Social Media Definition and the Governance Challenge:

An Introduction to the Special Issue

Jonathan A. Obar*

Steve Wildman**

*University of Ontario Institute of Technology and Michigan State University

**Michigan State University

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Contact: jonathan.obar@uoit.ca

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Transformative communication technologies have always called for regulatory innovation. Theodor Vail's vision of "one policy, one system, universal service" preceded more than one-hundred years of innovative regulations aimed at connecting all Americans to a single telephone network. The sinking of the Titanic, caused in part by "chaos in the spectrum" led to the Radio Act of 1912 and the creation of a command and control model designed to regulate broadcast radio (Nuechterlein and Weiser, 2005, p. 89). Safe-harbor hours were put in place after a father and son heard George Carlin's "seven dirty words" routine over the radio in their car. The fairness doctrine and the minority tax certificate program were designed to address inequalities in the broadcast television industry. The Digital Millennium Copyright Act responded to intellectual property concerns raised by a global Internet and the FCC's 700mhz auction was the result of demand for smarter mobile phones. Now we must consider the role of regulatory innovation in response to the emergence of social media.

This special issue of *Telecommunications Policy* entitled, "The Governance of Social Media" brings together contributions from leading communication policy scholars to address a variety of regulatory challenges raised by social media. These include: social media and the public interest (Philip Napoli), social media governance by platform design and policy (Laura DeNardis and Andrea Hackl), youth and social media surveillance (Kathryn C. Montgomery), policy and virtual economies (Edward Castronova, Isaac Knowles and Travis L. Ross), social media and

social justice (Amit M. Schejter and Noam Tirosh) and social media as online intermediaries (Milton Mueller).

This introductory contribution begins with a definition of social media that informs all contributions in this special issue. A section describing the governance challenge is presented next, followed by an overview of the various articles included in this special issue.

Social Media Definition

While the Internet and the World Wide Web have always been used to facilitate social interaction, the emergence and rapid diffusion of Web 2.0 functionalities during the first decade of the new millennium enabled an evolutionary leap forward in the social component of web use. This and falling costs for online data storage made it feasible for the first time to offer masses of Internet users access to an array of user-centric spaces they could populate with user-generated content, along with a correspondingly diverse set of opportunities for linking these spaces together to form virtual social networks.

Tapping latent demands, social media services quickly emerged as both business and social phenomena. Facebook, launched in 2004, has now reached 1.4 billion active monthly users worldwide (see Table 1). Twitter, started in 2006, currently has 288 million monthly active users posting 500 million tweets daily (Twitter.com, 2015).[1] Facebook and Twitter are currently the most visible of an avalanche of initiatives aimed at building new services around social media functionalities, and embedding Web 2.0 features into other web-based services.

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[1] Twitter claims that as of March 2015 they had 302 million active user accounts. The 288 million figure is noted by Statista.

Table 1 lists several of the more popular social media services; a small fraction of

the growing number of online services that enable users to express themselves,

build relationships, play and share in a networked environment. The following is

Statista's global listing of what they identify as the social media sites with the most

active users worldwide as of March 2015.

Table 1: Leading Social Media Services Worldwide By Active User Accounts, Millions

Service	Accounts
Facebook	1,415
QQ	829
WhatsApp	700
QZone	629
WeChat	468
Linkedin	347
Skype	300
Google+	300
Instagram	300
Baidu Tieba	300
Twitter	288
Viber	236
Tumblr	230
Snapchat	200
LINE	181
Sina Weibo	167

Notes: Source: Statista.com as of March 2015.

