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The Concepts for Better Regulation of Internet Platforms

By: Abdullah Ibrahim Altayyar

Master of information technology and intellectual property law, Sussex University, United Kingdom

Email: hdd.2009@hotmail.com

Abstract:

In this article, a critical analysis is made of whether Internet platforms are appropriately regulated and whether there are ways in which Internet platforms could be better regulated. This article argues that there is an argument for a combination of self-regulation and legal regulation rather than just one of these approaches for regulatory purposes. Moreover, the current approach to regulation in the United Kingdom tends towards such a hybrid regulatory approach compared to the American approach that leans more in favor of preserving the free market for digital business. Explaining the laws regulating platforms in the United States, as well as ways to combat abuse. The research concluded several results, including that more laws must be provided to regulate online platforms, and that online platforms represent a basic pillar of human life that needs more regulation in human life, and that it must be reduced The almost absolute immunity of the platforms, and the researcher recommended that more studies and comparisons be done to define the concept of the platform and lay the foundations and ways to organize the platforms and make comparisons between European and Arab countries in the foundations of regulating platforms and mediators.

Keywords: Internet, Regulation, technology, defense, act, online platforms, misuse, Cyber-paternalism, rights, legislation.

1. Introduction:

The issue of Internet regulation is one that has been a part of discourse around Internet since the 1990s when Internet became increasingly accessible to the public and different viewpoints have been offered on how far Internet can be regulated or even if it ought to be regulated by the state (Laura Denardis, 2014). Even if it is agreed that Internet can be and should be regulated by the law, there are peculiar characteristics of Internet including technology, geographical distribution of the users, and the nature of its content that make it difficult for states to regulate it (Boyle, 1997). There is also an argument made that instead of state regulation, it may be more appropriate for there to be an international approach to regulation of Internet through treaties and other international mechanisms (Judge Stein Schjolberg, 2021). But, this approach is difficult to apply because countries may have different approaches to implementing international law; for example, the United States give constitutional primacy to domestic law over international law unless the latter is ratified (Andrew, 2007). The challenges associated with the regulation of Internet through the medium of international law can be seen in the fact that there is no consensus reflected in any major international treaty for regulation of Internet (Matthias, 2022). At the same time, the permeating influence of Internet may require some forms of regulation for the purpose of providing individuals the protection of the law in commercial and non-commercial activities undertaken on the Internet.

The Internet has existed since 1969, but it was only in the 1990s that it saw significant growth and since then it has gone on to become ubiquitous in the human society. From 1969 to the 1990s, the Internet was a network only used in the United States under the Advance Research Project Agency (ARPANET), which was used by the military, defence contractors, and university laboratories conducting defence-related research, and which later was expanded to connect universities, researchers and others worldwide (Dharmesh, 2020). As such, the question of regulation of Internet was not one that related to protection of the public from harm due to the content available to them from the Internet as there was not much public exposure to the Internet. This is the not the case today. Internet is now easily accessible to significant proportion of the world population, for both commercial and noncommercial purposes. Like any other market space, Internet can be used for both licit and illicit purposes, which begs the question of regulation of the Internet platforms. In ACLU v Reno, the US Supreme Court accepted the nature of the Internet as a "giant network interconnected with a series of smaller networks." (*ACLU v Reno*, 1996) By the 1990s,

and more so today, the Internet is a site of interconnectedness worldwide, where ease of navigation and access to content means that a significant proportion of the world population has access to vast amounts of content and sites.

1.1. Research importance

The importance of the research is due to what the Internet represents today as a daily part of human life, in addition to the great role of platforms in the lives of individuals in general, and to the important and significant role these platforms play in providing services and products.

