Social Media Companies, Legislation, and the Public Interest

Alan Albarran
Professor Emeritus; The University of North Texas;
Email: alan.albarran@unt.edu

Iranian Journal of Information Processing and Management

Received: 1, Sep. 2021 **Accepted:** 30, Jan. 2022

Abstract: This essay examines the tripartite relationship between social media companies, policy regulators and the public interest. There are many complex issues to consider regarding regulation of social media companies. The author looks at all three areas separately to try and understand the motivations and expectations of each entity.

Keywords: Social Media, Regulation, Policy Makers, Regulators, Public Interest, Business and Industry

Iranian Research Institute for Information Science and Technology (IranDoc)
ISSN 2251-8223
eISSN 2251-8231
Indexed by SCOPUS, ISC, & LISTA
Special Issue | Autumn 2022 | pp. 5-18
https://doi.org/10.35050/JIPM010.2022.039

The unbridled success of social media companies creates a paradox for regulators and their efforts to promote a competitive marketplace while protecting the public interest. A quick Google search (or use the search engine of your choice) reveals numerous postings/articles taking both sides of the issue of regulation and how to regulate. This essay examines this situation by considering the three main stakeholders in this paradox (social media firms, policymakers, and the individual users by examining the key concerns of each entity. Understanding the individual motivations of social media firms, policymakers and users is a necessary first step in finding a solution to this global problem.

It is important for the reader to understand this author's expertise and approach before continuing. I am a retired American professor whose life's work centers on the management and economics of the media industries; I do not consider myself an expert on social media. My perspective in writing is thus Western-based and Western-influenced. I believe in capitalism, and that free markets offer the best opportunity for economic growth and informed democracy. I was invited to provide this essay by the Editor, but I alone am responsible for the words and ideas expressed herein.

In 2013, Routledge published my edited volume, *The Social Media Industries* (Albarran, 2013), the first work of its kind to examine *how* social media was evolving as an industry and examining the nascent industry at that time using both descriptive and analytic methods. While the volume was well received and honored in several ways with praise and awards, much has changed over the past decade as the book was being written and edited for publication.

One thing that has not changed over time is that regulators are still perplexed as to how to regulate social media in any meaningful way, and this is true throughout the world. Social media companies have captured the attention of the public, and billions of people connect with social media every day to exchange ideas, photos, videos, and many types of useless and meaningful information. While social media is very attractive to many users, it can also be a harmful tool by bad actors promoting everything from bullying to hate speech to acts of violence. Social media has been blamed for promoting many forms of discrimination, fake news, election tampering, and numerous other issues. As such, regulators in many nations are wrestling with how to "reign in" social media as an industry and hold firms more accountable and responsible.

Given this introduction, we can drill down into each of our three stakeholders to better understand their position in this paradoxical debate over how to regulate social media, or if it should be regulated and in what ways. We will begin with a look at the social media industry.

Social Media Firms/Industry

In economic terms, an industry is a collection of firms (typically more than three) that produce the same goods or services for the same market. There are hundreds of companies or firms that participate in the social media industry around the world. However, as in many industries, there are a set of leading firms that tend to capture much of the market. In the social media industries, these firms include such notables as Facebook, Instagram, YouTube, Twitter, WeChat, Tik Tok, QQ, Snap, etc. (note these are not ranked).

Social media firms are like other businesses in that they operate to earn a profit. Their goal is to maximize revenue and capture market share. Social media companies participate in two simultaneous markets: the market for users/subscribers and the market for advertising. Social media companies offer their platforms for free to users. As users grow their individual networks and attract followers, they, in turn, attract advertisers. These individuals are referred to as social media influencers, usually well-known athletes, actors, and newsmakers (Geyser, 2021).

Social media companies use many metrics to analyze users and their activity (Chen, 2021). Chief among these is the concept of engagement, which consists not only of the time spent on a platform but other ways in which users are actively engaged (posting content, sharing comments, gathering new followers, etc.). Many users may not be aware that everything they “see” on a social media platform is recorded and aggregated with previous activity (Fourview Team, 2020). Over time, this allows social media companies to develop a unique profile for each user that can be accessed by advertisers. Social media companies are in one sense a giant database of “big data” information, which gives the companies leverage in negotiating with advertisers. In the case of Facebook, this information can be shared with other platforms it owns, like Instagram and WhatsApp.

The information compiled by social media companies of our use affects what we see on future visits to the platforms. Algorithms of past use influence the postings we see on our next use, especially with the sharing of consumer data across platforms (See Zafarani, Abbasi & Liu, 2014). For example, most of us have used Amazon for shopping, even if we are just checking prices or gathering information. But on your next logon to Facebook, you are likely to see advertisements for the same items you were shopping for on Amazon or other sites.

