiwan as a renegade province. On the other hand, until Taiwan adopts a new constitution or amends the article that defines territory in the constitution of “the Republic of China” (Taiwan’s official name), mainland China is technically still a part of its territory. China, however, would consider either a new constitution or an amendment as inciting for breaking the “status quo.” This knotty political reality causes much agony in Taiwan’s foreign affairs. In addition to the difficulties in diplomacy and international participation, Taiwan also places “China” and “Chinese” affairs in a distinct category. As mentioned earlier, the Taiwanese government is reluctant to ban Chinese apps, even though there are considerable national security concerns. Nevertheless, Chinese platforms may be barred from providing services in Taiwan. For example, Didi entered the Taiwan market in January 2018 but discontinued services at the end of the year.⁷² Unlike Uber, Didi and other Chinese companies are the subject of the “Cross-Strait Relations Act,”⁷³ which sets stricter requirements and procedures for Chinese investment in Taiwan. Taobao, an Alibaba subsidiary cloaked as a British company, began operating in Taiwan in October 2019 and was shut down by the end of 2020 for violating the same act.⁷⁴

Since 2017, there was a digital communications bill in Congress aiming to safeguard the communication environment and facilitate digital transformation.⁷⁵ The initial bill allowed platforms much room to self-regulate. In its first term (2016–2020), the Tsai administration⁷⁶ did deliberate on whether to revisit that bill to give platforms more responsibilities, including making platforms liable for hosting questionable contents or for not responding timely. By the end of 2018, the government had concluded

72 Mia, “退出台灣？罰款 4.3 億後滴滴出行暫止服務” [Leaving Taiwan? Didi halted service after 430 million fine], *Inside*, December 20, 2018, <https://www.inside.com.tw/article/15060-didi-stopped-services-in-taiwan-for-now>.

73 The full name of the statute is the Act Governing Relations between the People of the Taiwan Area and the Mainland Area.

74 Liu Jiqin 劉季清, “震撼！淘寶台灣今關閉平台 年底退出台灣” [Astonishing! Taobao Taiwan closes down its platform today, leaving Taiwan at the end of the year], *Business Today*, October 15, 2020, <https://www.businesstoday.com.tw/article/category/80392/post/202010150019/>.

75 Taiwan National Communications Commission (NCC), *2019 NCC Performance Report* (Taipei, 2020), 24, https://www.ncc.gov.tw/english/files/20091/382_5243_00918_1.pdf.

76 Tsai was reelected in 2020, serving her second term.

to follow the Manila Principles and support a self-regulatory model.⁷⁷ Instead of revising the digital communications bill, the DPP government proposed to review and fortify existing laws with clauses that penalize the intentional dissemination of rumors which may cause harm or public panic. One of the main concerns is that making platforms more responsible may inadvertently lead to private censorship.⁷⁸ Nevertheless, Congress did not pass the digital communications bill before the 2020 Congressional re-election, and as a rule the legislative process must start anew. Congress did pass the Anti-infiltration Act in December 2019 to combat Chinese influences on the domestic political processes. The Act targets agents of foreign hostile forces and their activities in lobbying and campaigning.⁷⁹ After the 2020 election, the NCC revisited the digital communications bill under a new commissioner. Although not yet revealed, early discussions suggest that the new bill mandates platforms to remove certain content at the request of the government for reasons such as national security, communications security, or criminal offenses.⁸⁰ The opposition parties⁸¹ and The Asia Internet Coalition led by global internet and technology firms expressed serious concerns, regarding the bill as a potential threat to free expressions.⁸² The Taiwan Association for Human Rights also calls for

77 “SayIt database of Taiwan Public Digital Innovation Space (PDIS)“, 2018-12-13 行政院第 3630 次會議後記者會” [2018-12-13 Executive Yuan No. 3630 post-meeting press conference], <https://sayit.pdis.nat.gov.tw/2018-12-13-%E8%A1%8C%E6%94%BF%E9%99%A2%E7%AC%AC-3630-%E6%AC%A1%E6%9C%83%E8%AD%B0%E5%BE%8C%E8%A8%98%E8%80%85%E6%9C%83>.

78 “SayIt database of Taiwan Public Digital Innovation Space (PDIS)“.

79 See Anti-infiltration Act (Taiwan), <https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=A0030317>.

80 Zhang Yifei 張逸飛, “NCC 擬重提「數位通訊傳播法草案」 賴香伶：別用傳統思維治理網路世界” [NCC considers to bring ‘Digital Communications Act’ bill back to table; Lai Hsiang-Ling: stop governing the internet with old-fashioned mind], *Newtalk*, December 29, 2020, <https://newtalk.tw/news/view/2020-12-29/515825>.

81 Lin Yu-hsuen and Joseph Yeh, “Digital communications draft bill not internet censorship: NCC”, *Focus Taiwan*, December 14, 2020, <https://focustaiwan.tw/society/202012140014>.

82 Jeff Paine, “AIC on digital communications act”, editorial, *Taipei Times*, December 18, 2018, <https://www.taipeitimes.com/News/editorials/archives/2018/12/18/2003706312>.

more public hearings to revise or stop the Act.⁸³ We still await the actual bill.

Chapter 5. Conclusion

The EU is taking a proactive role in setting a new regulatory paradigm for platforms to address privacy and ethical issues involved in platforms' business models, as well as the oligarchical structure of the market. While Taiwan shares many of EU's concerns, it may not find EU's platform governance strategies the best fit. Aside from the differences in the industrial make up, the cross-strait relations are often the trumping factor in policy discussions in Taiwan. Seeking to strike a balance between effective regulation, free speech, industrial growth and national security, platform governance is a complicated and contentious issue. Taiwan is less likely to directly challenge GAFAM as the EU does. Taiwan appreciates the EU for setting higher regulatory standards. However, to adequately address Taiwan's national security concerns, frameworks that are not effective in regulating major Chinese platforms can only be a partial solution. Such threats are not specific to Taiwan, but they are easily overlooked in other countries as Chinese platforms or companies are not as dominant as GAFAM. Nevertheless, It would be naive to leave out the problems posed by Chinese platforms in the platform governance debates.⁸⁴ Taiwan does not have a well-crafted solution for platform governance either, but the government and the civil society tackle it from other angles to ensure national security and sustain a healthy democracy.

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83 Ho Ming-Syuan 何明誼, “恐危害言論自由的數位通訊傳播法” [Digital Communications Act that could harm the freedom of speech], *Taiwan Association for Human Rights*, May 22, 2017, <https://www.tahr.org.tw/news/1999>.

84 *Economist*, “The most dangerous place on Earth”, May 1, 2021, <https://www.economist.com/leaders/2021/05/01/the-most-dangerous-place-on-earth>.

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