Realigning Incentives through Formal Media, Communications and Platform Governance

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Abstract

Governance measures in response to the business strategies and operations of digital platforms are proliferating in countries and regions around the world. They are a departure from approaches to governance that prevailed historically in the media and communications industries. This chapter reviews *ex ante* and *ex post* tools of governance that are being deployed in Europe and in the United States. The expectation is that the outcomes of the application of competition law and various sector-specific regulations will bring the behaviour of commercial platforms into alignment with public values. The likelihood that contemporary digital governance will achieve desired outcomes is discussed and commitments to growing digital economies and achieving leadership in digital innovation, especially in artificial intelligence, are shown to predominate, notwithstanding the aims to uphold fundamental rights and protect individuals from harm. The need for a shift in governance priorities to reflect societal, not mainly individual, interests is emphasised.

Keywords: Digital Governance, Media, Telecommunications, Digital Platform, Artificial Intelligence, Regulation

INTRODUCTION

Governance involves interactions among state, corporate and/or civil society stakeholders and it can be broadly understood to encompass "the regulatory structure as a whole" (Gorwa, 2019; Puppis, 2010, p. 138); that is, both formal and informal institutions. This chapter examines formal or statutory governance measures that are applied in the media, communications, and digital platform industries. With many digital platform companies attaining global market dominance, governance – both prescriptive *ex ante* and *ex post* mitigation- measures are being introduced aimed at strengthening competition and reducing harms linked to the platform companies.

Platform or "tech" companies resist classification for governance purposes as communication network operators or as media companies (Napoli & Caplan, 2017). The tools applied historically to govern the media and communications industries have been found inappropriate partly due to the complex and multi-sided configuration of platform structures and operations and partly to claims that these companies should be allowed to flourish without the imposition of formal governance measures to stimulate innovation (Mansell & Steinmueller, 2020). State forbearance from digital

platform oversight is being called into question as concern grows about diminishing protections for public values, harms to children and adults and the consequences of platform self-regulatory decisions for democracy. A variety of governance measures is being introduced, aimed at ensuring that platform operators are held accountable for their business practices, and especially for their use of artificial intelligence (AI)-enabled datafication operations (Enli et al., 2019; Van Dijck et al., 2019; Zuboff, 2019). As new combinations of digital platform governance tools are deployed across countries and regions, a key question is whether digital governance will be effective in mitigating harms and ensuring that people's fundamental rights are respected. Expectations are high that the goals established by formal digital governance will be met. However, since governance involves several layers of relationships which structure and condition the behaviour of multiple actors in the "platform society" (Van Dijck et al., 2018), it is important to consider whether digital governance measures are likely to yield the changes expected in the "tech" company business models. Will these measures bring platform operations into closer alignment with public values?

The next section briefly reviews the history of formal governance measures which have applied to the media and communications industries and challenges to these approaches in the wake of digital innovation. This is followed by a discussion of the tools of governance that are being applied in the digital platform era, highlighting developments in the European Union and the United States. The next section discusses why the outcomes of prevailing approaches to digital governance are likely to give rise to uncertain outcomes with the risk that they continue to provide scope for digital innovations that privilege corporate interests in data monetisation over individuals' rights and public values. The conclusion emphasises the need for continuing scrutiny of digital platform developments with a view to fostering deliberation on the governance arrangements that are needed to foster social solidarity as societies embrace a digital world.

DIGITAL GOVERNANCE IN CONTEXT

Media and communications governance in the Western democracies has a well-established pedigree. Throughout its history, there have been struggles over how best to balance the economic goals of private and state actors with public values, especially during periods of rapid technological innovation (Brown & Marsden, 2013; Harcourt, 2022; Just, 2022; Mansell & Raboy, 2011). The media and telecommunication industries were governed either via direct state ownership and by conditions attached to public service media, or by ensuring that privately owned companies were subject to a mix of competition (antitrust) law and sector regulation. In the Western democracies,

media governance arrangements were geared to maximising the diversity and plurality of the media and upholding public interest standards. In the telecommunication industry, the emphasis has been on creating incentives for investment in next generation networks and on ensuring that communications are private, except when national security concerns arise. With technology convergence and market liberalisation (Mansell, 2016), both competition law and sector-specific regulation have played a role in governing these industries. In the case of the media industries, it was acknowledged that they are both economic and cultural goods and this dual role sparked numerous controversies over the standards and value choices that should prevail in securing the public interest (Just, 2022). Conflicts concerning the way innovation and economic growth can be promoted alongside the protection of socio-cultural values and human rights persisted in the face of technological convergence, increasing in prominence with the emergence of the internet and the growing accessibility of services provided by what came to be designated as digital platforms (Mansell, 2011, 2021a)