The multitude of stand-alone and built-in social media products and services

makes defining the technology a challenge (Obar, Zube and Lampe, 2012). What are

social media? Even the terminology remains unclear with some in the literature

using the term "social network" (e.g. boyd and Ellison, 2008). The former will be the

term referred to herein. Upon first encountering the question, "what are social

media?" one might consider the answer to be straightforward. Facebook and Twitter

are social media – we seem to encounter their icons everywhere we turn, beckoning

us to join the supposed online revolution. While Facebook and Twitter are perhaps

two of the primary social media platforms, does social media end with these two

services? Certainly not. If social media begins with Facebook and Twitter, where does it end? Are there other primary social media services? Teens appear to increasingly prefer social media services like Instagram, Snapchat and Yik Yak where their parents aren't as likely to be users (Arce, 11 Oct 2015; Moss, 9 Jan 2015). Does this suggest that the primary networks are moving targets? What are the secondary networks? Is YouTube social media? Wikipedia? Amazon.com? NewYorkTimes.com?

There are two distinct challenges associated with the conceptualization of social media. First, the speed at which the technology is expanding and evolving, challenges our ability to define clear-cut boundaries around the concept. Social media technologies include a wide range of PC and mobile-based platforms that continue to be developed, launched, re-launched, abandoned and ignored every day in countries throughout the world and at varying levels of public awareness. Secondly, social media services facilitate various forms of communication that are similar to those enabled by other technologies. If social media bring people together, facilitate collaboration and communication, should the telephone be considered social media? The fax machine? Email?

To address these definitional challenges, we synthesize definitions presented in the literature and identify the following commonalities among current social media services:

1) *Social media services are (currently) Web 2.0 Internet-based applications.*

Before Web 2.0 applications became popular, the World Wide Web was primarily a medium for consumption. If you used the Internet in the late 1990s, you

likely spent the majority of your time on the web reading what other individuals had written and consuming audio and video clips that were often present in commercial media. Web 2.0 applications have changed the way we interact with the online world and the other users we connect with through it because Web 2.0 applications have made the Internet more interactive. The shift to Web 2.0 however, was not necessarily the result of a substantive change in technology, but rather in ideology (Kaplan and Haenlein, 2010). The shift to Web 2.0 can be characterized as a shift from user as consumer to user as participant. Some have suggested that the new role of the user is actually "prosumer," a combination of consumer and producer (Ritzer and Jurgenson, 2010). Applications are designed to enable users to create, interact, collaborate and share in the process of creating as well as consuming content. For more than a decade now, Web 2.0 has served as a platform for creating and publishing content, and also a place where content can be "continuously modified by all users in a participatory and collaborative fashion." (Kaplan and Haenlein, 2010, p. 61)

2) *User-generated content is the lifeblood of social media*.

Web 2.0 is the ideology and user-generated content is the fuel. The personal information you enter into your Facebook profile or any social media profile for that matter, the network connection you create by "friending," the video you upload to YouTube, the tweet you post on Twitter, the blog entry you just read, the comment you leave on that blog entry, the photos you add to Instagram, your high score on Candy Crush, your "Like" of someone's Pinterest image, your upvote on Yik Yak, and an endless number of other user-generated decisions that populate social media

sites across the Internet, and increasingly link us together, are all examples of the user-generated content that fuel social media sites. Without this content, without our decisions and behaviors, social media sites would be, well, what MySpace is turning into, and what Google+ is trying to avoid becoming, a ghost town, a vast, colorful midway filled with games that nobody is playing.

3) *Individuals and groups create site-specific user profiles within the boundaries of the social media service*

The backbone of the social media service is the user profile (boyd and Ellison, 2008). The type of identifying information requested, as well as the options for identifying oneself vary considerably from service to service, but often include the option of creating a username, providing contact information and uploading a picture. The reason the profile serves this backbone function is to enable social network connections between user accounts. Without identifying information, finding and connecting to others would be a challenge. Furthermore, many network functions, such as comparisons between gaming scores, sharing, upvoting, liking, etc. would not be possible without user identification. A unique example of this point, and illustration of the complexity of providing a clear conceptualization of the social in social media, is the mobile app Yik Yak. This app is marketed as being an anonymous social media service and doesn't require that individuals provide their real name, photo, etc. upon signup. For this reason, users believe that Yik Yak is anonymous (Mahler, 8 Mar 2015). In actuality, when users sign up, as noted in its own privacy policy, Yik Yak creates a unique user profile for each individual in its database and tracks the mobile device being used, location data, as well as the

