Internet Governance
The role of private information intermediaries

Virgilio Almeida
Harvard University

Cambridge, September 2016
References

• Laura DeNardis, The Global War for Internet Governance, Yale University Press, 2015 – Chapter 7


Internet intermediaries: services, platforms and channels for expression

ISPs
Web hosts
Search engines
Registrars
DNS providers
Cloud computing
CDNs
Any website that enables user commentary
Payment intermediaries
The main functions of intermediaries

• To provide the infrastructure
• To collect, organize and evaluate dispersed information
• To facilitate social communication and information exchange
• To aggregate supply and demand
• To facilitate market processes
• To provide trust; and
• To take into account the needs of buyers and sellers or users and customers.
## Role of Intermediaries

### Main Internet Intermediaries

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Internet access and service providers; wired and wireless</td>
<td>Provide access to the Internet to households, businesses, and government</td>
<td>E.g. Verizon, Comcast, NTT, Internet Initiative Japan, BT, Free.fr and mobile operators offering Internet access such as Vodafone, Orange, T-mobile, MTN</td>
</tr>
<tr>
<td>Web hosting, data processing and content delivery</td>
<td>Transform data, prepare data for dissemination, or store data or content on the Internet for others</td>
<td>E.g. Navisite, Akamai, OVH, Easyspace, Rackspace, Register.com, Go Daddy, GMO internet Inc.</td>
</tr>
</tbody>
</table>

### Role of Intermediaries

- **Third-party producers** of content, products and services
- **Users or consumers** of content, products and services

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**Credit:** OECD THE ECONOMIC AND SOCIAL ROLE OF INTERNET INTERMEDIARIES 2010

Cyberspace Governance, Harvard 2016
Internet Platforms
Policy & Regulatory Issues

- Focal point for content regulation, social policy questions.
- What role should intermediaries play in advancing public policy goals?
- What is the scope of their liability for user activity?
- How do information intermediaries perform regulatory functions?

Policy areas: copyright enforcement, safeguarding national security, defamation & hate speech, protecting children, addressing illegal content, providing criminal information to governments
Information Intermediaries: regulatory functions

- Governments may seek to impose regulatory functions (e.g., prevent or punish illegal content)
- Intermediaries are viewed as well-positioned to take action
  - Privatization of freedom of expression
  - Discretionary censorship
  - App censorship
  - Transactional and financial blocking of sites
Intermediary Privacy Governance

- Governing privacy
  - Disclosing personal information
  - Government requests
  - Divulging subscriber information for advertising
  - Locational advertising
- Governing reputation
  - Reputation and scoring systems
  - People
  - Products and services
- Online harassment and cyber-bullying
- Privatized Governance
Collecting personal information

*The Atlantic*

**If You’re Not Paranoid, You’re Crazy**

As government agencies and tech companies develop more and more intrusive means of watching and influencing people, how can we live free lives?
Why intermediaries?

- Global trend – governments and private entities want to enlist intermediaries to solve problems, address unlawful content
  - Direct liability and gatekeeping obligations (e.g., blocking a site)
  - For legitimate purposes or as a pretext for censorship
- Principles for “Notice and Action”
  - Must be highly specific to ensure targeted response
  - Sufficient evidence or legal attestations of illegality
- Safeguards are necessary to mitigate risk of abuse
  - Penalties for unjustified notice, appeals system and due process, transparency, flexibility for service providers
Protection of Intermediaries

- Does the law protect intermediaries from criminal or civil liability for third-party activity?

- What kinds of intermediaries qualify for protection?

- What kinds of legal claims does the law apply to?
International Models of Protection

- **US**: Section 230 – immunity for wide range of content-based claims, DMCA, etc.

- **Chile & Canada & Brazil**
  - Intermediaries are held liable for third-party copyright infringement if they do not comply with a takedown order issued by a court. Notice-forwarding requirement.

- **India**
  - Modeled on E-Commerce Directive, but 2012 regulations cast doubt on effectiveness of protections

- **China**
  - Imposes liability and self-monitoring requirements for 3rd party content at nearly every layer – content creator, content host, access provider
### United States Law Enforcement Requests for Data

We respond to valid requests relating to criminal cases. Each and every request we receive is checked for legal sufficiency and we reject or require greater specificity on requests that are overly broad or vague.