It has been clear for many decades that the formal apparatus of media and communications governance confronts challenges when technological innovation spawns new corporate actors. When these companies are able to exploit economies of scale and scope, augmented by network effects, to scale their businesses globally, they are able to gain powerful dominant market positions (Cowhey & Aronson, 2009; Mansell & Steinmueller, 1999; Raboy, 1998). As the internet achieved global coverage, but not equitable accessibility, and digital platform companies - Google, Apple, Meta, and Amazon in the West and Tencent, Alibaba and others in China – have become gatekeepers across multiple markets (Evens et al., 2020). The newspapers, broadcasters, and telecommunication operators are no longer the sole providers of content and communications services. Traditional approaches to media and communications governance have been tested severely because the existing regulatory regime was "suited for stable markets, not markets that are facing a major transition in the underlying technologies" (Lemstra & Melody, 2014, p. 19).

With digital platforms as *de facto* regulators of their own activities, they have engaged in refining their business models to maximise user or audience attention and to monetise data for profit (Viljoen et al., 2021; Zuboff, 2022). Their gatekeeping power has enabled them to acquire or suppress competitors, favour their own products and services, and downplay or disavow responsibility for harms linked to their data collection, processing, and monetisation operations. The companies claim they should have free rein to innovate and grow in a global data economy. Echoing a simplified view of market dynamics, they insist that they are providing their customers with

convenient ways to access digital content and to buy goods online consistent with their individual preferences. In this neoliberal view of the digital market, individuals are assumed theoretically to be active consumers with the capacity to make informed choices about their online activities and, consequently, there is deemed to be little need for intervention by the state to govern the digital marketplace.

With evidence accumulating of a misalignment of digital platform operations with expectations for the protection of fundamental rights, in liberal democracies – and to some extent in authoritarian states – "a new digital realignment" is being called for (Couldry & Mejias, 2019; Ghosh & Couldry, 2020). A mix of older and new governance measures is being introduced in an effort to mitigate harms associated with technological innovation and, especially, with platform data monetization strategies (Mansell & Steinmueller, 2020; Moore & Tambini, 2022; Van Dijck et al., 2021; Winseck, 2016). In the search to attain a new balance of economic and public values, there are renewed struggles over how to encourage innovation and competitive success and to ensure that a realignment favouring public values is achieved (Helberger et al., 2018; Van Dijck et al., 2018). The challenge for governance is how to "incentivize powerful firms to 'do the right thing?'" (Cusumano et al., 2021, p. 1280). The "right thing" is a strongly contested aspiration, however, since digital governance is expected to operate within the framework of capitalism which privileges the contribution of digitalised operations to economic growth (Srnicek, 2017). Nevertheless, the aim is to alter institutionalised norms of corporate behaviour by applying existing laws or by introducing new state-initiated restraints on the behaviour of the "tech" companies. As a result, efforts to balance the protection of people's rights with aspirations for innovation and growth in the world's data economies lead to contradictions at the heart of digital governance. The next section briefly discusses the tools that are being deployed using the formal apparatus of governance to achieve a realignment of values.

FORMAL GOVERNANCE TOOLS

With digital platform company operations extending across all the layers of the digital ecology, competition law, together with a variety of sector-specific regulatory tools, are being deployed (Just, 2022; van Dijck, 2020; Winseck, 2022). The first explicit reference to "online platforms" as a distinct object of regulation is claimed to have appeared in a communication by the European Commission on platform contributions to the Digital Single Market (EC, 2016b). A record of the outcomes of digital governance is in an early phase of development since new requirements for platform

transparency and accountability to the state need to be formally agreed through legislative processes and then implemented. The United Nations has insisted that all approaches to digital governance should ensure "that digital technologies are built on a foundation of respect for human rights", while, at the same time, fostering market incentives so that technological innovations, including AI, "provide meaningful opportunity for all people and nations" (United Nations, 2019, p. 6). The Council of Europe has issued numerous recommendations on media and communication governance emphasising the need for media pluralism, the right to freedom of expression, the roles and responsibilities of internet intermediaries and the protection of journalism (CoE, 2022). Its initiatives have consistently defended human rights as platform companies have introduced manipulative AI-enabled algorithms and other business practices that challenge the sustainability of traditional media industries, including journalism and public service media. There are ongoing efforts to ensure that public interest media are discoverable and prominent on digital platforms (Mazzoli & Tambini, 2020).

