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Internet and Technology: New Regulatory Paradigms

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State of the Internet

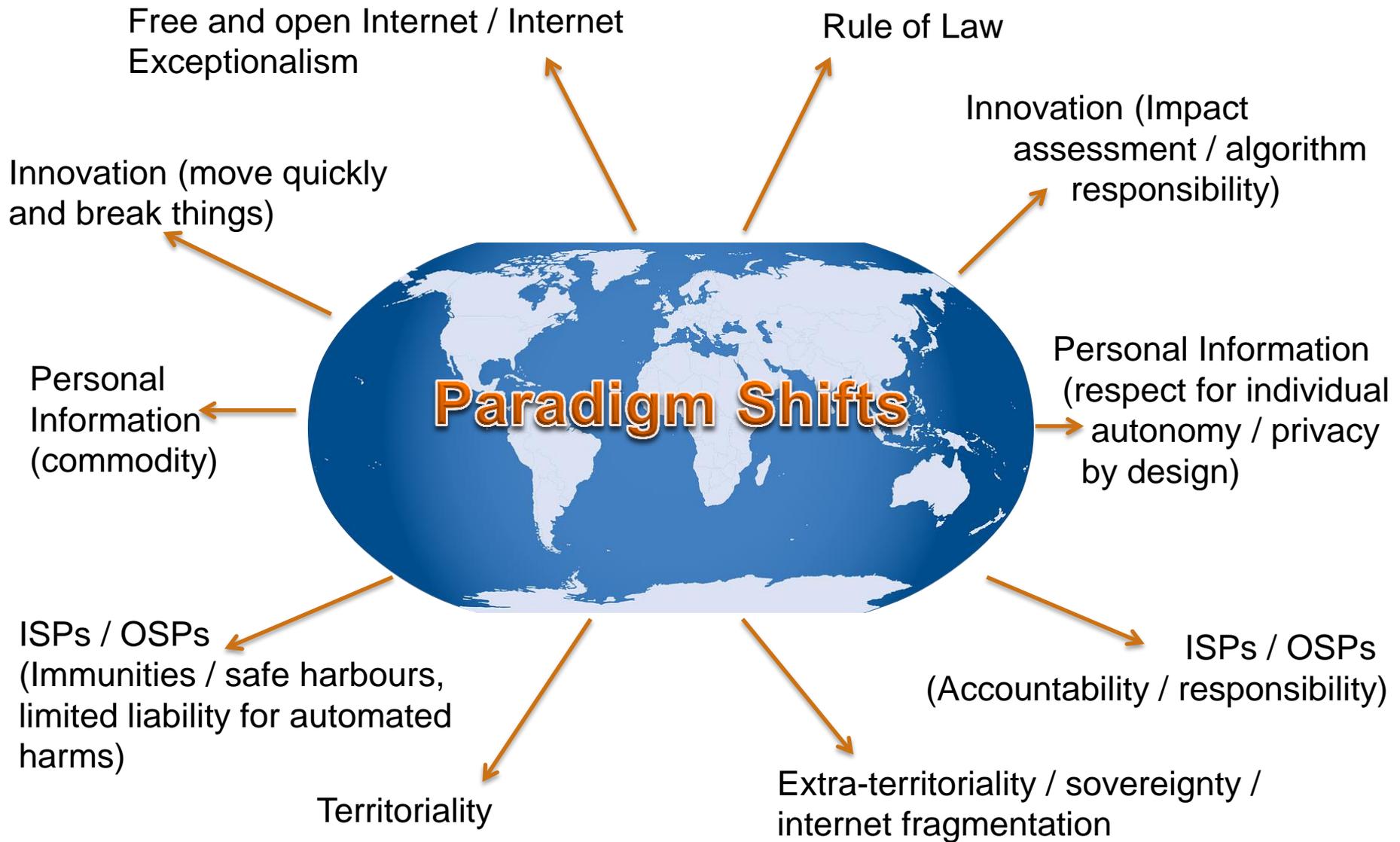
“Vint Cerf: In 2018, we will tackle the Internet’s dark side”
Wired, Jan 6, 2018, “The empowerment of individuals has been nothing short of exhilarating – but now we are starting to see the consequences. Freedom to speak has never been more available, but in the resulting babel, truth is obscured by manufactured falsehoods, misrepresentations, fake news, alternative facts and a medley of other phenomena. In 2018 we will see a significant reaction to these side-effects and will grasp the nettle of how to balance free speech with an open Internet...”

State of the Internet

Sir Tim Berners-Lee “The web is under threat. Join us and fight for it. – [World Wide Web Foundation](#)”, “The threats to the web today are real and many..from misinformation and questionable political advertising to a loss of control over our personal data...

What’s more, the fact that power is concentrated among so few companies has made it possible to weaponise the web at scale. In recent years, we’ve seen conspiracy theories trend on social media platforms, fake Twitter and Facebook accounts stoke social tensions, external actors interfere in elections, and criminals steal troves of personal data.