1.2. Research objectives

1- Clarifying the concept of the platform

2- Statement of the organization of the platforms

3- Clarifying the most important laws regulating platforms

4- Explain the regulation of platforms in the United Kingdom

5- Ways to combat misuse of platforms

2. Method

First, to understand the meaning of the term 'platform', there is no generally accepted definition of the term, and it is a term that is used to distinguish a platform from other forms of online presence, such as, individuals, on the basis of the platform's facilitation of "provision and access to products, information, entertainment, opinions, sales, advertising or other content or services from a variety of sources (Hogan, 2018)." The term platform also becomes relevant to distinguishing between content managed by a platform and content provided by an individual user. The term platform is also used for 'online content intermediaries' (C-324/09). An important question is whether intermediaries are to be considered platforms or publishers and there is often some problem with delineating the scope of the definitions of platforms and intermediaries. The term platform is generally used with respect to all intermediaries, but the term 'platform' does not appear in the relevant European legislation and instead the term 'online content intermediary' is used to describe a subset of 'hosting' providers by the E-Commerce Directive. In L'Oreal v eBay, the term 'active' host was used and may mean something similar to intermediary.

The E-Commerce Directive defines three types of intermediary: 'mere conduits', 'caching providers' and 'hosts' (Mark Bunting, 2018). The EU Commission has proposed the Digital Services Act, which differentiates between Intermediary services (internet access providers, domain name registrars), Hosts, Online platforms (app stores and social media platforms), and large online platforms (platforms reaching more than 10% of monthly European consumers) (Ethan Shattock, 2021).

It can be argued that the first step towards improving the framework on regulation of the Internet would be to clarify on who is to be regulated in terms of platforms because at this time there is little clarity on how platforms are defined across different jurisdictions. In the UK, the term 'online intermediaries' is used and even with the wide scope of actors who come within this definition, it has been suggested that the existing definitions do not effectively delineate the full spectrum of actors that are involved in the internet's architecture and can facilitate and participate in wrongdoing (Jaani Riordan, 2016). Furthermore, Internet regulation is territorially fragmented because different jurisdictions have different definitions of platforms and intermediaries and different standards of regulation, which can either lead to intermediaries being able to avoid liability in some cases and attract liability in others (Catherine Stromdale, 2007).

There are three identifiable characteristics of online content intermediaries, which are that they: operate open marketplaces through direct interaction between suppliers and consumers of information and content; play an active role in matching content to users; and earn revenue by taking a share of the value created by the platforms. Intermediaries do not simply allow people to use their platforms to upload content, but play a role in moderating content and choosing what kinds of content may get promoted over the others. This is one of the reasons why it is important to affix liability to intermediaries. An important point is that intermediaries are in the position to put an end to harmful or illegal activity because of their capacity to detect, prevent and control the means of wrongdoing.

3. Discussion

3.1. Regulation of platforms

Regulation of platforms of intermediaries also has been thought to be necessitated by the fact that these actors play a role in moderating information and content, as noted recently by the Council of Europe:

"The power of such intermediaries as protagonists of online expression makes it imperative to clarify their role and impact on human rights, as well as their corresponding duties and responsibilities, including as regards the risk of misuse by criminals of the intermediaries 'services and infrastructure… States are confronted with the complex challenge of regulating an environment in which private parties fulfil a crucial role in providing services with significant public service value (Council of Europe, 2018)."

Therefore, there is a justifiable argument in favor of regulating intermediaries or online platforms. The question is how such regulation should be put in effect. At this point, it is also important to also engage with the theory on Internet regulation. The regulation of Internet is made complex by the nature of Internet as a vast, interconnected space without borders. Due to this, it has also been argued that cyberspace as a global electronic social space is a site where national governments do not have a moral right to rule and do not have efficient methods of enforcement (John Perry Barlow, 1996). There are multiple and overlapping systems of rules or 'interleaflet' applicable to Internet, which makes it inappropriate for any state to justifiably claim comprehensive law-making in this area (Chris Reed and Andrew Murray, 2018). In light of this background, two prominent theories of Internet regulation have come to be propounded in the literature on Internet regulation, these are cyber-libertarianism and cyber-paternalism, and they offer contrasting views on Internet regulation. Although both theoretical approaches are premised on the viewpoint that the Internet is a unique form of communication, they offer different answers to the question of how far and in what way Internet should be regulated by the law. Cyber-libertarianism perspective argues that regulation by a state is not appropriate because there are no territorial boundaries on the Internet, and instead of state regulation, it is more appropriate that norms of regulation are defined by the digital community. In other words, cyber-libertarianism approach emphasises on self-governance of Internet. This kind of approach to Internet regulation has been called a "bottom-up private ordering" of Internet, which avoids the need for regulation by a bureaucratic state (NW Netanel, 2000).

