

Media, Censorship and Threats to Press Freedom

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Media Reform due to the COVID “Crisis”

- Many claim that the authoritarian policies of the ‘COVID-era’ are a part of the past and no longer a threat to our future.
- However, COVID is being used as a reason to implement reforms and structural changes in the European Union (EU) media sector with the adoption of the European Media Freedom Act (EMFA)

*“As raised by stakeholders at the public consultation, **the fragile economic situation of the media sector remains an issue, and has been exacerbated by the COVID-19 crisis.** Securing diverse and sufficient financing sources could bolster the resilience and independence of media, and support the provision of quality services to Europeans...”*

(Explanatory Memorandum of the EMFA)

European Media Freedom Act (EMFA)

Background

“The proposal seeks to tackle a series of problems affecting the functioning of the internal market for media services and the operation of media service providers”

- This is an effort to promote “media independence” and pluralism and to **fight against disinformation and foreign interference** through legislation **by establishing an EU set of minimum standards**
- **It is important to understand the EMFA in the context of EU Member States increasingly losing power and sovereignty**

Media Service Providers - “a natural or legal person whose professional activity is to provide a media service and who has editorial responsibility for the choice of the content of the media service and determines the manner in which it is organised”

Very Large Online Platforms - Google, YouTube, Twitter, TikTok, Instagram, Wikipedia, Facebook, Apple App Store, etc.

European Media Freedom Act (EMFA)

Timeline

- In 2021, President of the European Commission Ursula von der Leyen **announced the initiative** in her State of the Union address
 - Media should not be treated as any other business
 - Media “independence” must be protected at the EU level
- December 2021: An announcement of the initiative was published as well as a call for evidence
- Jan. 10, 2022 - March 25, 2022: A public consultation took place
- June and July 2022: Reviews of the proposal, procedural reviews
- **Sept. 16, 2022:** The European Commission publishes the European Media Freedom Act (EMFA)
- **June 21, 2023:** The EMFA is now with the European Council

European Media Freedom Act (EMFA)

Background

- The proposal seeks to **adhere to and expand on existing policies** while addressing the regulatory gaps
- Media regulators to have **a coordinated approach** to matters affecting the EU's information space in order to protect news consumers
 - Strategic Compass for Security and Defence: Strengthening the coordination between media regulators to manage matters impacting the EU's information space (**EU's toolbox on Foreign Information Manipulation and Interference**)

European Media Freedom Act (EMFA)

Four “main points”

1. “**Fostering cross-border activity and investment** in media services by harmonizing certain elements of the diverging national media pluralism frameworks, in particular to facilitate cross-border service provision...”
2. “**Increasing regulatory cooperation and convergence** through cross-border coordination tools and EU-level opinions and guidelines...” (harmful content, disinfo.)
3. “**Facilitating provision of quality media services** by mitigating the risk of undue public and private interference in editorial freedom...”
4. “**Ensuring transparent and fair allocation of economic resources** in the internal media market by enhancing transparency and fairness in audience measurement and allocation of state advertising...”

- Uses positive language to distract the public’s attention

European Media Freedom Act (EMFA)

Framework

- The **Audiovisual Media Services Directive (AVMSD)** is the current media framework (in addition to several others)
- The **European Regulators Group for Audiovisual Media Services (ERGA)** currently works with the Commission to ensure the implementation of the AVMSD
- The EMFA proposal states that the ERGA **does not have the resources or ability** to solve cross border issues or manage regulatory matters (limited scope of action)
- **A new governing body** will replace the ERGA and will be given additional tasks and authority, as described in the EMFA proposal
- The EMFA is a **Regulation**. It will **not be subject to scrutiny** by Parliament and **will be effective immediately** in all Member States once adopted

European Media Freedom Act (EMFA)

The European Board for Media Services

- The EMFA seeks to replace the ERGA with **The European Board for Media Services** (The ‘Board’)
- The Board is described as “fully independent from governments or any other public or private entities” and a “collective body of independent media regulators.” (Yet, it is heavily monitored and controlled by the Commission)
- The Board will give special advice, issue opinions on market concentrations, invite and attend meetings to discuss the Regulation and coordinate and implement actions for noncompliance

