



Net neutrality regulation and the participatory condition

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Abstract: Across the globe, net neutrality policy consultations have sought the input of an engaged networked public by recursively mobilising the very technology of the internet itself as a kind of policy participation. This paper examines such cases, where regulators in the United States, Canada, India, and the European Union intended to more accurately represent public interest perspectives. However, as I argue, appeals to the participatory culture of the internet risk reifying participation itself while ignoring systemic inequalities that structure the concept of networked publics according to the exclusionary norms of internet discourse.

Keywords: Participation, Network neutrality, Networked Publics, Platforms, Public interest

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INTRODUCTION: PARTICIPATION TROUBLE

Regulators all over the world have attempted to address the challenges of internet governance by turning to networked publics as stakeholders. This paper focuses on the issue of net neutrality as a key concern for regulatory frameworks concerning the internet as a core communications infrastructure. Network or net neutrality is the basic principle that all traffic should be treated equally as it traverses the internet (Wu, 2003). This principle is derived from earlier ideas of common carriage in transportation regulation, where telecommunication providers have similarly long been regulated as content-neutral common carriers (Lentz, 2013, p. 572). The stakes of network neutrality are particularly high for the ideal of networked deliberative democracy, in a climate where large telecommunications companies seek ever more consolidated power over both content and networks (Barratt & Shade, 2007). Yet the definition of neutrality in this context is perhaps more complex than it appears; as Christian Sandvig (2007) has argued, the way that layers of internet protocol work means that discrimination is

not simply a legal matter but a technical one, built into internet infrastructure. Moreover, business practices such as differential pricing or zero rating, where certain applications can be used without contributing to data allowances, show how violations of the idea of net neutrality raise conflicting consumer interests, further clouding the apparent public interest perspective in developing regulatory provisions that uphold common carriage principles.

In their public consultations for proceedings implicating net neutrality, various regulators over the past few years have experienced or actively sought the input of everyday users of the internet, beyond that of the usual policy experts (see Table 1 for a summary). In some cases, the usual mechanisms for soliciting comments garnered many more responses than is typical. A particularly well known example of this is the US Federal Communications Commission (FCC) online comments portal, which received millions of submissions during the past two consultation periods on net neutrality in 2014 and 2017 (Kimball, 2016; Novak & Sebastian, 2019; Obar, 2016). In other cases, regulators expanded beyond their usual processes to actively invite broad public comment, such as in the way that the Canadian Radio-television and Telecommunications Commission (CRTC) set up a thread on the bulletin board style website Reddit to solicit public comments on its 2016 consultation about differential pricing. The Telecommunications Regulatory Authority of India (TRAI) held its 2015 consultations on net neutrality at a moment when Facebook was attempting a massive roll out of its Free Basics programme in the country, and so the public input in that case volleyed between TRAI's consultation email address and rival form submissions set up by Facebook and advocacy group Save the Internet. In the European Union, the Body of European Regulators for Electronic Communications (BEREC) accepted submissions to its 2016 open internet consultation via email but also indirectly through faxes to members of the European Parliament. Such varied means of encouraging public participation in this particular regulatory debate among the four jurisdictions points toward the impact of large-scale advocacy work in support of net neutrality provisions (Faris, Roberts, Etling, Othman, & Benkler, 2016).

Table 1: Four examples of recent net neutrality consultation mechanisms

Region	Regulator	Year(s)	Consultation	Mechanism(s)	Comments
US	FCC	2014; 2017	Docket no. 14-28, "Protecting and Promoting the Open Internet"; Docket no. 17-108 "Restoring Internet Freedom"	comment portal	~4 million; ~22 million
Canada	CRTC	2016	File no. CRTC 2016-192, "Examination of differential pricing practices related to Internet data plans"	comment portal; Reddit	123; ~1,200
India	TRAI	2015	"Regulatory Framework for Over-the-Top (OTT) Services"	email; Facebook	~1 million; 1.35 million

Region	Regulator	Year(s)	Consultation	Mechanism(s)	Comments
EU	BEREC	2016	“Guidelines on the Implementation by National Regulators of European Net Neutrality Rules”	email; fax	~500,000; number unknown

