

Comments of Facebook, Inc.

In Response to the “Notice of Inquiry”

by the

U.S. Department of Commerce,

National Telecommunications and Information Administration:

Information Privacy and Innovation in the Internet Economy

Submitted June 14, 2010

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Facebook, Inc. submits these comments in response to the Department of Commerce’s notice of inquiry regarding “the nexus between privacy policy and innovation in the Internet economy.”¹ Facebook commends the Department for establishing its new Internet Policy Task Force and for making it a “top priority to ensure that the Internet remains open for innovation.”² The Department properly recognizes that “the Internet is crucial to U.S. innovation, prosperity, education and political and cultural life.”³ And as the Department notes, in the coming years U.S. policymakers will face a host of questions about whether and to what extent legal constraints should be placed on the Internet’s openness as a means of expression and information exchange.

Facebook is the largest social-networking service in the world. It allows users to connect and share information over the Internet—thoughts, photographs, news articles, videos—with their relatives, friends, colleagues, and others, all free of charge. In the span of only six years, Facebook has grown to serve over 450 million active users—one-fourteenth of the world’s population.

¹ 75 Fed. Reg. 21,226 (Apr. 23, 2010).

² *Id.*

³ *Id.*

Facebook was created and launched from a Harvard dorm room by CEO Mark Zuckerberg in 2004. Its network initially reached only four universities, but by the end of 2004, as Facebook expanded to other colleges, nearly one million active users had signed up. In 2005, Facebook expanded its networks to reach high schools and foreign institutions, and in 2006 Facebook was opened up to anyone with an e-mail address.

At the same time as Facebook has expanded its user community, it has developed innovative information-sharing functionalities responding to the immense public demand for greater openness and connectivity—a photo-sharing feature that, with some 48 billion pictures online, constitutes the largest photo archive in the world; a “Wall” feature through which users can post messages on their friends’ individual pages; and the immensely popular “News Feed,” which informs a user’s network of friends about changes in the user’s status and displays user-created content. Facebook has also established Facebook Platform, which enables third-party developers to create innovative “social” applications that enhance the Facebook experience and allow users to experience and benefit from the Facebook community on numerous devices and locations around the Internet.

The development of Facebook’s service has mirrored the rapid evolution of the Internet and Internet norms. Users join Facebook precisely because they *want* to share their information with others, as a way of expressing themselves, communicating ideas, forming communities and maintaining relationships across the country and the globe. At the same time, a core aspect of Facebook is the set of extensive controls that Facebook gives users to customize who sees their information and how it is used. One of Facebook’s driving principles is to continue to press forward in enhancing the openness and connectivity of the Internet, and of social-networking sites in particular, while improving the tools that allow users to control how their information is shared.

Facebook submits these comments to give the Department its perspective on how all stakeholders—users, industry, government—can work together to develop policies that will encourage innovation to the maximum extent possible and that will reflect the public’s growing preference for increasingly open and personalized paths of communication. In Facebook’s view, a self-regulatory approach that allows for individual user choice offers the best path

forward—the clearest way to balance user demand for openness and sharing with legitimate concerns about personal information. Government agencies like the Department of Commerce can play a valuable role in encouraging the development of better mechanisms for user control over information and championing efforts that prove successful.

I.

The Internet and Innovation

A. The Internet Today

It goes without saying that the Internet has brought profound changes to American life. Its rapid growth and expansion have yielded incalculable benefits to the American and global economies. At a social level, the Internet has enabled new forms of communication and expression, from e-mail to blogs to wikis. At the same time, the Internet has invited new threats, such as Internet fraud, phishing, spam, computer viruses, and cyber terrorism. The challenge for policymakers is determining how to combat such threats without stifling the innovation that makes the Internet such a powerful medium.

Since the late 1960s when the Internet was developed as a research project for the Department of Defense (called “ARPANET”),⁴ the few links that originally connected a handful of universities and laboratories now connect nearly 2 billion people around the world.⁵ Today 74 percent of Americans use the Internet.⁶ That number will approach 100 percent soon, given that 93 percent of Americans between the ages of 18 and 29 use the Internet,⁷ and the first generation of children who grew up with the Internet is rapidly reaching maturity. Seventy-one

⁴ See generally *The Internet*, in THE NEW YORK TIMES GUIDE TO ESSENTIAL KNOWLEDGE 454-59 (2007).

⁵ *Internet Usage Statistics, The Internet Big Picture*, World Internet Users and Population Stats, <http://www.internetworldstats.com/stats.htm>.

⁶ PEW INTERNET & AMERICAN LIFE PROJECT, DEMOGRAPHICS OF INTERNET USERS (2010) <http://www.pewinternet.org/Static-Pages/Trend-Data/Whos-Online.aspx>.

⁷ *Id.*

percent of Americans use the Internet every day.⁸ This rapid growth had led to rapid innovation, with users demanding new services and facilitating those services through their participation.

The Internet has provided numerous functionalities that have fundamentally changed the way people interact with the world. The two dominant innovations of the 1990s were the World Wide Web and e-mail. But the past decade has seen an explosion in innovative functionalities that could not have been imagined during the Internet's infancy. Many of these technologies—commonly termed “Web 2.0”—promise to transform American life in much the same way that web-browsing and e-mail did in the late 1990s.⁹ What distinguishes them from the first wave of functionalities is their level of interactivity and user-driven characteristics. Whereas traditional web-browsing restricts the user experience largely to viewing content, with the limited ability to engage in structured and bilateral transactions such as sending e-mail or making online purchases, Web 2.0 applications enlist users as both the viewers *and* creators of online content, frequently in a framework that is social and involves open forums or communities defined by the users.

The offerings of Web 2.0 span a wide range of functionalities and offer varying degrees of user controls. Blogs (originally short for “web logs”) allow individuals to publish their thoughts and to spark debate on anything from politics to sports to their personal lives. Wikis (such as Wikipedia) function by allowing any user to post information and then allowing other users to modify and adjust the content, thereby leveraging the knowledge of the entire user community to keep entries thorough and up to date. Various consumer review sites, such as Yelp and Citysearch, allow patrons to provide ratings and reviews of restaurants, bars, and other local services. The website Pandora uses advanced algorithms to tailor music playlists to a user's tastes—ensuring that listeners receive a stream of music they like, while also allowing lesser-known musicians to gain exposure to listeners who are likely to appreciate their sound. And YouTube, an instant hit when it went live in 2005, allows even the least sophisticated

⁸ PEW INTERNET & AMERICAN LIFE PROJECT, TREND DATA (DAILY) (2010) <http://www.pewinternet.org/Trend-Data/Online-Activities-Daily.aspx>.

