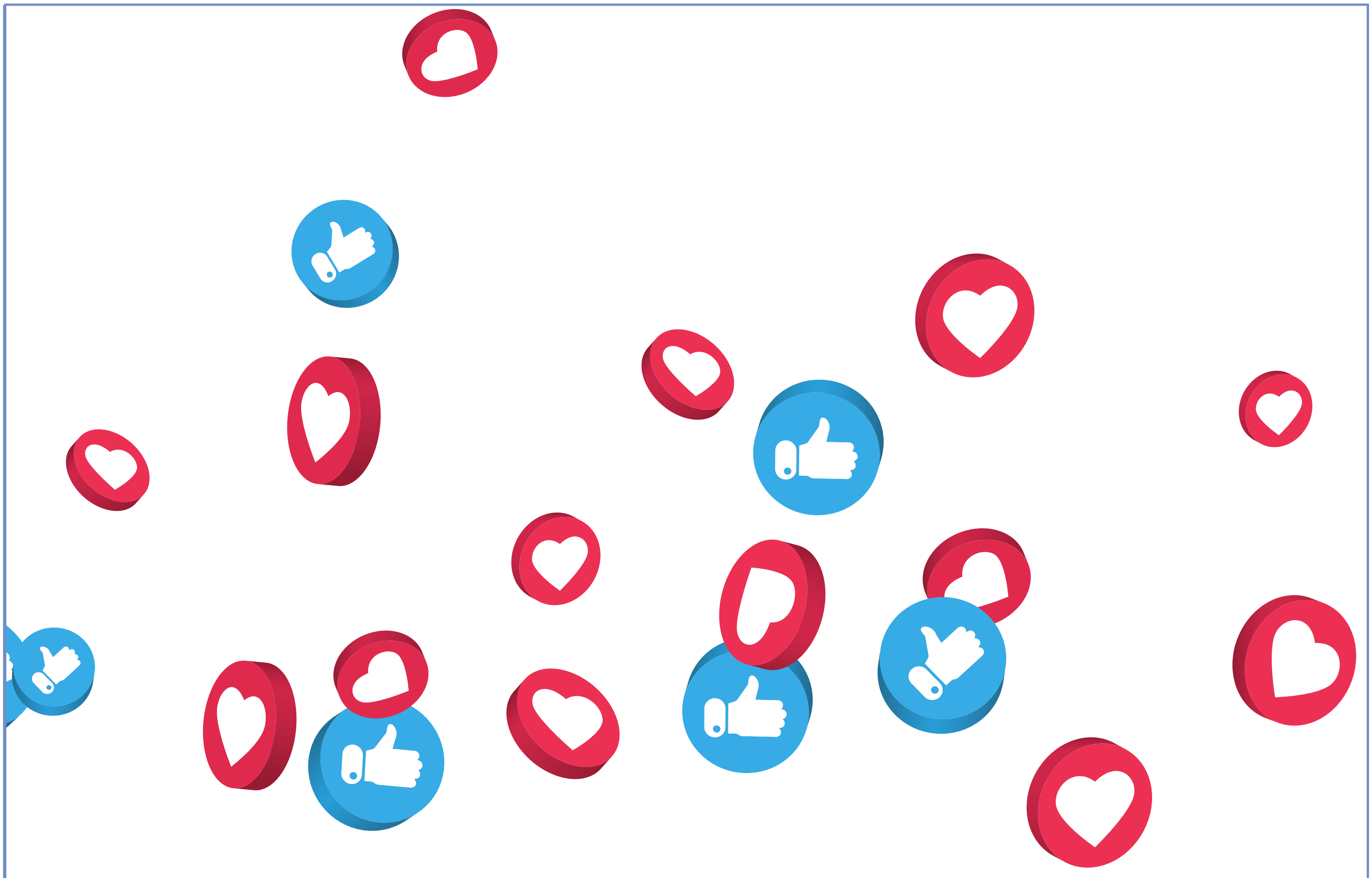

A LAW & ECONOMICS APPROACH TO SOCIAL MEDIA REGULATION

BY
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The thesis of this essay is that policymakers must consider what the nature of social media companies as multisided platforms means for regulation. The balance struck by social media companies acting in response to the incentives they face in the market could be upset by regulation that favors the interests of some users over others. Promoting the use of technological and practical means to avoid perceived harms by users themselves would preserve the benefits of social media to society without the difficult tradeoffs of regulation. Part I will introduce the economics of multisided platforms like social media, and how this affects the incentives of these platforms. Social media platforms, acting within the market process, are best usually best positioned to balance the interests of their users, but there could be occasions where the market process fails due to negative externalities. Part II will consider these situations where there are negative externalities due to social media and introduce the least-cost avoider principle. Usually, social media users are the least-cost avoiders of harms, but sometimes social media are better placed to monitor and control harms. This involves a balance, as the threat of collateral censorship or otherwise reducing opportunities to speak and receive speech could result from social media regulation. Part III will then apply the insights from Part I and II to the areas of privacy, children's online safety, and speech regulation.

01 INTRODUCTION

From privacy to children's online safety to concerns about censorship, misinformation, and hate speech, policymakers at both the federal and state level have been extremely active in attempts to regulate social media.[2] While there is not always agreement on why exactly social media is bad, there is a strong feeling that those companies are to blame for harms to society. It is also generally recognized, though often not emphasized, that social media brings great value to its users. In other words, there are costs and benefits to social media, and policymakers should be cautious when introducing new laws that would upset the balance that social media companies must strike to serve their users well.

This essay will propose a general approach, informed by law & economics, to when and how social media should be regulated. Part I will introduce the economics of multisided platforms like social media, and how this affects the incentives of these platforms. Social media platforms, acting within the market process, are best usually best positioned to balance the interests of their users, but there could be occasions where the market process fails due to negative externalities. Part II will consider these situations where there are negative externalities due to social media and introduce the least-cost avoider principle. Usually, social media users are the least-cost avoiders of harms, but sometimes social media are better placed to monitor and control harms. This involves a balance, as the threat of collateral censorship or otherwise reducing opportunities to speak and receive speech could result from social media regulation. Part III will then apply the insights from Part I and II to the areas of privacy, children's online safety, and speech regulation.

