

Governing the gatekeepers: is formal regulation needed?

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Robin Mansell is Professor of New Media and the Internet at the LSE. In the latest post in [our series on digital intermediaries and plurality](#), she argues that intermediaries are influencing media production and dissemination often in ways not fully understood by policymakers, implementing policy without oversight. Regulators have been unable to keep up with the pace of change and still rely on legislation geared towards traditional market structures. To protect the public interest, they will need to shift emphasis to a more holistic view of the media ecology rather than the piecemeal approach of the past.



Media policy has always been concerned with the exercise of media power. Regulatory frameworks are designed to ensure that, whatever power media have, it aligns with citizen interests. Is there a need for self-, co- or formal regulation, in what combinations, with what justifications and backed up by what evidence base? What should be the core focus if the goal is to maximise media pluralism in an age where new intermediaries sit at the very centre of a complex media ecology?

This ecology includes fixed and wireless access providers, search engines, video, webhosting, and blog platforms, social media providers, payment systems, and more. The top 10 websites in 2014 include Google with about 90% of the search market in the UK (and YouTube), Facebook, Yahoo, Twitter, and Amazon. They and others are involved in search, content aggregation, recommendation, and collection and processing of user generated data. These insurgent companies function as market makers or intermediaries, layer player specialists, orchestrators in the value chain given and as integrators. [Latzer](#) points out that they 'squeeze themselves between traditional news companies and their two customer segments, the audience and the advertisers'.

The intermediaries benefit from economies of scale of operation and from economies of scope enabling them to exploit central assets including their databases, hardware, and algorithms. They compete less on the basis of price than on the way their users evaluate the quality of their services. They are in a position to exercise market power. The question is whether they do so in a way that threatens citizen rights to privacy, freedom of expression, access to information and safety. If their editorial or gatekeeping efforts diminish the variety of content accessed by citizens, result in new forms of discrimination, or lead to unwanted algorithmic surveillance, there is a case for oversight to protect the public interest.

Almost a decade ago I said that the relationships between established incumbent players (telecoms companies and broadcasters) would be [radically changed](#) as intermediaries established their presence and that this was not likely to be entirely consistent with the public interest. Policy makers and regulators were focusing on traditional ways of measuring whether or not incumbent companies were exercising power in the marketplace to control [gateways](#) to content. A decade later the intermediaries are functioning as gatekeepers – blocking and filtering communications and content in line with their own strategies, subject to legislation that is still geared to the old market structures. In [Europe](#) and in the [United States](#) there is academic analysis of what this means for policy and regulation, but fewer signs that policy makers and regulators are ready to catch up with the fast pace of change. Most intermediaries are commercial companies. Intermediaries claim that they are 'conduits' for traffic, but they are more than this. They influence which ideas citizens are able to find easily and whether it will even be possible to conceive of a public sphere for democratic dialogue in the future.

The biggest intermediaries provide digital platforms. A platform provider might privilege content produced by its affiliates in one business segment, but not in another if this threatens its profit margin. We are witnesses to the 'platformization' of the media industry. This awkward neologism aptly characterizes the media market with its tangled vertical and horizontal arrangements. There will be no understanding of the consequences of the intermediaries' strategies if regulators look in the wrong places for symptoms of bad behaviour.

Today's intermediaries become concentrated because of network effects. They exert power in selected markets adjacent to the ones in which they are offering free content. Multisided platform operators package up some content and sell it, and subsidize other content. All subsidies are not harmful, but when they are, this is when regulatory oversight is needed. Of course intermediaries are restrained in what they can do to shape their customers' media worlds. Consumers resist, and Facebook will alter its privacy settings, for instance. The European Court of Justice mandates that citizens have a right to have the traces they leave online deleted and Google sets up its [Advisory Control](#) to address the right to be forgotten. These, however, are sporadic measures and they do not amount to a coherent basis for on-going assessment of the need for regulatory oversight of whether the strategies of intermediaries are inconsistent with public values.

There is relatively little understanding of the subtle ways in which news production and access to content are influenced in a *platformized* marketplace. Policymakers seem entranced by the technical capacities of intermediaries to create, process and store vast quantities of digital content. Some even suggest that platform providers have a commercial interest in being neutral. Some claim that regulatory intervention is needed *only* if there is direct evidence that intermediaries are involved in practices inconsistent with public values such as media pluralism. After all, technological innovation has abolished content scarcity and abundant media is beneficial for all.

But platform intermediaries are profiling customers and allowing some to find free content; others, paid-for content; and still others, exposure to online advertising. Search activities may result in referrals to specific content through corporate tie-ins leading to cross selling of products and services. The intermediaries' interest is in aggregating content and shaping traffic by managing agreements between content providers, advertisers and network operators. When intermediaries close off or steer their customers through subscription access to news outlets, for instance, then no matter how trustworthy they are, or how much they promise to protect their customers' privacy, they are managing the content that their consumers are most likely to see. Platform providers can screen out desirable content without the citizen's knowledge just as they can screen out undesirable content. It should not simply be commercial operators that decide what is and is not desirable.

Absent a shift in regulatory attention to *platform* arrangements and the potential for gatekeeping, intermediaries will establish policy without public oversight. Of course in a complex media ecology it is tall order to create an evidence base to underpin claims of threats to the public interest. Google and other large intermediaries are not (yet) in the business of producing news but this is unlikely to be the case forever. Business models change through time. Regulators need to be able to monitor changes in the control configurations. Instead of focusing separately on market segments such as transmission/access, content, search/aggregation, the focus needs to shift to the media ecology, the new points of control, and assessment of whether the user experience is inconsistent with the public interest in media plurality.

It is time for regulators to be just as innovative as the digital platform industry. History suggests that there will be times when gatekeeping has a negative impact on broader public interest goals. Proceeding with silo measures of market power and excluding intermediary platform operators from public interest regulation means that decisions about the media environment enjoyed by citizens simply are removed from policy oversight.

This article gives the views of the author, and does not represent the position of the LSE Media Policy Project blog, nor of the London School of Economics.