<table>
<thead>
<tr>
<th>Total Requests</th>
<th>Users / Accounts Requested</th>
<th>Percentage of requests where some data produced</th>
</tr>
</thead>
<tbody>
<tr>
<td>19,235</td>
<td>30,041</td>
<td>81.41%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Government Request Type</th>
<th>Total Requests</th>
<th>Users / Accounts Requested</th>
<th>Percentage of requests where some data produced</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court Order (Other)</td>
<td>314</td>
<td>383</td>
<td>69.43%</td>
</tr>
<tr>
<td>Court Order (18 USC 2703(d))</td>
<td>601</td>
<td>1,433</td>
<td>79.87%</td>
</tr>
<tr>
<td>Emergency Disclosures</td>
<td>855</td>
<td>1,223</td>
<td>73.45%</td>
</tr>
<tr>
<td>Pen Register/Trap and Trace</td>
<td>964</td>
<td>1,045</td>
<td>78.01%</td>
</tr>
<tr>
<td>Search Warrant</td>
<td>11,128</td>
<td>17,703</td>
<td>85.38%</td>
</tr>
<tr>
<td>Subpoena</td>
<td>5,288</td>
<td>8,134</td>
<td>78.10%</td>
</tr>
<tr>
<td>Title III</td>
<td>85</td>
<td>120</td>
<td>74.12%</td>
</tr>
</tbody>
</table>
France – Facebook Requests 2015/2

Select Report  July 2015 - December 2015

France Requests for Data

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<tbody>
<tr>
<td>2,711</td>
<td>2,894</td>
<td>54.22%</td>
</tr>
</tbody>
</table>

France Content Restrictions

We restricted access in France to content reported under laws prohibiting Holocaust denial and condoning terrorism, as well 32,100 instances of a single image related to the November 2015 terrorist attacks in Paris that was alleged by OCLCTIC to violate French laws related to the protection of human dignity.

Number of pieces of content restricted

37,695
Brazil: Facebook Requests 2015/2

Brazil Requests for Data

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</thead>
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<tr>
<td>1,655</td>
<td>2,673</td>
<td>41.27%</td>
</tr>
</tbody>
</table>

Brazil Content Restrictions

We restricted access to items in compliance with seizure orders from local courts related to criminal defamation cases.

<table>
<thead>
<tr>
<th>Number of pieces of content restricted</th>
</tr>
</thead>
<tbody>
<tr>
<td>34</td>
</tr>
</tbody>
</table>
### Information requests (government)

<table>
<thead>
<tr>
<th>REPORT</th>
<th>TOTAL INFORMATION REQUESTS</th>
<th>NON-EMERGENCY REQUESTS</th>
<th>EMERGENCY REQUESTS</th>
<th>PERCENTAGE WHERE SOME INFORMATION PRODUCED</th>
<th>ACCOUNTS SPECIFIED</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015: Jul 1 - Dec 31</td>
<td>2,673</td>
<td>2,115</td>
<td>558</td>
<td>79%</td>
<td>7,435</td>
</tr>
<tr>
<td>2015: Jan 1 - Jun 30</td>
<td>2,436</td>
<td>1,994</td>
<td>442</td>
<td>80%</td>
<td>6,324</td>
</tr>
<tr>
<td>2014: Jul 1 - Dec 31</td>
<td>1,622</td>
<td>1,402</td>
<td>220</td>
<td>80%</td>
<td>3,299</td>
</tr>
<tr>
<td>2014: Jan 1 - Jun 30</td>
<td>1,257</td>
<td>1,125</td>
<td>132</td>
<td>72%</td>
<td>1,918</td>
</tr>
<tr>
<td>2013: Jul 1 - Dec 31</td>
<td>833</td>
<td>733</td>
<td>100</td>
<td>69%</td>
<td>1,323</td>
</tr>
<tr>
<td>2013: Jan 1 - Jun 30</td>
<td>902</td>
<td>-</td>
<td>-</td>
<td>67%</td>
<td>1,319</td>
</tr>
<tr>
<td>2012: Jul 1 - Dec 31</td>
<td>815</td>
<td>-</td>
<td>-</td>
<td>69%</td>
<td>1,145</td>
</tr>
<tr>
<td>2012: Jan 1 - Jun 30</td>
<td>679</td>
<td>-</td>
<td>-</td>
<td>75%</td>
<td>948</td>
</tr>
</tbody>
</table>

