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Social Media and Monopoly

KELLY RANTTILA*

I. INTRODUCTION

Whether Google should be broken up under antitrust law is not a new question in the legal community or tech world.¹ Since its creation in 2015, Alphabet, Google's parent company created to house the search engine and Google's other tech ventures, has been at the top of the largest publicly traded company charts.² Whereas calls for breaking up Alphabet and Google because of its influence are not recent news, calls for addressing the influence of social media sites are new.³ Recent allegations regarding shadow banning and the outright banning of people and organizations from social media sites have brought up the issue of regulating the internet.⁴ While the United States has taken a lax approach regarding internet site regulation, in March 2019, Google was fined 1.5 billion euros under the European Union's antitrust laws.⁵ Google's massive influence over the web has been known and debated for more than a decade, but more recently calls for social media platform reform have come from both sides of the aisle.⁶

Democratic politicians like Elizabeth Warren and Beto O'Rourke have called for the breakup of not just Google and Amazon, but social media sites like Facebook, with the goal of promoting competition.⁷ On the other side of the political spectrum, Republicans, including Senator Ted Cruz, have called

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1. Kristine L. Devine, *Preserving Competition in Multi-Sided Innovation Markets: How Do You Solve a Problem Like Google*, 10 N.C.J.L. & TECH. 59, 60 (2008).

2. Alex Hern, *How Alphabet Became the Biggest Company in the World*, THE GUARDIAN (Feb. 2, 2016, 3:08 PM), <https://www.theguardian.com/technology/2016/feb/01/how-alphabet-made-google-biggest-company-in-the-world>.

3. Tony Romm, *Senate Republicans Renew Their Claims That Facebook, Google and Twitter Censor Conservatives*, THE WASHINGTON POST (Apr. 10, 2019), https://www.washingtonpost.com/technology/2019/04/10/facebook-google-twitter-under-fire-senate-republicans-censoring-conservatives-online/?utm_term=.a247a1b32e25.

4. *Id.*

5. James Vincent, *Google Hit with 1.5 Billion Antitrust Fine by EU*, THE VERGE (Mar. 20, 2019, 7:11 AM), <https://www.theverge.com/2019/3/20/18270891/google-eu-antitrust-fine-adsense-advertising>.

6. *Id.*

7. Marshall Auerback, *Beto v. Liz Warren 2020 Democratic Debate: At Odds on Breaking Up Tech Giants Like Amazon*, SALON (Apr. 21, 2019, 8:29 PM), https://www.salon.com/2019/04/21/beto-vs-liz-warren-2020-democratic-debate-at-odds-on-breaking-up-tech-giants-like-amazon_partner/.

for a change, not to promote competition in the economy, but to address concerns that the social media and tech giants have censored conservative speakers.⁸

This comment will take a look at whether antitrust law can be used to address the influence of companies like Facebook and Twitter that have politicians and Americans worried. The paper will also look at the ways Europe has addressed the power of these companies and whether the United States should adopt a similar approach. Part I will take a look at the alleged problems of social media companies banning and “shadow banning” users. Part II will analyze current antitrust law in the United States, as well as how cases against the social media companies have fared. Part III takes a look at how Europe has tackled the size and influence of these companies and whether the United States can adopt any of Europe’s approaches. Finally, the comment concludes with my thoughts on whether companies like Facebook and Twitter should be regulated at all.

II. THE PROBLEM

In April 2019, the Senate Judiciary Committee, chaired by Senator Ted Cruz, questioned representatives from Twitter, Google, and Facebook about allegations that the companies censor conservative users and speech.⁹ Twitter and Facebook representatives denied that any such censorship was taking place.¹⁰ Twitter’s Director of Public Policy and Philanthropy for the U.S. and Canada, Carlos Monje, Jr., stated that such a notion was “antithetical to our commitment to free expression.”¹¹ Testimony from Neil Potts, Facebook’s Public Policy Director, echoed Monje’s sentiments, stating that Facebook’s mission included “striv[ing] to foster a diversity of viewpoints and experiences on our platform.”¹²

These statements do not reflect the experiences expressed by conservative groups on social media sites.¹³ Chuck Konzelman, director of “Unplanned” — a pro-life film about a Planned Parenthood director who became a pro-life advocate — testified at the same Senate Judiciary Committee hearing that Twitter suspended their account the day after the

8. Romm, *supra* note 3.

9. Romm, *supra* note 3.

10. *Hearing Before the Subcomm. on the Constitution of the U.S. Sen. Comm. on the Judiciary* (2019) (testimony of Carlos Monje, Director, Public Policy, and Philanthropy, Twitter, Inc.).

11. *Id.*

12. *Hearing Before the Subcomm. on the Constitution of the U.S. Sen. Comm. on the Judiciary* (2019) (testimony of Neil Potts, Public Policy Director, Facebook).

13. *Hearing Before the Subcomm. on the Constitution of the U.S. Sen. Comm. on the Judiciary* (2019) (testimony of Chuck Konzelman, Writer and Director of “Unplanned”).

movie was released and, once the account was reinstated, deleted over ninety-nine percent of its followers.¹⁴

Former Representative, now Vice President of Government Affairs of the Susan B. Anthony List — another pro-life group — Marilyn Musgrave, explained a similar experience.¹⁵ She testified that Twitter told the organization that their ad asking citizens to urge their legislators to defund Planned Parenthood was ineligible as a violation Twitter’s Health and Pharmaceutical Products and Services Policy.¹⁶ At the same time, Planned Parenthood was permitted to run ads that promoted the opposite stance.¹⁷

Pro-life groups are not the only ones citing biased censorship on social media platforms.¹⁸ Facebook has banned right and far-right users including InfoWars owner Alex Jones, Milo Yiannopoulos, and Paul Joseph Watson, among others.¹⁹ Many of these individuals had previously been banned on sites like Twitter and YouTube.²⁰ These bans came along with the removal of about 800 pages and accounts across the platform for “inauthentic behavior.”²¹ The official statement from Facebook outlined that the reason behind the page removals was to target “coordinated inauthentic behavior” that posts spam, like fake sunglass ads, as well as pages that “promote or engage in violence and hate.”²² This round of bans not only focused on right-of-aisle content, as the sweep caught Black Nationalist minister Louis Farrakhan as well.²³

In addition to the outright removal of pages and accounts from social media sites, other conservatives, Republicans, and labeled alt-right people and organizations have argued that they have been shadow banned.²⁴ Shadow banning occurs when an account is kept activated on a platform, but the content posted by the account does not appear in the timelines, feeds, or

14. *Id.*

15. *Hearing Before the Subcomm. on the Constitution of the U.S. Sen. Comm. on the Judiciary* (2019) (testimony of Hon. Marilyn Musgrave, Vice President of Government Affairs, Susan B. Anthony List).

