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Darien High School and Pomperaug High School

This House would (THW) require social media algorithms to expose users to a diversity of political viewpoints.

Contents

How have social media algorithms changed the way we interact?

BBC News, by Nicholas Barrett, 10/12/2024

(Note: This article has been abridged for concision.)

Social media algorithms, in their commonly known form, are now 15 years old.

They were born with Facebook's introduction of ranked, personalised news feeds in 2009 and have transformed how we interact online.

And like many teenagers, they pose a challenge to grown-ups who hope to curb their excesses.

It's not for want of trying. This year alone, governments around the world have attempted to limit the impacts of harmful content and disinformation on social media – effects that are amplified by algorithms…

Adam Candeub is a law professor and a former advisor to President Trump, who describes himself as a free speech absolutist.

Social media is "polarising, it's fractious, it's rude, it's not elevating – I think it's a terrible way to have public discourse", he tells the BBC. "But the alternative, which I think a lot of governments are pushing for, is to make it an instrument of social and political control and I find that horrible."

Professor Candeub believes that, unless "there is a clear and present danger" posed by the content, "the best approach is for a marketplace of ideas and openness towards different points of view".

The limits of the digital town square

This idea of a "marketplace of ideas" feeds into a view of social media as offering a level playing field, allowing all voices to be heard equally. When he took over Twitter (now rebranded as X) in 2022, Elon Musk said that he saw the platform as a "digital town square".

But does that fail to take into account the role of algorithms?

According to US lawyer and Yale University global affairs lecturer Asha Rangappa, Musk "ignores some important differences between the traditional town square and the one online: removing all content restrictions without accounting for these differences would harm democratic debate, rather than help it."

Introduced in an early 20th-Century Supreme Court case, the concept of a "marketplace of ideas", Rangappa argues, "is based on the premise that ideas should compete with each other without government interference". However, she claims, "the problem is that social media platforms like Twitter are nothing like a real public square".

Rather, argues Rangappa, "the features of social media platforms don't allow for free and fair competition of ideas to begin with… the 'value' of an idea on social media isn't a reflection of how good it is, but is rather the product of the platform's algorithm."

The evolution of algorithms

Algorithms can watch our behaviour and determine what millions of us see when we log on – and, for some, it is algorithms that have disrupted the free exchange of ideas possible on the internet when it was first created.
"In its early days, social media did function as a kind of digital public sphere, with speech flowing freely," Kai Riemer and Sandra Peter, professors at the University of Sydney Business School, tell the BBC.
However, "algorithms on social media platforms have fundamentally reshaped the nature of free speech, not necessarily by restricting what can be said, but by determining who gets to see what content", argue Professors Riemer and Peter, whose research looks at why we need to rethink free speech on social media.
"Rather than ideas competing freely on their merits, algorithms amplify or suppress the reach of messages… introducing an unprecedented form of interference in the free exchange of ideas that is often overlooked."
Facebook is one of the pioneers of recommendation algorithms on social media, and with an estimated three billion users, its Feed is arguably one of the biggest.
When the platform rolled out a ranking algorithm based on users' data 15 years ago, instead of seeing posts in chronological order, people saw what Facebook wanted them to see.
Determined by the interactions on each post, this came to prioritise posts about controversial topics, as those garnered the most engagement.

Shaping our speech

Because contentious posts are more likely to be rewarded by algorithms, there is the possibility that the fringes of political opinion can be overrepresented on social media. Rather than free and open public forums, critics argue that social media instead offers a distorted and sensationalised mirror of public sentiment that exaggerates discord and muffles the views of the majority.
So while social media platforms accuse governments of threatening free speech, is it the case that their own algorithms might also inadvertently pose a threat?
"Recommendation engines are not blocking content – instead it is the community guidelines that restrict freedom of speech, according to the platform's preference," Theo Bertram, the former vice president of public policy at TikTok, tells the BBC.
"Do recommendation engines make a big difference to what we see? Yes, absolutely. But whether you succeed or fail in the market for attention is not the same thing as whether you have the freedom to speak."
Yet is "free speech" purely about the right to speak, or also about the right to be heard?
As Arvind Narayanan, professor of Computer Science at Princeton University, has said: "When we speak online – when we share a thought, write an essay, post a photo or video – who will hear us? The answer is determined in large part by algorithms."
By determining the audience for each piece of content that's posted, platforms "sever the direct relationship between speakers and their audiences", argue Professors Riemer and Peter. "Speech is no longer organised by speaker and audience, but by algorithms."
It's something that they claim is not acknowledged in the current debates over free speech – which focus on "the speaking side of speech". And, they argue, it "interferes with free speech in unprecedented ways".

