

[Robin Mansell](#)

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The Public's Interest in Intermediaries

By

Robin Mansell
Department of Media and Communications
London School of Economics and Political Science
Email: r.e.mansell@lse.ac.uk

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Abstract

Purpose: The paper examines recent developments in European policy debates concerned with whether governments should intervene in the digital intermediary marketplace to protect the public's interest.

Design/methodology/approach: The paper discusses the public's interest in the evolution of the digital intermediary marketplace, it considers the economics and policy literature on the case for policy intervention in the market dynamics of digital platforms, and it examines the extent to which policy makers in Europe are catching up with changes in the market for digital platform services.

Findings: It is argued that policy makers need to broaden the evidence-base upon which they consider whether policy intervention is needed beyond economic analysis. This is essential to ensure the European digital intermediary marketplace develops in line with economic, social and cultural goals.

Research Implications: The case is made for measures to ensure continuous and integrated monitoring of developments in the digital marketplace based on economic indicators and evidence on the diversity of media content.

Practical implications: Suggestions are made about the need for innovations in the way policy makers develop the required evidence-base for their decisions.

Social implications: The paper draws attention to the need for proactive policy making based on a consideration of economic, social and cultural goals to ensure that digital intermediaries are held accountable.

Originality/Value: The paper provides a multidisciplinary perspective on the dynamics of the digital intermediary ecology and assesses the extent to which the European digital market strategy provides an integrated initiative that is likely to be implemented.

Keywords: Digital Single Market, Intermediaries, Platforms, European Policy, Digital Content, Diversity

Introduction

Communication policy is always concerned with the exercise of power – both market power *and* political power. Regulatory frameworks are designed to ensure, whatever power intermediary market players may have, that it is exercised in a way that is aligned with consumer and citizen interests. Companies in the digital ecosystem are involved in content production, retail sales and other forms of electronic commerce. They are also involved in scientific research and, increasingly, in data analytics. These digital

intermediaries are selling tools, products and services based on the reuse of data. They include providers of data marketplaces and platforms, data analytics products and services, mobile and cloud apps, software, IT equipment and the telecommunication infrastructure. The digital ecology is increasingly centred around extracting economic value from substantial volumes of user-generated data and this has a variety of implications for policy.

Digital intermediary platform research is often concerned with the dynamics of competition and innovation, drawing upon economic theory or engineering design models to examine market structure and coordination strategies and platform architectures and business strategies. As Gawer (2014) notes, however, an understanding of intermediary platform dynamics also requires an examination of their governance since governance arrangements influence how these platforms evolve. She focuses mainly on internal corporate governance, that is, on whether intermediary companies are likely to compete or collaborate. In this paper, the focus is on the policy-related aspects of governance which arise with the expansion of internet-based service provision (Mansell, 2012). The paper considers recent developments in European policy debates that have a bearing on decisions about whether or not governments should intervene in the digital intermediary marketplace to protect their interpretation of the public's interest.

The next section explains why the public has an interest in the evolution of the digital intermediary marketplace. Subsequent sections consider the case for policy intervention, the available evidence on the market dynamics of digital platforms, and whether policy makers in Europe are catching up with rapid changes in the market for digital platform services. In the conclusion it is argued that policy makers need to broaden the evidence-base they turn to when they consider whether policy intervention is called for. They need to look beyond what can be provided by economic analysis if the digital intermediary marketplace is to develop in a way that meets both economic, and social and cultural goals, in Europe.

The Public's Interest

The public's interest in the evolution of digital intermediaries is important because as Gawer (2014: 1243) emphasises, 'users play ... the role of (generally unpaid) contributors to the supply of (and further innovation on) these platforms'. Users play a double role insofar as they are both consumers and citizens. When digital intermediaries sit at the core

of complex platform ecologies, how can policy makers ensure that the public's interest in fairness, plurality, and privacy protection is upheld? In the European Union, policy makers have to balance these goals with other goals including the global competitiveness of the European digital single market and the rights of commercial digital platform owners to build profitable businesses. Global intermediaries such as Amazon, Google and Facebook dominate their respective value chains and their vertical integration gives them a substantial competitive advantage, partly as a result of network effects and scale economies.