16. *Id.*

17. *Id.*

18. Mike Isaac & Kevin Roose, *Facebook Bars Alex Jones, Louis Farrakhan and Others From Its Services*, THE NEW YORK TIMES (May 2, 2019), <https://www.nytimes.com/2019/05/02/technology/facebook-alex-jones-louis-farrakhan-ban.html>.

19. *Id.*

20. *Id.*

21. Nathaniel Gleicher, *Removing Additional Inauthentic Activity from Facebook*, FACEBOOK NEWSROOM (Oct. 11, 2018), <https://newsroom.fb.com/news/2018/10/removing-inauthentic-activity/>.

22. *Id.*; Isaac & Roose, *supra* note 18.

23. Isaac & Roose, *supra* note 18.

24. Liam Stack, *What is a ‘Shadow Ban,’ and Is Twitter Doing It to Republican Accounts?*, THE NEW YORK TIMES (July 26, 2018), <https://www.nytimes.com/2018/07/26/us/politics/twitter-shadowbanning.html>.

search results of other users.²⁵ Shadow banning, if it exists, is the result of a platform's algorithm working to make certain content appear less often.²⁶

The practice of what is known as “deboosting” is similar to that of shadow banning.²⁷ Deboosting is described as suppressing livestreams that take place on Facebook's platform so that followers of the page do not get notifications of the stream and the stream does not appear when users check the site.²⁸ Conservative podcaster and YouTube host Steven Crowder has alleged that Facebook has deboosted his Facebook live streams in the past.²⁹ Project Veritas, a non-profit that states its mission is to “[i]nvestigate and expose corruption, dishonesty, self-dealing, waste, fraud, and other misconduct in both public and private institutions” has released what it says are internal documents from Facebook that state policies of suppressing conservative pages.³⁰ Facebook has denied the allegations and stated that they were the result of a former employee's wish to validate her own agenda.³¹

Additionally, Republican politicians have claimed they have been victims of shadow bans when their accounts did not populate in search results on Twitter.³² Radio host and political commentator, Michael Savage, also stated that he had been shadow banned after his comments regarding the fire at Notre Dame in Paris.³³ Savage stated that his followers expressed that they were no longer getting notifications of his tweets and that the number of viewers who could watch him on Periscope — a livestreaming app owned by Twitter— was limited.³⁴ Regarding the lack of auto-populating in search results, Twitter officials stated that they were aware of the situation and were working to fix the problem.³⁵

25. *Id.*

26. *Id.*

27. *Facebook Insider Leaks Docs; Explains “Deboosting,” “Troll Report,” & Political Targeting in Video Interview*, PROJECT VERITAS (Feb. 27, 2019), <https://www.projectveritas.com/2019/02/27/facebook-insider-leaks-docs/>.

28. *Id.*

29. Brodigan, *Project Veritas: Facebook Engineers Regularly ‘Deboost’ Conservative Pages, Including Steven Crowder*, LOUDER WITH CROWDER (Feb. 27, 2019), <https://www.louderwithcrowder.com/project-veritas-facebook-deboost-steven-crowder/>.

30. *Facebook Insider*, *supra* note 27; *About*, PROJECT VERITAS, <https://www.projectveritas.com/about/>.

31. *‘Deboost’: Ex-Facebook Employee Leaks Dozen of ‘Troubling’ Docs Suggesting Censorship of Conservatives*, CBN NEWS (Feb. 28, 2019), <https://www1.cbn.com/cbnnews/us/2019/february/deboost-ex-facebook-employee-leaks-dozens-of-troubling-docs-suggesting-censorship-of-conservatives>.

32. Stack, *supra* note 24.

33. Michael Savage, *Twitter Shadow Bans Michael Savage and You Might Be Next*, NEWSMAX (Apr. 23, 2019, 12:10 PM), <https://www.newsmax.com/michaelsavage/twitter-shadow-ban-algorithm/2019/04/23/id/912914/>.

34. *Id.*

35. Stack, *supra* note 24.

The problem is more than just Republican politicians' names not immediately appearing in a search; it is the lack of clarity regarding the enforcement of the stated policies on social media sites.³⁶ Facebook publishes its policies, including its more recent one to remove misinformation from its site.³⁷ The goal of that policy, which began in July of 2018, was to stop the spread of false news in three key ways: removing the economic incentives to post false news, building new products to identify false news, and helping people make more informed decisions when online.³⁸

The push for the new policy came from allegations that Facebook was being used abroad to incite violence against minority groups.³⁹ For example, The New York Times reported that violence broke out in Sri Lanka after misinformation was posted on Facebook that stirred up animosity between Buddhist and Muslims.⁴⁰ Similar instances of violence in India and Mexico have also been attributed to misinformation spreading on Facebook.⁴¹

Stopping the spread of blatantly false information to protect against violence is a worthwhile goal of Facebook's; however, the negative that comes along with these policies is that no one outside of the platform knows exactly how they work.⁴² Facebook states that it trains and reviews the actions of those it hires to review flagged content and filter results, but no one knows how that process unfolds.⁴³

The lack of clarity in how platforms like Facebook enforce their policies-led organizations to do their own research.⁴⁴ In 2018, the Western Journal released a report that found a bias on Facebook in favor of liberal-leaning content and against conservative content.⁴⁵ The Western Journal analyzed traffic to fifty top news websites through Facebook.⁴⁶ It found that comparing

36. Farhad Manjoo, *Tech Companies Like Facebook and Twitter Are Drawing Lines - It'll Be Messy*, THE NEW YORK TIMES (July 25, 2018), <https://www.nytimes.com/2018/07/25/technology/tech-companies-facebook-twitter-responsibility.html?module=inline>.

37. Adam Mosseri, *Working to Stop Misinformation and False News*, FACEBOOK (Apr. 7, 2017), <https://www.facebook.com/facebookmedia/blog/working-to-stop-misinformation-and-false-news>.