⁹ See Katie Hafner, *The Young Turks of Cyberspace*, N.Y. TIMES, July 27, 2008, at BR; Ben Zimmer, *Social*, N.Y. TIMES MAG., Apr. 4, 2010.

Internet users to upload video to the Web of anything from political demonstrations to home movies.

Web 2.0 also includes a host of social media focused on expression and personal connections. Social-networking services like Facebook, LinkedIn, MySpace, and Google Buzz enable users to connect with friends and others and to post content such as messages, business developments, and photographs on personalized pages. For a quarter of American Internet users, signing on to one of these social-networking sites is a daily activity.¹⁰ A related service is provided by Twitter, which permits users to write short messages called “tweets” (140 words or fewer) that can be read by anyone who elects to follow those users. User demand for social media has also driven more specialized social-networking services. Blippy functions like Twitter, but focuses on what people are purchasing, allowing individuals to quickly share information about good buys and interesting products. Buzzd spreads real-time reviews of bars, restaurants, and clubs, allowing users to know what spot is “buzzing” on a given night. Gowalla, Foursquare, and other services have taken the power of the social network and linked it back to specific geographic locations in the brick-and-mortar world by allowing users to explore cities with their friends even when they are not in the same location. Classmates.com taps into existing alumni networks and allows users to reconnect with their peers from primary school, high school, and college.

Even in the realm of dating services, social networking has given users choices and experiences previously unavailable. Match.com, the most popular dating service, allows users to explore social and geographical networks to find potential partners. An innovative new service, Meezoog, has further leveraged the social network to pair people based on “trusted paths” and “social proximity.”

Collectively, these and other innovative Web 2.0 applications have profoundly affected Americans’ social interactions, sense of community, acquisition of information, and expression of viewpoints. In 2010 there exists a plethora of entirely new ways of connecting and

¹⁰ PEW INTERNET & AMERICAN LIFE PROJECT, TREND DATA (DAILY) (2010)
<http://www.pewinternet.org/Trend-Data/Online-Activities-Daily.aspx>.

communicating, and these innovations promise to reshape the way Americans relate to each other and the world. But critically, each of these new forums for communication requires some level of user input and some sharing of user information, whether it is simply sharing knowledge on Wikipedia or actually posting personal information on a social-networking site. As the social experience of the Internet has become more interactive, it has also encouraged users to share their opinions and aspects of their lives with more people, providers, and the public at large. It is no surprise, then, that a recent groundbreaking study, the Pew Internet & American Life Project, a project of the Pew Research Center, found that users have become more comfortable with the amount of information about them available online.¹¹

The impact of the Internet on the economy can be felt in more concrete, quantifiable ways as well. In 2009, online retail spending in the United States was nearly \$130 billion, only slightly lower than in 2008 despite the enormous impact of the recession on the U.S. economy.¹² One estimate suggests that the commercial Internet adds \$1.5 *trillion* in value to businesses and consumers worldwide.¹³ And in a time of economic hardship, Web 2.0—and social networking services in particular—are providing a much needed engine of jobs, growth, investment, and innovation.

A critical component of that continued growth is online advertising. Like Web 2.0 applications generally, online advertising has grown to reflect user input, in contrast to the more static, one-size-fits-all advertising of traditional print and television media. In particular, online advertisers have employed “tailored” or “behavioral” advertising, which is directed at consumers based on their preferences, as demonstrated through their web-browsing activity or information they provide online. The Chairman of the Federal Trade Commission (“FTC”), Jon Leibowitz, recently praised these forms of advertising:

¹¹ MARY MADDEN & AARON SMITH, PEW INTERNET & AMERICAN LIFE PROJECT, PEW RESEARCH CENTER, REPUTATION MANAGEMENT AND SOCIAL MEDIA 21 (May 26, 2010).

¹² Jeff Clabaugh, *Online spending in 2009 falls*, MILWAUKEE BUS. J., Feb. 9, 2010.

¹³ ROBERT D. ATKINSON ET AL., THE INFO. TECH. & INNOVATION FOUND., THE INTERNET ECONOMY 25 YEARS AFTER .COM 1, 4 (2010).

They are usually good for consumers, who don't have to waste their time slogging through pitches for products they would never buy; good for advertisers, who efficiently reach their customers; and good for the Internet, where online advertising helps support the free content everyone enjoys and expects.¹⁴

The efficiencies and benefits of behavioral advertising described by Chairman Leibowitz are particularly pronounced in the context of Web 2.0. As users express who they are and what they like through social media, service providers can better target advertisements to consumer preferences. And, in turn, more efficient advertising models will continue to provide the economic backbone and incentives for the “free” online services and applications that users have embraced and integrated into the fabric of their professional and personal lives.

B. The Role of Government Regulation

To the great benefit of the public, the federal government has largely allowed the Internet to develop free of government regulation, while remaining vigilant to protect against serious threats to the physical and financial security of Internet users. That reserved posture is not the product of inattention but rather a conscious, bipartisan choice of policymakers and legislators.

In Section 230 of the Communications Decency Act, enacted by overwhelming majorities in the House and Senate in 1996,¹⁵ Congress recognized that “[t]he Internet and other interactive computer services have flourished, to the benefit of all Americans, *with a minimum of government regulation.*”¹⁶ Congress declared that it was “the policy of the United States . . . to preserve the vibrant and competitive free market that presently exists for the Internet and interactive computer services, unfettered by Federal or State regulation.”¹⁷ In an age of dial-up

¹⁴ Jon Leibowitz, Chairman, Fed. Trade Comm’n, *Where’s the Remote? Maintaining Consumer Control in the Age of Behavioral Advertising*, Address at the National Cable & Telecommunications Association’s The Cable Show 2010 (May 12, 2010).

¹⁵ The Communications Decency Act passed with the support of 81 U.S. Senators, both Republicans and Democrats. In the House, the Act passed unanimously. See *S.652 Telecommunications Act of 1996*, GOVTRACK.US, <http://www.govtrack.us/congress/bill.xpd?bill=s104-652> (the Communications Decency Act is also known as the Telecommunications Act).

¹⁶ 47 U.S.C. § 230(a)(4) (emphasis added).

