

**THE RIGHT TO AUDIENCE: EXPLORING THE FUNDAMENTALS OF FREEDOM OF SPEECH IN THE DIGITAL AGE\***

**Abstract**

*The advent of technology precipitates complexities in the enjoyment of various human rights including the right to freedom of speech. The use of technology and its systems to determine or regulate the audience of certain expressions or control the audience which receive information, is one of the factors influencing freedom of speech in the digital age. Despite the constitutional and international guarantees of freedom of expression, contemporary digital realities have exposed a gap between the right to speak and the practical ability to be heard. Traditional human rights frameworks which were developed long before algorithmic and digital platforms protect individuals from State interference, but do not address the power of private digital platforms that now control visibility, reach, and public attention. Issues arising from the intersectionality between technology and the right to freedom of speech including surreptitious censorship, content demotion, shadow-bans, and other technological restriction methods raise new questions on the inclusion of the right to an audience as an integral aspect of the right to freedom of expression. This study explores the fundamentals of freedom of speech in the digital age with a view to conceptualizing the right to an audience and bridging the existing legislative gap. The study is doctrinal in nature, and employs the use of both primary and secondary sources of law in identifying and explaining the issues explored in this research. The study finds that the digital age has occasioned a new form of speech repression, thus, traditional understanding of freedom of expression is no longer sufficient to address the realities of digital communication. The study recommends the development or expansion of the existing jurisprudence to include or address the right to an audience. The research further proposes strategies to prevent hidden forms of digital discrimination or silent suppression, to improve the enjoyment of all elements of the right to freedom of expression.*

**Keywords:** Right to Audience, Freedom of Speech, Digital Age, Technology

**1. Introduction**

Free speech is essential to democracy and is becoming more and more important in light of the growing complexity of the internet. The right to freedom of expression has become more accessible in the face of technology and digital or social media platforms. While these platforms provide opportunities for the enjoyment of the right and reduces the inequalities and discriminatory practices beguiling traditional expression of free speech, they also provide new possibilities for the violation of the right to freedom of expression. In many cases, these avenues of violation are worse as they may not be apparent to victims, thus impeding redress. A systematic strategy is necessary to traverse the novel issues precipitated by free speech in the digital age, that will involve all actors and stakeholders including individuals, technology corporations, and governments. This study explores the fundamentals of freedom of speech in the digital age with a view to encouraging the conceptualization and recognition of a ‘right of audience’ as an integral part of the right to freedom of expression.

**2. Conceptual Clarifications**

**Freedom of Expression**

Oxford Review has provided a comprehensive definition of the right to freedom of expression as the fundamental human right to express one’s thoughts, ideas, opinions, and beliefs without fear of censorship, reprisal, or discrimination.<sup>1</sup> This right emphasizes the importance of providing an environment where diverse

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<sup>1</sup> Oxford Review, ‘Freedom of expression – Definition and Explanation’ *Oxford Review Briefings* <https://oxford-review.com/the-oxford-review-dei-diversity-equity-and-inclusion-dictionary/freedom-of-expression-definition-and-explanation/>. Accessed 16/12/2025

voices are valued and protected. Free speech as a principle and guarantee is enshrined in international human rights documents like the Universal Declaration of Human Rights,<sup>2</sup> which sets out in broad terms the components of this freedom, to include freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. The right to freedom of expression is foundational to democratic societies.<sup>3</sup> It supports the open exchange of ideas, fostering innovation, understanding, and respect across cultural, social, and ideological divides. The International Covenant on Civil and Political Rights also safeguards this right in its Article 19, defining it in similar terms as the Universal Declaration of Human Rights but restricting expression where it is necessary for respect of the rights or reputations of others; and for the protection of national security or of public order, or of public health or morals.<sup>4</sup> The right to freedom of expression as guaranteed in the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights protect free speech from repression by State and non-state actors, promoting the principles of non-discrimination in the expression of ideas and impartation of information. Regionally, the right to freedom of expression is recognized and guaranteed through specific human rights treaties - The African Charter<sup>5</sup> in Africa, the European Union Charter on Human Rights in Europe, and the American Convention on Human Rights in America. These establish legal standards for free speech, information access, and media freedom and are supported by regional courts and monitoring bodies that enforce these rights against state violations.<sup>6</sup>

Free speech is guaranteed in most States. States where freedom of expression is severely restricted often include authoritarian states like North Korea, China, Iran, Russia, and Turkmenistan,<sup>7</sup> where governments heavily control media, suppress dissent, and punish criticism. Equally notable in this sphere are many States including Myanmar, Eritrea, Syria, Vietnam, and Cuba, where speech is severely limited, often with the use of widely interpreted laws on cybercrime and ‘national security’, to silence journalists, activists, and citizens online and offline.<sup>8</sup> In Nigeria, the right to freedom of speech is considered under the Fundamental Human Rights enshrined in Chapter 4 of the Constitution of the Federal Republic of Nigeria.<sup>9</sup> Section 39 of the Nigerian Constitution provides thus: ‘(1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference’.