The cyber- libertarianism approach has been opposed by cyber-paternalism, which takes forms of cyber-realism and techno-determinism. Cyber-paternalism is essentially an umbrella term that comprises both cyber-realism and techno-determinism. Cyber-realism argues that Internet can be regulated based on traditional jurisdiction and law.

Techno-determinism posits that the idea that Internet cannot be regulated, also termed as Internet exceptionalism, is not based on the impossibility of regulating Internet, but the practical challenges associated with enforcement of regulatory norms in the Internet. Lawrence Lessig, who proposes a cyber-paternalistic approach to Internet regulation argues that by re-reading the traditional regulatory performance with Internet characteristics and architecture, and relating this to the markets, law, and norms around Internet, it is possible to regulate the Internet through state made law (NW Netanel, 2000). The architecture of Internet is unique, but it has a capacity to engender rights and duties, which makes it possible to also regulate the Internet through the architecture of these rights and duties (Chris Reed, 2004). An approach that seeks to take a balanced view to state regulation and self-regulation is proposed by Andrew Murray, which posits that Internet being a site for communication and discourse, only direct legal-regulatory control is not appropriate for regulation, and other actors and stakeholders can also provide means of regulation. Clearly, there is a division in the discourse around Internet regulation, with divergent theoretical approaches on how such regulation can take place. Some approaches deny the ethical basis for such regulation, some accept the power of the state to make such regulation, while some argue for a middle way approach where government and other actors all play a role in norm building for Internet regulation. In the next sections of the essay, a critical and comparative discussion is undertaken on how states have responded to Internet regulation through their laws and policies with the view to identifying how Internet can be regulated and has been regulated in different jurisdictions. The argument is that adopting a middle approach to regulation, where some aspects of regulation are undertaken by the state legislation and other aspects of regulation are undertaken through a self-regulation method offers a more effective and nuanced response to regulation of platforms.

3.2. Early statutes on Internet regulation

One of the early statutes on Internet regulation is found in the United States, where the Congress enacted the Communications Decency Act of 1996 with the aim to protect minors from explicit material on the Internet. The law criminalised the knowing transmission of obscene or indecent messages to recipients under 18 years of age. The statute was challenged before the United States Supreme Court in the case of ACLU v Reno, where the court held that there is a difference between Internet communication and the other forms of communication that the Supreme Court had earlier ruled on where First Amendment speech rights had been invoked (*ACLU v Reno*, 1996).

The court was of the opinion that the Communications Decency Act of 1996 lacked precision required under the First Amendment for regulation of the content of speech and it restricted the freedom of speech that adults have when less restrictive alternatives would be at least as effective in achieving the legitimate purpose that the statute was enacted to serve (Ibid).

The above discussed early decision on Internet regulation reflects on some important aspects of Internet as a mode of communication and the challenges that states may face in regulating it because the US Supreme Court invalidated the Communications Decency Act of 1996 in ACLU v Reno. Subsequent attempts to regulate Internet content with the view to protecting children were made in Child Online Privacy Protection Act of 1998 (Vashee, 'ACLU v. Reno). This Act restricts the online collection of personal information from children aged 13 or younger by platforms and require that platforms that maintain chat rooms directed at children must either condition a child's participation on the consent of a parent or guardian or monitor the chat room and censor references to personal information. One of the questions that is raised in this context is whether the law infringes on the free speech rights of children (Charlene Simmons, 2007).

Indeed, the question of free speech rights is an important part of any discussion on Internet regulation because regulation of the Internet hinges on several aspects of individual liberty such as free speech as well as important aspects like equality, fairness, and human rights in general. Internet regulation then becomes an area that requires careful balancing of different interests. Where on the one hand, Internet is a space where individuals may face risks to their privacy and other interests, it is also a space for innovation, access to knowledge and information, and access to opportunities, which makes it a delicate act of balancing for the state. Critics of regulation therefore point to paternalistic attitudes towards individual freedom when state may make regulation that is seen to be impinging on free speech rights; this was seen in the case of Child Online Privacy Protection Act of 1998, which was considered by critics to be an infringement of children's right to free speech, as well as the platforms 'right to commercial speech (Anita, 2001). The criticism hinges on the argument that in the case of children and the possibility of harm in online environments, it is the parents that must regulate the activities of the children and not the government (Melanie, 2001). To go back to the ACLU v Reno judgment, the view of the US Supreme Court also was that a statutory provision that lays financial burden on the speakers because of the content of their speech, is presumptively inconsistent with the First Amendment

