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Networked Governance

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Introduction

This submission introduces the phrase "networked governance" as a term to describe how a broad array of platforms—not just Facebook—are conceptualizing the engagement of external actors and organizations in the creation and implementation of content standards. This terminology builds on theories from new institutionalism/neo-institutionalism and organizational sociology,[1] taking as its starting point the "demise of the isolated and sovereign actor or organization" and placing an emphasis on "understanding interaction" between

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[1] *See* Paul J. DiMaggio & Walter W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, 48 AM. SOCIO. REV. 147 (1983).

interdependent actors and organizations.[2] "Networked governance" is a term that can be useful for researchers in platform governance who are theorizing about how platform companies, like Facebook and Google, are using strategies like trusted flagger programs, trust and safety councils, and external stakeholder engagement teams, to engage relevant organizations and experts in providing feedback on platform rules and content standards.

I. What is Networked Governance? How is it distinct from self-regulation and multi-stakeholderism?

The phrase "networked governance" is borrowed from literature in political science that has been used by scholars to describe entities and organizations that attempt to leverage fields of interdependent (though autonomous) actors in more horizontal, self-regulating, and informal approaches to making governance decisions.[3] Networked governance is related to but different from similar concepts such as "multistakeholderism," which has been used in Internet governance literature to refer to "two or more classes of actors engaged in a common governance enterprise concerning issues they regard as public in nature characterized by polyarchic authority relations constituted by procedural rules."[4] In multistakeholderism, stakeholders can include a range of state and non-state (including state, firm, and civil society) actors with an interest (or "stake") in a change, and who "control relevant information and resources and whose support is needed in order to implement the change."[5] Conversely, though multiple stakeholders are

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[2] Peter Bogason & Juliet A. Musso, *The Democratic Prospects of Network Governance*, 36 AM. REV. PUB. ADMIN. 3, 4 (2006).

[3] Eva Sørensen & Jacob Torfing, *The Democratic Anchorage of Governance Networks*, 28 SCANDINAVIAN POL. STUD. 195, 203 (2005).

[4] Mark Raymond & Laura DeNardis, *Multistakeholderism: anatomy of an inchoate global institution*, 7 INT'L THEORY 572 (2015). It is important to note that, particularly during the time of writing the article from which this definition is drawn, Raymond and DeNardis refer to multistakeholder governance as "inchoate," meaning that the specifics of what constitutes multistakeholderism is "in flux." *Id.*

[5] Paul Dragos Aligica, *Institutional and Stakeholder Mapping: Frameworks for Policy Analysis and Institutional Change*, 6 PUB. ORG. REV. 79, 79

involved in networked governance, these actors do not necessarily have access to the same information and support, but could be characterized by differences in access to information, methods of communication, and motivation.[6] Networked governance, as used by platforms, is also distinguished from "self-regulation." Self-regulation refers to a process "in which rules that govern market behavior are developed and enforced by the governed themselves."[7] Though it is also voluntary and can be collective (with firms cooperating with each other), it is oriented around the setting of rules rather than information sharing. It is also distinct from "enhanced self-regulation" as conceptualized by Rotem Medzini,[8] who makes the case that Facebook, for instance, operates under an expanded self-regulatory regime in that it relies on a network of third-party intermediaries to balance their public and private interests and provide some oversight.[9] Governance networks are related to self-regulation and the rise of the neoliberalism; however, they are less tied to formal rules and regulation, but more to how policies

(2006); *see also* PETER MORGAN & SUZANNE TASCHEREAU, CANADIAN INT'L DEV. AGENCY, CAPACITY AND INSTITUTIONAL ASSESSMENT: FRAMEWORKS, METHODS AND TOOLS FOR ANALYSIS (1996), http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.119.7536&rep=rep1&type=pdf.

[6] GABRIEL A. HUPPÉ, HEATHER CREECH & DORIS KNOBLAUCH, INT'L INST. SUSTAINABLE DEV., THE FRONTIERS OF NETWORKED GOVERNANCE (2012), https://www.iisd.org/system/files/publications/frontiers_networked_gov.pdf.