The algorithmic society

Our era has been labelled "the algorithmic society" – one in which, it could be argued, social media platforms and search engines govern speech in the same way nation states once did.
This means straightforward guarantees of freedom of speech in the US constitution can only get you so far, according to Jack Balkin of Yale University: "the First Amendment, as normally construed, is simply inadequate to protect the practical ability to speak".
Professors Riemer and Peter agree that the law needs to play catch-up. "Platforms play a much more active role in shaping speech than the law currently recognises."
And, they claim, the way in which harmful posts are monitored also needs to change. "We need to expand how we think about free speech regulation. Current debates focused on content moderation overlook the deeper issue of how platforms' business models incentivise them to algorithmically shape speech."
While Professor Candeub is a "free speech absolutist", he's also wary of the power concentrated in the platforms that can be gatekeepers of speech via computer code. "I think that we would do well to have these algorithms made public because otherwise we're just being manipulated."
Yet algorithms aren't going away. As Bertram says, "The difference between the town square and social media is that there are several billion people on social media. There is a right to freedom of speech online but not a right for everyone to be heard equally: it would take more than a lifetime to watch every TikTok video or read every tweet."
What, then, is the solution? Could modest tweaks to the algorithms cultivate more inclusive conversations that more closely resemble the ones we have in person?

New microblogging platforms like Bluesky are trying to offer users control over the algorithm that displays content – and to revive the chronological timelines of old, in the belief that offers an experience which is less mediated.
In testimony she gave to the Senate in 2021, Facebook whistleblower Frances Haugen said: "I'm a strong proponent of chronological ranking, ordering by time… because we don't want computers deciding what we focus on, we should have software that is human-scaled, or humans have conversations together, not computers facilitating who we get to hear from."
However, as Professor Narayanan has pointed out, "Chronological feeds are not … neutral: They are also subject to rich-get-richer effects, demographic biases, and the unpredictability of virality. There is, unfortunately, no neutral way to design social media."
Platforms do offer some alternatives to algorithms, with people on X able to choose a feed from only those they follow. And by filtering huge amounts of content, "recommendation engines provide greater diversity and discovery than just following people we already know", argues Bertram. "That feels like the opposite of a restriction of freedom of speech – it's a mechanism for discovery."

A third way

According to the US political scientist Francis Fukuyama, "neither platform self-regulation, nor the forms of state regulation coming down the line" can solve "the online freedom of speech question". Instead, he has proposed a third way.
"Middleware" could offer social media users more control over what they see, with independent services providing a form of curation separate from that inbuilt on the platforms. Rather than being fed content according to the platforms' internal algorithms, "a competitive ecosystem of middleware providers … could filter platform content according to the user's individual preferences," writes Fukuyama.
"Middleware would restore that freedom of choice to individual users, whose agency would return the internet to the kind of diverse, multiplatform system it aspired to be back in the 1990s."
In the absence of that, there could be ways we can currently improve our sense of agency when interacting with algorithms. "Regular TikTok users are often very deliberate about the algorithm – giving it signals to encourage or discourage the recommendation engine along avenues of new discovery," says Bertram.
"They see themselves as the curator of the algorithm. I think this is a helpful way of thinking about the challenge – not whether we need to switch the algorithms off but how do we ensure users have agency, control and choice so that the algorithms are working for them."
Although, of course, there's always the danger that even when self-curating our own algorithms, we could still fall into the echo chambers that beset social media. And the algorithms might not do what we ask of them – a BBC investigation found that, when a young man tried to use tools on Instagram and TikTok to say he was not interested in violent or misogynistic content, he continued to be recommended it…

New study shows just how Facebook's algorithm shapes conservative and liberal bubbles

July 27, 2023 Heard on All Things Considered By Huo Jingnan and Shannon Bond

Is Facebook exacerbating America's political divide? Are viral posts, algorithmically ranked feeds, and partisan echo chambers driving us apart? Do conservatives and liberals exist in ideological bubbles online?
New research published Thursday attempts to shed light on these questions. Four peer-reviewed studies, appearing in the journals Science and Nature… found liberals and conservatives live in their own political news bubbles more so than elsewhere online. They also show that changing the platform's algorithm substantially changes what people see and how they behave on the site — even if it didn't affect their beliefs during the three-month period researchers studied.
"The insights from these papers provide critical insight into the black box of algorithms, giving us new information about what sort of content is prioritized and what happens if it is altered," said Talia Stroud of the University of Texas at Austin, who is co-leading the research project.

