

# Platform Neutrality Principle and Online Intermediaries

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## Abstract

Platform service providers, such as search engines, online marketplaces, and social networks, are becoming new online gatekeepers playing an important role in publicizing content, developing social relationships, and organizing online transactions. Information, that is undetectable or otherwise remains excluded from these platforms, is almost non-existent in the acknowledgment of Internet users. However, these platforms are potentially non-neutral in a variety of ways that can significantly distort the experiences of most of their users. Numerous cases illustrate how these online intermediaries undermine the flow of information from speaker to listener. They do so by censoring content and applying bases for discrimination that listeners would not have chosen. To address this problem, this article examines the ‘platform neutrality’ principle focusing on the responsibilities and liabilities that online intermediaries should bear. Since online intermediaries have certain characteristics, combining those of telecommunication service providers and media entities, the application of platform neutrality on online intermediaries is needed to oblige accountability on how result recommendation presented to Internet users. Various values should be present in such a framework such as the value of relevant and unbiased result recommendation; the value of transparency concerning algorithms, and respect for the dignity of the users recognizing how information is presented.

**Keywords:** Platform Neutrality, Net Neutrality, Online Intermediaries, Internet Regulation

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## 1. Introduction

At the present, people access information provided by online intermediaries such as search engines and social media. Online intermediaries are defined by Chandler as: a class of [the Internet] intermediaries that select and filter information en route to listeners. Examples of this class of online intermediaries include search engines, software filters, Internet Service Providers (“ISPs”) that block or filter content, and spam blocklists.<sup>2</sup> Van Hoboken uses the term Online intermediaries to denote a range of intermediary service providers and technologies which map, order, select, validate and value online information.<sup>3</sup> For the purpose and scope of this article, Online intermediaries refer to two main online media intermediaries: i.e. search engines and social media. Provision of information by online intermediaries, however, involves bias due to its operation and nature such as result recommendations display. The operations of online intermediaries are not neutral; rather they impose criteria of discrimination to degrade some content from people’s attention. Such manipulation of recommended results, which is usually referred to as ‘bias’<sup>4</sup>, covers a broad range of different forms and can occur in many processes. It can be influenced by many factors and it has various actions such as filtering, prioritization, classification, and blocking.<sup>5</sup> The manipulation of recommendation results is not merely about algorithms but includes manual human interventions.<sup>6</sup>

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<sup>2</sup> Jennifer Chandler, “A Right to Reach an Audience: An Approach to Intermediary Bias on the Internet,” *Hofstra Law Review* 35, no. 3 (2007): 1095, 1096.

<sup>3</sup> Joris Van Hoboken, “Legal Space for Innovative Ordering: On the Need to Update Selection Intermediary Liability in the Eu,” *International Journal of Communications Law & Policy* 13, (2009): 2012-2038. (He uses the term more restrictively than Chandler: not including filters but for search engines or information location tools in the broad sense.)

<sup>4</sup> For discussion about bias see e.g. Geoffrey Manne, and Joshua Wright, “If Search Neutrality Is the Answer, What’S the Question?,” George Mason Law and Economics Research Paper No. 11-37, last modified April 12, 2011, accessed April 12, 2011, <http://ssrn.com/abstract=1807951>; Benjamin Edelman, “Bias in Search Results?,” *Indian Journal of Law and Technology* 16, no. 7 (2011): 601-608; James Webster, “User Information Regimes: How Social Media Shape Patterns of Consumption,” *Northwestern University Law Review* 104, no. 2 (2010): 593-612.

<sup>5</sup> See Nicholas Diakopoulos, “Algorithmic Accountability,” *Digital Journalism* 3, no.3 (2015): 400-402.

<sup>6</sup> For example, human may block, censor or double-check results from algorithms. Humans may also affect at the design stage of the algorithms, i.e. which factors to include in the algorithm, and how to weigh them.

It will either be a completely specific manipulation or a general bias; and, it may involve intentional or indirect prioritization of certain types of information over others.<sup>7</sup> Bias is also caused by many reasons: to satisfy users, for the interest of third parties, and to serve their own self-interest. For instance, a popularity algorithm gives more weight to information coming from popular websites to serve the topics most people are interested in. Online intermediaries can also positively or negatively shape their results in response to an exchange for payment of advertising, a threat of a competitive challenge, or a disapproval of a page/website's policies.