38. *Id.*

39. Sheera Frenkel, *Facebook to Remove Misinformation That Leads to Violence*, THE NEW YORK TIMES (July 8, 2018), <https://www.nytimes.com/2018/07/18/technology/facebook-to-remove-misinformation-that-leads-to-violence.html?rref=collection%2Fsectioncollection%2Ftechnology&action=click&contentCollection=technology®ion=stream&module=inline&version=latest&contentPlacement=3&pgtype=sectionfront>.

40. *Id.*

41. *Id.*

42. Manjoo, *supra* note 36.

43. *Id.*

44. *Id.*

45. George Upper & G.S. Hair, *Confirmed: Facebook's Recent Algorithm Change Is Crushing Conservative Sites, Boosting Liberals*, THE WESTERN JOURNAL (Mar. 13, 2018, 11:39 AM), <https://www.westernjournal.com/confirmed-facebooks-recent-algorithm-change-is-crushing-conservative-voices-boosting-liberals/>.

46. *Id.*

the traffic before and after a Facebook algorithm change in February 2018 demonstrated a slight boost to liberal-leaning news sites and a significant decrease in traffic to conservative-leaning sites.⁴⁷ The results of the analysis found that the twenty-five liberal-leaning news organizations saw an average of a 1.86 % increase in traffic the month after the algorithm change compared to the month before, while conservative-leaning sites saw an average of a 13.71 % decrease in traffic over the same time period.⁴⁸

It should be noted, however, that the Western Journal is a conservative-leaning site and that its report has been disputed.⁴⁹ During the time of Western Journal's analysis, Fox News received more traffic to its website due to the Facebook post algorithm change.⁵⁰ Matthew Sheffield, writer for Salon, called the Western Journal a "junk publication" and attributed the decrease in traffic to the false information the sites spread, not a suppression of a particular political leaning.⁵¹

While some individuals, including social media and tech company executives, have stated that there is no problem regarding shadow banning or outright banning of right-wing people and groups online, the dispute illustrates that these websites play a major role in Americans' everyday lives.⁵² They have a significant influence over the content most people engage with on a daily basis.⁵³ Regardless of the bias an algorithm or content reviewer might have, the actual problem may just be in the amount of influence the organizations have.⁵⁴ Antitrust law seeks to stop that influence from becoming too big, which stifles competition.⁵⁵ Therefore, it is a potential solution to address the lack of transparency concerns.⁵⁶ If the major

47. Jason Schwartz, *Conservative Outlets Take on Facebook*, POLITICO (Mar. 29, 2018), <https://www.politico.com/story/2018/03/29/conservatives-facebook-liberal-bias-490920>. The algorithm change's purpose was to prioritize "news that is trustworthy, informative, and local." *Id.*

48. Upper & Hair, *supra* note 45.

49. Schwartz, *supra* note 47.

50. *Id.*

51. Matthew Sheffield, *Pioneers of Fake News: Can WorldNetDaily Be Saved?*, SALON (Feb. 12, 2018, 9:58 AM), <https://www.salon.com/2018/02/12/pioneers-of-fake-news-can-worldnetdaily-be-saved/>.

52. Jane Coaston, *The Facebook Free Speech Battle, Explained*, VOX (May 14, 2019, 12:38 PM), <https://www.vox.com/technology/2019/5/6/18528250/facebook-speech-conservatives-trump-platform-publisher>.

53. Nicole Martin, *How Social Media Has Changed How We Consume News*, FORBES (Nov. 30, 2018, 4:26 PM), <https://www.forbes.com/sites/nicolemartin1/2018/11/30/how-social-media-has-changed-how-we-consume-news/#1cd5e2233c3c>.

54. Nelson Granados, *How Facebook Biases Your News Feed*, FORBES (Jun. 30, 2016, 7:36 PM), <https://www.forbes.com/sites/nelsongranados/2016/06/30/how-facebook-biases-your-news-feed/#49c987161d51>.

55. Jan Wolfe, *Explainer: Should Big Tech Fear U.S. Antitrust Enforcers?*, REUTERS (June 5, 2019, 4:13 PM), <https://www.reuters.com/article/us-tech-antitrust-legal-explainer/explainer-should-big-tech-fear-u-s-antitrust-enforcers-idUSKCN1T62K3>.

56. *Id.*

social media companies have too much influence over what Americans read and watch every day, antitrust laws are a possible way for government and even citizens to take action.⁵⁷

III. ANTITRUST LAW

There are three major antitrust laws: the Sherman Antitrust Act, the Clayton Act, and the Federal Trade Commission Act. The Sherman Antitrust Act imposes criminal penalties while the Clayton and Federal Trade Commission Act are both civil statutes.⁵⁸ The Clayton Act concerns anticompetitive pricing and mergers, and while Twitter and Facebook have bought up some of their competitors, since the sites are free, this Act is less applicable.⁵⁹ The Federal Trade Commission Act gives the Federal Trade Commission the ability to take action to protect consumers and conduct investigations from unfair methods of competition that affect interstate commerce.⁶⁰ Again, since the federal government has yet to take action, this Act could be used, but has not been thus far. The Sherman Act is the only one that lawsuits have attempted to use to curtail social media companies' alleged misconduct.⁶¹ Efforts by private citizens have thus far been unsuccessful; however, the government has not made any attempt to use antitrust law or any other regulation to address the recent concerns.⁶²

a. *Sherman Antitrust Act*

The Sherman Antitrust Act was passed by Congress in 1890 as the first law to address concerns over monopolistic activities in the U.S.⁶³ The Sherman Act is based on Congress's ability to regulate interstate commerce and was originally used to target major oil and railroad companies, but was memorably used to break up Microsoft in the late 1990s.⁶⁴

Section One of the Act states that “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal.”⁶⁵ Section Two makes it illegal to “monopolize, or attempt to

57. *Id.*

58. *Antitrust Laws and You*, THE U.S. DEPT. OF JUSTICE, <https://www.justice.gov/atr/antitrust-laws-and-you> (last updated Jan. 5, 2017).

59. 15 U.S.C. § 12 (2012).

60. *Federal Trade Commission Act*, FEDERAL TRADE COMMISSION, <https://www.ftc.gov/enforcement/statutes/federal-trade-commission-act>.

61. Wolfe, *supra* note 55.

62. *Id.*

63. *Sherman Anti-Trust Act (1980)*, OUR DOCUMENTS, <https://www.ourdocuments.gov/doc.php?flash=false&doc=51>.

