Social media is but a stage upon which the drama of human society unfolds; the script, however, is written by its actors.

--Mohamad Ezri Bin Haji Abdul Wahab

Regulating Social Media

H. Douglas Adams, PhD **11 May 2025**

Gutenberg's invention of the printing press in the 1430s changed history. Before that, books were copied by hand and only the wealthy had access to them. The printing press made books more available, helping spread ideas, fuel the Renaissance, and shape how we share information today. But it also sparked controversy. In England, the Stationers' Company, formed in 1403, got a royal charter in 1557 giving it control over publishing. They could ban books and punish writers who went against the Church or the Crown. In Elizabethan England, the Master of the Revels had the power to approve or censor plays. In Colonial America, speech and religion were tightly controlled, and authorities punished those who criticized the crown. Fearing the power of print, the Crown taxed newspapers and banned "dangerous" books. Throughout history, how we communicate and what we say has often led to government control. So, today's reactions to social media are not surprising. The need to express ourselves drives the popularity of social media. While some see it as a force for change, it mainly reflects society's current values and behaviors. People choose platforms where they find others who think like them, creating digital communities that offer identity and connection. But social media also has dark sides—misinformation, harmful content, and bad actors. This raises the question: who should oversee and regulate this space?

Harawa (2014) suggests that "some may argue that social media … deserves no protection as it adds no value to the marketplace, and after all, the First Amendment protects speech for its value to society."

According to Carr (2021) "the arrival of broadcast media at the start of the last century set off an information revolution just as tumultuous as the one we are going through today, and the way legislators, judges, and the public responded to the earlier upheaval can illuminate our current situation." The distinctions between forms of communication that shaped the Supreme Court's decision in the Carlin case (FCC v Pacifica Foundation 438 US 726) influenced regulatory policymaking throughout the early mass media era. While digitization has blurred these distinctions on a technical level, it has not eliminated them entirely. Section 230 of the Communications Decency Act (CDA) shields web companies from accountability for the material they allow to be posted online. It places private interest above public interest. This approach made sense in the

beginning but is counterproductive today allowing social media companies and content producers to operate under a liability shield.

Matthews (2023) notes a need to “revise Section 230 of the Communications Decency Act (CDA) to establish that social media companies can be held liable in court for harms caused by content on their platforms.” Since companies control the algorithms responsible for amplifying what’s on their platforms, they should bear liability for defamatory content transmitted.

Bergman (2023) reports that “Judges and scholars increasingly recognize that the expansive interpretation of Section 230 over the past 25 years has incentivized social media companies to elevate profits over public safety, and that products liability provides a sound legal vehicle to promote corporate accountability and consumer safety. Application of products liability principles to social media platforms will not throttle free speech, stifle innovation, nor deprive consumers of the tangible benefits that social media provides. Rather, by internalizing safety costs within the economic entities that design and profit from unreasonably dangerous platforms, strict products liability will simply subject social media platforms to the same risk-utility analysis as any other consumer good. And holding social media companies liable for foreseeable harms caused by negligently designed platforms merely imposes the same duty of reasonable care that is born by any other product manufacturer.”

Silbaugh (2024) asks “Can we regulate against the harms inflicted by social media within the bounds of the Constitution? Eleven states passed laws to protect minors from social media harms in 2023, with legislation pending in many more….”, But Federal courts have stayed these laws for violating the First Amendment as the legislation failed to address the constitutional and common law concerns. Parents have initiated personal injury litigation against social media companies alleging that platforms induce harm sometimes with fatal consequences. But the social media companies evade this due to liability shields.

From a policy analysis perspective Rochfort (2020) finds that as calls to regulate social media grow louder, scholars stress complexity and challenge of the issue. Internet governance has long been a focus in communication research, with policy approaches generally falling into three categories: “Industry Self-Regulation, Limited Government Regulation, and Comprehensive Government Regulation”. With Self-Regulation social media companies manage their own practices with minimal government involvement. Limited Government Regulation introduces narrowly defined rules enforced by public authorities. Comprehensive Government Regulation would expand government oversight significantly, aiming to restructure the entire industry to address root causes of dysfunction—not just the symptoms. Rochfort also notes that “the idea of regulating social media and other information platforms as public utilities has received attention…. Proponents of this tactic contend that the Internet, broadly, and social media platforms, more specifically, have now become indispensable infrastructure for the modern

economy. Regulation of social media platforms as a public utility is an inherently more novel - and more invasive."

