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Why media companies insist they're not media companies, why they're wrong, and why it matters
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Abstract

A common position amongst social media platforms and online content aggregators is their resistance to being characterized as media companies. Rather, companies such as Google, Facebook, and Twitter have regularly insisted that they should be thought of purely as technology companies. This paper critiques the position that these platforms are technology companies rather than media companies, explores the underlying rationales, and considers the political, legal, and policy implications associated with accepting or rejecting this position. As this paper illustrates, this is no mere semantic distinction, given the history of the precise classification of communications technologies and services having profound ramifications for how these technologies and services are considered by policy-makers and the courts.

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Introduction

The past few years have seen a series of controversies emerge in the realm of social media. These controversies have erupted around issues such as accusations of bias in the construction of Facebook's and Twitter's trending topics lists (Nunez, 2016a, 2016b; Thune, 2016); criticisms of social media platforms for censoring photos of historical/journalistic significance (Scott and Isaac, 2016); evidence of increased prominence of false news reports in social media feeds; and concerns about the possible impact of social media-disseminated false news reports on election outcomes in the U.S. and Europe (Bell, 2016; Robinson, 2016).

This sequence of events has focused public attention on the question of if and how social media platforms are functioning as news organizations; along with the related question of whether these platforms should behave as news organizations (Isaac, 2016; Jarvis, 2016; Manjoo, 2016). These discussions are taking place as data indicate that social media platforms have established themselves as one of the primary mechanisms via which individuals access and consume news (Gottfried and Shearer, 2016). The potentially troubling irony of this situation is that these social media

companies that are playing an increasingly important and influential role in the news and information ecosystem have a long history of insisting that they are not news organizations, or even media companies, at all. Rather these companies have insisted that they should be thought of only as technology companies (see, *e.g.*, Dixon, 2014; D'Onfro, 2016). In this regard, these social media companies are following a pattern established and maintained by other digital media companies, such as Google and Apple, in insisting that they not be thought of as media companies.

A number of analysts have pointed out this growing disconnect between how these companies have perceived themselves — and want to be perceived by others — and how they actually function in the contemporary news and information ecosystem (Caplan, 2016; Bell, 2016; Bogust, 2016; Ingram, 2012; Snip, 2016). The goal here is to take this observation a few steps further, by critically examining the articulated rationales and underlying motivations of this position, and by considering the broader implications of accepting this argument. A key goal of this paper is to illustrate how this argument fits within broader, ongoing efforts by these companies to "discursively … frame their services and technologies" [1]. As Gillespie (2010) notes, many digital media companies use terms like "platform" strategically, "to position themselves both to pursue current and future profits, to strike a regulatory sweet spot between legislative protections that benefit them and obligations that do not, and to lay out a cultural imaginary within which their service makes sense" [2]. We see the self-definition as technology companies and the strong resistance to any classification as media companies as a key dimension of this discursive framing, which has important implications for the legal and regulatory frameworks that are applied to these platforms.

This critique of the argument that social media platforms (and digital content curators more broadly) should be considered purely as technology companies, and not as media companies will be grounded in economic, historical, and policy perspectives on media, in an effort to illustrate the significant points of continuity, rather than distinction, between traditional and new platforms for news and information. In unpacking and critiquing this argument, this paper seeks to demonstrate the significance of what on the surface may seem like an inconsequential semantic distinction. As this paper will illustrate, there are fundamental legal and policy implications associated with how these companies define themselves and are defined by policy-makers and the public.

The first section of this paper presents and refutes the arguments most commonly put forth by those companies seeking to be perceived as technology companies rather than media companies. The second explores the primarily rationales for these companies maintaining this position. The third section considers the broader implications of accepting the increasingly tenuous arguments that these companies are technology companies rather than media companies. The concluding section considers the need for new definitional approaches that better capture the increasing intersection of technology and media.

Why media companies insist they're not media companies; and why they're wrong

It seems that in today's technology-driven business environment, firms increasingly see their identity in terms of the technological approaches they take to their business, rather than in terms of the particular business in which they operate. One of the most prominent — and controversial — current examples involves Uber. Uber has steadfastly maintained that it is a technology company rather than a transportation company because, according to one Uber representative, "we don't transport goods or people — our partners do. We just facilitate that" [3]. The ramifications of accepting or rejecting this argument are profound, because if Uber is perceived as a transportation company, then it is subject to the regulations under which the transportation industry operates. If, on the other hand, Uber is perceived as a technology company, then these transportation industry regulations simply don't apply; which, could represent an important source of competitive advantage for Uber (see, *e.g.*, Carney, 2015). Uber is certainly not alone in maintaining such a position. Automotive, finance, and telecommunications companies have similarly argued that they should be seen purely as technology companies (Napoli and Caplan, 2016).