One Facebook, two political worlds

In one study looking at 208 million adults on Facebook in the U.S., researchers tried to answer a long-standing question: do liberals and conservatives consume different political news?
The answer seems to be yes. After analyzing popular political news links posted on the platform between September 2020 and February 2021, the researchers found that there's not much overlap between political news consumption within the two camps. Segregation also increases as a news link moves from being selected by the algorithm, to being seen by a user, to being interacted with.
That ideological gap was larger than what other research has shown for overall news consumption online and in traditional media…

The bubbles are sometimes punctured. The researchers measured segregation levels by day, and found it dramatically dropped on October 2, 2020, when the White House announced President Donald Trump was diagnosed with COVID-19…

The gap goes beyond the difference in what posts people see. Conservatives engaged more with political news, meaning they clicked, liked, commented on, and re-shared the political news they saw more often than liberals did.

The bubbles were asymmetric: there were more political news links seen exclusively by conservatives than by liberals. Political news links posted by pages and in groups — not by friends — had even higher levels of audience segregation.

Conservatives are also the main consumers of websites that Facebook flagged as untrustworthy and links that third-party fact checkers flagged as inaccurate. That said, both amount to a very small fraction of overall political news, which itself makes up just 3% of what people share on Facebook. (Facebook began showing users less news in 2018 and less political content in early 2021.)

What happens when you tweak the news feed

Another study also examined ideological separation, using an internal Facebook measure to classify the ideological leanings of all content sources seen by active users in the US. They found that on average, about half the posts users see come from like-minded sources. One out of five users experience an echo chamber on the platform, where at least three-quarters of the posts they see come from ideologically aligned sources.

After establishing that baseline, the researchers ran an experiment, recruiting roughly 23,000 users who agreed to take part. About 30% of those users were shown less content from like-minded sources and then researchers checked if that reduction changed their political attitudes.

That was not the case. Users did, however, see more content from sources with different political leanings, as well as fewer posts from sources that repeatedly post misinformation.

Two other experiments published on Thursday also tested changes to the algorithm that have been proposed by critics of Meta and policy makers.

The researchers tried replacing Facebook's algorithmic feed with one showing posts in reverse chronological order, without any algorithmic ranking, and reducing the number of reshared posts (the kind of content that goes viral).

All of the changes to the algorithms had significant impacts on what users saw in their Facebook feeds. For example, compared with a chronological feed, the algorithmically driven feed served less political content, less moderate content, more politically aligned sources, and less content from sources Facebook deemed untrustworthy, the study found.

Edelson, the NYU researcher not involved in the project, noted that the comparison sheds light on how Facebook's ranking algorithm works — something that has been hard for outsiders to do, given how closely the company holds its data.

"This is interesting, strong evidence that when it comes to politics, the algorithm is biased towards the extremes," Edelson said. "This is genuinely new."

Moving users to a chronological feed also affected how they used the platform: they posted less about politics, liked political content less, and were less likely to share that they voted or mention politicians and candidates for office. Getting rid of the algorithmically driven feed also curtailed the amount of time people spent on the platform, sending them to Instagram.

"When I read these papers, I see some really promising lines of study. I see things that we could do to build on this work to move toward a safer algorithm, to move toward interventions where we find ways to show people less harmful content," Edelson said.

Changing Facebook's algorithm to reduce engagement would have significant business implications. The systems serve up content they predict will keep users clicking, liking, commenting, and sharing — creating an audience for the advertising that generates nearly all of Meta's $116.6 billion in annual revenue.

Big questions remain unanswered

However, none of the three experiments showed an impact on users' political attitudes over the three months the study ran. That suggests addressing political polarization is not so simple as tweaking a social media algorithm…

"The experimental studies add to a growing body of research showing there is little evidence that key features of Meta's platforms alone cause harmful 'affective' polarization, or have meaningful effects on key political attitudes, beliefs or behaviors." Nick Clegg, Meta's president of global affairs, wrote.

But the outside academics who conducted the studies and other researchers who reviewed the findings cautioned against drawing broad conclusions from these studies about social media's role in polarization.