Thus, the right to freedom of expression enjoys international, regional and local safeguards, allowing persons to hold opinions and share information freely through various traditional and digital media, save for limitations like defamation laws, criminal legislations, hate speech laws, and national security concerns. This right covers both the traditional expression of speech, digital expression of opinions and impartation of ideas and information.<sup>10</sup> The right to freedom of expression is central to facilitating public discourse in pluralistic societies. States have the obligation to respect this freedom and apply it as binding on State actors, including law enforcement agencies the executive, legislature and the judiciary. This obligation means that the state must protect free speech even where political discourse, comments on public affairs, and critiques to government policies and programs are precipitated thereby. In these climes when digital speech and expression are fast becoming the means of communication and impartation of information, there are

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<sup>2</sup> United Nations, 1948, Universal Declaration of Human Rights, Art 19

<sup>3</sup> General Comment No. 34 on Freedom of Expression, Article 19 of the ICCPR, Adopted at the 102nd Session of the Human Rights Committee on 12 September 2011

<sup>4</sup> International Covenant on Civil and Political Rights (ICCPR), 1976, Art 19

<sup>5</sup> African Charter on Human and Peoples’ Rights, 1981, Art 9

<sup>6</sup> EU (2012). Charter of Fundamental Rights of the European Union. Official Journal of the European Union C 326/391, Art 11

<sup>7</sup> R I Rotberg, ‘Repressive, Aggressive, and Rogue Nation-States: How Odious, How Dangerous?’ (2016) [https://www.brookings.edu/wp-content/uploads/2016/07/worstoftheworst\\_chapter.pdf](https://www.brookings.edu/wp-content/uploads/2016/07/worstoftheworst_chapter.pdf), accessed 16/12/2025

<sup>8</sup> US Department of State, ‘Human Rights Report’ (2025) <https://2021-2025.state.gov/report/custom/2c04b72395/> accessed 10/12/2025

<sup>9</sup> Constitution of the Federal Republic of Nigeria (CFRN), 1999, Chapter 4

<sup>10</sup> Digital Rights Lawyers Initiative, ‘An Overview of Online Expression as a Digital Right’ (2021) <https://digitalrightslawyers.org/wp-content/uploads/2021/01/AN-OVERVIEW-OF-ONLINE-EXPRESSION-AS-A-DIGITAL-RIGHT-GROUP-1-POLICY-BRIEF.pdf> accessed 10/12/2025

questions as to whether the legislative exercises undertaken internationally, regionally and nationally, adequately protect free speech in the digital sphere.

### **Algorithm**

An algorithm is a procedure used for solving a problem or performing a computation. Algorithms act as an exact list of instructions that conduct specified actions step by step in either hardware or software-based routines. The Cambridge Dictionary defines algorithm as a set of mathematical instructions or rules that, especially if given to a computer, will help to calculate an answer to a problem.<sup>11</sup> Algorithms are widely used throughout all areas of Information Technology. In mathematics, computer programming and computer science, an algorithm usually refers to a small procedure that solves a recurrent problem. Algorithms are also used as terms for performing data processing and play a major role in automated systems. Algorithms work by following a set of instructions or rules to complete a task or solve a problem. They can be expressed as natural languages, programming languages, pseudocode, flowcharts and control tables.<sup>12</sup>

### **Algorithmic Bias**

Algorithmic bias describes systematic and repeatable errors in a computer system that create ‘unfair’ outcomes, such as ‘privileging’ one category over another in ways different from the intended function of the algorithm. Bias can emerge from many factors, including but not limited to the design of the algorithm or the unintended or unanticipated use or decisions relating to the way data is coded, collected, selected or used to train the algorithm. This bias can have impacts ranging from inadvertent privacy violations to reinforcing social biases of race, gender, sexuality, and ethnicity. Algorithmic Bias occurs when an algorithm produces results that are systemically prejudiced due to erroneous assumptions in the machine learning process. These biases result in or amplify discrimination.<sup>13</sup>

### **Algorithmic Governance**

Algorithmic governance is simply put, governance by the use of computable procedures referred to as algorithms. It is the use of automated, data-driven systems to manage and coordinate societal functions, replacing or supplementing traditional human-led administrative tasks, for the purpose of efficiency.<sup>14</sup>

### **Shadow Ban**

Dictionary.com best offers a simplistic, but legally accurate definition of the term ‘shadow ban’ to mean the suppressing from public view of a social media post or posts by platform moderators, without notifying the user who published the content, usually in response to a violation of the platform’s terms of service.<sup>15</sup> Another definition offered by Merriam Webster is that the term means to cause a user or their content to be hidden from some or all other users usually without the user’s knowledge.<sup>16</sup> Shadow banning is a form of speech repression and control of the right to freedom of expression. The term is colloquial in origin and its usage has changed over time. Originally, the term referred to a deceptive type of account suspension on web forums - a shadow banned user would be give the impression that they were still able to post, whereas in fact their content was no longer visible to any other users.<sup>17</sup> In most recent usage however, shadow banning usually refers to alternative processes, especially visibility remedies such as delisting and downranking.<sup>18</sup>

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<sup>11</sup>Cambridge Dictionary ‘Algorithm’(20 24) <<https://dictionary.cambridge.org/dictionary/english/algorithm>> accessed 4/10/2024

<sup>12</sup>Tech Target ‘What is an Algorithm’ (2024) <<https://www.techtarget.com/whatis/definition/algorithm>> accessed 4/10/2024

<sup>13</sup>European Union Agency for Fundamental Rights, ‘Bias in Algorithms Artificial Intelligence and Discrimination’ (2022) <[https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2022-bias-in-algorithms\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2022-bias-in-algorithms_en.pdf)> Accessed 12/5/2024

<sup>14</sup> U Kango, ‘Algorithmic Governance’ (2025) Handbook of Human-Centered Artificial Intelligence (pp.1-26)

<sup>15</sup> Dictionary.com, ‘Shadow Ban’ (2025) <https://www.dictionary.com/browse/shadow-ban> accessed 11/12/2025

<sup>16</sup>Merriam Webster Dictionary, ‘Shadow-Ban’ (2025) <https://www.merriam-webster.com/dictionary/shadow%20ban> accessed 11/12/2025

<sup>17</sup> L Belli, N Zingales, Y Curzi (Eds.), IGF Glossary of Platform Law and Policy Terms, Internet Governance Forum (2021) <https://perma.cc/7K3Q-HN36>, accessed 12/14/2025

<sup>18</sup> K Cotter, ‘Shadow banning is Not a Thing’: Black Box Gaslighting and the Power to Independently Know and Credibly Critique Algorithms’ *Inf, Commun Soc* (2021), pp. 1-18

These processes do not cut off access to content entirely, but instead make this content less visible through discovery features such as search and recommendation. Shadow banning is a content moderation sanction which the affected user is unable to detect.