Policy makers and industry players are increasingly turning to questions of governance and policy as the digital intermediary marketplace develops. Industry representatives frequently observe that a new data governance regime is urgently needed (IDC, 2015). In the public policy domain, the European Commission has launched a digital single market strategy (EC, 2015a). The strategy is ambitious. It is an effort to initiate a coherent governance regime to ensure that the European digital single market can flourish. The strategy begins with the observation that 'achieving a Digital Single Market will ensure that Europe maintains its position as a world leader in the digital economy, helping European companies to grow globally' (EC, 2015a: 3). Three pillars - better access, conditions for a level playing field, and market growth - are aimed, in the words of Commission President Juncker, at 'every consumer getting the best deals and every business accessing the widest market' (EC, 2015b: np). It is claimed that the digital single market in Europe could generate EUR 415 bn by 2019 with many thousands of new jobs.

The strategy makes clear that policy makers concerned with digital intermediaries need to consider the whole data cycle from data ownership, sharing, interoperability, competition and potential market abuse, to social impacts such as material and information inequalities. When market analysts depict the digital ecology, they try to capture a value chain that moves from data collection and creation, through storage, aggregation and organization, to analysis, processing, marketing and distribution. In addition, they envisage an interlinked governance environment in which issues of data privacy, data ownership, copyright and security, skills, infrastructure investment, technical interoperability, and capital markets are addressed as part of a package.

Policy makers similarly need to address governance issues in this area in an interlinked

way. This is especially so when it comes to considering whether it is necessary for public authorities to intervene in the dynamically evolving digital ecosystem. This makes it vitally important that the analysis of the political, social and cultural dimensions is coupled tightly to economic analysis of digital intermediary platforms. This is because some digital intermediaries are operating as market makers - or orchestrators - in the digital ecology value chain. They can function explicitly as gatekeepers to digital content and information, blocking and filtering in line with their terms of service agreements or with government policies for data protection, copyright enforcement or surveillance. The intermediaries' activities are not always transparent. For example, Google has responded over the past year to some 262,600 requests to delist links from name search results that are claimed to contravene data protection legislation in Europe (Google, 2015). But there is no evidence about whether the process employed by Google is fair, what information is most likely to be delisted, or how this varies from country to country.

It may be questioned whether it is possible to introduce effective national or regional policy in the face of a complex digital ecology and when much of the world's data flow through the United States, or are facilitated by US-based, companies. Others argue, notwithstanding the global reach of the internet, that countries can and should devise policy frameworks to support intervention when it is called for to enable or constrain the activities of digital intermediaries (UK Parliament, 2015). Such differing views about the viability of policy intervention in the response to the evolution of digital intermediaries raise questions about the evidence-base that is required to support intervention when it is needed.

When he announced new rules for an Open Internet in the United States, Federal Communications Commission (FCC) Chairman Wheeler said that 'we know from the history of previous networks that both human nature and economic opportunism act to encourage network owners to become gatekeepers that prioritize their interest above the interests of their users' (FCC, 2015: 1). The FCC rules now treat the internet as a common carrier. The rules will be contested in the courts, but a major regulatory agency has found grounds for policy intervention in the world of digital intermediaries to protect its understanding of the public's interest. The FCC clearly believed there was sufficient evidence to support policy intervention, though it might be argued that the new rules are likely to protect the interests

of some corporate players and not those of others. The European market has different characteristics so what is the case for policy intervention in the European Union context?

The case for policy intervention

It is often argued that any form of policy intervention in the digital intermediary ecology is likely to suppress innovation and growth. For instance, Gotz (2013) argues that the evaluation of the different options should rest on whether online products are sufficiently differentiated from the consumer point of view. He suggests that even relatively robust empirical results indicating a potentially positive effect of intervention should be regarded as a best-case outcome. As a result in the face of high levels of uncertainty in the fast changing digital ecology, it may be argued that no intervention or a light-handed approach is superior. Other analysts suggest that policy intervention is unlikely to have traction because of the rapid pace of change. For instance, McKnight signals that the reality is one in which intermediary companies do not stand still and will always be ahead of policy makers. This is because,

‘enterprises deliver digital services orchestrated in hybrid clouds on virtual machines, using software-defined networks and network function virtualization to enable firms to create, and tear down heterogeneous, policy-compliant servers and networks in an instant as users wish, whilst implementing Over the Virtual Top [services]’ (McKnight, 2014: 2).