The thesis of this essay is that policymakers must consider what the nature of social media companies as multisided platforms means for regulation. The balance struck by social media companies acting in response to the incentives they face in the market could be upset by regulation that favors the interests of some users over others. Promoting the use of technological and practical means to avoid perceived harms by users themselves would preserve the benefits of social media to society without the difficult tradeoffs of regulation.

02 THE ECONOMICS OF SOCIAL MEDIA PLATFORMS

Mutually beneficial trade is a fundamental bedrock of the market process. Entrepreneurs, including those that act through formal economic institutions like business corporations, seek to discover the best ways to serve consumers. Different types of entities have arisen to help connect those who wish to buy products or services to those who are trying to sell them. Physical marketplaces are a common occurrence around the world: those places set up to facilitate interactions between buyers and sellers. If those marketplaces fail to serve the interests of those who use them, others will likely arise.

Social media companies are virtual example of what economists call multi-sided markets or platforms.[3] Such platforms derive their name from the face that they serve at least two different types of customers and facilitate their interaction. Multi-sided platforms have "indirect network effects," described by one economist as a situation where "participants on one side value being able to interact with participants on the other side… lead[ing] to interdependent demand."[4] In some situations, a platform may determine it can raise revenue from one side of the platform that wishes to reach the other, but only if the demand on the other side of the platform is high. In such cases, the platform may choose to offer one side free access to the platform to keep demand high, which is subsidized by participants on the other side of the platform.[5] This thus creates a positive feedback loop where more participants on one side of the platform leads to more participants on the other.

In this sense, social media companies are much like newspapers or television in serving an important economic func-

2 See e.g. Mary Clare Jalonick, *Congress eyes new rules for tech, social media: What's under consideration*, Associated Press (May 8, 2023), https://www.wvtm13.com/article/whats-under-consideration-congress-eyes-new-rules-for-tech-social-media/43821405#; Khara Boender, Jordan Rodell, & Alex Spyropoulos, *The State of Affairs: What Happened in Tech Policy During 2023 State Legislative Sessions?*, Project Disco (Jul. 25, 2023), https://www.project-disco.org/competition/the-state-of-affairs-statetech-policy-in-2023 (noting laws passed and proposed addressing consumer data privacy, content moderation, and children's online safety at the state level).