### **Censorship**

Censorship is defined as the restriction of public expression or access to information by an authority. It can be defined as the control of information and ideas being circulated within a society. It involves examination of books, plays, films, TV and radio programmes, new reports, internet posts and other forms of communication for the purpose of altering or suppressing ideas found to be 'objectionable' or 'offensive'. This suppression of knowledge and thoughts is carried out through a framework of laws and procedures that are used by governments or organizations to prevent the free and unopposed circulation of material in society.<sup>19</sup>

### **Digital Suppression and Discrimination**

'Digital suppression' and 'digital discrimination' refer to the use of technology, algorithms, and digital infrastructure to control, marginalize, or disadvantage individuals and groups. These practices can infringe upon fundamental human rights and perpetuate existing social and economic inequalities.<sup>20</sup>

### **Artificial Intelligence**

The term 'Artificial Intelligence' was coined by Scientist, John McCarthy to describe the science of making and engineering intelligent machines.<sup>21</sup> The Oxford Learner's Dictionary<sup>22</sup> defines Artificial Intelligence as the theory and development of computer systems able to perform tasks normally requiring human intelligence, such as visual perception, speech recognition, decision-making, and translation between languages. Artificial Intelligence is in its broadest sense, intelligence exhibited by machines, particularly computer systems which may be akin to human intelligence. Artificial Intelligence technologies try to simulate or surpass human intelligence in machines, grooming the said machines to perform tasks traditionally associated with human intelligence. According to Baum<sup>23</sup> Artificial intelligence (AI), sometimes called machine intelligence, is intelligence demonstrated by machines, in contrast to the natural intelligence displayed by humans and other animals, such as 'learning' and 'problem solving. The phrase 'Artificial Intelligence' as used in this work thus refers to any technique that enables machines or computers to mimic human intelligence through logic; and any systems, products, technologies or processes that exhibit or are derived from the said technique.

### **Right to An Audience**

The right to an audience is a passively considered yet integral part of free speech. Because the right to freedom of expression does not complete full circle until the speech reaches the audience for whom it is meant, this researcher believes that the right to an audience must be actively recognized as being integrated in the right to freedom of speech, to ensure that speakers achieve the goal for which speech is being made. Thus, the right to an audience is conceptualized as the right of a speaker to express his thoughts and opinions to an audience of his choice, whom were willing or indifferent, may receive this speech, thought or opinion without external interference.

## **3. Emerging Technologies and the Revolutionization of Free Speech**

<sup>19</sup>A Kapur, 'SPECTATORSHIP, CENSORSHIP AND CRITICAL ANALYSIS' <https://www.egyankosh.ac.in/bitstream/123456789/40676/1/Unit-3.pdf>

<sup>20</sup> C K Sanders & E Scanlon, 'The Digital Divide Is a Human Rights Issue: Advancing Social Inclusion Through Social Work Advocacy' *Justice, Human Rights and Social Work* (2021) 2

<sup>21</sup> V Rajaraman, 'JohnMcCarthy — Father of Artificial Intelligence' [2004] (19) *Resonance*, 198-207.

<sup>22</sup>Oxford Learner's Dictionary 'Artificial Intelligence' (2024) <[https://www.oxfordlearnersdictionaries.com/definition/american\\_english/artificial-intelligence#:~:text=an%20area%20of%20study%20concerned,Oxford%20Advanced%20Learner's%20Dictionary%20app](https://www.oxfordlearnersdictionaries.com/definition/american_english/artificial-intelligence#:~:text=an%20area%20of%20study%20concerned,Oxford%20Advanced%20Learner's%20Dictionary%20app)> Accessed 30/7/2024

<sup>23</sup> H Baum, *An Introduction to Artificial Intelligence* (United States: AG Printing & Publishing, 2023) p 6.

Digital technologies have transformed the exercise of the freedom of expression. Technology, especially the internet, offers tremendous opportunities for freedom of expression, allowing the opportunity to share information and express personal views, receive vast volumes of information, and communicate with like-minded persons around the globe almost instantaneously.<sup>24</sup> The rise and consolidation of digital technologies have deeply transformed the way individuals experience and enjoy freedom of expression as a human right.<sup>25</sup> The spread of digital technologies such as artificial intelligence, social media platforms, the internet and broadband access, encryption and anonymity tools, decentralized platforms, content moderation algorithms, digital surveillance technologies, deepfake technology, data analytics, algorithmic amplification and recommendation systems, and other digital technologies influence not only the sharing of ideas, but also the individual freedom to form an opinion based on accessing diverse information.

#### **4. Positive Outcomes for Freedom of Expression in the Digital Age**

The frontiers of the rights to freedom of expression and access to information have been expanded by technology in the following positive patterns:

***Democratization of Speech and Access to Public Discourse:*** Digital platforms have dismantled traditional gatekeeping structures guarding free speech which were once controlled by governments, media houses, and economic elites.<sup>26</sup> Individuals can now speak directly to local and global audiences without institutional mediation. Digitalization in interaction with freedom of speech enhances *the equality* in expression, advances participatory democracy, and empowers marginalized voices who are historically excluded from mainstream media. The internet as a technological tool has transcended the traditional one-to-many mass media model in communication, where editors were the gatekeepers of expression, to a many-to-many model, where all persons with an internet connection can produce and disseminate information. This impact revolutionizes the exercise of free speech, expands the horizons of civic participation, and strengthens accountability in democratic societies in more tremendous rates than was available by the sole use of traditional avenues for expression.<sup>27</sup>

***Enhancement of Frontiers in Formulation and Dissemination of Ideas:*** Technological programs and systems including Artificial Intelligence today assist in creating diverse intellectual materials and streamlining the process of sharing information online. This capacity to enhance content creation and dissemination is a significant benefit of technology for the right to freedom of expression and access to information. These tools can further assist human creators in generating output, such as suggesting ideas, outlining stories, and even writing drafts, thus widening the scope of information available for consumption.<sup>28</sup> The capacity to enhance content creation and dissemination significantly improves the exercise of the right to freedom of expression and widens the scope of information available for consumption.