Similarly, it seems that a defining characteristic of social media platforms and digital content curators is the consistency with which they have resisted being characterized as media companies and instead have insisted that they be thought of purely as technology companies (see, *e.g.*, Helft, 2008; Mickey, 2013). Even companies that are unequivocally in the business of producing media content, like Gawker and Vox, have had their CEOs maintain that they are technology companies rather than media companies (see, *e.g.*, Sicha, 2011; Tjaardstra, 2015).

Before looking at the specifics of the arguments put forth by these companies, it is important to recognize that the broad brush "media company" terminology around which these arguments have been structured is somewhat problematic. The media are not a single, monolithic construct (despite the tendency to treat them as such in the discourse we'll be examining). First, from a regulation and policy perspective, electronic media such as television and radio (and, with the imposition of the Internet neutrality regulations, the Internet as well), are considered fundamentally different from other media, generally being afforded lower levels First Amendment protection and operating under more explicit regulatory requirements to serve the broader public interest (Napoli, 2001). This is an important distinction that generally does not find its way into the arguments discussed below. Also largely absent is the important (if sometimes blurred) distinction between *entertainment* and *news* media. From a regulation and policy standpoint, the production, distribution, and consumption of news has been a far greater point of motivation and focus for

policy-makers (Napoli, 2015); though certainly concerns about the cultural dimension of entertainment media have motivated regulation and policy-making as well (Napoli, 2008). As will be illustrated below, these points of distinction often matter when considering the technology company-not-media-company argument.

We turn now to the primary arguments put forth in support of the position that social media platforms and digital content curators are technology companies rather than media companies. In each case, we'll draw from economic, historical, and policy perspectives on media industries to illustrate central weaknesses of each argument.

"We don't produce content"

The most prominent argument amongst digital media companies in support of the position that they are not media companies is that many of these companies do not produce original content; rather they merely facilitate the distribution of content created by their users. Some of the companies that have made this argument have subsequently vertically integrated into content creation, following a fairly predictable pattern in media history, in which content distributors inevitably pursue the strategic and economic advantages of also being content creators (see Napoli, 2016). So, for instance, in 2016 YouTube began been producing original series on its subscription service; while (as will be discussed further in the Conclusion), Facebook has recently initiated a foray into original video content creation (Etherington, 2016; Perez and Shieber, 2017; Dougherty and Steel, 2015). Nonetheless, given the past — and likely future — persistence of this argument amongst content distributors, it is important that it receive detailed scrutiny.

Google's Eric Schmidt (along with other Google executives) deployed this argument frequently over the years, declaring "We don't do our own content. We get you to someone else's content faster" [4]. Facebook also has long been a proponent of this argument. As Facebook's VP of Global Marketing Solutions has stated, "'We actually define ourselves as a technology company. ... Media companies are known for the content that they create'" [5]. Facebook CEO Mark Zuckerberg has maintained this position over the years (see, *e.g.*, Fiveash, 2016); and as recently as November of 2016, in his response to accusations that the dissemination of fake news stories via Facebook may have affected the U.S. presidential election (Roberts, 2016). Dick Costolo, then-CEO of Twitter, has stated "I think of us as a technology company because I think the future of the company is in building on an extensible platform that allows third-party developers and companies to add value to Twitter in a way that is accretive to Twitter and is accretive to our users. ... I don't need to be or want to be in the content business'" [6]. The late Steve Jobs of Apple similarly emphasized this point at the time of the launch of iTunes. Bristling at the suggestion from an *Esquire* interviewer that Apple was becoming a media company, he argued "We're not a media company. We don't own media. We don't own music. We don't own films or television. We're not a media company. We're just Apple'" [7]. The issue was sufficiently sensitive to Jobs that he abruptly ended the interview at that point.

This argument obviously invites discussion of the types of activities that are central to our understanding of what media companies do. Traditionally, the industrial organization of media has been described in terms of three fundamental — but seldom mutually-exclusive — activities: 1) production (exemplified by content creators such as news outlets and television studios); 2) distribution (the process of moving content from producers towards consumers); and, 3) exhibition (the process of providing content directly to audiences) (see, *e.g.*, Picard, 2011).

