

When Media Companies Insist They're Not Media Companies and
Why it Matters for Communications Policy

Philip M. Napoli
James R. Shepley Professor of Public Policy
Sanford School of Public Policy
Duke University
Durham, NC
philip.napoli@duke.edu

Robyn Caplan
Research Associate
Data & Society Research Institute
New York, NY
robyn@datasociety.net

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Introduction

In 2015, Gizmodo, a Gawker Media subsidiary, published two articles which worked to unveil some of the inner workings of Facebook's news ranking system called Trending News. The controversy that arose around these allegations, which mainly served to highlight the extent to which *human beings* were playing a role in determining what news was important versus algorithmic mechanisms, (see Nunez, 2016) has helped to focus public attention on the question of if and how social media platforms are functioning more as news organizations (Caplan and boyd, 2016; Isaac, 2016; Manjoo, 2016). Though much of this conversation has centered on the role of humans versus more mechanistic processes in determining what is 'newsworthy' (with many researchers arguing that the two processes are always inevitably intertwined), Facebook's dominant position as an intermediary for news media has also ignited discussion of whether social media platforms such as Facebook *should* behave as news organizations as they begin to take on similar roles that news organizations have taken on in the past, even going so far as to hire editorial news team responsible for curating spaces like Twitter's Moments page, Facebook's Trending News, and SnapChat's Featured Stories (Jarvis, 2016). The irony of the current relationship between technology and news is that companies that are more clearly 'content creators' have also begun to take advantage of the ambiguity of industry classifications in this space – companies like BuzzFeed, Gawker, and even the Washington Post, have all attempted, at various points in their respective histories, to make the case that they are 'technology' companies, rather than media companies (Dixon, 2014; Patterson, 2016; Kim, 2014).

Companies, like Facebook and Google have, over the last several years, evolved to play an increasingly influential role in the production, dissemination, and consumption of news. As

these digital media platforms become increasingly intertwined with the institution of journalism, it is important that policymakers, public interest advocates, and the users of these platforms have an accurate sense of how these platforms operate in the contemporary news ecosystem; as well as a clear sense of what can and should be expected of them as they operate in this realm.

Toward these ends, this paper seeks to address the argument that these companies should be considered technology companies rather than media companies and to consider the implications of this classification for communications policy. In unpacking and critiquing this argument, and laying out its underlining motivations, this paper will demonstrate the significance of what on the surface may seem like an inconsequential semantic distinction. As this paper will illustrate, there are fundamental policy and legal implications associated with how these companies define themselves and are defined by policymakers and the public, particularly with regard to accountability mechanisms that are often based on classifications at the bureaucratic, market, and professional association levels (Warren, 2014). Indeed, as this paper will illustrate, the history of communications policy is rife with examples of struggles over how to classify various platforms and services having far-reaching consequences.

In conducting this analysis, this paper first explores the importance of classification in communications policymaking. Drawing on examples from U.S. communications policy, this paper illustrates how and why disputes over the appropriate classification of communications technologies and services often have had profound policy implications. Next, this paper explores the contours of the argument that digital media platforms should be considered technology companies rather than media companies. This section will outline and critique the motivations for digital media platforms embracing the technology company identity over the media company identity, as well as the key rationales put forth in support of this position. The final section

discusses *why* it is important that these online content providers/aggregators be understood as media companies by communications policymakers, public interest organizations, and the public.

Language and Classification in Communications Policy

U.S. communications policymaking has been characterized by numerous disputes over how to appropriately classify new communications technologies and services. Such disputes have been common and are important because they affect the regulatory models applied to a technology or service, as well as the legal frameworks under which they operate. It's in these cases that specific words and metaphors used to describe technology, as well as the finer points of distinctions between one word and another, matter quite a bit.

The popularization of the Internet and its widespread use led to many issues related to classification – law and policy makers could not decide whether the Internet, which was taking on many of the functions of media and communication, was something wholly new (*exceptional*) or whether it fit within existing media policy regimes. In the 1990s, this became a major conundrum for the Supreme Court. In its assessment of the constitutionality of the Communications Decency Act in the late 1990s, in which Congress attempted to impose content restrictions on the Internet similar to those that have long been applied to broadcasting, the Court struggled with whether to treat the Internet as akin to the telephone, a print newspaper, or television/radio (Stein, 1997). Given the long tradition in the U.S. of applying completely different regulatory regimes to different communication technologies (rather than the alternative which would be to build off of existing policy), the argument of which analogy to embrace for the Internet had far-reaching legal and policy implications. In the United States, this has meant that different media industries – for instance, film industry, cable, broadcast, and the Internet – have had varying levels of First Amendment protection (Napoli, 2001).