[7] Michael Latzer, Natascha Just & Florian Saurwein, *Self- and co-regulation: Evidence, legitimacy and governance choice*, *in* ROUTLEDGE HANDBOOK OF MEDIA LAW 373, 376 (Monroe E. Price, Stefaan G. Verhulst & Morgan Libby eds., 2013).

[8] Rotem Medzini, *Enhanced self-regulation: The case of Facebook's content governance*, NEW MEDIA & SOC'Y (Feb. 1, 2021), https://journals.sagepub.com/doi/abs/10.1177/1461444821989352.

[9] He cites bodies like GNI and Poynter as an example of how this coordination takes shape, with third-party intermediaries responsible for audits of activities like fact-checking, being organized and certified by an organization such as Poynter. *Id.*

are "shaped and reshaped through practices of negotiation between interdependent actors."[10]

A. Networks and Governance and the Characteristics of Networked Governance

Networked governance exists in contrast to more hierarchical forms of government, such as state rule, and as an alternative to market competition.[11] As a concept, they are not new. Pluralists, such as Dahl,[12] have long examined how political outcomes emerge out of competitive, and unequal, interest groups. The study of policy and governance networks emerges out of this tradition, in opposition to corporatist or triangle models of governance,[13] which includes media policy and platform governance,[14] and adopts the network metaphor to account for "multi-dimensional patterns of interaction between different political actors" as well as shifting away from vertical understandings of societal governance, towards horizontal networks.[15]

Within political science, the study of governance networks corresponds with the rise of neoliberalism as well as political and economic paradigms that emphasize an increased reliance on market forces and a decreased reliance on the state. They correspond with a move away from an interest in *government* towards *governance*, which marked a turn away from theories of formal governing by the state, towards the influence of other entities, private corporations, markets, multinational

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[10] Eva Sørensen & Jacob Torfing, *Network Governance and Post-Liberal Democracy*, 27 ADMIN. THEORY & PRAXIS 197 (2005).

[11] *See* Sørensen & Torfing, *supra* note 3, at 196.

[12] ROBERT A. DAHL, WHO GOVERNS? DEMOCRACY AND POWER IN AN AMERICAN CITY (1961).

[13] *See generally* ORGANIZED INTERESTS AND THE STATE: STUDIES IN MESO-CORPORATISM (Alan Cawson ed., 1985).

[14] *See* Jack Balkin, *Free Speech is a Triangle*, 118 COLUM. L. REV. 2011 (2018); Robert Gorwa, *The platform governance triangle: Conceptualizing the informal regulation of online content*, 8 INTERNET POL'Y REV. 1 (2019).

[15] Sørensen & Torfing, *supra* note 10, at 201.

agreements, and other forms of distributed decision-making.[16] As a subject within political science, the study of governance networks also emerged at the same time as interest in the "network paradigm" and the "network society."[17] As Galloway and Thacker note, the discourse of networks is not only "posed both morally and architecturally against what its participants see as retrograde structures like hierarchy and verticality," but has been mastered by institutions that have long-embraced those same structures, such as the U.S. military, as a recognition of the dominance of this organizational structure within contemporary life.[18]

Within the field of political science, scholars studying networked governance examine the ways in which politics or governance have been expanded beyond the single "party" or entity, using the rhetoric of promise of more opportunities for "cooperation, flexible responses, and collective social production."[19] The theory builds on concepts from new institutionalism and organizational sociology,[20] taking as its starting point the "demise of the isolated and sovereign actor or organization" and placing an emphasis on "understanding interaction" between interdependent actors and organizations.[21] Networks are generally not legal entities, and are often not bound by formal contracts, but they are cooperating towards a collective

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[16] *See* Manuel Puppis, *Media Governance: A New Concept for the Analysis of Media Policy and Regulation*, 3 COMMC'N, CULTURE & CRITIQUE 134, 135 (2010).