¹⁷ *Id.* § 230(b)(2).

modems, Congress's prescience was remarkable. Few could have predicted in 1996 the tremendous role the Internet would come to play in commercial and social interactions.

Since the Communications Decency Act, Congress has continued to come together to ensure that the Internet will thrive in a robust zone of innovation and free thinking, unencumbered by stifling regulatory mandates or regulators operating with overly broad or ill-defined powers. The Internet Tax Freedom Act of 1998, also passed with broad bipartisan support,¹⁸ imposed a moratorium on state taxes on Internet access.¹⁹ That same year, Congress approved a "Declaration That the Internet Should Be Free of Foreign Tariffs, Trade Barriers, and Other Restrictions," with nearly unanimous support from both sides of the aisle.²⁰ In that declaration Congress made clear that electronic commerce must be free from "burdensome and discriminatory regulation."²¹ Congress' ability to enact bipartisan legislation designed to facilitate innovation and growth on the Internet, even in a polarized political climate, highlights the national importance of such legislation.

Like Congress, the federal courts have recognized the need to proceed cautiously when it comes to regulating the Internet. For example, in *Zeran v. AOL*, a plaintiff attempted to impose liability on American Online for the defamatory messages posted by an anonymous third party on an online bulletin board. The Fourth Circuit Court of Appeals refused to extend tort liability to AOL based primarily on the congressional policy of non-regulation.²² The court relied on § 230 of the Communications Decency Act, recognizing a congressional objective to "maintain the robust nature of Internet communication and, accordingly, to keep government interference

¹⁸ The Internet Tax Freedom Act of 1998 was approved by a vote of 96-2-2 in the Senate and passed by a voice vote in the House. *See U.S. Internet Tax Legislation*, OPENCONGRESS.COM, http://www.opencongress.org/wiki/U.S._internet_tax_legislation#Internet_Tax_Freedom_Act_of_1998.

¹⁹ *See* 47 U.S.C. § 151 (the moratorium has been extended by amendment until 2014).

²⁰ Omnibus Consolidated and Emergency Supplemental Appropriations Act, Pub. L. No. 105-277, 112 Stat. 2681 (codified at 19 U.S.C. § 2241); *see also H.R. 4328 Omnibus Consolidated and Emergency Supplemental Appropriations Act 1999*, GOVTRACK.US, <http://www.govtrack.us/congress/bill.xpd?bill=h105-4328> (detailing the Act's passage with unanimous Senate consent and a vote of 391-25-18 in the House).

²¹ 112 Stat. at 727.

²² 129 F.3d 327 (4th Cir. 1997).

in the medium to a minimum.”²³ The court also cited Congress’s findings that the Internet offers “a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.”²⁴

The hands-off approach to Internet regulation adopted by both Congress and the courts is critical for at least two reasons. First, in an area of such rapid technological change, regulations are likely to provoke unforeseen and undesirable consequences. Attempts to impose rigid legal requirements on websites or other Internet-based platforms will make it far more difficult for a college sophomore experimenting somewhere to devise the “next big thing.” Would-be start-ups, faced with onerous and complex legal requirements or fearful that their activities could provoke the ire of a regulator armed with a broad and ambiguous legal standard, will find it more challenging to attract venture capital and talent—particularly foreign innovators, who may find their services put to better use in a jurisdiction without such legal uncertainty. The very fluidity of the Internet, which is fast-moving and not amenable to rigid line-drawing, will make it incredibly hard to calibrate legal standards that remain meaningful without stunting the Internet’s capacity for technological innovation. Given that reality, the presumption should be that regulation will be limited.

The Chairman of the Federal Communications Commission (“FCC”), Julius Genachowski, recently recognized how the openness of the Internet fosters the creation of pathbreaking Internet-based applications like Facebook:

Mark Zuckerberg was a college student in 2004 when he started Facebook, which just announced that it added its 300 millionth member This is the power of the Internet: *distributed innovation and ubiquitous entrepreneurship, the potential for jobs and opportunity everywhere* there is broadband. . . . [I]n the 21st century, the garage, the basement, and the dorm room remain places where innovators can not only dream but bring their dreams to life.²⁵

²³ *Id.* at 330.

²⁴ *Id.*

²⁵ Julius Genachowski, Chairman, Fed. Comms. Comm’n, Prepared Remarks at the Brookings Institute (Sept. 21, 2009), available at <http://www.openInternet.gov/read-speech.html> (emphasis added).

Were that openness to be constricted by ill-advised, ambiguous legal constraints, we might never know what future American innovators would have created in their garages or dorm rooms.

In the words of the current head of the FTC’s Bureau of Consumer Protection, David Vladeck, it would be “foolhardy” to “set strict or binding regulations or inflexible norms” with respect to Internet privacy issues.²⁶ Because the “technologies . . . are evolving so quickly,” he explained, the government should not “try to set rules in place knowing that two or three years later they would be rendered obsolete.”

Second, it is important that policy-makers avoid legal regimes that limit consumer choice by restricting the ability of a provider of content or functionality to change its design or options over time. Many of today’s most popular and functional Internet-based applications—from Gmail to iTunes to Facebook—started out with a far different suite of options than they currently offer, and then evolved to their current formats. Their ability to satisfy customer demand depended critically on their ability to make what were often substantial changes to their user interface and services. For Internet companies—just as for a movie producer, a musician, or a manufacturer—enhancing users’ lives can involve developing and offering experiences that users themselves have not yet thought of. The original offering that falls flat is an unavoidable byproduct of innovation and cultural and economic progress (for example, Apple’s early-1990s Newton device achieved nowhere near the success of its later iPod or iPad). For these reasons, legal constraints that “freeze” Internet applications by hampering their ability to alter initial offerings—on the ground of preserving amorphous “user expectations”—would be nothing short of disastrous for Internet innovation and consumer choice. They would also unreasonably favor new entrants over companies with an established record of success and would incentivize those new entrants to provide consumers with as few options as possible for fear of having those options frozen in place by regulators.

²⁶ See Interview by John Villafranco (for the TheAntitrustSource.com) with David Vladeck, Director, Fed. Trade Comm’n Bureau of Consumer Prot. (Mar. 19, 2010), *available at* <http://www.abanet.org/antitrust/at-source/at-source.html>.

For these and other reasons, Internet features that enhance users' control of the information they share, discussed at greater length below, are far preferable to attempts by U.S. or foreign regulators to impose rigid constraints on information-sharing on the Internet.