These four examples illustrate ways that regulators have imagined tapping into a networked public interest perspective, and in the process, shoring up their own legitimacy as governing bodies actively consulting “the public” without questioning who that public includes and excludes (Salter, 2007, p. 304). Moreover, the digital spaces involved in these consultations provide key sites for critiquing how publics get constructed by the affordances of online platforms. Using discursive interface analysis - a method of assessing the “productive constraints of [web] interfaces and the norms they construct” (Stanfill, 2015, p. 1060) - I argue that these particular examples show how policymaking about the internet reifies a particular version of public participation that is directly tied to the internet’s own constitutive myth of democratisation.

THE PARTICIPATORY CONDITION

The key periodising context for this argument is that of the participatory condition, which Darin Barney and his co-authors (2017) describe as one in which “participation has evolved into a leading mode of subjective interpellation” (p. x). Interpellation is an Althusserian concept that accounts for the ways in which people are called into particular subject positions by the ideological apparatuses of their social milieu, including for example, the media. Taking the place of other public values such as equality, justice, fairness, community, or freedom, participation has become the norm of contemporary political subjectivity according to the promises of networked digital media, and upheld both by the set-up of Western institutions as well as critiques of those institutions (Barney et al., 2016, p. xii). In terms of policy, participation has been yoked to internet policy-making’s appeals to the public interest, which rest on an ideal of citizen participation. At the same time, participation is valorised in critiques of the ways that internet policy-making tends to be exclusionary given its inability to ensure participation of actors beyond its typically technocratic setting (Obar, 2016). This is a paradox that pervades all kinds of policymaking, not only that about the internet (e.g., Fischer, 2003), but the case of internet policymaking in particular illustrates the ideological weight of participation on two conjoined fronts: that of representing the will of the public alongside that of “empowering” the public via networks. Participation as a public goal has become foregrounded due to a combination of its generalisation (as a largely unspecific and unmeasurable property), compatibility with neoliberalism (the dominant mode for contemporary governance based on economic rationality), and alignment with the supposed democratising values projected onto networked digital technologies (Barney et al., 2016, p. x). The participatory condition thus describes the way internet’s assumed power to lower barriers to engaging in public deliberation recasts citizenship as a set of responsibilities oriented around the technology’s affordances of interactivity.

Such a notion of the participatory condition offers a rejoinder to the concept of networked publics. In danah boyd’s (2010) formulation, a networked public adapts the essential contours of the Habermasian public sphere and Fraserian counterpublics - accessible venues for public debate regarding governance - to see the internet as a platform for imagined collectivity within virtual spaces. While the participatory potential of networked publics should not be understated

(e.g., Bennett & Segerberg, 2013), the limitations of networked publics are tested when they stand in for public participation or are tasked with articulating a public interest perspective (Pangrazio, 2016, p. 172). Such limitations stem from the way that the participatory condition rests on promises of digital media that are symbiotic with for-profit models and therefore deeply politically ambiguous (Langlois, 2013, p. 92). Participation, which comes to be taken-for-granted in liberal-democratic visions of digital culture as a virtue, does not necessarily beget the properties it comes to be associated with, such as equality, justice, or efficacy. In other words, while participation carries generally positive connotations in terms of addressing social exclusion, participation in and of itself is ambivalent. Participation is in fact often promoted by powerful “bureaucracies, police forces, security and intelligence agencies, and global commercial enterprises” to maintain political domination (Barney et al., 2016, p. xxxii), and thus cannot be mapped onto resistance. Accordingly, case examples of net neutrality consultations in the US, Canada, India and the EU demonstrate how attempts to integrate networked publics into policy proceedings can further entrench social divides by upholding an idea that participatory platforms might act as “conduits for governance” (Langlois, 2013, p. 99). These examples further demonstrate the ironies inherent in appeals to a public interest perspective predicated on the participatory condition, where regulatory bodies depend on the legitimacy conferred by consulting a networked public.

