

CANCEL CULTURE & DE-PLATFORMING
Return of the Stationers' Company
A Precedent

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Introduction

History cannot repeat itself. It does, however, from time to time, throw up precedents illuminating contemporary affairs. And there is the aphorism attributed to George Santayana: *Those who do not learn from history are doomed to repeat it.* Accordingly, I present a precedent to illuminate contemporary cancel culture and social media de-platforming.

The Stationers' Company of London

Between the 1407 Oxford Constitutions and the 1710 Statute of Queen Anne, the Stationers' Company of London (originally a guild) enjoyed the exclusive and perpetual right to copy (*copyright*) and subsequently to print and sell books subject to Church and Crown prohibition of "immoral, licentious, irreligious, or treasonable or seditious" works. Such prohibitions were contained in a Licensing Act that evolved over succeeding Parliaments including those of Cromwell's Commonwealth.

The Company was the chosen instrument of pre-publication censorship by Catholic Queen Mary, Anglican Queen Elizabeth I and Puritan Cromwell. The Head of State, theologies and ideologies would change but the Stationers' Company continued chasing down illicit printers, printing presses and books. The Company enjoyed the right of search and seizure even of private homes. In return, the Crown granted the Company the exclusive right to copy and subsequently print books and perpetual copyright to such works— not to the author.

Put another way, Church and Crown outsourced censorship to the Stationers' Company for over 300 years. This set the precedent for today's social media platforms performing a similar censorial role - think hate, paedophilia, racism and terrorism. Definition of such evils, however, varies according to one's ideology, theology and/or the Party in power.

Thomas Jefferson initially resisted American copyright given the censorial practices and perpetual copyright granted to the Company. In the end he supported the 1780 Copyright Act insisting on a term of life of the author plus 14 years. As with the East India Company and the Boston Tea Party, he and other founding fathers of the American Revolution detested State grants of industrial privilege, *a.k.a.*, monopolies, as did Adam Smith in his 1776 *Inquiry into the Wealth of Nations*. This was especially true when it came to freedom of expression and freedom of the press.

The Knowledge-Based Economy

While the Licensing Act lapsed along with perpetual copyright, copyright itself survived in the Anglosphere. Today it enjoys a term of 70 years after the author's death. But while the author is now recognized as the initial owner of a literary or artistic work all rights can be and generally are assigned to a publisher, *a.k.a.*, the Company. In fact, ever evolving copyright statutes, together with patents,

registered industrial designs (design patents in the US) and trademarks, have become the legal foundation for the industrial organization of *The Knowledge-Based Economy*, so-called in a 1996 OECD publication.

The Digital Economy

A year prior, in 1995, Windows '95 was released offering consumers a Graphic User Interface (GUI) with a personal computer and subsequently a free web browser – Internet Explorer. What once was an industrial tool quickly transformed into a household appliance like a TV, frig or a stove. Arguably, the digital consumer economy was born preceded by the CD and what became the DVD. What once was difficult to copy was made as easy as pushing a button. Protection of commercially valuable content required that new ‘rights’ be created.

The national and international response was digital management rights (DMRs) included in the *1996 World Copyright Treaty (WCT) & World Performances & Phonogram Treaty (WPPT)*; the 1998 U.S. *Digital Millennium Copyright Act (DMCA)* and the *2012 Canadian Copyright Modernization Act*. As noted by L.R. Patterson in his “*The DMCA: A Modern Version of the Licensing Act of 1662*”, there are striking similarities between the DMCA and the last Licensing Act of 1662. I have since confirmed that the WCT, WPPT and Canadian legislation share such similarities.

In this regard it should be noted that a contributing factor to ending Stationers’ perpetual copyright and censorship was emergence of a new competitive medium of communication – the daily newspaper. The *Oxford Gazette* was the first English-language newspaper published in 1665 succeeded by the *London Gazette* in 1666. The Statute of Queen Anne passed in 1710 ending the Company’s monopoly.

Similarly, Google Search was launched in 1998, the same year as the DMCA, offering consumers the first effective search engine for the growing informational wealth of the Internet. One definition of knowledge is organized, systematized and retrievable information. Google Search converted an exponentially increasing mountain of information called the Internet or World-Wide Web into a knowledge base. What relational databasing did for industrial use of computers at the beginning of the Information Revolution in the 1970s, Google Search did for the consumer internet in the late 1990s – bringing order out of chaos. It was, however, but the pioneer of a new communications medium– social media – as well as a new business model that would transform the consumer economy while, perhaps, mortally wounding the daily newspaper in turn.

This new business model came to fruition with the launch of Facebook in 2004 and Twitter in 2006. The model allowed all three to grow using network economies into digital communications monopolies through expansion and acquisition of competitors and complimentary platforms, *e.g.*, Google’s acquisition of YouTube.