3 See e.g. Jean-Charles Rochet & Jean Tirole, *Platform Competition in Two-Sided Markets*, 1 J. Euro. Econ. Ass'n 990 (2003).

4 David S. Evans, *Multisided Platforms in Antitrust Practice*, at 3 (Oct. 17, 2023), *forthcoming*, Michael Noel, Ed., Elgar Encyclopedia on the Economics of Competition and Regulation*, available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4606511.

5 For instance, many nightclubs hold "Ladies Night" where ladies get in free in order to attract more men who pay for entrance.

tion: by solving a transaction cost problem,[6] these platforms bring together potential buyers and sellers by providing content to one side and access to consumers on the other side. Recognizing their value is in reaching their users, these platforms sell advertising and offer access to content for a lower price as a result, often at the price of zero (or free). In other words, advertisers subsidize the access to content for platform users.

Social media companies, for the most part, are free for users. Revenue is primarily collected from the other side of the platform, i.e. advertisers. In effect, social media companies are attention platforms, which supply content to its users while collecting data for targeted advertisements for businesses who then pay for access to those users. To be successful, social media companies must keep enough, and the right type of, users engaged so to maintain demand for advertising. Social media companies must curate content that users desire to persuade them to spend time on the platform.

But unlike newspapers or television, social media companies primarily rely on their users to produce content rather than creating their own. Thus, they must also consider how to attract and maintain high-demand content creators, as well as how to match user-generated content to the diverse interests of its users. If they fail to serve the interests of high-demand content creators, they may leave the platform, thus reducing time spent on the platform by users, which then reduces the value of advertising. Similarly, if they fail to match content to the interests of its users, those users will be less engaged on the platform, reducing its value to advertisers.

Moreover, this also means social media companies need to consider the interests of advertisers and balance them with the interests of its users. Advertisers may desire more data to be collected for targeting, but users may desire less data collection. Similarly, advertisers may desire more ads, while users prefer less. Advertisers may prefer content that keeps users engaged on the platform, even if it is harmful for society because it is false, hateful, or leads to mental health issues for minors. On the other hand, brand-conscious advertisers may not want to run ads next to content they disagree with. Moreover, users may not want to see certain content. Social media companies need to strike a balance that optimizes their value, recognizing that losing participants on either side would harm the other.

Usually, social media companies acting within the market process are going to be best positioned to make decisions on behalf of their users. Thus, they may create community rules that restrict content that would reduce user engagement on net.[7] This could include limitations on hate speech and misinformation. On the other hand, if they go too far in restricting content that is desirable from the point of view of their users, that could also reduce user engagement and thus value to advertisers. Social media companies may compete on moderation policies, trying to strike the appropriate balance to optimize platform value. A similar principle applies when it comes to privacy policies and protections for minors: social media companies may choose to compete by providing tools to help users avoid what they perceive as harms while keeping users on the platform and maintaining value for advertisers.

However, there may be times when there are negative externalities[8] from social media usage that are harmful to society. A market failure could result, for instance, if platforms have too great of an incentive to allow misinformation or hate speech that keeps users engaged, or to collect too much (or the wrong types of) information for targeted advertising, or to offer up content that is harmful for minors that keeps them hooked to using the platform.

In sum, social media companies are multi-sided platforms that facilitate interactions between advertisers and users by curating user-generated content that drives attention to their platform. To optimize the platform's value, a social media company must keep users engaged, and this will often include privacy policies, content moderation standards, and special protections for minors. On the other hand, incentives could become misaligned and lead to situations where social media usage leads to negative externalities due to insufficient protection of privacy, too much hate speech or misinformation, or harms to minors.

6 Transaction costs are the additional costs borne in the process of buying or selling, separate and apart from the price of the good or service itself — i.e. the costs of all actions involved in an economic transaction. Where transaction costs are present and sufficiently large, they may prevent otherwise beneficial agreements from being concluded.