None of this is to say that there is no role in the Internet for regulation. Far from it. The government must be constantly watchful for serious threats to the physical well-being of Americans and for criminals and miscreants who leverage the Internet's openness and capacity for anonymity to engage in financial scams, identity theft, and other fraudulent activity that causes tangible harm to members of the public. That is why Congress has enacted targeted statutes that address those problems without cabining the creative freedom that is the lifeblood of the Internet. In laws like the Computer Fraud and Abuse Act,²⁷ the Child Online Privacy Protection Act,²⁸ and the CAN-Spam Act,²⁹ Congress has addressed specific problems—such as the collection of personal information from those too young to consent and the incessant annoyance of spam—through regulatory schemes that go no further than necessary to remedy the problems they address. Facebook has invoked these laws vigorously to defend its users against malicious online attacks and to help make the Internet safer for all by taking spammers out of commission: the Company, for instance, has obtained the two largest-ever civil judgments under the CAN-Spam Act.³⁰ Such laws, which eschew open-ended grants of regulatory authority or vastly over-inclusive prohibitions, should serve as the model for any future legislative initiatives. Moreover, as with those pieces of legislation, Congress should build an evidentiary record of real harm before intervening.

In addition, government agencies and private standard-setting bodies can be of assistance by formulating general principles of Internet conduct. For example, the FTC has established principles of self-regulation for both Internet privacy generally and for behavioral advertising.³¹

²⁷ Pub. L. No. 99-474, 100 Stat. 1213 (Oct. 16, 1986).

²⁸ Pub. L. No. 105-277, 112 Stat. 2581 (Oct. 21, 1998).

²⁹ Pub. L. No. 108-187, 117 Stat. 2699 (Dec. 16, 2003).

³⁰ A 2008 judgment against Adam Guerbez and Atlantis Blue Capital (\$873 million) and a 2009 judgment against the “Spam King” Sanford Wallace (\$740 million).

³¹ See FED. TRADE COMM’N, PRIVACY ONLINE: FAIR INFORMATION PRACTICES IN THE ELECTRONIC MARKETPLACE (2000), available at <http://www.ftc.gov/reports/privacy2000/privacy2000.pdf>; FED.

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Similarly, the private nonprofit organization TRUSTe certifies that websites, including Facebook, comply with its privacy guidelines. This sort of partnership between the public and private sectors will be integral to Internet regulation in the coming decades.

C. Extraterritorial Aspects of Internet Regulation

Any policy approach to Internet-based applications should take into account the inherently international character of the Internet. A user “tweeting” in Los Angeles can instantly reach an audience in Mumbai, and the Wikipedia entry on George Washington can be edited by a high school student in Tokyo just as easily as by a professor in Milwaukee. Because of the fundamentally global dimension of the Internet, however, one nation’s lawmakers can have an outsized impact on Internet policy. It is extremely difficult for Internet-based applications to adopt one set of features for one country and a different set for another country.

While the United States government has for the most part maintained a narrowly tailored approach to the regulation of the Internet, some other nations’ regulators have taken a more interventionist approach. For example, many EU members have adopted significant restrictions on the sorts of consensual data collection and processing practices that are routinely undertaken by Internet-based services. Those restrictions, if applied to United States companies, could reduce the openness, connectivity, and efficiency that users (including American users) have come to expect from the Internet. For now, the European Union has agreed to the U.S. - European Union Safe Harbor Framework, developed by the Department of Commerce in consultation with the European Commission.³² Ordinarily under the laws of the European Union, a company cannot export data from a European country into another country with

[Footnote continued from previous page]

TRADE COMM’N, SELF REGULATORY PRINCIPLES FOR ONLINE BEHAVIORAL ADVERTISING (2009), available at <http://www.ftc.gov/os/2009/02/P085400behavadreport.pdf>.

³² U.S. DEP’T OF COMMERCE, SAFE HARBOR PRIVACY PRINCIPLES (July 21, 2000), http://www.export.gov/safeharbor/eu/eg_main_018475asp.

allegedly “less adequate” data protections.³³ But the Safe Harbor agreement provides a set of guidelines that U.S. companies can follow when operating in Europe.

The Safe Harbor approach is far preferable to a system that permits one country to dictate Internet policy throughout the world. For a company like Facebook, for example, which boasts an active presence in over 180 countries and which counts 70% of its users from outside of the United States, it is essential to have a concise, consistent international regulatory policy. It would simply not be feasible for a service like Facebook to adjust its settings, controls, and technologies to comply with different regulations in all of the nations where it enjoys a user base. The Department of Commerce should actively consider and implement additional mechanisms to ensure that Web 2.0—and the jobs and innovation that American companies in this space are creating—are not hamstrung by international legal regimes that seek to curtail the consensual sharing of information and innovation on the Internet.

II.

Facebook and Internet Self-Regulation

It is no secret that certain voices in the online community have called for greater government regulation of Internet services, including websites like Google and social-networking services like Facebook. In some instances, these critics have articulated legitimate concerns about the security of user data against the threat of hackers and others. But efforts to ensure data security should not open the door to intrusive government regulation of other aspects of the Internet. Internet services are, by and large, self-regulating and self-correcting. Social networking services in particular have successfully adopted and nurtured robust self-correction mechanisms and will continue to do so in the future. In addition, there are a range of independent resources freely available on the Internet that inform users of how to further control their information and supplement the natural self-corrective tendencies of social-networking sites.

³³ Council Directive 95/46, On the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data, 1995 O.J. (L 281) (EC).

A. Self-Regulatory Features of the Internet and Social Networking Services

At core, the Internet is an open environment where people share information through a vast network of connections. The Internet's essential nature is about *sharing* and *connectivity*. There is no central decision-maker who decides what is or is not posted on the Internet—its very users drive and create the content. That user-driven structure has only been enhanced by Web 2.0 applications, which encourage a proliferation of user-generated content unconstrained by government or corporate decision-makers.

Because of the fundamental user-based orientation of the Internet, users collectively retain an incredible ability to force service providers to self-regulate—to adapt their policies and interfaces in ways that reflect user demand. And for many of these applications, self-regulation is inherent in their very structure.