Similarly, the European Union is seeking to ensure that digital governance is "fit for the digital age - empowering people with a new generation of technology" (von der Leyen, 2019, p. np) and a set of digital rights and principles has been introduced to ensure that people are able to enjoy the benefits of digitalisation (EC, 2022d). Formal governance measures are being deployed in multiple countries requiring platform operators to modify their business operations in line with aspirations for a realignment of values and similar measures are also visible in authoritarian countries, albeit with different rights protection standards (Flew, 2021). Among the tools of formal governance that are being strengthened or introduced are content moderation, privacy and data protections, AI governance principles and competition/antitrust legal measures.

Digital Content Moderation and Content Targeting

Insofar as digital platform companies are governed neither as media nor as communications service providers, they have not been treated as media companies or as public utility providers. Yet with growing evidence of harms linked to platform choices about what content is acceptable on their platforms, the challenge of content moderation is to discern which content the platforms should host and how they should use algorithms to present digital content to their users.

In the European Union, a Digital Services Act (DSA) has been introduced with the aim of achieving fairness, transparency and accountability of platform content moderation decisions and their

advertising practices by requiring modifications to their "editorial functions" (EC, 2022c). Statutory obligations now apply to providers of "intermediary services", requiring the companies to provide a safe online environment and to protect fundamental rights. Various provisions govern the algorithms used in automated content filtering and binding obligations have been introduced to remove illegal content, accompanied by safeguards to respect freedom of expression and with substantial penalties for failures to comply. The DSA contains provisions regarding targeted advertising or personalisation, enabling platform users to object to profiling and requiring user consent before personal data is processed for use in such advertising. Systems used to recommend content to users must enable understanding of the criteria used in algorithms to present content to them. Furthermore, the use of profiling based on personal information to present content to recipients who are known to be minors is forbidden. These and other market interventions are informed by a framework where restrictions on speech rights are legally prescribed and permitted only when they are deemed proportional in a democratic society. This application of *ex ante* sector specific regulation is expected to impact on digital platform practices, bringing them into better alignment with public values.

In the United States there is much debate about the spread of viral dis- and mis-information and about the social and political consequences of digital platform content moderation practices (Flew, 2021; Gillespie, 2018). The prevailing interpretation of First Amendment speech rights has led to heightened controversy around the need for formal governance of the use of profiling to target information to users and of the content moderation process. Legislative proposals aimed at curtailing the circulation of content that is deemed to be harmful often fail to garner congressional support. In the name of boosting incentives for innovation, the digital platforms benefit from Section 230 of the 1996 Telecommunications Act (Title V) (US, 1996). Providers or users of interactive computer services are deemed to be "publishers" or "speakers" with broad immunity from liability for the content they host. There is debate about how platform immunity might be circumscribed, but policy in this area is highly politicised. Proposals to combat "fake" information invariably are met with "free market" arguments and an expectation that competition will eliminate problems. Meanwhile, in response to criticism of their content moderation practices, the platforms have devised self-regulatory initiatives such as Facebook/Meta's Content Oversight Board. They also publish community standards in response to political and civic pressure to be transparent about how they moderate content.

Privacy and Data Protection

Platform incentives to monetise the data generated through their operations have led to increasing concerns about the need to protect individual privacy. The General Data Protection Regulation (GDPR) in the European Union took effect in 2018 with respect to the online processing of personal data and there are regulations on non-personal data access, processing and control as well as an updated Electronic Communications Code Directive (EC, 2016a, 2019a, 2019b). Revisions to an ePrivacy regulation also are under consideration (EC, 2017). These measures seek to provide a high level of protection of the fundamental rights and freedoms of online service users. They also typically assume that a level competitive market is, or soon will be, in place. At the same time, however, additional governance measures aim to promote a free flow of "open" data in support of data monetization which requires the processing of both personal and non-personal data (EC, 2019a, 2022a). In a broader context, the Council of Europe's updated Convention for the Protection of Individuals with Regard to the Processing of Personal Data (Convention 108+) has been in place since 2018 with the aim of securing human dignity and protecting human rights and fundamental freedoms (CoE, 2018). The Council's recommendations emphasise personal autonomy and the right to control personal data, privileging societal interests in the rules governing the processing of such data, with exceptions in the case of national security, defence, public safety, and criminal offence issues.