Digitization and media convergence have meant that these processes have, in some cases, merged, as content can now be distributed directly to the end user. The decline of traditional exhibitors such as book and music retailers in the face of content digitization and digital distribution represents a case in point. One would be hard pressed to argue that traditional exhibitors such as movie theaters, book stores, or record stores should be thought of as media companies. However, the replacements for these entities, such as Amazon, iTunes, and Netflix, are fundamentally different, utilizing an electronic media infrastructure to distribute content to audiences in a pure public good form in a manner that more closely parallels traditional content curators and distributors such as cable systems and broadcast networks. This is in many ways also the case with social media platforms such as Twitter, Snapchat, and Facebook, which now serve as central means of content distribution for many content creators (ranging from news outlets, to individuals, to the NFL), while also serving as the exhibition endpoint for users, who access the content through these platforms via a variety of devices. And, with services like Facebook Live (which allows direct and immediate broadcasting over the Facebook platform) and Facebook Instant Articles (through which Facebook directly hosts the content produced by news organizations; see Constine, 2015), the processes of production, distribution, and exhibition are even more integrated.

We emphasize these evolving processes because distribution is a defining characteristic of media, as much as is content creation, as a growing body of media scholarship makes clear (see, e.g., Curtin, *et al.*, 2014). Content creation/ownership has never served as a point of distinction in defining a media company from the perspectives of those charged with regulating the media sector. Consider, for instance, that both the cable television and satellite industries were built entirely on a foundation of serving exclusively (at least initially) as distributors of media content. This fact never served as a mechanism for keeping these companies beyond the bounds of the U.S. Federal Communications Commission's (FCC) regulatory authority. In the case of cable television, the FCC extended its regulatory authority to cable in part by classifying cable as ancillary to broadcasting (*United States v. Southwestern Cable Co.*, 1968). That is, the fact that cable systems served as a central means of distributing and accessing content (broadcast television) that did fall under the FCC's regulatory authority acted as a mechanism for the expansion of that regulatory authority to cable.

Consequently, the companies within the cable and satellite industry sectors have been subject to ownership regulations and certain public interest obligations, in keeping with the FCC's general approach to electronic media regulation (see, *e.g.*, Federal Communications Commission, 2016a). Fundamental media policy concerns about diversity, competition, and localism (see Napoli, 2001) have characterized the regulation of these industries, independent of if, or to what extent, these companies engaged in content creation. And while the mechanisms of content distribution in the digital realm certainly are different from those employed by traditional media, as digital media executive Elizabeth Spiers has asked, "'Will someone explain to me how digital distribution of your content makes your company primarily a tech company?'" [8]. The argument, then, that content creation/ownership meaningfully separates these "technology" companies from the media sector either reflects a naïve or ill-informed understanding of media, or a more intentional, strategically-motivated effort to redefine the parameters of a media company within business and policy discourse. In either case, the implications are troubling, as will be discussed in greater detail below.

"We're computer scientists"

The second prominent line of argument put forth by social media platforms and digital content curators focuses on the nature of their personnel. Specifically, representatives of these companies frequently point to the professional training and backgrounds of themselves and their employees in support of the argument that they are technology companies rather than media companies. Google's Eric Schmidt emphasized that Google is a technology company "because it is run by three computer scientists" [9]. Similarly, Cheezburger CEO Ben Huh has emphasized the proportion of the company's employees that are developers on behalf of his assertion that the company is a technology company rather than a media company (Koetsier, 2012).

Here too we see an argument lacking in logical or historical grounding. Consider, for instance, that at the time of its introduction there was no greater technological marvel than over-the-air broadcasting. It represented a technological leap forward in the means of communication of a magnitude that can probably only be approached by the introduction of the Internet. Consequently, broadcasting was the province of the technologists and engineers of the time, given its relative technical complexity compared to other available means of communication, such as print newspapers. Technological expertise was at the core of early radio broadcasting companies such as RCA and the Marconi Company (Woolley, 2016). Satellite technology represented another dramatic advancement; once again requiring professionals with a high level of technical expertise.

Technological advancements — and the associated technical expertise — have been fundamental to the media sector since at least the advent of the printing press. As Deuze (2007) notes, it is important that we recognize "the pivotal role technologies play in media work" [10]. To argue that the technical orientation of the personnel or leadership of a company represents a logical grounding for precluding it from being thought of as a media company reflects either an ill-informed understanding of the history and evolution of media, or a strategic effort to narrow the definition of media relative to its traditional parameters. Whatever the reason, the underlying premise, that technology and media are somehow separate endeavors that draw upon completely different skill sets and professional backgrounds, has no firm grounding in the history of media.