One powerful example is the internal mechanisms of commercial service providers such as eBay, Inc. (“eBay”) and Amazon, Inc. (“Amazon”). Users of eBay drive what is available for sale and what is purchased, and an internal rating and reporting mechanism ensures that fraudulent or misrepresented transactions are controlled and properly filtered out. As eBay's former CEO Meg Whitman put it, eBay is “a self-regulating marketplace that functions like a free economy.”³⁴ And eBay itself has supplemented that natural self-regulation with cutting-edge technologies that control for potential risks.³⁵ Amazon's feedback system likewise provides effective self-regulation. Sellers are regularly rated by the community of users, which in turn provides a signal to new potential buyers regarding a seller's reliability.³⁶ If a buyer discovers that a seller is unreliable, the buyer can bring his or her business elsewhere.

Social-networking sites such as Facebook provide even more effective mechanisms for self-regulation and self-correction. By definition, social-networking sites are open

³⁴ Robert D. Hof, *Meg Whitman on eBay's Self-Regulation*, BUSINESSWEEK, Aug. 18, 2003.

³⁵ JEANNE PIA MIFSUD BONNICI, SELF-REGULATION IN CYBERSPACE 159-63 (2008).

³⁶ See *Amazon Feedback FAQ*, AMAZON.COM, http://www.amazon.com/gp/help/customer/display.html/ref=help_search_1-1?ie=UTF8&nodeId=1161284&qid=1275337333&sr=1-1.

environments, the entire point of which is to enable users to share information and comment on their experiences. These users engage the social-networking medium to connect and share information, but they also play a large role in policing the medium itself. Users who find that Facebook's policies are not conducive to their preferences can simply deactivate or delete their account and choose another social-networking site (or communications medium) with policies more in line with their preferences. Or, indeed, they can use Facebook itself to organize protests against new features they do not like—when Facebook launched its “News Feed” product, 10 percent of Facebook users joined a Facebook group to protest the Feed (some modifications were made and the News Feed is now immensely popular and integral to the Facebook experience). Simply, if a service that exists to enable users to share and communicate causes users to share in a manner they dislike, the service will experience user backlash in the same manner as a movie studio that produces bad movies or a consumer-products manufacturer that begins marketing low-quality goods.

The culture of user empowerment that defines Web 2.0 has itself spawned innovation in the very manner in which sites govern themselves. For example, in February 2009, Facebook established a Notice and Comment procedure that it uses when considering changes to its Statement of Rights and Responsibilities (“SRR”) and its Privacy Policy.³⁷ Now, proposed changes to the SRR and Privacy Policy are posted on Facebook, typically for seven days. Users are encouraged to comment on the proposed changes, and Facebook devotes substantial internal resources to reviewing the comments received. Facebook has, on a number of occasions, modified proposed changes to its SRR and Privacy Policy to address this user feedback; in certain instances, Facebook's terms even call for a user vote before implementing a change. These industry-leading procedures promote transparency, help users better understand the terms of service, and represent an innovative model for user input and self-governance.

User choice is further enhanced by a large community of sophisticated Internet users who devote considerable time to critiquing and improving the social-networking experience. These users leverage their knowledge to organize concerted responses to disfavored policies, create

³⁷ Posting of Mark Zuckerberg to the Facebook Blog, *Governing the Facebook Service in an Open and Transparent Way*, <http://blog.facebook.com/blog.php?post=56566967130> (Feb. 26, 2009 2:20 PST).

extensive blogs, user guides, and how-to manuals, and generally drive self-regulation and self-correction. Even a brief perusal of technology blogs and newspapers shows that there has been no shortage of input in recent months on Facebook's policies. That robust debate helps users decide whether they want to continue to be members of the Facebook community or would prefer to join (and in some instances, create) other social-networking communities with different suites of services and options. Social networking services, and the Internet in general, function effectively because users are highly engaged and information flows rapidly and efficiently. Discipline and self-regulation are critical, because if a service does not respond appropriately, users can and will go elsewhere.

And there are plenty of other places to go. For example, users can choose from a menu of social networking choices beyond Facebook. Twitter – which defaults users to open settings that permit anyone on the Internet to view content – is among the fastest growing web-based companies on the planet. Another popular option is LinkedIn, which targets users who are focused on professional networking. MySpace, a predecessor to Facebook, still boasts a large online community and recently made changes to its information-sharing policies in an attempt to distinguish itself from Facebook.³⁸ A new startup plans to launch a site called Diaspora as an alternative to Facebook. Google Buzz launched earlier this year and, nearly instantaneously, boasted over 100 million users. Users who want to maintain a Facebook account but who wish to take advantage of other social media have the option of maintaining—at no charge—a Facebook account as well as an account with another service. In short, there is no shortage of options for those who want something different than what Facebook offers, and that competitive diversity demands that Facebook continually respond to user preferences.

While the user community and market forces serve to control and police the outer limits of social-networking innovation, there are many independent resources that provide additional protection to users. These resources are another pillar of self-correction. Hundreds, if not thousands, of articles, commentaries, and guides have been produced and disseminated throughout the Internet regarding how to manage one's "online reputation." As to Facebook

³⁸ *MySpace Simplifies Settings as Facebook Criticised*, AFP, May 17, 2010.

specifically, entities ranging from the mainstream media to individual bloggers have produced comprehensive “how to” guides for sharing (and not sharing) information on Facebook.³⁹ Other services have emerged that will manage a user’s online presence, not only on Facebook but throughout the Internet.⁴⁰

All of these tools help make the users of social-networking sites savvy in protecting their information in accordance with their personal preferences. The Pew study found that 57% of adult Internet users monitor their online presence.⁴¹ Among users age 18 to 29, 71% have adjusted their settings and controls to regulate how much they are sharing with others, and 65% of all social-networking site users have done so.⁴² If these users feel that a service is overstepping its bounds, they will actively take steps to control their own personal information.

B. Facebook’s Continuing Evolution in Response to User Preferences

As Facebook has blossomed from a small start-up to a service with nearly half a billion users, it has, in response to the self-regulatory pressures described above, continually sought to improve its user interface, its data-sharing policies, and its overall user experience. In 2004, Facebook enabled users to do little more than post basic personal information and share it with their schoolmates. Today, Facebook, together with developers building applications on Facebook Platform, allows users to share political information, to engage in charity fundraising, to develop support networks, to build customized communities of interest, to play games with people from across the globe, and to engage in a host of other social interactions. Facebook’s user-driven innovations have transformed it from a primarily college-based network of “friends” into a thriving, open community of individuals who share, group, exchange, and develop information. Its story is one of innovation in action, and it vividly illustrates why it is so

³⁹ See, e.g., ANTHONY MAYFIELD, *ME AND MY WEB SHADOW: HOW TO MANAGE YOUR REPUTATION ONLINE* (2010); MICHAEL FERTIK & DAVID THOMPSON, *WILD WEST 2.0: HOW TO PROTECT AND RESTORE YOUR REPUTATION ON THE UNTAMED SOCIAL FRONTIER* (2010).