free speech rights. Clearly, a paternalistic approach to regulation of intermediaries may lead to difficulties because the intermediaries cannot act as sole gatekeepers to adjudge speech rights and at the same time, a complete lack of regulation can lead to perverse outcomes for the rights of those who are harmed or whose rights are violated because of unregulated content.

3.3. Regulation in UK

In the UK, the regulation of online content is done through a primary responsibility of the creator of content to ensure lawful content and the secondary responsibility of a platform operator to remove unlawful content from its website (Lovells, 2018). The principal legislations that have relevance to regulation of the Internet are the Digital Economy Acts of 2010 and 2017 (although these do not provide a comprehensive review of content regulation), the Communications Act 2003 (although this does not include online content or platforms) and the E-Commerce Directive (2000/31/EC). The draft online security bill deals with the responsibility of intermediaries to meet certain standards and subjects Ofcom (the proposed regulator) to regulatory obligations. The object of the Draft Online Safety Bill is to "make provision for and in connection with the regulation by OFCOM of certain internet services; and to make provision about and in connection with OFCOM's functions in relation to media literacy (Draft Online Safety Bill)." The EU E-Commerce Directive (Directive 2000/31/EC) also provides for liabilities that arise out of the functioning of networks and is relevant to the regulation of the intermediaries. The European Court of Justice (CJEU) has considered the issue of intermediary liability in the case of Peterson v Google, where the question before the court was whether Google could be held liable in damages, and be subject to an injunction, for hosting on YouTube videos containing copyright-infringing material. The court's decision was that the operator of a platform is allowed the protections under the E-Commerce Directive unless they have the requisite wrongful knowledge in connection with its hosting of copyright-infringing material. Therefore, an important component to intermediary liability is the wrongful knowledge otherwise the intermediary enjoys protection of the E-Commerce Directive (2000/31/EC). Under the Directive, intermediaries have protection and are liable for illegal content only if they have 'actual knowledge' of it and have failed to act 'expeditiously' to remove or block it (Kightlinger, 2020).

In the UK, there is a growing consensus on the need to find more effective means for regulating intermediaries; for instance, the UK Parliament has stated that in the changing digital world, the existing legal framework is no longer fit for purpose (UK House of Commons, 2018).

A recommendation is also made to appoint a regulator, such as, UK Information Commissioner and communications regulator Ofcom, who is tasked to combat disinformation directly by licensing of content providers and their systems for content moderation (UK Information Commissioner's, 2018). The argument that there should be such state regulation of online content through appointed regulators is that government should not impose the judgement exercise of regulating online content on "online intermediaries, who are inexpert in and not incentivised to judge fundamental rights, and not bound by States' international human rights commitments (Chris *et al.*, 2020)." In the UK, which is bound by European Convention of Human Rights, Article 10 provides the freedom of expression and also lists the restrictions that governments can impose on the freedom of expression. This engenders human rights related to expression. If the online intermediary is only responsible for moderating online content, then there is a possibility that the online intermediary would restrict speech in the name of regulation. Those who argue for statutory regulation argue that online intermediaries cannot be held responsible for regulating content when it involves human rights adjudication, which is not the job of the intermediaries but of the government.