***Globalization and Transnational Reach of Expression:*** Technology and its forms, systems and processes greatly modify the reach and speed of speech. Use of digitalization in speech enables instant transmission of speech through various transnational borders, with ability to trigger global conversations, mobilizations, or resistance movements. Digital platforms like Facebook, X (former Twitter), YouTube, and TikTok allow opinions and ideas to be shared instantaneously and across national borders, enabling the formation of global communities and movements. This capacity strengthens international solidarity, enhances advocacy for

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<sup>24</sup> J M Balkin, *Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society*, 79 N.Y.U. L. Rev. 1, 2-6 (2004)

<sup>25</sup> A Bekoenova, Z Idrizi & K Ozturk 'Impact of Digital Technology on Human Rights in Europe and Central Asia: Trends and Challenges Related to Data Protection, Artificial Intelligence and Other Digital Technology Issues' (stanbul, United Nations Development Programme: 2023) 7.

<sup>26</sup> O Okonkwo, 'Power Dynamics of Information Control, Censorship, and Digital Transparency Shaping Human Rights Discourse In The Information Society'(2021) *GSC Advanced Research and Reviews* 9(3):184-202

<sup>27</sup> L Lutaji 'Freedom of Expression and The Civil Participation of the Youth' (2019) *European Journal of Education, Vol 2* (19) 19 -24.

<sup>28</sup> N Helberger, S Eskens, M V Drunen, M Bastian & J Moeller, 'Implications of AI-Driven Tools in the Media for Freedom of Expression' *Institute for Information Law (IViR)*, [2019] 7

global human rights causes, weakens authoritarian information isolation,<sup>29</sup> and is an immense improvement from the limited speed and reach characteristic of traditional avenues for the exercise of the right to freedom of expression.<sup>30</sup>

**Empowerment of Activists and Marginalized Voices:** Technology provides essential tools for human rights defenders, activists, and citizens to express themselves, report human rights violations, and mobilize protests, even in authoritarian societies where traditional media is suppressed. With the use of technology, historically repressed and marginalized groups have opportunities to freely express themselves and have their causes heard in the relevant avenues.<sup>31</sup> The empowerment of marginalized voices is a significant outcome of the use of Artificial Intelligence in promoting the right to freedom of expression and access to information. Digital tools amplify marginalized voices, and increase representation by providing a platform for culturally underserved persons to express themselves and access information. Digital tools are consistently overcoming geographical, linguistic, and socio-economic barriers, enabling marginalized individuals to participate in virtual discussions and access information. Digitalization in communication allows free sharing of perspectives and contributions in policy formation and social development.

**Digital Tools Providing Efficient Safeguards Against Persecution for Free Speech:** Technology provides tools such as VPNs<sup>32</sup> that can help users protect their identity online. Anonymity provides a vital safeguard for individuals in repressive regimes who fear reprisal for expressing unpopular opinions.<sup>33</sup> The opportunity for anonymous expression online allows individuals to voice opinions without fear of reprisal. This is especially important in restrictive environments.

**Accentuated Access to Information:** Tech-powered search engines provide more accurate and relevant search results, making it easier for people to find information. AI-driven Natural Language Processing (NLP) can help users find information in their native languages, breaking down language barriers.<sup>34</sup> Artificial Intelligence can also curate content based on user preferences,<sup>35</sup> interests, and needs, providing personalized information and even availing information without internet connection, by offline connectivity. For persons living with disability, AI-powered tools can help in ease of access to information, such as through text-to-speech or image recognition. AI-powered tools can translate languages, summarize articles, and personalize information delivery, making it more accessible to a wider audience. The digital revolution has dramatically reduced the costs of copying and distributing information, making an unprecedented volume and variety of information available to a wider audience than was available via traditional avenues for speech and expression.

**Novel Information Retrieval Systems:** Search engines and online databases serve as powerful tools from where individuals can seek and receive information and ideas of all kinds.<sup>36</sup> by allowing for easier monitoring and information dissemination about public affairs.

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<sup>29</sup> T Roberts & M Oestrom, 'Digital Authoritarianism: A Systematic Literature Review' (2025) *Information Technology for Development*, Vol 31(4)

<sup>30</sup> D Block, 'Globalization, Transnational Communication and the Internet' (2004) *International Journal of Multicultural Societies*, 6.

<sup>31</sup> G Brown, D Morah, C Egeh, & P Obi, 'Digital Media and the Amplification of Marginalised Voices in Select Communities in Akwa Ibom State' (2025) *International Journal of Technology and Education Research*, Vol. 3

<sup>32</sup> P B Gentry, 'What is a VPN?' (2001) *Information Security Technical Report*, Vol 6, 15–22.