"No human editorial intervention"

A less explicit argument that these digital media platforms put forth, but one that certainly ties into the previous argument, is the frequent contention that the content that is "surfaced" is not done by human judgment, but by algorithms and data-driven technologies that filter, categorize and classify information that is already present in the system, and reflect what users want back to them. Platforms such as Google and Facebook have frequently emphasized the lack of human intervention in their content curation processes, and have been hesitant to acknowledge such human intervention when it does take place (see, *e.g.*, Trielli, *et al.*, 2016). Facebook, in the wake of the Trending News controversy, in which a report contended that human editors employed by Facebook were suppressing conservative news stories in the platform's Trending list, focused on downplaying as much as possible the role that direct human editorial intervention played in the platform's operation (see, *e.g.*, Fiveash, 2016; Isaac, 2016), even going so far as to eliminate the positions of the journalists and editors overseeing its Trending module in the aftermath of the controversy (Thielman, 2016).

This asserted/perceived lack of direct human editorial involvement is, in many ways, fundamental to the logic of perceiving these platforms as technology companies rather than media companies. Indeed, as Gillespie (2010) has illustrated, the term platform itself has been strategically deployed as a means of casting these services strictly as neutral, technology-driven facilitators of content creation and dissemination. Facebook's Mark Zuckerberg has favored emphasizing that the platform simply provides tools to users, to help them to engage in their own content creation and curation (Fiveash, 2016), a position that seems to ignore — or at least mischaracterize — the role that the platform's algorithms play in prioritizing and filtering content for users. The asserted absence of direct human editorial involvement helps to further this perception of distance from, and/or neutrality in, the content selection process — a model that is presumably fundamentally different from the kind of direct (and human) editorial discretion that has been a defining characteristic of traditional media companies.

However, simply because the mechanisms for exercising editorial discretion — for gatekeeping — have changed doesn't mean that the fundamental institutional identity of the gatekeepers should be recast. Representatives of these platforms would likely argue that the nature of their interaction with users is fundamentally different from traditional media, in that social media users play a much more autonomous role in determining the

content that they receive. That is, the users, in collaboration with their social networks, ultimately dictate the content that they consume, with the platform serving as neutral facilitator. Whether a reflection of naivete or disingenuousness, this position is simply no longer tenable (Gillespie, in press).

For starters, media have always, to some extent, tried to give audiences exactly what they want. In this regard, a Facebook, Twitter, or Google is little different from any print, broadcast, or digital news outlet desperately seeking to figure out what it is audiences want, and to then provide them with exactly that (Nadler, 2016). The real difference is that digital media platforms simply represent more effective and efficient mechanisms for doing so, given the increased quantity, scope, and depth of user data that they are able to draw upon, which is a function of the greater interactivity associated with these newer platforms. The relationship between social media platforms and users thus represent the next step in the ongoing progression of what Napoli (2011) has termed "the rationalization of audience understanding" [11].

We can look to recent developments, like the much-maligned rebranding of struggling traditional media company Tribune Publishing as technology company tronc (see Satell, 2016), as an indicator of how permeable the boundary is separating technology company from media company. Tribune's metamorphosis into tronc appears to rest almost entirely on a stated greater reliance on machine learning and algorithms to better serve audience interests and to facilitate the use of automation in content production (Satell, 2016). The widespread skepticism (and even derision) that has met this rebranding (see, *e.g.*, Satell, 2016), in terms of whether it represents anything truly transformative, helps to illustrate that an increased reliance on technology to serve audience interests doesn't serve as a meaningful distinction between technology companies and media companies.

Further, the notion that algorithms operate in a completely neutral and objective manner, free of the kind of biases that characterize direct human editorial decision-making, has been effectively discredited at this point. Algorithms, though automated, are used to classify, filter, and prioritize content based on values internal to the system, and the preferences and actions of users (DeVito, 2016). It is well-understood at this point that engineers and other company actors must make countless decisions in the design and development of algorithms. Through those decisions and relationships, subjective decisions, and biases get encoded into systems. For these reasons, algorithmic bias has become a widely researched and increasingly well-understood phenomenon (see, *e.g.*, Gillespie, 2017; Kitchin, 2017; Pasquale, 2015).

In addition, regardless of the gatekeeping mechanisms employed, platforms such as Facebook, Google, and Twitter find themselves having to navigate a range of editorial policy issues that place them firmly in line with traditional media organizations such as newspapers and broadcasters (Gillespie, in press). Issues related to protecting users from offensive, inflammatory, or adult content are central to the operation of these platforms (see, *e.g.*, Pierson and Dave, 2016). This tension was well-illustrated by the controversy that arose around Facebook's decision to censor a posting by a Norwegian journalist, which featured the well-known Vietnam War photo of a nude young Vietnamese girl fleeing a napalm attack (Scott and Isaac, 2016). Amid the outcry, Facebook quickly reversed its decision on the basis of the photograph's historical importance (Scott and Isaac, 2016). Nonetheless, the controversy that arose highlighted the reality of the extent to which editorial policy decisions not unlike those associated with traditional news publishers are essentially part and parcel of what it means to be a social media platform, even when the editorial decision-making is initially being handled by algorithms, as was the case with the Vietnam photo.