In the United States the capacities of digital platforms to collect, process and make data generated online available to third parties without user consent are subject to formal regulatory measures with privacy protection legislation being updated in response to the platforms' privacy invasive data monetisation strategies. An amended Children's Online Privacy Protection Act (COPPA) governs the collection of information about minors (US, 2013) addressing issues of parental consent, confidentiality and security, with safe harbour provisions and rules for data retention and deletion. No single federal law governs data privacy, but there are federal and state laws pertaining to data and telecommunications, health information, credit, financial and marketing information as well as multiple state level laws, including the California Consumer Privacy Act (CCPA) (US, 2018). The Federal Trade Commission (FTC) functions as a regulator to constrain unfair or "deceptive trade practices" and takes action to enforce privacy laws (Kira et al., 2021).

AI Governance

The core assets of digital platform companies are their AI and machine learning technologies. These enable recommender systems, content filtering and a host of applications that learn from large data

sets to target information for platform users. The biases of AI-enabled algorithms typically go unacknowledged until the discriminatory consequences of their outputs are brought to light by those disadvantaged by them or by researchers (Crawford, 2021; Pasquale, 2020). Multiple efforts are in train to govern the deployment of AI systems and applications in line both with public values and with aspirations for achieving market leadership. OECD principles and a global governance framework for AI reflect "shared values and priorities" among its member states. These focus on ensuring that AI development is consistent with inclusive growth, sustainable development and well-being, human-centred values and fairness, transparency and explainability, and with robustness, security and safety as well as accountability (OECD, 2022).

In the United States, there are numerous initiatives to promote American leadership in AI with agreements in place to drive technological breakthroughs, to share information with allies, protect national security and ensure that AI applications are trusted. A declaration aims to promote exchanges of information on regulatory frameworks without discussion of privacy or ethics although "cultural considerations" are mentioned (US, 2020a). The Council of Europe recommended that guidelines to ensure the accountability of those deploying AI systems for human rights violations be introduced in 2017 (CoE, 2017). A follow-up recommendation addressed issues of AI standards, transparency and oversight (CoE, 2019). Recommendations concerning the governance of algorithms were made in 2020 insisting that the promotion of technology innovation must respect human rights (CoE, 2020) and a convention is under discussion at the time of writing. The Council is also working on a draft international treaty on AI. This initiative is controversial with regard to whether it should apply to both public and private organisations and whether civil society should be permitted to participate in the drafting process with the United States seeking their exclusion on security grounds (Bertuzzi, 2023).

In the European Union, the DSA conditions the use of AI-enabled algorithms, recommender systems and targeting – ranking and prioritising content and curating information provided to platform users, also addressing privacy issues, the safety of minors and the protection of personal data incorporated into platform algorithms. The aim is to mitigate the effects of personalised recommendations and nudges towards products or content associated with risks as well as to ensure the safety of AI applications. In addition, an AI Act is expected to provide a regulatory framework for AI systems, with statutory obligations that must be met by system providers, without constraining technological innovation (EC, 2021). Some AI applications such as scoring for general purposes by public authorities are forbidden. High-risk applications such as scanning tools that rank job applicants will

be subject to specific legal requirements, leaving other applications unregulated. Notwithstanding these governance measures, principles-based approaches to AI are seen by critics as being insufficient to minimise risks to the protection of fundamental rights. They are also criticised for their focus on individual rather than on societal interests. Nevertheless, digital governance tools are intended to achieve a balance between investment in AI innovation and privacy, security, and safety, through the promotion of ethical standards.