THE NETWORKED PUBLIC INTEREST IN NET NEUTRALITY

The way that regulatory bodies have configured the networked public in net neutrality consultations is illustrative of how the participatory condition structures contemporary articulations of the public interest. Influential predecessors of this tendency might be found in what Brandie Nonnecke and Dmitry Epstein (2016) term “crowdsourcing internet governance”. In their examination of multistakeholder policy-making at the Internet Corporation for Assigned Names and Numbers (ICANN) through an internet platform called IdeaScale, Nonnecke and Epstein argue that while the platform enabled diverse stakeholders to participate in internet governance, more effective engagement required extensive research, face-to-face meetings, and a pre-existing relationship with ICANN. Moreover, the IdeaScale platform’s design parameters, particularly its lack of multilingual support, stymied the ideal of global participation (Nonnecke & Epstein, 2016, p. 16). In this case, the greater accessibility to policy-making processes enabled by networked digital platforms represented a limited effort to diversify the input that actually influenced decision making, ultimately maintaining the exclusivity of policy discourse.

Recent net neutrality consultations have likewise made attempts to harness the participatory veneer of internet platforms - platforms that seem to support public debate and yet are known to also hinder democratic aims (e.g., Hindman, 2008) - in ways that suggest an openness toward diverse publics.

THE AMERICAN EXAMPLE

Perhaps the best example of this is the move toward increased public engagement by the US FCC during the Obama administration under the leadership of Tom Wheeler (Kimball, 2016, p. 5961). The baseline for the FCC’s public consultations is the “notice and comment” process mandated by the Administrative Procedures Act of 1946. More expansive outreach initiatives had been established by 2014, when the FCC revisited its 2010 Open Internet Order on the heels

of a challenge by Verizon Communications that internet service providers could not be considered common carriers. A 120-day period for accepting public comments on the FCC's website opened in May 2014. Submitting a comment entailed a number of steps: navigating the list of open proceedings on the FCC comment website; locating this particular proceeding (Docket no. 14-28, "Protecting and Promoting the Open Internet") and entering the electronic filing system; typing in one's name, address, and comment; and agreeing to that personal information and the comment becoming part of the public record and available online. Through the lens of discursive interface analysis, the FCC's comments platform produces a somewhat paradoxical version of participation. The procedure requires a degree of policy literacy from users who may not already be well-acquainted with the FCC's procedures (Lentz, 2014), for example in even being able to locate the comment form among several obscurely numbered dockets, but then the text box for the comment itself is restricted to a few paragraphs and does not support attachments, suggesting a limited amount of feedback.

To try to encourage a general public less well-versed in the bureaucratic maze of comments submission to engage in the proceeding, a number of advocacy groups designed form letter templates that could easily be submitted through their own websites. These groups, including the Electronic Frontier Foundation, Free Press, and Demand Progress, sought to increase the number of comments supporting the protection of net neutrality by eliminating the need for commenters to struggle with the cumbersome interface of the FCC's website. They also aimed to harness an increased public attention to the consultation driven by coverage on HBO's late-night programme *Last Week Tonight* in early June 2014, when host John Oliver encouraged viewers to submit comments in favour of net neutrality provisions (Faris et al., 2016, p. 5849). In the wake of the publicity generated by Oliver's segment, Robert Faris and his co-authors (2016) examined how the "networked public sphere" of online discourses reflected a core-periphery model of political mobilisation, where the "link economy" of hyperlinks on social media sites like Twitter further encouraged broad participation in comments submissions to the FCC (pp. 5852, 5860). When considered as designed interfaces for participation, however, the Oliver coverage as well as the Twitter discourse can also be seen as ways of reinforcing the participation of only a particular segment of the public. In traditional means of policy consultation it is also true that only a select few voices tend to be represented, but in the case of attempting to broaden participation via web platforms and television coverage, the issue is that these mediated arenas become synonymous with the public when they are instead still only representative of specialised demographics. For example in the FCC's case, the demographics of Oliver's viewership skew male, politically progressive, and highly educated, overlapping significantly with those who already appreciate the stakes of net neutrality (Freelon et al., 2016, p. 5910). Similarly, if Twitter discourse surrounding the FCC consultation represents a core-periphery flow of influence as Faris et al. (2016) suggest, then a central core of Twitter users – who also skew urban, higher income, politically progressive, and highly educated (Smith & Anderson, 2018) – are the most influential voices participating in this discourse. Moreover, as Jonathan Obar (2016) has argued about digital form letters such as those developed by advocacy groups in this case, their ability to overcome certain structural barriers to participating in the FCC's consultations is undercut by the way that formalised, technocratic discourse is maintained in the actual decision making that takes place within the Commission (p. 5882).