These companies are, nevertheless, increasingly at the centre of everything we do online. In the United Kingdom, Ofcom’s Digital Day study shows that total media and communication consumption grew from more than eight hours per day in 2010 to in excess of 11 hours per day in 2014 (Ofcom, 2014). Patterns differ across Europe, but citizens are using digital intermediary services to access a growing proportion of their total media consumption. The prominence of digital intermediaries in the digital ecology means that ensuring intermediary responsibility and accountability is crucial and that insofar as policy makers are mandated to hold these companies to account, they have an obligation to do so. From the commercial market perspective there may also be a strong argument for policy intervention. This additional impetus for intervention is relatively infrequently discussed except when it means rolling back regulation. Without clear policies for privacy, data ownership, pricing and data security and related issues, however, trust in intermediary

services is likely to be eroded and trust is essential for the success of both new entrants in Europe and, indeed, for major non-European-owned companies.

Until quite recently, policy makers have found the digital intermediary ecology rather challenging to address in a coherent way for several reasons. A principal one is continuous industry transformation within multiple layers of the ecology, with the cloud and increasing mobility creating high levels of uncertainty in the industry. Digital intermediary platform organizations are companies that as Latzer et al. (2014: 18, citing Aguila-Obra et al., 2007) say, 'squeeze themselves between traditional news companies and their two customer segments, the audience and the advertisers'. These companies benefit from substantial economies of scale and, especially, scope of operation, which means they are able to exploit enormous information assets.

The platform form of organization is not itself a new phenomenon and it has been a characteristic of the marketplace since the mid-1990s (Gawer & Cusumano, 2002). Bresnahan and Greenstein (2014: 475) define a platform as 'a reconfigurable base of compatible components on which firms and users build applications. Applications share the general purpose components, thereby exploiting increasing returns at an industry wide level'. The reconfigurability of digital platforms hints at the agility of companies in expanding into new markets with or without policy oversight. Profiling is used to segment customers – some offering free content; others, paid-for content, and still others, exposure to online advertising. User search activities result in referrals to content 'properties' through sharing arrangements that are aimed at supporting targeted marketing and cross-selling. The interest of the platform owner is in aggregating content and shaping traffic flows, ultimately, to achieve profits, and to command high visibility in the market ecology. As these platform organisations become pervasively present in citizen's lives, they are bringing an array of policy issues onto the political agenda with an increasingly high profile.

This is partly because digital intermediaries are innovating continuously to find ways of locking in or 'capturing' visitors to their websites, using creative combinations of algorithms and human intervention. This is not a new phenomenon either. In the 1990s 'portal' firms like Yahoo! sought ways to control what users could do at their websites. This earlier period of 'platform' evolution resulted in debates about the implications for privacy,

freedom of expression, and access to diverse content (Mansell, 1997). In this earlier period, policy makers tended to focus mainly on ways of measuring whether or not incumbent companies had the ability to exercise sufficient market power to control the gateways through which users accessed content (Mansell, 1996). Nearly two decades later, today's digital intermediaries continue to function as gatekeepers, but they remain subject to policies that are often geared to older market structures. While the technology has moved on, the problems created by the control exercised by digital intermediaries over content gateways and over citizen's information have not disappeared; in fact, their activities have become more ubiquitous and less transparent. Most digital intermediaries are commercial companies. They frequently maintain they are mere 'conduits' for data, but they are more than this. They have the capacity to influence which ideas citizens are able to find easily and, ultimately, whether it is possible to conceive of a public sphere for democratic dialogue in the digitally mediated environment.

