How to Regulate (and Not Regulate) Social Media | SSRN

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To understand how to regulate social media you must first understand why you want to regulate it.

We should regulate social media companies because they are key institutions in the twenty-first century digital public sphere. A public sphere does not work properly without trusted and trustworthy intermediate institutions that are guided by professional and public-regarding norms.

The current economic incentives of social media companies hinder them from playing this crucial role and lead them to adopt policies and practices that actually undermine the health and vibrancy of the digital public sphere.

The point of regulating social media is to create incentives for social media companies to become responsible and trustworthy institutions that will help foster a healthy and vibrant digital public sphere. It is equally important to ensure that there are a large number of different kinds of social media companies, with diverse affordances, value systems, and innovations.

Treating social media companies as state actors or as public utilities does not solve the problems of the digital public sphere. One might create a public option for social media services, but this, too, cannot serve as a general solution to the problems that social media create. Instead, this essay describes three policy levers that might create better incentives for privately-owned companies: (1) antitrust and competition law; (2) privacy and consumer protection law; and (3) a careful balance of intermediary liability and intermediary immunity rules.

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