[17] *See* Walter W. Powell, *Neither Market Nor Hierarchy: Network Forms of Organization*, 12 RSCH. ORG. BEHAV. 295 (1990); John Lim, *Networked Governance: Why it is Different and How it Can Work*, ETHOS (Jan. 6, 2011), https://www.csc.gov.sg/articles/networked-governance-why-it-is-different-and-how-it-can-work; Manuel Castells, *Toward a Sociology of the Network Society*, 29 CONTEMP. SOCIO. 693 (2000).

[18] Alexander Galloway & Eugene Thacker, *Protocol, Control, and Networks*, 17 GREY ROOM 6, 7 (2006).

[19] Gerry Stoker, *Public Value Management: A New Narrative for Networked Governance?*, 36 AM. REV. PUB. ADMIN. 41 (2006).

[20] *See* Dimaggio & Powell, *supra* note 1.

[21] *See* Bogason & Musso, *supra* note 2, at 4.

goal, sharing resources and information.[22] Though they are often used to refer to the expansion of rule-making beyond the state—to nonprofits, citizens, industry, and other networked actors—firms, particularly the technology industry, have frequently made use of networks as a way to meet "resource and functional needs."[23] Though typically more horizontal than other forms of governance, hierarchies still exist within networks, with power between stakeholder groups often unevenly distributed.[24]

Governance networks became popular because they present opportunities, but they also have limitations. Proponents of governance networks argue they can increase the diversity and expertise of people contributing to decisions about policy—which, for the technology industry in particular, has been a major concern.[25] Networks can also insert "more negotiated or deliberative models" of decision-making into what was previously done wholly hierarchically within the company,[26] and they can increase the responsiveness of internal policy teams to content issues that are posing problems for local communities.[27]

But networked governance has significant constraints when it comes to how policies are developed and how powerful actors can retain or co-opt influence in policymaking. Governance networks can introduce more ambiguity into how decisions are made, particularly as relationships with external

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[22] Keith G. Provan & Patrick Kenis, *Modes of Network Governance: Structure, Management, and Effectiveness*, 18 J. PUB. ADMIN. RSCH. & THEORY 229 (2008).

[23] *See* Powell, *supra* note 17.

[24] For instance, Emma Porio found that the institutionalisation of decentralisation in Manila "promoted democratisation while strengthening 'selectively' traditional political élites and allied power bases in civil society and the business sector." See https://www.tandfonline.com/doi/abs/10.1080/13562576.2012.698128 " .

[25] *See* Sara Harrison, *Five Years of Tech Diversity Reports—and Little Progress*, WIRED (Oct. 1, 2019, 7:00 AM), https://www.wired.com/story/five-years-tech-diversity-reports-little-progress/.

[26] *See* Bogason & Musso, *supra* note 2, at 5.

[27] *See* Aligica, *supra* note 5, at 85.

stakeholder groups and actors remain informal and difficult to trace.[28] In distributing decision-making policies, it can lead to a situation where "no one is in charge."[29] With regard to the governance of technology, these more distributed ways of governance can mimic other concerns with distributed responsibility of agency between human engineers and automation that have been noted by scholars like Elish in her concept, the "moral crumple zone."[30] And though consulting external groups and experts can increase the diversity of those contributing to and enforcing content policies, they can also *increase power differentials*, particularly when inclusion within networks depends significantly on institutional ties between organizations and can favor those already in power.[31] Decisions done through networks also become more decentralized, placing them even more outside public view,[32] creating more channels of political influence with potentially unevenly distributed access.[33]

B. Networked Governance as a Lens for Studying Platform Governance

Networked governance is useful as a framework for studying platform governance, particularly in tracing how platform companies make use of external stakeholders, such as civil society organizations and academics, in the development of platform policies, such as in the setting of community guidelines. Though platform companies do not refer to these processes as

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[28] *See* Bogason & Musso, *supra* note 2.