Competition/Antitrust

The foregoing governance tools involve *ex ante* measures that aim to mitigate the likelihood that harms due to platform operations will occur. Competition/antitrust law provides tools that are mainly applied *ex post* to mitigate harms associated with evidenced abuse of market power. Consistent with a neoliberal privileging of the benefits of a level competitive marketplace as the best way to ensure that consumer welfare is protected, competition or antitrust law is used to deploy remedies. These include corporate divestment, fines, and behavioural requirements to combat discriminatory platform power and diffuse market concentration (Just, 2018). Competition law is seen as a means of levelling the market and diffusing gatekeeper power by creating incentives for innovation and for responding to consumer needs and expectations. The gatekeeping power of dominant platform companies in this view is typically treated as a "natural" outcome of technological innovation, the assumption being that the most efficient digital market supply occurs when individuals govern their own online behaviour. The impacts of platform dominance on the traditional media and press industries and on the communications industry have led to renewed efforts to invoke competition law in a way that modifies narrow consumer welfare criteria for determining whether anti-competitive behaviour has occurred so that issues beyond economic considerations might be considered (Just, 2022).

Over the past decade or more, the European Commission and European Union member states have brought cases under competition law, for example, against Google's search and advertising practices, against both Google's and Apple's app store rules for participation, and against Facebook's data collection and processing practices, especially regarding third party access, as well as against Amazon for its treatment of the companies that use its online marketplace (Nicoli & Iosifidis, 2022). Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) apply to the conduct of gatekeepers, but the scope of these provisions tends to be limited to instances of the exercise of harmful market power through, for example, the dominance of specific markets,

evidenced through lengthy *ex post* investigation to establish the contestability and fairness of market conduct. Although traditional approaches to proceedings under competition law are slow to change, modifications are being introduced or proposed in some jurisdictions. For example, in Germany, non-price issues such as access to data have been treated as a potential criterion for determining the extent of market power. Countries are also introducing modifications to their competition laws, e.g. the restraints of Competition Act (Germany) and the Austrian Cartel Act. This is intended to enable authorities to scrutiise market structures and corporate behaviours against criteria that enable them to bring actions against digital platforms more easily (Just, 2018).

Until recently the digital platforms have faced few efforts to invoke competition law in the United States (Wu, 2018). Various proposals have been made to encourage a more aggressive application of antitrust law by changing merger guidelines, strengthening antitrust law enforcement and requiring interoperablilty to ensure data access among competitors (Stigler Committee, 2019). Under existing antitrust law, more cases are now being brought against the platforms by the Department of Justice (DoJ) and the FTC, sometimes leading to findings of "unfair methods of competition", but still limited in the criteria used to establish harm. In 2022, the FTC issued a policy statement indicating it will seek to extend antitrust deliberations to encompass a wider range of unfair conduct that can negatively affect competitive conditions (FTC, 2022). And, under the Biden Administration, both the FTC and the DoJ are expected to enforce antitrust measures more vigorously to stimulate "free and fair" competition in the digital marketplace (US, 2020b; White House, 2021).

In addition to modifications to *ex post* competiton law measures to address digital platform dominance, efforts are being made to introduce *ex ante* legislation in the United States. Legislation such the American Innovation and Choice Online Act is being considered as a means of making competition law a tool of governance fit for purpose for tackling platform gatekeeping power. These formal measures face the platforms' lobbying power as they try to protect their innovative capacities. If enacted, such legislation would prohibit large platforms from giving preference to their own products, encourage interoperability and restrict platform use of non-public data, with penalties and injunctions. At the time of writing, this new governance tool had failed to be signed into law and the Computer & Communications Industry Association (with Amazon, Alphabet, Apple, Meta, and others) had spent some US$ 130m in lobbying against the legislation (Edgerton et al., 2022).

In the European Union, efforts to introduce *ex ante* sector-specific governance measures have been more successful. The Digital Markets Act (DMA) aims to render the digital market contestable by constraining the practices of companies found to have gatekeeping power and which offer "core" platform services. The goal is to promote "innovation, high quality of digital products and services, fair and competitive prices, as well as high quality and choice for end users in the digital sector" (Brown, 2021; Crémer et al., 2019; EC, 2022b, p. para 106). This is to be achieved by addressing imbalances in bargaining power and unfair practices so that greater choice is available to platform users. The DMA introduces sanctions against platform self-preferencing, requires the largest gatekeepers to enable interoperability, and introduces many other measures aimed at achieving a better balance between business and individual (or collective) interests. As Executive Vice President Vestager put it, "the power these large platforms wield is not just an issue for fair competition; it is an issue for our very democracies" (Vestager, 2022, p. 2). When the DMA becomes effective in May 2023, there will be an ongoing need for clarifications of the interpretation of the legal texts to enable the designation of platforms with "gatekeeper" status and with regard to implementation procedures and criteria (De Streel et al., 2023).

