

Statement to the Subcommittee:

I am Jeff Jarvis, Leonard Tow Professor of Journalism Innovation and Director of the Tow-Knight Center for Entrepreneurial Journalism at the City University of New York's Craig Newmark Graduate School of Journalism. In my journalism career, I was an editor, columnist, and executive for the New York Daily News, Chicago Tribune, and San Francisco Examiner; creator of Entertainment Weekly at Time Inc. and of numerous news web services for Advance Publications; and an advisor to news companies on innovation.

I write to the committee to express my concern about often well-intentioned but ill-conceived internet regulation, which could have deleterious effects on freedom of expression; which tends to protect incumbent media and technology companies at the expense of innovation and competition; and whose unintended consequence is frequently to grant internet platforms yet greater power. It is worthwhile to examine the effects of internet regulation elsewhere as it is debated here.

Consider, for example, Australia's media code. The net result, [according to the news site Crikey](#), is that the country's existing media duopoly of News Corp. and the Nine Network will receive 90 percent of the money being paid by Google and Facebook, both of which are now in the position to decide which news organizations should receive support. Small news startups that might compete with the powerful incumbents receive no protection or support in the law. The Australian code amounts to a link tax — for those companies that link to news are required to pay for news — and Sir Tim Berners-Lee, inventor of the web, [testified](#) to Australian legislators that such a precedent would “make the web unworkable around the world.” It would break the internet. I regret that in the end, Google and Facebook succumbed to what I see as corporate and political blackmail.

In Europe, various changes to copyright law — Germany's Leistungsschutzrecht, Spain's link tax, the EU's Articles 15 and 17 of the its Directive on Copyright — amount to regulatory capture, for the large internet companies can afford compliance but I have spoken with smaller competitors for whom the expense and effort are crippling. Germany's NetzDG hate-speech law requires Facebook to decide — in a private company rather than an open courtroom — what speech is manifestly illegal. Europe's Right to be Forgotten court decision puts Google in the position of deciding what speech should be remembered or forgotten. The UK is considering regulation that would require platforms to take down “legal but harmful speech.”

Online speech is imperiled in many quarters. In Italy, Facebook was forced to [reinstate](#) a site for a neo-fascist group. Poland has announced a new law that would [require](#) platforms to carry all legal speech, a nightmare that would protect the worst of the net. I would remind us that compelled speech is not free speech. In addition, Singapore instituted a [fake-news law](#), which

puts internet companies in the unwanted position of being arbiters of truth. Similarly, India is enacting [regulation](#) that would require platforms to take down speech that is false or threatens national unity.

In the United States, Google's recent announcement that it will forego ad targeting on the web based on third-party data was applauded by privacy advocates who have demonized web cookies as so-called "surveillance capitalism." But this again amounts to regulatory capture as Google itself has plentiful first-party data about consumer behavior as well as the resources and technical means to innovate in advertising. Incumbent publishers, on the other hand, are stuck without their own first-party data or innovation. I know this because in my university center, I spent years trying to convince publishers to change their product and business strategies to prepare for this day. They generally insisted on relying on their dying print businesses and on third-party ad networks online, and now they are retreating behind paywalls. As a result, just when we need it most, reliable news is becoming a product for the privileged few who can afford it. [According to](#) Oxford's Reuters Institute, only 20 percent of Americans pay for online news and it is a winner-take-all market with most people paying for only one subscription for news — almost two thirds of subscriptions go to just three publishers: The New York Times, The Washington Post, and Rupert Murdoch's News Corp.

Note well that most local newspaper companies in the United States are now controlled by hedge funds, which are not inclined to invest in innovation and which, by their nature, tend to sell assets and draw cash out of these enterprises. If there ever were an attempt to enact an Australia-like law here — if it could overcome clear First Amendment objections — any money resulting from it would end up in the balance sheets of hedge-fund owners and would benefit neither journalism nor innovation at legacy, local news companies.

Thus to grant newspaper owners an exemption from antitrust, as has been discussed, would be profoundly anti-competitive, for it would — as in Australia — entrench the interests of the largest companies on both sides of the table, media and technology.

Similarly, I argue that breaking up major technology companies is an emotional response to the discussion of technology and power. It would not meet the test of rectifying consumer harm, for users benefit tremendously from free, open, and inexpensive services. Also, there is considerable competition; note Microsoft's role in this debate.

Instead, in both industries — technology and media — the best cure for concerns about size is to encourage and support entrepreneurship and new competition. In my university, I started a first-of-its-kind program in entrepreneurial journalism to teach journalists to do just that. I hope next to turn my attention to internet studies, to foster the design and creation of a next generation of the net: one built not just to speak but to listen, one designed to build bridges rather than

battlements, one that protects the benefits of today's historically unprecedented opportunity to hear voices too long not heard in mass media. There is much work to be done and much opportunity to create competitors to the present proprietors of the net and media. This is where we should focus our attention in policy.

The net is yet young. We don't fully know what it is and may not for generations, even centuries. Note that the first newspaper was not published until a century and a half after Gutenberg introduced movable type. In my research for a book on the end of the Gutenberg age, I have learned much about the reaction to the introduction of printing. After initial and brief utopian glee at its prospects, authorities worried greatly about print's power to spread the fake news of the day, to cause unrest (the Reformation and the Thirty Years' War), and to disrupt institutions. I have also learned that governments' attempts to control printing and thus speech largely failed. In a prescient [1998 paper](#) for the RAND Corporation, "The Information Age and the Printing Press: Looking Backward to See Ahead," James Dewar argued persuasively for "a) keeping the Internet unregulated, and b) taking a much more experimental approach to information policy. Societies who regulated the printing press suffered and continue to suffer today in comparison with those who didn't."

In what I have said here, it might sound as if I oppose all internet regulation. I do not. I worked for more than a year with a Transatlantic High-Level Working Group on Content Moderation Online and Freedom of Expression, convened by former FCC Commissioner Susan Ness under the auspices of the Universities of Pennsylvania and Amsterdam. The group included many experts and luminaries, such as former Secretary of Homeland Security Michael Chertoff, former Ambassador Eileen Donahoe, former Estonian President Toomas Ilves, and former members of the European Parliament Marietje Schaake and Erika Mann. Our [report](#) recommended a flexible framework for internet regulation based on transparency as the basis of accountability as well as the establishment of e-courts to rule on matters of legality where that should occur, in public and in court.

To put this in my terms, I have long argued that both technology and media companies should make covenants of mutual obligation with their users and the public — not just rules for users but promises from the companies for what we may expect of them in building useful, respectful, and productive services and environments. In the model of the Federal Trade Commission, I would favor requiring them to provide data about their implementation and impact so as to hold them accountable to their promises. I also hope for a multistakeholder forum — of technologists, lawmakers, regulators, civil society, academics, and users — to grapple with new and unforeseeable problems, such as pandemics, and to exploit new opportunities.

Internet regulation should not be about punishing power or success but instead about creating the means to work together for a better internet, a better society, a better future.