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### INCREASING CHALLENGES IN AI REGULATION : NEED FOR ADAPTIVE, NOT REACTIONARY POLICIES.

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The regulators have been facing a big challenge with the advent of gen AI systems. Even though many states/organisations are blocking their usage, there is a need to be adaptive to the development rather than implementing reactionary policies.

Recently, 25% of European organisations have blocked Grok AI, a chatbot developed by Elon Musk's xAI, according to new research by Netskope Threat Labs. Grok AI, which has been integrated into its sister platform X (formerly Twitter), has become a topic of controversy due to contentious responses. The Irish Data Protection Commission (DPC) initiated an investigation into how personal data from publicly accessible posts on X is processed for training generative AI (GenAI) models, specifically targeting the Grok large language models (LLMs).

Prior to the advent of generative AI systems like Grok, there were two kinds of content systems online – the publishers and the intermediaries (such as -social media). The **publishers** created their own content, and were therefore liable for it if it were found unlawful. The **intermediary** platforms did not create their own content and hence, liability constructs for intermediaries were devised accordingly.

A safe harbour provision was introduced in many parts of the world that shielded online intermediaries from liability, provided they met certain conditions. Subsequently, it was mandated for these entities to communicate to the users about the nature of content that can and cannot be posted on their platforms.

#### **Fixing the liability**

However, Grok AI presents a departure from the publisher and intermediary paradigm, as both users and the system play a role in the creation of information.

This new development has raised new questions of liability, that could be summed as follows:

- **First**, what matters is the context in which the content is generated, as well as the intent behind it. AI content governance is highly circumstantial and must be considered in a specific context, meaning that a precedent from one case cannot be blanketly applied to a variety of different situations. For instance, if a person is relying on a generative AI system to assist him in listing different examples while writing a historical book on hate speech, then it is not unlawful. However, if another person uses a chatbot to publicly produce and disseminate speech to incite unrest or violence, it would be a different matter.
- **Second**, in the case of Grok, the question is whether the chatbot is required to adhere to content related restrictions set out under the Information Technology Rules of a state.
- **Third**, the role of the user has to be factored into content that is created by AI systems like Grok. Many developers of AI systems put guardrails in place to ensure that their systems do not generate certain unlawful information. But sophisticated users can bypass such guardrails to make a generative AI system create content that it is not supposed to, which may be unlawful.

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Given that such attacks are difficult to pre-empt and guard against, such a scenario may warrant regulatory concession and provision of safe harbour.

### **It is Not Just Regulation**

Every nation/organisation stands at crossroads in shaping the legal and ethical future of generative AI. While constitutional boundaries around free speech must remain the bedrock of any regulation, the rise of AI demands a more adaptive, context-sensitive approach — one that recognises the shared responsibility between platforms, developers, and users.

A blanket imposition is not the solution of the day as it may affect the genuine use of gen AI in cases such as - the customer care bots. Therefore, every regulatory body must craft a forward-looking legal architecture that balances accountability with innovation, and freedom with responsibility. The challenge is not just to regulate AI but to do it wisely.