Like businesses in any industry, social media companies resist efforts by policymakers to enact legislation that could harm their position in the market. In the United States and most developed nations, lobbyists represent the major social media companies and work to try and prevent legislation through their interaction with politicians. Facebook spent approximately $20 million on lobbying activities in 2020, the most of any technology company (Feiner, 2021).

One thing that helps social media companies in their fight against regulation is that the platforms are offered free to users. No one is required to have a social media account, nor is anyone required to post information. Users do this freely. No doubt, many users ignore the many legal terms stated in setting up a new profile; they simply “agree” and begin using the platform (Berreby, 2017).

Social media companies have also been slow to attempt any type of censorship of their content, even though some postings may be harmful (such as hate speech) or contain inaccurate information (“fake news”). One reason for this is that the safe harbor provision (commonly referenced as Section 230) of the Communications Decency Act of 1996 protects social media companies, Internet service providers and search engines from liability for defamation by users (Gillespie, 2017).

The CDA was the first attempt by the United States Congress to limit the spread of online pornography. The Act was challenged and deemed unconstitutional by the Courts except for Section 230, which survived. As such, social media companies claim Section 230 protects them from content liability. Critics contend that social media barely existed in 1996, and at the time, was not adopted worldwide with such cultural impact. Policymakers face a dilemma in revising or even repealing Section 230 (Kerry, 2021). Policymakers want social media companies to accept more responsibility for the content posted on their platforms but at the same time, they must be careful not to prohibit free speech. It is a difficult situation for policymakers to address without creating more unforeseen problems. The challenges of regulating social media companies are discussed in the next section.

Policymakers

Policymakers represent the second part of the social media paradox troika. All governments have regulatory bodies made up of elected and/or appointed officials. Policymakers enact laws and regulations that affect all aspects of society—individuals, businesses, international trade, etc. Policymakers have the power to levy taxes, tariffs, and fines. Policymakers typically want to ensure competition in the marketplace by preventing anticompetitive behavior.

Policymakers have many issues with social media companies, but most can be broken down into one of three broad categories in no particular order. First is anticompetitive behavior, often mistaken as monopoly power. It is important to recognize that in economic terms, a *true* monopoly consists of only one seller of a given product, and the price is set by the monopolist. Many critics of social media inaccurately argue that Facebook is a monopoly. While Facebook clearly has a dominant first-mover advantage in that it has become the world's leader in social media networking, it is not a monopoly in an economic sense. The fact that Facebook is free disputes much of the argument because no user "pays" for a Facebook profile. Facebook is routinely criticized for being the largest platform, with its market position strengthened by its ownership of other popular platforms, Instagram, Messenger, and WhatsApp. In the United States and the European Union, there are efforts to force Facebook to divest itself of these additional platforms and make them separate companies (Dwoskin, 2020; Howoritz, 2020).

Anticompetitive practices consist of more than just monopoly-like behavior. Common examples include price-fixing, group boycotts, and exclusive contracts or trade association rules. These types are conducted in conjunction with other firms. It is well known that Facebook and other technology companies routinely share "big data" files with one another, regardless of it is done for a fee or free. There are unknown partnerships with advertisers and marketers designed to strengthen both entities. In very general terms, policymakers have a difficult time in linking social media to anticompetitive practices, which is why most countries attempt to break up dominant companies via antitrust regulations.

A second area of concern for policymakers is content regulation. Governments want and expect social media companies to provide more discretion over the types of content allowed on the platforms. Here think of content broadly; it may be photographs, videos, text, or even re-postings from other sources. The content may not be accurate or verifiable; it may pose harm in the form of hate speech, discrimination, sexual harassment, or bullying. Ideally, social media companies would somehow "check" material before it is posted. This may sound like a wonderful policy, but practically it is impossible to put into practice, especially with the current safe harbor provisions of Section 230 discussed earlier.

Social media companies such as Facebook would need to hire countless employees who would need to be trained on how to identify suspect content. It would take away the immediacy of posting material by the user, and it would also create a censorship-type situation where the social media company could deny the posting, creating a free speech issue. Companies like Facebook do use a series of algorithms to scan content *after* it is posted, and Facebook can remove content that does not meet "standards" or is questionable. Given the amount of material posted daily on the platform from all over the world, there is no way any social media platform (such as Wikipedia) catches everything. In the case of Wikipedia, the site asks users to correct any invalid or missing information.