Article 10

Structure of the Board

1. The Board shall be composed of representatives of national regulatory authorities or bodies referred to in Article 30 of Directive 2010/13/EU.
2. Each member of the Board shall have one vote.
3. Where a Member State has more than one national regulatory authority or body, those regulatory authorities or bodies shall coordinate with each other as necessary and appoint a joint representative which shall exercise the right to vote.
4. The Board shall be represented by its Chair. The Board shall elect a Chair from amongst its members by a two-thirds majority of its members with voting rights. The term of office of the Chair shall be two years.
5. The Commission shall designate a representative to the Board. The representative of the Commission shall participate in all activities and meetings of the Board, without voting rights. The Chair of the Board shall keep the Commission informed about the ongoing and planned activities of the Board. The Board shall consult the Commission in preparation of its work programme and main deliverables.
6. The Board, in agreement with the Commission, may invite experts and observers to attend its meetings.
7. The Board shall take decisions by a two-thirds majority of its members with voting rights.
8. The Board shall adopt its rules of procedure by a two-thirds majority of its members with voting rights, in agreement with the Commission.

- The Commission has influence on the Board through the **designation of a representative**
- The Chair of the Board **must keep the Commission** informed about ongoing activities and future plans
- The Board must “**consult the Commission** in preparation of its work programme and main deliverables”
- **In agreement with the Commission,** the Board may invite experts and observers to attend meetings
- **“The Board shall adopt its rules of procedure by a two-thirds majority of its members with voting rights, in agreement with the Commission.”**

Article 11

Secretariat of the Board

1. The Board shall have a secretariat, which shall be provided by the Commission.
2. The main task of the secretariat shall be to contribute to the execution of the tasks of the Board laid down in this Regulation and in Directive 2010/13/EU.
3. The secretariat shall provide administrative and organisational support to the activities of the Board. The secretariat shall also assist the Board in carrying out its tasks.

- The **Commission provides a secretariat to the Board** who “shall contribute to the execution of tasks” and “provide administrative and organizational support to the activities of the Board”
- Even the staff of the Board is run by the Commission

European Media Freedom Act (EMFA)

Tasks of the Board

Article 12

Tasks of the Board

Without prejudice to the powers granted to the Commission by the Treaties, the Board shall promote the effective and consistent application of this Regulation and of national rules implementing Directive 2010/13/EU throughout the Union. The Board shall:

- (a) support the Commission, through technical expertise, in ensuring the correct application of this Regulation and the consistent implementation of Directive 2010/13/EU across all Member States, without prejudice to the tasks of national regulatory authorities or bodies;
- (b) promote cooperation and the effective exchange of information, experience and best practices between the national regulatory authorities or bodies on the application of the Union and national rules applicable to media services, including this Regulation and Directive 2010/13/EU, in particular as regards Articles 3, 4 and 7 of that Directive;
- (c) advise the Commission, where requested by it, on regulatory, technical or practical aspects pertinent to the consistent application of this Regulation and implementation of Directive 2010/13/EU as well as all on other matters related to media services within its competence. Where the Commission requests advice or opinions from the Board, it may indicate a time limit, taking into account the urgency of the matter;
- (d) when requested by the Commission, provide opinions on the technical and factual issues that arise with regard to Article 2(5c), Article 3(2) and (3), Article 4(4), point (c) and Article 28a(7) of Directive 2010/13/EU;

- The **Board is in a supportive position** to the Commission by ensuring the correct application of the Regulation

- **The Board shall advise the Commission**, when requested, on the consistent application of the Regulation as well as other matters related to media services. **The Commission can implement time limits** when requesting an opinion or advice from the Board (if it is an urgent matter)

European Media Freedom Act (EMFA)

Tasks of the Board

- (e) in agreement with the Commission, draw up opinions with respect to:
- (i) requests for cooperation and mutual assistance between national regulatory authorities or bodies, in accordance with Article 13(7) of this Regulation;
 - (ii) requests for enforcement measures in case of disagreement between the requesting authority or body and the requested authority or body regarding the actions recommended pursuant to Article 14(4) of this Regulation;
 - (iii) national measures concerning media service providers established outside of the Union, in accordance with Article 16(2) of this Regulation;
- (f) upon request of the Commission, draw up opinions with respect to:
- (i) national measures which are likely to affect the functioning of the internal market for media services, in accordance with Article 20(4) of this Regulation;
 - (ii) media market concentrations which are likely to affect the functioning of the internal market for media services, in accordance with Article 22(1) of this Regulation;

- **In agreement with the Commission**, the Board shall draft opinions on requests for enforcement measures and national measures concerning media service providers (MSPs) outside the EU

European Media Freedom Act (EMFA)