"This finding can not tell us what the world would have been like if we hadn't had social media around for the last 10 to 15 years or 15 or 20 years, however long it's been at this point," said Joshua Tucker of New York University, who co-led the research project with Stroud

The study's short duration and setting — a three-month period ahead of a highly contentious national election — may have been too short to show an impact on beliefs, he added.
Ultimately, these studies raise more questions than they answer, said Chris Bail, director of Duke University's Polarization Lab, who was not involved in the research but reviewed the findings.
"We need many, many more studies before we can come up with these types of sweeping statements about Facebook's impact on democracy, polarization, the spread of misinformation, and all of the other very important topics that these studies are beginning to shed light on," he said.
"We all want this to be a referendum on, is Facebook good or bad," he said. "But it's not."

Social Media Companies Want to Co-opt the First Amendment. Courts Shouldn't Let Them.

New York Times, By Jameel Jaffer and Scott Wilkens 12/09/2021

In two cases that could have sweeping implications for free speech online, Facebook, YouTube and Twitter are challenging new laws in Florida and Texas that limit their ability to decide which content appears on their platforms. The companies are right that the laws violate the First Amendment, but some of the arguments they are making are deeply flawed. If these arguments get traction in the courts, it will be difficult for legislatures to pass sensible and free-speech-friendly laws meant to protect democratic values in the digital public sphere.
The Florida and Texas cases are unusually important because they concern the first significant efforts by states to regulate social media companies. The laws differ in some respects, but between them they prevent the companies from removing certain content, limit their use of algorithms and require them to publish information about their content-moderation practices. They also restrict the companies' ability to attach their own labels to users' posts.
The power that a few technology companies wield over public discourse is a real problem, but the two states' laws are less an effort to address this problem than an attempt to punish certain social media companies for their supposed political views. In the months before the laws were passed, Twitter and Facebook kicked President Donald Trump off their platforms, blocked or limited access to a news story about Hunter Biden and attached labels to what they determined to be misleading claims about the election and the pandemic.
The Florida and Texas laws were payback. Legislators were candid about this, as were the states' governors. Gov. Ron DeSantis of Florida declared that the law was intended to "take back the virtual public square" from "big tech oligarchs" and "their radical leftist narrative." Gov. Greg Abbott of Texas explained that his state's law was intended to stop the companies from silencing "conservative viewpoints and ideas."
For instance, they contend that the courts should extend to social media platforms exactly the same very broad First Amendment protections that have been afforded in the past to newspapers. They also argue that any law that burdens their exercise of "editorial judgment," however minimally, should be deemed unconstitutional. These arguments are deeply misconceived and would, if the courts agree with them, pre-empt even laws that do not share the Florida and Texas laws' fundamental defects.
The truth is that social media platforms are like newspapers in some ways but not others. Like other media organizations, social media companies sometimes make decisions about which content to publish, and they sometimes add their own voices to public discourse — as they do when they attach labels to users' posts. When the companies engage in these activities, they are exercising the kind of editorial discretion that the Supreme Court has protected against government interference again and again.
But social media platforms are different from newspapers in important ways. They are primarily vehicles for others' speech, rather than their own. They do not exercise close curatorial control over the content they publish. They do not take responsibility for the content they publish in the same way that newspapers do — and the law does not require them to. There is also an incredible disparity in scale between (many) social media platforms and newspapers. Over the course of a day, the newspaper you are reading publishes a couple of hundred articles, but the big platforms publish hundreds of millions of posts.
Florida and Texas contend that these kinds of differences mean that social media companies are outside the protection of the First Amendment. That is clearly wrong. But the First Amendment should apply differently to social media companies than it does to newspapers, because social media companies and newspapers exercise editorial judgment in different ways.
The stakes here are high. The constitutional protection the Supreme Court has afforded to editorial judgment is essential and worth defending — for newspapers and for social media companies as well. This protection safeguards the right of editors of all kinds to decide for themselves which speech to publish and promote. It also serves as a crucial bulwark against government efforts to distort and control public discourse.
But the companies' arguments would make it almost impossible for legislatures to enact carefully drawn laws that protect the integrity of the digital public sphere. They would make it difficult for legislatures to impose even modest

transparency requirements on the companies, to require the companies to share data with academic researchers or to require them to provide explanations to users whose posts are removed or whose accounts are suspended. They would also make it difficult for legislatures to pass straightforward privacy laws limiting the information companies can collect and how they can use it.