Traditional ‘natural’ monopolies arise from increasing returns to scale in production. One firm can satisfy all market demand at the lowest average cost per unit. A competitor entering at a smaller scale faces a fatal cost disadvantage. Network economies, on the other hand, result from exponential growth of communications pathways as the number of subscribers grow. Facebook, for example, has some 2 billion subscribers. An entrant has a much smaller network making it less appealing. At best it remains a niche player. The example of WordPerfect *vs* Microsoft WORD in the 1990s illustrates. As more and more users adopted MS Windows OS with WORD bundled in its Office Suite, WordPerfect experienced an ever-declining percentage of users. You can e-communicate with more people, more easily, using WORD. WordPerfect continues but as a niche player.

The Social Media Business Model

So, what is this new social media business model and how does it relate to the Stationers’ Company? I will briefly outline five characteristics: (a) Digital Platforming; (b) Content; (c) Pricing; (d) Capital Intensity; and (e) Licensing.

(a) Digital Platforming

The term ‘platform’ has multiple meanings in the context of social media. First, in the world of computing a platform is a machine and/or an operating system serving as the base on which software applications run. Second, in the world of politics a platform can be: (i) a space for the accommodation of speakers; or the value base of a collective such as (ii) a political party or (iii) a corporate culture. Social media embraces all these definitions. While the first is value neutral being technically defined the second and third are not. Accommodation of speakers is subject to the changing value base of a platform that varies with shifting ideologies, theologies and/or the Party in power. Just like the Stationers, however, profit remains the primary motive.

(b) Content

Commercial audio-video content excluding video gaming is delivered through a ‘cool’ medium with the audience passively absorbing content. Social media is a ‘hot’ medium requiring the active participation of the user/subscriber. As noted by Marshal McLuhan, text is hot. Social media is also hot in the sense that much user/subscriber content is socio-political in nature, *i.e.*, value laden. This leads to, among other things, ‘Twitter storms’ when many user/subscribers take vigorous written exception to content generated by another. It is this back-and-forth that has led some observers to call social media the ‘new public square’.

While the Stationers could preview a work before publication to ensure it was not “immoral, licentious, irreligious, or treasonable or seditious”, social media platforms instantly publish user/subscriber content and only *ex poste* determine

whether to censor objectionable content and/or de-platform a user/subscriber entirely. In fact, with the end of the Licensing Act and pre-publication censorship the Crown had to rely on *ex post* libel and sedition charges against a published work before a Common Law court. This marked a major move towards freedom of the press and freedom of expression. In the case of social media, however, the situation is different because platforms are privately owned. They can, and do, arbitrarily change their terms and conditions defining objectionable content. There is currently no legal appeal to a platform's censorial decisions.

(c) *Pricing*

It is with respect to pricing that social media represents a truly new business model. Subscription to most social media platforms is without a monetary price. Payment is due in the form of personal information about the user/subscriber. And what is meant by personal information has changed with the advent of social media. In effect it has evolved from a noun to a verb.

Once upon a time personal information concerned the status of an individual (like a noun)— name, address, credit rating, marital status, number of dependents, health status, *etc.* With social media it has become behavioural (like a verb). What did you buy? When did you buy it? What did you watch? What did you read? Where are you now?

Collected under the terms of an End User Licensing Agreement or EULA (see below (e) *Licensing*) a social media platform collects and harvests personal information processing it into psychographic profiles of the user/subscriber and then either sells the profile and/or uses it itself to advertise products matching the wants, needs and desires of a specific user/subscriber. This is done using AI auctions whereby advertisers bid against one another in nanoseconds to win the targeted user/subscriber's attention. And, of course, such profiles are highly sought after for political as well as commercial purposes.

The commercial use of personal information was highlighted in Jacob Weisberg's "[They've Got You, Wherever You Are](#)", *New York Review of Books*, October 27, 2016 where he notes:

Facebook's vast trove of voluntarily surrendered personal information would allow it to resell segmented attention with unparalleled specificity, enabling marketers to target not just the location and demographic characteristics of its users, but practically any conceivable taste, interest, or affinity. And with ad products displayed on smartphones, Facebook has ensured that targeted advertising travels with its users everywhere.

This 'pricing' system has significant economic and cultural implications. A few examples demonstrate. First, using psychographic profiles purchased from social media platforms the insurance industry may be transformed from using actuarial tables of risk according to demographic category, *e.g.*, men over 65, to

individual pricing. In the process the industry will become a discriminating monopolist, the most profitable form of business. Individuals at greatest risk will pay a very high price if they can afford it. Second, there can be no question that social media platforms generate value. Google maps reduce travel costs; Facebook brings communities together but there is no monetary contribution to Gross Domestic Product, the generally accepted measure of economic well being. They generate **Value without Price**. Third, there are those who fear **Surveillance Capitalism** based on the effective end of citizen/consumer privacy. Others write of an **Attention Economy** based on social media's psychological manipulations to capture and keep eyes on the screen. Fourth, who owns personal information in the first place? As things currently stand, in the Anglosphere, under Common Law, social media platforms and the business sector owns your personal information. In the Eurosphere, under Civil Code, the individual citizen/consumer owns one's personal information. In the Sinosphere, under autocratic rule, personal information is owned by the State as in the days of the Stationers' monopoly. Whoever owns personal information it is now a commodity, an intellectual commodity. And like other intellectual commodities such as copyrights, patents, registered industrial design and trademarks it is arguably deserving of protection distinct from privacy rights.

