

SOCIAL MEDIA REGULATION: BALANCING FREE EXPRESSION AND ACCOUNTABILITY

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Introduction

In the early years of the internet, internet service providers realized they had some problems: if their users produced potentially defamatory, illegal, or misleading information, they were likely to bear consequences. Mail delivery services like the U.S. Postal Service and FedEx are not responsible for the contents of packages they deliver, which made it unreasonable for internet service providers to be held accountable for content they had no control over (Alfino, 2023). Because of this, Congress created safe harbor protections that provide immunity from liability when “internet service providers and social media platforms [SMPs] act in good faith to remove objectionable or illegal content” (Alfino, 2023). This immunity included “lewd, obscene, lascivious, filthy, excessively violent, harassing, or otherwise objectionable” content (Alfino, 2023).

The safe harbor is part of Section 230 of the Communications Decency Act of 1997. It proclaimed that internet service providers are not publishers while also enacting a wide range of sensible moderation practices, such as implementing content guidelines, providing reporting mechanisms for objectionable content, and responding to user complaints in a timely manner (Alfino, 2023). While these safe harbor protections were vital in the early development of the internet, the rapid evolution and widespread influence of social media platforms have introduced complex challenges that test the balance between free speech immunity and moral accountability.

Throughout U.S. history, Freedom of Speech has been at the forefront of democracy. However, because of the growth and popularity of SMPs like Twitter, Facebook, TikTok, Instagram, and Snapchat, the environment of these online spaces have become complicated in many ways. Between 2021 and 2023 especially, social media platforms posed threats to civil democracy, raising concerns about their impact on free speech. Twitter played a role in

coordinating a seditious conspiracy tied to the Capitol breach, promoting white supremacist ideologies, and spreading disinformation that undermines societal stability and national security. (Matthews, Williams, & Evans, 2023).

This report aims to evaluate whether social media should be strictly regulated or remain mildly regulated by the platform’s current terms of agreement, which is viewed as unregulated. If regulation is deemed necessary, it will also determine who should be responsible for regulation—social media platforms themselves, the government, or a possible third party—and provide a well-founded recommendation.

This topic matters in the field of Journalism because social media plays a significant role in how news and information is distributed and consumed by the public. Regulation, or lack of regulation, affects the reach, credibility, and type of shared content, which can either enhance or injure journalistic efforts to inform the public. Journalists also rely on freedom of speech and press in reporting, and the spread of misinformation poses credibility challenges to journalists and blurs the lines between real news and fake news for members of society. Regulations on social media content affect the public and their trust in journalists and the content they publish. These regulations can hold people and platforms accountable by addressing biases to ensure content regulations do not silence voices or promote misinformation.

Overview of Positions

There are two very distinct positions on this issue: pro-regulation (Side A) and anti-regulation (Side B). Side A believes SMPs should be regulated to prevent the spread of

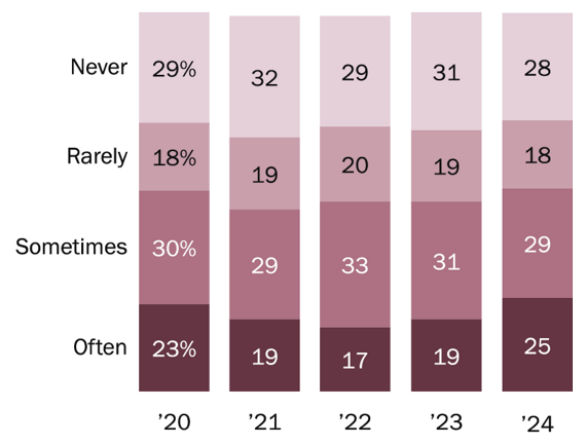


Figure 1. A table showing percent of adults who get their news from social media in the years between 2020-2024 (Pew Research Center 2024).

misinformation, hate speech, and harmful content and to ensure accountability, a key factor in maintaining the balance between free speech and social responsibility. Side A also argues for government oversight of social media platforms, arguing that self-regulation leads to no regulation at all. Side B advocates that over-regulation threatens free speech, and self-regulation by platforms and minimal government intervention is preferred to maintain the balance between free expression and safety. Achieving the right balance between free speech and accountability is a crucial challenge that affects us all.