And, as the controversy surrounding Facebook's Trending list illustrated, human editorial intervention often plays a more significant role in the process of content curation than is commonly assumed (Fiegerman, 2016). Snapchat employs an editorial-staff of around 75 people, and is also using these workers to train algorithms and technology that will eventually automate the selection and sorting of news for its 100 million daily users (Sloane, 2016). Twitter also employs a "curation team" to sift through content and highlight events and trends for its 'Moments' section — a blog-like section of the site in which Twitter editors work to combine tweets and photos published onto the site into a narrative, particularly for news events that are trending on the site (Twitter, 2016). The guidelines these teams use are not unlike editorial guidelines used by many content companies — outlining both content suggestions to promote accuracy, and limit bias, as well as stylistic guidelines regarding the type of headline curation team members should write, and the choice of thumbnails.

As should be clear, this scenario points toward these companies operating not only as media organizations in the broadest sense, but more specifically as news organizations, given the extent to which they are engaged in editorial and gatekeeping decisions related to the flow of news and information.

The centrality of advertising

Finally, it is worth noting that all of the arguments put forth by these platforms collapse under the fact that the primary revenue stream for the bulk of these platforms is advertising. Being in the business of providing content to audiences, while selling those audiences to advertisers is a defining characteristic of the media sector (Ingram, 2012; Wolff, 2012). When advertisers are exploring how best to reach potential consumers, the strengths and weaknesses of digital media platforms such a Facebook, Twitter, and Google are being evaluated right alongside those of more traditional media options such as broadcast and cable television, and print and online publications. Moreover, these digital media platforms are proving increasingly effective at siphoning off advertising revenues from these other media sectors (Bhattacharyya, 2016). From this perspective, it

is hard to dispute that these firms are all operating in the same business sector. And it is a business that, as history has shown (see above), firms can enter without owning or producing their own content.

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Underlying motivations

The discussion thus far has focused on the expressed rationales put forth by these digital media companies for being considered technology companies rather than media companies. The next step is to look beyond these expressed rationales and consider some of the underlying reasons why this argument is so consistently put forth.

Appealing to the investment community

Perhaps the most obvious reason that social media platforms and digital content curators would rather be thought of as technology companies rather than media companies is that the technology company label brings with it the potential for much higher valuations from the investment community (see, *e.g.*, Fox, 2014). As investor Chris Dixon makes clear, classification has significant implications in the investment world. As he states, "One of the most important things you have to do in later-stage venture investing is think rigorously about how companies are categorized" [12]. And, as has frequently been observed, the investment community generally sees greater income potential in the technology sector than the media sector (see, *e.g.*, Bond, 2007; Roberts, 2016); and seems to have maintained a hard-line distinction between these two sectors despite growing evidence to the contrary. Painting oneself as a technology company rather than a media company is "what venture capitalists [want] to hear" [13]. As digital media executive Elizabeth Spiers has noted, "institutional investors don't fund media services" [14].

To some extent, this phenomenon may reflect a perspective cultivated by the disparate trajectories of early digital frontrunners Google and Yahoo, and perhaps also from the culture clashes that were central to the demise of AOL-Time Warner. Yahoo "kicked the engineers aside" [15] quite early in its history in its effort to evolve into a full-fledged media company. At its peak Yahoo even considered attempting to purchase NBC in an effort to better integrate into traditional media. These efforts to evolve from a search engine or "portal" (a very popular designation for a brief time) to a more well-rounded media company obviously failed spectacularly in comparison to Google's more technocratic strategic approach.

The AOL-Time Warner merger has become an iconic case study in how incompatible corporate cultures submarined the kind of old media–new media integration that most observers saw as a desirable — even inevitable — outcome of digital convergence (McGrath, 2015). The primary takeaway from this disaster was that "tech people" and "media people" did not work particularly well together, and — perhaps most important — didn't seem to be particularly capable of grasping the idiosyncrasies of each other's businesses (McGrath, 2015). In the end, AOL was jettisoned from the conglomerate and the name completely scrubbed from the company's identity.