Digital intermediaries compete less on price than on the way people evaluate the quality of their services and they are in a position to exercise market power when they achieve a dominant market position. The question is whether they are using, or will use, this power in a way that threatens citizen's rights. If their editorial or gatekeeping efforts diminish the quality or variety of content available to citizens, result in discriminatory treatment, or lead to unwanted surveillance, then arguably there is a *prime facie* case for policy oversight.

Evidence on Market Dynamics of Digital Platforms

Digital intermediaries are examined by economists as multi-sided platforms. These platforms bring together two or more types of economic agents to facilitate interactions, theoretically making all agents better off by coordinating them through their affiliation agreements (Hagiu, 2014). For example, search engine intermediaries can generate economic value for three groups: website owners by indexing them and making them available through search queries, people who make queries, and advertisers who want to reach their customers. Evans and Schmalensee (2013: 12) find that it is likely that a platform owner will price at a level that is 'higher than is socially desirable', at least in some part of its platform business. The consequence, as in all forms of pricing above cost, is a deadweight social loss; that is, a loss to all, as well as a distribution of surplus from consumers to producers. In brief, social welfare is not maximized within the meaning ascribed to this by economists. 'Perfect markets' are not plausible in these kinds of

platform industries. The advice for policy makers that follows from this type of economic analysis is that 'exclusive reliance on mechanical measures such as market share or price-cost margins in determining market power is not advisable' (Evans & Schmalensee, 2013: 21). In part, this is because of uncertainty about what is a 'just return' for innovation. This means that economic analysis of this kind cannot provide a sufficiently clear the evidence-based as is often expected by policy makers.

Despite the lack of clear direction available from economic analysis, policy makers ignore the complexity of digital intermediary platforms at their peril. They therefore need to develop new methods for understanding how agents (businesses, consumers and citizens) on all sides of a platform are being affected by these innovating firms. While dynamic indirect network effects matter in terms of which actors are likely to be negatively affected, unfortunately, the available economic results are not designed to provide certainty about whether policy intervention is called for or not. The result may be a strong inclination on the part of policy makers to do nothing until evidence of harm in the commercial market or to the public is incontrovertible.

Sometimes it is argued that companies such as Google, YouTube or Facebook may be near monopolists, but their status is temporary. The market leaders at a given moment may have superior technology and they may be the most innovative companies, but creative forces of destruction mean that their specialized assets will be eroded away and, eventually, they will be overtaken by new market entrants. Following this line of analysis, it is argued that intermediary company strategies and practices are not anticompetitive and that market dynamics will yield justifiable outcomes for consumers and citizens (Haucap & Heimeshoff, 2014). Policy intervention in contractual alliances among large digital intermediary platform companies is likely to inhibit innovation and policy intervention, and therefore is risky. Some economists may argue that platform companies like Google are not multisided. Luchetta (2013), for instance, argues that the relevant market of concern for policy makers should not be the online search market, but the whole market for personal information, a market in which Google is not (yet) dominant.

One explanation for diverse perspectives is that the digital ecology is undergoing a complex process of 'platformization' (Ballon, 2014). This neologism is used to characterize the intermediary market ecology with its tangled vertical and horizontal arrangements.

Platforms operators with multiple companies in their value chains are constantly reconfiguring and available economic models do not capture this. A company *might*, for example, introduce data analytics techniques that infringe on citizen privacy in one area of its business and then change this technique without notice.

This raises the issue of whether policy makers should be reactive or proactive. Policy makers could wait for economists, legal experts, and industry analysts to agree about the impacts of platformization, but they are likely to wait a long time. As indicated earlier, it may be claimed that intervention is needed *only* when there is unambiguous evidence that intermediaries are involved in practices that are inconsistent with the public's interest. It may be difficult to underpin claims of market distortion or threats to the public with a robust quantitative evidence base, but it should not be impossible to reach judgements about the need for intervention. For instance, it is known that digital intermediaries package up content and sell it and that these lines of business are used to recover costs or 'subsidize' other lines of business. The subsidies are not all likely to be harmful and, similarly, all information-related practices are unlikely to be deemed infringements of citizen's rights. Nevertheless, there is a need for an evidence base that can underpin policy judgement. When economic activity and practices are found to be unjustified, there is likely to be a case for policy intervention. The additional issue is how digital intermediaries should be made to bear the burden of responsibility for any harms that are deemed to require action (Zingales, 2014).