Of course, whether any particular legislative proposal is constitutional will turn on its specifics. If the courts accept the companies' arguments, however, many legislative proposals worth considering will be dead on arrival.

The federal appeals courts should not allow the companies to turn the First Amendment against the values it was meant to serve. They should strike down the Florida and Texas laws but reject the social media companies' broader arguments. It would be terrible if the First Amendment were allowed to become an obstacle to carefully drawn legislation meant to strengthen democratic values online.

Lessons for social media from the Fairness Doctrine

Columbia Journalism Review, By Philip M. Napoli August 13, 2020

As the possibility of government regulation of large digital platforms picks up steam, the debate has begun to coalesce around a complex question: Is Big Tech fair?

The question, usually in response to accusations that digital platforms suppress conservative viewpoints, dominated last month's House Judiciary Committee hearing featuring the CEOs of Apple, Facebook, Amazon, and Google. It is the social-media version of the debate now dominating journalism, centering on objectivity and whether reporters have an obligation to surface opposing views, even if they are false or objectionable.

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The president's repeated demands for fairness bring to mind a long gone, but not forgotten, regulation – the Fairness Doctrine. First introduced by the Federal Communications Commission in 1949, the Fairness Doctrine required broadcasters to cover controversial issues of public importance—and, in so doing, provide contrasting views on those issues. The Fairness Doctrine reflected policymakers' concerns about the influence potential of broadcasting given its capacity for widespread and immediate reach, which extended well beyond the capacity of other media at the time. Within this context, policymakers were particularly concerned that the medium expose listeners and viewers to a diversity of viewpoints. These concerns echo in today's environment of digital platforms with massive audience reach. The doctrine required that broadcasters provide "fair and balanced" presentation of all public issues. (This is where Fox News got the phrase.) Individuals or organizations could file Fairness Doctrine complaints that broadcasters would then need to address in their newscasts.

The mechanics of applying the Fairness Doctrine to newscasts are obviously very different from applying them to social media platforms with millions of users. Everyone's news feed is essentially its own newscast, with the platforms' curation algorithms (and, in some cases, actual humans) making decisions about what does—and what does not—show up in your feed, and in what order. The differences in scale and scope for implementing a Fairness Doctrine for social media platforms are monumental.

It is also important to remember that the Fairness Doctrine applied only to radio and television broadcasters. Subsequent arguments that the Fairness Doctrine should also apply to newspapers were rejected by the Supreme Court as a violation of publishers' First Amendment rights. The reason that the Supreme Court considered the Fairness Doctrine constitutional in the broadcast context, but not in the context of other media, has to do with the fact that broadcasters are licensees of a "scarce public resource"—the broadcast spectrum. Broadcasters' privileged access to this public resource essentially means that they are "public trustees" who must, as a quid pro quo for access to the spectrum, abide by some public interest obligations. These public interest obligations have, in addition to the Fairness Doctrine, included requirements such as providing minimum levels of educational children's programming and providing equal time to political candidates.

Obviously, social media platforms don't utilize the broadcast spectrum. So where's the quid pro quo? I've argued elsewhere that one approach to justifying content-based regulation of social media platforms is to treat aggregate user data as a publicly held resource, collectively owned in the same way that the public "owns the airwaves."...

It's also worth understanding why the FCC decided to eliminate the Fairness Doctrine in 1987. The FCC argued that the doctrine was no longer necessary given the growth in the number of media outlets available—an argument that echoes today amid millions of online voices. This growth facilitated access to a diversity of perspectives in a less heavy-handed way than the Fairness Doctrine. The FCC also argued that the doctrine had unintended, counterproductive consequences. Here, the commission relied on testimonials from broadcasters who stated that the doctrine had a "chilling effect" on their speech, compelling them to avoid coverage of controversial issues rather than endure the process of responding to the Fairness Doctrine complaints that such coverage generated. From this perspective, the end result of the Fairness Doctrine was less coverage of controversial issues, something that the FCC did not see as in the public interest.