<sup>33</sup> Cybersecurity Knowledge Hub, 'How VPN Works: A Guide to Virtual Private Networks' (2025) <https://www.group-ib.com/resources/knowledge-hub/virtual-private-network/> accessed 9/12/2025

<sup>34</sup> A Alalaq, 'AI-POWERED SEARCH ENGINES' (2025) *Journal of Artificial Intelligence*, Vol. 2, p 53

<sup>35</sup> E Brard, 'The Role of Artificial Intelligence (AI) in Content Creation' (2024) <https://honchosearch.com/blogs/news/the-role-of-artificial-intelligence-ai-in-content-creation>. Accessed 6/12/2025

<sup>36</sup> T T Funmilola, 'The Application of Artificial Intelligence on Information Retrieval Systems in Libraries in Nigeria' (2024) *International Journal of Academic Multidisciplinary Research (IJAMR)* Vol. 8 (9)151-156

**Pluralization of Narratives and Counter Speech:** Before the advent of digital media, States and State actors were wholly or substantially in control of information and narratives, and could bend them for non-public or partisan interests. Thus, public opinion was largely shaped by the information and ideas permitted by States to be circulated by media houses. In 2024, the Federal High Court sitting in Lagos, Nigeria, ordered the National Broadcasting Commission to ‘stop using the NBC Act and the Nigeria Broadcasting Code to impose fines, threaten to impose sanctions, harass and intimidate the broadcast stations and other independent media houses in the country.’ The court declared that ‘the NBC and its agents lack the legal power and authority to impose penalty unlawfully and unilaterally, including fines, suspension, withdrawal of license or any form of punishment whatsoever on independent media houses for promoting access to diverse information on issues of public importance.’<sup>37</sup> With digitalization, information is no longer at the control of States and stringent unobjective state control mechanisms, but in the hands of virtually all individuals with smart devices. This is a creditable accomplishment where safeguards against actual fake news and information that amount to violation of rights of other persons, are put effectively put in place, and results in the availability of balanced narratives in social and political discourse.<sup>38</sup> Digital avenues for freedom of expression allow alternative histories, dissenting views, and counter-hegemonic narratives to flourish, thereby protecting pluralism, a core value of freedom of expression, countering State propaganda and media monopolies, and enhancing the quality of information available to the public.<sup>39</sup>

**Enabling Other Rights:** The right to freedom of expression optimized by technology and the internet creates vast opportunities for the exercise of other rights. For instance, freedom of expression when successfully exercised by one individual provides another with tools to enjoy another right - the right to education, right to health, right to political and cultural participation, *et cetera*, by facilitating access to platforms and information.<sup>40</sup> There has been recorded, growing youth participation in political activity since the rise of digital communication.<sup>41</sup> In fact, the digitalization of speech enables mass participation in social cohesion and engineering, enabling the exercise of civil, political and cultural rights. Speech is no longer merely expressive but actionable through digital tools like hashtags, viral posts, and digital campaigns that translate expression into immediate political pressure. Freedom of speech in the digital age enjoys deepened mass political participation, enhanced accountability and facilitated collective action.

## **5. Challenges of Digitalization for the Freedom of Expression**

While the frontiers of free speech have enjoyed growth and expansion through technology and digitalization, technology has also introduced new complexities and challenges to the right to freedom of expression, which were not contemplated under traditional paths for free speech. These challenges are novel in themselves and revolutionize the exercise of the right to freedom of expression.

**Algorithmic Control, Digital Content Moderation and the Emergence of Invisible Censorship:** Censorship is a persistent form of interference with the right to freedom of expression. While censorship of speech predates the digital age, the issue continues even with digitalization,<sup>42</sup> in more imperceptible patterns, with victims sometimes uncertain of whether they are being gagged or simply suffer continued cyber downtime. There have been accusations and counter-accusations of paranoia when issues of ‘shadow-bans’ are raised. Today, technology is putting new tools of censorship in the hands of autocrats and closet dictators, all seeking

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<sup>37</sup> Unreported Suit No. FHC/L/CS/1486/2022, SERAP & Anor v. NBC

<sup>38</sup> N Manna, ‘The Balance Between Free Speech and Hate Speech in the Digital Age’ (2024) [https://www.researchgate.net/publication/383568090\\_THE\\_BALANCE\\_BETWEEN\\_FREE\\_SPEECH\\_AND\\_HATE\\_SPEECH\\_IN\\_THE\\_DIGITAL\\_AGE](https://www.researchgate.net/publication/383568090_THE_BALANCE_BETWEEN_FREE_SPEECH_AND_HATE_SPEECH_IN_THE_DIGITAL_AGE). Accessed 4/12/2025

<sup>39</sup> P N Vasist, D Chatterje, & S Krishnan, ‘The Polarizing Impact of Political Disinformation and Hate Speech: A Cross-country Configural Narrative’ (2023) *Information Systems Front*, Vol 17:1-26.

<sup>40</sup> Amnesty International, ‘Freedom of Expression’ (2025) <https://www.amnesty.org/en/what-we-do/freedom-of-expression/>. Accessed 10/12/2025

<sup>41</sup> A Alodat, L F Al-Qora’n, & M Abu Hamoud, ‘Social Media Platforms and Political Participation: A Study of Jordanian Youth Engagement’ (2023) *Social Sciences*, 12(7), 402.

<sup>42</sup> L Tanczer, R McConville & P Maynard, ‘Censorship and Surveillance in the Digital Age: The Technological Challenges for Academics’ (2016) *Journal of Global Security Studies*. Vol. 1.

to expand the limitations to free speech. Technology has aided States in the development of new methods of control and speech repression, including internet shutdowns, shadow-bans, content filtering, and sophisticated surveillance technologies, which directly undermine free expression and privacy rights. The power of large private technology companies who are at the back-end of algorithm monitoring, to moderate or remove content is a pertinent factor that raises questions about private censorship and the balance between free expression and protection from harms such as hate speech and misinformation. For instance, companies like Meta, Google, and X (formerly Twitter) use algorithms and human moderators to decide what content is allowed.<sup>43</sup> This gives them enormous influence over public discourse. Automated systems programmed to scan publications or posts online for harmful or rule-breaking contents often reflect biases or limitations, especially across diverse languages and cultures, due to algorithmic bias. These perpetuate inequality and hinder free speech. While speech may not be formally prohibited, algorithms determine *who gets heard*. Content may be deprioritized, demonetized, or shadow-banned without notice or justification. This severely undermines the *right to an audience which is an integral part of the right to free speech*, replaces overt censorship with opaque private governance and grossly violates principles of legality, transparency, and accountability.