Facebook and Twitter can penalize users by suspending their accounts or even banning their accounts—as in the case of former US President Donald Trump (Ghosh, 2021). But these are rare and unusual occurrences. The banning of Trump remains very controversial, especially among conservatives who claim the ban by Facebook and Twitter is unconstitutional and infringes on Trump's freedom of speech. The former President has sued the companies, and it will be very interesting to see how all of this plays out in the courts.

Regulators will continue to press for content regulation among social media firms. Likewise, we can expect social media companies will resist any such efforts to regulate the content on their platforms. Because of the many challenges associated with trying to "police" content, it seems unlikely that any meaningful content regulation can be achieved at a global level. There may be opportunities for some type of policymaking at the national or pan-regional level (such as the European Union or other national cooperatives), but that is also unlikely and would be aggressively challenged by social media companies.

The third area that policymakers would like to see more regulation is in individual (user) data rights. Again, this is an area that is full of controversy and disagreement. At the core is the question of who owns the “data” that is posted on social media? Social media companies quickly point out that when you accept the terms to create a profile on Facebook, Instagram, Snapchat, and other profiles, you are providing a license for the platform to use your text, photos, and videos for commercial and promotional purposes royalty-free. This is known as signing a EULA (end-user license agreement). Most users simply don’t read the agreements nor care about the details; they simply want access to the platform (Berreby, 2017). They click “accept” and move forward.

This license agreement stays in effect until the user deletes their profile on a social media platform or the profile is removed. Once a profile is deleted, the ownership of the content reverts to the user; the social media company no longer has a legal license to the content. Regulators would like to see the entire license agreement modified to prohibit the social media company from repurposing any user content in any way. But once again, the social media company has no interest in giving up these rights and considers the EULA a key provision of its use of the platform. These data rights are the key to social media platforms’ ability to profile user activity and then market that activity to advertisers.

Data rights involve more than just the initial EULA between the public and the social media platform. Regulators want to give consumers the ability to protect their personal data from being used without their consent. Members of the United States Senate reintroduced the Social Media Privacy Protection and Consumer Rights Act of 2021 in June of 2021 (see https://www.jdsupra.com/legalnews/social-media-privacy-protection-and-4106751/). This proposed legislation would cover many areas, including the ability of users to opt-out and therefore keep their information private by disabling data tracking and collection cookies; provide users greater control and access over their data, and require terms of service agreements (EULA) to be written in plain language that non-lawyers can understand.

Similar types of legislation on data rights have been passed in many countries of the world, and these efforts target all types of technology (websites, mobile phones and apps, etc.) and not just social media companies. According to the

United Nations Conference on Trade, 128 out of 194 countries (66%) had put in place legislation to secure the protection of data and privacy (see https://unctad.org/page/data-protection-and-privacy-legislation-worldwide). Of course, social media companies have joined other tech giants (Alphabet, Microsoft, Apple, Netflix) to thwart these efforts through intense lobbying efforts.

No doubt, one of the most sweeping regulatory efforts was the implementation of the European Union's GDPR (General Data Production Regulation) in May 2018. In short, the law is designed to provide individual consumers control over their personal data. In terms of social media, this means that any platforms operating in the EU from another region (e.g., Facebook, Instagram, etc.) must obtain permission from individuals to allow their personal data to be shared (Barnhart, 2020). This can be as simple as checking an opt-in box as part of a EULA. It has become a model for many other countries considering data rights policies.

To date, individual data rights is the area where policymakers have had the most success in trying to regulate aspects of social media. However, the efforts are not yet global in nature, and there are many other areas of concern with data rights that policymakers face. Social media represents a very moving target by its innovative nature and will continue to do so as the platforms evolve and improve their data tracking methods.

Users

The billions of users that access social media regularly represent the third part of the troika. After all, without the users there would be no social media industry, and regulators would turn their attention elsewhere. The popularity of social media is universal; in less than two decades, social media has become one of the many daily activities for billions of users. This growth has enabled companies like Facebook, Instagram, Twitter, and Snapchat to become powerful as an industry, maximizing their ability to earn billions in advertising.

Social media has always been about connecting people to one another—whether it be friends, families, co-workers, classmates or developing new relationships. Social media quickly proved immensely popular as a communications platform. At first social media was perceived as a big waste of time by many people, especially those over the age of 50 (just an example age) who didn't see the utility in the platform. Why would you want to share information about what you were doing today? How many photos/videos of pets do you need to see in a day? Why would you "tweet" about what you were eating for lunch?