The bias of online intermediaries may adversely reduce the flow of information. In this regard, the European Commission has expressed concern about the manipulation power and the bottleneck control that online intermediaries can exploit.<sup>8</sup> Also, the Council of Europe has underlined "the importance of free or affordable access to content and services in view of the convergence of the media and new communication service sectors".<sup>9</sup> Therefore, the actual ability to access information without any unreasonable distortions of online intermediaries is profoundly concerning. To guarantee access to diverse information, there are academic proposals that a certain responsibility should be imposed on online intermediaries in general to prevent arbitrary and unacceptable bias.

It is worthy of concern that the process of providing information should not be considered detrimental as it is a normal operation to serve its purpose. If the law specifically forces certain processes, it would interrupt the innovation of technology. Also, getting rid of all bias is not sensible and practical. This article, therefore, will explain the concept of platform neutrality and will analyze the application of platform neutrality principle to regulate the operation of online intermediaries. Part 2

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<sup>7</sup> E.g. The punishment of search engine optimization. Facebook treats video and pictures as more important than links and status updates (Dan Taylor, "Everything You Need to Know About Facebook's Edgerank," The Next Web, last modified May 9, 2011, accessed March 23, 2023, <https://thenextweb.com/socialmedia/2011/05/09/everything-you-need-to-know-about-facebooks-edgerank/>).

<sup>8</sup> Commission Of The European Communities, "Media Pluralism in the Member States of the European Union," Commission Staff Working Document SEC (2007) 32, last modified January 16, 2007, accessed April 12, 2022, [https://ec.europa.eu/information\\_society/media\\_taskforce/doc/pluralism/media\\_pluralism\\_swp\\_en.pdf](https://ec.europa.eu/information_society/media_taskforce/doc/pluralism/media_pluralism_swp_en.pdf).

<sup>9</sup> Recommendation CM/Rec (2007)11 of the Committee of Ministers to member states on promoting freedom of expression and information in the new information and communications environment, adopted by the Committee of Ministers on 26 September 2007, 142.



of the article will explore the controversial perspectives about the characters of online intermediaries. Since online intermediaries have certain characteristics combining those of telecommunication service providers and media entities, it is important to investigate the role of online intermediaries in order to determine appropriate responsibility for online intermediaries. Given that the services of platform service providers are varied, this article focuses on online intermediaries in which neutrality is an issue: search engines and social media. Then, Part 3 will delineate the platform neutrality principle. Lastly, the article will recommend the application of this principle to regulate bias in result recommendation of online intermediaries.

## **2. The Controversial Perspectives of the Characters of Online Intermediaries**

This section analyses the controversial issue of the characteristics of online intermediaries. The discussions to date have mostly focused on online intermediaries (e.g. search engines and social media) and various platform service providers (e.g. app stores and online market platforms) relating to the context of free speech and competition law. There are two main different perspectives on how these intermediaries should be treated. First, the ‘conduit communication’ perspective recognizes online intermediaries as passive gatekeepers under telecommunication law. As a result, online intermediaries should be neutral. Another, the ‘editor perspective’, regards these intermediaries as media companies that should not be regulated and view a bias in result recommendations as acceptable.

## 2.1 Online Intermediaries as Conduit Communicators

The ‘conduit communicators’ perspective can be easily illustrated by drawing an analogy between online intermediaries and common carriers.<sup>10</sup> The function of new intermediaries is the main map of the network of information.<sup>11</sup> Pasquale describes these new intermediaries as essential cultural and political gatekeepers.<sup>12</sup> As he describes:

“Internet intermediaries govern online life. ... search engines are particularly central to the web’s ecology. Users rely on search services to map the web for them.”<sup>13</sup>

Also, Levine comments that “social networks are a critical layer of infrastructure for a wide variety of applications and content” and “they are the 21st century version of AT&T, of RCA, of the Motion Picture Patents Company”.<sup>14</sup> Thus, advocates of this opinion recognized these online intermediaries as a kind of communication infrastructure delivering traffic to content providers.<sup>15</sup>

With this perspective, scholars focus on what intermediaries can do. They are concerned about the power of these intermediaries to skew the viewpoints of people by discriminating against certain groups and favoring others.<sup>16</sup> Content providers

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<sup>10</sup> A “common carrier” is a company whose main business is transporting things on behalf of people. The term may also refer to telecommunication service providers and public utilities. A common carrier provides services to the general public without discrimination.