NOTE: The data in these reports is as accurate as possible, but may not be 100% comprehensive. It may be necessary to side-scroll to see all the table columns depending on the screen resolution.
## France: Twitter Requests

### Information Requests

<table>
<thead>
<tr>
<th>REPORT</th>
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<th>PERCENTAGE WHERE SOME INFORMATION PRODUCED</th>
<th>ACCOUNTS SPECIFIED</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015: Jul 1 - Dec 31</td>
<td>707</td>
<td>61%</td>
<td>866</td>
</tr>
<tr>
<td>2015: Jan 1 - Jun 30</td>
<td>139</td>
<td>38%</td>
<td>238</td>
</tr>
<tr>
<td>2014: Jul 1 - Dec 31</td>
<td>60</td>
<td>13%</td>
<td>81</td>
</tr>
<tr>
<td>2014: Jan 1 - Jun 30</td>
<td>36</td>
<td>8%</td>
<td>51</td>
</tr>
<tr>
<td>2013: Jul 1 - Dec 31</td>
<td>57</td>
<td>23%</td>
<td>102</td>
</tr>
<tr>
<td>2013: Jan 1 - Jun 30</td>
<td>18</td>
<td>11%</td>
<td>35</td>
</tr>
<tr>
<td>2012: Jul 1 - Dec 31</td>
<td>12</td>
<td>0%</td>
<td>54</td>
</tr>
<tr>
<td>2012: Jan 1 - Jun 30</td>
<td>6</td>
<td>0%</td>
<td>6</td>
</tr>
</tbody>
</table>

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# Brazil: Twitter Requests

## Information Requests

<table>
<thead>
<tr>
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<th>PERCENTAGE WHERE SOME INFORMATION PRODUCED</th>
<th>ACCOUNTS SPECIFIED</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015: Jul 1 - Dec 31</td>
<td>31</td>
<td>42%</td>
<td>56</td>
</tr>
<tr>
<td>2015: Jan 1 - Jun 30</td>
<td>52</td>
<td>29%</td>
<td>102</td>
</tr>
<tr>
<td>2014: Jul 1 - Dec 31</td>
<td>50</td>
<td>14%</td>
<td>158</td>
</tr>
<tr>
<td>2014: Jan 1 - Jun 30</td>
<td>77</td>
<td>39%</td>
<td>157</td>
</tr>
<tr>
<td>2013: Jul 1 - Dec 31</td>
<td>20</td>
<td>30%</td>
<td>55</td>
</tr>
<tr>
<td>2013: Jan 1 - Jun 30</td>
<td>22</td>
<td>32%</td>
<td>44</td>
</tr>
<tr>
<td>2012: Jul 1 - Dec 31</td>
<td>34</td>
<td>12%</td>
<td>43</td>
</tr>
<tr>
<td>2012: Jan 1 - Jun 30</td>
<td>5</td>
<td>0%</td>
<td>6</td>
</tr>
</tbody>
</table>

**NOTE:** The data in these reports is as accurate as possible, but may not be 100% comprehensive. It may be necessary to side-scroll to see all the table columns depending on the screen resolution.
2 December 2010: United States - EveryDNS stops wikileaks.org domain service

EveryDNS registrar stops serving the Wikileaks.org domain name.

3 December 2010: United States/Global - Paypal discontinues service

Paypal stops processing donations for WikiLeaks, cutting off a major source of funding.

“PayPal has permanently restricted the account used by WikiLeaks due to a violation of the PayPal Acceptable Use Policy, which states that our payment service cannot be used for any activities that encourage, promote, facilitate or instruct others to engage in illegal activity.”

At the time of the announcement, the website did not detail the “illegal activity” by WikiLeaks which amounted to the violation of the use policy. Vice-President

9 December 2010: Global - UN High Commissioner for Human Rights condemns blockade
Whither Social Media Governance?

Figure 1. Factors that influence social media governance.
Whither Social Media Governance

• Social media platforms provide:
  1. the intermediation of user-generated content;
  2. the possibility of interactivity among users and direct engagement with content;
  3. the ability for an individual to articulate network connections with other users.