Tasks of the Board

- (k) coordinate national measures related to the dissemination of or access to content of media service providers established outside of the Union that target audiences in the Union, where their activities prejudice or present a serious and grave risk of prejudice to public security and defence, in accordance with Article 16(1) of this Regulation;
- (l) organise a structured dialogue between providers of very large online platforms, representatives of media service providers and of civil society, and report on its results to the Commission, in accordance with Article 18 of this Regulation;

- The Board shall **coordinate national measures for media service providers (MSPs)** outside the EU that target audiences within the EU which **“present a serious and grave risk of prejudice to public security and defense”**
- The Board shall **organize discussions** between providers of very large online platforms (VLOPs), reps of media service providers (MSPs) and civil society and **report the findings to the Commission**

European Media Freedom Act (EMFA)

Article 17

Content of media service providers on very large online platforms

1. Providers of very large online platforms shall provide a functionality allowing recipients of their services to declare that:
 - (a) it is a media service provider within the meaning of Article 2(2);
 - (b) it is editorially independent from Member States and third countries; and
 - (c) it is subject to regulatory requirements for the exercise of editorial responsibility in one or more Member States, or adheres to a co-regulatory or self-regulatory mechanism governing editorial standards, widely recognised and accepted in the relevant media sector in one or more Member States.
2. Where a provider of very large online platform decides to suspend the provision of its online intermediation services in relation to content provided by a media service provider that submitted a declaration pursuant to paragraph 1 of this Article, on the grounds that such content is incompatible with its terms and conditions, without that content contributing to a systemic risk referred to in Article 26 of the Regulation (EU) 2022/XXX [Digital Services Act], it shall take all possible measures, to the extent consistent with their obligations under Union law, including Regulation (EU) 2022/XXX [Digital Services Act], to communicate to the media service provider concerned the statement of reasons accompanying that decision, as required by Article 4(1) of Regulation (EU) 2019/1150, prior to the suspension taking effect.

- Providers of very large online platforms (VLOPs) are **to monitor** content posted by media service providers (MSPs) and enforce the measures (remove content)
- MSPs have to declare independence from Member States **while being controlled** by the European Commission via the Board
- The Board **to organize an annual structured dialogue** with VLOPs, reps of MSPs and reps of civil society to discuss **best practices for the application of and adherence to self-regulatory efforts to protect society from harmful content and disinformation.**

European Media Freedom Act (EMFA)

Article 25 - Monitoring exercise

Article 25

Monitoring exercise

1. The Commission shall ensure an independent monitoring of the internal market for media services, including risks to and progress in its functioning and resilience. The findings of the monitoring exercise shall be subject to consultation with the Board.
2. The Commission shall define key performance indicators to be used for the monitoring referred in paragraph 1, in consultation with the Board.
3. The monitoring exercise shall include:
 - (a) a detailed analysis of the resilience of media markets of all Member States, including as regards the level of media concentration and risks of foreign information manipulation and interference;
 - (b) an overview and forward-looking assessment of the resilience of the internal market for media services as a whole;
 - (c) an overview of measures taken by media service providers with a view to guaranteeing the independence of individual editorial decisions.
4. The monitoring shall be carried out annually, and its results shall be made publicly available.

- **“The Commission shall ensure an independent monitoring of the internal market for media services.”** Results of the exercise will be subject to consultation with the Board

- **The Commission will conduct the monitoring exercise annually**

European Media Freedom Act (EMFA)

Article 26 - Evaluation and reporting

Article 26

Evaluation and reporting

1. By [four years after the entry into force of this Regulation] at the latest, and every four years thereafter, the Commission shall evaluate this Regulation and report to the European Parliament, the Council and the European Economic and Social Committee.
2. For the purposes of paragraph 1 and upon its request, Member States and the Board shall send relevant information to the Commission.
3. In carrying out the evaluations referred to in paragraph 1, the Commission shall take into account:
 - (a) the positions and findings of the European Parliament, the Council and other relevant bodies or sources;
 - (b) outcomes of the relevant discussions carried out in relevant fora;
 - (c) relevant documents issued by the Board;
 - (d) findings of the monitoring exercise referred to in Article 25.