7 See David S. Evans, *Governing Bad Behavior by Users of Multi-Sided Platforms*, 27 Berkeley Tech. L. J. 1201 (2012); Kate Klonick, *The New Governors: The People, Rules, and Processes Governing Online Speech,* 131 HARV. L. REV. 1598 (2018).

8 An externality is a side effect of an activity that is not reflected in the cost of that activity — basically, what occurs when we do something whose consequences affect other people. A negative externality occurs when a third party does not like the effects of an action.

03

NEGATIVE SOCIAL MEDIA EXTERNALITIES AND THE LEAST-COST AVOIDER PRINCIPLE

In situations where there are negative externalities from social media usage, there may be a case for regulating social media companies. However, any case for regulation must recognize the presence of transaction costs, and how platforms and users may respond to changes in transaction costs. To get regulation right, the burden of avoiding a negative externality should fall on the least-cost avoider.

The Coase Theorem, derived from the work of Nobel-winning economist Ronald Coase,[9] and elaborated on in the subsequent literature,[10] helps explain the issue at hand:

1. The problem of externalities is bilateral;
2. In the absence of transaction costs, resources will be allocated efficiently, as the parties bargain to solve the externality problem;
3. In the presence of transaction costs, the initial allocation of rights does matter; and
4. In such cases, the burden of avoiding the externality's harm should be placed on the least-cost avoider, while taking into consideration the total social costs of the institutional framework.

In one of Coase's examples, the noise from a confectioner using his machine is a potential cost to the doctor next door who consequently can't use his office to conduct certain testing, and simultaneously the doctor moving his office next door is a potential cost to the confectioner's ability to use his equipment. In a world of well-defined property rights and low transaction costs, the initial allocation of a right would not matter, because the parties could bargain to overcome the harm in a beneficial manner — i.e. the confectioner could pay the doctor for lost income or to set up sound-proof walls, or the doctor could pay the confectioner to reduce the sound of his machines.[11] But since there are transaction costs that prevent this sort of bargain, it is important whether the initial right is allocated to the doctor or the confectioner. To maximize societal welfare, the cost should be placed on the entity that can avoid the harm at the lowest cost.[12]

Here, social media companies create incredible value for their users, but they also arguably impose negative externalities in the form of privacy harms, misinformation and hate speech, and harms particular to minors. In the absence of transaction costs, the parties could simply bargain away the harms associated with social media usage. But, since there are transaction costs, it matters whether the burden to avoid the harms is on the users or the social media companies. If the burden is wrongly placed, then it may end up being the case that the societal benefits of social media will be lost.

For instance, imposing liability upon social media companies risks collateral censorship, which occurs when platforms decide that liability risk is too large and opt to over-moderate or not host user-generated content, or restrict access to such content through either higher prices or excluding those who could be harmed (like minors).[13] By wrongly placing the burden upon them to avoid harms associated with social media usage, societal welfare will be reduced.

On the other hand, there may be situations where social media companies are the least-cost avoiders. For instance, they may be best placed to monitor and control harms associated with social media usage when it is difficult or impossible to hold those using their platforms accountable for harms they cause.[14] For instance, if a social media com-

9 See R.H. Coase, The Problem of Social Cost, 3 J. L. & Econ. 1 (1960)

10 See Steven G. Medema, The Coase Theorem at Sixty, 58 J. Econ. Lit. 1045 (2020).

11 See Coase, *supra* note 9, at 8-10.

12 See *id.* at 34 ("When an economist is comparing alternative social arrangements, the proper procedure is to compare the total social product yielded by these different arrangements.").

13 See Felix T. Wu, *Collateral Censorship and the Limits of Intermediary Liability*, 87 Notre Dame L. Rev. 293, 295-96 (2011); Geoffrey A. Manne, Ben Sperry & Kristian Stout, *Who Moderates the Moderators: A Law & Economics Approach to Holding Online Platforms Accountable Without Destroying the Internet*, 49 Rutgers Computer & Tech. L J. 26, 39 (2022); Ben Sperry, *The Law & Economics of Children's Online Safety: The First Amendment and Online Intermediary Liability*, Truth on the Market (May 12 2023), https://truthonthemarket.com/2023/05/12/the-law-economics-of-childrens-online-safety-the-firstamendment-and-online-intermediary-liability.