<sup>11</sup> Lucas D. Introna, and Helen Nissenbaum, “Shaping the Web: Why the Politics of Search Engines Matters,” *The information society* 16, no. 3 (2000): 169-185, <https://dx.doi.org/10.1080/01972240050133634>.

<sup>12</sup> Frank Pasquale, “Dominant Search Engines,” in *The Next Digital Decade*, ed. Berin Szoka and Adam Marcus (Washington, DC: TechFreedom, 2010), 402.

<sup>13</sup> Frank Pasquale, “Beyond Innovation and Competition: The Need for Qualified Transparency in Internet Intermediaries,” *Northwestern University Law Review* 104, no. 1 (2010): 105-106.; See also Oren Bracha, and Frank Pasquale, “Federal Search Commission? Access, Fairness and Accountability in the Law of Search,” *Cornell Law Review* 93, no. 6 (2008): 206–1209.

<sup>14</sup> Jake Levine, “It’s Time for Social Network Neutrality,” *Business Insider*, last modified July 18, 2011, accessed March 23, 2023, <https://www.businessinsider.com/its-time-for-a-social-network-neutrality-2011-7..>

<sup>15</sup> Adam Raff, and Shivaun Raff, “Penalties, Self-Preferencing, and Panda: Why Google’s Behaviour Makes Antitrust Sanctions Inevitable,” last modified August 31, 2011, accessed March 23, 2023, [http://www.foundem.co.uk/Google\\_Conflict\\_of\\_Interest.pdf](http://www.foundem.co.uk/Google_Conflict_of_Interest.pdf).

<sup>16</sup> See Allan K., “Neutrality Isn’t About Objectivity - It’s About Who Has the Power,” MIT Admissions, last modified May 20, 2016, accessed March 23, 2023, <https://mitadmissions.org/blogs/entry/neutrality-isnt-about-objectivity-its-about-who-has-the-power/>; Edelman, “Bias in Search Results?,” 32.



utterly depend on these intermediaries to choose what is made visible or invisible in the public sphere. Therefore, according to the ‘conduit communication’ perspective, online intermediaries should be prevented from exploiting their power to obstruct the expression of content providers.<sup>17</sup> A simple analogy is that an ideal map of the network of information should be accurate and objective. They should be regulated to effectively assist speakers in connecting to audiences.

According to this perspective, to regulate online intermediaries, non-discriminatory principles of telecommunications law, such as common carrier roles of telephone and network neutrality, should extend to these intermediaries. Although the advocates of the ‘conduit communication’ perspective all agree that non-discriminatory principles should be applied, it is not clear how the operation of selection intermediaries is non-discriminatory. There are many opinions on the interpretation of non-discriminatory principles for online intermediaries. Some scholars argue that online intermediaries should be treated similarly to telecommunications entities: that is, regarded as a common carrier carrying the speech of others on an objective basis.<sup>18</sup>

Nevertheless, the characteristics of online intermediaries are distinguished from those of telecommunication network providers. An Internet service provider is an indispensable tool to connect users to access information online and can treat everyone similarly on a non-discriminatory basis. With this role of an Internet service provider, it is reasonable to restrict the action of this service provider in order to encourage free speech of content providers to reach the audience. If the Internet service provider can block or choose which content can flow through its service, it will be harmful to the variety of information the user is exposed to. This characteristic of telecommunication service providers is different from online intermediaries. Online intermediaries do not just facilitate access to information available on the Internet. They also decide and select content providers to match users’ preferences. Due to its nature and purpose, online

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<sup>17</sup> See Frank Pasquale, “Platform Neutrality: Enhancing Freedom of Expression in Spheres of Private Power,” *Theoretical Inquiries in Law* 17, no. 2 (2016): 487-513.

<sup>18</sup> See Wei Gao, and Yao Yang, “Chaining Cyber-Titans to Neutrality: An Updated Common Carrier Approach to Regulate Platform Service Providers,” *Computer Law & Security Review* 31, no. 3 (2015): 412-421; Levine, “It’s Time for Social Network Neutrality.”

intermediaries cannot provide equal access to everything on the Web. Because of its hierarchical structure, an online intermediary has to list some content on the top of its page or result recommendation while some other content will have to be on the bottom or even on the next pages. Therefore, applying the objective role of telecommunication providers to selection intermediaries can be considered as an excessive restriction of these intermediaries.<sup>19</sup>