⁴⁰ For example, SaveFace, Reclaim Privacy, Reputation Defender, DoYouBuzz, Brand-Yourself.com, and many others.

⁴¹ MARY MADDEN & AARON SMITH, *PEW INTERNET & AMERICAN LIFE PROJECT, PEW RESEARCH CENTER, REPUTATION MANAGEMENT AND SOCIAL MEDIA* 8, 21 (May 26, 2010).

⁴² *Id.*

important for providers of Internet-based applications to remain free to experiment with new approaches.

Because the uses of social-networking sites are largely user-driven, it can be difficult to predict the ways in which new networks and connections on Facebook will develop. For example, recently some communities have begun to apply Facebook to assist with law enforcement. Others have deployed Facebook to advance searches for missing persons. Still others have used the service to alert their friends and neighbors to traffic patterns, discount sales, and neighborhood activities. No one could have predicted these benefits when Facebook began.

The growing multitude of Facebook features reflects a diverse set of needs and preferences among its user base. One study shows that Facebook has drastically increased the ability of users to develop and maintain essential social capital.⁴³ Another study makes clear that social networking allows for “friendship-driven” and “interest-driven” engagement by youth, allowing for new forms of self-directed and peer-based learning.⁴⁴

Some of Facebook’s most popular innovations were initially met with skepticism from privacy advocates and others. For example, Facebook’s News Feed faced significant controversy when it was first released in 2006. That feature instantly presents users who log-in to Facebook with a real-time, ambient accounting of all of their connections, prioritized to feature information about the people and subjects the user is most closely connected to. News Feed updates users about events such as the birth of a friend’s child, a colleague receiving a prestigious award, a concert by the user’s favorite new band, or a news article that a relative has linked as particularly interesting. In response to input from users who feared that sensitive details would be instantly conveyed to all of their friends, Facebook quickly established more

⁴³ Nicole B. Ellison, Charles Steinfield & Cliff Lampe, *The Benefits of Facebook “Friends”: Social Capital and College Students’ Use of Online Social Network Sites*, 12 J. COMPUTER-MEDIATED COMM. (2007), available at <http://jcmc.indiana.edu/vol12/issue4/ellison.html>.

⁴⁴ See MIZUKO ITO ET AL., *LIVING AND LEARNING WITH NEW MEDIA: SUMMARY OF FINDINGS FROM THE DIGITAL YOUTH PROJECT*, THE JOHN D. AND CATHERINE T. MACARTHUR FOUNDATION REPORTS ON DIGITAL MEDIA AND LEARNING (2008).

granular controls over what information would be displayed on News Feed, and News Feed is now viewed as an essential component of Facebook, as any user can attest.

The self-correcting mechanism of user choice has compelled Facebook to constantly re-evaluate and refine its user preferences. As part of that process, Facebook has established some bedrock policies focused on user-protection. Facebook does not sell or share user's personal information with advertisers. And Facebook does not charge users for any of its services or applications. These policies ensure basic user protections, as Facebook does not have a direct monetary incentive to share or sell data to outside parties. Facebook sees these policies as core to Facebook's ability to build and maintain user trust, which Facebook views as indispensable to its ability to compete. Critically, however, other companies with other focuses may choose different strategies. One may require user-generated content to be distributed broadly if at all. Another may in all cases prevent distribution to anyone other than the user's confirmed connections. A third may sell user-generated content to third-party search providers, in the hopes that users will appreciate the broader distribution of their content that comes from search indexing. A fourth may sell information to ad networks, in the hopes that users will appreciate the improved advertising targeting they experience elsewhere on the Internet. The central point is that the proliferation of Web 2.0-based services competing in the marketplace provides users with a broad range of innovative choices today, and—absent a government mandate that supplants the wisdom of the marketplace with regulatory fiat—they will provide users with even more innovative choices tomorrow.

Facebook's recent changes to its controls and privacy policy provide a prime example of how social networking services and Internet-based services more generally have a dynamic ability to respond to users and self-correct. Over the years, Facebook has taken unprecedented steps toward ensuring that users understand what they are sharing and how its various controls interact with their information. In December 2009, Facebook rolled out a new and unprecedented Privacy Wizard, which all users were required to interact with to evaluate and select their privacy settings, before they could continue to use the Facebook service. Also last year, Facebook deployed a "per-object" publisher, which enables users to choose how widely to share on an item-by-item basis. With both innovations, Facebook sought to maximize both

simplicity and control, a delicate balance, while finding the right level of openness for each user and for the Facebook community as a whole.

In response to user reaction to several new products it recently announced, Facebook recently implemented further changes and additions to its controls, again working quickly—in the face of enormous technical complexity—to respond to views expressed in the user community. Facebook’s recent changes achieve three primary goals: providing a single control for content (while maintaining its more granular controls for users who want to use them); narrowing the categories of user information that are necessarily public to those essential to provide its core functionality; and offering an easy way for users to “opt out” of Platform and thereby prevent the sharing of user information with applications.

As Facebook moves forward, it will face additional challenges relating to the balance between, on the one hand, user demand for sharing and connectivity and, on the other hand, the ability for users to control who has access to the content they share on Facebook. It also will aim to balance simplicity and ease of use with the learning process that inevitably accompanies technology as it becomes more sophisticated, be it a telephone, a TV remote control, or a computer. The current frontier of Facebook innovation involves its Platform functionality, which allows third-party developers to offer a nearly infinite variety of tools to enhance users’ experience both on and off Facebook. With the consent of users, these third-party developers can access the information about users that allows developers to innovate to provide additional features not developed solely by Facebook itself. Hundreds of thousands of games, mobile applications, utilities, and other applications have been created through Facebook Platform.

A recent Facebook change illustrates how the gradual opening up of Facebook to third-party developers can greatly benefit users. When Facebook Platform was first launched in 2007, Facebook imposed a 24-hour data caching rule on developers (meaning they had to submit new requests for user data every 24 hours). Over time, based on feedback from users and developers, it became clear that the 24-hour caching rule was cumbersome, inhibited some applications, and generally deteriorated the user experience. Again seeking to respond to users and remain innovative, Facebook recently announced that it was eliminating the 24-hour caching rule—a

resource-intensive technical restriction—and instead rolling out more strict and nuanced principles and policies governing how developers acquire information from users.