comments and votes users input (Yikyakapp.com, 2015). Even a service like Yik Yak, which many users believe is anonymous, requires the profile backbone, as it allows the service to deliver the functionality that users expect (location-based messages, profile scores, message scores, etc.) It is common practice that social media services will not allow non-registered users to access the content of registered users. Perhaps the only anomaly is Wikipedia, which allows users to browse the free online encyclopedia as well as make basic edits without having an account. For users that do not create profiles or do not log into their profile before making edits, Wikipedia automatically identifies and tracks user IP addresses and logs these addresses with any edits made.

4) *Social media services facilitate the development of social networks online by connecting a profile with those of other individuals and/or groups.*

This aspect of social media technology is among the more controversial as it could be suggested that earlier communication technologies (such as the telephone) allowed individuals to develop, facilitate and maintain social networks, suggesting that online communication technologies should not be identified as uniquely social. This issue is compounded by the fact that "The nature and nomenclature of these connections may vary from site to site." (boyd and Ellison, 2008, p. 211) For example, one method of creating a social network online is by creating a list of individuals that you want to connect with, and then managing interactions through that list. Facebook and Snapchat call those on a list "friends," on Twitter and Instagram they are "follows," and on Linkedin they are "connections." Once a list of network connections is created, users can then review, access and modify that social

network by engaging with a list of those actively organized users. Content consumption (such as accessing and sharing links) and interaction (such as "liking" or commenting on something) is often associated with the creation of these lists, as users are generally provided with a form of homepage that aggregates content from those in the list. There are however, other social media services that allow social networking without the creation of one of these traditional lists. Yik Yak for example, allows users to interact with others based on location, or content preference. Users don't have to generate a specific list of individuals to interact with; instead, the social network is determined by location and/or content.

Thus, even with the identification of these commonalities, it is clear that ambiguity remains; especially as social media functionalities are being built into products not traditionally designed for social networking purposes. For example, social network functionality has become a major component of many video game applications. This set of commonalities however, allows us to begin to discuss an evolving set of interactions specific to a variety of fascinating Internet-based applications that are increasingly creating links among users and user-generated content in virtual space.

Governance of Social Media: The Challenge

When a new technology spreads rapidly through a society and becomes the foundation for new businesses, a force for organizing social relationships, a critical link between political candidates and their supporters, and begins to impact the design and delivery of government services, questions about whether and how government should respond are unavoidable. Today, regulators and the courts are

being asked to address a broad and diverse range of challenges social media pose to law and policy. Privacy, speech rights, intellectual property, antitrust, government surveillance, employer surveillance of employees, protection of children and older minors and consumer protections are prominent among the issues being addressed.

A natural first response to the legal and policy challenges posed by a new technology is to look for ways to produce innovative solutions within existing legal and regulatory frameworks. To a degree this is unavoidable, even if it does not produce the best policy for the long run. Rarely will the right response to new challenges in a complex environment be obvious or easy to implement, even when with modest adjustments exiting law and regulatory institutions may prove more than adequate. Nevertheless, political demands for quick fixes will often be intense, and in some cases it will simply not be acceptable by any standard to postpone a policy response while waiting for policymakers to identify and sort through their options. The risk is that the policy establishment will strain to bend and stretch existing institutions to deal with problems and respond to opportunities for which they are ill-suited, even as a chasm grows between what is needed and what can be done within the constraints of existing institutional frameworks.