Yet it is in these everyday experiences that most social media users (and the general population) experience life. Social media give people a new way to spend their leisure time and allow users to "follow" one another, especially important for those who live across time zones or those we don't often see due to distance. The ability to share reactions (like or dislike) and add comments simply add to the overall experience.

Very quickly the Facebooks of the world recognized that the data they were collecting on its users would be of immense value to advertisers and marketers, allowing direct access to consumers on the go and at the point of "sale" when they entered a business. While social media was evolving as a cool communication tool for younger people, it quickly earned a reputation as a business tool and a new way to reach consumers.

But what about the user? Do most users care about their data rights? Probably not, especially younger users. They simply want a way to interact with their peers and learn new things. Older users to the platform are more discriminating, and some may never participate in social media because of the privacy concerns mentioned earlier in this essay. Older users who do use social media join the platform to connect with friends and family (especially grandchildren). As such, there is no common answer when it comes to whether users care about their individual data rights.

Consumers would benefit from clearer license agreements and the ability to protect the data they post. The question here is how many consumers would be proactive in this regard? Again, there is just no way to determine such an answer.

Likewise, are users concerned that their use of social media platforms is being tracked and ultimately packaged to marketers and advertisers? Most users to the platform are ambivalent about data tracking and accept it as part of the process of being a social media subscriber. Those individuals more concerned about data tracking are the ones "making noise" and encouraging policymakers to establish protective legislation. However, many users are more than willing to voluntarily provide their data in return for benefits that social media provide, such as discounts or unlocking things or limited premium use.

Generally, most individuals who use social media probably don't care about the politics of regulation, nor are they concerned about how large or influential the social media industries have become in society. Users simply want access to the platform, the freedom to post, and the opportunity to enjoy the reactions and comments of their postings.

There are both positive and negative impacts of using social media, well documented by many academic and medical studies. Regular use of social media enables one to build relationships, share expertise, raise your own visibility, educate oneself, and recognize trends early (Friedman, 2014). Negatives do exist; among the areas of most concern are addiction to social media use, cyberbullying, negative body image perceptions, depression and anxiety, negative sleep patterns, and the fear of missing out on information by not consistently stating connected (Stegner, 2020). Overall, to this writer, the benefits of using social media far outweigh the negatives.

Summary

This essay has attempted to examine the three primary stakeholders (social media firms, policymakers, users) that must be considered in regulating social media. The material here is not meant to provide a scientific study backed by data or an extensive literature review but rather an attempt to understand the many contemporary challenges associated with the regulation of social media. Each stakeholder has been discussed in some detail, explaining the primary motivations and concerns associated with the regulatory process.

Personally, I find it quite significant that some type of regulation of social media exists in 66% of the nations of the globe. The scope and range of regulatory activity differ from country to country, and we may never achieve any sort of global agreement on what and how to regulate social media as an industry. But this is an important start, as most policies adopted to date center around individual data rights.

Where do we go from here in terms of social media regulation? As mentioned earlier, there remain efforts to break up some of the big technology companies in the USA that some policymakers believe are too powerful and influential. But the case to break up social media companies (and most technology) firms are based on incomplete market analysis and incorrect assumptions about market dynamics and market share. In this author's opinion, the breakup of tech companies in general and social media companies explicitly would cause more harm and confusion for consumers than the status quo.

There are many areas where social media companies can and should do a better job regulating themselves. For decades the broadcast television industry in the United States was able to stave off competition by a combination of effective lobbying and self-regulation. Social media companies should consider adopting more self-regulation in the areas of data tracking and privacy issues for starters. There is also room to do a better job in banning and removing hate speech and other offensive material and avoiding trying to limit political and religious posts.

Much of the negative perceptions of social media could be improved with a better effort to work together with governments on regulatory efforts rather than taking defensive positions. In the US, several progressive members of Congress would like to reform Section 230 of the Communications Decency Act, which among other things, protects social media companies from liability over user posts. However, it is unlikely these radical efforts will prove to be successful, as many have argued such a move would do more to harm free speech (Feiner, 2020).

Moving forward, we can expect to see continuing efforts by governments to find ways to regulate social media and attempt to break up tech companies. In tandem, we will see similar efforts by social media companies to resist any calls for divestment and other types of regulation. With government priorities dictated by more pressing societal matters such as the Covid-19 pandemic and rebuilding their economies and employment, social media regulation will likely remain out of mind for many policymakers. But how long will that be the case?