These changes are intended to force developers to adopt and adhere to their own privacy policies, and to request only information that is necessary. Among other things, Facebook imposed granular data permission rules on its developers, requiring applications to request specific permissions from users if and to the extent they require access beyond the users' public information. In other words, just because a user approves a certain application does not mean that the application can access *all* of the user's information. This change took Facebook beyond the industry norm, which is to permit third-party applications to access *all* user information for those users who sign up to use applications. These new requirements give users increased control and awareness and will encourage developers to implement (and adhere to) their own privacy policies, thereby meeting user expectations and avoiding adverse marketplace consequences.

Facebook thus serves as prime example of the tremendous self-corrective tendency of Internet-based applications, particularly with respect to the balance between openness and privacy. Its rapid and continual responses to user feedback about privacy settings has helped it to become a better service while continuing to enhance the user experience and pioneer new ways to share information. And, Facebook's pioneering development of user controls for the information they share is an example for regulators in the U.S. and abroad of how approaches that vest decisionmaking in individual users, rather than in government regulators, is the most promising means of furthering user satisfaction and Internet innovation.

III.

Special Considerations Regarding Regulation of Social-Networking Sites

As the Commerce Department and other agencies evaluate regulatory policy toward the Internet, it will be valuable to bear in mind certain unique considerations that apply in the context of social-networking sites.

First, by definition, social-networking sites require users to share some information with others, and indeed exist to enable such sharing. Whether it be simply users' names, their images,

their professions, or a broader array of information regarding interests and activities, a social networking service simply cannot function without information sharing. If users were to join Facebook or a similar service, but none had any information visible to anyone except existing friends, it would be impossible for users to find others users or for the network to grow. Two users could not find each other, because there would be no publicly available information. Engaging a social-networking site is, by definition, a public endeavor. To be sure, services like Facebook give users control and limit the information that is necessarily public, but the nature of social networking requires some information to be shared publicly.

Second, users have different personal preferences for what information they want to share. That diversity of user demand renders a single legal standard for information-sharing infeasible. Some Facebook users, for example, choose an open policy as their default for the content they share; others restrict it to friends. Many others frequently vary distribution depending on the particular content they are sharing at a given time. Facebook and other social-networking sites have endeavored to give users a host of options—*i.e.*, granularity—to decide precisely what information is shared with whom. For the blunt tool of government regulation to replace that tailored approach with a one-size-fits-all policy would diminish consumer choice and be profoundly anticompetitive. As respected technology columnist L. Gordon Crovitz recently wrote, “[t]echnology now allows people to set their own balance between privacy and the benefits of disclosing information. Social media sites should make it as easy as possible to adjust this dial, but regulations can’t possibly replace the individual privacy preferences of hundreds of millions of people being social online.”⁴⁵ As the Department and other government authorities evaluate Internet policy, they should recognize social networking in particular as an area where user control should predominate over government control.

Third, as technologies continue to evolve, the type of information that users desire to share will continue to evolve as well, which weighs against any attempt to establish fixed legal restraints. For example, the capability to post video is a relatively new technological advancement. It is difficult to predict what innovations will come in the future. At the same

⁴⁵ L. Gordon Crovitz, *Privacy Isn’t Everything on the Web*, WALL ST. J., May 24, 2010.

time, Facebook and other social-networking sites are ensuring that information-sharing controls are evolving and adapting with the technology. Facebook’s per-object sharing controls are a prime example—a user can now designate a unique set of sharing preferences for a particular type of content (such as photos and videos posted by that user), and can vary that preference for a particular photo or video that the user wishes to share more or less broadly.

Fourth, the *degree* to which users share information has continued to evolve and may change in unexpected ways in the future. Throughout the mid-1990s, the Internet remained mostly a forum for receiving content. At the time, users were very reluctant to engage in financial transactions online. Beginning in the late 1990s, however, users increasingly used the Internet as a means to engage in e-commerce, to the point where, today, online banking is ubiquitous, and where many consumers do the bulk of their buying—from food to furniture, from socks to stocks—online. Likewise, norms regarding behavioral advertising have evolved from deep skepticism and concern to widespread recognition of its benefits.⁴⁶ The proliferation of Web 2.0 services represents the next frontier. Increasingly, users value sharing and personal expression, not anonymity, and that trend is extending beyond the borders of social networking sites themselves. The Internet itself is becoming personalized, reflecting an individual’s uses, preferences, interests, and social connections. Individuals already can receive a live feed aggregating their friends’ activities in various networks, a personalized stream of tailored music based on their friends’ musical tastes, and live “tweets” featuring their preferred political groups, candidates, causes, or celebrities. During the 2009 inauguration, Facebook partnered with CNN.com to provide those following the inauguration online an enormously popular live stream of updates featuring users’ reactions to that historic event. In that example and many others, users embraced a “social” web—one in which any given user’s experience of a popular website featured the social connections of that particular user, and was therefore different from, and more tailored than, the experience of any other user.

Government regulators cannot possibly predict what direction user preferences will go next, or the degree to which users will embrace and enable information-sharing to permit service

⁴⁶ See Leibowitz, *supra* note 15.

providers to meet their needs; any attempt to do so would be flawed at the outset. Attempts to regulate and establish unilateral standards not only would threaten the viability of social-networking sites, but would severely inhibit the innovation and subsequent self-correction that has marked the advance of the Internet over the last two decades—an advance that has been defined by technological developments, entrepreneurship, job creation, and newer, better ways for individuals to interact with the Internet.

Fifth, excessive regulation could threaten one of the next great advances in social networking: functionalities like Facebook Platform that allow developers to enhance and expand the functionality surrounding users' social networks. Internet innovation depends on a proliferation of independent developers having the ability to expand upon existing services. Facebook Platform has enabled the development of an entire Platform economy, featuring more than 700,000 applications. To pick just a handful of examples, the *Birthday Calendar* application allows users to track birthdays, anniversaries, and other important dates. The *Circle of Moms* application serves as a local support group for mothers, drawing on the collective knowledge of the community to provide support to a user. And on the charitable front, the *Causes* application provides an online platform for individuals and organizations to raise funds for charitable causes. Other applications allow users to receive their Facebook content on different devices (such as cell phones) or platforms (such as their desktop). Regulation that sought to limit or prohibit the ability of developers to access user information would stifle innovation and drastically reduce the benefits a user can gain from Facebook, and from the Internet as a whole.