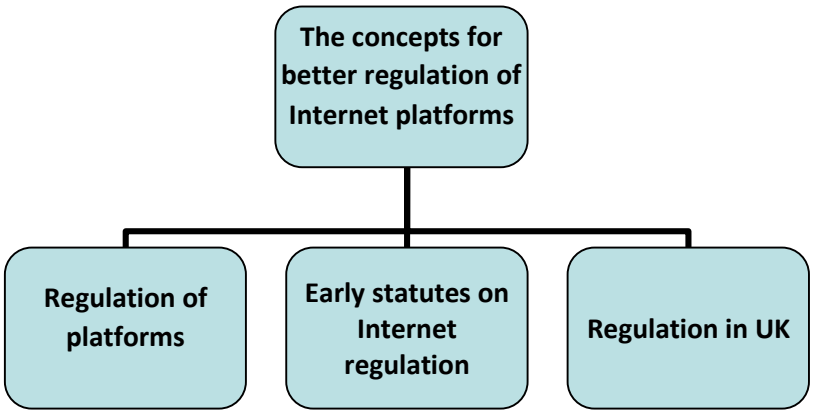

Figure 1. Headings

4. Conclusion

In conclusion, the regulation of the Internet is fraught with dilemmas and issues surrounding the conflicting values of free market and innovation of the digital economy on the one hand and the protection of rights of individuals, including children, who may be exposed to different kinds of harms and rights violation on the Internet. Non-regulation of the Internet is not an option considering that this is a market that cannot be left to regulate on its own.

Intermediaries cannot be the sole gatekeepers because they cannot be the appropriate judges of human rights and constitutional rights of the users. Some forms of self-regulation can be useful in creating systems of regulation that can be cheaper to implement and also effective in responding to illicit and illegal content on the platforms. It cannot be the sole method because for certain aspects, there is a need to use governmental regulation. The recent UK government approach is showing a tilt towards using a combination of government regulatory mechanisms, particularly with the Ofcam and the Digital Markets Unit, and self-regulation with the inputs from intermediaries. It is submitted that this approach is likely to be more effective that the near absolute immunity that is seen in the United States with respect to intermediaries or platforms. Any regulation in the form of statutes or policy should also clarify the meaning of platform or intermediaries so that it is clearer as to whom the liability is affixed to. This is not the case at this point. Finally, it is important to reiterate that the issue of regulation of intermediaries involves questions of conflicting values that need a balanced approach, which can be provided by using a combination of self-regulation and formal regulation.

5. Research results

1- More laws must be provided to regulate online platforms.

2- Internet platforms represent an essential pillar of human life that needs more organization in human life.

3- The importance of regulating brokers.

4- The need to define conflicting values.

5- The semi-shot immunity of the platforms must be reduced.

6. The recommendations

We recommend conducting more studies and comparisons to define the concept of the platform, lay down foundations and ways to regulate platforms, and make comparisons between European and Arab countries in terms of the foundations for regulating platforms and brokers.

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8. References

Bunting, M. (2018). Keeping Consumers Safe Online: Legislating for platform accountability for online content. Available at SSRN 3274556.http://static1.1.sqspcdn.com/static/f/1321365/27941308/1530714958163/Sky+Platform+Accountability+FINAL+020718+2200.pdf

Murray, A. (2007). The regulation of cyberspace: control in the online environment. Routledge. https://books.google.com/books?hl=en&lr=&id=WGiOAgAAQBAJ&oi=fnd&pg=PT2&dq=Murray+A,+The+regulation+of+cyberspace:+control+in+the+online+environment+(Routledge+2007).&ots=Uo9Llroxrj&sig=X8Kh1Y42JtGDaR-Br4nzpMQaEXU

Catherine Stromdale, 'Regulating Online Content: A Global View' (2007) 13 *Computer and Telecommunications Law Review* 173.

Reed, C., & Murray, A. (2018). Rethinking the jurisprudence of cyberspace. Edward Elgar Publishing. https://books.google.com/books?hl=en&lr=&id=k-p6DwAAQBAJ&oi=fnd&pg=PT9&dq=Chris+Reed+%26+Andrew+Murray,+Rethinking+the+Jurisprudence+of+Cyberspace+(Edward+Elgar+2018)+14.&ots=OB6iXRTNCS&sig=t5bUahTCjHB6Yt97YPEYdrB6T5Y

Reed, C. (2004). Internet law: text and materials. Cambridge University Press. https://books.google.com/books?hl=en&lr=&id=GpKZu2uAS3sC&oi=fnd&pg=PR11&dq=Chris+Reed,+Law:+Text+and+Materials+(Cambridge+University+Press+2004).&ots=RBx2CMJGKi&sig=d7Aq4mCi2EjeGuBGfaYWnneAOtk