The governance tools reviewed in this section are not the only ones available to governments in their efforts to balance economic interests with public values. As the platforms have destabilised the traditional audiovisual media and journalism sectors by draining advertising revenues away from them, digital platform taxes and state support for public interest journalism are being introduced in some countries to compensate news publishers for declining advertising revenues (Kostovska et al., 2020; Pickard, 2020). Yet, the statutory governance measures reviewed in this section continue to operate within a framework of platform and state interests in data monetisation and with building digital economies remaining a very high priority, even as governance measures seek to mitigate platform harms.

GOVERNANCE WITH UNCERTAIN OUTCOMES

A crescendo of *ex ante* sector-specific regulations and a renewed emphasis on the application of *ex post* competition law is yielding some intended outcomes, even as the "tech" companies complain that new measures "will create unnecessary privacy and security vulnerabilities for our user" (Espinoza, 2022, p. np). On the European Union level, heavy fines have been levied on some of the platforms for discriminatory behaviour using existing competition law, privacy protection legislation is gaining some traction, and the DSM and DSA requirements are already imposing new norms and

accountability regimes on the digital platforms. Rarely, however, are the biases and harms associated with platform deployment of algorithmic processes acknowledged by the companies until they are pressed to do so by regulators or ethical breaches are exposed in the press. The digital platform companies and others engaged in data analytics for economic and political purposes continue to press for voluntary adherence to "responsible practices" and "fairness in AI" with their adherence to ethical principles used mainly as a lobbying strategy.

Additional factors make the outcomes of the contemporary mix of digital governance initiatives uncertain. For example, the implementation of governance tools may lead to variations in interpretation and implementation, often favouring the interests of the "tech" companies and leading to unexpected outcomes (Kerr et al., 2019). In addition, many governance tools rely on risk assessments undertaken by the platform companies themselves, even if overseen by regulators in a co-regulatory environment. Risk assessment involves substantial judgement and it can be impossible to establish a direct causal link between a digital platform's operation, user activity and a specified harm (UK, 2022). This can lead to inaction or actions which shape the behaviour of platforms in unexpected ways. Furthermore, the tools needed to achieve corporate (algorithmic) transparency and accountability are deemed by some analysts to be far from being "ready to roll out" (Ada Lovelace Institute, 2020).

If competition law and regulatory legislation enforcement aimed at restraining "gatekeeper" power do lead to strengthened competition among digital platform providers, greater competition could stimulate a "race to the bottom" where platforms do not differentiate their offerings by, for example, enhancing privacy guarantees (Edlin & Shapiro, 2019). Other moves to introduce regulations to address the practices of platforms that have achieved market dominance (e.g. relating to content moderation, targeted advertising, erosions of privacy protections and the spread of mis or disinformation using non-transparent AI-assisted algorithms) are expected to ensure that citizens' fundamental rights are upheld. However, enforcement of content moderation requirements also could result in overzealous content moderation with implications for freedom expression or it might create incentives to host misinformation and propaganda (Helberger et al., 2018; Roberts, 2019). In some instances, governance provisions can be used as a justification for state infringement of rights, especially when user profiling itself is not the concern, the aim being instead to ensure that data analytics are performed "in a controlled and transparent manner" (EC, 2020, p. fn 1). Furthermore, smaller scale commercial platform operations that remain outside the scope of legislation which

focuses on those with gatekeeper power, could enable smaller companies to innovate in ways that are inconsistent with the goal of upholding public values.