[29] Stoker, *supra* note 19, at 52.

[30] Madeleine Clare Elish, *Moral Crumple Zones: Cautionary Tales in Human-Robot Interaction*, 5 ENGAGING SCI., TECH. & SOC'Y 40 (2019). Elish has used the example of self-driving cars to explore the "moral crumple zone," how mistakes made by automation may misattributed to human actors. *Id.* She makes the case that the "moral crumple zone protects the integrity of the technological system, at the expense of the nearest human operator." *Id.* at 41.

[31] Frank Fischer, *Participatory Governance as Deliberate Empowerment: Cultural Politics and the Facilitation of Discursive Space*, 36 AM. REV. PUB. ADMIN. 19 (2006).

[32] *See* Bogason & Musso, *supra* note 2, at 8.

[33] *See* Sørensen & Torfing, *supra* note 10, at 214.

"networked governance," it is a useful conceptual frame for understanding how platform companies adopt interactive governance mechanisms strategically. At the user level, platforms have long-incorporated user-feedback to identify and "flag" potentially offending material, though the relationships between flagging, moderation, and policy-making have always been opaque.[34] Platforms also engage external stakeholder groups beyond user-level interactions, referring specifically to civil society organizations, experts, government agencies, and other specific community members (such as volunteer moderators, or creators).[35] Some platforms have institutionalized this outreach within the company's operations. Facebook has a team, Content Policy Stakeholder Engagement, that is specifically directed towards doing this kind of work.[36] They also note within their community standards that "gathering input from our stakeholders is an important part" of how they develop their content policies.[37]

Many platform companies use councils or advisory bodies as a way to engage experts in the development of policies, products, and services. Twitter has had a "Trust and Safety Council" since 2016, which is composed of nonprofits, academics/researchers, and other grassroots organizations around the world, and it is still growing.[38] Other platform companies have followed similar programs. Twitch, a live streaming platform used mostly by gamers, has also established a "Safety Advisory

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[34] Kate Crawford & Tarleton Gillespie, *What Is a Flag For? Social Media Tools and the Vocabulary of Constraint*, 18 SOC. MEDIA & SOC'Y 410 (2014).

[35] Robyn Caplan, *Networked Platform Governance: The Construction of the Democratic Platform*, INT'L COMMC'NS ASS'N (2022).

[36] Facebook, *Stakeholder Engagement*. Retrieved from Community Standards: https://web.archive.org/web/20220318183042/https://www.facebook.com/communitystandards/stakeholder_engagement. (last visited Apr. 16, 2022).

[37] Facebook, *Stakeholder Engagement*, Retrieved from Facebook.com: https://web.archive.org/web/20190829075417/https://www.facebook.com/communitystandards/stakeholder_engagement. (last visited Apr. 16, 2022).

[38] TRUST AND SAFETY COUNCIL, https://about.twitter.com/en/our-priorities/healthy-conversations/trust-and-safety-council (last visited Apr. 16, 2022).

Council" comprised of external experts and Twitch streamers who will advise on content policies and procedures.[39] TikTok has also recently added their own Content Advisory Council[40] and Trust and Safety Council for Asia Pacific.[41] Though these councils are often formalized, they exist to "advise" companies as they develop their "products, programs, and rules."[42] Membership within these groups are voluntary, and platforms do not have to adopt recommendations or respond to insights from these councils.

Platform companies often highlight the ways that partnerships with civil society organizations help them bridge gaps in expertise and insert context into content policies and decisions. In particular, for bridging gaps in cultural and linguistic expertise as well as for specific issues like eating disorders, bullying, terrorism, and hate speech, platforms have increasingly looked to outside partners.[43] Platforms representatives typically use partnerships they form with outside organizations as subject-matter experts on particular topics or for particular concerns. Pinterest, for instance, works with groups like the National Eating Disorder (as well as the World Wildlife Foundation, Koko, National Network to End Domestic Violence, and LegitScript).[44] Facebook also has a "Safety Advisory Board" which Facebook consults on issues related to online

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[39] *Introducing the Twitch Safety Advisory Council* (May 14, 2020), https://blog.twitch.tv/en/2020/05/14/introducing-the-twitch-safety-advisory-council/.