The natural characteristic of selection intermediaries as delineated above is valuable for Internet users to find content in the vast online environment. By addressing these differences between online intermediaries and broadband network providers, it is evident that the principles of non-discrimination applied to telecommunication network providers cannot be directly imposed on online intermediaries; they can reasonably be applied to online intermediaries to some extent. Some scholars suggest that certain aspects of the non-discrimination principles can be applied to online intermediaries. Pasquale proposed that the universal service principle of net neutrality (which prevents Internet service providers to block legal content and applications) can be applied to online intermediaries by prohibiting the “denial of access to copyrighted works once they are indexed”.<sup>20</sup> Besides, he suggests that:

“‘[s]earch engines’ concern about the applications and content disadvantaged by carrier fast-tracking should lead them to provide annotation remedies to indexed sites whose marks have been unfairly occluded by the search process.”<sup>21</sup>

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<sup>19</sup> See Dean Bubley, “So-Called “Platform Neutrality” Is Nothing to Do with Net Neutrality,” LinkedIn, last modified July 17, 2014, accessed March 23, 2023, <https://www.linkedin.com/pulse/20140717131104-610434-so-called-platform-neutrality-is-nothing-to-do-with-net-neutrality/>; Jens-Henrik Jeppesen, “French and German Ministers Should Not Confuse Platform Neutrality with Net Neutrality,” CDT, last modified December 18, 2014, accessed March 23, 2023, <https://cdt.org/insights/french-and-german-ministers-should-not-confuse-platform-neutrality-with-net-neutrality/>.

<sup>20</sup> Frank Pasquale, “Internet Nondiscrimination Principles: Commercial Ethics for Carriers and Search Engines,” *University of Chicago Legal Forum* 2008, no. 1 (2008): 289.

<sup>21</sup> *Ibid.*, 299; See also Frank Pasquale, “Asterisk Revisited: Debating a Right of Reply on Search Results,” *Journal of Business and Technology Law* 3, no. 1 (2008), [http://www.law.umaryland.edu/academics/journals/jbtl/issues/3\\_1/3\\_1\\_061\\_Pasquale.pdf](http://www.law.umaryland.edu/academics/journals/jbtl/issues/3_1/3_1_061_Pasquale.pdf).



Chandler also applied net neutrality on online intermediaries by suggesting that “search engines should not remove websites from their indices unless required by law to do so”.<sup>22</sup> Besides, search engines should not manipulate individual search results except to address instances of suspected abuse of the system.<sup>23</sup> Significantly, paid advertisements and organic search results have to be made distinctively.

Pasquale and Chandler do not treat online intermediaries to be as objective as telecommunications entities but apply some non-discriminatory principles i.e. net neutrality to harmonize with the nature of online intermediaries. Imposing some degree of objectivity on selection intermediaries such as preventing unreasonable blocking will encourage accessibility to a variety of content providers. As a result, Internet users and content providers are protected from unreasonable bias and abusive manipulation of result recommendations by online intermediaries.

## 2.2 Online Intermediaries are Media Entities with Editorial Control

While the ‘conduit communicator’ perspective focuses on the influence of online intermediaries, scholars of the ‘editorial perspective’ are concerned about the right of these intermediaries. Advocates of this ‘editorial perspective’ accept the subjective nature of online intermediaries; they consider the provision of result recommendations as the opinion of these intermediaries.<sup>24</sup> Instead of preferring non-discriminatory principles (i.e. net neutrality) as the ‘conduit communicator’ perspective does, the ‘editorial perspective’ embraces bias. As Eric Goldman presents:

“From my perspective, search engine bias is the unavoidable consequence of search engines exercising editorial control over their databases. ... search engines simply cannot passively and neutrally redistribute third party content...” and

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<sup>22</sup> Chandler, “A Right to Reach an Audience: An Approach to Intermediary Bias on the Internet,” 1117.

<sup>23</sup> Ibid.

<sup>24</sup> Marvin Ammori, and Luke Pelican, “Competitors’ Proposed Remedies for Search Bias: “Neutrality” and Other Proposals,” *Journal of Internet Law* 15, no. 11 (2012): 17-18.