• Differences between a public and controlled physical spaces;
• Communication shifting from public spaces → private platforms.
  – Protecting intermediaries from liability to ensure free speech.
  – Crescent tendency to prescribe limits and shapes for the communication among their users calls for attention;
Factors that Impact Social Media Governance

Figure 1. Factors that influence social media governance.
Factors that Impact Social Media Governance

1. rules of operation comprehend the technical factors in which the fundamental design options in a given platform will find their expression (e.g.: code, interfaces, back ends, data modeling)

2. laws refer to laws and regulations set forth by a public authority. Regulatory frameworks vary among countries.

3. social norms or codes of conduct are important because they can constrain, release, or even promote the ideas of communities with specific characteristics in a social network.
   – Communities can impose sanctions for those who don’t comply with a given behavior — and, at the other end, can induce certain types of it, even “positive” behavior

4. terms of use or the contractual clauses that govern the platform’s use.
Rules of Operation & Technical Aspects

• difference between social networks → the types of content they share and focus on.

• text, image, audio, and video have distinct characteristics in data packaging, storage and availability, and different impacts on the platforms.
  – Twitter: text – 140 characters
  – Youtube: video
  – Pinterest: images
  – Facebook: text, image, video, etc

• image and video uploads are subject to control by sophisticated algorithms for copyright detection (business models).

• text doesn’t receive the same attention. Offensive content posted in comments, for instance, can take a long time to be removed.

Cyberspace Governance, Harvard 2016
Conflicts

• related to information filtering, censorship, freedom of speech, and privacy → social media platforms limit users’ rights that could eventually be avoided in public spaces.
• “real name policies” adopted by some social media platforms;
• things tend to get even more complicated:
  – it is hard to predict all the possible conflicts that could happen in a social network as a public space.
  – convergence between social media platforms and their use as public space for expression, activities such as payments, learning, or unimaginable ones, a global frame-work for governance might be desirable.
• as platforms continue to evolve globally, new issues related to governance may arise.
• opportunity to consider the use of global multi-stakeholder structure to deal with human rights issues.

Cyberspace Governance, Harvard 2016
At face value, the tweet that Twitter user @Sickayduh fired off early Sunday morning makes perfect sense: If Twitter has the ability to bring the hammer down on anyone violating the Olympic Games' and NBCUniversal's copyright protections, then surely they're capable of acting with equal speed and certainty when it comes to the legion of trolls, creeps, and anonymous eggs who get their rocks off harassing strangers.

Paul Watson, a web developer and researcher, received an email on Sunday from Twitter notifying him that a tweet which included a 15-second clip he'd personally filmed off of his own television was in violation of the Digital Millennium Copyright Act of 1996. The copyright holder had requested that Twitter remove it and Twitter did just that.

Ooooh #Rio2016 @Twitter DMCA takedown, my first. Such a fun #olympic games, for the people. Corps are people too. pic.twitter.com/a7VKS44t9S

— Paul Watson (@paulmwatson) August 13, 2016
Twitter Suspends 235,000 More Accounts Over Extremism

By KATIE BENNER  AUG. 18, 2016

A photo posted on the Twitter page of Al Qaeda's affiliate in Syria, the Nusra Front, which has said it was changing its name to the Levant Conquest Front. Al-Nusra Front, via Associated Press

SAN FRANCISCO — Twitter suspended 235,000 accounts that promoted terrorism over the last six months, as part of a continuing effort to keep people from using the social network for extremist causes, the company...
Facebook scrambled on Monday to respond to a new and startling line of attack: accusations of political bias.

The outcry was set off by a report on Monday morning by the website Gizmodo, which said that Facebook’s team in charge of the site’s “trending” list had intentionally suppressed articles from conservative news sources. The social network uses the trending feature to indicate the most popular news articles of the day to users.
Did Facebook Defame Megyn Kelly?

Which is a different way of asking: Can a bot commit libel?

Facebook set a new land-speed record for situational irony this week, as it fired the people who kept up its “Trending Topics” feature and replaced them with an algorithm on Friday, only to find the algorithm promoting completely fake news on Sunday.
Facebook Under Pressure

Looking beyond the social network’s decision to take down and then restore the “napalm girl” photo.