What evidence do policy makers need?

Policy oversight with a capacity for intervention requires that policy makers do not repeatedly find themselves in a reactive mode. Digital intermediary platforms enable a myriad of interactions. They are successful because they reduce search or transaction costs for those who visit their platform services. This puts them in a privileged position and continuous vigilance is required to understand how they are deploying this privilege. In some instances, this is likely to require clarification or extension of the legal powers of the state but this is not the subject of this paper.

With respect to the required evidence base, the case of media content in the digital intermediary ecology offers an illustration of the complex issues that need to be examined. This area raises issues of both quality and the diversity of content. For platform owners,

there is a trade-off between fostering quantity and quality. However quality is judged, policy makers need to take it into account or abandon the goal of protecting the right of citizens to be informed in a democracy. Policy that is geared to measuring the power of these intermediaries in conventional ways that treat segments of the market ecology separately – for instance, broadcasting, telecommunication, cloud services - ignores how the industry is developing. Policy makers have no purchase on the consequences of digital intermediary strategies for citizens if they look in the wrong places for symptoms of bad behaviour. When digital intermediaries close off or steer their customers through subscription access to news outlets, for instance, then regardless of how trustworthy they are, or how sincerely they promise to protect customer privacy, they are functioning as gatekeepers of the content that citizens are most likely to see. They can screen out desirable content without the citizen's knowledge, just as they can screen out undesirable content. It should not only be the companies that decide what is, and is not, desirable.

Before digital intermediary platform owners took centre stage, it was comparatively easy, though not uncontroversial, to assess which companies had incentives to operate in ways that would limit media plurality or abuse citizen's fundamental rights. There was a consensus about where to draw boundaries around market segments and about the evidence-base needed for decision making, although this evidence-base was always acted upon. Similarly, empirical evidence is needed to assess whether, in a given market that is dominated by very large players, the diversity of content available to citizens is being unjustifiably reduced, or whether company practices are abridging social norms such as individual privacy, especially in relation to the news media market (Doyle, 1998). The empirical evidence that policy makers look for to underpin their decisions about intervention in the digital ecology needs to be able to capture the complexity of the contemporary marketplace.

As indicated above, economic analysis of the dynamics of digital platforms does not offer an evidence-base that takes the full range of policy goals into account. It is also necessary to consider how the activities of platform organisations are shaping citizen's understanding of their environment through their 'construction of audiences' (Bucher, 2012). Napoli (2014: 354) argues that it is essential to have insight into how, and with what consequences, the changing velocity, volume, and value of data supported by intermediaries is encouraging citizens to 'embrace algorithmically driven decision making tools'. If policy makers were to

proceed as if segmented markets for content and infrastructure still exist, this would be tantamount to suggesting that responsibility for the intermediaries' activities should rest exclusively with the platform owners.

Are policy makers catching up with platform innovators?

Several years ago it seemed that policy makers were not ready to catch up with the changes in the digital ecology (Ballon, 2009). Since then, however, there are developments that give some basis for hope that a more coherent policy approach can be devised. For example, media content and plurality issues are receiving policy attention in Europe. The European Commission's High Level Group on Media Freedom and Pluralism is clear about what is at stake in the European market, especially in the wake of the financial crisis. This group emphasises that democratic legitimacy on the European Union level requires that high priority be given to ensuring access to diverse digital content (Vike-Freiberga et al., 2013), and that this, in turn, requires the monitoring of the whole of the digital ecology including search engines, news aggregators and social networks (Valcke et al., 2010).

In Spring 2015, with the publication of the European digital single market strategy, a step has been taken to acknowledge the interrelatedness of issues raised by platformization dynamics and the need for creative approaches to providing evidence in support of policy intervention. The European Commission's strategy, like all good strategy documents, is long on problem identification, while it refrains from providing specific direction. The strategy is a 'call to arms' nevertheless. It is noted, for example, that telecommunication operators are not investing quickly enough in high-speed broadband and that high-speed broadband is unevenly available across Europe. The digital skills base is not what it needs to be since '39% of EU citizens have only low or no digital skills' and there could be a shortage of 825,000 information and communication technology professionals by 2020. Almost half of Internet traffic goes to only 1% of actively trading websites in the European Union and only 7% of companies with more than 10 employees are using 'big data' analytics. Only one of the top 20 'big data' companies active in the global market is European owned and only one of the top 10 providers of cloud computing is based in Europe (EC, 2015c).