- Every four years, **the Commission will “evaluate this Regulation and report to the EU Parliament, the Council and the European Economic and Social Committee”**
- This is misleading. The Commission is not accountable to Parliament in a meaningful way.
- In order to conduct the evaluation, **the Board and Member States must submit relevant information at the request of the Commission**

European Media Freedom Act (EMFA)

**... But what about media
freedom?**

European Media Freedom Act (EMFA)

Article 4 - Rights of media service providers

Article 4

Rights of media service providers

1. Media service providers shall have the right to exercise their economic activities in the internal market without restrictions other than those allowed under Union law.
2. Member States shall respect effective editorial freedom of media service providers. Member States, including their national regulatory authorities and bodies, shall not:
 - (a) interfere in or try to influence in any way, directly or indirectly, editorial policies and decisions by media service providers;
 - (b) detain, sanction, intercept, subject to surveillance or search and seizure, or inspect media service providers or, if applicable, their family members, their employees or their family members, or their corporate and private premises, on the ground that they refuse to disclose information on their sources, unless this is justified by an overriding requirement in the public interest, in accordance with Article 52(1) of the Charter and in compliance with other Union law;
 - (c) deploy spyware in any device or machine used by media service providers or, if applicable, their family members, or their employees or their family members, unless the deployment is justified, on a case-by-case basis, on grounds of national security and is in compliance with Article 52(1) of the Charter and other Union law or the deployment occurs in serious crimes investigations of one of the aforementioned persons, it is provided for under national law and is in compliance with Article 52(1) of the Charter and other Union law, and measures adopted pursuant to sub-paragraph (b) would be inadequate and insufficient to obtain the information sought.
3. Without prejudice and in addition to the right to effective judicial protection guaranteed to each natural and legal person, Member States shall designate an independent authority or body to handle complaints lodged by media service providers or, if applicable, their family members, their employees or their family members, regarding breaches of paragraph 2, points (b) and (c). Media service providers shall have the right to request that authority or body to issue, within three months of the request, an opinion regarding compliance with paragraph 2, points (b) and (c).

European Media Freedom Act (EMFA)

Article 4 - Rights of media service providers

2. Member States shall respect effective editorial freedom of media service providers. Member States, including their national regulatory authorities and bodies, shall not:
- (a) interfere in or try to influence in any way, directly or indirectly, editorial policies and decisions by media service providers;
 - (b) detain, sanction, intercept, subject to surveillance or search and seizure, or inspect media service providers or, if applicable, their family members, their employees or their family members, or their corporate and private premises, on the ground that they refuse to disclose information on their sources, unless this is justified by an overriding requirement in the public interest, in accordance with Article 52(1) of the Charter and in compliance with other Union law;
 - (c) deploy spyware in any device or machine used by media service providers or, if applicable, their family members, or their employees or their family members, unless the deployment is justified, on a case-by-case basis, on grounds of national security and is in compliance with Article 52(1) of the Charter and other Union law or the deployment occurs in serious crimes investigations of one of the aforementioned persons, it is provided for under national law and is in compliance with Article 52(1) of the Charter and other Union law, and measures adopted pursuant to sub-paragraph (b) would be inadequate and insufficient to obtain the information sought.

- The focus is on protecting the MSPs from the Member States. (Member States' authority is already being limited in other ways)
- The focus is not on protecting MSPs from the Commission, which in this act, is given unprecedented controls over the media sector

European Media Freedom Act (EMFA)

Conclusions

- The Commission is an unelected, unaccountable body in the EU which has the power to write laws including this one. The Commission is seeking to monitor the media, but it is the job of the media and journalists to monitor the Commission.
- How can journalists and media entities **hold power to account** if they are being **regulated** by the very entity that they are obligated to hold to account?
- How can sources feel comfortable providing information to journalists if **there is a risk** of criminal prosecution and/or **surveillance**?
- They use the language of health to destroy our health under the guise of protecting our health. They use the language of media freedom to control and destroy our media.
- It would be better to advocate for less media regulation, not more.

The Prosecution of Julian Assange



Award-winning Australian journalist faces **175 years** in a maximum security prison in the United States for **publishing information in the public interest.**

The Prosecution of Julian Assange

- The situation is dire not only for the **broader press implications** that may result but for human rights and Julian Assange's health and well-being
- Assange is very close to facing extradition to the United States, which could set a **dangerous global precedent** and infringe on the public's right to know and access information
- June 8: A High Court Judge issued a ruling **denying the defense's appeal** on all grounds. There is **one more opportunity** to appeal to the UK courts.



