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THE CURRENT: Will the Facebook whistleblower's testimony spur new US digital regulation?

Thursday, October 14, 2021

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(MUSIC)

PITA: You're listening to The Current, part of the Brookings Podcast Network. I'm your host, Adrianna Pita.

Last week, the U.S. Senate heard testimony from Facebook whistleblower Frances Haugen on the platform's detrimental impact on children and young adults who use it. Questions about whether and how to moderate speech and content ranging from sensitive or misleading up to inflammatory and dangerous have grown in recent years, particularly around the 2020 election and the COVID-19 pandemic. So we're glad to have with us today Tom Wheeler, visiting fellow with the Center for Technology Innovation here at Brookings, and the former chair of the FCC during the Obama administration. Tom, thanks for talking to us.

WHEELER: Adrianna, it's great to be with you again.

PITA: So, in addition to Frances Haugen's testimony, there has also been reports of a second whistleblower willing to testify regarding foreign national leaders' manipulation of the Facebook platform. The Intercept published an internal list of banned or heavily restricted subjects, individuals and organizations that Facebook uses. So, Facebook's not having a great week. This is on top of the massive system outage a couple weeks ago.

So, maybe you can start us off with what did the Senate hear from the whistleblower last week and where does her testimony in the context of this larger conversation about misinformation and free speech on social media platforms?

WHEELER: Well, you know, Adrianna, I think that what the Senate heard was a new context and an explanation for that context. The new context was to talk about the impact of Facebook's business practices on consumers and specifically to single out the impact on children. Start talking about children and you get everybody's attention, and you avoid a lot of the partisan "well I see it from this side," "I see it from that side;" You talk about kids and everybody tends to see things in a much more similar way.

But then the context that she put that into was to talk about the business model at Facebook. And that the reason that these kinds of harmful things were happening was because of a business model that prioritizes engagement over responsibility, that is designed to get as many people to stay as long as possible on the platform in order that Facebook can then sell as many advertisements as possible to those people.

And she was very explicit in her statement that the priority is revenue generation, not the consequences of what may be being sent out. And that was, I think, an eye-opener for many of the people in the Congress and in the public that were listening.

PITA: Facebook and Twitter have been around for a few years now, but digital communication does change so rapidly, that market and the technology. And federal policy is famously pretty slow to take shape and to take effect, partly because of the processes, partially because of ignorance on the part of a lot of lawmakers on these issues. So talk to us a little bit about what sort of response would you like to see? What would an effective federal regulatory policy look like around some of these issues of business models and content, and these issues that have come up?

WHEELER: So the challenge, Adrianna, is how does government oversight become as agile as technology enables product creation to be? And where we have been on this, thus far, is that because of a lack of government oversight, we have been allowing the companies to make the rules, in essence to become pseudo-governments themselves, and to do that without concern for the consequences. What are the effects of their actions? What we need to have is a sense of agility in oversight that replicates the agility the digital technology creates for the ability to develop new products.

Let me give you an example. The digital companies all move on standards. The standards process, saying this is how a technology will work, is a crucial process. We moved in mobile phones, for instance, from 1G to 2G to 3G to 4G to 5G and now they're working on 6G as a technical standard that reflects the changes in technological capabilities, but nowhere along the line in any of the development of these standards was there consideration for, what are the consequences of this technical capability that we are standardizing?

So what we need to be doing is to be asking ourselves the question, how do we have regulation that has the same kind of agility, but it is standardizing for the effects, the consequences, the behaviors, rather than the technology. And the proposal that myself and several others have made is that what we need to have is a process that takes and mirrors that technology standardization through a multi-stakeholder process, but brings the government into it to say, okay here are the kind of behavioral standards that need to be in place. We'll be at the table while these get worked out and they can be flexible, over time, and then we will enforce those standards.

PITA: You said that the platforms have largely been left alone to do their own governing, to do their own policing, setting their own standards. Is there a place in a more agile regulatory framework for the kinds of self-regulation, like, for instance, Facebook's Oversight Board? Can those be effective, or those always going to be suspect because they're the product of the company itself?

WHEELER: Well, you know I don't want to throw cold water on efforts to do the right thing, but it is unclear whether things like the Oversight Board have delivered much beyond being a public relations shield. The strategy at Facebook and other places seems to be one of, well, let us beg forgiveness, do a little bit, but not really compromise the cash cow that is this business model that is based on engagement and whatever it takes to keep the user connected for as long as possible.

PITA: So Haugen is going to also be testifying before the British Parliament later this month. What sort of role is there for international coordination on these issues? Is that necessary? Are there mechanisms and dialogues sort of already in place on these issues? What does that look like?

WHEELER: It's a huge issue. The internet is a series of interconnected networks that don't understand the lines that have been arbitrarily drawn on a map to say no, this is my country, this is your country kind of a situation. So the reality is that the rules that exist in one nation end up having an impact in other nations as well. And this is one of the real problems that I think will become increasingly apparent: that results from the failure of the United States government to step up and say this is how we envision regulatory oversight for these platforms, that the U.S. is behind what the European Union, the U.K. are doing to establish what, because of the interconnected nature of the Internet, ultimately become international norms.

Give you one example. We have been talking forever in this country about privacy rules for the Internet. But the companies have been able to successfully block any legislation. The European Union came out with what they call the GDPR, the General Data Protection Regulation. And when California, in the United States, decided they weren't going to wait for the Congress and passed their own privacy law, what did they base it on? The GDPR and what the EU has done. So we are in a situation where instead of de jure deciding our own marketplace policies for the digital platforms, we are de facto defaulting to other nations'. And those countries might have different standards than we do. I mean, for instance, the EU and the U.K. see free speech much differently than we do. They see competition issues much differently than we do. And our absence from the field, our failure as a government to step up and do anything about these new digital platforms has left the regulatory field wide open to other nations who just might have decisions being made on other priorities.

PITA: So these sorts of conversations, these questions about updating many aspects of internet and digital communications-related regulations have been around for several years. You mentioned at the top that you think that Haugen's testimony will have a real impact because when it comes to kids that really gets people's attention. So do you feel like we might maybe be at sort of a tipping point where we might finally see some congressional action on this issue?

WHEELER: Well, I hope so, okay? And I also think that the Facebook stories – and, as you suggest, there appear to be more to come – are the canary in the coal mine for the broader digital platform space. That, yes, Facebook is taking it on the chin these days, often deservedly so, but it doesn't mean that the other platforms end up getting a free pass.

I think we're going to see multiple forms of legal responses to what we've been learning. First, obviously, is regulation. And Lina Khan, the chairwoman of the Federal Trade Commission, has been very out front in speaking about these things. We are going to see increased anti-trust enforcement, not only from the Justice Department and the FTC, but from state attorneys general. I think we're also going to see some new legal action by both state attorneys general as well as private lawyers, representing private litigants, on the consumer harms that Frances Haugen laid out. And we'll see some private actions in that regard.

We've talked about legislation. The legislative process is a long and arduous process. I hope we end up with some legislation that creates meaningful oversight; hopefully, a new digital platform agency. But then the other part about it is that, as we discussed a minute ago, the rest of the world is not sitting idly by and waiting for us to make some kind of decision. By our inaction, thus far, we have abrogated international leadership, and so I think it will be a laundry list of those five things all working simultaneously, if not in concert, to redefine what the future ends up looking like.

PITA: All right. Tom, thanks so much for talking to us and explaining this today.

WHEELER: Adrianna, thank you.