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**Thinking Clearly About Speaking Freely – Part 10: Empowering
Consumers to Be Content Moderators**

by

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Throughout this now ten-part "[Thinking Clearly and Speaking Clearly](#)" series, I've contended that the major Big Tech web platforms like Twitter, Facebook, and YouTube have been overly censorious in removing content that should remain subject to public debate. It's clear now that Elon Musk won't be riding to the rescue by adopting a new "free speech" model for Twitter. So, my project, with its aim of exploring various approaches that address my ongoing "Cancel Culture" concern, continues.

The major platforms' itchy trigger finger impacts the range of our Digital Age public discourse. According to a [2021 report](#) from the Pew Research Center, "more than eight-in-ten U.S. adults (86%) say they get news from a smartphone, computer or tablet 'often' or 'sometimes,' including 60% who say they do so 'often.'" The percentage is likely even higher today.

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In a recent [post](#) to the University of Chicago Law Review Online, Daphne Keller, who directs the Program on Platform Regulation at Stanford's Cyber Policy Center, puts the problem this way: "Billions of global users now depend on platforms like Facebook and YouTube to mediate their communications. Those companies have the capacity to profoundly shape public discourse through private 'speech rules' ranging from formal Terms of Service to back-end ranking algorithms." As Ms. Keller says, "in a world with a dozen Facebooks or five search engines, platforms' choices would not be as consequential."

But that is not the world in which we live, at least not now. So, in the meantime, I want to examine another approach to the problem, one that would rely heavily on empowering consumers to decide for themselves the content to which they wish to have access or make available to others. This approach would give platforms' users considerably more control over content selection and exposure than, typically, they presently enjoy.

But before delving more deeply into this "consumer empowerment" approach, it's useful to rehearse very briefly another approach, the "common carrier" alternative, that I've considered previously. Traditionally, entities classified as common carriers are required to carry all lawful messages indiscriminately. This nondiscrimination mandate is a hallmark of common carriage, so its proponents suggest it would effectively address the speech suppression that they claim bedevils the major platforms.

Concerned about what they claim to be discriminatory censorship, both Texas and Florida have adopted laws that, for the most part, mandate that major social media platforms refrain from censoring content based on viewpoint. With a few exceptions that are themselves incongruously viewpoint-based, they require that major platforms like Twitter operate similar to common carriers. As of now, the effectiveness of both the Texas and Florida laws has been enjoined preliminarily by the courts on the grounds that they likely violate the platforms' First Amendment free speech rights.

It's worth noting that, on May 31, 2022, when the Supreme Court refused to allow the Texas law to go into effect pending further legal proceedings, [three Justices dissented](#), telegraphing their interest in having the full Court consider whether imposition of common carriage obligations on major platforms is lawful. As Justice Alito declared in his dissent in which Justices Thomas and Gorsuch concurred: "Social media platforms have transformed the way people communicate with each other and obtain news. At issue is a ground-breaking Texas law that addresses the power of dominant social media corporations to shape public discussion of the important issues of the day." According to Justice Alito, "it is not at all obvious how our existing precedents, which predate the age of the internet, should apply to large social media companies."

In [Part 3](#) and other parts of this series, I've explained why I'm reluctant to embrace the common carrier alternative, so I won't repeat those reasons here. Instead, I want to turn to the consumer empowerment approach that puts tools in the hands of platform users to determine the parameters of the content they wish to access. In effect, consumers would be given the means to assume, to a much larger extent than presently is the case, the content moderation function now principally performed by the platforms.

As a practical matter, achieving this higher level of consumer empowerment involves enabling users to select, insert, and control a more sophisticated layer of content selection tools that Daphne Keller and others have dubbed "middleware." This "middleware" layer would consist of personalized moderation tools that operate on top of the normal platform interface. New market entrants could compete to provide users with distinctive versions of middleware consisting of different kinds of filtering tools and other moderation features. As Ms. Keller [says](#), "users could opt in to the speech rules of their choice but still be able to communicate with other people on the platform."

In another recent [post](#), Mark Jamison, Director of the Digital Markets Initiative at the University of Florida, focusing chiefly on Twitter shortly after Elon Musk's original takeover bid, suggested that a "new Twitter" could give users more options to control the content to which they are exposed and to which they contribute. According to Mr. Jamison, this could be accomplished by Twitter using technologies like blockchain and cryptocurrency. For example, "Twitter could treat content as non-fungible tokens (NFTs), allow users and entrepreneurs to use smart contracts to match content to viewers, and utilize a cryptocurrency payment system."

Proposals like these that rely on new technologies, especially those that facilitate the easy use of innovative features like "smart contracts" to be used in conjunction with the newly employed technical means, represent promising approaches to addressing the excessive censorship problem. They have the virtue of incorporating market-oriented developments to enable increased consumer choice rather than relying on imposition of heavy-handed government solutions like common carriage or antitrust breakups.

But important questions remain. For example, the use of "middleware" may reduce the platforms' power by allowing new entrants to participate in the social media marketplace. It's not clear why the now dominant platforms like Twitter voluntarily would allow a reduction in their own power through further fragmentation of their user bases. And on the other side of the equation, to the extent that the market doesn't drive platforms voluntarily to make available more consumer empowerment tools, the costs of government mandates requiring the use of middleware may well outweigh the benefits. And, importantly, such government mandates dictating the incorporation of consumer-operated speech controls into the platforms' interfaces may not be consistent with their First Amendment rights.

I intend to return to the consumer empowerment approach in a future part of this ["Thinking Clearly and Speaking Clearly"](#) series to consider those concerns and others. But it's certainly an alternative worthy of further discussion and refinement.

* Randolph J. May is President of the Free State Foundation, a free market-oriented think tank in Rockville, MD. The views expressed in this *Perspectives* do not necessarily reflect the views of others on the staff of the Free State Foundation or those affiliated with it. *Thinking Clearly About Speaking Freely – Part 10: Empowering Consumers to Be Content Moderators* was published in *Real Clear Markets* on July 25, 2022.