(d) Capital Intensity

The capital intensity of the printing press combined with Licensing Act restrictions on the number of presses and even on “**iron work or letters... forged, cast, brought or imported**” facilitated the Stationers' monopoly. A limited number of printing presses and many authors aided the Company's censorship.

As noted above a platform is a machine *and/or* an operating system serving as the base on which software applications run. Social media platforms rely on both hardware and software. The relationship between the two has dramatically changed since the beginning of the Information Revolution. Since 1965 Moore's Law has seen the processing power of hardware double roughly every two years. Programming software, however, remains labour intensive subject to productivity limitations identified by economists **William & Hilda Baumol**. The Y2K crisis illustrates. Due to the expense and limitations of computer memory programmer's left the '19' out of dates such as '1985' creating the possibility of a financial catastrophe when the clock reach '2000'. Would computer accounts read '2000' or '1900'? Re-programming existing software for the Y2K bug provided the foundation for the software industry in India.

With respect to social media platforms reliance is placed on 'server farms' enjoying economies of scale. Facebook and Google as well as Microsoft, Apple and Amazon have their own massive server farms designed to serve a global market

(excluding China). Twitter relies on Amazon servers. It is upon server operating systems that software applications generating social media platforms are operationalized. Access to server farms is a barrier to entry to new social media platforms. In this regard Amazon, Apple and Google almost simultaneously de-platformed one such entrant, *Parler* much as the Stationers' Company would seize and dismantle a printing press outside the Company, *a.k.a.*, a competitor.

(e) Licensing

The Stationers' Company received its powers through a Royal Charter and a Licensing Act approved by Parliament and/or Royal Edict. What might be called the charter of social media platforms, in the US, is Section 230 of the 1996 *Communications Decency Act*. This gives such platforms legal immunity over user/subscribers' words and actions. In effect, it designates them as a telephone company where what is said by subscribers cannot be held against the utility. This exemption from liability was granted to encourage freedom of expression and foster innovation on the internet. Over time, however, social media platforms have been encouraged by the State to censor hate, paedophilia, racism and terrorism. A noted, definition of such evils varies according to one's ideology, theology and/or the Party in power.

What serves as the Licensing Act for social media platforms is the End-User Licensing Agreement or EULA drafted by platform lawyers, not the State. EULAs are used across the software industry. One feature is exemption from product liability – if it breaks your computer you cannot sue. To my knowledge, software is the only commodity exempt from product liability. Another feature is that with a click the user/subscriber accepts its terms and conditions running ten or more pages of legalese that virtually no user/subscriber reads. Terms and conditions include collection, harvesting, processing and sale of personal information. EULAs are designed to minimize risks to the producing firm while maximizing its benefits. In the Anglosphere personal information is like any other piece of corporate property to be bought and sold according to corporate interest at any point in time subject only to national law.

The Stationers' Company permitted only licensed works to be printed censoring those considered by the Crown to be “immoral, licentious, irreligious, or treasonable or seditious”. Major social media platforms have increasingly, as private entities, taken it upon themselves through changing terms and conditions to define and redefine what constitutes hate, paedophilia, racism and terrorism. Who should be censored and/or de-platformed? Why? Like the Stationer's Company adapting to changing Heads of State, theologies and ideologies social media companies primarily seek profits from a changing marketplace – right or wrong.

Conclusions

The more things change the more they stay the same. Transition to a new communications media is always accompanied by social disruption. This is true for the transition from an oral to a written culture, from manuscript to the printing press, from the printing press to social media inclusive of text and audio-visual content. With each transition audience/readership has increased exponentially until today, theoretically, a single Facebook user/subscriber can reach two billion people.

With each exponential burst of audience/readership the State has confronted growth of malign content. Yesterday it was” immoral, licentious, irreligious, or treasonable or seditious”; today, hate, paedophilia, racism and terrorism. While the constellation of powers changes, censorship continues. The question is what and when to censor and by whom?

The Stationers’ Company relied on its Charter, control of the printing press and the Licensing Act. The charter of social media platforms in the US is Section 230. Does market behaviour reflect its intention to encourage freedom of expression and foster innovation on the internet? The hardware foundation of social media platforms are server farms. Are they barriers to entry? Entrants require access if there is to be freedom of expression and internet innovation. The licensing act of social media platforms – EULAs – are drafted according to changing corporate cultures. While not liable for user/subscriber content they can and do arbitrarily define what is acceptable. And unlike previous communications technologies social media platforms are financed not by market price but by collecting, harvesting, processing and selling personal information about the individual user/subscriber. Given personal information is now an intellectual commodity is it not appropriate to recognize it as legal property subject to protection like copyrights, patents, registered industrial designs and trademarks and distinct from privacy rights? Should EULAs be subject to legislative definition to encourage freedom of expression and foster innovation on the internet and recognize the initial owner of personal information as the user/subscriber?

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P.S. In 1937 the Stationers’ Company became the Stationers’ and Newspaper Makers’ Company that continues to operate until today.