A more recent example can be found in the FCC's network neutrality regulations, which may soon also find themselves before the Supreme Court. The FCC's network neutrality regulations hinge on the classification of Internet service providers as *telecommunications* service providers (akin to phone companies) rather than *information* service providers (akin to web hosting services) (Federal Communications Commission, 2015). After initially classifying ISPs as information service providers back in 2002, the FCC reclassified them as telecommunications service providers in 2015 (Federal Communications Commission, 2015). This was done because the FCC's regulatory authority over telecommunications service providers is much greater than its authority over information service providers (again, different technologies and services frequently operate under different regulatory models); so much so that the net neutrality regime imposed by the FCC would be impermissible if ISPs were classified as information service providers (Patel, 2014). Consequently, as one would expect, a significant dimension of the debate surrounding the network neutrality regulations revolved around the meaning of the telecommunications service and information service terminologies and their applicability to the provision of Internet access (Federal Communications Commission, 2015; Rinehart, 2015).

This discussion highlights the importance that language plays in policymaking. In the public policy literature in general, and in the communications policy literature in particular, there is an increasing reliance on discourse analysis to understand the dynamics of the policymaking process (Lentz, 2011). This body of literature consistently demonstrates that "words matter" (Lentz, 2013); that the specific terms employed in the discourse and documents that shape and reflect policy decisions have profound consequences, and thus are employed strategically; in some cases helping to define the contours of a policy issue; in other cases helping to marginalize

certain stakeholder groups from participating in the policymaking process (see, e.g., Streeter, 1987). Of particular importance within the communications policy context is the extent to which the discourse has exhibited a strong technological focus, treating new technologies as autonomous agents, and/or narrowly defining the policy terrain in purely terms of complex technical issues and concerns, to the exclusion of broader social concerns (Napoli, 2009; Streeter, 1987).

The key point of this discussion is to illustrate how important the adoption and use of specific terms and definitions are to policy debates and policy outcomes, and how the specific terms of classification can become highly politically charged. The use of one term over another opens up certain policy issues, normative concerns, and policy remedies, and forecloses others. Of course, the communications technology examples above took place within the context of very specific legal and policy proceedings. We are not yet at this point in relation to digital media platforms such as social media and content curators, but could be soon, with implications that could be profound for the future of our news and information ecosystem.

This technocratization of communications policy discourse serves as an important backdrop for the “tech-company-not-media-company” argument being considered here. The embracing of the media or technology company terminology could ultimately help determine the nature of the policy issues that arise and resonate – or whether any policy issues or concerns gain traction at all. Perhaps this has happened already.

Why Media Companies Insist they’re not Media Companies

It seems that in today’s technology-driven business environment, firms increasingly see their identity in terms of the technological approaches they take to their business, rather than in terms of the particular business in which they operate. These ambiguities in classification have

been happening beyond the media sector, to other industries where the classification of ‘technology company’ or ‘platform’ has enabled companies to enter markets under very unclear identities. One of the most prominent – and controversial – current examples involves Uber. Uber has steadfastly maintained that it is a technology company rather than a transportation company because, according to one Uber representative, “we don’t transport goods or people – our partners do. We just facilitate that” (Cukier, 2016, p. 1). The ramifications of accepting or rejecting this argument are profound, because if Uber is perceived as a transportation company, then it is subject to the regulations under which transportation industry operates. If, on the other hand, Uber is perceived as a technology company, then these transportation industry regulations simply don’t apply; which, of course, could represent an important source of both economic and competitive advantage for Uber (see, e.g., Carney, 2015).

Similarly, it seems that a defining characteristic of contemporary digital media companies is the consistency with which they resist being characterized as media companies and insist instead that they be thought of purely as technology companies (see, e.g., Helft, 2008; Mickey, 2013). Even companies that are unequivocally in the business of producing media content and selling audiences to advertisers, like Gawker and Vox, have had their CEOs maintain that they are technology companies rather than media companies (see, e.g., Sicha, 2011; Tjaardstra, 2015).

This position is part of a broader, ongoing effort by these forms to “discursively ... frame their services and technologies” (Gillespie, 2010, p. 348). As Gillespie (2010) notes, these firms use terms like “platform” strategically, “to position themselves both to pursue current and future profits, to strike a regulatory sweet spot between legislative protections that benefit them and obligations that do not, and to lay out a cultural imaginary within which their service makes sense” (p. 348). The self-definition as technology companies rather than media companies is a

key dimension of this discursive framing, which tends to accompany other arguments in which the company appeals to functional or other characteristics which they argue distinguish them from the media industry.