Despite these shortcomings of participation in the way the FCC constructed it for the 2014 net neutrality consultations, the nearly four million online comments received were ultimately heralded as a win for the public interest perspective when the Commission announced its decision in 2015 to classify internet service providers as common carriers (Faris et al., 2016). It seemed as though internet channels enabled a broad public to be mobilised to participate in

what would have normally been an exclusive arena for technocratic regulatory debate, as though people using the internet were motivated intrinsically to protect it. And yet, because the basic structural parameters of policy-making had not been fundamentally altered by the version of participation embodied in the FCC's comments interface, a revisiting of net neutrality rules in 2017 shows how the same mechanism of participation can result in an opposite outcome.

Under a new federal administration and led by former telecom executive Ajit Pai, the FCC launched a public consultation in May 2017 to again solicit comments on net neutrality under the aegis of "Restoring Internet Freedom" (Docket no. 17-108). Again, advocacy groups set up form letter templates and Oliver covered the issue on his late-night programme. This time, the FCC received nearly 22 million comments, an immense number for an internet policy proceeding and a significant increase from the number of comments received in 2014. This surge in comments can be explained through designed vulnerabilities in the FCC's comments platform. Not only did the platform crash after Oliver's coverage (as it did the first time in 2014), but it also seemed that the FCC's website was susceptible to spam comments submitted by bots. Over half of the comments submitted included false or misleading personal information, such as duplicate email addresses, 94% of comments themselves were duplicates submitted multiple times, and thousands of identical comments were often submitted at the same second (Hitlin et al., 2017). These vulnerabilities show how the solicitation of comments through a badly designed and implemented web form that is susceptible to abuse - many of the fraudulent comments have since been linked to Russian email addresses - represents an insufficient means of consulting broad publics or even actual people. The ultimate outcome of this particular consultation period, where the FCC decided to roll back the protections for net neutrality put in place in 2015, further demonstrates how the comments exercise represents a somewhat empty gesture toward integrating a public interest perspective through networked publics that are ill defined, taken for granted, and only presumed to exist.

THE CANADIAN EXAMPLE

The US example is illustrative of how internet-mediated participation, as a social norm predicated on supposedly inherently democratic values of the web, is constructed by regulators through their appeals to networked publics as a signifier adaptable to ambivalent political ends. In Canada, the CRTC is mandated by Parliament to consult Canadians and respond to their enquiries and complaints. In order to do this, the CRTC uses an online platform similar to the FCC's for comments submission, which is difficult to navigate and requires commenters to use their real names and contact information, which becomes public on the CRTC's website. In addition, the regulator has produced a brochure to encourage participation, which admonishes Canadians to "make your voice heard" by contacting the CRTC online, by phone or fax, participating in a proceeding or submitting comments to a consultation, following the CRTC's Twitter account or liking its Facebook page (CRTC, 2017). It's not clear from the brochure, however, what the difference between these modes of participation might be or how they are used in decision making as part of a proceeding such as the 2016 inquiry into differential pricing practices (File no. CRTC 2016-192). Contrasting the millions of comments received by the FCC, only 123 comments were submitted to this proceeding via the CRTC's online submission system, of which 86 were from private citizens and the rest were mainly from industry representatives, non-profit groups, or academics. The design of the CRTC's interface requires that commenters know exactly which file number to search for and how to access its attendant submission button (similar to the FCC's site); moreover, the way this proceeding was framed - in the language of differential pricing (zero rating) rather than a more inclusive consideration of net neutrality - may have resulted in discursively limiting citizen understanding of the issue under debate. In this way, the CRTC's system for explaining a proceeding as well as linking to its submission

portal sets up a discursive interface that structures the ideal user of the website according to more standard technocratic policy processes, preventing broad participation despite the apparent aims of the participation brochure.