64. *Id.*

65. 15 U.S.C. § 1 (2019).

monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States.”⁶⁶ Originally, these provisions were used to bust companies like Standard Oil⁶⁷ and Northern Securities Co.,⁶⁸ but recently there have been suggestions as well as lawsuits that allege that these provisions apply to social media companies like Facebook and Twitter.⁶⁹

In August 2018, Freedom Watch, the free speech oriented political interest group, filed a class action lawsuit against Google, Facebook, Twitter and Apple.⁷⁰ The complaint alleged that the defendants “engaged in a conspiracy to intentionally and willfully suppress politically conservative content.”⁷¹ The complaint asserted, among other things, violations of both sections one and two of the Sherman Antitrust Act.⁷² The basis for the alleged section one violation is that the Defendants worked together to silence conservative voices, or at least worked in “conscious parallelism.”⁷³ The asserted section two violation resulted from what Freedom Watch considered to be the defendants’ intentional actions to destroy competition in the market for online media and news.⁷⁴

In March 2019, the United States District Court for the District of Columbia granted the defendants’ motion to dismiss.⁷⁵ The court found that Freedom Watch’s decrease in subscribers on YouTube and followers on the other platforms did not amount to evidence of a violation of section one.⁷⁶ The court found that Freedom Watch had no evidence of cooperation between the defendants, let alone a coordinated effort to suppress conservative voices and organizations.⁷⁷ The fact that Freedom Watch still has accounts on the sites was evidence enough that the defendants were not refusing to deal with the plaintiff.⁷⁸

Additionally, the court was not persuaded that the media and tech companies violated section two of the Sherman Act.⁷⁹ Stating that Facebook has almost three fourths of the market share in advertising revenue and that fifty-nine percent of Twitter users get their news from the site was not

66. 15 U.S.C. § 2 (2019).

67. 221 U.S. 1 (1911).

68. 193 U.S. 197 (1904).

69. Wolfe, *supra* note 55.

70. Complaint at 1, *Freedom Watch Inc. v. Google et al.*, 368 F. Supp. 3d 30 (D.D.C. 2019).

71. Complaint at 4, *Freedom Watch Inc.*, 368 F. Supp. 3d 30.

72. Complaint at 20, 22, *Freedom Watch Inc.*, 368 F. Supp. 3d 30.

73. Complaint at 21, *Freedom Watch Inc.*, 368 F. Supp. 3d 30.

74. Complaint at 22, *Freedom Watch Inc.*, 368 F. Supp. 3d 30.

75. *Freedom Watch, Inc.*, 368 F. Supp. 3d at 41.

76. *Id.* at 36, 38.

77. *Id.* at 37.

78. *Id.*

79. *Id.* at 39.

sufficient to state a claim, according to the court.⁸⁰ Popularity and success of social media sites did not amount to monopolization of the news market, especially because the nationwide media and news markets are larger than the internet.⁸¹

The D.C. District Court's dismissal of the complaint demonstrates the difficulties in bringing a Sherman Act claim against social media platforms. Even if more conservative users feel that their audiences are decreasing, it is difficult, if not impossible to demonstrate that the social media platforms are working in concert to censor conservative voices while promoting liberal ones.⁸²

The district court in *Freedom Watch* dismissed the Sherman Act allegations, in part, because Freedom Watch still had accounts on all the social media platforms.⁸³ This was enough evidence to demonstrate that the companies were not refusing to deal with conservative or right leaning organizations and voices.⁸⁴ The detriments that come from a monopoly-like environment include more than just being locked out of purchasing a product.⁸⁵ It also includes protection against "increased prices, decreased quality, lower output, and less innovation."⁸⁶

It may be the case that lower quality is what Freedom Watch is actually concerned about. It is not just that Facebook, Twitter, and YouTube make up most of the nation's internet usage, but that the Freedom Watch, and others, believe that the quality of the product they are receiving is of a lower quality than their counter parts on the other side of the political aisle, and the high barrier to entry makes creating a competing social network platform almost impossible.⁸⁷

YouTube political commentator Steven Crowder also took legal action against Facebook.⁸⁸ Crowder's action apparently resulted in a private settlement with the company.⁸⁹ Before the settlement, Crowder filed pre-trial discovery documents that asserted that Facebook refused to permit Crowder

80. *Freedom Watch, Inc.*, 368 F. Supp. 3d at 39.

81. *Id.*

82. *Id.* at 37.

83. *Id.*

84. *Id.* at 41.

85. *Monopoly*, ECONOMICS ONLINE, https://www.economicsonline.co.uk/Business_economics/Monopoly.html.

86. Dina Srinivasan, *The Antitrust Case Against Facebook: A Monopolist's Journey Towards Pervasive Surveillance In Spite of Consumers' Preference For Privacy*, 16 BERKELEY BUS. L.J. 39, 82 (2019).

87. *Freedom Watch Inc.*, 368 F. Supp. 3d at 37.

88. Petition for Pre-Suit Discovery at 1, *Steven Crowder v. Facebook, Inc.*, No. DC-16-05584 (May 10, 2019).

89. Luke Henderson, *Project Veritas Reveals Conservative Suppression on Facebook*, BEING LIBERTARIAN (Feb. 28, 2019), <https://beinglibertarian.com/project-veritas-facebook-suppression/>.

to advertise on Facebook.⁹⁰ The problem with Facebook's refusal to work with Crowder is that the company gave no reason for the change.⁹¹ The pre-trial discovery also concerned a payment issue where Facebook was demanding payment for past advertising that Crowder asserted he had already paid.⁹² On a macro scale, Facebook receives one of every five dollars spent on online advertising in the United States.⁹³

b. Possible Monopoly

As a company, Facebook can choose who it wants to do business with.⁹⁴ The problem is that Facebook is not only the major way that Americans get their news, but it is also where Americans see the majority of advertisements.⁹⁵ For several years, Facebook and Google have taken in the majority of the digital advertising revenue in America.⁹⁶ In 2017, Facebook and Google's ad revenue accounted for 63.1% of the U.S. market.⁹⁷

The most famous antitrust case concerning a big technology company is *U.S. v. Microsoft Corp.*⁹⁸ In *Microsoft*, the United States government sued the computer and software giant for violating sections one and two of the Sherman Act.⁹⁹ The D.C. Circuit Court found that Microsoft had violated section two of the Sherman Act and remanded back to the trial court for further findings.¹⁰⁰ The court noted that Microsoft made up over eighty percent of the market share for computer operating systems.¹⁰¹ However, the court was quick to note that market share alone is not sufficient to establish a monopoly in violation of the Sherman Act.¹⁰² Microsoft was found to have violated section two because, not only did it maintain most of the market share, but it also created a structure that prohibited competition.¹⁰³

90. Petition for Pre-Suit Discovery at 3, *Steven Crowder*, No. DC-16-05584.

91. *Id.*

92. *Id.*

93. *Google and Facebook Tighten Grip on US Digital Ad Market*, EMARKETER (SEPT. 21, 2017), <https://www.emarketer.com/Article/Google-Facebook-Tighten-Grip-on-US-Digital-Ad-Market/1016494>.