…
But the biggest problem with the Fairness Doctrine is what it does to our conception of journalism and to the notion of how responsible gatekeeping works. Over the past few years, there has been a substantial amount of criticism heaped upon the news media for engaging in "false equivalence"—giving equal attention to competing claims on different sides of the political or ideological spectrum, regardless of the objective validity of the competing claims. …[P]assivity in the face of falsity is at the heart of the Fairness Doctrine. It literally allowed tobacco companies to counter news reports of research demonstrating that cigarettes caused cancer with the alternative—and false—perspective that there was no meaningful link between smoking and cancer. It also provided a tool for presidential administrations to try to influence news coverage about them. The Johnson and Nixon administrations were particularly fond of using the Fairness Doctrine to try to counteract bad press.

This sort of uncritical, non-evaluative approach to journalism—and to online gatekeeping more broadly—simply is not the right path to cultivating an informed citizenry. Institutionalizing such a model puts gatekeepers in the position of legitimizing falsity by presenting it alongside truth. It creates a system where demands of fairness and balance neuter journalists' and other gatekeepers' abilities (and responsibility) to differentiate fact from fiction. This critical gatekeeping function is more valuable than ever in today's vast and complex information ecosystem, where distinguishing legitimate sources of news and information from illegitimate sources is more challenging for the end user than it has ever been; where efforts by bad actors to manipulate social media platforms have become commonplace and increasingly sophisticated; and where our traditional assumption that a free-flowing "marketplace of ideas" is the best way of ensuring that truth will win out over falsity may not hold up as well as it once did. Social media platforms are not the "passive bulletin boards" that the executive order demands them to be; nor should they be. For this reason, more than any other, borrowing from a regulatory intervention developed for the media environment of 1949 seems particularly dangerous today.

The Sordid History of the Fairness Doctrine

Reason Magazine, by Paul Matzko January 30, 2021

(Note: This article has been abridged for concision.)

It was terrible for free speech on the radio dial. We shouldn't inflict it on the internet too.

…

When many people hear the phrase "Fairness Doctrine," they picture a time at some indeterminate point in the past when broadcast media were reasonable and balanced. Back then, they imagine, radio and television station owners couldn't air only their own opinions and spread unchecked misinformation; they had to let the other side on any given hot-button issue have a say, allowing the "good guys" to act as a check on the "bad guys" and their lies.

That narrative is almost entirely a myth. Despite its evocative name, the Fairness Doctrine was primarily a tool wielded by established political interests to suppress unwelcome speech.

It was terrible for free speech on the radio dial. We shouldn't inflict it on the internet too.

The true story of the Fairness Doctrine begins long before the first major implementation of the doctrine in 1963, back before the rule was enacted in 1949, back all the way to the Radio Act of 1927. That law created the FCC's precursor, the Federal Radio Commission (FRC), and gave it the power to license and limit radio stations. Among other things, the law required licensees to promote "the public interest, convenience, and necessity" and not simply to serve their own interests.

Does that sound vague to you? It certainly did to station owners in the 1920s and '30s. Whose convenience are we talking about? What content is necessary and what is not? Is there even such a thing as a singular public interest? The inherent ambiguity also meant incredible opportunities for graft and political privilege. In practice, the more political connections and capital you possessed, the more "public interest" your license application had. The commission maintained a revolving door with the major radio networks, and the networks quickly consolidated what had been a relatively diverse and independent radio landscape.

Non-WASPs and political radicals in particular faced an uphill battle when applying for station licenses. In 1928, for example, the FRC attempted to reassign the license for the leftist Queens station WEVD, named after the socialist leader Eugene Victor Debs. It took a major public pressure campaign to convince the agency that the station showed "due regard for the opinions of others," which was necessary given that they were "the mouthpiece of a substantial political or religious minority" and thus not naturally deserving of a broadcast voice. Of course, non-socialist stations never had to show a similar "due regard"; it was taken for granted that they represented the public interest. Similarly, in 1933 the FRC decided that two stations in Chicago—WIBO and WPCC, which served a predominantly immigrant audience—should lose their licenses to a new station, WJKS, because the latter's programming was better "designed to meet the needs of the foreign population." By what standard? Well, WJKS promised to air programming that "stress[ed] loyalty to the community and the Nation" and taught "American ideals and