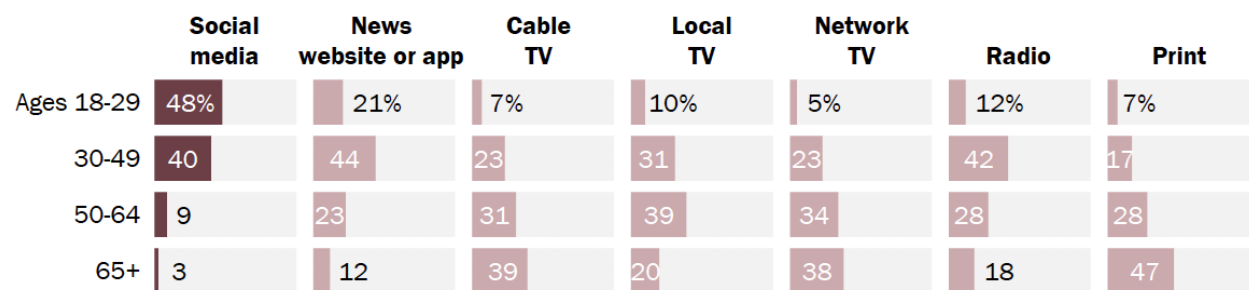


Figure 2. Survey of where people of different age demographics get their news, showing how people under 30 heavily rely on social media (Pew Research Center 2020).

Background

The emergence of new modes of communication in the early twentieth century, radio, television, telephones, cell phones, and the internet, significantly altered our communication landscape. Social media, a later addition to this list, is unique in that it is not regulated by the Federal Communications Commission (FCC) or state governments, but instead relies on self-regulation, meaning that the content is moderated by the companies themselves (Doyle, 2022). *Reno v. ACLU* (1997) established that internet service providers were not broadcasters, which granted them this exemption (Matthews, Williams, & Evans, 2023).

In a new Media & Technology Survey from Boston University's College of Communication, 46% disagreed or strongly disagreed with government regulation and 28% agreed or strongly agreed. More survey respondents expressed agreement with the removal of

unverified information, 63%, or minimizing, 57%, by owners of the SMPs (Staff, 2024). Not only are American's generally not in support of government regulation, the survey concluded that freedom of speech on SMPs is vital to two-thirds of respondents.

However, in newer research by Pew Research Center, 51% of Americans want social media platforms to be “regulated by an official, government-appointed body” (Hutchinson, 2024). While that number is up according to this new research, it's down from 56% found in 2021. We can deduce that American's trust the government less following the Capitol riots and the impact SMPs had on political speech in 2021 (Hutchinson, 2024).

Side A – Advocating Oversight: Support for Social Media Regulation

Side A warns others that in the name of security and civil safety, SMPs cannot continue to self-regulate. The lack of strict oversight has led to influence elections, organize and plan attacks, and spread hate speech and misinformation. All SMPs have their own form of moderation that includes a terms of ageement and self-regulation as needed. This results in a lack of standardized practices across social media platforms. In

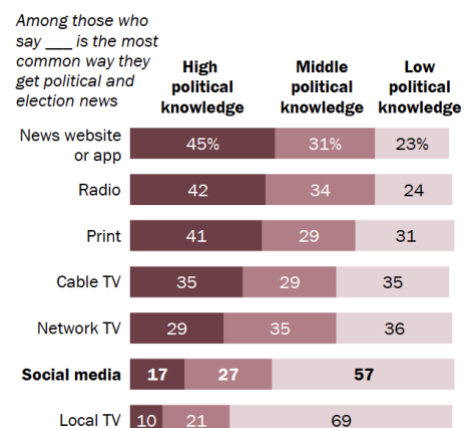


Figure 3. A bar graph displaying percent of political knowledge among users and how they get political content, showing that social media users have the lowest political knowledge (Pew Research Center).