14 See Geoffrey A. Manne, Kristian Stout & Ben Sperry, *Twitter v. Taamneh and the Law & Economics of Intermediary Liability*, Truth on the Market (Mar. 8, 2023), https://truthonthemarket.com/2023/03/08/twitter-v-taamneh-and-the-law-economics-of-intermediary-liability; Ben Sperry, *Right to Anonymous Speech, Part 2: A Law & Economics Approach*, Truth on the Market (Sep. 6, 2023), https://truthonthemarket.com/2023/09/06/right-to-anonymous-speech-part-2-a-law-economics-approach.

pany allows pseudo-anonymous use with no realistic possibility of tracking down those users, illegal conduct could go undeterred. Placing the burden upon social media users in those cases could lead to social media imposing uncompensated harms upon society.

Thus, it is important to determine whether it is the social media companies or their users that are the least-cost avoiders. Placing the burden on the wrong party(ies) would harm societal welfare by either reducing the value of social media or resulting in more uncompensated negative externalities.

04 APPLYING THE LESSONS OF LAW & ECONOMICS TO SOCIAL MEDIA REGULATION

Below, I will consider the areas of privacy, children's online safety, and content moderation, and consider both the incentives of social media companies and whether the platforms or their users are the least-cost avoiders.

E. Privacy

As discussed above, social media companies are multi-sided platforms that provide content to attract attention from its users, while selling information collected from those users for targeted advertising. This leads to the possibility that social media companies will collect too much information in order to increase revenue from targeted advertising. In other words, as the argument goes, the interests of the side of the platform paying will outweigh the interests of social media users, imposing a negative externality upon them.

Of course, this assumes that the collection and use of information for targeted advertisements is considered a negative externality by social media users. While this may be true for some, for others it may be something they care little about or even value because targeted advertisements are more relevant to them. Moreover, many consumers appear to prefer free content with advertising to paying a subscription fee.[15]

It does seem likely, though, that negative externalities are more likely to arise when users don't know what data is being collected or how it is being used. Moreover, it is a clear harm if social media companies misrepresent what they are collecting and how they are using it. Thus, it is generally unobjectionable, at least in theory, for the Federal Trade Commission to hold social media companies accountable for their privacy policies.[16]

On the other hand, privacy regulation that requires specific disclosures or verifiable consent before collecting or using data would increase the cost of targeted advertising, thus reducing its value to advertisers, and then reducing the incentives of the platform to curate valuable content for users. For instance, in response to the FTC's consent agreement with YouTube that it violated the Children's Online Privacy Protection Act (COPPA), YouTube required channel owners producing children's content to designate their channels as such, along with automated processes designed to identify the same.[17] This reduced the ability of content creators to benefit from targeted advertising if their content was directed to children. The result was less content created for children with poorer matching as well:

> Consistent with a loss in personalized ad revenue, we find that child-directed content creators produce 13% less content and pivot towards producing non-child-directed content. On the demand side, views of child-directed channels fall by 22%. Consistent with the platform's degraded capacity to match viewers to content, we find that content creation and content views become more concentrated among top child-directed YouTube channels.[18]

Alternatively, social media companies could raise the price charged to users as it no longer can use advertising

15 See, e.g., Matt Kaplan, *What Do U.S. consumers Think About Mobile Advertising?*, InMobi (Dec. 15, 2021), https://www.inmobi.com/blog/what-us-consumers-think-about-mobile-advertising (55% of consumers agree or strongly agree that they prefer mobile apps with ads rather than paying to download apps); John Glenday, *65% of US TV wiewers will tolerate ads for ffree content, according to report*, The Drum (Apr. 22, 2022), https://www.thedrum.com/news/2022/04/22/65-us-tv-viewers-will-tolerate-ads-free-content-according-report (noting that a report from TiVO found 65% of consumers prefer free TV with ads to paying without ads). Consumers often prefer lower subscription fees with ads to higher subscription fees without ads as well. See e.g. Toni Fitzgerald, *Netflix Gets it Right: Study Confirms People Prefer Paying Less With Ads*, Forbes (Apr. 25, 2023), https://www.forbes.com/sites/tonifitzgerald/2023/04/25/netflix-gets-it-right-study-confirms-more-people-prefer-paying-less-with-ads/.