responsibilities." The FRC had decided that the public interest was synonymous with ethno-nationalist self-interest, the 1930s regulatory version of an "English only" sign.
… How did the government get away with denying broadcasters full free speech rights? When challenged in cases …they appealed to something called the "scarcity rationale." Since the electromagnetic spectrum is physically finite, they argued, the First Amendment shouldn't apply to radio. The government needed to choose winners and losers, because someone had to decide who got a license and who did not… The courts bought the scarcity rationale excuse until the 1990s….
Ronald Reagan's FCC ended the rule in 1987, and Reagan vetoed a bi-partisan bill to reinstate it.
We are fortunate that Congress and the courts decided in the 1990s to regulate the internet under a print regulatory regime rather than a broadcast regime. As a result, the internet was "born free," to borrow a phrase from Adam Thierer. For example, when Congress codified Section 230 of the Communications Decency Act, it extended to the internet a set of legal precedents that had protected bookstores from publisher liability.
And thank goodness they did! Imagine how disastrous a Fairness Doctrine for the internet would be, if outlets and platforms had an affirmative obligation to ensure that either articles published or user posts permitted were carefully balanced according to some ambiguous public interest standard. Think of the mischief that, say, President Donald Trump could have done under a Fairness Doctrine-style regime. The Trump reelection campaign—or some ostensibly independent PAC—could have forced outlets to run a response to any criticism of the administration.
The Fairness Doctrine as originally conceived would not pass legal muster for cable broadcasting or the internet. But there have been proposals for Fairness Doctrine–style regulations that would make an end-run around First Amendment protections by targeting Section 230's liability waiver. For instance, in 2019 Sen. Josh Hawley (R-Mo.) introduced a bill that would have given the Federal Trade Commission the power to certify that social media platforms are politically neutral with their content moderation policies; decertification would have exposed companies to significant legal liability. Hawley's legislation was laughed off at the time, but just last October several Senate Republicans, including Lindsey Graham, introduced a bill that would make platforms liable for their moderation of political speech.
These approaches might not pass First Amendment muster. But even if they ultimately failed in court, that would still mean years of messy legal challenges with significant chilling effects on online speech and innovation.
Despite its name, the Fairness Doctrine was deeply unfair. It made broadcasting less diverse, more beholden to powerful corporate interests, and more susceptible to political abuse. And it was a key weapon in one of the most successful censorship campaigns in American history. It would be a mistake of historic proportions to mimic it while writing regulations for the internet.

Don't blame the algorithm: Polarization may be inherent in social media

Science, Hannah Richter, August 15, 2025

(Note: This article has been abridged for concision.)

Following the 2024 U.S. presidential election, millions of aggravated X users flocked to Bluesky to avoid the partisan vitriol that had overtaken the older social media platform. Designed without an algorithm to determine what content users see, Bluesky aimed to avoid X's pitfalls. For a while, it seemed to work: Individuals with lots of followers weren't overamplified, nasty language was less common, and misinformation seemed held at bay. But less than 1 year later, some of social media's typical ills had emerged on Bluesky. Some complain it has become a bit of an echo chamber, albeit a left-leaning one.
Now, simulations with a scaled-down platform populated with virtual users generated with artificial intelligence (AI) may have revealed why social media tends to become so polarized. The simple platform had no nuanced algorithm designed to feed users posts that would appeal to them and keep them online the longest. Yet it still split into insular communities, researchers report in a preprint posted to the arXiv server last week. The results suggest that just the basic functions of social media—posting, reposting, and following—inevitably produce polarization. Others caution, however, that cliquishness may have been baked into the AI-generated users.
The study's "central outcomes are compelling," says Kate Starbird, an information scientist at the University of Washington who studies online rumors and was not involved with the work. "There's a lot of things about it that resonate with hypotheses that I and others have had about online systems." …. In the experiments, a randomly selected user would face three choices: Choose a news article from 10 random options (out of 210,000) and write a post about it, repost something, or follow another user based on their profile. The user's choices were influenced by their feed, which consisted of 10 posts. Half were from a user's followers and half were popular posts from people the user didn't follow.
The network ran for 10,000 cycles in each test. But no matter which [AI chatbot] the researchers used, the platform inevitably developed the negative trifecta of echo chambers, concentrated influence, and extreme voices.

"We were expecting that we would have to work very hard in some way to produce this effect," Törnberg says. But instead, "We get this toxic network that is forming as a result of these just basic actions of reposting and following…"

Online speech showdown: Six takeaways from Moody v. NetChoice

Hogan Lovells Law Firm, by Mark Brennan, Ryan Thompson, and Thomas Veitch, July 8, 2024

The U.S. Supreme Court recently released its decision in *Moody v. NetChoice*, providing some much-needed guidance to lower courts on the application of the First Amendment to laws regulating content moderation practices of websites, social media platforms, and other online services ("online platforms"). The Court held that online platforms' selection, ordering, and ranking of third-party content is expressive and thus protected by the First Amendment—but the lower courts failed to conduct a proper analysis of whether the challenged laws are facially unconstitutional.