The paths traveled by Yahoo and AOL-Time Warner have likely helped to reinforce the logic of the strategy of maintaining at least the illusion of distance and distinction from the media sector. The end result, in any case, is that, social media platforms and digital content curators face a strong incentive to portray themselves in the way that resonates most strongly with the perceptions and priorities of the investment community, which continues to maintain an artificially strict either/or distinction between tech companies and media companies.

Legal and policy motivations

It is also important to consider the legal and policy motivations for being thought of as a technology company rather than a media company. As was illustrated in the Uber example above, the way in which a company is classified can have significant legal and policy implications. This has certainly long been the case in the media sector as well.

For instance, in deciding the constitutionality of the Communications Decency Act (which applied a broadcast regulatory model to the Internet), the U.S. Supreme Court struggled with whether to treat the Internet as akin to the telephone, a print newspaper, or television/radio (Stein, 1997). Given the long tradition in the U.S. of applying completely different regulatory regimes to different communication technologies based upon their technological characteristics, the argument of which — if any — analogy to embrace for the Internet had far-reaching legal and policy implications. More recently, the FCC's decision to impose network neutrality regulations on Internet service providers (ISPs) hinged on the re-classification of Internet service providers as telecommunications service providers (akin to phone companies) rather than information service providers (akin to Web hosting services) (U.S. Federal Communications Commission, 2015; Rinehart, 2015). The FCC's regulatory authority over telecommunications service providers is much greater than its authority over information service providers (again, different technologies and services frequently operate under different regulatory models); so much so that the net neutrality regime imposed by the FCC would be impermissible if ISPs were classified as information service providers (Patel, 2014). The Trump FCC's impending reversal of the network neutrality regulations will likely involve another round of re-classification.

Similar issues of classification are beginning to confront digital content curators such as social media platforms. This is well-illustrated by some of the legal challenges that have confronted Twitter. In a case involving a government subpoena for information (including tweets) about an individual Twitter user, the court suggested that Twitter was analogous to "scream[ing] out the window" (*New York v. Harris*, 2012). In another subpoena made to Twitter for the IP information for some of its users (who were associated with the organization Wikileaks), the court used a different classification, comparing Twitter, and the IP addresses used to connect to the site, to using a telephone (*New York v. Harris*, 2012).

A fundamental question underlying these classification efforts involves if, or to what extent, Twitter holds ownership and editorial authority over the content that circulates on its platform. In navigating these issues of classification, industry observers have noted, "It has ... suited Twitter to pose as a tech company when it comes to potential regulatory and legal burdens" [16]. For instance, in a response to a court order for information about a user who was arrested during an Occupy Wall Street protest, Twitter adopted the legal position that it has no ownership of individual tweets (Rana, 2012), a position that would seem to operate in conflict with the various forms of editorial discretion that Twitter has engaged in in relation to the content on its platform (see, *e.g.*, Guynn, 2016; Ingram, 2012).

The reality is that platforms such as Twitter have substantial leeway to engage in editorial discretion over the content they host without triggering categorization as a publisher, and thus contracting the wide-ranging legal liabilities that come with being a publisher. This is the essence of Section 230 of the Telecommunications Act of 1996. Section 230 provides platforms such as search engines, Internet service providers, and social media sites with broad protection from legal liability for any of the third-party speech that they host, curate, or distribute. From this standpoint, social media platforms and digital content curators are sheltered from many of the negative obligations (*i.e.*, obligations to police/protect against the circulation of various types of speech) associated with media companies; or, in the words of Section 230, "information content providers." Much of the policing of their content that these platforms do engage in, it should be emphasized, is actually voluntary (under what is referred to as the "Good Samaritan Provision"), not unlike the way that the cable television industry has long restricted foul language and nudity in the programming they provide, despite being outside the bounds of the FCC's indecency regulations.

However, in many sectors of the media industry, there is also a long tradition of *affirmative obligations* (*i.e.*, obligations to provide certain types of speech). Electronic media companies have historically operated under a unique set of government-mandated social responsibilities, that these companies have long argued are burdensome and costly. In the U.S., these social responsibilities have taken the form of various "public interest obligations" (Napoli, 2015). Even those electronic media companies primarily engaged in content distribution (such as cable systems, ISPs, and satellite service providers) have been subject to obligations such as providing subscribers with access to minimum levels of public, educational, and government programming; minimum levels of locally-produced programming; providing broadband access to schools and libraries, and providing political candidates with the ability to advertise on these platforms at reduced rates (U.S. Federal Communications Commission, 2016a). For a time, such public interest obligations became particularly aggressive, as in the case of the Fairness Doctrine, which, through the 1970s and part of the 1980s, required broadcasters (given their significant bottleneck position) to provide equivalent amounts of coverage to differing perspectives on controversial issues of public importance (Ruane, 2011).