16 See 15 U.S.C. § 45.

17 See Garrett A. Johnson, Tesary Lin, James C. Cooper, & Liang Zhong, *COPPAcalypse? The YouTube Settlement's Impact on Kids Content*, at 6-7, SSRN (Apr. 26, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4430334.

18 *Id.* at 1.

revenue to subsidize their access. This is, in fact, exactly what has happened in Europe as Meta is now offering an ad-free version of Facebook and Instagram for $14 a month.[19]

In other words, placing the burden on social media companies to avoid the perceived harms from the collection and use of information for targeted advertising could lead to less free content available to consumers. This a serious tradeoff, and not one that most social media consumers appear willing to make.

On the other hand, it appears that social media users can avoid much of the harm from the collection and use of their data by using available tools, including those provided by social media companies. For instance, most of the major social media companies offer two-factor authentication, privacy checkup tools, the ability to privately browse the service, limit audience, and to download and delete data.[20] Social media users could also use virtual private networks (VPNs) to protect data privacy while online.[21] Finally, users could just not post private information and limit interactions with businesses (through likes or clicks on ads) if they want to reduce the amount of information used for targeted advertising.

F. Children's Online Safety

Some have argued that social media companies impose negative externalities upon minors by addicting them to social media and serving them up content that is results in mental health harms.[22] They argue that social media companies benefit from this because they are able to then sell data from minors to advertisers.

While it is true that social media companies want to attract users through engaging content and interface, and make money through targeted advertising, it is supremely unlikely that they are making much money from minors themselves. Very few social media users under 18 have considerable disposable income or payment card options to be valuable to advertisers. Thus, regulations that raise the cost to social media companies to serving minors, whether through a regulatory duty of care[23] or through age verification and verifiable parental consent,[24] could lead to social media companies investing more in the exclusion of minors than creating vibrant and safe online spaces.

"Some have argued that social media companies impose negative externalities upon minors by addicting them to social media and serving them up content that is results in mental health harms

Federal courts considering age verification laws have noted there are costs to companies, as well as users, in obtaining this information. In *Free Speech Coalition Inc. v. Colmenero*,[25] the U.S. District Court in Austin, Texas considered an age verification law before viewing online pornography and found that the costs of obtaining age verification were high, citing the complaint that stated "several commercial verification services, showing that they cost, at minimum, $40,000.00 per 100,000 verifications."[26] But just as importantly, the transaction costs in this example also include the subjective costs borne by those who actually go through with verifying their age to access pornography. As the court noted "the law interferes with the Adult Video

19 See Sam Schechner, *Meta Plans to Charge $14 a Month for Ad-Free Instagram or Facebook*, Wall Street J. (Oct. 3, 2023), https://www.wsj.com/tech/meta-floats-charging-14-a-month-for-ad-free-instagram-or-facebook-5dbaf4d5.

20 See Christopher Lin, *Tools to Protect Your Privacy on Social Media*, NetChoice (Nov. 16, 2023), https://netchoice.org/tools-to-protect-your-privacy-on-social-media/.

21 See e.g. Chris Stobing, *The Best VPN Services for 2024*, PC Mag (Jan. 4, 2024), https://www.pcmag.com/picks/the-best-vpn-services.

22 See e.g. Jonatahan Stempel, Diane Bartz & Nate Raymond, *Meta's Instagram linked to depression, anxiety, insomnia in kids – US state's lawsuit*, Reuters (Oct. 25, 2023), https://www.reuters.com/legal/dozens-us-states-sue-meta-platforms-harming-mental-health-young-people-2023-10-24/ (describing complaint from 33 states alleging Meta "knowingly induced young children and teenagers into addictive and compulsive social media use").