THE EUROPEAN AND INDIAN EXAMPLES

In Europe and India, regulators used a different system to solicit comments on their net neutrality proceedings in June-July 2016, by posting an email address instead of setting up an online submission form. The request for email submissions is a mechanism of consulting interested parties via written feedback on draft documents, which is legally mandated by European Union Regulation EC 1211/2009 but only suggested by the transparency clause in the TRAI Act (1997). A comparison of these two regulatory contexts demonstrates that, despite differences in its legal requirements, the request for email submissions is also a design choice that opens up the affordances of commenting beyond the restrictive parameters of online forms that suggest only a limited range of ideal comments (Stanfill, 2015, p. 1071). BERC's instructions for email submission note that comments should be sent in English and include reference to its draft guidelines on net neutrality, and that comments will be posted publicly but without any identifying personal information. In this way, an ideal comment is suggested by the instructions rather than the interface, which also does not require commenters' personal information to be made public. Similarly, TRAI solicited comments from March-April 2015 through an email address that enabled commenters to write as much as they like and include attachments. In this case, however, there were some problems once comments were publicly posted to India's mygov website: some of the email messages posted had nothing to do with the net neutrality consultation and others were confidential emails intended for TRAI employees. Despite their differences, both the BERC and TRAI consultations share a common email interface for comments submission, and a similar trajectory where not many comments were submitted until the involvement of Save the Internet, an advocacy group that set up a submission form for each consultation through its dedicated regional sites savetheinternet.eu and savetheinternet.in. Described as a recursive public of geeks coalescing around the governance of internet infrastructure that supports their affinity (Prasad, 2017, p. 420), Save the Internet is largely responsible for the volume of public submissions to both the European (half a million) and Indian (one million) consultations.

Considering each of the cases of comments solicitation in the US, Canada, India, and the EU in relation to networked publics, the role of advocacy groups points to how those publics are each constructed from within specific subcultures despite the suggestion that they reflect broader public sentiment. The idea of recursive publics, suggested by Revati Prasad's (2017) analysis of the Indian net neutrality consultation, implies that geek culture, as a subset of public culture, characterises the comments received in each of these proceedings. In his formulation of recursive publics as a concept, Christopher Kelty (2005) explains that they comprise "a distinct social group [...] constituted by a shared, profound concern for the technical and legal conditions of possibility for their own association" (p. 185). In the US case, it is apparent that this particular group partly overlaps with the audience for Oliver's HBO programme, which is often ascribed as the main driver for the volume of comments submissions, at least in the 2014 consultation (e.g., Faris et al., 2016). The following year in India, a similar strategy was devised by comedy group All India Bakchod, who produced a YouTube video that used internet humour and was directed toward Indian "digital natives" (Prasad, 2017, p. 421). Combined with the interfaces for comments submissions and the level of policy literacy required to make an effective comment, these sorts of mobilisation efforts show how in accessing the perspectives of a specifically networked public, regulators constrain the notion of policy participation in line with the way the participatory condition recasts citizenship as a specific affordance of digital

technologies (Barney et al., 2016). In this way, regulators claim to want broad input, seem to put mechanisms in place to solicit broad input via the internet, but maintain structuring inequalities by ignoring how internet participation is itself constricted by the affordances of digital platforms.

PARTICIPATION BY PLATFORM

Especially when considering the involvement of social media platforms in net neutrality consultations, the ways that participation has been co-opted by private interests further complicates the way that interface affordances constrain public engagement. As Ganaele Langlois (2013) has argued, social media platforms have themselves become “conduits for governance”, with the consequence that “there is an undeniable closing off of the concept of participatory media as it is folded into a corporate online model of participation via a handful of software platforms” (pp. 99, 92). Perhaps the best examples of this sort of platform politics in net neutrality policy-making can be found in the Indian and Canadian cases. Both of these countries’ regulators contended with social media platforms in distinct ways: in India, a key backdrop for TRAI’s 2015 net neutrality consultations was Facebook’s simultaneous push to roll out its Free Basics programme throughout the country; in Canada, the low number of submissions received through the CRTC’s online submission portal was supplemented through a dedicated Reddit thread intended to generate increased public engagement. Despite the differences between these contexts for involving particular platforms in the net neutrality regulatory debate, both examples demonstrate how social media platforms in particular trade on participation as a constitutive myth of their societal value.

