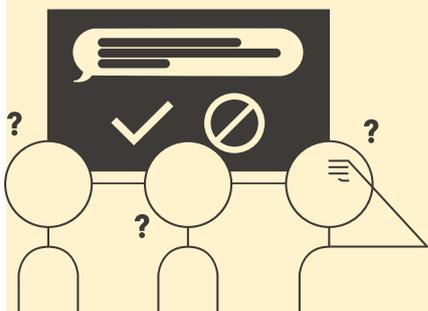## DIGITAL PLATFORMS:

For a real-time and collaborative regulation

This note supplements Renaissance Numérique's two previous publications on the regulation of digital platforms and the moderation of toxic content[1]. It details two proposals concerning the way in which certain types of digital platforms should be regulated:

· The real-time regulation of platforms that monetize their audience through real-time advertising marketplaces (i.e. ad-exchanges[2]).

· The participation of platforms' users in regulatory bodies at two levels: within regulatory instances themselves and in platforms' governance.

1.

Establishing real-time regulation

A digital platform can be defined as a governance structure for exchanges that determines who can participate, what role can be played, how participants can interact, and how disputes are resolved through protocols and technological standards to facilitate connection, coordination, and/or collaboration among the actors in the resulting ecosystem[3].

Among the many existing platforms, those that monetize their audience to advertisers do so through real-time marketplaces on which millions of ad impressions are sold every day to advertisers who target their users based on data, including data provided by the platform on its audiences. Such is the case of search engine platforms like Google and Bing, but also of user-generated content (UGC) platforms like YouTube and Facebook.

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1   Renaissance Numérique (2020), "Regulating digital platforms: why and how?", May, 45 pp. Available online: https://www.renaissancenumerique.org/publications/regulating-digital-platforms-why-and-how ; "Moderating our (dis)content: renewing the regulatory approach", July, 56 pp. Available online: https://www.renaissancenumerique.org/publications/moderating-our-dis-content-renewing-the-regulatory-approach
2   Korula N., Mirrokni V., Nazerzadeh H. (2016), "Optimizing Display Advertising Markets: Challenges and Directions," IEEE Internet Computing, vol. 20, no. 1, pp. 28-35, doi: 10.1109/MIC.2015.137
3   Renaissance Numérique (2020), "Regulating digital platforms: why and how?", May, 45 pp.

The online advertising market is a real-time market which works like a financial one, where supply (i.e. publishers' ad inventories) and demand (i.e. ad campaigns) meet, and where market makers (i.e. ad-exchanges) match these with their targeting and pricing algorithms. This way of marketing online advertising, known as "programmatic purchasing", is now widely dominant in France[4] and in the main advertising markets worldwide. It is largely dominated by two global companies: Google and Facebook[5].

The way this market operates is subject to much criticism and several failures have been denounced by various stakeholders[6]: advertisers themselves, publishers, users, NGOs, and some regulatory authorities[7]. Advertisers complain about the high costs they incur to control the quality of their campaigns and feel that they should not have to bear these costs[8]. Publishers must invest to guarantee the quality of their advertising inventories, ensure brand safety, and bypass advertising blockers which induce significant losses in advertising revenue[9]. User-installed ad blockers are the result of users' overexposure to too many ads, which in turn is a consequence of these digital platforms' revenue model. Lastly, some NGOs decry the fact that programmatic advertising systems allow the spread of hateful advertising messages. The micro-targeting of specific populations by political campaigns during pre-election and election periods is also identified by some as a threat to the democratic process[10]. Others complain that open ad-exchanges contribute to monetizing websites promoting hatred and discrimination[11].

Therefore, it appears that the regulation of these digital platforms should set the rules for ad buying and selling practices, to guarantee a fair economic relationship between the various players in the advertising chain and a non-toxic informational and advertising environment for citizens.