The “We Don’t Produce Content” Argument

The most prominent argument amongst digital media companies in support of the position that they are not media companies is that many of these companies do not produce original content; rather they merely facilitate the distribution of content created by their users. Google’s Eric Schmidt (along with other Google executives) deployed this argument frequently over the years, declaring “We don’t do our own content. We get you to someone else’s content faster” (quoted in Sullivan, 2006, p. 1). Facebook also has long been a proponent of this argument. As Facebook’s VP of Global Marketing Solutions has stated, ““We actually define ourselves as a technology company. . . . ‘Media companies are known for the content that they create’” (quoted in Fiegerman, 2016, p. 1). When Marissa Mayer took over as CEO of Yahoo, she also embraced this argument, emphasizing Yahoo’s focus going forward on partnerships with other content providers, as opposed to generating original content, as a reason for defining Yahoo as a technology company (Bercovici, 2013). Twitter CEO Dick Costolo has stated ““I think of us as a technology company because I think the future of the company is in building on an extensible platform that allows third-party developers and companies to add value to Twitter in a way that is accretive to Twitter and is accretive to our users. . . . I don’t need to be or want to be in the content business’” (quoted in Bilton, 2012, p. 1). The late Steve Jobs of Apple similarly emphasized this point at the time of the launch of iTunes. Bristling at the suggestion from an *Esquire* interviewer that Apple was becoming a media company, he argued ““We’re not a media company. We don’t own media. We don’t own music. We don’t own films or television. We’re

not a media company. We're just Apple'" (quoted in Langer, 2003, p. 2). The issue was sufficiently sensitive to Jobs that he abruptly ended the interview at that point.

What is perhaps most troubling about this argument is that these companies do not consider that many companies that have been referred to as 'media' companies in the past have been in the business of *distribution* rather than *creation* of content. Distribution is a defining characteristic of a media company, as much as is content creation, as a growing body of media scholarship makes clear (see, e.g., Curtin, Holt, & Sanson, 2014). And while the mechanisms of content distribution in the digital realm certainly are different from those employed by traditional media, as digital media executive Elizabeth Spiers has asked, "Will someone explain to me how digital distribution of your content makes your company primarily a 'tech company?'" (Benton, 2014, p. 1).

It is important to also recognize that content creation/ownership has never served as a point of distinction in defining a media company from the perspectives of those charged with regulating the media industries. Consider, for instance, that both the cable television and satellite industries were built entirely on a foundation of serving exclusively (at least initially) as distributors of media content. This fact never served as a mechanism for keeping these companies beyond the bounds of the FCC's regulatory authority. The companies within these industry sectors have been subject to ownership regulations and certain public interest obligations, in keeping with the FCC's general approach to electronic media regulation (see, e.g., Federal Communications Commission, 2016a). Fundamental media policy concerns about diversity, competition, and localism (see Napoli, 2001) have characterized the regulation of these industries, independent of if, or to what extent, these companies engage in content creation.

The argument, then, that content creation/ownership meaningfully separates these “technology” companies from traditional media companies either reflects an incredibly naïve or ill-informed understanding of media, or a more intentional, strategically-motivated effort to redefine the parameters of a media company within business and policy discourse. In either case, the implications are troubling, as will be discussed in greater detail below.

The “We’re Computer Scientists” Argument

The second prominent line of argument put forth by digital media companies focuses on the nature of their personnel. Specifically, representatives of digital media companies will frequently point to the professional training and backgrounds of themselves and their employees in support of the argument that they are technology companies rather than media companies. Google’s Eric Schmidt has emphasized that Google is a technology company “because it is run by three computer scientists” (quoted in Kramer, 2006, p. 1). Similarly Cheezburger CEO Ben Huh has emphasized the proportion of the company’s employees that are developers on behalf of his assertion that the company is a technology company rather than a media company (Koetsier, 2012).

Here too we see an argument with no logical or historical grounding. Consider, for instance, that at the time of its introduction there was no greater technological marvel than over-the-air broadcasting. It represented a technological leap forward in the means of communication of a magnitude that can probably only be approached by the introduction of the Internet. And, of course, broadcasting was the province of the technologists and engineers of the time, given its relative technical complexity compared to other available means of communication, such as print newspapers. Technological expertise was at the core of early radio broadcasting companies such as RCA and the Marconi Company. Satellite technology represented another dramatic

advancement when employed by the cable television industry; once again requiring professionals with a high level of technical expertise.

Technological advancements – and the associated technical expertise – have been fundamental to the media sector since at least the advent of the printing press. To argue that the technical orientation of the personnel or leadership of a company represents a logical grounding for precluding it from being thought of as a media company once again reflects either an ill-informed understanding of the history and evolution of media, or a strategic effort to narrow the definition of media relative to its traditional parameters. Perhaps this argument represents an inability amongst this generation of technologists to understand or acknowledge the broader social and cultural context for their work. Whatever the reason, the underlying premise, that technology and media are somehow separate endeavors that draw upon completely different skill sets and professional backgrounds, has no firm grounding in the history of media.

