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# Telecommunications Policy

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## Internet governance *by* social media platforms



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### ARTICLE INFO

Available online 9 May 2015

#### Keywords:

Internet governance  
Infrastructure studies  
Social media platforms  
Civil liberties online  
Freedom of expression  
Permissionless innovation

### ABSTRACT

An emerging area of inquiry in Internet governance scholarship is the role of private information intermediaries in enacting governance via technical design choices and user policies. Following this trajectory, this paper addresses governance *by* social media rather than governance *of* social media. Informed by conceptual frameworks from Internet governance and Science and Technology Studies, it examines the extent to which these platforms either promote or constrain rights in three thematic areas: (1) anonymous speech and individual privacy; (2) the ability to express ideas or, stated as a negative liberty, freedom from censorship; and (3) technical affordances of interoperability and permissionless innovation. Because of their unique role as the intermediaries providing citizens with access to the digital public sphere, social media platforms are central points of control on the Internet. Viewing these private platforms through an Internet governance lens, rather than a content lens, suggests that social media technical architectures and policies actually pose several challenges to communication rights as well as to the open Internet. There is an opportunity for Internet governance studies, which have primarily focused on governmental policies and new global institutions, to give greater consideration to the direct policymaking role of private intermediaries and the accompanying phenomenon of the privatization of human rights.

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### 1. An Internet governance lens into social media platforms

Much scholarship related to the politics of social media has focused on content and usage issues, such as the salutary relationship between social media and political transformation (Howard et al., 2011), the use of these platforms for self-representation (boyd & Ellison, 2007; Correa, Willard Hinsley, & Gil de Zuniga, 2010; Gray, 2009, Marwick & boyd, 2010; Tufekci, 2008), and ways in which social media usage expands freedom of expression and facilitates new forms of citizen journalism, alternative media, and dissent (Lynch, Freelon, & Aday, 2014). These inquiries are primarily focused on content rather than the less visible area of the technical infrastructure supporting social media content.

Though not visible in the same way content is visible, how technical infrastructure is designed and administered is not only a technically complex function but one with significant public interest implications. The broad term “Internet governance” is often used to describe the design and administration of the technical infrastructure necessary to keep the Internet operational and the enactment of substantive policies around these technologies (DeNardis, 2014). A dominant theme in both the scholarship and practice of Internet governance examines the policymaking role of new global

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institutions, such as the Internet Corporation for Assigned Names and Numbers (ICANN) overseeing domain names and the Internet address space, the Regional Internet Registries distributing Internet Protocol (IP) addresses, or the Internet Engineering Task Force (IETF) and World Wide Web Consortium (W3C) establishing the technical standards that enable interoperability among computing devices (Froomkin, 2003; Klein, 2002; Mueller, 2002). Another prominent theme is the role of nation states and intergovernmental organizations in regulating or coordinating the Internet in areas as diverse as antitrust, net neutrality, computer fraud and abuse, privacy, or hate speech (DeNardis, 2009; Goldsmith & Wu, 2006; Mueller, 2010).

A less established but growing area of inquiry examines private information intermediaries, such as social media platforms, in enacting global governance via platform design choices and user policies. Discussing real identification requirements on Facebook and Google+, Rebecca MacKinnon (2012) contends that these platforms take a “Hobbesian approach to governance” (p. 164), with users consenting to give up fundamental rights in exchange for services. Tarleton Gillespie (2010) suggests that private intermediaries strategically frame themselves as “platforms” to pursue economic interests and impact the legal framework in which they operate.

The definition of social media platforms is both capacious and mercurial. Some definitions characterize social media platforms as applications that allow for “user-generated content” (Kaplan & Haenlein, 2010). Other definitions focus on the ability to interactively exchange information with dispersed groups of recipients (Hogan & Quan-Haase, 2010). Drawing from existing definitions, this paper defines social media platforms as providing three specific technological affordances: 1. the intermediation of user-generated content; 2. the possibility of interactivity among users and direct engagement with content; and 3. the ability for an individual to articulate network connections with other users. These common characteristics materialize in various types of information intermediaries: social networking sites like Facebook, microblogging platforms like Twitter, content aggregation sites like YouTube and Reddit, reputation engines like Yelp, mobile image messaging services like Snapchat, e-commerce sites like Etsy and virtual gaming platforms like Xbox Live.

Viewing social media platforms through an Internet governance lens suggests several distinct areas of inquiry. One is the question of how national statutory mechanisms or international legal instruments attempt to, or should, *regulate* social media, whether for intellectual property rights enforcement, antitrust, privacy or other public interest concerns. As a separate matter, governments also use social media to carry out paradigmatic responsibilities such as communicating with citizens or providing e-governance services. Another issue at the intersection of governance and social media involves user employment of these platforms as technologies of *dissent* to organize or protest against authoritative regimes. A quite distinct issue, and the narrow one this paper addresses, is how social media platform policies and technical design choices serve as a form of *privatized governance* directly enacting rights and regulating the flow of information online.

This inquiry focuses quite narrowly on this latter question of *privatized governance* via social media platforms, examining how social media platform policies, design choices, and business models predicated upon identity infrastructures and metadata aggregation, enact Internet governance or affect the universality and free flow of information on the Internet and, in doing so, promote or constrain civil liberties. In other words, it addresses governance *by* social media rather than governance *of* social media. To what extent are public interest concerns mediated by private intermediaries rather than by governmental structures and global Internet governance institutions? How do the technological and policy affordances of social media platforms promote or constrain free expression? What are the implications of governance by private intermediaries for individual rights?

These questions build upon scholarship suggesting that expression is no longer merely about content but about the institutional and technological structures underlying this content. On a material level, these underlying structures could potentially be viewed as neutral. Scholarship influenced by the field of Science and Technology Studies (STS) emphasizes the inherently political nature of infrastructure (Bowker, Baker, Millerand, & Ribes, 2010; Nissenbaum, 2001) and successfully challenges the notion of neutrality in science and technology (Sismondo, 2008). In his influential work “Do Artifacts Have Politics,” for instance, Langdon Winner (1980) suggests that technological architecture is reflective of political power structures. Scholars applying this lens to Internet governance explain that the underlying technologies that keep the Internet operational “not only embed political values in their design and operations but are increasingly being co-opted for political purposes irrelevant to their primary Internet governance function” (DeNardis, 2012, p. 2). For example, repressive regimes have turned to interconnection infrastructures to cut off communications during political unrest and law enforcement has turned to the Domain Name System (DNS) to block access to websites that illegally share copyrighted content or sell trademarked goods (DeNardis, 2012).

This theme of the underlying politics of infrastructure has similarly emerged in legal scholarship. Constitutional law scholar Lawrence Lessig (2006) has famously suggested that “code is law.” Jack Balkin (2014) considers the connection between free expression and infrastructure as a defining feature of the digital age:

the infrastructure of free expression increasingly is merging with the infrastructure of speech regulation and the infrastructure of public and private surveillance. The technologies and associated institutions and practices that people rely on to communicate with each other are the same technologies and associated institutions and practices that governments employ for speech regulation and surveillance (p. 4).

Balkin (2009) identifies the key values of free expression as the “protection of individual freedom to express ideas, form opinions, create art, and engage in research; the ability of individuals and groups to share their views with others, and build

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