Traditional approaches to regulation favor corrective measures that are qualified as *ex post*, i.e. they happen once the damage has been observed and

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4   In France, it represents 81% of the total revenue for *Display & Social* in the first half of 2020. See: http://www.sri-france.org/wp-content/uploads/2020/07/20200707_ePub_S1-2020_vDEF2.pdf
5   Autorité de la concurrence (2018), Avis n° 18-A-03 du 6 mars 2018 portant sur l'exploitation des données dans le secteur de la publicité sur internet. Available online: https://www.autoritedelaconcurrence.fr/sites/default/files/commitments//18a03.pdf
6   Théophile Megali (2020), *Régulations réclamées. Enquête sur le marché de la publicité en ligne et son autorégulation*, Thesis, PSL-Université Paris-Dauphine.
7   Autorité de la concurrence (2019), Décision 19-D-26 du 19 décembre 2019. Available online: https://www.autoritedelaconcurrence.fr/fr/decision/relative-des-pratiques-mises-en-oeuvre-dans-le-secteur-de-la-publicite-en-ligne-liee-aux ; (2010), Décision 10-D-30 du 28 octobre 2010
relative à des pratiques mises en œuvre dans le secteur de la publicité sur Internet. Available online: https://www.autoritedelaconcurrence.fr/fr/decision/relative-des-pratiques-mises-en-oeuvre-dans-le-secteur-de-la-publicite-sur-internet
8   Measuring print visibility is typically a cost borne by the advertiser. Expenses to prevent fraud is another cost borne by advertisers.
9   Shiller B., Waldfogel J., Ryan J. (2018), *The effect of ad blocking on website traffic and quality*, The Rand Journal of Economics, Vol. 49, Issue 1, Spring 2018, pp. 43-63.
10   Borgesius et. al. (2018), *Online Political Microtargeting: Promises and Threats for Democracy,* Utrecht Law Review, Vol. 14, n°1, pp. 82-96 ; Kruschinski S., Haller A. (2017), *Restrictions on data-driven political micro-targeting in Germany,* Internet Policy Review, Alexander von Humboldt Institute for Internet and Society, Berlin, Vol. 6, Iss. 4, pp. 1-23. Available online: http://dx.doi.org/10.14763/2017.4.780
11   See: https://en.wikipedia.org/wiki/Sleeping_Giants
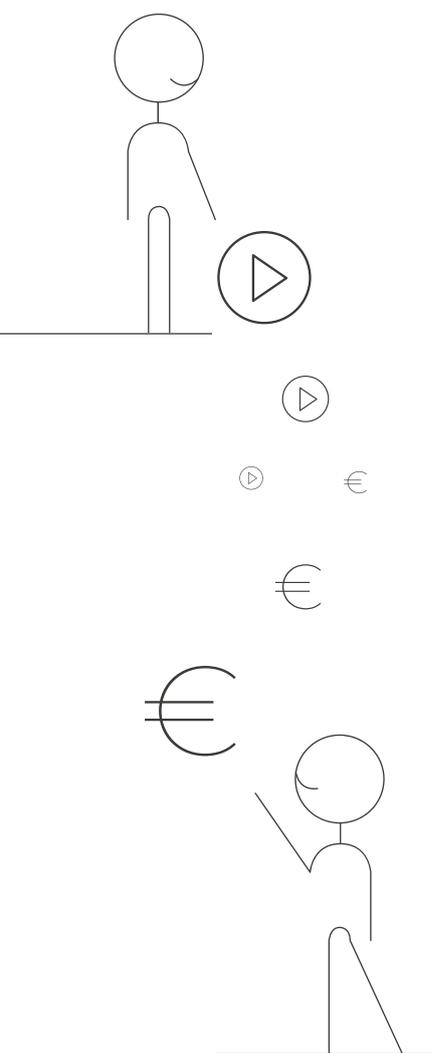
quantified. In the context of the current regulatory reform, particularly with regard to digital players, many voices are calling for *ex ante* regulation of those players, especially to limit possible predatory acquisitions[12]. In that respect, the French Competition Authority (*Autorité de la concurrence*) notes: "[...] *the fact that authorities must be able to intervene quickly is recognized as an absolute necessity. Most competition authorities thus share the objective of being able to carry out their investigations within a timeframe that suits the market's rapid changes, and to make wider use of precautionary measures*"[13].