Even economically-motivated structural regulations and government oversight have historically been more aggressively imposed in the media sector than other industry sectors, given concerns about the relationship between competition in media markets and the effective functioning of the "marketplace of ideas" (Napoli, 2001). A variety of ownership regulations persist in the electronic media sector, despite the increasing competition facilitated by the Internet and its lowering of the barriers to entry into various media markets (U.S. Federal Communications Commission, 2016b). Mergers in the electronic media sector undergo a separate "public interest" review above and beyond the standard scrutiny that all mergers undergo in terms of their impact on competition, in which concerns completely unrelated to a proposed merger's effect on competition can factor into the approval process, and in which various public interest-oriented conditions are often imposed on approving a merger (Sallet, 2014).

The key point in reviewing how the notion of the public interest is applied within the context of electronic media regulation is to illustrate that classification as a media company — at least in the realm of electronic media — has historically meant more intensive government oversight, in the form of affirmative obligations to serve the public interest and more stringent regulation in areas such as concentration of ownership. Given these greater regulatory burdens that fall upon the electronic media sector, one can see why digital media platforms would work to establish an organizational identity that places them well outside of this regulatory model.

Imagine, for instance, if Facebook had to operate under a Fairness Doctrine for social media. In many ways, one could look at the controversies that arose surrounding the alleged suppression of conservative news stories or the circulation of fake news stories during the 2016 presidential election as just the kind of spark that could have ignited that kind of discussion. Or, one could certainly imagine a digital media platform such as Facebook, with its dominant market position, growing concerned about the possibility of a more media-oriented competition analysis being applied to its increasingly dominant position in both the economic marketplace and the marketplace of ideas (see Thompson, 2016). Recent data show the extent to which a Facebook/Google duopoly has developed in online and mobile advertising (Slefo, 2017). The somewhat surprising fact that such findings have yet to really spark a conversation in U.S. policy discourse could perhaps be attributed to the success thus far of the technology-company-not-media-company rhetoric.

As this discussion has hopefully made clear, the question of whether platforms such as Facebook and Twitter are media companies or technology companies is not just a matter of semantics but rather part of a larger a discursive strategy. The success of this strategy has significant legal and policy implications, and is one in which the economic, legal, and political motivations of digital media platforms to be (mis)perceived as technology companies rather than media companies are quite compelling.

Why it matters

As communications policy researchers have noted "words matter" (Lentz, 2013). The specific terms employed in the discourse and documents that shape and reflect policy decisions have profound consequences, and thus are employed strategically; often in an effort to define the contours of an issue, or to influence which stakeholders fall within the parameters of a specific policy proposal (see, *e.g.*, Lentz, 2011; Streeter, 1987). Within communications and media contexts, a specific discursive strategy amongst many stakeholders has been to employ a strong technological focus, treating new communications and media technologies as autonomous agents, and/or narrowly defining the policy terrain purely in terms of complex technical issues and concerns, to the exclusion of broader social concerns (Napoli, 2009; Streeter, 1987). Scholars of Internet governance, for instance, have observed a tendency amongst many stakeholders to try to strip various Internet governance issues of their broader political and cultural significance, seeking instead to frame these issues in their narrowest technical terms, a process which ultimately marginalizes stakeholders and governance issues with a primarily political or cultural focus (see, *e.g.*, Raboy and Landry, 2005). This technocratization of policy discourse serves as an important backdrop for the "tech-company-not-media-company" argument being considered here.

In the end, the framing of social media platforms and digital content curators purely as technology companies marginalizes the increasingly prominent political and cultural dimensions of their operation, which grow more pronounced as these platforms become central gatekeepers of news and information in the contemporary media ecosystem. In these situations, in which there is a disconnect between function and framing, we have a "discourse [that] serves to shape an institution that it fails to describe" [17]. This techno-centric framing can contribute to these platforms operating largely outside of the legal and regulatory frameworks that have been established for electronic media organizations; frameworks that were established largely because of the significant political and cultural dimensions of their operation.

This situation becomes particularly troubling as these platforms inevitably evolve in ways that make the technology-company-not-media-company distinction even more invalid. For instance, as was noted above, like previous generations of content distributors, such as cable and satellite systems, and, most recently, YouTube and Netflix (Kokalitcheva, 2016; Napoli, 2016), Facebook has begun vertically integrating into content creation. The company has initiated an effort to produce original video programming (Kafka, 2014). And, in the wake of massive criticism about Facebook's role in the spread of fake news during the 2016 election, the company has initiated the Facebook Journalism Project. Amongst the objectives of this project are to "forge deeper ties with publishers by collaborating on publishing tools and features" [18]. This deeper integration into the dynamics of news production and distribution is, perhaps, the first step towards genuine vertical integration in the news arena; but is at minimum a shift in organizational direction as it relates to journalism that further undermines any arguments opposing being categorized as a media company (Baram, 2017).