If this argument had merit, it would have been further undermined by personnel changes that have been occurring over the last several years at many of these major companies, as they try to develop more news media related products. Gizmodo recently unveiled that Facebook has hired journalists and former journalism students to train their algorithms for their Trending Topics feed (Nunez, 2016). Facebook, however, is not the only company that has hired media workers for editorial teams. Snapchat employs an editorial-staff of around 75 people, and is also using these workers to train algorithms and technology that will eventually automate the selection and sorting of news for its 100 million daily users (Sloane, 2016). Twitter also employs a “curation team” to sift through content and highlight events and trends for its ‘Moments’ section – a blog like section of the site in which Twitter editors work to combine tweets and photos published onto the site into a narrative, particularly for news events that have are trending

on the site (Twitter About, 2016). The guidelines these teams use are not unlike editorial guidelines used by many content companies – outlining both content suggestions to promote accuracy, and limit bias, as well as stylistic guidelines regarding the type of headline curation team members should write, and the choice of thumbnails. These highlighted stories are also guided by Twitter’s relationships with particular publishers (Pena, 2016). However, Twitter has very recently stated they will be opening up the ‘Moments’ page curation to some of its users – which may be one way it’s trying to reclaim itself as a ‘platform’ rather than a publisher.

The “No Human Editorial Intervention” Argument

This last point has also been used to counter another point of distinction that is frequently raised by these companies – that what is ‘surfaced’ is not done by human judgment, but by an algorithm and data-driven technologies that filter, categorize and classify information that is already present on the system, and reflecting what users want back to them. Platforms such as Google and Facebook have frequently emphasized the lack of human intervention in their content curation processes, and have been hesitant to acknowledge such human intervention when it does take place (see, e.g., Trielli, Mussenden, Stark, & Diakopoulos, 2016). Facebook, in the wake of the Trending list controversy, has focused on downplaying as much as possible the role that direct human editorial intervention plays in the platform’s operation (see, e.g., Isaac, 2016).

This asserted/perceived lack of direct human editorial involvement is, in many ways, fundamental to the logic of perceiving these platforms as technology companies rather than media companies. Indeed, as Gillespie (2010) has illustrated, the term *platform* itself has been strategically deployed as a means of casting these services strictly as neutral facilitators of content creation and dissemination. The asserted absence of direct human editorial involvement

helps to further this perception of distance from, and/or neutrality in, the content selection process – a model that is presumably fundamentally different from the kind of editorial discretion that is a defining characteristic of traditional media companies.

However, simply because the mechanisms for exercising editorial discretion – for *gatekeeping* – have changed doesn't mean that the fundamental institutional identity of the gatekeepers needs to be recast. Representatives of these platforms would likely argue that the nature of their interaction with audiences is fundamentally different from traditional media in that audiences play a much more autonomous role in determining the content that they receive. That is, the users, often in collaboration with their social networks, ultimately dictate the content that they consume, with the platform serving as mere neutral facilitator. Whether a reflection of naivete or disingenuousness, this position is simply no longer tenable (Gillespie, 2017).

For starters, media have always, to some extent, tried to give audiences exactly what they want. In this regard, a Facebook, Twitter, or Google is little different from any print, broadcast, or digital news outlet desperately seeking to figure out what it is audiences want, and to then provide them with exactly that. The real difference is that digital media platforms simply represent more efficient mechanisms for doing so, given the nature and scope of data and analytical tools they have to draw upon; and thus represent the next step in the ongoing progression of what Napoli (2011b) has termed “the rationalization of audience understanding” (p. 26).

Indeed, we can look to recent developments, like the much-maligned rebranding of struggling traditional media company Tribune Publishing as technology company Tronc (see Satell, 2016), as an indicator of how thin is the boundary separating technology company from media company. Tribune's metamorphosis into Tronc appears to rest almost entirely on a stated

greater reliance on machine learning and algorithms to better serve audience interests and to increase the use of automation in content production (Satell, 2016). The skepticism that has met this rebranding, in terms of whether it represents anything truly transformative, helps to illustrate that an increased reliance on technology to serve audience interests doesn't serve as a meaningful distinction between technology companies and media companies.

Further, the notion that algorithms operate in a completely neutral and objective manner, completely free of the kind of biases that characterize direct human editorial decision-making, has been effectively discredited at this point. Algorithms, though automated, are used to classify, filter, and prioritize content based on values internal to the system, and the preferences and actions of users (DeVito, 2016). It is well-understood, at this point, that engineers and other company actors must make countless decisions in the design and development of algorithms. Through those decisions and relationships, subjective decisions and biases get encoded into systems. For these reasons, algorithmic bias has become a widely researched and increasingly well-understood phenomenon (see, e.g., Gillespie, 2016; Kitchin, 2016; Pasquale, 2015).

In addition, regardless of the gatekeeping mechanisms employed, platforms such as Facebook, Google, and Twitter find themselves having to navigate a range of editorial policy issues that place them firmly in line with traditional media organizations such as newspapers and broadcasters (Gillespie, in press). Issues related to protecting users from offensive, inflammatory, or adult content are central to the operation of these platforms (see, e.g., Pierson & Dave, 2016).