The Prosecution of Julian Assange

Case history

- Julian Assange founded WikiLeaks in 2006. WikiLeaks **shifted the way we view media** (funding model, technology). Newsrooms around the world adopted a similar dropbox technology in response to WikiLeaks.
- WikiLeaks published information exposing US war crimes in Iraq and Afghanistan, human rights abuses including torture programs and unlawful CIA spying (VAULT 7), etc.
- Julian Assange **won numerous journalism awards** for this work. WikiLeaks has never had to retract a statement.
- On April 11, 2019, Julian Assange was **arrested on 17 counts of espionage for the receipt and publication of classified material**. Assange continues to be incarcerated in Belmarsh Prison.

The Persecution of Julian Assange

- As a result of a **continued disinformation campaign** against Julian Assange, he entered the Ecuadorian embassy in London in June 2012 to seek asylum.



- Assange spent seven years in the embassy as an **asylum seeker**.

- He **lacked medical care**, sunlight, access to family, etc.

The Prosecution of Julian Assange: Surveillance and Spying

- In 2017 (Vault 7 announced), **US intelligence contracted the embassy's security firm Under Cover Global (UC Global) to spy on Assange and all of his visitors.**
- The embassy's security system was **transformed into a surveillance system** with a separate camera feed that was sent to and viewed by US intelligence.
- Visitors had to provide embassy employees with their devices and other personal information.
- Data on visitors' devices was **collected by UC Global employees and sent to American intelligence**
- **Violation** of privacy, attorney-client privilege, doctor-patient confidentiality, camera in the women's bathroom, DNA of Assange's infant son was stolen, etc.
- The Central Intelligence Agency (**CIA**) **plotted to assassinate Assange**

Yahoo News Investigation - 30 US officials describe CIA plot

yahoo!news

Kidnapping, assassination and a London shoot-out: Inside the CIA's secret war plans against WikiLeaks



This Yahoo News investigation, based on conversations with more than 30 former U.S. officials — eight of whom described details of the CIA's proposals to abduct Assange — reveals for the first time one of the most contentious intelligence debates of the Trump presidency and exposes new details about the U.S. government's war on WikiLeaks. It was a campaign spearheaded by Pompeo that bent important legal strictures, potentially jeopardized the Justice Department's work toward prosecuting Assange, and risked a damaging episode in the United Kingdom, the United States' closest ally.