A joint paper by several competition authorities also mentions the issues of regulation timing and of the nature of data-based digital activities: *"Other challenges include how to use effective information-gathering powers, given new forms of and methods for retaining data, and how to pursue sound enforcement intervention against anticompetitive conduct in a meaningful timeframe."*[14]

These approaches, however relevant they may be, leave aside the "real-time" nature of the activity taking place on online advertising markets. In this industry, transactions are not accessible to the regulator as such, unlike financial transactions on the financial markets[15].

We suggest implementing real-time regulation for online advertising platforms, rather than *ex ante* or *ex post* regulation. It could apply both to economic issues linked to competition and to issues related to the nature of advertising content.

In France, regulators for certain digital services, such as the National Gaming Authority (*Autorité nationale des jeux*), already have access to data from regulated operators[16]. In the Internet access market, the French regulator, the Electronic Communications, Postal and Print Media Distribution Regulatory Authority (*Autorité de régulation des communications électroniques, des postes et de la distribution de la presse*) has implemented a mandatory API for telecom operators, to gain a better understanding of the quality of ser-

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12   Cremer J., de Montjoye Y.A., Schweitzer H. (2019), "Competition policy for the digital era", 127 pp. Available online: https://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf

13   Translated from the French original: « [...] *le fait que les autorités doivent pouvoir intervenir rapidement est reconnu comme une nécessité absolue. La plupart des autorités de concurrence partagent ainsi l'objectif de pouvoir mener leurs investigations dans des délais répondant aux évolutions rapides du marché, et de faire un usage plus large de l'outil que constituent les mesures conservatoires.* » Autorité de la concurrence, "Contribution de l'Autorité de la concurrence au débat sur la politique de concurrence et les enjeux numériques", February 19th, 2020. Available online: https://www.autoritedelaconcurrence.fr/sites/default/files/2020-02/2020.02.28_contribution_adlc_enjeux_num.pdf

14   Common Understanding of G7 Competition Authorities on "Competition and the Digital Economy", Paris, June 5th, 2019, p.5. Available online: https://www.autoritedelaconcurrence.fr/sites/default/files/2019-11/g7_common_understanding.pdf

15   For the sake of transparency, Facebook already gives access to political advertising campaigns in some countries: https://www.facebook.com/ads/library/?active_status=all&ad_type=political_and_issue_ads&country=FR&impression_search_field=has_impressions_lifetime

16   See, on the website of the *Autorité nationale des jeux*: https://anj.fr/regulation/documentation-destination-des-operateurs
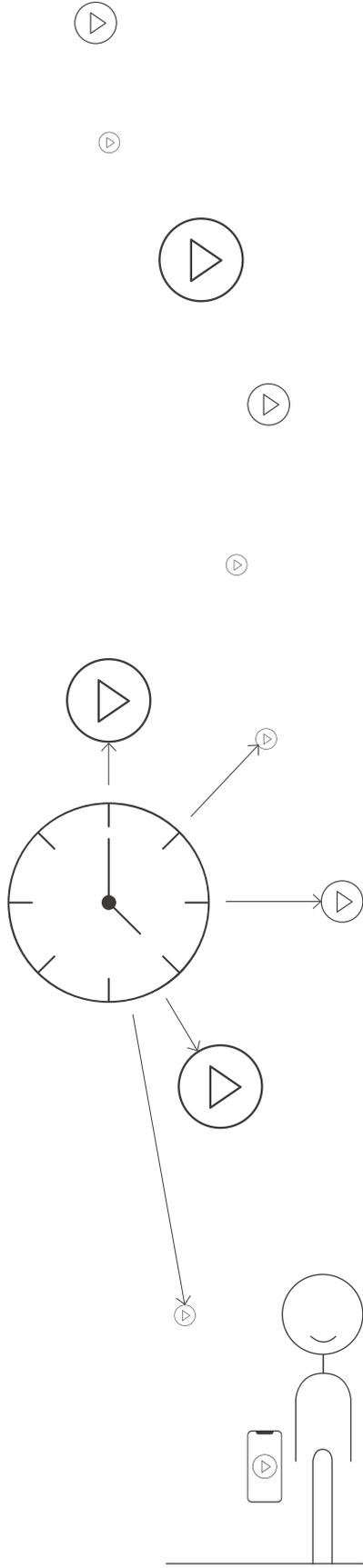
vice they deliver to their customers[17]. Some digital sectors have thus already adopted data-based regulation.

