

Consumer Costs in the Attention Economy

Positive and Normative Perspectives

(a kick-off paper)



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Consumer Law and the Attention Economy

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Argument, in short:

Private law has difficulty **conceptualizing cognitive resources** (attention, emotions, etc.) as **objects** of **market exchange** (“consideration”)

Law & policy tend to **ignore** harms to **mental health** being **external effects** of **consumption**, including in the process of data monetization
(phone & ad example)

Before we discuss **what to do**, we should critically assess **how to think** about consumer law and social media -> **mental costs theory**

What “price” do we pay for “free” services like Facebook, Google, TikTok or Twitter?

Positive theories:

- Service-for-**data** (Directive 2019/770, just part of the story)
- Service-for-**behavior** (Zuboff, but Hwang)
- Service-for-**attention** (Wu, best but an umbrella)

Normative theories:

- **Privacy**, **Autonomy** (anti-manipulation), **Equality** (anti-discrimination)

What if one’s **data is not disclosed**, one **never clicks on an ad**, and never gets **discriminated against**?

Missing in both: **Mental health and mental resources**

In the US:

3 reasons why Seattle schools are suing Big Tech over a youth mental health crisis

Updated January 11, 2023 · 1:34 PM ET

By Mary Yang



Utah bans under-18s from using social media unless parents consent

Governor signs law putting restrictions on TikTok, Instagram, Facebook and other platforms, including requiring them not to get minors addicted



Senators unveil bipartisan legislation to ban kids under 13 from joining social media platforms



By Brian Fung, CNN

Updated 1:38 PM EDT, Wed April 26, 2023



Surgeon General Warns That Social Media May Harm Children and Adolescents

The report by Dr. Vivek Murthy cited a “profound risk of harm” to adolescent mental health and urged families to set limits and governments to set tougher standards for use.

Give this article



780



Next five years (probably, as always)

- Americans spot a problem / have an idea **2023**
- Americans write 100 articles
Europeans start noticing **2024**
- American regulatory efforts fail, scholars move on
Europeans write 1000 articles
European Commission unveils a strategy **2025**
- EC proposes “Online Mental Health Act”
transparency, risk management plans
creating Online Mental Health Agencies and 8% fines **2026**
- Online Mental Health Act is adopted
nothing really changes, Europeans feel good about themselves
tell the rest of the world to do the same **2028**

Now's time to ponder

POSITIVE LEVEL

How to understand what is going on and why?

NORMATIVE LEVEL

1. How to evaluate the present state of affairs?
2. What should the regulatory goals be?
3. How to best achieve these regulatory goals?

Now's time to ponder

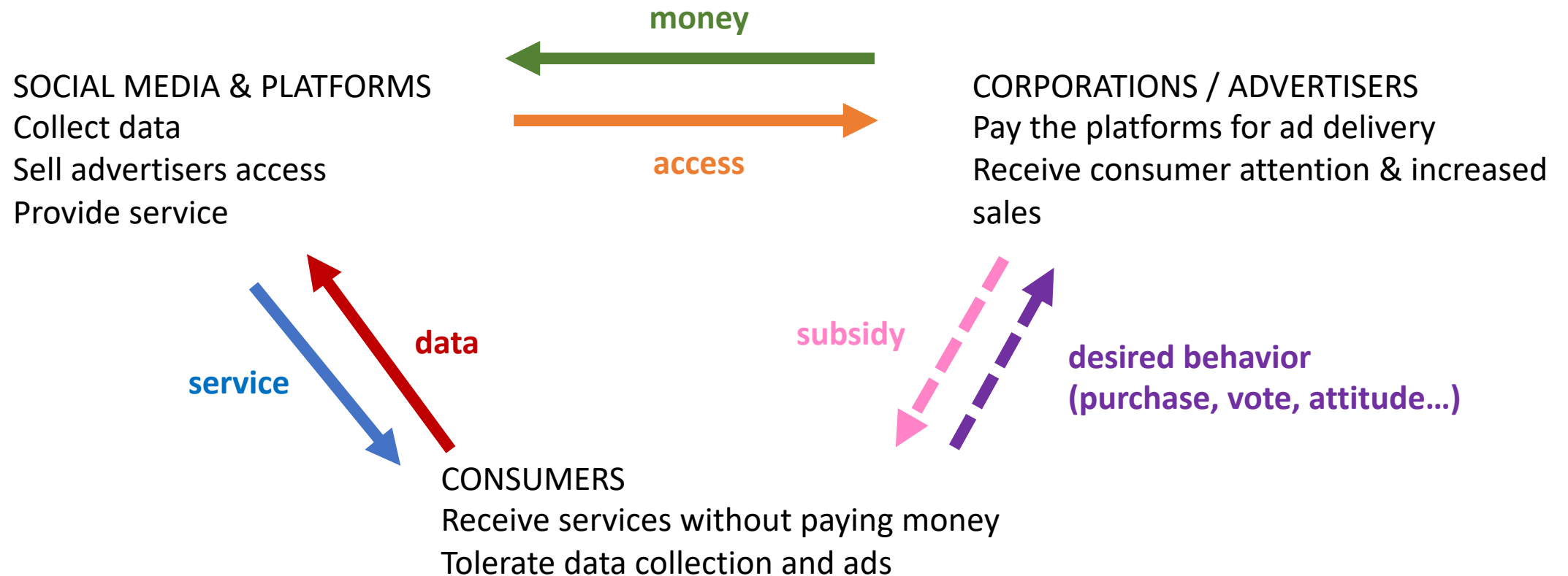
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Facts (pretty egalitarian model)