2019, Twitter announced it would not allow paid political advertisements while, at the same time, Facebook exempted politicians and campagisn from a fact-checking process, while Google rarely, if ever, moderated false ads (Doyle, 2022). This creates an unstable and unreliable online climate.

In 2020, the Oversight Board, an independent body established by Meta (formerly Facebook) to review and make decisions on challenging content moderation cases across its

platforms, including Facebook and Instagram, launched after a year long study to help decide what could be published and what needed to be removed. This board was made up of twenty global legal scholars and technology experts. However, it's said that the creation of this committee did not stop the publication and spread of hate speech and violence and that these messages went unchecked or were evidently approved by Facebook CEO Mark Zuckerberg (Doyle, 2022).

The storming of Capitol Hill was fueled by inadequately regulated social media content. On January 6, 2021, during a speech to protesters, former President Trump used Twitter to call on people to march on Congress, a call they followed. For months leading up to the insurrection, hate and misinformation spread unchecked, creating a ticking time bomb that ultimately exploded into violence. With standardized and effective regulation, the spread of such provocative content and speech could have been mitigated, potentially preventing the attack.

Side B – Protecting Freedom: Opposition to Social Media Regulation

Side B, anti-regulation, argues that we can't trust the government or SMPs to regulate wisely in the best interest of the people, and that social media needs transparency, not regulation. This position states that over-regulation threatens free speech. Therefore, self-regulation by platforms and minimal government intervention is preferred to maintain the balance between free expression and safety.

However, self-regulation becomes even more complex when you consider how SMPs play an active role in politics and our culture. The problem: transparency is nearly impossible when there

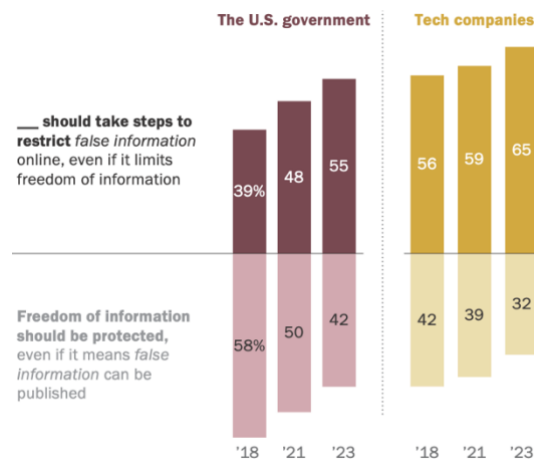


Figure 4. A bar graph showing support for the U.S. government and tech companies in favor or not in favor of restricting false information online. Restriction has risen

is an extensive variety of speech that can be misleading or false depending on many variables such as the receiver and the context (Lin & Van Alstyne, 2022).

The January 6th storming of the U.S. Capitol shows us how false claims and fake news can lead to violence and chaos. Following this event, the top SMPs began tagging posts if they were deemed unreliable or untrue (Cusumano, Gawer, & Yoffie). These actions clearly did not prevent the insurrection. The fact that the event unfolded despite these warnings emphasizes a crucial point: flagging harmful content in real time does not automatically stop its spread or mitigate its impact, especially when such content is already deeply embedded in online culture. This highlights the limitations of the current reactive measures and the need for more proactive regulation and oversight to prevent the spread of dangerous misinformation that can threaten society and democracy.

This side knows that government regulation, the government legitimizing speech, is dangerous. This is where a new, third-party option is born: the creation of a new institution for oversight of media moderation. Scholars propose we, “split the definition, adjudication, and remediation of misinformation across different bodies just as we split the legislative, judicial, and executive branches of government” (Lin & Van Alstyne, 2022).