“Search engine bias sounds scary, but . . . such bias is both necessary and desirable.”<sup>25</sup>

Also, Tufekci commented that everyone should drop the pretense that online intermediaries are neutral: “Facebook is biased. That’s true... That’s how its algorithm works, and how it determines what more than a billion people see every day” and “algorithms used in such subjective decision making can never be truly neutral, objective or scientific”.<sup>26</sup>

This ‘editorial perspective’ recognizes that bias is a valuable and advantageous point of online intermediaries. People prefer to depend on editorial judgment when they use these services. Bias is inherent in these online intermediaries: the process must systematically give priority to certain types of content over others. If these intermediaries do not exercise editorial control, their system will quickly and inevitably be anarchic and worthless to users.<sup>27</sup> Thus, requiring online intermediaries to apply non-discrimination principles is both impossible and undesirable.<sup>28</sup>

Besides, the speech of online intermediaries is at the heart of the ‘editorial perspective’, not the accessibility of the public to content providers. Online intermediaries are regarded as speakers themselves by analogy with media companies. As Volokh and Falk illustrate:

“... Search exercise editorial judgment about what constitutes useful information and convey that information—which is to say, they speak—to their users. In this respect, they are analogous to newspapers and book publishers that convey a wide range of

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<sup>25</sup> Eric Goldman, “Search Engine Bias and the Demise of Search Engine Utopianism,” *Yale Journal of Law and Technology*, no. 8 (2006).; See also Mike Masnick, “A Recommendation Is Not the Same as Corruption,” last modified June 21, 2010, accessed March 23, 2023, <https://www.techdirt.com/2010/06/21/a-recommendation-is-not-the-same-as-corruption/>; Christopher Yoo, “Free Speech and the Myth of the Internet as an Unintermediated Experience,” *George Washington Law Review* 78, (2010): 708.

<sup>26</sup> Zeynep Tufekci, “The Real Bias Built in at Facebook,” *The New York Times*, last modified May 19, 2016, accessed March 23, 2023, <https://www.nytimes.com/2016/05/19/opinion/the-real-bias-built-in-at-facebook.html>.

<sup>27</sup> Jeffrey Jarosch, “Novel Neutrality Claims against Internet Platforms,” *Cleveland State Law Review* 59, (2011).

<sup>28</sup> *Ibid*, 443; see also Marvin Ammori, “Failed Analogies,” in *Internet Competition and Regulation of Online Platforms*, ed. Aitor Ortiz (Washington, DC: Competition Policy International, 2016), 52.



information from news stories and selected columns by outside contributors ...<sup>29</sup>

Also, Bilton comments that:

“There’s also the question of how much responsibility Facebook has .... In that respect, the biases of human editors might be a feature, not a bug. News organizations regularly make similar editorial judgments. As Facebook becomes an increasingly central news source for its users, there’s a lot more pressure for it to act like a legitimate one.”<sup>30</sup>

The scholars of this view illustrate that the process of providing result recommendations (which involves selecting and ranking results and then choosing a short title and excerpt of referred pages) necessitates editorial judgment like newspapers’ judgment about which content is worth running and where to place it within a newspaper. Though there are some differences, they all have the same core of editorial control function, which is the decision to exclude irrelevance out of thousands of possible items.<sup>31</sup> These online intermediaries, therefore, should be protected by freedom of speech. They should be free to present any viewpoints and should not be forced to link to any content they do not wish to. Interferences from a government to impose an obligation like telecommunication sector would be undesirable.<sup>32</sup>

The advocates of the ‘editorial perspective’ all agree that non-discriminatory principles (i.e. net neutrality) should not be applied to selection intermediaries. However,

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<sup>29</sup> Eugene Volokh, and Donald M Falk, “Google First Amendment Protection for Search Engine Search Results,” *Journal of Law Economic and Policy* 8, (2012): 899.

<sup>30</sup> Ricardo Bilton, “Facebook’s Trending Stories Leak Shows That It Isn’t Too Different from Average News Orgs.,” NiemanLab, last modified May 9, 2016, accessed March 23, 2023, <https://www.niemanlab.org/2016/05/facebooks-trending-stories-leak-shows-that-it-isnt-too-different-from-average-news-orgs-flawed-human-a-little-biased/>.

<sup>31</sup> Eric Goldman, “Revisiting Search Engine Bias,” *William Mitchell Law Review* 38, no. 1 (2011): 106; Bruce Brown, and Alan Davidson, “Is Google Like Gas or Like Steel?,” *The New York Times*, last modified January 4, 2013, accessed March 23, 2023, [https://www.nytimes.com/2013/01/05/opinion/is-google-like-gas-or-like-steel.html?\\_r=0](https://www.nytimes.com/2013/01/05/opinion/is-google-like-gas-or-like-steel.html?_r=0).

