# Why self-regulation of social media could work — the financial services model

By M. Todd Henderson, opinion contributor — 07/29/19 02:30 PM EDT
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Trust in social media companies is eroding. At the recent White House Social Media Summit, the president's 2020 campaign manager, Brad Parscale, decried "social media platforms . . . banning conservative voices and supporters of the president." Meanwhile, progressives blame Facebook and Twitter for the president being elected in the first place, citing a campaign of disinformation spread by Russian trolls.

In response, social media companies are taking steps to increase trust on internet platforms. Facebook and YouTube have built huge teams and sophisticated technology to police violations of their self-defined community standards. In a recently released report, Facebook describes tens of millions of posts it reviewed for questionable content, ranging from nudity to terrorist propaganda. News reports suggest Facebook is building a "supreme court" of up to forty individuals to decide "important and disputed" cases.

While these efforts are laudable, they are likely not enough to rebuild public trust or ameliorate regulators. The lack of alternatives to many social media platforms in the market means that if Facebook or Twitter is biased against particular viewpoints, there isn't anywhere for people holding those views to go.

Critics have invoked this "monopoly" problem to call for more government regulation. After Facebook took down some ads criticizing it by Senator Warren, Rep. Alexandria Ocasio-Cortez (D-N.Y.) declared, "our . . . democracy . . . has a Facebook problem." Congress is holding hearings.

This is dicey. The First Amendment hamstrings government's ability to regulate speech, even speech we all agree is distasteful. Flag burning and hate speech are both protected by the Constitution. In addition, a prior government attempt to ensure balance on the airwaves — the Fairness Doctrine — was abandoned in 1987 after widespread dissatisfaction. In our bitterly divided times, it is hard to imagine Senator Mitch McConnell (R-Ky.) and Speaker Nancy Pelosi (D-Calif.) agreeing on workable standards, especially when both sides seem to benefit from sowing distrust as a means of turning out their respective bases.

So what's the alternative?

In the absence of government regulation, it's incumbent on the industry to self-regulate — to protect their own interest in a manner that aligns with the public's interest. The opportunity then is for Facebook, Twitter, and other platforms that survive on user-generated content to form an industry body tasked with developing meaningful standards that could be consistently and broadly applied.

The independent body — call it the "Internet Standards Setting Organization" (ISSO) — would need to be funded by the major social media platforms, but would be run independently. Participation would be voluntary. But by joining ISSO, companies would reduce the burden to maintain and police their own standards, creating a level playing field.

Led by a board of prominent Americans from a range of backgrounds and political ideologies, ISSO could invest in identifying the community standards that will best advance society's interests on the internet, promulgate a community standards code across platforms, and ultimately build the capacity to monitor and enforce the standards.

This approach is common in other industries, where individual firms do not have the optimal incentives to regulate behavior. The Financial Industry Regulatory Authority (FINRA) is an independent, non-governmental agency that sets the rules of conduct for stockbrokers, investigates misconduct, and brings enforcement actions when behavior falls short of the ideal. Because it is not the government, and is thus not limited by the Constitution, FINRA can be more aggressive than the SEC in policing misconduct. It's also staffed with industry experts who are apolitical.

The self-regulatory body that became FINRA was created in the 18$^{th}$ Century because government failed to provide the necessary trust environment for brokers to flourish. Congress eventually authorized the idea of industry wide self-regulation with section 15 of the Securities Exchange Act in 1934. A similar statute authorizing a self-regulatory organization for social media companies would provide the impetus for social media companies to cooperate in creating community standards that would apply to everyone.

There is a pressing need to raise the standards of internet speech but no one trusts the government or individual companies to do it. The solution is an independent body, authorized by law, to undertake the important work. Many details would need to be worked out regarding the governance and operation of the organization, but the need for authority and independence that an organization like ISSO could bring is clear.

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