In addition, digital governance measures are typically presented as yielding market "certainty", yet expectations concerning their outcomes do not directly challenge the underlying commercially-inspired data monetisation business models (Kretschmer et al., 2021). The raft of new efforts to impose requirements on the platforms is likely to yield intended and unintended outcomes as the platforms innovate around new legislation by developing new internal norms and rules (Van Dijck et al., 2021). The platform operators are revisiting their business models and moving into new areas with potentially greater reliance on third party data analytics and less emphasis on social media and direct targeting of platform users. As transparency and reporting requirements are strengthened, these companies are seeking new means of aligning their operations with growth of the data economy. Uncertainty about the outcomes of digital governance is also heightened by uncoordinated legislative measures and by a proliferation of older and new institutions with overlapping remits (Popiel, 2022). An emphasis on individual agency to ensure that adults and children have the time, digital literacies, and motivation to secure their own interests when they navigate platforms is also a persistent feature of current approaches to digital governance. This is especially evident when media, information or digital literacy is reduced to news literacy and fact-checking with little emphasis on broader digital literacy capabilities (Frau-Meigs, 2022; Livingstone, 2022).

Digital governance initiatives emphasise individual choice in the name of personal data sovereignty seeking to maximise their control over data, the assumption being that "market symmetry" will be achieved to balance the power of platforms and the agency of individuals (Lanier & Weyl, 2018; Lehtiniemi & Haapoja, 2020; Verdegem, 2021). In addition, efforts to secure data privacy remain largely blind to risks and harms associated with data traded in the dark web and to power dynamics that favour intrusive government security agency practices (Deibert, 2022). Thus, while some argue that digital governance measures are wresting power away from dominant platforms in favour of individuals (or the state), others suggest that the current approaches will help to consolidate platform power, albeit in new configurations (Busch et al., 2021). In the latter context, digital governance is implicated in driving exponential increases in intrusive data collection and monetisation without yielding the expected certainty of a stable balance between platform economic interests and the protection of individuals' fundamental rights.

Alternatives to the prevailing digital platform models are being imagined and, in some instances, instantiated, but many of these also rely on commercial data monetization with risks to public values. A more radical alternative is the development of non-commercial platforms as a public good. Initiatives include those aimed at managing data collectively through commons-based organisations or treating the whole of the digital infrastructure as a public utility (Fuchs & Unterberger, 2021; Napoli, 2019; Schiller, 2020). The case for "a truly public media—one that is genuinely accountable to and representative of publics" (Freedman, 2019, p. 214) is also being made, but proposals for public service media platforms confront the fact that state-owned platforms are not innocent of breaches of citizen's rights (van den Bulck & Moe, 2018). In essence, proponents of alternative models of digital platform provision call for a rupture of pro-market approaches. Such proposals tend, however, to neglect the need for an alternative legal framework consistent with their ownership and self-governing arrangements and to consider how such platforms will be resourced and scaled up.

"Societal constitutionalism" is also proposed as a style of digital governance that would be more responsive to civil society concerns because it does not aim to *balance* contested interests, but, instead, to develop a legal apparatus that can "transcend itself" using the dynamic interdependencies of a complex infrastructural system (Celeste, 2019; Suzor, 2018). In this institutionalisation of governance, it is conceivable that opportunities would emerge to favour norms and practices consistent with public or collective interests, thereby bringing platform provision into closer alignment with democratic values and fundamental rights. However, since contemporary efforts by states to grant digital freedoms often conflict with the values of authoritarianism (Schlesinger, 2022), at present, there seems little scope for an upswing in commons-based governance approaches to platforms (Mueller, 2020). Nevertheless, it is argued that if stakeholders engage in ethical deliberation and learn to put "guardrails" in place consistent with desirable digital market outcomes, then a realignment of economic and other values could be achieved (Bauer, 2022).

Contestations over governing in the face of rapid technological change and the emergence of dominant commercial companies are not new since governments always face conflicting priorities when they initiate measures aimed at balancing asymmetrical power relationships. There have been warnings about how digitalisation led by corporate interests can foster anti-democratic social norms for decades (Lyon, 1986; Mansell, 2021b). Yet an absence of foresight persists, giving space to a legitimization of digital platform power if mitigation measures or guardrails are in place. Averting a

digitized world which is at risk of losing the battle to respect and uphold fundamental rights will require that states suspend their commitment to the imagined benefits of fully competitive or contestable commercial digital markets. It will mean diminishing or abandoning the neoliberal framings of digital innovation and commercial data economies as a viable pathway towards securing public values. It will require a shift away from positioning individual consumer choice as the key arbitrator of whether norms and values are consistent with upholding fundamental rights. This suggests that radical changes in digital governance, ultimately, will be needed to uphold collective societal interests. A failure in this regard is likely to encourage a digital ecology experienced by adults and children as an erosion of human dignity.

