

Questioning the Wisdom of Laissez-Faire Regulation of Digital Media

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The recent news that Facebook, Apple's iTunes, Spotify, and YouTube removed the accounts of InfoWars and Alex Jones from their platforms led to accusations of censorship and ignited a debate about free speech and the regulation of content in the digital space. In a particularly bizarre bit of surrealism, Senator Ted Cruz commented on the tech companies' actions by alluding to the famous Martin Niemoller poem about the German accommodation of Nazism, and said, "First, they came for Alex Jones." While Ted Cruz and the rest of Alex Jones' fans decry what they see as censorship of their political views, the fact remains that censorship is defined by government limits on speech, whereas first amendment protections do not extend to privately controlled spaces like Facebook or Twitter. These debates and the ongoing threats to our democracy from the use of media disinformation by Russia to influence our elections and sow division and discord in our country have highlighted the need to seriously consider the means by which media content is regulated in the digital space.

Until now, digital media content has largely been regulated via a patchwork of different groups with often conflicting interests. We might turn to the FCC, who for almost a century had a hand in the regulation of broadcast content. The FCC's original justification for the regulation of broadcast content was rooted in the scarcity of the analog spectrum. In the digital space, that scarcity is no longer an issue, and starting in the 1980s, that argument paved the way for aggressive deregulation. But the fact that scarcity is not necessarily an issue in the digital age does not mean that there is no public interest need to regulate this important and powerful space. Under chair Ajit Pai, the FCC has adopted a laissez-faire approach to the internet and digital media, but even if the FCC chooses not to regulate the space, it does not mean that it is not regulated. It means that the government has ceded control to corporations.

Private corporations and large media conglomerates have their own policies and guidelines regarding their content. While television and film content still often passes through industrial gatekeepers like network standards and practices and the MPPDA, streaming content is not necessarily subject to those reviews and strictures. In the social media space, corporations like Facebook claim an allegiance to free speech protection fostering a global conversation. They argue that they only intervene in cases of violent threats and hate speech. In the case of Alex Jones, the decision as to whether or not to ban InfoWars from Facebook reportedly came down to Mark Zuckerberg and how he interpreted their content policies and wanted to handle it. This raises important questions like: do we want the content on a platform that is as demonstrably powerful as Facebook to be policed according to the ideologies of one very rich individual? In all of these cases, should content in the digital space be controlled to such an extent by large, unaccountable corporations whose primary interests are making money and not necessarily in the public interest? What kind of content regulation should exist in the digital space?

The current FCC has not only been hands off, they have aggressively rolled back existing regulations in a manner that is creating something of a digital wild wild west that favors large corporations and harms consumers. Their revised media ownership rules not only allow for a smaller number of media outlets to control larger segments of the media, they also displace the production of new content from local media outlets to national producers. The FCC also rolled back the net neutrality protections put in place by the FCC under President Obama. That gives a few large media conglomerates more

power than ever to determine what media content audiences can access and at what price.

The abdication of responsibility by the government has resulted in the de facto regulation of the space by large corporations and allows those corporations to determine the kinds of information and content we have access to, how, where, and at what cost. If we recognize that media content is an indispensable part of our lives, both for pleasure and for affecting the ways in which we think about our world and the people we share it with, should we not consider how that media content is regulated, by whom, and for what purpose?