Sixth, the potential harms from social-networking sites' failing to adequately respond to user preferences are different in kind from the types of harms—like the exploitation of children and financial fraud—that Congress has found justify regulation of the Internet. The FTC's David Vladeck has described interests such as public-health imperatives as “far more weighty,”⁴⁷ from a regulatory standpoint, than pure privacy concerns. We understand Director Vladeck to mean not that privacy is unimportant, but rather that the burden of justifying

⁴⁷ David Vladeck, *The Difficult Case of Direct-To-Consumer Drug Advertising*, 41 LOY. L.A. L. REV. 259, 289 (2007).

significant regulatory action should be comparatively higher. Courts, similarly, have recognized that the unexpected receipt of information by third parties often will not be a subject for legal redress, either because the information was voluntarily shared with others or because no identifiable harm resulted.⁴⁸ A legal approach that neglected these familiar principles of the common law and constitutional interpretation would open the door to opportunistic lawsuits by claimants who experienced no actual harm, and might subject promising start-up companies to crushing penalties—or deter entrepreneurial innovation in the first place.

Seventh, unlike the regulation of pure financial transactions on the Internet, the regulation of consensual data-sharing by social-networking sites could trigger substantial First Amendment concerns. Social networks are at core an expressive medium. Facebook users share everything from political opinions to photographs to random musings. The First Amendment protects such expression, allowing it to be regulated only when the government has a truly compelling interest.

First Amendment concerns with regulating social-networking sites are not merely academic; the freedom of expression that Facebook's breadth of dissemination encourages has profound real-world consequences. Facebook and other social-networking sites have fulfilled a key democratic function. Because such sites allow users to quickly share information and build communities, democracy advocates in repressive regimes around the globe have found them instrumental to spreading their message and engaging in political action. Facebook and Twitter provided a voice and an expressive medium to the advocates of democracy following the contested Iranian election,⁴⁹ and Facebook was famously used by Oscar Morales in Colombia in 2008 to organize massive street demonstrations against the FARC terrorist group.⁵⁰ Social-networking sites have played an important role in advancing grassroots democratic movements across the globe.

⁴⁸ See, e.g., *Smith v. Maryland*, 442 U.S. 735, 743–44 (1979); *United States v. Stults*, 575 F.3d 834 (8th Cir. 2009); see also *Ruiz v. Gap, Inc.*, No. 09-15971, 2010 WL 2170993 (9th Cir. May 28, 2010) (no actual harm to users whose information was exposed by theft of company laptops); *In re JetBlue Airways Corp. Privacy Litig.*, 379 F. Supp. 2d 299 (E.D.N.Y. 2005).

⁴⁹ Lev Grossman, *Iran Protests: Twitter, the Medium of the Movement*, NEWSWEEK, June 17, 2009.

⁵⁰ Sibylla Brodzinsky, *Facebook Used to Target Colombia's FARC with Global Rally*, CHRISTIAN SCI. MONITOR, Feb. 4, 2008.

Here at home, Facebook has had a marked impact on domestic politics. In the 2008 presidential election, YouTube and Facebook cosponsored presidential debates with traditional media outlets such as CNN and ABC News.⁵¹ Some have called the 2008 election the “Facebook Election,” noting the service as a key source of grassroots support for President Obama.⁵² At the same time, Facebook has become a key platform for candidates for state and local office to get their message out, especially those who otherwise could not afford expensive television and radio airtime. Beyond candidates for office, estimates suggest that over 300 *current* Members of Congress use Facebook in their official capacity.⁵³

These political uses of Facebook underscore the serious First Amendment issues that would arise if the government actively regulated the way in which users share information on social networking sites. And of course, the robust First Amendment protections given to non-commercial speech apply to a range of other communications on social-networking sites that are of a non-political nature.

⁵¹ Brian Stelter, *ABC News and Facebook in Joint Effort to Bring Viewers Closer to Political Coverage*, N.Y. TIMES, Nov. 26, 2007; Virginia Heffernan, *Clicking and Choosing: The Election According to YouTube*, N.Y. TIMES, Nov. 14, 2008.

⁵² Matthew Fraser & Soumitra Dutta, *Barack Obama and the Facebook Election*, U.S. NEWS AND WORLD REP., Nov. 19, 2008.

⁵³ Posting of Tony Romm to The Hill, ‘*Congress on Facebook*’ Goes Live, <http://thehill.com/blogs/hillcon-valley/technology/97683-congress-on-facebook-goes-live> (May 13, 2010 7:58 EDT).

IV. Conclusion

The Internet is among the most important innovations of our time. Nowhere has it been as vibrant as in the United States, where its growth and the at-times dazzling creativity it has spawned are due in part to a consistent, bipartisan congressional preference for limiting government regulation of the Internet to only specific, tailored circumstances.

The government nonetheless has an important role in supervising certain activities on the Internet, including fraudulent and abusive practices, especially when directed at children. The success of the Internet to date, however, counsels great caution before pursuing a more interventionist government role in the future. Internet services—and users’ attitudes toward the Internet—are evolving more rapidly and in different directions than the government could ever predict or appropriately capture in a regulation. That is particularly true for social-networking sites. These services do not involve economic activities of a type the government has an established track record of regulating. Likewise, norms for “protecting” data and shielding it from disclosure cannot supply the predicate for regulating networks where individuals post messages, images, and ideas on the Internet with the very purpose of sharing. Ultimately, constitutional values suggest restraint before instituting government-imposed presumptions about how and when Internet users may share information with one another.

As the Commerce Department and other agencies take stock of the growth and uses of the Internet, and the innovation and American jobs that Web 2.0 and other technology companies are creating, they should make note of the robust mechanisms on the Internet itself for monitoring, self-correction, and disciplining unwelcome practices. If social-networking sites take steps that users oppose, they will lose users and suffer in the highly vocal Internet court of public opinion. A range of outside services and critics exist to observe the practices of social-networking sites, to suggest improvements, and to help users make the most of sites that—as they become more sophisticated—inevitably will take more time to master than when they were first introduced. Technology also can enhance companies’ ability to increase user control over the information they share, as reflected in recent changes on Facebook. And, while user control is preferable to government fiat, the government and consensual standard-setting organizations

can play a valuable role in promoting “best practices” that enhance users’ experience and control while preserving the innovation and freedom that are the Internet’s lifeblood.

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