94. Steven Crowder, *Steven Crowder Officially Files Legal Motion Against Facebook Requesting Information*, LOUDER WITH CROWDER (MAY 10, 2016), <https://www.louderwithcrowder.com/its-official-targeted-conservative-steven-crowder-files-motion-against-facebook/>.

95. *Google and Facebook Tighten Grip on US Digital Ad Market*, *supra* note 93; Katerina E. Matsa & Elisa Shearer, *News Use Across Social Media Platforms 2018*, PEW RESEARCH CENTER (Sept. 10, 2018), <https://www.journalism.org/2018/09/10/news-use-across-social-media-platforms-2018/>.

96. *Freedom Watch Inc.*, 368 F. Supp. 3d at 39; *Google and Facebook Tighten Grip on US Digital Ad Market*, *supra* note 100.

97. *Google and Facebook Tighten Grip on US Digital Ad Market*, *supra* note 93.

98. *United States v. Microsoft Corp.*, 253 F.3d 34, 45 (D.C. Cir. 2001).

99. *Id.*

100. *See id.* at 64, 67, 72, 76, and 119.

101. *Id.* at 54.

102. *Id.* (citing *United States v. Grinnell*, 384 U.S. 653, 571 (1966)).

103. *Microsoft Corp.*, 253 F.3d at 55.

The court recognized that when it comes to technology, there is a lack of a competition problem, which, notably, the company does not necessarily create.¹⁰⁴ When a tech product is created, people want to use the most popular product that has the most applications.¹⁰⁵ The same can be said for Twitter and Facebook.¹⁰⁶ People want to use a site that their friends are using, and the site that has the most applications they want to use.¹⁰⁷ Facebook owns a popular messenger app as well as Instagram, and Twitter owns Periscope.¹⁰⁸

The circuit court upheld the district court's finding that Microsoft was a monopoly because its significant power over the market meant it had the ability to raise prices above a competitive level.¹⁰⁹ And while social media sites provide a free service to their users, unlike Microsoft, Facebook, Google, Twitter, and Amazon all have significant portions of the online advertising market.¹¹⁰ Ultimately, the free product most consumers use and the fact that there are multiple companies, not just one, means that *Microsoft v. U.S.* likely will not be useful to illustrate that the Sherman Act applies to social media companies.

IV. EUROPE'S APPROACH

As has been noted, there has not been much legal action within the U.S. to address these internet companies.¹¹¹ The same cannot be said for Europe.¹¹² Europe has been much stricter regarding antitrust law and major technology companies than the United States.¹¹³ In July 2018, the European Union fined Google \$5.06 billion for violating its antitrust laws.¹¹⁴ This was the second fine Google received from the E.U. for an antitrust violation,

104. *Id.*

105. *Id.*

106. John Gramlich, *10 Facts About Americans and Facebook*, PEW RESEARCH CENTER (May 16, 2019), <https://www.pewresearch.org/fact-tank/2019/05/16/facts-about-americans-and-facebook/>.

107. *Id.*

108. Nina Godlewski, *What Company Owns Instagram? Five Companies Owned by Facebook and How They Use Your Information*, NEWSWEEK (Mar. 26, 2018, 2:21 PM), <https://www.newsweek.com/facebook-own-instagram-does-companies-apps-data-860732>; David Gorton, *Top 7 Companies Owned by Twitter*, INVESTOPEDIA (Apr. 25, 2018), <https://www.investopedia.com/articles/insights/082216/top-8-companies-owned-twitter-twtr.asp>.

109. *Microsoft Corp.*, 253 F.3d at 57.

110. Taylor Soper, *Report: Amazon Takes More Digital Advertising Market Share from Google-Facebook Duopoly*, GEEKWIRE (Feb. 20, 2019, 9:13 AM), <https://www.geekwire.com/2019/report-shows-amazon-taking-digital-advertising-market-share-google-facebook-duopoly/>.

111. Joseph E. Stiglitz, *America Has a Monopoly Problem – and It's Huge*, THE NATION (Oct. 23, 2017), <https://www.thenation.com/article/america-has-a-monopoly-problem-and-its-huge/>.

112. Erin Dunne, *Is Google an Evil Monopoly? The EU Thinks So*, WASHINGTON EXAMINER (JULY 18, 2018, 10:01 AM), <https://www.washingtonexaminer.com/opinion/is-google-an-evil-monopoly-the-eu-thinks-so>.

113. *Id.*

114. *Id.*

having been fined \$2.8 billion a few years earlier.¹¹⁵ The first fine was a result of Google's use of its own search engine to promote its own services, and the second fine came from the company's requirement that Android devices have Google search and Chrome preinstalled in order to have access to its app store.¹¹⁶

So far Facebook has not been hit with similar fines; however, Germany warned the company in January 2019 that it needs to be careful.¹¹⁷ Facebook CEO Mark Zuckerberg has announced possible plans to merge the apps WhatsApp, Instagram, and Facebook Messenger into a single platform to promote easier communication and security for users.¹¹⁸ After the report went public, Germany's Justice Minister stated that such a merger could constitute a monopoly under European law and would result in legal action.¹¹⁹

European antitrust law is stricter than American law. Both seek to promote competition by preventing mergers that allow organizations to get too big, but the fact that the EU has taken such significant action in warning Facebook demonstrates that there are key differences.¹²⁰ One of the most obvious differences is that the Sherman Act permits prison time as a punishment, while EU law only imposes fines.¹²¹ The EU forbids minimum resale price agreements between manufacturers and retailers, cross-border sales restrictions, customer restrictions, and price discrimination to a higher extent than U.S. law.¹²²

The requirement that Android devices install Google's Chrome and search engine onto the phone to get access to its app store did not violate American antitrust law.¹²³ It does not exhibit monopolistic behavior in a way the Sherman Act prohibits, especially since there is competition in the cell phone market with Apple devices.¹²⁴

115. *Id.*

116. Brussels, *Antitrust: Commission Fines Google €4.34 Billion for Illegal Practices Regarding Android Mobile Devices to Strengthen Dominance of Google's Search Engine*, EUROPEAN COMMISSION, (July 18, 2018), https://europa.eu/rapid/press-release_IP-18-4581_en.htm.