CONCLUSION

Contemporary digital governance aimed at mitigating platform-associated harms and threats to fundamental rights is chasing after an elusive balancing of economic interests and public values in a context where a neoliberal preferencing of individual rational choice remains predominant. Formal governance initiatives may aim to protect rights and to mitigate harms, but they must operate in conflict with rapid innovation and commercial platform strategies. Innovation, especially in AI, privileges a digital realm designed to organise "large numbers of humans via chains of command, deliberate planning and accounting procedures" (Latour, 1999, p. 207). The principal goal remains that of making online "clusters of transactions and relationships stickier"; the crucial ingredient for deepening data monetisation (Cohen, 2019). Yet, the assumption persists that digital governance that departs from *laissez-fair* market-led platform development will produce an equal distribution of power, making it feasible to secure a balancing of platform interests and public values. This prevailing imaginary of the digital future camouflages conflicts between those seeking to promote digital innovation and economic growth and those seeking to uphold fundamental rights. On balance, the current wave of digital governance arguably does not substantially disrupt a normalization of a commercial data economy that is misaligned with public values (Cammaerts & Mansell, 2020).

Rather than relying principally on the conviction that formal governance measures will deliver outcomes in line with expectations, greater scrutiny is needed to reveal how decisions about the norms and values that are shaping digital encounters are playing out in the formative design of digital services and applications. A legal infrastructure and financing are the prerequisites for creating a foundation for collective decision-making that works to create sustainable opportunities

to privilege non-market arrangements for the digital sphere, consistent with public values and democracy. The prevailing contemporary vision of data economies remains overwhelmingly singular, notwithstanding the presence of governance initiatives aiming to privilege public values within a commercially driven framework. This vision is used to diffuse digital networks and applications worldwide in the name of economic growth. It remains visible in recent digital governance initiatives, even as they sit alongside varying commitments to protect fundamental rights. Nascent institutional rules and norms consistent with the deployment of digital technologies in the interests of the people who use them – both individually and collectively - in societies around the world are yet to be fully tested. What is certain, however, is that they will continue to be contested by companies that dominate in the digital market. For a rupture in the prevailing digitalisation and AI vision to occur there needs to be a new pathway towards next generation digital services and applications.

Digital governance ambitions raise questions that are, in essence, about societies' norms and about how people experience their everyday lives. Enabling more personalisation and increased data monitoring in the name of economic growth alongside oversight of digital platform markets and corporate behaviours does not acknowledge the fact that no commercial data monetisation market can exist without governance rules that enable it. At present, the underlying incentives created by institutions of governance are established in the name of growing data economies using opaque AI-inspired computational methods. In the 1970s, it was observed that if we substitute mathematics – today, algorithms and commercial data analytics - for human understanding (Freeman, 1973), societies will be at risk of a "reduction in social solidarity" (Freeman & Soete, 2005, p. 351). As destabilisations of social solidarity become increasingly difficult to regard as temporary in countries and regions around the world, a new vision – even in the face of contestation – about what digital platform configurations and operations are legitimate and which are not is imperative (Cammaerts & Mansell, 2020). Deliberation on the kinds of digitally mediated societies that will be desirable in the future is essential to forestall a crisis in the broader social and political ordering and governance of societies.

With persistent underinvestment in providing decent quality and affordable connectivity for the excluded, a failure to address digital literacy adequately, and a deeply rooted bias, consistent with a neoliberal digital economy, towards privileging economic over public values, societies are likely to experience declining sociality in the coming years. There is scope for optimism, however. There are some signs that societies can learn to govern in their collective interests and there is a proliferation

of scholarly work, activism, and expert groups operating on multiple levels which aim to shape the digital future in line with public values and fundamental rights. Dialogue may generate opportunities to legitimize a shift towards developing digital services and applications in ways that do not rely on intensive commercial monetization of data and on rights-abrogating uses of AI. Platform services are the central infrastructures in the lives of increasing numbers of people. It is for this reason that more radical digital governance responses to digital operations are needed before, not after, harm occurs. Failure to devise alternatives to the commercial platform models means that private (and state), not people's, interests will be normalized, notwithstanding a policy discourse that calls for a balancing of corporate interests with those of platform end or citizen users.

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