And, as the recent controversy surrounding Facebook's Trending list illustrates, human editorial intervention often plays a more significant role in the process of content curation than is commonly assumed (Fiegerman, 2016). Thus, the notion of purely algorithmically-driven

decision-making processes represents more of an ideal type than the reality of how these digital media platforms actually operate; a situation that undermines the fundamental premise of an argument of already-questionable validity.

The Centrality of Advertising

Finally, it is worth noting that all of these arguments collapse under the fact that the primary revenue stream for the bulk of these digital media platforms is advertising. Being in the business of providing content to audiences, while selling those audiences to advertisers is a defining characteristic of the media sector (Ingram, 2012; Wolff, 2012). When advertisers are exploring how best to reach potential consumers, the strengths and weaknesses of digital media platforms such as Facebook, Twitter, and Google are being evaluated right alongside those of more traditional media options such as broadcast and cable television and print. From this perspective, it is hard to dispute that these firms are all operating in the same business. And it is a business that, as history has shown, firms can enter without owning or producing their own content.

Underlying Motivations

The discussion thus far has focused on the expressed rationales put forth by these digital media companies for being considered technology companies rather than media companies. The next step is to look beyond these expressed rationales and consider some of the other, not directly acknowledged, reasons why this argument is so consistently put forth.

Appealing to the Investment Community

There are a number of underlying reasons that these digital media companies would rather be thought of as tech companies than media companies. The most obvious is that being thought of as a tech company brings with it the potential for much higher valuations from the

investment community (see, e.g., Fox, 2014). As investor Chris Dixon makes clear, as in the policy sector, classification has significant implications in the investment world:

One of the most important things you have to do in later-stage venture investing is think rigorously about how companies are categorized. For example, when we invested in Oculus last year, the big question was whether to think of it as a gaming-peripheral company, in which case the \$200 million valuation we invested at seemed super high . . . versus thinking of it as a new computing platform like the mobile phone — in which case that seemed like a great bargain. Similarly, if you think of BuzzFeed as a print media company along the lines of the *New York Times/Washington Post/Wall Street Journal*, etc., the valuation seems rich. If you think about it as a strong candidate to be a key institution connecting media talent with the 5 billion people who will be using Internet-connected smartphones in a few years — a new media empire in a world where media empires reach 10-100x the audience that they used to — it seems like a bargain. (Kafka, 2014, p. 1, emphasis added)

Clearly, the investment community generally sees greater income potential in the technology sector than the media sector (Bond, 2007); and seems to have maintained a hard line distinction between these two sectors despite growing evidence to the contrary. Painting oneself as a technology company rather than a media company is “what venture capitalists [want] to hear” (Morrissey, 2016, p. 1). As digital media executive Elizabeth Spiers has noted, “institutional investors don’t fund media services” (Benton, 2014, p. 1).

To some extent, this phenomenon may reflect a perspective cultivated by the disparate trajectories of early digital frontrunners Google and Yahoo, and perhaps also from the culture clashes that were central to the demise of AOL-Time Warner. Yahoo “kicked the engineers

aside” (Foremski, 2014, p. 1) quite early in its history in its effort to evolve into a full-fledged media company. At its peak Yahoo even considered attempting to purchase NBC in an effort to better integrate into traditional media. These efforts to evolve from a search engine or “portal” (a very popular designation for a brief time) to a more well-rounded media company obviously failed spectacularly in comparison to Google’s more technocratic strategic approach.

The AOL-Time Warner merger has become an iconic case study in how incompatible corporate cultures submarined the kind of old media–new media integration that most observers saw as a desirable – even inevitable – outcome of digital convergence (McGrath, 2015). The primary takeaway from this disaster was that tech people and media people do not work particularly well together, and – perhaps most important – don’t seem to be particularly capable of grasping the idiosyncrasies of each other’s businesses (McGrath, 2015). In the end, AOL was jettisoned from the conglomerate and the name completely scrubbed from the company’s identity.

In the end, the paths traveled by Yahoo and AOL-Time Warner likely helped to reinforce the logic of the strategy of maintaining at least the illusion of distance and distinction from the media sector. The fates of these early efforts at realizing convergence perhaps also explain why today’s investors and digital media platforms feel that a strict either/or distinction needs to be maintained between tech companies and media companies.