The strategy highlights multiple policy arenas where action is needed to address this situation. Familiar goals are stated, but the document only hints at the directions of

travel that are needed to achieve them. Instead, choices and potential pathways for policy are set out. For instance, 'the Commission will propose solutions which maximise the offers available to users and open up new opportunities for content creators, while preserving the financing of EU media and innovative content' (EC, 2015c: 7). The Commission wants a strong, competitive and dynamic telecommunications sector and to boost innovation in cloud computing, big data tools and the Internet of Things, but it also says that the online market power of some platforms 'raises concerns ... [and is] becoming increasingly critical' (EC, 2015c: 9).

The strategy discusses telecommunication operators, the audiovisual industry, and digital intermediary platform operators in one document. This confirms that policy makers are acknowledging that these companies do not occupy different worlds. The strategy also acknowledges that 'telecoms operators compete with services which are increasingly used by end-users as substitutes for traditional electronic communications services ... which are not subject to the same regulatory regime' (EC, 2015a: 10). It insists on a level playing field. It observes that in the audiovisual market, traditional television and on-demand media are not subject to the same rules. When it comes to pathways for change, however, political pitfalls are circumvented and two pathways typically are presented: for example, 'enhance the overall level of protection from harmful material through harmonised implementation and enforcement of the conditions which allow online intermediaries to benefit from the liability exemption' (EC, 2015c: 56), *or* invite intermediaries 'to exercise greater responsibility and due diligence in the way they manage their networks and systems ... so as to improve their resistance to the propagation of illegal content, increase transparency and thereby confidence in the online environment' (EC, 2015c: 56-57).

Uncertainty about which pathways to follow and what policies to apply is unsurprising, but the strategy does not appear to take account of the academic evidence-base on the consequences of digital platform activities that does exist in Europe, e.g. (Ballon, 2014; Craufurd Smith & Tambini, 2012; Gawer, 2014). The results of research undertaken by the Harvard Berkman Center are cited with regard to intermediary liability (Gasser & Schulz, 2015), but the evidence the strategy relies upon to assess European platform dynamics comes mainly from McKinsey and other consultancies. In the Commission's words, 'policy makers have to keep pace with rapid innovation, often of a disruptive nature (such as the rise of the "sharing economy")', and balance risks with intelligent

regulatory and governance models preserving the values of our societies' (EC, 2015a: 4). In order for this to happen, evidence is needed to inform a balancing of policy intervention strategies with corporate self-regulation as the means of governing these companies.

The offer of a menu of potential solutions continues in the strategy document when platform intermediaries are discussed specifically. There is a definition of platforms, a recognition that they can become very large due to network effects and that they 'act as key players' (EC, 2015c: 52), that they can be 'among the most influential of digital actors' (EC, 2015c: 53), and that this gives them the 'power to shape the online experience' (EC, 2015c: 53). Issues of strategic control of platforms (gatekeeping) and fundamental rights to data protection and privacy are noted, as are low levels of customer and citizen awareness about use of their data, and the relative scarcity of information provided to website visitors. Content diversity is mentioned, mainly in relation to copyright, but the plurality of the news content available to citizens as a result of digital intermediary platform dynamics is not mentioned at all.

Regardless of whether the political will is strong enough to enable policy makers to make the choices between alternative policy pathways, a strong evidence base will be needed to underpin the digital single market strategy. An economic rationale for action is needed. But so too is evidence on the political, cultural and social consequences of a changing industry landscape. The Commission says it will undertake 'a comprehensive assessment of the role of platforms, including in the sharing economy, and of online intermediaries' (EC, 2015a: 12) on issues of transparency, platform owner use of information, relations between platforms and service suppliers, enabling users to switch service providers, and tackling illegal content on the Internet. But it is suggested that research will only be *gathered* on 'how different types of platform work and their effects on their customers and the economy as a whole' (EC, 2015c: 55).