***Privatization of Speech Regulation:*** As noted above, large private technology companies now have extensive control over act as *de facto* arbiters of public discourse, applying terms of service that often exceed constitutional limitations.<sup>44</sup> Even though governments have a long history of seeking to limit free speech, the privatization of speech regulation weakens constitutional safeguards, diverts public law accountability, and creates regulatory asymmetry between States and corporations

***Digital Inequality and Attention Discrimination:*** The expression of free speech in the digital age is bound by corporate interests and regulatory frameworks that define its limits and shape its scope. Visibility for expression aided by technology is unequally distributed with algorithms privileging sensationalism, commercial viability, linguistic dominance, and political convenience over truthfulness and democratic inclusivity. This produces institutionalized silencing, marginalizes minority, local, or dissenting speech, and converts the right to expression into a commodity rather than a right.<sup>45</sup> Unequal access to the internet and digital literacy further widens inequities. Thus, these factors prevent equal benefit from these expanded frontiers.

***Amplification of Disinformation and Misinformation:*** New social media platforms enable real-time viralization of news stories. As a consequence, they became a vehicle for the diffusion of misinformation to a global audience. The speed and scale of information dissemination also mean that harmful misinformation and disinformation can spread rapidly, posing risks to individuals and societies.<sup>46</sup>

***Emergence of the Gap Between the Right to Speak and the Right to Be Heard:*** While digital platforms appear to expand opportunities for expression, they have paradoxically exposed a widening gap between formal freedom to speak and practical access to an audience.<sup>47</sup> Speech that is technically permitted may be rendered ineffective through content demotion, shadow-banning, or deprioritization. This revolution challenges the classical assumption that freedom of expression ends once speech is uttered. Freedom of expression has been revolutionized by the rise of algorithmic regulation, where speech is no longer encountered sequentially as originally published, but filtered, ranked, promoted, or buried by automated systems. Algorithms determine who or what is heard, who or what is ignored, and whose or what speech goes viral. This introduces a new form of invisible regulation, which is often immune from scrutiny.

<sup>43</sup> B S 'Meta's AI moderation and free speech: Ongoing challenges in the Global South' *Cambridge Forum on AI: Law and Governance*. 2025; Vol. 1, 25.

<sup>44</sup> D Tambini, D Leonardi & C Marsden, 'The Privatisation of Censorship: Self-Regulation and Freedom of Expression' (Routledge: CL Press, 2008) 269-289

<sup>45</sup> K Kärki, 'Digital Distraction, Attention Regulation, and Inequality' (2024) *Philos. Technol.* 37, 8.

<sup>46</sup> D Caled, M J Silva, 'Digital media and misinformation: An Outlook on Multidisciplinary Strategies Against Manipulation' (2022) *J Computer Social Science*. Vol. 5, 123-159.

<sup>47</sup> E Armijo & A A Bhagwat, 'The Right to an Audience' (2025) *George Washington Law Review*, Vol 94

Concerns for the right to freedom of expression arise where algorithmic systems discriminate against certain viewpoints, political opinions, minorities, or dissenting voices, without transparency, explanation, or appeal, resulting in what may be described as silent or structural censorship. This raises the human rights question of whether the right to freedom of expression can be meaningfully exercised without not just safeguards from interference, but reasonable access to visibility and reach, especially in internet spaces which have now replaced traditional avenues of free speech. In other words, whether the right to freedom of expression should not fully encompass the ‘right to be heard’ or ‘right to an audience’, to operate effectively. This researcher believes that it is necessary to expansively interpret the right to freedom of expression as guaranteed under international, regional and local laws, to encompass the right to an audience, or that these relevant laws and covenants be reviewed to recognize and adequately protect this right.

## **6. Legal and Structural Factors Militating Against Freedom of Expression in the Digital Age**

### ***Legislative Gaps Between the Guarantee of Freedom of Expression and the Recognition of the Right to An Audience***

Freedom of expression is legally protected in most constitutions and international human rights frameworks, but without commensurate extension of the protection to the right to an audience. Article 19 of the International Covenant on Civil and Political Rights provides thus:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (ordere public), or of public health or morals.

The letters of the above Article 19 create the impression that only the right to hold opinion is free from interference. The persuasive General Comment No. 34 on Freedom of Expression as expounded by the ICCPR<sup>48</sup> emphasizes that states have an obligation to respect and ensure freedom of expression for all individuals, without distinction. States must not impose disproportionate or arbitrary restrictions on freedom of expression. It also requires that states take proactive steps to ensure the enjoyment of this right, including enacting legislation that protects freedom of expression and holding authorities accountable for violations of this right. States must ensure that individuals are not subject to undue interference, including arbitrary censorship or surveillance, and should provide adequate protection against threats or attacks on journalists, human rights defenders, and others exercising this right (paragraphs 13-19). The rights to freely express oneself and be entitled to be heard have no authoritative protection from interference. To buttress this absence, the Universal Declaration of Human Rights<sup>49</sup> in its Article 19 provides thus:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

In fact, the African Commission on Human and Peoples’ Rights (ACHPR) Declaration of Principles of Freedom of Expression and Access to Information in Africa, 2019, in Principle 2 provide for non-interference with freedom of opinion. The declaration emphasizes that freedom of opinion, including the

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<sup>48</sup> UN Human Rights Committee (HRC), General Comment No.34: Article 19: Freedoms of opinion and expression, 21 July 2011, <https://www.refworld.org/legal/general/hrc/2011/en/79729>. Accessed 16/12/2025