Legal and Policy Implications

We also need to consider the legal and policy implications of being thought of as a technology company rather than a media company, and how these implications likely motivate this argument. As was illustrated above, the way in which a company is classified can have significant legal and policy implications. Within the digital media sector, this is well illustrated

by some of the challenges that have confronted Twitter. As industry observers have noted, “It has . . . suited Twitter to pose as a tech company when it comes to potential regulatory and legal burdens” (Rana, 2012, p. 1). For instance, in a response to a court order for information about a user who was arrested during an Occupy Wall Street protest, Twitter adopted the legal position that it has no ownership of individual tweets (Rana, 2012). In court, Twitter ceded to descriptions of their technology made by the courts that posting on Twitter was analogous to “scream[ing] out the window,” lowering the expectation of privacy for Twitter users (New York v. Harris, 2012). In another subpoena made to Twitter for the IP information for some of its users (who were associated with the organization Wikileaks), the court used a different classification, comparing Twitter, and the IP addresses used to connect to the site, to using a telephone (New York v. Harris, 2012). This classification was similarly used to justify a lower standard of privacy for Twitter users, despite the fact that, unlike telephone numbers, Internet users do not need to manually and consciously enter in the IP address of a site in order to communicate over the network.

It is also important to note that media companies – particularly those engaged in the production and/or distribution of news – have historically had a unique set of social responsibilities. These social responsibilities typically have been imposed internally through professional norms and codes of ethics, as well as through government regulations, which in the U.S. have taken the form of various “public interest obligations” (Napoli, 2015). For a time, such public interest obligations became particularly aggressive, as in the case of the Fairness Doctrine, which, through the 1970s and part of the 1980s, required broadcasters (given their significant bottleneck position) to provide equivalent amounts of coverage to differing perspectives on controversial issues of public importance (Ruane, 2011).

The Fairness Doctrine represents the apex of a range of regulations over the years that have sought to ensure that media audiences have access to a diversity of sources and viewpoints (Napoli, 2011a). It should be noted that even those companies primarily engaged in content distribution (such as cable systems and satellite service providers) have been subject to obligations such as providing subscribers with minimum levels of public, educational, and government programming; minimum levels of locally-produced programming; and providing political candidates with the ability to advertise on these platforms at reduced rates (Federal Communications Commission, 2016a).

Even economically-motivated structural regulations and government oversight have historically been more aggressively imposed in the media sector than other industry sectors, given concerns about the relationship between competition in media markets and the effective functioning of the “marketplace of ideas” (Napoli, 2001). A variety of ownership regulations persist in the electronic media sector, despite the increasing competition facilitated by the Internet and its lowering of the barriers to entry into various media markets (Federal Communications Commission, 2016b). Mergers in the electronic media sector undergo a separate “public interest” review above and beyond the standard scrutiny that all mergers undergo in terms of their impact on competition (Sallet, 2014).

The key point here is that there is a long history of regulatory interventions in the electronic media sector on behalf of broader public interest concerns related to policy principles such as diversity, competition, and localism (Napoli, 2001). The regulated industries have generally regarded adherence to these regulations as burdensome and costly; and so one can see why digital media platforms would work to establish an organizational identity that places them

well outside of this regulatory model, even if most of the traditional justifications for media regulation (use of a scarce public resource such as spectrum) don't necessarily apply to them.

Imagine, for instance, if Facebook had to operate under a Fairness Doctrine for social media. In many ways, one could look at the controversy that arose surrounding the alleged suppression of conservative news stories as just the kind of spark that could ignite that kind of discussion (more likely, of course, if suppression of liberal news had been alleged, given the long-standing opposition amongst conservative policymakers to content regulation such as the Fairness Doctrine). Or, one could certainly imagine a digital media platform such as Facebook, with its dominant market position, growing increasingly concerned about the possibility of a more media-oriented competition analysis being applied to its position in both the economic marketplace and the marketplace of ideas (see Thompson, 2016). The somewhat surprising fact that such a conversation has yet to take hold at all in U.S. policy discourse could perhaps be attributed to the success thus far of the technology-company-not-media-company rhetoric.

As this discussion has hopefully made clear, the question of whether platforms such as Facebook and Twitter are media companies or technology companies is not just a matter of semantics but rather part of a larger a discursive contest. The outcome of this contest has significant policy legal and policy implications, and is one in which the economic, legal, and political motivations of digital media platforms to be (mis)perceived as technology companies rather than media companies are quite compelling.

Why it Matters for Communications Policy

One of the most potentially significant aspects of the controversy that arose in response to the allegations that Facebook was suppressing conservative news stories in its Trending list was the extent to which it drew the attention of policymakers. While policymakers have paid

attention to digital and social media in the past, the focus has, to this point, overwhelmingly been on issues of privacy and uses of personally identifiable information (Napoli, 2015). Only now are we beginning to see conversations about the role of these platforms in the contemporary news and information ecosystem make some tentative inroads into communications policy discourse.