117. Janosch Delcker, *Germany Warns Facebook Against 'Monopoly' Plans to Merge Message Services*, POLITICO (Jan. 31, 2019, 11:53 AM), <https://www.politico.eu/article/germany-warns-facebook-against-monopoly-plans-to-merge-message-services/>.

118. Chance Miller, *Zuckerberg Says Merging WhatsApp, Instagram & Messenger Chats Will Improve Security, Create an iMessage-like Experience*, 9TO5MAC (Jan. 30, 2019, 5:33PM), <https://9to5mac.com/2019/01/30/facebook-combine-messenger-instagram-whatsapp/>.

119. Delcker, *supra* note 117.

120. Sanford M. Pastroff & Tilman Kuhn, *Antitrust Law in the United States and European Union: Key Differences*, AMERICAN BAR ASSOCIATION, https://www.americanbar.org/groups/young_lawyers/publications/tyl/topics/antitrust/antitrust-law-the-united-states-and-european-union-key-differences/.

121. *Id.*

122. *Id.*

123. Dunne, *supra* note 112.

124. *Id.*

Absent from Europe's regulation of the tech giants is the concern for speech censorship and suppression.¹²⁵ The European Commission has actually has taken the opposite approach, applauding the platforms for recently decreasing the time it takes to find and remove hate speech from their sites.¹²⁶ The EU Directive aims at protecting minors from hate speech, violence, and harmful content on online audio-visual content providers.¹²⁷ As a result, content is flagged for violating this Directive or other European law regarding hate or violence speech, and platforms have already been taking down such content to comply with Europe's wishes.¹²⁸

For example, Germany's Criminal Code outlaws incitement (Voklsverhetzung).¹²⁹ Section 130 of the code makes it a crime to make documents available to minors that call for violence, incite hatred against a particular group, or assault human dignity.¹³⁰ The broad drafting of the German Criminal Code in Section 130 likely would catch some of the speech that the platforms have already censored by removing users, but it would also likely include speech that Facebook and Twitter have not addressed.¹³¹ This is not because the platforms are necessarily unable, but because the free speech culture in the United States is much stronger than the German Criminal Code currently permits.¹³²

The United States could follow down European countries' paths, but that option is both unlikely and unadvisable. While it would be a way to regulate the manner in which social media platforms act that is potentially more transparent – users would know exactly why their content was removed – the European approach goes against the American understanding of free speech.¹³³ Additionally, it could also lead to more censorship of political voices with legal justification if the platforms do in fact have an ideological bias.¹³⁴ Finally, public forum doctrine could also impact America's ability to

125. David Meyer, *Facebook, Twitter and Google Finally Got Some Good Feedback on Their Anti-Hate Speech Efforts*, FORTUNE (Feb. 4, 2019), <https://fortune.com/2019/02/04/facebook-twitter-google-eu-hate-speech/>.

126. *Id.*

127. Council of the EU Press Release, *Audiovisual Media Services: Agreement on a Directive to Protect Minors, Boost Competitiveness and Promote European Content*, EUROPEAN COUNCIL OF THE EUROPEAN UNION (June 13, 2018), <https://www.consilium.europa.eu/en/press/press-releases/2018/06/13/audiovisual-media-services-agreement-on-a-new-directive-to-boost-competitiveness-and-promote-european-content/>.

128. Meyer, *supra* note 125.

129. STRAFGESETZBUCH [StGB] [PENAL CODE], § 130, *translation at* https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgbhttp://www.gesetze-im-internet.de/stgb/_130.html.

130. *Id.*

131. Harvey A. Schwartz, *What if the US, Like Germany, Bans Hate Speech in the Future?*, WHO.WHAT.WHY., (Jan. 17, 2019), <https://whowhatwhy.org/2019/01/17/what-if-the-us-like-germany-bans-hate-speech-in-the-future/>.

132. *Id.*

133. Meyer, *supra* note 125; Schwartz, *supra* note 131.

134. Romm, *supra* note 3.

regulate social media platforms in this way, although whether public forum doctrine applies to social media sites is outside the scope of this comment.¹³⁵

V. WHY THIS IS A BAD IDEA

Facebook and Twitter have a lot of influence over the average American, even if they do not notice it. According to the Pew Research Center, over two-thirds of adults in the U.S. use Facebook.¹³⁶ Only twenty-two percent of U.S. adults use Twitter.¹³⁷ As a result, Pew's research suggests that most adults get their news from the social media.¹³⁸ The question is whether that is enough to warrant regulation or a breakup of the social media sites. If the accusations from conservative and right of center social media users are true, that their content is being removed and suppressed based on ideological differences, then there is an understandable reason to want to regulate these companies.¹³⁹ People are missing part of the news and part of the content they may wish to see.¹⁴⁰

On the other hand, it is also understandable that Facebook and Twitter do not want their platforms to be used to spread misinformation that is fuel for violence and extremism. Moreover, social media companies do not want to give up exactly how their algorithms work out of fear of losing their competitive advantage.¹⁴¹ Ultimately, some balance is needed between transparency to social media users and privacy and discretion for the social media platforms.

One possible reason for not regulating companies like Facebook and Twitter is that the product they provide for most consumers is free. However, a free product does not mean that antitrust law does not apply.¹⁴² Absent from the Sherman Act is a price requirement.¹⁴³ The quality of the product matters too.¹⁴⁴ The case can be made that by suppressing and silencing certain

135. David McGee, *What Constitutes a Public Forum on Social Media?*, AMERICAN BAR ASSOCIATION, (last visited Sept. 5, 2019) https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-ongoing-challenge-to-define-free-speech/public-forum-social-media/.

136. *Id.*

137. Adam Hughes & Stefan Wojcik, *Key Takeaways from our New Study of How Americans Use Twitter*, PEW RESEARCH CENTER (Apr. 24, 2019), <https://www.pewresearch.org/fact-tank/2019/04/24/key-takeaways-from-our-new-study-of-how-americans-use-twitter/>.