FACEBOOK

While the 2015 TRAI net neutrality consultation was called independently, its timing coincided with Facebook’s aggressive marketing campaign to launch Free Basics (then called Internet.org) in India. As a result, the debate about TRAI’s consultation coalesced around Facebook’s controversial provision of zero-rated websites, with most of the comments submitted urging for a protection of net neutrality principles (Gurumurthy & Chami, 2016). In response, Facebook redoubled its efforts to portray Free Basics as a boon for the Indian public interest. Facebook CEO Mark Zuckerberg penned a blog post claiming that pro-net neutrality arguments were preventing marginalised populations from accessing the opportunities that come with connectivity, he also embarked on an extensive tour of the country, speaking in classrooms and villages, and the company’s large-scale advertising campaign depicted Free Basics as the cornerstone of a “Connected India” that would empower disadvantaged rural citizens (Shahin, 2019). These more traditional promotional efforts were matched by a Facebook campaign that went live in December 2015. At this time, Facebook sent out notifications to all of its users in India, encouraging them to send comments to TRAI to “save Free Basics” via a simple one-click interface. While the regulator critiqued the validity of the 1.35 million messages it received through Facebook, as Anita Gurumurthy and Nandini Chami (2016) argue, the power of the platform to generate its own support reveals “the sweet spot that platform control constitutes in the struggle for hegemony in the network society. As dominant actors vie for control, they mediate user experience by redefining the materialities of the multi-layered internet environment” (n.p.). What the authors identify here is a recursivity to Facebook’s actions: through its power to persuade users to demand regulation in its interest, Facebook essentially controls the means by which the internet can be shaped. By casting Free Basics as the internet itself, Facebook demonstrated how it could wield its power to shape the infrastructures of

participation.

REDDIT

Offering quite a different example of platform power, the CRTC turned to Reddit in order to reach people “who might not otherwise participate” in its differential pricing consultation, according to a CRTC spokesperson (quoted in Jackson, 2016). Despite the different context for the integration of Reddit by the CRTC versus the antagonistic position of Facebook in TRAI’s consultation, the way Reddit was used similarly underscores the limitations of conflating platforms with publics. Compared to the modest 123 submissions received through the CRTC’s own website, its Reddit thread garnered nearly 1,200 comments on the net neutrality implications of differential pricing practices over a four-day period in September 2016. These comments, overwhelmingly against differential pricing practices and in support of net neutrality, show one of the issues with conflating a particular website with the broader public interest perspective. Reddit is not an adequate stand-in for the public or even for the internet, as Adrienne Massanari (2017) has illustrated in her analysis of the way Reddit’s architecture and social norms support the formation of “toxic technocultures”. For example, Reddit accounts are pseudonymous and easy to create, and posts are subject to a system of upvoting and downvoting. These features suggest an egalitarianism or democracy inherent to the platform, however, in practice Reddit valorises individual contributions while also creating the conditions for a “herding mentality” in terms of what kinds of content becomes popular (Massanari, 2017, p. 337). The consequence of the herd mentality for the CRTC is that the Reddit comments provide only one common perspective. In this sense, the initial goal of seeking public input is somewhat skewed in that this segment of the public – mainly users with existing Reddit accounts since any new users were subject to increased moderation – presents quite a unified argument against differential pricing in line with the idea of the internet as inherently “neutral”.