After Gizmodo broke the story that Facebook workers were curating the Trending news module rather than an algorithm (which was what assumed, though no less immune to bias than human beings) some policymakers became concerned about the power that Facebook, and a room full of select workers, could have over the information and news media ecosystem. Though calls for oversight were headed by conservative lawmakers – the Facebook revelations included news that workers routinely suppressed *conservative* content more than liberal – this has quickly become a bipartisan issue. Conservative senator, John Thune, led the initial charge, writing a letter on behalf of the Committee on Commerce, Science, and Transportation demanding Facebook explain how it handles its trending algorithm, and the potential role of human bias. Facebook responded by saying that Trending Topics is a reflection of activity that is already happening on the platform, and that they play only a small role, stressing the entire process is unbiased and neutral. Zuckerberg for his part has reiterated that Facebook’s power is *as a* platform: “Facebook stands for giving everyone a voice. We believe the world is better when people from different backgrounds and with different ideas all have the power to share their thoughts and experiences. That’s what makes social media unique. We are one global community where anyone can share anything – from a loving photo of a mother and her baby to intellectual analysis of political events.” This defense, however, must be considered in light of

evidence that has shown that Facebook is increasingly becoming the main distributor for news media, particularly within the United States (Gottfried & Shearer, 2016).

These actions have spurred a broader debate over whether policymakers should take a more active approach to the dominant position that digital media platforms such as Twitter and Facebook are establishing in the news and information ecosystem (see, e.g., Rolark-Barnes & Chavis, 2016). Obviously, the answer to this question hinges heavily on whether these companies are considered technology companies or media companies. The goal here is to highlight some of the communications policy issues and concerns that come to the foreground when we think about these platforms as we should – first and foremost as media companies.

The Federal Communications Commission, which for many years congratulated itself for not wading into internet regulation (see, e.g., Oxman, 1999), has now, though its intervention in issues such as network neutrality, begun to consider the internet within the broader normative framework that it has developed for other communications services under its regulatory authority. In addition, the survival of journalism has become, in and of itself, a basic communications policy issue, with Congress, the Federal Trade Commission, and the Federal Communications Commission all conducting proceedings to explore if and how policymakers should take action to protect and preserve the institution of journalism (see, e.g., Kirchhoff, 2009; Leibowitz, 2009; U.S. Senate, 2009; Waldman, 2011).

Digital Media Platforms and Journalism

This confluence of circumstances suggests that policymakers need to concern themselves with understanding exactly how these digital media platforms function in the contemporary journalism ecosystem; how they are interacting with those organizations that actually produce journalism; and if, or to what extent, they are undermining the viability of journalism. To the

extent that organizations/platforms that don't see themselves as media companies – let alone as *news* media companies – displace or undermine the viability of legitimate producers of journalism, who operate under news values that have at least some connection to the role that news and information serve in the effective functioning of a democracy, this exacerbates an existing policy problem and therefore requires attention.

From this standpoint, it may be time for policymakers to start thinking about the interaction between digital media platforms and news organizations in the same way that they thought about the interaction between broadcast television and cable, and the potential (though, in this case, ultimately unfounded) threat that cable television and its bottleneck position posed to the viability of broadcast television and the free national and local news that broadcast television provided – concerns that ultimately led to the must-carry rules (Bunker & Davis, 1996). The Federal Communications Commission was able to extend its regulatory authority over the cable television industry in part because cable was deemed *ancillary* to broadcasting (United States v. Southwestern Cable Co., 1968). Might, similarly, digital media content curators like social media platforms be similarly ancillary to the internet service providers who now fall under the FCC's regulatory purview due to the reclassification that took place in connection with the network neutrality regulations? Some analysts have already asserted that social media platforms function as utilities (Andrejevic, 2013; boyd, 2012), just as Internet service providers, under the telecommunications service designation, are considered utilities in line with traditional phone services (Federal Communications Commission, 2015), but this argument has yet to gain much traction in the policy sphere. However, the more social media platforms essentially function as the gateway (or portal, to resurrect that term) to the broader web, the more it may be time to revisit this perspective.

What is perhaps most disturbing about this situation is that, despite serving as bona fide news outlets, these digital platforms seem genuinely averse to serving this function. This would seem to be a primary takeaway, for instance, from the controversy around the accusations of the suppression of conservative news stories by Facebook. In what seems to have been a direct response to this controversy, Facebook modified its News Feed algorithm in order to increase the prioritization of posts from friends and family over those by media outlets (Isaac and Ember, 2016). It would seem that the more Facebook is perceived as a news source, the more the social media platform works to appear otherwise. However, in Facebook's case, no sooner did they announce this change than the platform found itself front and center as the most important news source in the country, as Diamond Reynolds used the platform to livestream the aftermath of the shooting of Philando Castile by a Minnesota police officer (Uberti, 2016). In addition, recent data indicate that Facebook's algorithm tweaks have not meaningfully affected the extent to which it drives traffic to news sites (Washington-Harmon, 2016).