138. Matsa & Shearer, *supra* note 95.

139. Romm, *supra* note 3.

140. *Id.*

141. Chris Hughes, *It's Time to Break Up Facebook*, THE NEW YORK TIMES (May 9, 2019), <https://www.nytimes.com/2019/05/09/opinion/sunday/chris-hughes-facebook-zuckerberg.html>.

142. *Id.*

143. 15 U.S.C. § 2.

144. Srinivasan, *supra* note 86, at 44.

speech, the social media companies are decreasing the quality of the product they provide.¹⁴⁵

It is next necessary to determine if the social media companies constitute a monopoly. Most adults use the platforms on a daily basis and a majority of teenagers use social media – almost half of them “almost constantly.”¹⁴⁶ With so many Americans using social media and with it playing such a significant role in their lives, it is important that competition be given the opportunity to make the products as good as possible.¹⁴⁷ Section 2 of the Sherman Act is concerned with this consequence.¹⁴⁸

But, as the court noted in *Microsoft*, a monopoly is not formed just because the majority of consumers use a particular brand of product.¹⁴⁹ That means that Facebook and Twitter likely cannot be regulated under antitrust law just based on the fact that most people use these sites for their news consumption.¹⁵⁰ Other options for social media exist, as do other mediums for accessing news, even online. Facebook did not begin as the first social media site. It replaced MySpace by 2010, six years after it was created.¹⁵¹ Twitter is mostly used by younger people,¹⁵² and while it has a different format than Facebook (tweets can only be made up of 280 characters), advertisements are prominent on both and news stories, and personal posts can be published to each platform.

Even for those that have found themselves kicked off of the major social media sites, other options exist. Gab was created in 2016 as the ultimate free speech alternative to Facebook and Twitter.¹⁵³ As result of its open policy, it has attracted those that have been banned from the mainstream platforms.¹⁵⁴ The purpose of the site, according to its creator, was to offer an alternative to sites that are biased against conservatives.¹⁵⁵ Despite the founders’ best intentions, the site has become a place of not just free speech, but free speech directed towards anti-Semitic, racist, and sexist ideas.¹⁵⁶ That reputation, as well as the fact that sites like Facebook are already so popular, makes

145. David L. Hudson, Jr., *Free Speech or Censorship? Social Media Litigation is Hot Legal Battleground*, AMERICAN BAR ASSOCIATION JOURNAL (Apr. 1, 2019, 12:05 AM), www.abajournal.com/magazine/article/social-clashes-digital-free-speech.

146. Monica Anderson & Jingjing Jiang, *Teens, Social Media & Technology 2018*, PEW RESEARCH CENTER (May 31, 2018), <https://www.pewinternet.org/2018/05/31/teens-social-media-technology-2018/>.

147. *Id.*; Hudson, *supra* note 145.

148. Srinivasan, *supra* note 86, at 45; 15 U.S.C. § 2.

149. *Microsoft Corp.*, 253 F.3d at 54.

150. *See id.*

151. *Id.*

152. Hughes & Wojcik, *supra* note 137.

153. Taylor Lorenz, *The Pittsburgh Suspect Lived in the Web’s Darkest Corners*, THE ATLANTIC (Oct. 27, 2018), <https://www.theatlantic.com/technology/archive/2018/10/what-gab/574186/>.

154. *Id.*

155. *Id.*

156. *Id.*

competitors less likely to be to gain the enough popularity to rival the current major players.¹⁵⁷ It makes sense, then, why Facebook's CEO, Mark Zuckerberg, was unable to easily answer its major competitors when asked before the Senate Judiciary and Commerce committees.¹⁵⁸ Since 2011, no major social media company has been created that was not bought up by one of the larger platforms.¹⁵⁹

If there is in fact a monopoly problem and a difficulty for new social media companies to rise to compete, how, then, can antitrust law be used to break up the influence these tech giants have? One reason the sites are so useful to people is due to the fact that they are so popular.¹⁶⁰ People want to be on the same site their friends, favorite celebrities, and news sources are.¹⁶¹ How, then, should the companies be broken up to address the influence and monopoly concerns without sacrificing the purpose of the social media sites?

One way is to follow the suggestion of Facebook's co-founder, Chris Hughes. Hughes helped start Facebook from the college dorm he shared with Zuckerberg in the early 2000s.¹⁶² One possibility is to force Facebook to give up its smaller social media companies Instagram and WhatsApp.¹⁶³ Instagram has 1 billion monthly active users around the world, and WhatsApp, a Wi-Fi messaging service, has 1.6 billion monthly users.¹⁶⁴ Hughes argues in his New York Times article that when Facebook acquired these companies in 2012 and 2014, respectively, it seemed innocent, but now that Facebook controls so much of what people interact with on a daily basis, it must be stopped.¹⁶⁵ No other platform comes close to the combined influence Facebook has, based on the number of users who access Facebook owned platforms each month.¹⁶⁶

Forcing Instagram to be sold could be somewhat effective.¹⁶⁷ However, Instagram is not a major source of news compared to Facebook and Twitter – it's format allows users to see photos posted by the accounts they follow and post their own pictures, as well as access short videos of the accounts for twenty-four hours. Forcing the sale of Instagram would break up the online

157. Sarah Jeong, *Zuckerberg Struggles to Name a Single Facebook Competitor*, THE VERGE (Apr. 10, 2018, 4:32 PM), <https://www.theverge.com/2018/4/10/17220934/facebook-monopoly-competitor-mark-zuckerberg-senate-hearing-lindsey-graham>.

158. *Id.*

159. Hughes, *supra* note 141.

160. Gramlich, *supra* note 106.

161. Adam Mosseri, *Bringing People Closer Together*, FACEBOOK: NEWSROOM (Jan. 11, 2018), <https://newsroom.fb.com/news/2018/01/news-feed-fyi-bringing-people-closer-together/>.

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. Hughes, *supra* note 141.