Desai (2022) informs us that "one framework through which to view this question-or perhaps one subset of this question-is, where should social media companies lie on…the 'speaker-conduit continuum'? When we think about regulating the post office or the old AT&T, …we instinctively think about that regulation differently from how we think about regulating The New York Times. Why does regulating the telephone company seem different from regulating a newspaper? One reason is that each plays a different role in the free-speech ecosystem: one is a 'speaker,' the other a 'conduit' for other people's speech. …the Supreme Court dealt with a similar conundrum, one that required it to interrogate, and then articulate, the role that newspapers and broadcast media each play in the free-speech ecosystem. the Court implicitly placed newspapers firmly on the "speaker" side of the speaker-conduit continuum and saw broadcast media as having some attributes of a "conduit." … the Court's decisions depended on a social construction of newspapers and broadcast radio, one that intertwines with the public values the Court saw each medium as furthering. …the Court understood broadcast as …a medium of communication, one where the interests of the public as audience, not as speakers, were of primary concern. Similarly, we cannot understand the appropriateness of any legal regulation of social media without making judgments about both where on the "speaker-conduit continuum" social media companies should lie and what public values we want them to embody. Social media regulation matters for the same reason that regulation of any communications medium matters: it shapes the free-speech ecosystem. The choice of regulatory framework for any given type of entity in that ecosystem depends on the public value(s) we want that type of entity to play. Even the most private of media - entities like the newspaper - exist within a regulatory structure that furthers some public value."

Sweeny (2023) explores the issue of social media defamation noting that "defamation is a longstanding tort with an almost universal definition in the United States. However, because it was formulated with print media in mind, when it is applied to statements posted online or on social media, things get more complicated. Print media differs markedly from social media in how quickly and widely the information can be transmitted as well as by whom. Moreover, public speech is no longer the sole province of journalists with fact-checkers and copy editors at hand, which means that internet speech also has fewer safeguards for veracity. As early as 2009, courts began to entertain defamation cases based on statements made on Twitter. As these cases [and others] show, some aspects of defamation law, once well-settled, become difficult to apply to the rough-and-tumble world of internet speech."

Section 230 of the CDA protects internet platforms from liability they might otherwise incur as a result of third party action. Addressing that concern McGee (2022) states that "scholars argue that either amending or repealing Section 230 is the most viable option. Scholars on this side of the debate would argue that the legislature is responsible for

detailing the standard of liability that can guide courts in settling alleged violations as they arise. Legislation aimed at policing algorithms not only requires companies to create a safer environment online, but also allows companies to maintain a largely self-regulated market. As more reform proposals are discussed, lawmakers must remember that the solution cannot rest on individual users because the problem stems from social media companies' conscious decisions”

Jaffe (2024) writes that it seems as though those in support of Section 230 of the DCA “have valid arguments and reasonings for such beliefs. In theory, it is easy to keep Section 230 of the DCA unchanged as the internet is exponentially growing and becoming more and more pivotal in everyday life. By implementing new systems such as how to assign liability in the face of tragedy, disruption to such growth or internet use is bound to occur. Changing Section 230 is an attractive solution for anyone who has been adequately impacted by online content and is left searching for liability in the face of tragedy.”

For a contrarian view we go to Morris (2021) who posits “content regulation is difficult even in the best of circumstances; it is difficult for all speech, and it is especially difficult when the topic is the murky world of speech. The consumer needs to take agency of their own information. Regulation of the social media is futile: it is futile because history has proven we cannot regulate speech; it is futile for technological reasons-the technology of fakery and stealth is so good that the truth cannot be determined; it is futile for global reasons-there is always a different regulatory regime that will let the material pass; and it is futile for viewpoint reasons-who is to make the determination? There is nothing wrong with leaving the social media alone to make their own determinations. What is difficult, and perhaps impossible, is to police the judgment they use to make those determinations. Each person should be free to choose the social media that works best for them.”

Lastly, we note Harawa (2014) comment that “even when social media activity is not contributing to a larger social dialogue, social media is an important tool of self-expression. It is a primary means of communication for people around the world, supplanting speech that was previously conducted in private that people would not dream of criminalizing.”

From Rochefort

Policy Analysis Criteria

Criteria	Definition
Effectiveness	The probability that stated policy goals will be achieved. Specific considerations for the regulation of social media platforms typically include issues of privacy protection, freedom of expression, and the maintenance of democratic institutions such as the electoral system.
Administrative Difficulty	The ease or difficulty faced by government and regulated actors in implementing the proposed policy.
Cost	The estimated overall cost of implementing the specific policy. This includes things like the government's creation of new administrative agencies, hiring subject matter expects, and developing new technical systems for oversight. Costs may also fall upon the regulated actors.
Political Acceptability	The extent to which a policy proposal has support from elected officials, important private stakeholder groups, and public opinion.

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