<sup>32</sup> See Ryan Heath, “The Wrong Suspect: A Debate About Platform Neutrality Finds Little Evidence of Consumer Harm,” DISCO, last modified March 16, 2015, accessed March 23, 2023, <https://www.project-disco.org/competition/031615-wrong-suspect-debate-platform-neutrality-finds-little-evidence-consumer-harm/>; Andrea Renda, “Antitrust Regulation and the Neutrality Trap,” in *Internet Competition and Regulation of Online Platforms*, ed. Aitor Ortiz (Washington, DC: Competition Policy International, 2016), 59.

there are many opinions regarding the degree of interference by the government. Some scholars suggest that online intermediaries should proceed without regulatory intervention, while others contend that online intermediaries can and should be regulated.

Goldman has been the most outspoken proponent of the view that selection intermediaries should be free from regulatory distortion. He suggests that free market and technological revolution are all that is necessary to limit an excess of bias.<sup>33</sup> Nevertheless, there is a flaw in this perspective. Market power alone is not effective to protect and encourage the free speech of Internet users and content providers so regulation is needed to achieve this goal. In addition, this opinion ignores the role of online intermediaries in navigating the online information environment. The function of these intermediaries is not limited to selecting and excluding certain information like newspapers; it also extends to providing access to information. It is true that bias is unavoidable and necessary, however, it is not always desirable. Online intermediaries' bias will only be preferred if they provide what people seek with diverse perspectives, not any results which online intermediaries prefer.

Some scholars accept that online intermediaries can be regulated but leave an open question as to what extent and how they should be regulated.<sup>34</sup> Although selection intermediaries can claim the protection of free speech, they can be restricted in order to protect democracy and the free speech of people. It should be noted that the exercise of editorial control by traditional media also has legal responsibility. For instance, broadcasters cannot arbitrarily publish information they want or discard some content. They are under the principles such as impartiality, plurality, and accuracy. If the operation of online intermediaries is regarded as having editorial control like traditional media; online intermediaries should have to perform tasks impartially such as assisting an audience to connect to content providers instead of blocking users' access to information. Imposing some degree of responsibility on selection intermediaries will encourage accessibility to a variety of content providers.

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<sup>33</sup> Goldman, "Search Engine Bias and the Demise of Search Engine Utopianism."

<sup>34</sup> See e.g. Ammori, "Failed Analogies," in *Internet Competition and Regulation of Online Platforms*, 52; Renda, "Antitrust Regulation and the Neutrality Trap," in *Internet Competition and Regulation of Online Platforms*, 59.



which combine those of telecommunication service providers and media entities. The present model of regulation whether telecommunication law or media law is not suitable in applying to the nature of online intermediaries. Thus, we should search for a new model of regulation for the manipulation of recommendation result. The application of platform neutrality on online intermediaries is needed to oblige accountability on how result recommendation presented to Internet users.

### 3. Platform Neutrality

The platform neutrality principle is the concept that platform service providers should not favor or discriminate against particular content, users, or viewpoints.<sup>35</sup> In other words, platforms should treat all content and users equally, without the favour of their own services. For example, online market platforms such as Amazon could not systematically favor its own products in the search rankings on its marketplace, and search engines or social media such as Google and Facebook could not promote their own preferential viewpoints in their search results while demoting rivals. At its core, platform neutrality is about ensuring that online intermediaries are fair, transparent, and impartial in the way they operate and treat Internet users and content providers. Noteworthy, while there is no specific law or regulation that is directly explicit to platform neutrality at the present, however, there are several laws and regulations that implicitly include provisions that could be considered relevant to the concept such as the Digital Services Act includes provisions on transparency and accountability for content moderation<sup>36</sup> and the Digital Markets Act includes rules aimed at promoting fair competition practices by large online platforms.<sup>37</sup> However, all these regulations do not provide all aspects of concerns regarding bias in manipulation of recommendation result.

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<sup>35</sup> Konstantinos Stylianou, "Platform Neutrality," Glossary of Platform Law and Policy Terms, last modified December 17, 2021, accessed March 23, 2023, <https://platformglossary.info/platform-neutrality/>.

<sup>36</sup> Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), Recital 40 and 49.

<sup>37</sup> Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), Recital 4 and 5.

Under an economical focus, the proposal to regulate online intermediaries points to eliminating the benefits derived from vertical integration and encouraging economically neutral towards services they provide. By obliging the platform to maintain certain neutrality, products or services that function as platforms are prohibited from favoring their own goods and services.<sup>38</sup> From the free speech point of view, platform neutrality helps to promote free speech, diversity, innovation, and the exchange of ideas. By guaranteeing that online platforms remain open and accessible to all users regardless of their views or interests, this principle is important to ensure that a wide range of viewpoints and opinions can be shared on these platforms.