167. *Id.*

advertising market, but not in a way that would impact the voices that assert they are being stifled.¹⁶⁸

Another possible solution that can be inferred from Hughes' recent article is to impose an independent commission to address content moderation.¹⁶⁹ This could address the potential suppression based on political association and it would also address Facebook's daily influence over the lives of its users.¹⁷⁰ The problem is that there is no basis for this regulation in antitrust or any other law. Congress would have to create new legislation calling for this type of regulation.¹⁷¹ An independent counsel, which Zuckerberg has expressed interest towards in the past, could just shift the power from Facebook to another body.¹⁷² If that counsel has the same beliefs as the current Facebook moderators, there would likely be no change regarding favoritism of liberal advertisements and posts and suppression of conservative ones.¹⁷³ Unless the independent commission created a new level of transparency along with it, it is not necessarily a viable solution.¹⁷⁴

It does not seem like Hughes' call to break up Facebook will be successful to combat the speech mentioned at the beginning of this comment. It could break up some advertising, and it is possible that the new owners and moderators would be more amenable to conservative advertisers, but Facebook will still continue to dominate the market.¹⁷⁵

The other question is whether the government should even be involved in the issue at all. Gab and similar sites have not been successful, not because their product is necessarily lacking in quality, but because people have not become fed up with the platforms they are using.¹⁷⁶

Should the government then try and artificially break up the major companies like Facebook, especially when such a break up may not address the current major speech concerns users have? ¹⁷⁷ A break up is also predicated on a company being found to be a monopoly.¹⁷⁸ Facebook has significant influence, but it has not destroyed newspapers, and even as

168. See Hughes, *supra* note 141.

169. *Id.*

170. *Id.*

171. Srinivasan, *supra* note 86, at 43-44.

172. Spencer Kimball, *Zuckerberg Backs Stronger Internet Privacy and Election Laws: 'We Need a More Active Role for Governments'*, CNBC (Mar. 30, 2019, 5:07 PM), <https://www.cnbc.com/2019/03/30/mark-zuckerberg-calls-for-tighter-internet-regulations-we-need-a-more-active-role-for-governments.html>.

173. *Id.*

174. *Id.*

175. Hughes, *supra* note 141.

176. *Id.*

177. Evelyn Douek, *Breaking Up Facebook Won't Fix Its Speech Problems*, THE SLATE (May 10, 2019), <https://slate.com/technology/2019/05/chris-hughes-facebook-antitrust-speech.html>.

178. Srinivasan, *supra* note 86, at 44.

physical readership declines, the major newspapers' websites are still currently thriving with online subscriptions.¹⁷⁹ Advertising may be difficult for pro-life groups on Twitter and Facebook, but they can potentially advertise on Amazon, Google, more niche websites that better align with their interests, or even outside the internet on billboards, magazines, or television.¹⁸⁰

The government took it upon itself to break up Standard Oil, AT&T, Microsoft, and the major railroad companies, but those industries are or were essential at their time.¹⁸¹ Even Microsoft, as a tech company, provided the product—the computer—that has become necessary in today's world. Social media is pervasive and helps people stay informed and connected to the world around them, but it is not a requirement. Many users have left social media, or just the major companies, in favor of a more private life.¹⁸² Also, users who state their content has been suppressed due to political differences have moved to paid subscription services to support their content – think Steven Crowder's mug club or various YouTubers' Patreon accounts.¹⁸³

VI. CONCLUSION

Injecting government regulation would have an effect, but it may not address the actual concerns of too much influence.¹⁸⁴ When Zuckerberg was questioned at the Senate committee hearing he stated, “[I]awmakers often tell me we have too much power over speech, and frankly I agree.”¹⁸⁵ Zuckerberg recognized the problem, or at least recognized that enough people believe there is a problem for him to want to take action.¹⁸⁶ If that is the case, then using an antitrust law to break up these companies may not be necessary. If Zuckerberg's independent commission is created, it may also be insufficient

179. *The Future of Journalism: S. Hrg. 111-428 Before the Subcomm. on Communications, Technology, and the Internet of the S. Comm. on Commerce, Science, and Transportation* (2009) (statement of Frank A. Blethen, Publisher, The Seattle Times Reclaiming America's Independent Press).

180. See generally Brian Robertson, *Facebook Censorship Fast Becoming an Enemy of Free Expression for Conservatives*, WASHINGTON EXAMINER (Mar. 6, 2019, 10:18 AM), <https://www.washingtonexaminer.com/opinion/op-eds/facebook-censorship-fast-becoming-an-enemy-of-free-expression-for-conservatives>.

181. Margaret Harding McGill & Steven Overly, *Why Breaking Up Facebook Won't Be Easy*, POLITICO (May 27, 2019), <https://www.politico.com/story/2019/05/27/breaking-up-facebook-antitrust-1446087>.

182. Vicky Spratt, *Here's What Your Life Would Be Like Without Social Media*, GRAZIA (Nov. 19, 2015), <https://graziadaily.co.uk/life/opinion/heres-life-like-without-social-media/>.

183. *Mug Promo Club*, LOUDER WITH CROWDER (last visited Sept. 12, 2019), <https://www.louderwithcrowder.com/mug-club-promo/>; Will Fischer, *'Ad Models Break Everyone's Brains': How Patreon and Substack are Trying to Make the Internet a Better Place with Membership and Subscriptions*, BUSINESS INSIDER (August 11, 2019, 11:57 AM), <https://www.businessinsider.com/subscription-platforms-patreon-substack-quality-alternative-to-social-media-2019-8>.

184. Hughes, *supra* note 141.

185. Kimball, *supra* note 172.

186. *Id.*

to fix the problem, but selling Instagram and WhatsApp is not more likely to be successful.

This purpose of this comment is not to determine whether there is a problem with the suppression of conservative leaning speech, the purpose is to demonstrate how much influence users feel these companies exert over their lives and organizations. The Sherman Antitrust Act is a way that the U.S. government could potentially address this issue; however, social media is neither a necessary product like oil, nor is there a clear case that companies like Facebook are in fact monopolies.¹⁸⁷

The United States could choose to adopt broader antitrust laws as Europe has to address these concerns, but those more significant regulations go above and beyond what the U.S. has been prepared to recognize as a monopoly in the past, and still would be unlikely to address the speech suppression concerns.¹⁸⁸ Regulating speech like Germany does would likely go beyond what the Constitution permits and would require additional government regulation outside of antitrust law.

Politicians and those whose business depends on social media will likely continue to call for some change as long as the policies behind how the companies function remain a mystery. That call for regulation under U.S. antitrust law should be reconsidered because not only is it likely to be ineffective to address current concerns, but also because it seems that social media companies may be willing to make changes as they feel the public pressure.

187. Harding & Overly, *supra* note 181.

188. Pastroff & Kuhn, *supra* note 120.