Finally, a few thoughts regarding future research scholars should consider. More studies are needed on companies, especially regarding changes in market share and other competitive behaviors. Understanding the strategy behind the actions of social media companies would also be welcome. For example, Facebook changed its name to Meta in October 2021 to reflect its growing focus on what it calls the metaverse. Will the name change affect perceptions of the company? Will it result in less scrutiny of the Facebook platform as Meta expands into new markets?

Scholars should also examine any potential regulation on social media companies and examine how any changes will impact the industry, market, and user levels. Opportunity exists to study regulatory activities at the national, regional, and international levels of activity. This area would be ideal for scholarly collaboration across countries to assess and analyze similarities and differences.

Finally, more studies on users and their behaviors are needed. We need to understand how gender and other demographic traits differ across the age and ethnicity cycles. What causes someone to be loyal on one platform versus another? What is the best way to measure engagement among users? How does social media use correlate or differ from other types of media activities, such as watching television or movies, listening to music, or reading? These are just a few areas that would help us understand a complete picture of social media users.

Clearly, there are many areas of research needed to understand better the role and impact of the social media industry on society and users. Scholars interested in this area of study have plenty of potential research topics to consider. These studies will help to increase our knowledge and understanding of social media, its cultural and societal impact, and its role in business and industry.

References

Albarran, A. B. (2013). *The social media industries.* New York: Routledge.

Barnhart, B. (2020, June 15). *GDPR and social media: What marketers need to know*. Available at https://sproutsocial.com/insights/gdpr-and-social-media/

Berreby, D. (2017, March 3). *Click to agree with what? No one reads terms of service, studies confirm*. Available at https://www.theguardian.com/technology/2017/mar/03/terms-of-service-online-contracts-fine-print

Chen, J. (2021, March 26). *The most important social media metrics to track*. Available at https://sproutsocial.com/insights/social-media-metrics/

Dwoskin, E. (2020, December 11). *Regulators want to break up Facebook. That's a technical nightmare, insiders say*. Available at https://www.washingtonpost.com/technology/2020/12/11/facebook-breakup-antitrust/

Feiner, L. (2020, November 17). *Mark Zuckerberg and Jack Dorsey testify before the Senate Tuesday — here's what they'll say*. Available at https://www.cnbc.com/2020/11/17/facebook-twitter-ceos-senate-judiciary-committee-prepared-testimony.html

Feiner, L. (2021, January 22). *Facebook spent more on lobbying than any other Big Tech company in 2020*. Available at https://www.cnbc.com/2021/01/22/facebook-spent-more-on-lobbying-than-any-other-big-tech-company-in-2020.html

Fourview Team. (2020, July 15). *How is social media invading privacy?* Available at https://www.fourview.com/blog/how-is-social-media-invading-your-privacy/

Friedman, L. (2014, April 22). *5 benefits of using social media.* Available at https://www.linkedin.com/pulse/20140422162738-44670464-5-benefits-of-using-social-media/

Geyser, G. (2022, April 4). Article updated from original; original post no longer exists. *What is an influencer? Social media influencers defined* [Updated 2021). Available at https://influencermarketinghub.com/what-is-an-influencer/

Ghosh, D. (2021, January 14). *Are we entering a new era of social media regulation?* Available at https://hbr.org/2021/01/are-we-entering-a-new-era-of-social-media-regulation

Gillespie, T. (2018, June 26). *How social networks set the limits of what we can say online*. Available at https://www.wired.com/story/how-social-networks-set-the-limits-of-what-we-can-say-online/

Howoritz, J. (2020, December 15). *Europe threatens to break up Big Tech if it doesn't play by new rules*. Available at https://www.cnn.com/2020/12/15/tech/digital-services-act-europe-google-facebook/index.html

Kerry, C. F. (2021, May 14). *Section 230 reform deserves careful and focused consideration*. Available at https://www.brookings.edu/blog/techtank/2021/05/14/section-230-reform-deserves-careful-and-focused-consideration/

Stegner, B. (2020, February 4). *7 negative effects of social media on people and users*. Available at https://www.makeuseof.com/tag/negative-effects-social-media/

Vaidhyanathan, S. (2019, April 28). *Regulating Facebook will be one of the greatest challenges in human history*. Available at https://www.theguardian.com/commentisfree/2019/apr/28/regulating-facebook-will-be-one-of-the-greatest-challenges-in-human-history

Zafarani, R., Abbasi, M. A. & Liu, H. (2014). *Social media mining. An introduction*. Cambridge: Cambridge University Press.

Alan Albarran

Dr. Alan B. Albarran has been conducting research on the management and economics of the media industries since the 1980s. The author/editor of 16 books, Albarran also served as Editor of both the Journal of Media Economics and the International Journal on Media Management.