<sup>49</sup> Adopted at the 102nd Session of the Human Rights Committee on 12 September 2011

right to form and change all forms of opinion at any time and for whatever reason, is a fundamental and inalienable human right indispensable for the exercise of freedom of expression. This means that state authorities are expressly prohibited from interfering with anyone's freedom of opinion.<sup>50</sup> Curiously, this prohibition of interference was not extended to the right to freedom of expression or to be heard. Absence of legal precision, oversight structures, and policy guidance militate against the effective exercise of the right to freedom of expression, even as its frontiers are expanded in the digital age. The defences of shadow banning are often cast in the technocratic language of security and circumvention when opaque visibility remedies are applied to avoid public accountability. This absence of legislative framework allows States and non-state actors to avoid responsibility for breach. The issue of free speech without an audience, access to platforms or public attention is a direct fall-out from poor legislation, expansion and interpretation of the right to freedom of expression as guaranteed in our body of laws. Fortunately, the Nigerian framework admits of a provision recognizing the right to 'impart ideas and information without interference' by providing in section 39 thus: 'Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.' This is a commendable provision which ought to be adopted in international and regional fronts, and even expanded further to clearly delineate the recognition of a 'right to an audience', as a veritable aspect of the right to freedom of expression.

### ***Algorithmic Bias and the Commodification of Visibility***

Algorithms are the invisible curators of digital speech, determining which voices are amplified and which are buried. When algorithms grant visibility to sensational content, commercial viability, and dominant languages, the means and effects of expression are grossly distorted. Now algorithms due to the pattern by which they are created may tend to favour one narrative over the other. A programmer's bias may seep into the algorithm, with bias against certain users or expressions as a resultant effect. This bias may be displayed in reduction of visibility. Data exploitation also commodifies speech, reducing personal expression to behavioral metrics that feed advertising models.<sup>51</sup> The result is a climate where people hesitate to speak freely, knowing that their words may be tracked, profiled, and monetized. Such conditions erode the very foundation of free expression by turning it into a risk rather than a right. Further, the commodification of visibility is another structural factor affecting the right to an audience. Digital content moderation strategies such as demonetization which renders items ineligible for advertisement revenue-sharing programs,<sup>52</sup> are used in manners that impact free speech, or remove the incentives that are attendant to provision of valuable information. This commodification of visibility means that freedom of expression is no longer about the right to speak, but about the ability to be heard in algorithmically mediated spaces. Minority voices, dissenting perspectives, and nuanced debates are systematically disadvantaged, producing structural silencing that undermines democratic discourse.

### ***Shadow Bans and Demotion of Published Speech and Expression in Digital Platforms***

Shadow-bans and demotion of speech are visibility restrictions applied in digital platforms, whose outcomes are difficult or even impossible to discern by victims.<sup>53</sup> While shadow-bans are both a matter of policy and of design, content demotion is a structural challenge to the exercise of freedom of expression in digital platforms. Due to lack of transparency of digital platforms in the use of these content moderation techniques, it is difficult for victims to allege with certainty that these restrictions have been used against them, and consequently, difficult to seek redress. Digital platforms do not inform their users that their contents are under shadow-bans or demotion, leaving victims to wallow in paranoia as to why content engagement ratings have grossly dropped. Further, allegations of shadow banning in specific cases tend to

<sup>50</sup> Declaration of principles of freedom of expression and access to information in Africa, 2019, Principle 2

<sup>51</sup> A D Wardaningsih, 'Personal Data as a Commodity in the Digital Economy' (2025) *International Journal of Social, Politics, and Humanities*. 8. 54-66.

<sup>52</sup> R Caplan, T Gillespie, 'Tiered governance and demonetization: the shifting terms of labor and compensation in the platform economy' *Soc Media+ Soc*, 6 (2) (2020)

<sup>53</sup> K Jaidka, S Mukerjee, U Lelkes, 'Censorship on Social Media: The Gatekeeping Functions of Shadowbans in The American Twittersverse' SSRN Draft Paper (2022) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4087843](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4087843)

be ignored by platforms, or responded to only partially, even though these platforms admit at a policy level to using visibility restrictions.<sup>54</sup>

### ***Corporate Control and Platform Gatekeeping***

Digitalization has concentrated communicative power in the hands of private corporations that own and operate major platforms. These companies act as gatekeepers, setting terms of service, moderating content, and enforcing community standards that often prioritize profit and brand image over democratic values. While these corporations claim neutrality, their decisions about what speech is permissible or visible are inherently political. This corporate control creates a paradox where freedom of expression exists formally, but its practical exercise is contingent on the policies of profit-driven entities.

### ***The ‘Chilling Effect’ of Surveillance***

The digital age has normalized surveillance, with states and corporations collecting vast amounts of personal data. This constant monitoring produces chilling effects, as individuals self-censor to avoid scrutiny, harassment, or reprisal. The cumulative effect of these legislative and structural gaps, is the transformation of free speech from a democratic right into a commodified privilege. These factors embed structural inequalities into the very architecture of communication, tainting the vast opportunities for expression that digitalization provides. To reclaim the right to freedom of speech wholly, societies must confront these militating factors and visualize digital spaces as avenues governed by the continuing principles of inclusivity, accountability, and justice.

## **7. Conclusions and Recommendation**

The integration of technology into speech and means of expression as seen above, has varying impacts on the human right to freedom of expression. International and regional legal frameworks affirm the right to freedom of expression, but emerging challenges and possibilities require that these provisions are expanded or interpreted under novel lenses, and adequate safeguards developed to meet with the digitalization of speech. While digital platforms have expanded the avenues through which individuals may express themselves, they have simultaneously introduced new barriers to being heard. Algorithmic content moderation, ranking systems, and engagement-based visibility models often result in content demotion, shadow-banning, or selective amplification. As a consequence, expression is no longer merely about the ability to speak, but increasingly about whether such speech is rendered visible or remains obscured, creating a structural gap between expression and audience access.