Examples of this tendency to look to pre-existing regulatory models when attempting to develop policies suitable to new services and technologies include proposals (taken seriously at the time) to develop a common carrier model for broadcasting (Napoli, 2001), to develop a broadcast-like regime to regulate Internet content (Werbach, 1997; Napoli, 1998), and to allocate Internet domain names in a manner similar to broadcast licenses (Mueller, 1998), all of which seem almost

humorous in retrospect. The ongoing dispute over whether ISPs should be treated as telecommunications carriers subject to common carrier obligations is another example, the legacy of a decades-long debate over FCC attempts to make and enforce artificial distinctions between information and telecommunications services that began with the first of the computer inquiries nearly fifty years ago.

Lawyers and policy analysts have begun to examine a broad array of pre-existing legal and regulatory frameworks and scenarios with potential applicability to social media. The First Amendment (Calvert, 2009; Hade, 2011; Taylor, 2014) and the Fourth Amendment (Naito, 2011; Semitsu, 2011) of the US Constitution, the Federal Trade Commission Act (Touschner, 2011), the Digital Millennium Copyright Act (Hull, 2010), freedom of information law (Levine, 2012), privacy law (Solove, 2012; Nissenbaum, 2011; Obar and Clement, 2012; Obar, 2015), defamation and other speech-oriented laws (Metcalfe, 2010; Lidsky, 2011) and contract law (Anderson, 2011) are just a few of the areas in which pre-existing law and policy are being reconsidered in light of the new challenges posed by social media.

It was precisely this tendency to apply old policy solutions to the challenges posed by new media that Ithiel de Sola Pool decried in his prophetic *Technologies of Freedom*, when he pointed to "the failure of Congress and the courts to understand the character of the new technologies" (de Sola Pool, 1983, p. 3) and the problems that arise as a consequence; charging that,

> Judges and legislators have tried to fit technological innovations under
> conventional legal concepts. The errors of understanding by these scientific

laymen, though honest, have been mammoth. They have sought to guide

toward good purposes technologies they did not comprehend. (pp. 3-4)

In a similar vein, FCC Counsel for the Advanced Communications Office of

Plans and Policy, cautioned the Commission not to

automatically impose legacy regulations on new technologies. …

Traditional regulatory structures were designed to fit services in

existence at the time of enactment. New technologies, while perhaps

similar in appearance or in functionality, should not be stuffed into

what may be ill-fitting regulatory categories in the name of regulation.

(Oxman, 1999, pp. 24-25)

Of course it is neither feasible nor wise to engage in wholesale institutional

redesign every time a new technology or service rears its head. Substantial changes

in law and policy are always time consuming and costly, and there is no guarantee

that policymakers will get it right when they create the new regime. The cost of

institutional change and the risk of error in policy design are both reasons to

undertake wholesale reform infrequently and only when the benefits of doing so are

clear and large. The value of a certain amount of institutional conservatism is

formally recognized in the legal principle of *stare decisis*, which privileges precedent

in the interpretation of law. As Frieden (2003) notes, "courts often use legacy

models to conserve judicial resources and to display restraint based on the view

that they interpret law rather than make policy." (p. 111) Similarly, appreciation of

the perils and costs of creating new regulatory frameworks may be offered as

justification for extending and reinterpreting regulatory policies that proved viable

in the past as, for example, with current efforts to apply universal service principles developed in the era of plain old telephone services to broadband.

New regulatory models designed for a world in which social media play a large role are already being proposed in the United States. Swire (2012) has proposed that a Privacy Policy Office be created within the executive branch of the US government. The office would complement the work already being done by the Federal Trade Commission, and in light of the evolving challenges to privacy, take on a leadership role in this area as "the FTC does not have the budget or institutional structure to attempt to participate in all of the issues touching on commercial privacy throughout the federal government." (p. 50) The office would also ensure that the US government was speaking with one voice on the issue, developing and clarifying the US government's position on privacy within domestic as well as international settings. The White House has also initiated its own innovative approach to the big data boom, proposing a "Consumer Privacy Bill of Rights." The rights would include: transparency, individual control, respect for context, focused collection and responsible use, security, access and accuracy, and accountability (White House, 2015).