However, even third-party institutions designed to oversee content moderation, like Meta's Oversight Board, can have limitations. While the Oversight Board aims to bring independent and transparent decision-making to social media content moderation, it is not immune to potential biases. The board is funded by Meta, which raises questions about its independence, and its decisions can still reflect the values and priorities of the platform rather than the public interest; which is what we saw in the 2021 storming of the Capitol (Oversight Board, n.d.). Furthermore, decisions about what content is harmful or misleading can vary

depending on the board's interpretations and the context in which the content is presented. This complexity underscores the challenge of achieving truly objective oversight in an environment where both politics and profit play major roles.

Conclusion

Marshall Van Alstyne, Chair Professor of Information Economics at Boston University, argues that the status quo on social media is unsustainable and demands change. According to Van Alstyne (2022), social media platforms have become vehicles for dangerous agendas such as vaccine hesitancy, genocide, racism, sex trafficking, and cancer disinformation. He highlights how terms of agreement are often disregarded in the name of "newsworthiness," with platforms known to give favorable treatment to influential figures. Van Alstyne argues that social media platforms should enforce existing laws in a fair and consistent manner, ensuring that all users are treated with equal respect and without favoritism, regardless of their status.

The debate over social media regulation highlights the delicate balance between safeguarding free speech and ensuring accountability to today's powerful social platforms. Supporters of regulation argue that strict oversight is essential to curb the spread of misinformation, hate speech, and content that can incite violence, as evidenced by events like the January 6th Capitol riot. Advocates against regulation, however, are opposed to government interference, emphasizing the risks it poses to free expression and the potential for abuse of power. As public opinion remains divided, with some supporting third-party oversight to maintain neutrality, the need for a refined approach becomes evident. Ultimately, any path forward must prioritize transparency and protect democratic values while acknowledging social media's profound influence on modern society.

In light of these concerns, I believe that an independent body, free from both government and social media company influence, is crucial for overseeing content moderation across all platforms. This neutral third party would ensure impartiality while protecting democratic values. Ultimately, any path forward must prioritize transparency and protect democratic values while acknowledging social media's profound influence on modern society.

Recommendation

Establishing an independent organization called the Digital Accountability Council (DAC) is recommended to address the ongoing challenges of social media content regulation. The International Digital Accountability Council (IDAC) is a non-profit, independent privacy watchdog that currently exists. This organization promotes accountability in the digital sector by examining data privacy practices and monitoring whether digital platforms are respecting user privacy and security (International Digital Accountability Council, n.d.). Its focus is on data practices and not content moderation.

The proposed Digital Accountability Council (DAC) would operate as a non-governmental entity with a multi-stakeholder body to ensure unbiased practices for overseeing and guiding content moderation on social media platforms. This council would need to consist of experts in law, technology, ethics, journalism, and public policy. This would ensure the DAC remained transparent, unbiased and enforced consistent standards across all SMPs.

The key roles and responsibilities of the DAC would be to develop a standardized set of guidelines that ensure harmful content is addressed across digital platforms, require platforms to report on their content moderation practices in order to hold them accountable, conduct audits on platforms that are continuously being flagged, incentivize responsible regulation by social media

platforms and lastly, educate the public on the dangers of dangerous content such as hate speech and misinformation.

While it may seem reasonable for social media companies to fund the DAC to support its mission, the potential for bias remains a concern. Ideally, the DAC should be funded by neutral, independent entities, such as a coalition of higher education institutions or nonprofits, ensuring that the organization stays impartial, fosters transparent oversight, and builds trust with both SMPs and their users.

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Appendix:

A- Senate Bill 1876 – Platform Accountability and Transparency Act

This proposed legislation addresses the regulation of social media platforms and their role in content moderation. The full text of the bill can be accessed at:

<https://www.congress.gov/bill/118th-congress/senate-bill/1876/text>.