Digital technologies have enhanced access to platforms of expression by lowering entry barriers and enabling real-time, transnational communication. Marginalized voices, civil society actors, and dissenting groups may now bypass traditional media gatekeepers and reach global audiences. In this sense, digitalization has the potential to strengthen freedom of expression by broadening the scope and reach of public discourse. The use of Artificial Intelligence in content moderation and platform governance raises serious risks of discrimination and arbitrariness. Automated systems may disproportionately suppress certain viewpoints, languages, political opinions, or minority expressions due to biased datasets or opaque decision-making processes. This creates a form of silent or invisible censorship that is difficult to detect, challenge, or remedy within existing human rights frameworks. Digitalization increasingly requires individuals to adapt their expression to platform-specific norms, formats, and algorithmic preferences in order to attain visibility. While users may develop digital literacy skills to navigate these systems, the necessity to ‘optimize’ speech for algorithms risks distorting authentic expression and privileging sensational, commercial, or majority views over substantive or minority perspectives.

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<sup>54</sup> P Leerson, ‘An End to Shadow Banning? Transparency Rights in the Digital Services Act Between Content Moderation and Curation’ *Computer Law & Security Review*, Volume 48, April 2023

The benefits of digital expression are disproportionately enjoyed by platform owners and technology companies that control the infrastructure of speech. While platforms profit from user-generated content and engagement, individuals exercising their right to freedom of expression often lack effective remedies against unjustified content suppression, demonetization, or de-platforming. This imbalance underscores the growing power of private actors over the digital public sphere, with limited accountability under traditional freedom of expression doctrines. Overall, the balance between the positive and negative impacts of digitalization on the right to freedom of expression is largely contingent upon the regulatory and normative frameworks governing digital platforms. While digital technologies possess the capacity to enhance expressive freedoms, their unregulated or weakly regulated deployment tends to undermine the practical enjoyment of the right to free speech and particularly the necessitated emerging right to an audience.

Nigeria like many other jurisdictions, does not currently recognize the right to an audience as an integral part of the right to freedom of expression, but recognizes the right to ‘impart information without interference’. Existing instruments, most notably the Constitution of the Federal Republic of Nigeria 1999 (as amended) provide general protections for free speech but fall short of the expansive lettering that would have encompassed this right which is necessary for the effective exercise of free speech. The absence of legal precision, oversight structures, and policy guidance renders many States ill-equipped to safeguard the right to freedom of expression in its full form, especially in the digital era. It is thus necessary to legislate transparency obligations, human rights-based platform governance, and accessible accountability mechanisms, without which digital expression risks becoming formally guaranteed but functionally ineffective. It is an international consensus that digital technologies tend to amplify existing power structures. In contexts with strong democratic institutions and rights-based regulation, digitalization may enhance expressive freedoms, whereas in weak or fragmented regulatory environments, it may entrench censorship, exclusion, and informational inequality. Consequently, the digital age necessitates a reconceptualization of freedom of expression in a manner that explicitly recognizes access to an audience as an indispensable element of the right.

As digital technologies transform freedom of speech, it is necessary to reexamine a means of protecting the exercise of the right to this freedom. While digital platforms have expanded avenues for speech, they have simultaneously introduced opaque mechanisms of control that silently regulate visibility, reach, and audience access. Safeguarding digital expression therefore requires a multi-layered approach that addresses legal accountability, technological governance, human rights theory, and inclusivity in the digital public sphere. In light of the above, the following are strategies for the promotion and protection of freedom of expression in the digital age, and preventing covert repression of speech:

### ***Legal Reforms and Policy Recommendations***

There is urgent need for legal reforms that recognizes the growing trends of digitalization in speech expression, the power of platform governance over speech, and subjects such power to human rights-oriented regulation. Laws and policies should impose positive obligations on States to protect individuals against unjustified speech suppression by private actors, particularly in digital platforms. Regional and international human rights bodies should expand jurisprudence to clarify States’ responsibilities in regulating platform practices without enabling censorship, to ensure that the right to freedom of expression survives in the digital age. The right to an audience must receive legislative recognition and protection as an integral part of the right to freedom of expression, ensuring that speech made reaches the audience for whom it is meant.

### ***Transparency in Algorithmic Governance***

Policies regarding transparency must be set out to prevent the opaque nature of digital platforms which undermine accountability and facilitate silent restrictions on expression. These policies must obligate full disclosure of source and meaningful explanations where algorithmic systems affect the reach and visibility of speech to reinforce procedural fairness and protection against arbitrary interference with the right to an audience.

***Preventing Hidden Forms of Digital Discrimination***

Regulatory frameworks must require platforms to conduct regular human rights impact assessments of their content moderation and algorithmic systems. Independent oversight mechanisms should be established to investigate patterns of systemic bias and silent suppression. Importantly, remedies must extend beyond content restoration to include explanations, appeals, and structural reforms. Addressing these covert practices is essential to ensuring that freedom of expression remains meaningful rather than illusory in digital spaces.

***Balancing Innovation with Rights Protection***

Digital platforms must be carefully calibrated to avoid stifling technological innovation and free enterprise. Over-regulation risks entrenching State control or discouraging innovation, while under-regulation permits unchecked private censorship. A balanced approach is therefore required that protects fundamental rights without undermining the benefits of digital platforms, that emphasize the principles of proportionality, necessity, and accountability.

***Collaboration of Co-Regulatory Authorities***

Co-regulatory authorities, i.e., International and Regional bodies, States, digital platforms, civil society, and users must foster shared responsibility in protecting digital expression. Where innovation is encouraged, but not at the expense of democratic discourse and human dignity. These efforts must be applied to safeguarding digital expression by building inclusive digital public spheres where diverse voices can be heard. Inclusivity demands that platforms actively promote pluralism, accessibility, and equal participation. This may involve supporting public interest content, safeguarding minority speech, and ensuring that platform policies do not disproportionately silence certain groups. Recognizing and protecting the right to an audience is central to achieving this goal.