[40] Vanessa Pappas, *Introducing the TikTok Content Advisory Council*, TIKTOK (Mar. 18, 2020), https://newsroom.tiktok.com/en-us/introducing-the-tiktok-content-advisory-council.

[41] Arjun Narayan Bettadapur, *Introducing the TikTok Asia Pacific Safety Advisory Council*, TIKTOK (Sept. 21, 2020), https://newsroom.tiktok.com/en-sg/tiktok-apac-safety-advisory-council.

[42] TRUST AND SAFETY COUNCIL, *supra* note 34.

[43] Caplan, *supra* note 35.

[44] Adelin Cai, *Overview of Each Company's Operations: Pinterest*, CONTENT MODERATION & REMOVAL AT SCALE CONF., at 01:04:45 (Feb. 2, 2018), https://law.scu.edu/event/content-moderation-removal-at-scale/.

safety.[45]This global group of nonprofits—which includes (among others) organizations such an India-based women's empowerment nonprofit called Center for Social Research, the UK-based Childnet International, the National Network to End Domestic Violence, and an Austria-based movement against bullying called PROJECT ROCKIT—provides "expertise, perspective, and insights that inform Facebook's approach to safety."[46]

Examining *how* these partnerships unfold in practice can, however, be difficult, given the broad range of both formal and informal partnerships (from a side conversation to a formal partnership), gaining access to platform companies to do research, and the rampant use of non-disclosure agreements across the tech industry.[47] In rare reporting on the trust and safety councils, or of meetings between platforms and civil society groups, platforms have been criticized by external stakeholders participating in this process. For instance, Twitter's Trust and Safety Council filed an open letter arguing they had months without updates and were not able to reach contacts within the company.[48] Facebook has also been criticized in its exchanges by civil society partners. Organizers of the #StopHateForProfit Facebook advertising boycott, referred to recent statements made by Facebook executives in a meeting as "spin" and as a "powerful PR machine."[49]

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[45] WHAT IS THE FACEBOOK SAFETY ADVISORY BOARD AND WHAT DOES IT DO?, https://www.facebook.com/help/222332597793306 (last visited Apr. 16, 2022).

[46] Facebook. *What is the Facebook Safety Advisory Board and what does this board do?* FACEBOOK HELP (last visited April 27, 2022). https://www.facebook.com/help/222332597793306

[47] *See* Jeff John Roberts, *Why You Should be Worried About Tech's Love Affair With NDAs*, FORTUNE (Apr. 29, 2019, 6:30 AM), https://fortune.com/2019/04/29/silicon-valley-nda/.

[48] *See* Louise Matsakis, *Twitter Trust and Safety Advisers Say They Are Being Ignored*, WIRED (Aug. 23, 2019, 2:50 PM), https://www.wired.com/story/twitter-trust-and-safety-council-letter/.

[49] Mike Isaac & Tiffany Hsu, *Facebook Fails to Appease Organizers of Ad Boycott*, N.Y. TIMES (July 7, 2020), https://www.nytimes.com/2020/07/07/technology/facebook-ad-boycott-civil-rights.html.