In this respect, the regulation of financial markets, a field in which real-time data is available to the regulator, also offers an interesting point of comparison. Financial markets regulators have the possibility to access market data through APIs[18], to check the transactions' compliance with regulations and investigate those transactions if necessary. In the absence of compliance, they can therefore take immediate sanctions against those non-compliant transactions.

With regard to the online advertising market, the European Union could very well establish strict rules on the nature of advertising campaigns (non-discrimination of individuals, respect for human rights, etc.) and monitor the campaigns' compliance with these rules by accessing campaign feeds. Platforms could be obliged to accept only advertising campaigns that comply with these rules and could be sanctioned if a breach were to be found based on data the regulator would access through an exclusive API.

To this end, it would be necessary to upgrade existing advertising standards by imposing market-specific metadata to ease automatic real-time control. Just like the values exchanged on financial markets have a unique code (the "ISIN code"), it would be possible to identify an advertiser easily through a unique international code (the International Advertiser Number or IAN) to be integrated into advertising campaigns. Metadata could be attached to each campaign, in order to control the nature of the advertising messages and to describe the object of the campaign with keywords. This would allow ad-exchanges to filter the campaigns based on these criterions and the regulator, which would access the ad-exchange's flow through an API, to monitor the compliance of advertising messages with the regulations they would be subject to. To ensure that such a system is properly implemented, the use of an advertiser identifier could be made mandatory, as could the tagging of campaigns. This would enable ad-exchanges to filter out campaigns that do not include identifiers and tags.

It should be noted that advertisers in France have proposed a mechanism called *Trust ID*[19], which makes it possible to track an advertising campaign and to know which websites display the advertising messages in order to check brand safety. Google now supports this initiative within the Interactive Advertising Bureau (IAB) with the aim of extending it worldwide. It is also worth mentioning that some issues of transparency in advertising markets, already regulated in France by *Loi Sapin 2* (a bill dealing with transparency,

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17   See: https://en.arcep.fr/news/press-releases/view/n/data-driven-regulation-4.html
18   Facebook already provides an API to query past ad campaigns: https://www.facebook.com/ads/library/api/?source=archive-landing-page
19   «*Trust ID* permet de tracer l'ensemble de nos investissements médias digitaux», *Journal du Net*, November 26th, 2019: https://www.journaldunet.com/ebusiness/publicite/1486678-olivier-roz-la-poste/

the fight against corruption, and the modernization of the economy)[20], have led to an evolution of operators. The latter have become more willing to develop and integrate more transparent protocols aimed at enabling regulators to monitor their compliance with the rules of the market.

Lastly, just like in financial markets, access to data would also allow the monitoring of pricing mechanisms and the assessment of possible abuses of a dominant position in price determination. From this perspective, should a complaint be filed about possible abuses by one or another operator on the market, competition authorities could quickly gather information and adopt sanctions within a much shorter timeframe than the ones currently witnessed in digital services, which are considered to be too long by actors in this market.

2.

Formalizing users' involvement in regulation

In its previous note on the regulation of digital platforms[21], Renaissance Numérique called for a reconsideration of regulation mechanisms to take into account the specific nature of these platforms compared to more conventional models of production organization, such as companies. Some digital platforms are particular in that they offer content that is mostly produced by their users. Such is the case of social media and multimedia content (video, text, music) platforms, which are categorized as "user-generated content" (or UGC) platforms.

There are many challenges related to UGC, which require moderation and regulation mechanisms that, to date, rarely or hardly involve users. Besides, labor intermediation platforms also face issues they need to sort out with workers on how the platform itself operates (working conditions, protection, remuneration, etc.)[22]. The question of creating bodies that can serve as forums for dialogue is therefore also raised on this type of platforms.