By Kate Klonick
Facebook temporarily blocks Black Lives Matter activist after he posts racist email

The ban against Shaun King, which was revoked as a ‘mistake’ hours later, is the latest incident of site censoring users following Vietnam war photo removal.

Sam Levin in San Francisco
Monday 12 September 2016 17.26 EDT

Facebook temporarily banned a well-known Black Lives Matter activist and writer who posted a racist message he received, raising fresh questions about the way the social media site censors journalists.

Shaun King - a senior justice writer for the New York Daily News, who frequently writes viral stories about police brutality - posted on his Facebook page a screenshot of an email that twice called him the N-word, saying “FUCK YOU N*****!” The technology corporation said it was blocking him from posting for 24 hours, saying he had violated its “community standards”.
The government wants social media sites to take down terrorist propaganda. Maybe they shouldn’t.
What are the issues?

• A better question would be when and whether companies should be taking extremist content off the Internet at all.
• Reuters reported that Facebook and Google were considering adopting an algorithm developed by the Counter Extremism Project that could instantly detect jihadist websites and posts.
• Companies could use technology such as the Counter Extremism Project’s code to flag content and then put those posts in human hands. At that point, employees could determine what violates a site’s terms of service on their own, rather than trusting the string of letters and numbers the tool spits out.
• However social media companies decide to weigh the problem, the U.S. government would be wise to keep its finger off the scale.
Big other: surveillance capitalism and the prospects of an information civilization

- Main points:
  - Surveillance capitalism: new form of information capitalism aims to predict and modify human behavior as a means to produce revenue and market control.
  - Now, data about where we are, where we’re going, how we’re feeling, what we’re saying, the details of our driving, and the conditions of our vehicle are turning into beacons of revenue that illuminate a new commercial prospect.
  - “The goal of everything we do is to change people’s actual behavior at scale. When people use our app, we can capture their behaviors, identify good and bad behaviors, and develop ways to reward the good and punish the bad”.

Cyberspace Governance, Harvard 2016
Big other: surveillance capitalism and the prospects of an information civilization

• Main points:
  – It was first discovered and consolidated at Google, then adopted by Facebook, and quickly diffused across the Internet.
  – Eric Schmidt “the online world is not truly bound by terrestrial laws...it’s the world’s largest ungoverned space.”

• About Google
  – From the start, Google had collected data on users’ search-related behavior as a byproduct of query activity.
  – Serving users with amazing search results “used up” all the value that users created when they inadvertently provided behavioral data.
  – Behavioral data that were once discarded or ignored were rediscovered as what I call behavioral surplus.
Big other: surveillance capitalism and the prospects of an information civilization

- Although the facts about surveillance capitalism are known, their significance has not been fully appreciated or adequately theorized.
- Model
  1. the push for more users and more channels, services, devices, places, and spaces is imperative for access to an ever-expanding range of behavioral surplus.
  2. the application of machine learning, artificial intelligence, and data science for continuous algorithmic improvement → a sophisticated and exclusive twenty-first century “means of production.”
  3. the new manufacturing process converts behavioral surplus into prediction products designed to predict behavior now and soon.
- Not only advertisers, any actor with an interest in monetizing probabilistic information about our behavior and/or influencing future behavior can pay to play in a marketplace.
Big other: surveillance capitalism and the prospects of an information civilization

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- Model
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Big other: surveillance capitalism and the prospects of an information civilization

• In this model, it becomes clear that demanding privacy from surveillance capitalists or lobbying for an end to commercial surveillance on the Internet is like asking a giraffe to shorten its neck...

• At Google/Alphabet, every operation and investment aims to increasing the harvest of behavioral surplus from people, bodies, things, processes, and places in both the virtual and the real world.

• Regulation:
  1. the initial capture of behavioral surplus,
  2. the use of behavioral surplus as free raw material,
  3. excessive and exclusive concentrations of the new means of production,
  4. the manufacture of prediction products,
  5. the sale of prediction products,
  6. the use of prediction products for third-order operations of modification, influence.
Privacy Governance in Cyberspace

Internet Governance

Figure 1. Privacy governance in cyberspace. Data protection should be achieved through laws and practices that encompass the information collection activities of these three main actors.
References


THANKS!
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