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We are at a turning point in the history of the Internet. Until now Internet companies have been largely free of government regulation. Now tech CEOs like Mark Zuckerberg of Facebook are saying “we need a more active role for governments and regulators.” Specifically he thinks government should regulate the harmful content of online speech.

Governments are happy to oblige. The United Kingdom has just proposed ambitious plans “for a new system of accountability and oversight for tech companies, moving far beyond self-regulation.” Marietje Schaake, the leading voice at the European Commission on these matters, has promised companies will be held liable for content on their platforms including “disinformation” and “hate speech.” In the U.S., liberals and conservatives in Congress want to regulate speech for different reasons. This rush to regulation should be resisted.

Let’s recall why the government has so little control over the internet. Social media involves people speaking about many things, public and private. The First Amendment sharply limits government’s power over speech. What about “hate speech?” The courts have prevented government from discriminating against offensive speech including “hate speech,” whatever that might mean. The courts will strike down direct government censorship of social media.

They will be right to do so. Individuals have a right to speak, and our society benefits from dissent.

Congress has also strongly protected Internet speech. In the famous section 230 of the Communications Decency Act of 1996, Congress decided to exempt tech companies from liability for the actions of their users. For example, if I libel someone in a Facebook post, I can be sued and perhaps made to pay them compensation. Congress’ exemption means Facebook cannot be held responsible for my malfeasance.

Congress protected the companies for two reasons. First, if Facebook were responsible for my libel, they would have incentives to remove all speech that might be actionable. The result? A lot less speech online. By protecting the companies, Congress protected speech which in turn fostered the growth of social media. Freedom of speech and economic growth worked together wonderfully.

Unlike government, tech firms are not bound by the First Amendment. They may refrain from hosting any speech they dislike. That may seem puzzling. But forcing tech companies to host unwanted speech would violate their right to private property. Tech managers know best how to keep their users (and advertisers) happy. If “hate speech” drives down profits, managers have the right to ban it. But this is about more than business. People should not be forced to hear or to associate with views they dislike. Those liberties too are part of American freedoms.

But therein lies a problem. We protect freedom of speech because government officials have powerful reasons to censor it. Government officials can get around the First Amendment by persuading Facebook to suppress speech. After all, Facebook's decisions about speech are not covered by the First Amendment.

The company might be tempted to follow the German example. Since January, Germany has required large social media platforms to suppress speech contrary to its hate speech laws. The proscribed speech covers Nazi symbolism, denials of the Holocaust, and expressions of racial hatred along with vague terms like "insult" or "blasphemy." Companies must suppress the speech within 24 hours or face fines up to 50 million euros (\$60 million).

The times we live in increase the threat to speech. Horrible events like the Christchurch video prompt the belief that "something must be done" inducing a panic. Conservatives are convinced already that Facebook and other social media are biased against them. Progressives decry hate speech. Elected officials of every stripe are generally uncomfortable with novel technologies that seem to be upending the political status quo. Hence the bipartisan interest in regulation.

Tech leaders do have a right to control their property, and we all benefit from that. But they too are citizens who should protect vital rights like freedom of speech. Tech managers also have the knowledge and technology to deal with abuses of the internet like speech inciting violence or other unprotected conduct. Their efforts will inevitably involve trial and error. How could it be otherwise with such novel problems? Turning to the heavy hand of government will make things worse.

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