



The Daily Dish

EU Makes an Offer We Should Refuse

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On August 12, European Commissioner for Internal Market and Services Thierry Breton [sent a letter](#) effectively threatening X owner Elon Musk for his then-upcoming interview with former President Trump that broadcast on the platform later that night.

As the letter reads, Commissioner Breton highlights that Europe’s Digital Services Act (DSA) makes it illegal for a platform to disseminate content that “may incite violence, hate and racism in conjunction with major political — or societal — events around the world, including debates and interviews in the context of elections.” Breton adds, “any negative effect of illegal content on X in the EU, which could be attributed to the ineffectiveness of the way in which X applies the relevant provisions of the DSA, may be relevant in the context of the ongoing proceedings and of the overall assessment of X’s compliance with EU law.”

In other words, you’d better watch what you say, or we will come after you. Tony Soprano had more subtlety. Increasingly speech regulations around the globe often directly inhibit Americans’ ability to express themselves online. Thierry Breton is only too happy to play the part of mafioso.

But as Europe has begun the process of eroding free speech protections, the United States has been moving in a similar direction. While the First Amendment offers a strong bulwark against government censorship, Congress and federal bureaucrats can and have effectively threatened platforms with regulation if those platforms choose not to “moderate” their content in a manner that suits bureaucrats’ needs - which are of course often nakedly partisan - a practice known as “jawboning.” Not much has been done to combat jawboning in the United States. In the recent *Murthy v. Missouri* case, for example, the Supreme Court ignored the substantive question of whether White House officials threatened platforms to take down what it claimed was misinformation and instead settled the case on [standing](#)

[grounds](#), leaving any potential jawboning in place. The Court also [refused to strike down](#) state laws that require social media platforms to moderate in a politically neutral way, sending the cases back to lower courts for further proceedings. And active legislation such as the [Kids Online Safety Act](#) could result in content moderation changes on social media platforms as Congress attempts to limit children's access to content that it views as harmful.

It is increasingly apparent that some in the United States do not feel like the First Amendment should apply to online speech. But a word of caution: If we dismiss the First Amendment, the United States will have its own Thierry Breton making offers Americans can't refuse.