23 See e.g. California Age-Appropriate Design Code Act, AB 2273 (2022), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2273AADC; Kids Online Safety Act, S. 1409, 118th Cong. (2023), as amended and posted by the Senate Committee on Commerce, Science, and Transportation on July 27, 2023, *available at* https://www.congress.gov/bill/118th-congress/senate-bill/1409 (last accessed Dec. 19, 2023).

24 See e.g. Arkansas Act 689 of 2023, the "Social Media Safety Act."

25 *Free Speech Coal. Inc. v. Colmenero*, No. 1:23-CV-917-DAE, 2023 U.S. Dist. LEXIS 154065 (W.D. Tex., Aug. 31, 2023), *available at* https://storage.courtlistener.com/recap/gov.uscourts.txwd.1172751222/gov.uscourts.txwd.1172751222.36.0.pdf.

26 *Id.* at 10.

Companies' ability to conduct business, and risks deterring adults from visiting the websites."[27] Similarly, in *NetChoice v. Griffin*,[28] the District Court for Western District of Arkansas found challenged law's age-verification requirements were "costly" and would put social media companies covered by the law in the position of needing to take drastic action to either implement age verification, restrict access for Arkansans or face the possibility of civil and criminal enforcement.[29]

On the other hand, social media companies, responding to demand from minor users and their parents, have also exerted considerable effort to reduce harmful content being introduced to minors. For instance, they have invested in content moderation policies and their enforcement, including through algorithms, automated tools, and human review, to remove, restrict, or add warnings to content inappropriate for minors.[30] On top of that, social media companies offer tools to help minors and their parents avoid many of the harms associated with social media usage.[31] There are also options available at the ISP-, router-, device-, and browser-level for protecting minors while online. As the court put it in *Griffin*, "parents may rightly decide to regulate their children's use of social media—including restricting the amount of time they spend on it, the content they may access, or even those they chat with. And many tools exist to help parents with this."[32]

In other words, parents and minors working together can use technological and practical means to make marginal decisions about social media usage at lower cost than a regulatory environment that would likely lead to social media companies restricting use by minors altogether.[33]

G. Content Moderation

There have been warring allegations about the incentives of social media companies when it comes to content moderation. Some claim that salacious misinformation and hate speech drives user engagement, making platforms more profitable for advertisers, while others have argued that social media companies engage in too much "censorship" by removing users and speech in a viewpoint-discriminatory way.[34] The Supreme Court is currently considering laws from Florida and Texas that would force social media companies to carry speech.[35]

> ***Federal courts considering age verification laws have noted there are costs to companies, as well as users, in obtaining this information***

Both views fail to take into consideration that social media companies are largely just responding to incentives as multi-sided platforms. Social media companies are solving a Coasean speech problem, where some users don't want to be subject to certain speech from other users. As explained above, social media companies must balance these interests by setting and enforcing community rules for speech. This may include rules against misinformation and hate speech. On the other hand, social media companies can't go too far in restricting high-demand speech or they will risk losing users. Thus, they must strike an important balance.

27 *Id.*

28 *NetChoice LLC. v. Griffin*, Case No. 5:23-CV-05105 (W.D. Ark., Aug. 31, 2023), *available at* https://netchoice.org/wpcontent/uploads/2023/08/GRIFFIN-NETCHOICE-GRANTED.pdf.

29 See *id.* at 23.

30 See *id.* at 18-19.

31 See *id.* at 19-20.

32 *Id.* at 15.

33 For more, see Ben Sperry, *A Coasean Analysis of Online Age-Verification and Parental-Consent Regimes*, at 23 (ICLE Issue Brief, Nov. 9, 2023), https://laweconcenter.org/wp-content/uploads/2023/11/Issue-Brief-Transaction-Costs-of-Protecting-Children-Under-the-First-Amendment-.pdf.

34 For an example of a hearing where Congressional Democrats argue the former and Congressional Republicans argue the latter, see *Preserving Free Speech and Reining in Big Tech Censorship*, Libr. of Cong. (Mar. 28, 2023), https://www.congress.gov/event/118th-congress/house-event/115561.

35 See *Moody v. NetChoice*, No. 22-555 (challenging Florida's SB 7072); *NetChoice v. Paxton*, No. 22-277 (challenging Texas's HB 20).