Council of Europe, *Recommendation on the roles and responsibilities of internet intermediaries* (Recommendation CM/Rec(2018), 2 March 2018) accessed <https://rm.coe.int/1680790e14>

Vashee, D. S. (2000). ACLU v. Reno: Congress Places Speed Bumps on the Information Superhighway. Richmond Journal of Law & Technology, 6(3), 16. https://scholarship.richmond.edu/jolt/vol6/iss3/6/

Johnson, D. R., & Post, D. (1996). Law and borders: The rise of law in cyberspace. stanford law review, 1367-1402. https://www.jstor.org/stable/1229390

Draft Online Safety Bill, Objective, accessed <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/985033/Draft_Online_Safety_Bill_Bookmarked.pdf > p. 2.

Shattock, E. (2021). Self-regulation 2: 0? A critical reflection of the European fight against disinformation. Harvard Kennedy School Misinformation Review. https://misinforeview.hks.harvard.edu/article/self-regulation-20-a-critical-reflection-of-the-european-fight-against-disinformation/

Hogan Lovells, Liability regulation of online platforms in the UK: A White Paper (April 2018) accessed < https://www.hoganlovells.com/~/media/hogan-lovells/pdf/2018/google-online-platforms-white-paper.pdf> p. 7.

John Perry Barlow, 'Declaration of the Independence of Cyberspace' (1996) <https://www.eff.org/pt-br/cyberspace-independence>

Judge Stein Schjolberg, An International Criminal Court or Tribunal for Cyberspace. A paper for the EastWest Institute (EWI) Cybercrime Legal Working Group (EastWest Institute 2011).

Lovells, Liability regulation of online platforms in the UK: A White Paper, supra n 9.

Bunting, M. (2018). Keeping Consumers Safe Online: Legislating for platform accountability for online content. Available at SSRN 3274556. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3274556

Marsden, C., Meyer, T., & Brown, I. (2020). Platform values and democratic elections: How can the law regulate digital disinformation?. Computer law & security review, 36, 105373. https://www.sciencedirect.com/science/article/pii/S026736491930384X

Netanel, N. W. (2000). Cyberspace self-governance: A skeptical view from liberal democratic theory. California Law Review, 88(2), 395-498. https://www.jstor.org/stable/3481227

Thacker, S., & Griffiths, M. D. (2012). An exploratory study of trolling in online video gaming. International Journal of Cyber Behavior, Psychology and Learning (IJCBPL), 2(4), 17-33. https://www.igi-global.com/article/content/75169

Section 230 (2), Communications Decency Act 1996.

UK House of Commons, *Interim Report on Disinformation and 'Fake News', Select Committee on Media, Culture and Sport* (2018), accessed <https://publications.parliament.uk/pa/cm201719/cmselect/ cmcumeds/363/36302.htm>

UK Information Commissioner's Office, *Democracy Disrupted? Personal Influence and Political Influence* (2018), accessed <https://ico.org.uk/ media/action-weve-taken/2259369/democracy-disrupted-110718. pdf>, Recommendation 10.

8.1. Cases

ACLU v Reno, 929 F. Supp. 824 (1996), [830].

8.2. Books

L'Oréal Ogus A, 'Rethinking Self-Regulation', in Robert Baldwin, Colin Scott and Christopher Hood (eds) *A Reader on Regulation* (Oxford University Press 1998).

Riordan, J. (2016). The liability of internet intermediaries. Oxford University Press. https://books.google.com/books?hl=en&lr=&id=f3x9DAAAQBAJ&oi=fnd&pg=PP1&dq=Jaani+Riordan,The+liability+of+internet+intermediaries+(Oxford+University+Press+2016).&ots=3CTqfOkcKO&sig=Wx8F1raE9Bo3B5QRE3c6BIylZAQ

DeNardis, L. (2014). *The global war for internet governance*. Yale University Press. https://books.google.com/books?hl=en&lr=&id=jfxfAgAAQBAJ&oi=fnd&pg=PA1&dq=Laura+Denardis,+Global+War+for+the+Internet+Governance+(Yale+University+Press+2014).&ots=gCxFXjCpBX&sig=o4wNW8b7e_UiuhWfQX2xAqsce5E

Doi: doi.org/10.52132/Ajrsp.en.2023.48.3