We’ve looked to the platforms themselves for answers. Companies are aware of the problems and are making efforts to fix them — with each change they make affecting millions of people. The responsibility — and sometimes burden — of making these decisions falls on companies that have been built to maximise profit more than to maximise social good. A legal or regulatory framework that accounts for social objectives may help ease those tensions.”



UK Online Harms White Paper Consultation Paper

- “This White Paper sets out a programme of action to tackle content or activity that harms individual users, particularly children, or threatens our way of life in the UK, either by undermining national security, or by undermining our shared rights, responsibilities and opportunities to foster integration.”
- Examples, child exploitation, terrorist propaganda, online violence, anonymous abuse, cyberbullying, sexploitation, online abuse of public figures, sale of illegal goods.
- Online Disinformation: “One of the major technological challenges in disinformation is the continued development of AI systems. AI techniques can be used to target and manipulate individual voters, with highly sophisticated micro-targeting based on individual psychology.” “AI can be beneficial in the automatic detection of content, or automatically factchecking articles. But developments in AI also make it possible to generate fake content (text, audio and video) which is difficult to detect by humans and algorithms. As a result, it is becoming even easier to create and disseminate false content and narratives.”
- Online Manipulation: “Propaganda and false information have long been used to persuade and mislead, but the internet, social media and AI provide ever more effective ways to manipulate opinion.” “AI based algorithms and false or misleading information could be used to manipulate the public with unprecedented effectiveness.”

UK Online Harms White Paper Consultation Paper

- UK will establish “a new statutory duty of care to make companies take more responsibility for the safety of their users and tackle harm caused by content or activity on their services.” Compliance with this duty of care will be overseen and enforced by an independent regulator. “The regulator will set out how to do this in codes of practice.”
- The regulatory framework will apply to companies that provide services or tools that allow, enable or facilitate users to share or discover user-generated content, or interact with each other online.
- Enforcement action includes substantial fines, imposing liability on senior management, disruption of business activities via service providers, ISP blocking.
- “We will design the regulator’s powers to ensure that it can take action against companies without a legal presence in the UK, including blocking platforms from being accessible in the UK as a last resort.”
- See also, Australia [Unlawful Showing of Abhorrent Violent Material](#). Bill 2019 will include new offences with penalties of up to 10 per cent of a company’s annual turnover and potential prison sentences for executives of social media companies who fail to act to remove abhorrent violent material from their platforms; [EU proposal](#) to requiring terrorist content to be removed within 1 hour.

U.S. Algorithmic Accountability Act

- Would direct the FTC to require entities that use, store, or share personal information to conduct automated decision system impact assessments and data protection impact assessments.
- Will allow FTC to make regulations over covered entities (gross receipts >\$50MM, collects PI > 1MM consumers, data brokers)
- Will require automated decision system impact assessments for high risk AI systems for impacts on accuracy, fairness, bias, discrimination, privacy, and security.
- Will require data protection impact assessments of high risk information systems evaluating the extent to which they protect the privacy and security of personal information.
- Will require each covered entity to reasonably address in a timely manner the results of the impact assessments.
- See also, U.S. [Deceptive Experiences Online Users Reduction Act](#) or the “DETOUR Act” (To prohibit the usage of exploitative and deceptive practices by large online operators and to promote consumer welfare in the use of behavioral research by such providers.)
- See also, [EU consumer protection rules](#) requiring algorithmic transparency for online marketplaces.

Algorithmic Responsibility

“We believe that the changes we’re announcing today as part of our settlements with the NFHA, ACLU, CWA and other groups will better protect people on Facebook:

Anyone who wants to run housing, employment or credit ads will no longer be allowed to target by age, gender or zip code.

Advertisers offering housing, employment and credit opportunities will have a much smaller set of targeting categories to use in their campaigns overall. Multicultural affinity targeting will continue to be unavailable for these ads. Additionally, any detailed targeting option describing or appearing to relate to protected classes will also be unavailable.

We’re building a tool so you can search for and view all current housing ads in the US targeted to different places across the country, regardless of whether the ads are shown to you.”

Commitment applies to U.S. Facebook faces class action lawsuit in Quebec over discriminatory employment and housing ads. Employment minister calls for CHRC investigation of Facebook job ads.

Four Ideas to Regulate the Internet, Mark Zuckerberg

“Internet companies should be accountable for enforcing standards on harmful content. It’s impossible to remove all harmful content from the internet, but when people use dozens of different sharing services — all with their own policies and processes — we need a more standardized approach.

One idea is for third-party bodies to set standards governing the distribution of harmful content and measure companies against those standards. Regulation could set baselines for what’s prohibited and require companies to build systems for keeping harmful content to a bare minimum...

Second, legislation is important for protecting elections...

Third, effective privacy and data protection needs a globally harmonized framework... I believe it would be good for the internet if more countries adopted regulation such as GDPR as a common framework.

Finally, regulation should guarantee the principle of data portability.”