Research also, and crucially, needs to be *undertaken* on issues that go beyond the economic dynamics of digital intermediary platforms and their effects on consumers. Research needs to go beyond asking about providing more transparent information to consumers, for example. This approach pushes responsibility onto platform users to inform and protect themselves in a mediated environment where they are overwhelmed by the detail of platform operator and retailer terms of use and the fine

print of privacy protection statements (Helberger et al., 2013). While an evidence-base is needed concerning consumers, it is essential that supply-side problems be tackled using a multidisciplinary approach that includes analysis of social and cultural values as well as economic value. If measures are not taken to accumulate a more diverse evidence-base, the Commission's strategy is unlikely to achieve the full range of economic, and social and cultural goals. The success of the European digital market strategy depends on policy implementation that boosts *both* the economic prospects of supply- and demand-side stakeholders *and* the citizen's interest in a mediated landscape that respects political, social and cultural values. This means policy must foster a sustainable public sphere that is enabled by diverse media content that is well-financed and easily accessible to citizens.

Policy makers do not want to risk weakening Europe's digital single market and, as yet, there does not appear to be a political consensus on which policy options should be selected and implemented. In the case of digital content, the debate hinges on what constitutes 'sufficient' media plurality. It remains unclear how frequently media content monitoring should occur and what evidence threshold needs to be met to trigger policy intervention (Craufurd Smith & Tambini, 2012). In addition, some analysts are cautious about new kinds of evidence suggesting that this could result in 'a mismatch between the degree of elaboration of the concepts underlying plurality and the available data, or to unrealistic expectations about what measurement can do in its initial stages' (Collins & Cave, 2013: 314) and similar observations have been made in the United States (Bauer, 2014). Those who argue for a normative policy that invokes citizen's fundamental rights generally offer a stronger case for action. The European Data Protection Supervisor, for instance, has said that 'powerful or dominant undertakings are able to exploit "economies of aggregation" and create barriers to entry through their control of huge personal datasets alongside proprietary software which organises the data' (Hustinx, 2014: para 109) and that this requires a response.

Conclusion

The practices of digital intermediaries are constrained to some extent by citizen resistance to their more visible actions when they regard them as infringing on their rights to privacy protection, but these tend to be episodic reactions. These episodic reactions do not tackle persistent policy issues such as the plurality of media content or the protection of

fundamental rights to access information and to privacy. Policy makers must turn their attention to the need for an evidence-base that captures dynamic digital intermediary configurations so that companies do not have the opportunity to operate without regard to public oversight. Policy making, research and evidence gathering need to focus especially on the points at which digital intermediaries have opportunities to exercise gateway control and to make non-transparent intrusions into citizen's lives. Approaches to monitoring the digital intermediary ecology on the supply and demand-side of platformized markets will need to be agreed and implemented if the European Commission's digital market strategy is to have its desired effects. This evidence-base will be needed before, rather than after, any harms to markets and citizens occur (Tambini, 2015).

Policy makers will need to be as innovative as the digital intermediaries in developing an empirical evidence-base to support their decisions. Freedom of expression, access to diverse content, and the protection of the privacy and safety of citizens, including children, may be secured in some instances by industry self-regulatory codes of practice. There will be occasions, however, when the actions of digital intermediaries have a negative impact on the public. It is very unlikely that exclusively economic measures of market power will ensure that democratic political, social and cultural goals are pursued in a balanced way alongside economic objectives unless greater attention is given to producing a more robust evidence-base. Digital intermediaries are not neutral gatekeepers and there is no reason they should be expected to be. Their primary interest is in success in the marketplace. However, their treatment of consumers and citizens has huge implications for democratic practice and for the trust that users of their platforms place in the services they offer. The public's interest in these issues must not be sidelined in favour of an isolated economic calculus or an evidence-base that never achieves a threshold that tips policy makers into intervening in the digital intermediary marketplace. These policy issues require sensitive political judgements, but that should not render them infeasible to address.

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