The decision also left much to be addressed. Most prominently, lower courts will now need to determine whether the challenged laws are facially unconstitutional. The majority opinion also left open the prospect that non-expressive algorithmic curation may receive different constitutional treatment.

Below are six takeaways from the opinion and things to watch for as policymakers and lower courts decide what to do next.

Background

Florida and Texas enacted statutes curtailing online platforms' ability to engage in content moderation (such as filtering, prioritizing, and labeling content) and requiring certain disclosures. Trade associations challenged these laws as infringing on online platforms' First Amendment-protected right to organize content they published by impermissibly restricting speech. These cases were brought as "facial challenges," which attempt to fully invalidate a law under the theory that it is unconstitutional in at least a substantial number of applications. This differs from an "as-applied" challenge in which the plaintiff argues that a particular application of a statute is unconstitutional.

In an opinion penned by Justice Kagan, the Court concluded that the lower courts failed to address the high burden required for a facial challenge because they and the parties did not fully address the range of online platforms and activities to which the laws conceivably apply. The Court noted, for example, that the analysis may differ when applied to a platform's news feed versus its direct messaging services.

Five justices signed on to the opinion in full. Justice Jackson concurred with most but not all of the opinion. Justices Thomas, Alito, Barrett, and Jackson filed concurring opinions.

The cases were vacated and remanded to the Fifth and Eleventh Circuits to conduct a proper facial analysis.

Takeaway #1 | Content moderation is protected speech.

The Court recognized that the editorial decisions made by online platforms regarding content moderation are a form of protected speech under the First Amendment. This protected speech includes decisions about what content to allow, remove, or promote on their platforms. The Court emphasized that government regulations that force private entities to host or promote speech against their will can violate the First Amendment.

Takeaway #2 | Expressive algorithmic curation is protected speech.

The Court concluded that online platforms' algorithmic decisions to sort, rank, and remove third-party content are a form of protected speech. Thus, government regulation of expressive algorithmic curation of content is subject to First Amendment protections.

The Court also clarified that it was not addressing the potential for certain types of algorithmic sorting to not be expressive. For example, the Court noted that it was not addressing "algorithms [that] respond solely to how users act online—giving them the content they appear to want, without any regard to independent content standards." That said, it remains to be seen whether it is workable for courts to decouple such algorithms from expressive, First Amendment-protected algorithmic curation.

Takeaway #3 | States will keep passing laws raising First Amendment issues.

State legislatures across the country and the political aisle have been eager to enact laws regulating online platforms. The Court's decision is unlikely to dissuade legislators from continuing these efforts, even if the laws are ultimately held unconstitutional. The Court leaves many questions unresolved, such as whether the Florida and Texas laws are constitutional for any online services. And given the Court's explanation of how high the bar is for facial challenges, legislators may see an opportunity to enact laws that may remain in force for a longer period of time before courts can review whether a particular application of the law is unconstitutional.

Takeaway #4 | Expect lots more as-applied challenges, clogging courts.

This ruling may lead to an onslaught of as-applied challenges against online platform regulation because the Court has made facial challenges more difficult. This could increase the amount of litigation needed to address the constitutionality of these laws, clogging courts and potentially leading to conflicting district and circuit decisions in

the coming years as litigation plays out. For companies potentially impacted by these laws, it will be important to follow these cases closely.

Takeaway #5 | Section 230 is still a strong defense, for now.

Section 230 of the Communications Act has long been relied on by online platforms to protect themselves from liability arising from third-party content. Although the parties also litigated whether Section 230 preempted the Florida and Texas laws, the majority opinion did not address this issue.

Takeaway #6 | First Amendment battles will play out in consumer protection, online safety, and other areas.

The Court concluded that the laws' content-moderation provisions, as applied to platform news feeds, would fail even under lower standards of First Amendment scrutiny because Florida and Texas explicitly sought to suppress speech. But the Court noted that states might be able to sustain regulations of platforms based on other "possible interests" unrelated to speech suppression.

The Court left unresolved what to do with disclosure requirements for platforms or how the content-moderation provisions apply to services other than news feeds, like direct messaging, events management, email filtering, customer reviews, payments, and ride-sharing.