These adjustments to Facebook's algorithm come on the heels of recent data indicating that the functionality of platforms such as Facebook and Twitter is migrating away from their initial functionality as a means of individual and small group communication. That is, less of the content on these platforms is composed of the personal news and status updates that were the initial driver of these platforms' diffusion (Efrati, 2016). Today, more of what is being disseminated and consumed on these platforms is essentially institutionally-produced content (i.e., professionally produced news, information, and entertainment) (Snip, 2016). One could argue that these platforms are evolving into *broadcasters*, in the most traditional sense. Perhaps it is time they start being considered – and treated – as such.

Vertical Integration

The irony in all of this is that the history of media is one of companies that start out on the periphery of the media sector remaking themselves to be media companies in the fullest sense of the word. If we look historically at “platforms” that, like the many tech/media companies described above, began primarily as distributors of content and not producers, we see a recurring pattern of integration into content creation. The cable industry is a prime example. An industry that began as an “antenna service” for broadcast television gradually evolved into offering alternatives to broadcast television. The history of most cable networks is one of migrating from distributing content produced by others to creating original content. And so it goes with companies like Amazon, Netflix, YouTube, and Hulu, all of which began purely as content curators/intermediaries, only to integrate into content creation as well – at which point, according to the absurdly narrow definition employed in the tech sector (see above), they became media companies. Developments such as Facebook’s Instant Articles (in which Facebook hosts, rather than links to, the content produced by various news organizations; see Constine, 2015), and Twitter’s live streaming of professional sporting events, political conventions, and Bloomberg television programming (see, e.g., Ingram, 2016) represent the kind of initial steps toward the full-fledged vertical integration into content creation for these companies that history tells us is inevitable.

These developments also point toward a resurrection of the “walled garden” strategy employed by AOL during the first tech bubble (Nield, 2016) that was a significant cause for concern amongst policymakers at the time (Labaton, 2000). While concerns about the combined AOL-Time Warner leveraging their vertically integrated position to produce a walled garden that was harmful to the economic marketplace or the marketplace of ideas proved unfounded, it’s

questionable whether Facebook or Twitter's position in the media ecosystem is comparable to AOL-Time Warner's position at the time, given that, unlike AOL-Time Warner, Facebook and Twitter's reach is global, rather than being limited to those who subscribe to the affiliated broadband service.

And so, as dominant digital media platforms like Facebook and Twitter inevitably head down the vertical integration path, perhaps it is a good time to remember that policymakers have, at various points in the past, found the public interest to be well served by limiting the extent to which companies with a prominent bottleneck role in content distribution can simultaneously produce and own content. The financial interest and syndication rules, which applied for roughly two decades to the Big Three national television broadcast networks (ABC, NBC, CBS), limited the extent to which these networks could own their prime-time programming. The logic of these regulations rested on the notion that the proportion of audience attention controlled by these networks was so large that the public interest in diversity and competition was served by requiring the networks to allow other content creators to have access to this massive accumulation of audience attention – and to the accompanying revenues (Goolsbee, 2007). The cable industry – which essentially replaced the broadcast industry as the primary media bottleneck, found itself operating under must-carry rules (which required cable systems to carry local broadcast stations), as well as limits on the extent to which cable systems could populate their channel line-ups with networks in which they had an ownership stake. And, forgotten in the implosion of AOL-Time Warner is that conditions of the merger included the requirement that the company allow consumers to have access to unaffiliated internet service providers, allow these unaffiliated ISPs to control the content of customers' first screen, to assure interoperability of its Instant Messaging service (in some ways a precursor to social media) with competing

providers, and to open up its network to competing interactive television service providers (Federal Communications Commission, 2001; Federal Trade Commission, 2000).

The point here is that, historically, media platforms that have obtained significant bottleneck positions as content distributors have historically sought to leverage that position for content creation as well; and that, historically, policymakers have instituted safeguards to protect competition and diversity under such conditions. As is often the case in communications policy, the question becomes whether it is preferable to be pro-active (and potentially discourage innovation) or reactive (and be confronted by the inability to “put the horse back in the barn”). History tells us that we’re likely moving down a similar path in relation to a select few digital media platforms, so it is important that these conversations begin sooner rather than later.

Conclusion

The danger today is that those digital media platforms that are playing an increasingly central role in the production, dissemination, and consumption of news and information are – if we accept the technology company identity – essentially independent and distinct from the news and information ecosystem that they mediate. The dominant platforms for news and information will exist outside of the bounds of regulatory authority that have, since the dawn of the age of electronic media, been able to exert at least some influence over the structure and behavior of the key participants in the news and information ecosystem. At the most basic level, the acceptance of the argument that these digital media platforms are technology companies rather than media companies contributes to a scenario in which some of the most significant organizations involved in the production, dissemination, and consumption of news operate outside any of the normative or regulatory parameters that have traditionally characterized news organizations. In which case, we have a “discourse [that] serves to shape an institution that it fails to describe” (Streeter, 1987,

p. 176). Such a scenario could have dramatic repercussions for how citizens meet their critical information needs and, thus, for how democracy functions.

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