In France, the regulation of media content has historically involved users and/or their representatives, be it in the cinema industry with the National Center for Cinema and the Moving Image (*Centre national du cinéma et de l'image animée*) and the Classification Commission (*Commission de classification*)[23], or in advertising through the Joint Council for Advertising (*Conseil Paritaire*

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20   « Les modalités de l'obligation de compte rendu à l'annonceur de l'exécution des ordres de publicité en matière digitale », *Journal du Net*, February 17th, 2017: https://www.journaldunet.com/ebusiness/publicite/1192082-les-modalites-de-l-obligation-de-compte-rendu-a-l-annonceur-de-l-execution-des-ordres-de-publicite-en-matiere-digitale/

21   Renaissance Numérique (2020), "Regulating digital platforms: why and how?", May, 45 pp.

22   CNNum (2020), « Travail à l'ère des plateformes. Mise à jour requise ». Available online: https://cnnumerique.fr/files/uploads/2020/2020.06.30_Rapport_Travailleurs_des_plateformes_VF.pdf

23   See, on the CNC's website: https://www.cnc.fr/professionnels/visas-et-classification/activite-de-la-commission-de-classification

de la Publicité)[24], a complementary structure to the Professional Authority for the Regulation of Advertising (*Autorité de régulation professionnelle de la publicité*). In the area of television, a "Young Audience" expert committee (*Comité d'experts Jeune public*) has recently been established within the High Audiovisual Council (*Conseil Supérieur de l'Audiovisuel*), but it does not involve users, let alone representatives of young audiences (!). Although the European video game industry has developed a classification of its contents, it does not rely on users or their representatives[25].

Renaissance Numérique's proposal is to involve users in the regulation of these digital platforms at two different levels:

- the establishment of a users' panel within independent administrative authorities (IAAs), most of which only include a body of experts (*Autorité de régulation des communications électroniques, des postes et de la distribution de la presse*[26], *Autorité de la concurrence*[27], *Conseil supérieur de l'audiovisuel*[28]), or a modification of the composition of IAAs expert bodies by introducing a share of users ;

- the integration of users in the governance bodies of digital platforms.

1°) Concerning the integration of users into the authority (or authorities) responsible for the regulation of digital platforms hosting content that is mainly user-generated

Introducing users into these authorities' panels would allow them to be more closely involved in the regulation of platforms on which they are key players. The idea would be to involve a minority proportion of users into the IAAs' panels. This way, decision-making on digital platforms would integrate the point of view of those users who co-create value on the platform. Users should be designated by a random draw among the frequent users of said platforms.

2°) Concerning the integration of users into the platforms' governance

For UGC platforms

This idea in itself is not new, since the social media platform Facebook has already started to implement a mechanism, called the Oversight Board, which comes close to this suggestion[29]. Other platforms, such as TikTok and Twitch, plan to follow a similar model[30]. Yet, the composition of this body and the way its members are selected do not reflect the idea of users being represented

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24   See, on the CPP's website: https://www.cpp-pub.org
25   See, on the PEGI's (Pan European Game Information) website: https://pegi.info/page/pegi-committees
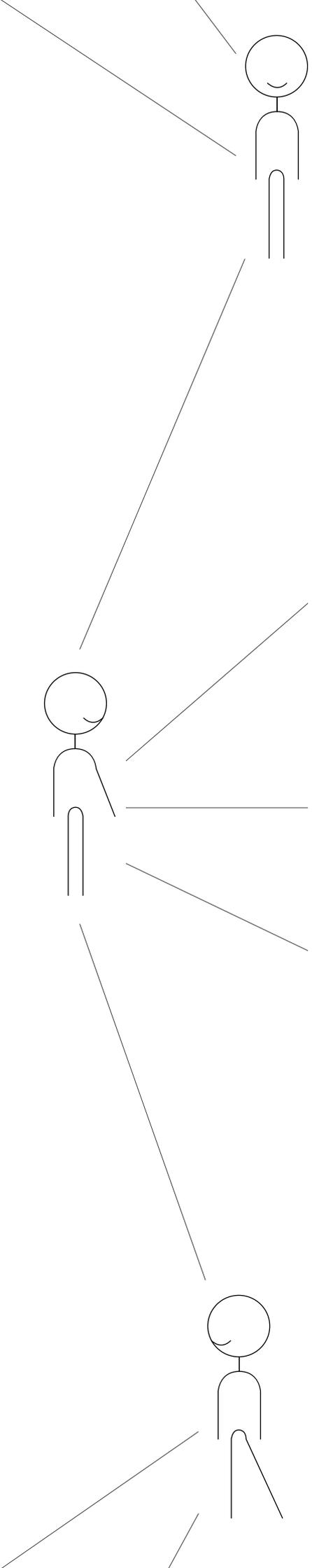26   The Electronic Communications, Postal and Print Media Distribution Regulatory Authority
27   The Competition Authority
28   The High Audiovisual Council
29   See the website dedicated to the Oversight Board, set up by Facebook: https://www.oversightboard.com
30   TikTok Newsroom, March 18th, 2020: https://newsroom.tiktok.com/en-us/introducing-the-tiktok-content-advisory-council