The concept of ‘platform neutrality’ relates to the term ‘net neutrality’. Net neutrality is a principle of non-discrimination for network operators that allow all types of content to be transmitted on the network with the same service quality. It ensures that Internet content providers are granted access to the Internet without favoring or prioritizing some content at the expense of other content by network operators. This term was defined by Tim Wu in 2003:

“Network neutrality is best defined as a network design principle. The idea is that a maximally useful public information network aspires to treat all content, sites, and platforms equally. This allows the network to carry every form of information and support every kind of application.”<sup>39</sup>

Also, according to Regulation (EU) 2015/2120, the definition of net neutrality should be understood as:

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<sup>38</sup> Friso Bostoën, “Platform Neutrality: Hipster Antitrust or Logical Next Step?,” KU LEUVEN, last modified December 14, 2017, accessed March 23, 2023, <https://www.law.kuleuven.be/citip/blog/platform-neutrality-hipster-antitrust-or-logical-next-step-part-ii/>.

<sup>39</sup> Tim Wu, “Network Neutrality Faq,” Timwu.org, accessed March 23, 2023, [http://www.timwu.org/network\\_neutrality.html](http://www.timwu.org/network_neutrality.html).; See also Tim Wu, “Network Neutrality, Broadband Discrimination,” *Journal on Telecommunications and High Technology Law* 2, no. 1 (2003): 145.



“Providers of internet access services shall treat all traffic equally, when providing internet access services, without discrimination, restriction or interference, and irrespective of the sender and receiver, the content accessed or distributed, the applications or services used or provided, or the terminal equipment used.”<sup>40</sup>

It should be noted that although net neutrality is a fundamental principle of the Internet, its scope and details are not universal. The topic of net neutrality covers a wide range of viewpoints. Marsden divides net neutrality into two broad elements: positive net neutrality and negative net neutrality.<sup>41</sup> The former refers to offering of faster access to consumers and guaranteed service, while the latter regards blocking, degrading or throttling of content beyond normal traffic management.

The concept of net neutrality can be emulated in the field of online platforms. According to a report in 2014, the French National Digital Council affirmed that net neutrality was indispensable for guaranteeing freedom of communication and free enterprise in the 21st century. However, it also noted that digital society does not only consist of the actual networks but also of access and communication services in which platforms play a central role. Compared to communication networks, platform service providers hold power to drive social interaction in today’s digital society. Thus, the French National Digital Council believes that these platforms have a vital role to play in ensuring that the principle of net neutrality is effectively upheld.<sup>42</sup> Also, US Senator Al Franken recently declared: “[a]s tech giants become a new kind of internet gatekeeper, I believe the same basic principles of net neutrality should apply here”.<sup>43</sup>

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<sup>40</sup> Articles 3(3) of Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users’ rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union.

<sup>41</sup> Christopher Marsden, *Net Neutrality: Towards a Co-Regulatory Solution* (London: Bloomsbury Academic, 2010), 29.

<sup>42</sup> CNNum, *Platform Neutrality: Building an Open and Sustainable Digital Environment* (Opinion no. 2014-2 of the French Digital Council on platform neutrality, 2014), 4-6, <https://cnnumerique.fr/platform-neutrality-building-open-and-sustainable-digital-environment>.

<sup>43</sup> Nitasha Tiku, “Al Franken Just Gave the Speech Big Tech Has Been Dreading,” WIRED, last modified November 9, 2017, accessed March 23, 2023, <https://www.wired.com/story/al-franken-just-gave-the-speech-big-tech-has-been-dreading/>.

The most advancing political paper considering platform neutrality is the French National Digital Council in 2014. According to the French National Digital Council in 2014 which advanced numerous recommendations on platform neutrality, the core idea of platform neutrality is to prevent massive intermediaries from distorting either private commerce or the public sphere simply by virtue of their size, network power, or surveillance capacities. Platform neutrality can take many forms; for example, online intermediaries should be transparent in the way they operate and enforce their policies.<sup>44</sup> This means that they should provide clear and accessible information or guidelines about their content moderation processes, in particular, algorithms ranking and content management systems, their terms of service, and any other relevant policies. Internet users need to be able to make a clear distinction between advertising and information.