Section 230 CDA Immunity

Nancy Pelosi in [recode interview](#)

“It is a gift to them and I don’t think that they are treating it with the respect that they should, and so I think that that could be a question mark and in jeopardy.”

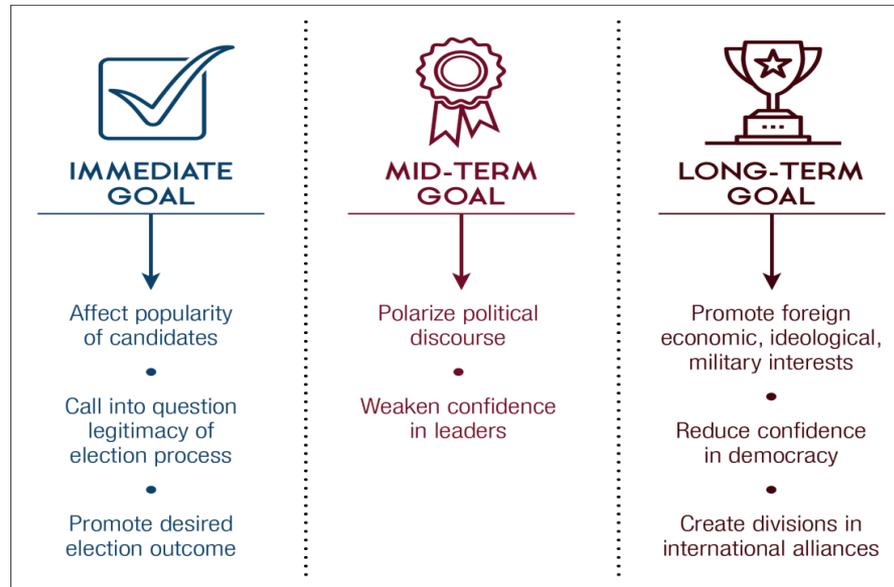
“When we come to 230, you really get their attention. But I do think that for the privilege of 230, there has to be a bigger sense of responsibility on it. And it is not out of the question that that could be removed.”

Hugh Stephens [Did Canada get “Section 230” Shoved Down its Throat in the USMCA? Commenting on Article 19.17 of the CUSMA.](#)

Canadian Centre for Cyber Security: 2019 Update Cyber Threats To Canada's Democratic Process

- “We judge it very likely that Canadian voters will encounter some form of foreign cyber interference related to the 2019 federal election. However, at this time, it is improbable that this foreign cyber interference will be of the scale of Russian activity against the 2016 United States presidential election.
- We judge it very likely that foreign cyber interference against Canada would resemble activity undertaken against other advanced democracies in recent years. Foreign adversaries have attempted to sway the ideas and decisions of voters by focusing on polarizing social and political issues, promoting the popularity of one party over another, or trying to shape the public statements and policy choices of a candidate.”

2019 Update Cyber Threats To Canada's Democratic Process



Democratic Institutions Minister Karina “Gould said her department has met with the major platforms regarding protection "to varying degrees of success." "I'm not feeling great about where we are right now...we have not really seen that much progress with them," she said. "There's a lot left to be desired in terms of how seriously they're taking these issues." [CBC News](#) April 8, 2019.

See also, Standing Committee on Access to Information, Privacy and Ethics, [Democracy under Threat: Risks and Solutions in the Era of Disinformation and Data Monopoly](#).

Canada Directive on Automated Decision-Making

- “The objective of this Directive is to ensure that Automated Decision Systems are deployed in a manner that reduces risks to Canadians and federal institutions, and leads to more efficient, accurate, consistent, and interpretable decisions made pursuant to Canadian law.”
- “The expected results of this Directive are as follows:
 - Decisions made by federal government departments are data-driven, responsible, and complies with procedural fairness and due process requirements.
 - Impacts of algorithms on administrative decisions are assessed and negative outcomes are reduced, when encountered.
 - Data and information on the use of Automated Decision Systems in federal institutions are made available to the public, where appropriate.”

Development of Jurisprudence

- Google Inc. v. Equustek Solutions Inc., [2017] 1 SCR 82 – global deindexing order against Google - builds on
 - Libman v. The Queen, [1985] 2 SCR 178
 - SOCAN v CAIP [2004] 2 SCR 427
 - Impulsora Turistica de Occidente, S.A. de C.V. v. Transat Tours Canada Inc., [2007] 1 SCR 867
 - Barrick Gold Corp. v. Lopehandia, (2004) 71 OR (3d) 416 (C.A.)
 - Cartier International AG & Ors v British Sky Broadcasting Ltd & Ors [2016] EWCA Civ 658 (06 July 2016), affirmed [2018] UKSC 28.
- A.T. v. Globe24h.com, [2017] 4 FCR 310
- Autorité des marchés financiers v. PlexCorps, 2017 QCTMF 88
- British Columbia (Attorney General) v. Brecknell, 2018 BCCA 5
- Douez v. Facebook, Inc., [2017] 1 SCR 751
- Ewert v. Canada, [2018] 2 SCR 165- decision tool should produce accurate information

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