Is policy innovation, perhaps radical, in the form of new legal and regulatory models and institutions needed to respond to the challenges posed by social media? Or will innovative applications of pre-existing regulatory models suffice? This special issue does not attempt the impossible task of addressing all legal and regulatory challenges posed by social media, but rather, addresses a sampling of some of the more pressing concerns as well as, in the context of social media, some

of the foundational normative questions that communication policy scholars have wrestled with for decades.

Overview of the Special Issue

The contributions to this special issue address a number of pressing legal and regulatory challenges posed by social media. Philip Napoli (Rutgers University) addresses how the public interest principle at the heart of communications policymaking is reflected in current social media governance. Laura DeNardis (American University) and Andrea Hackl (American University) discuss how the platform policies, business strategies and design choices of social media services constitute a form of governance. Kathryn Montgomery (American University) writes about the policy challenges associated with protecting young people from Facebook's social media marketing efforts, and calls for a set of "Fair Information and Marketing Principles for Children and Teens." Edward Castronova (Indiana University) Isaac Knowles (Indiana University) and Travis L. Ross (University of Louisville) focus on a number of policy issues relevant to virtual economies, and discuss the reasons why the boundaries between the real world and virtual worlds are eroding. Amit Schejter (Ben Gurion University of the Negev) and Noam Tirosh (Ben Gurion University of the Negev) suggest that Rawlsian and Senian approaches to redistributional justice should replace utilitarian regulatory philosophy to develop policies to help social media services realize their democratizing potential. Finally, Milton Mueller (Syracuse University) contributes commentary on the legal responsibilities of online intermediaries in situations where their users are allegedly breaking the law.

Each of the contributions included in this special issue identify moving targets; legal and regulatory challenges that are complicated by a continuously evolving and increasingly pervasive set of technologies and services. As social media services further integrate into our societal systems and personal lives, scholars, advocates and policymakers must continue to wrestle with the extent to which legal and regulatory innovations can ensure the protections and freedoms that will at certain points harness and at other points reign in the transformative possibilities implicit in social media. Future research efforts must continue to address the questions raised here, along with a host of others not addressed. We close by discussing at a high level two differences between social media and earlier communication services that pose challenges for policymakers and policy researchers.

One important difference is that the technologies that make social media possible are flexible, general-purpose technologies (see Bresnahan and Trajtenberg, 1995) that can support many different types of social media services. As a consequence, established services continue to explore the technology's potential and evolve their offerings at the same time that new and different social media services are proliferating rapidly. Neither of these trends shows any sign of slowing. By contrast, the fundamental characteristics of the services enabled by earlier communication technologies changed slowly over time and, combined with regulatory constraints, limited providers to developing functionally similar services. Policymakers could therefore take time to learn and make adjustments while developing rules that applied, with some variation, to all providers of a given type of

communication service. Given the pace of change in social media offerings, it is simply not feasible to employ the time-consuming regulatory procedures of the past to develop policies uniquely crafted for each new social media service as it develops. Two important questions, then, for future research are: (1) Whether we can identify a set of covering principles that can be applied in broad stroke to all social media services in a manner that still preserves some flexibility for the customization needed to deal with critical differences among services, and (2) Whether this can be done in a manner that preserves the ability of entrepreneurs to continue exploring, through the introduction of new services, the potential for welfare enhancing advances inherent in the underlying technologies. The articles presented in this special issue can all be seen as early contributions to the search for a set of covering principles that can guide the development of laws and policies appropriate to social media.

A second important difference between social media and earlier types of media is that social media services enable new forms of socialization that, when successful, can become integral to the daily lives of millions of people. At the same time, social media can facilitate injurious forms of social interaction, such as sexting, online stalking, and cyber-bullying that by any standards should be suppressed. How to craft laws and regulations that suppress what is harmful while preserving still the functionalities that facilitate positive forms of interaction is a challenge to which research can make significant contributions by identifying tradeoffs among objectives and perhaps coming up with innovative solutions.

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