Online intermediaries should not discriminate against any particular type of content or user, based on bias towards a political, financial, or social benefit serving the interests of owners of selection intermediaries. This means that platforms should not censor or block content that is not based on legal obligations and specific published rules. It should not be arbitrary or subjective on a particular complaint. The principle of no-blocking can be considered from two sides of the same coin: firstly, content providers are entitled to be integrated into the database of selection intermediaries; and secondly, end-users are entitled to access any links to a variety of content. Also, apart from advertising, content providers should not be charged for any process of providing normal result recommendation from online intermediaries. Price charging is prohibited if it is offered differently for specific content; and it is prohibited even in the case that online intermediaries equally apply the charge to every content providers on the same rate.

Accountability is another element of platform neutrality. Users need to know when a platform personalizes, promotes, or demotes certain results. Also, content providers can be aware of the reasons for a delisting, loss of access, or worsening of API access conditions, and are forewarned of new or changing prices. Platforms should provide a clear and accessible appeals process for users who feel that their content

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<sup>44</sup> CNNum, *Platform Neutrality: Building an Open and Sustainable Digital Environment*, 8.



has been unfairly censored or removed.<sup>45</sup>

Lastly, online intermediaries should ensure fair competition by avoiding anti-competitive practices that could harm smaller competitors or limit consumer choice.<sup>46</sup> This means that they should avoid using their dominant market position to unfairly take advantage of their own products or services, or to disadvantage their competitors. Also, online intermediaries must ensure that choices made in the display of recommendation results are legitimately provided by quality, relevance or customization, etc.

As James Grimmelmann suggests<sup>47</sup>, online intermediaries are trusted advisors from the view of Internet users. They do not merely connect Internet users to content providers but also search for relevant ones on behalf of users. They recommend to users which contents are in their interests. Regarding online intermediaries as advisor synthesizes the insights of platform neutrality. Online intermediaries provide a function for users to access content providers (as the conduit communication perspective describes) and exercise their discretion to suggest content for the interest of the audience (as the editor perspective illustrates). These two roles of online intermediaries are not contradicting but inseparable since the two roles are necessary to achieve the duty of advisor. Therefore, online intermediaries “connect websites and users by expressing judgments about websites”<sup>48</sup>. From the standpoint of Internet users, online intermediaries should be helpful and trustworthy advisors rather than trying to persuade the users for their own interests, especially commercial interests. As an advisor, online intermediaries should efficiently search for content that users are looking for instead of blocking users from accessing to information.

#### 4. Conclusion and Recommendations

Access to information has become one of the most important features of modern society. The Internet has fundamentally changed how we communicate and our relationship to information. Information is now a critical commodity and those that control access or delivery to this information are in key positions of power. By controlling

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<sup>45</sup> Ibid, 12

<sup>46</sup> Ibid.

<sup>47</sup> James Grimmelmann, “Speech Engines,” *Minnesota Law Review* 98, (2014): 893-905.

<sup>48</sup> Ibid, 895.

the communication of the Internet, online intermediaries have emerged as information gatekeepers. Online intermediaries have become the tools through which the democratic potential of the Internet can be advanced or hindered. Therefore, the public should be protected from unrestricted and unaccountable private power over such an important communications resource.

The framework of platform neutrality is needed to oblige accountability and protect Internet users in order to further their ability to engage in public discourse and access information. By taking the concept of platform neutrality proposed in the French National Digital Council in 2014 into account, the recommendations for applying platform neutrality framework are as follows:

1. Online intermediaries should provide clear and accessible information or guidelines about algorithms ranking and content management systems. Also, users need to know when a platform personalizes, promotes, or demotes certain results and content providers can be aware of the reasons for a delisting.

2. Online intermediaries should not discriminate against any particular type of content or user, based on bias towards a political, financial, or social benefit serving the interests of owners of selection intermediaries.

3. Online intermediaries should not censor or block content that is not based on legal obligations. It should not be arbitrary or subjective on a particular complaint. This means that content providers are entitled to be integrated into the database of selection intermediaries and end-users are entitled to access any links to a variety of content.

4. Online intermediaries should not charge content providers for any process of providing normal result recommendation (non-advertisement result) from online intermediaries.

Various values should be present in such a framework: the value of relevant and unbiased result recommendation; the value of a degree of transparency concerning algorithms and reasons for manual manipulation, and respect for the dignity of the users recognizing how information is presented.



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