Social Media's Incentives

Social media's **profit** depends on the **number of ads** run and the **price** charged for each ad ($P = p * \#$)

1. Have users spend as much **time** as possible using the platform
2. Have users generate as much **data** as possible

Means: addictive **design** (endless scroll), properly timed **notifications**, **content** shown (emotional, negative), etc.

Externalities (mental health & cognitive abilities)

Productivity	Brumby, D. P., Janssen, C. P., & Mark, G. (2019). How Do Interruptions Affect Productivity? In C. Sadowski & T. Zimmermann (Eds.), <i>Rethinking Productivity in Software Engineering</i> (pp. 85–107). Apress. https://doi.org/10.1007/978-1-4842-4221-6_9
Addiction	Hou, Y., Xiong, D., Jiang, T., Song, L., & Wang, Q. (2019). Social media addiction: Its impact, mediation, and intervention. <i>Cyberpsychology: Journal of Psychosocial Research on Cyberspace</i> , 13(1), Article 1. https://doi.org/10.5817/CP2019-1-4
Depression/anxiety	Dhir, A., Yossatorn, Y., Kaur, P., & Chen, S. (2018). Online social media fatigue and psychological wellbeing - A study of compulsive use, fear of missing out, fatigue, anxiety and depression. <i>International Journal of Information Management</i> , 40, 141–152. https://doi.org/10.1016/j.ijinfomgt.2018.01.012
Eating disorders	McLean, S. A., Paxton, S. J., Wertheim, E. H., & Masters, J. (2015). Selfies and social media: Relationships between self-image editing and photo-investment and body dissatisfaction and dietary restraint. <i>Journal of Eating Disorders</i> , 3(1), O21. https://doi.org/10.1186/2050-2974-3-S1-O21
Self-harm	Memon, A. M., Sharma, S. G., Mohite, S. S., & Jain, S. (2018). The role of online social networking on deliberate self-harm and suicidality in adolescents: A systematized review of literature. <i>Indian Journal of Psychiatry</i> , 60(4), 384–392. https://doi.org/10.4103/psychiatry.IndianJPsychiatry_414_17

But what about **price**?

These effects **cannot be just harms** or externalities
data collection is not just “privacy harms” – also a part of the contract

A user of social media **tolerates or agrees** that they will:

- Experience **unwanted emotions** (sad / angry is good for sales)
- Develop **unwanted habits** (endless scrolling, continuous checking)
- **Feel anxious** to check the apps (little dopamine shots)

And that these will translate into corporate money

Can we say that users “pay” with their emotions, peace of mind, freedom?

Voleth Meir

- in *The Witcher*, a demon that feeds on human pain and suffering
- Treats negative emotions not only as a source of utility (a diabolic consumable good) but also as
- A resource; an instrument to achieve its aim
- The whole 2nd season is a case study in unfair commercial practices (lack of disclosure) or bad faith contracting



Next steps

- We need to **get the mental costs right**, theory-wise
- **Simply banning** stuff, even for teens, **won't work** (cocaine is banned)
- Traditional **EU neoliberal approach** (forcing the firms to assess and mitigate the risk like GDPR, DSA, AI Act..) **won't work**
- **No on-size-fits all**
- A mix a private law, tort and contract, approaches with regulation

Thank you!

Questions / comments?

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