

Self-regulation of internet intermediaries: public duty versus private responsibility



*Internet intermediaries – the social media companies, search engines and internet service providers who supply ways for audiences to find and access online content – are under scrutiny regarding their crucial role in the flow of digital information. Google and Facebook attracted **one fifth of global advertising spend in 2016**, and concerns have been raised about these companies' increasing dominance. An event earlier this month hosted by the LSE Media Policy Project addressed the issue of intermediary liability for content and how policy makers should respond. **Paul Bernal** of the University of East Anglia spoke about the concept of public duty in relation to intermediaries; the following post is based on his remarks.*

Intermediary liabilities: the squeeze on the public

As the debate over internet intermediary liabilities has rumbled on over the last few years – sometimes quietly, sometimes quite furiously – one group has been the subject of a special squeeze: the public. The role of intermediaries, and in particular search engines and social media services, has been questioned in a number of areas with qualitatively different issues, but in almost all of them similar dynamics exist: lobbyists, governments and the intermediaries fight for their respective corners, and the interests of the public, of the ordinary internet user, are either ignored or minimised.

In all cases there are crucial questions to ask – and unless we are more honest about the answers to these questions, we are unlikely to come to appropriate conclusions.

- We need to ask who the intermediaries are working for – and what their real nature is. Intermediaries are *not* public utilities, and are *not* champions of freedom of speech. They are businesses, and need to be thought of in those terms.
- We need to ask who the relevant regulators are working for – and what their real function is. Are they working to help businesses? Are they working to 'protect' people? Are they primarily there just to stop the most egregious of abuses?
- We need to think harder about the power of the lobbyists – and we need to find a way to stop governments being unduly influenced by those lobbyists.
- We need to ask whether the problem being addressed is really about the internet intermediaries – or whether they are, in effect, being scapegoated because the underlying problem is too horrible to face or too difficult to solve?
- We need to look more at the 'unexpected' consequences of any actions that are taken – though to call them unexpected is often misleading in itself, as if the right people were listened to more, these consequences could be anticipated and taken into account before the decisions are made.

Three particular areas stand out: hate speech, the right to be forgotten and copyright breaches.

With **hate speech**, it is easy to blame the intermediaries – and fall into the trap of suggesting that it's easy for them to deal with it. It really isn't. There are two alternative routes: human intervention or algorithmic/automated systems. The first is expensive, slow and subject to bias, the second complex, easily gamed and prone to both false positives and omissions. In both cases, the ordinary people are not really protected – and may be caught up in messes not of their own making. Moreover, the double-standards between **the attitude to hate speech in the mainstream media** – Katie Hopkins and cockroaches come to mind – and that on the internet are palpable and cause resentment. There are strong echoes of this in the current debate over 'fake news': fake *narratives* have often prevailed in the tabloid press without any such alarm.



With **the right to be forgotten**, the debate was both polarised and misleading. Neither Google nor the media came out of it smelling of roses: Google looked as though they were protecting their bottom line, not freedom of speech, whilst the media seemed to care only about themselves. The power of Google shone out throughout the process, from **framing the debate through their 'roadshow'** to getting a private hearing with the House of Lords before they issued their report in 2014 – which surprisingly enough **came out very much in favour of Google's perspective**. The genuine problems suffered by people whose lives are blighted by old or inappropriate stories being highlighted on searches for them were not taken into account at all – and yet that's what **empirical evidence has shown to be the main use of the right**.

With **copyright**, at times it seems like a battle of the lobbyists, with the intermediaries in constant conflict with the copyright lobby – and again, the public essentially squeezed out, and their views largely unconsidered. The portrayal of copyright breaches as 'theft' which flies in the face of young people's experience in particular (stealing involves depriving people of something they had) is another way in which people's views are being largely ignored.

What next?

There are two keys to finding a better way forward. One is to acknowledge the 'messiness', and not to try to find 'simple' solutions or particular people or groups to blame. The tendency to demonise the internet – and internet intermediaries in particular – should be avoided wherever possible. The second is to pay closer attention to who is being listened to – and this is a plea to politicians in particular. Take lobbyists' views with bigger pinches of salt – and be more willing to listen to academics and to civil society. The latter, in particular, seems often to be treated as a nuisance rather than a resource – there is a great deal of expertise and experience in civil society, and if it is understood and consulted appropriately, far better ways forward can be found.

This post 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 and Political Science.

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