Laws that restrict the "editorial discretion" of social media companies may fail the First Amendment,[36] but they also reduce the ability of these companies to give their customers a valuable product in light of user (and advertiser) demand. For instance, the changes in the moderation standards of X (formerly Twitter) in the last year since the purchase by Elon Musk have led to many users and advertisers exiting the platform due to increased hate speech and misinformation.[37]

Social media companies need to be free to moderate as they see fit, free from government interference. This could occur not only by forcing the carriage of speech, but by the government engaging in censorship-by-proxy, as has been alleged in *Murthy v. Missouri*.[38] Government intervention by coercing or significantly encouraging the removal of disfavored speech, even in the name of misinformation, is just as harmful as the forced carriage of speech from a First Amendment perspective.[39] But more importantly for our purposes here, such government actions reduce the value of platforms by upsetting the balance struck by social media companies on speech interests of their users.

Users can avoid being exposed to unwanted speech by averting their digital eyes from it, i.e. refusing to interact with it, and training the algorithms of the social media companies to carry speech they prefer. They can also take their business elsewhere by joining a social media network more to their liking in terms of speech moderation policies if they don't carry speech they want to see or hear. Voting with one's digital feet (and eyes) is a much lower cost alternative than either mandating the carriage of speech or censorship by government actors.

Social media companies need to be free to moderate as they see fit, free from government interference

05
CONCLUSION

Social media companies are multisided platforms that must curate compelling content while restricting harms to users to optimize its value to the advertisers that pay for access. This doesn't mean they always get it right. But they are generally best positioned to make those decisions, subject to the market process. Sometimes, though, there may be negative externalities that aren't fully internalized. But as Coase taught us, that is only the beginning of the analysis. If social media users can avoid harms at lower cost than social media companies, then regulation should not place the burden upon social media companies. There are tradeoffs in social media regulation, including the possibility that it will result in a less valuable social media experience for users.

36 See e.g. Brief of International Center for Law & Economics as Amicus Curiae in Favor of Petitioners in 22-555 and Respondents in 22-277, *Moody v. NetChoice, NetChoice v. Paxton,* In the Supreme Court of the United States (Dec. 7, 2023), *available at* https://www.supremecourt.gov/DocketPDF/22/22-277/292986/20231211144416746_Nos.%2022-277%20and%2022-555_Brief_corrected.pdf.

37 See e.g. Ryan Mac & Tiffany Hsu, *Twitter's U.S. Ad Sales Plunge 59% as Woes Continue*, New York Times (Jun. 5, 2023), https://www.nytimes.com/2023/06/05/technology/twitter-ad-sales-musk.html ("Six ad agency executives who have worked with Twitter said their clients continued to limit spending on the platform. They cited confusion over Mr. Musk's changes to the service, inconsistent support from Twitter and concerns about the persistent presence of misleading and toxic content on the platform."); Kate Conger, Tiffany Hsu & Ryan Mac, *Elon Musk's Twitter Faces Exodus of Advertisers and Executives*, New York Times (Nov. 1, 2022), https://www.nytimes.com/2022/11/01/technology/elon-musk-twitter-advertisers.html ("At the same time, advertisers — which provide about 90 percent of Twitter's revenue — are increasingly grappling with Mr. Musk's ownership of the platform. The billionaire, who is meeting advertising executives in New York this week, has spooked some advertisers because he has said he would loosen Twitter's content rules, which could lead to a surge in misinformation and other toxic content.").

38 See *Murthy v. Missouri*, No.23A-243; *see also* Missouri v. Biden, No. 23-30445, slip op. (5th Cir. Sept. 8, 2023).

39 See Ben Sperry, *Knowledge and Decisions in the Information Age: The Law & Economics of Regulating Misinformation on Social Media Platforms*, (ICLE White Paper Sept. 22, 2023), *forthcoming* 59 Gonz. L. Rev. (2023), *available at* https://laweconcenter.org/resources/knowledge-and-decisions-in-the-information-age-the-law-economics-of-regulating-misinformation-on-social-media-platforms/.

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