Zach Dorfman, Sean D. Naylor and Michael Isikoff

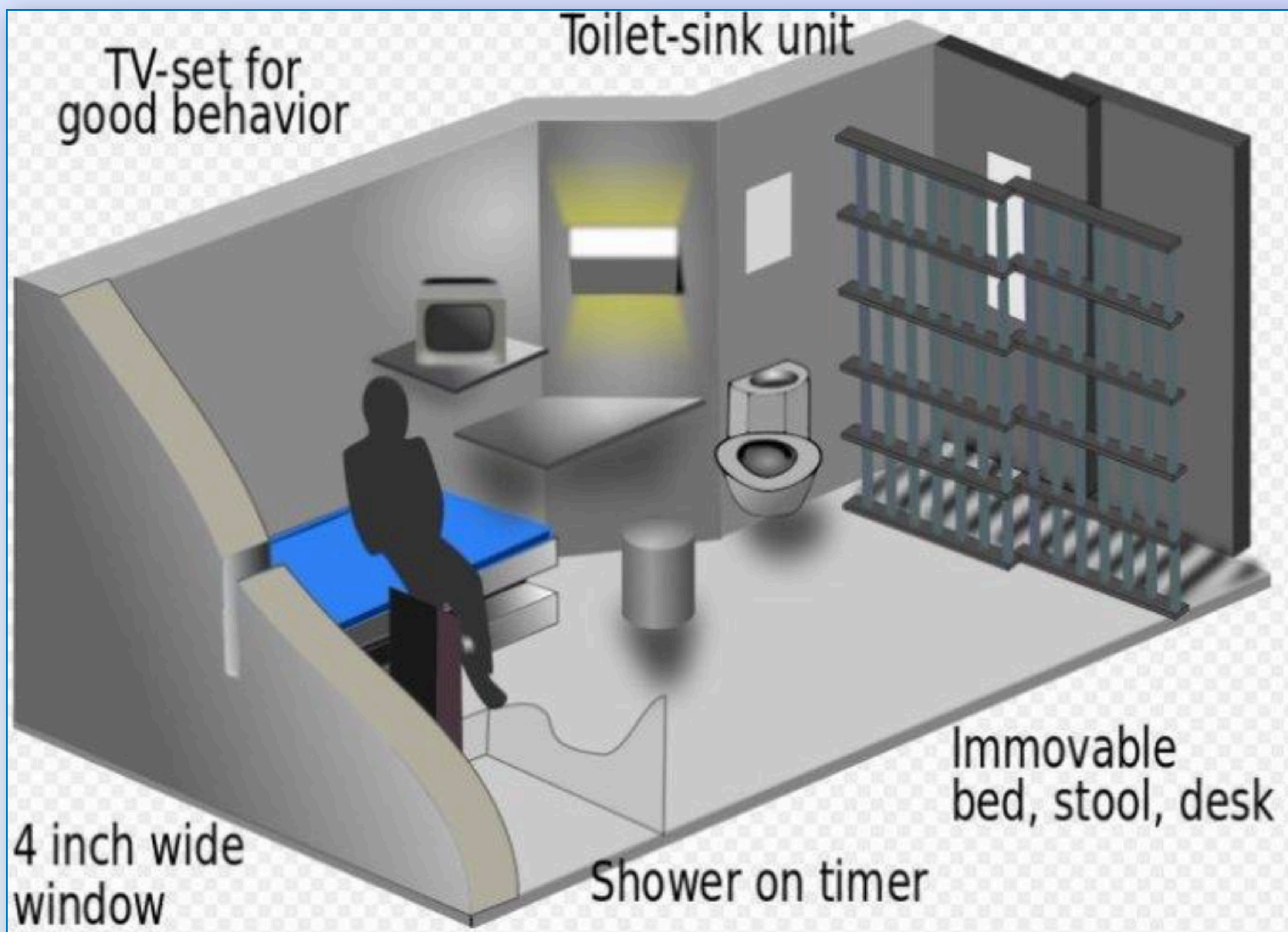
September 26, 2021 · 39 min read

The Prosecution of Julian Assange: Extradition Case

- In 2018, an indictment against Assange was est. and kept under seal until the day of his arrest on April 11, 2019 (**17 counts of espionage** & 1 count of conspiracy to commit computer intrusion)
- Extradition hearings in February 2020 and September/October 2020
- On January 4, 2021, a Magistrate's Judge issued her decision **rejecting the extradition order** on grounds that it would be **oppressive to extradite Assange** to the USA under section 91 of the UK Extradition Act of 2003
- The Crown Prosecution Service representing the US government **appealed this decision** and **won the appeal**
- Assange's legal team filed its perfected grounds of appeal to the High Court, which was rejected on June 8, 2023. There is **one more opportunity to appeal** in the UK. Assange may also bring the case before the European Court of Human Rights.

What if Assange is extradited to the US?

- As a national security defendant Assange would likely be **placed in a special unit** during pre-trial detention likely in Alexandria Detention Center (SAMs, extreme isolation, cannot prepare case, no access to the outside world)
- Defense witness, **American Attorney Yancey Ellis, testified** that when speaking with his clients in this setting, they had to shout at one another in order to be heard through the steel doors.
- Julian Assange would be tried in the **Eastern District Court of Virginia**. No national security defendant has ever won a case there. The jury pool would be comprised of former intelligence and their family members.
- The case would be **not be public** nor would it be open to the press (national security case - CIPA). There is no public interest defense allowed in espionage cases.
- If convicted, Assange would likely to placed in **ADX Florence or another maximum security prison**. ADX Florence in Colorado houses the most violent and dangerous criminal offenders in the US.



TV-set for good behavior

Toilet-sink unit

Immovable bed, stool, desk

Shower on timer

4 inch wide window

Size of the cell: 3.5m x 2m (7ft x 12ft)

The Prosecution of Julian Assange

What's at stake?

- The **public's right to know** and access information
- The Assange case **criminalizes standard and normal journalistic activity** (source protection and news gathering)
- The Assange case **sets a global precedent** that empowers governments to extradite foreign citizens for political purposes
- The Assange case **is a threat** to the First Amendment
- **Your ability to fight** for your own causes

The Prosecution of Julian Assange

How to help

- Visit: dontextraditeassange.com
- Visit: assangedefense.org
- Politely **contact** your representatives, MPs, the White House
- **Spread the word** to a friend, family member, neighbor, etc.
- **Write** to your local media organization (newspaper, TV station)
- **Write** to Julian Assange

Mr. Julian Assange
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About Taylor Hudak

Taylor Hudak is an American-Hungarian journalist based in Budapest, Hungary. Taylor is a contributor to Children's Health Defense Europe and covers issues focused on human rights, free speech, health, and law. Taylor researches, writes, and produces video reports and interviews for The Last American Vagabond and acTVism Munich.

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