by users. Indeed, members are appointed by the platform based on their specific expertise and not based on their uses, and are not representative of the platform's varied user profiles either. As a result, the members of the Oversight Board are more experts than users' representatives. Such "social media councils"[31] are not, in their current form, actual user-representative bodies.

Strict selection rules should be defined to ensure that such instances are actually representative of the users:

- Users should be registered on the digital platform for a substantially long time, indicating regular use. Regular use can easily be ascertained through the platform's usage data. The platform could identify the variety of uses and take this into account when selecting users.

- Among all these experienced users of the platform, individuals would be randomly drawn to serve as members of the council for a predefined, non-renewable term. This would prevent the professionalization of the users, which is a common trait encountered within this kind of bodies.

- The role of this representative panel would be to contribute to the definition of the platform's general terms and conditions (T&C) and moderation rules. Such a body should not be merely consultative but rather a joint decision-maker in defining and modifying those policies.

The role of such a user-representative body should cover several elements:

- Defining the platform's moderation rules and their evolution. The top-down approach of an "oversight board" on the one hand, and the more democratic and community-driven approach suggested by Renaissance Numérique on the other hand, are not mutually exclusive. In fact, they can actually be complementary. Strengthening communication between platforms and users, and extensively involving users in moderation processes, is one way to mitigate the risk of homogenization of the way content is regulated.

- Defining a collaborative, platform-specific approach for moderation. In the case of Wikipedia and Framasoft, both non-profit organizations, this community approach is a financial necessity should they continue to operate at scale. But the merits of this approach should not be seen as financial — indeed, the fact that community moderation is not remunerated raises some concerns. A collaborative approach requires discursive processes, not just the outsourcing of labor. Governance structures are needed to facilitate this participation. Examples of more

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31 "Social Media Councils, from Concept to Reality", Stanford Digital Policy Incubator Conference Report, February 1-2, 2020 : https://fsi-live.s3.us-west-1.amazonaws.com/s3fs-public/gdpiart_19_smc_conference_report_wip_2019-05-12_final_1.pdf
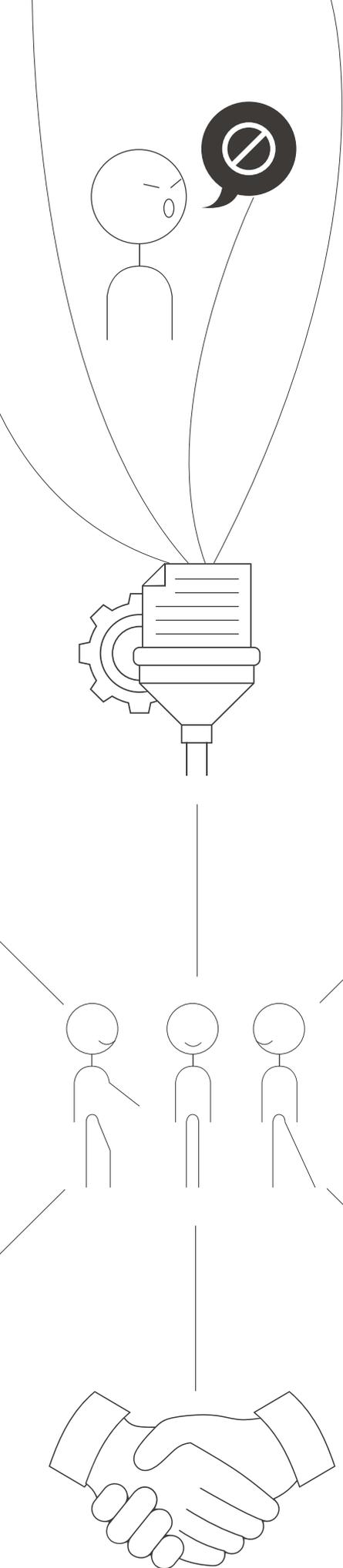
successful, inclusive moderation suggest that the most effective systems are multidimensional, with many levels of participation around a core moderation team, and with clear and strong communication between these layers.