Perhaps it is not surprising, then, that Facebook CEO Mark Zuckerberg has begun to soften his stance slightly in regards to Facebook's organizational identity. In December of 2016 he described Facebook as "not a *traditional* media company" [19]. Zuckerberg's evolving stance is reminiscent of Google, which after years of insisting that it was not a media company, stated in its 2005 SEC 10-K filing that "We began as a technology company and have evolved into a software, technology, Internet, advertising and media company all rolled into one" [20]. In both cases, the stance is one of continuing to maintain significant points of distinction and separation from traditional media companies. Regardless, by the time these firms acknowledge that they are media companies of any type, many benefits associated with not being perceived, or treated as, a media company have already been reaped. Indeed, part of the way that these companies are able to evolve into dominant media firms is by circumventing the media legal and regulatory frameworks that may have inhibited their rapid expansion and/or imposed more legal liability and/or social responsibility costs along the way. And the discursive strategy discussed here likely plays a role in facilitating this circumvention.

It is important to emphasize that we have not sought to build here towards recommendations for specific legal or regulatory interventions. Our goal here has simply been to highlight the logical flaws and underlying motivations of a discursive strategy that disassociates social media platforms from the normative, legal, and regulatory frameworks that have traditionally been applied to those institutions that have traditionally performed the functions that these platforms now perform. For this reason, we've tried here to push back against this purely technologically-oriented characterization of social media platforms and digital content curators in hopes that policy and governance discourse about these platforms better reflects the fact that the points of continuity between traditional and newer media are stronger than this characterization suggests.

Conclusion

Throughout media history, media technologies and services have evolved to serve functions that are ultimately very different from those for which they were created. Radio was created to facilitate ship-to-shore communication. The VCR was created to facilitate home video recording, with its creators having no idea of the massive video rental/sales industry that would arise. The Internet was created to facilitate communication between government and academic researchers. Facebook was created to help college students identify attractive classmates.

The speed with which the functionalities of communications technologies can evolve can lead to a persistent state of perception lagging behind reality. When the functionality at issue involves informing and influencing the democratic process, such a perceptual lag can have dangerous and profound ramifications. The 2016 election seems to have triggered a bit of catch-up in this regard, with users, journalists, policy-makers, scholars, and even the executives of these platforms themselves now seeming to be developing a clearer sense of the increasingly influential role that these platforms are playing in the democratic process. Whether this enhanced clarity leads to norms and governance structures that better serve the public interest remains to be seen, and should be a focus of research going forward.

Finally, as much as this paper has argued that social media platforms and digital content curators fit quite well within the established parameters of media organizations, one could just as easily argue that it is necessary and appropriate for our understanding of media companies to evolve to fully encompass the structure and operation of these platforms. Recent definitional approaches to media seem to reflect this perspective (see, *e.g.*, Hess, 2014). Deuze (2007), for instance, emphasizes that "Media industries produce content, yes, but also invest in platforms for connectivity" [21]. At the very least, perhaps it is time to more rigorously delineate the contours and parameters of the contemporary hybrid technology/media company, and to begin articulating if and how these companies should fit into existing legal, regulatory, and journalistic frameworks; or whether new or modified frameworks that reflect their hybrid nature need to be devised. 🔴M

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Notes

1. Gillespie, 2010, p. 348.

2. *Ibid.*

3. Cukier, 2016, p. 1.

4. Quoted in Sullivan, 2006, p. 1.

5. Quoted in Fiegerman, 2016, p. 1.

6. Quoted in Bilton, 2012, p. 1.

7. Quoted in Langer, 2003, p. 2.

8. Quoted in Benton, 2014, p. 1.

9. Quoted in Kramer, 2006, p. 1.

10. Deuze, 2007, p. 73.

11. Napoli, 2011, p. 26.

12. Quoted in Kafka, 2014, p. 1.

13. Morrissey, 2016, p. 1.

14. Benton, 2014, p. 1.

15. Foremski, 2014, p. 1.

16. Rana, 2012, p. 1.

17. Streeter, 1987, p. 176.

18. Isaac, 2017, p. 1.

19. Quoted in Constine, 2016, emphasis added.

20. Quoted in BIA/Kelsey, 2005, p. 1.

21. Deuze, 2007, p. 9.

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