C. Issues and Concerns with Networked Platform Governance

As of right now, it is unclear what impact networked platform governance efforts has on the future of content policy at platforms; however, it is clear that efforts to engage external actors or distribute responsibility is not a salve for centralized platform power. Networked platform governance should be considered within other research on external stakeholder engagement, such as that done by the legal scholar Brenda Dvoskin, who has examined civil society participation in platform policy-making.[50] Dvoskin contends that civil society participation is one way in which the "public interest" is considered within the "private regulatory procedures" of platform governance.[51] However, Dvoskin notes that this outreach and engagement has not necessarily been "neutral,"[52] and that processes of stakeholder engagement demonstrate a particular orientation towards content moderation outcomes. These networks of outreach in content policy at platforms are an attempt to build on forms of networked governance that have become more popular with governments with the rise of neoliberalism.[53] This strategy of networked platform governance means that platforms are inserting themselves into the role of the state[54] and are replicating state features (as the primary

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[50] Brenda Dvoskin, *Representation Without Elections: Civil Society Participation as a Remedy for the Democratic Deficits of Online Speech Governance*, VILL. L. REV. (forthcoming 2022).

[51] *Id.* at 6.

[52] Dvoskin's research points towards the conclusion that platform companies have "favored the views of those advocates who support stricter restrictions on hate speech, harassment, violent and extremist content, bullying, and other forms of harmful speech. *Id.* However, though Dvoskin's research is substantive—an interview study of 60 experts who have engaged with platforms—it is not exhaustive, and more research on this may be needed.

[53] *See* Sørenson & Torfing, *supra* note 10.

[54] *See* Robyn Caplan, *The Artisan and the Decision Factory: The Organizational Dynamics of Private Speech Governance*, *in* DIGITAL TECHNOLOGY AND DEMOCRACY THEORY 167 (Lucy Berhnolz, Hélène Landemore & Rob Reich eds., 2021); Nicolas Suzor, *Digital Constitutionalism: Using the Rule of Law to Evaluate the Legitimacy of Governance by Platforms*, SOC.

decision-maker in this form of governance) in the engagement of civil society. [55]

Because of the embrace of rhetoric of good governance by platforms, there has been little attention paid to the challenges of networked governance in general, as well as the specific manner in which platforms are soliciting and integrating feedback from distributed stakeholders.[56] Relationships between platforms and networked actors may increase the complexity of these decisions, making it impossible to understand or evaluate the relative influence of experts or interest groups in decision-making. Though consulting external groups and integrating user feedback can increase the diversity of those contributing to and enforcing policies, they can also *increase* power differentials, particularly when they depend on who has *access* to technology companies,[57] which can favor those who already have power.[58]

In the case of platforms, in most instances, networked feedback is absorbed into the function of the organization, further limiting its effect. Trust and Safety councils do not work publicly, or even through public channels; they are bound by non-disclosure agreements and operate behind closed doors. Relative to this, networked actors often have little understanding of their influence relative to the influence of others. This is particularly important as networked relationships continue to be mediated by platforms through their own formal channels, increasing asymmetry in power relations while gesturing towards horizontal decision-making.

Lastly, governance networks pose new challenges for accountability, particularly as platforms rely on actors and

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MEDIA + SOC'Y, July-Sept. 2018, https://journals.sagepub.com/doi/pdf/10.1177/2056305118787812.

[55] *See* Dvoskin, *supra* note 50.

[56] *See* Caplan, *supra* note 35.

[57] Robyn Caplan and Tarleton Gillespie. (2020). Tiered Governance and Demonetization: The Shifting Terms of Labor and Compensation in the Platform Economy. *Social Media + Society,* 6(2).

[58] *See* Fischer, *supra* note 29. See also https://www.tandfonline.com/doi/abs/10.1080/13562576.2012.698128

institutions to bolster their own legitimacy and perceived fairness, while not necessarily offering these networked organizations any real power over decisions. As trust in platforms and the technology industry declines, the desire to build on the legitimacy of these other institutions and organizations—and their relationships—is one strategy to shore up their own institutional legitimacy.[59] However, these governance networks tend to complicate classic notions of accountability, which are based on the assumption that those who *should be held* accountable can be clearly can be clearly identified and held responsible, and that pathways for accountability should be direct, with consequences clearly defined.[60] In this sense, networked forms of platform governance can lead to less accountability overall.

[59] *See* Stoker, *supra* note 19.

[60] *See* Sørenson & Torfing, *supra* note 10.