- Developing a specific culture of moderation for each platform. Each platform should be responsible for educating and equipping users as part of the construction of a culture of moderation. Moderation is much more than content removal, and it often necessitates pedagogy at the user level. This pedagogy could be defined jointly with the users' representatives within the governance body. Pedagogy is also part of transparent and efficient recourse mechanisms: the availability of clear and unambiguous policies helps to reduce the repetition of infractions and increases confidence in the governance of the platform. Platforms must provide resources to help users understand the logic behind moderation decisions.

For labor intermediation platforms

Regarding labor intermediation platforms, regulation should focus on those platforms that intermediate a permanent and regular activity. Non-professional and temporary activities might also need to be regulated, by implementing a cap, to prevent these from becoming primary activities, following the model of regulation introduced for e-commerce or housing rental platforms.

Platforms, regardless of their nature, organize a kind of co-creation of value. The issue at stake here is the sharing of this value between the platform's different actors, and more specifically the recognition of value co-creation by a governance body bringing together these various players.

Just like companies incorporate bodies representing their employees, platforms could consider setting up a body tasked with representing the various actors they host. Beyond informing and consulting platform users, such a body should have, as a prerogative, the power to conduct annual negotiations relating to the working conditions of the platform's users and to pricing methods. Similarly to the annual or pluriannual negotiations that take place between suppliers and retailers or between suppliers and clients in other sectors (mass retail, automotive), a mandatory annual negotiation on prices could be considered.

The fact that platform users provide essential matching data (booking, date, time, place, satisfaction surveys, etc.) also means that they should be represented in such a body, as a minority share. Just like the producers of the service, they should be eligible only after a significant period of use.

Only those actors engaged in a minimum use of the platform should be
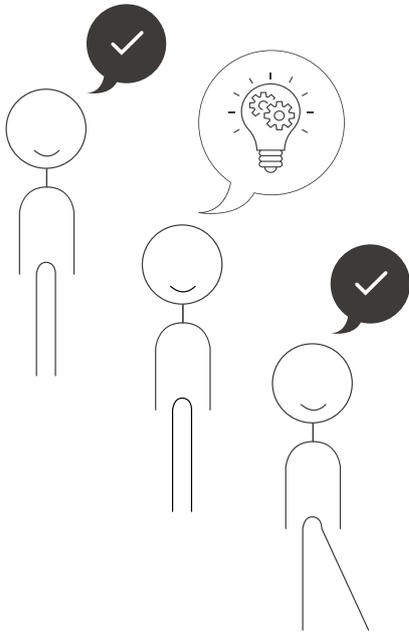
eligible. This use should logically exceed a significant period of regular use, to ensure the person's permanent registration in a real and non-temporary professional activity, thereby providing stability to the representative body. To that end, the election board would be made up of all the users of the platform registered since the predefined minimum period. An annual incentive scheme should be considered, which would be proportional to the use of the platform, just like performance bonuses in companies.

Besides, given the fact that users tend to use several platforms at the same time (multi-homing), an independent worker should be allowed to be elected on a single platform only, regardless of the distribution of her or his income between platforms.

On such a platform, the rights of users should also include the comprehensive and effective portability of the platform's usage data, so that independent workers can maintain their investment in the quality of services and not be penalized when changing platforms. Although data portability is already guaranteed within the GDPR, it should be supplemented with data standardization for it to be actually effective. Without actual portability, the competition between platforms remains limited.

This institutionalization of users in the governance of digital platforms should be understood as an institutionalization of these organizations in our society. In that respect, employee-representative bodies within companies did not appear as immediate mechanisms. They were rather the result of social regulation that imposed such consultative bodies on companies.

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