Appeals to the supposed pre-existing neutrality of the internet is the central discursive strategy of sites like Reddit and Facebook, that present themselves as neutral platforms in order to elide the politics they produce through their interfaces, algorithms, content moderation practices, and exploitative business models (e.g., Gillespie, 2010; van Dijck, 2013; Zuboff, 2015).¹ There is an important intersection here between the way platforms deploy the idea of neutrality and the way net neutrality is similarly constructed as a fundamental attribute of the internet. In this sense, the internet as neutral is cast as an apolitical space for the organic unfolding of politics, “a framework in which equal access and equal ability to express oneself are neutrally, and thus perhaps legally, protected” (Streeter, 2013, p. 497). Resting on the ideals of common carriage (Lentz, 2013; Sandvig, 2007), net neutrality thus comes with the baggage of its own conceits about participation as playing out in a utopian nonplace, as Carole Pateman (1970) has characterised the notion of full participation. Commercial social media platforms mobilise this idealised version of full participation in sometimes contradictory ways – for example, in Facebook’s support of the Open Internet Order in the US but simultaneous push for Free Basics to become ubiquitous in India – but always according to the ethos of maintaining their own appearance as mere facilitators of public debate (Busch & Shepherd, 2014). It is through subtle means, for example, by directing site users through paths of least resistance that reinforce normative claims (Stanfill, 2015, p. 1061), that platforms exercise the power to shape participation. As such, when regulators encounter platforms within their own net neutrality consultations, they also encounter versions of participation that are already conditioned by the platform economy.

THE IMAGINED PARTICIPANT

Both regulators' and platforms' versions of participation produce corresponding ideal participating subjects or imagined users, respectively. The mechanism of interpellation, where citizens or users are summoned into particular normative subjectivities, takes place throughout the participatory condition, in both institutional and technological contexts (Barney et al., 2016, p. ix; Stanfill, 2015, p. 1064). This is evident in the example of John Oliver's audience submitting comments to the FCC, as it is in the CRTC's choice of Reddit, a platform that reinforces a stereotypical internet user as young, white, and male (Massanari, 2017). The libertarian technoutopianism that underlies internet culture further suggests that its political tenor is one driven by the rational choices of users as individual actors. Here, as Barney et al. (2016) suggest, the participatory condition aligns with the neoliberal politics that also pervade regulatory institutions (p. x). In a context where private interests tend to exert more pressure on policymaking than public interests, attempts at visibly including the public are crucial for the legitimacy of the regulatory project (Fischer, 2003, p. 205; Salter, 2007, p. 311). Nonetheless, that public tends to be reduced in neoliberal terms to a compilation of individual consumers, making rational choices within the communications marketplace.

This discursive interpellation of a participating subject is clear in the BEREC net neutrality consultation's draft guidelines, published in June 2016 to precipitate public comment. The guidelines follow from the EU's overarching Electronic Communications Regulatory Framework, designed to facilitate users' ability to "access and distribute information or run applications and services of their choice", a statement which evidences "a distinctly narrow character and reflects strongly a techno-economic treatment of Net Neutrality" (Simpson, 2016, p. 337). Accordingly, the guidelines refer to "end-users" and "consumers" rather than "citizens" (a word that never appears in the document): "BEREC understands 'end-user' to encompass individuals and businesses, including consumers as well as CAPs [Content and Application Providers]" (BEREC, 2016a, p. 3). According to the logic of technology as a good in and of itself, the notion of participation thus becomes defined in a limited way as simply any uses of the technology, "rather than how such use is enabling people to participate culturally, socially, politically and economically" (Karim, 1999, p. 57). This language also evidences the increased conflation of citizens with consumers in neoliberal regulatory discourse over the past twenty-odd years of media policy that has coincided with the rise of converged digital technology (Livingstone et al., 2007, p. 616). Positioning consumers as the primary subjects of net neutrality regulation suggests a version of participation founded on choice, and in turn, casts participation in the regulatory process in the language of consumer rights.

By seeking public input from end-user consumers, that public thus becomes collapsed into rational choice actors in a way that defines the domain of net neutrality as, fundamentally, a marketplace. Consider for example how BEREC summarised the responses it received through email alongside faxes sent to members of the European Parliament. Most of these responses were filtered through Save the Internet's comment template, oriented around language about how service providers "Shall not limit the exercise of end-users' rights," for example through traffic management or differential pricing, in order to "ensur[e] consumers are protected against potentially harmful practices" (BEREC, 2016b, p. 12). The focus on harm to consumers suggests that the central concern is whether internet users are able to make choices unfettered by the structuring practices of service providers – an impossible scenario given the essential imbalance of power between these two stakeholders. The meaning of networked publics in this context is

further subject to what Arjun Appadurai (1990) has identified as the “fetishism of the consumer”, whereby the consumer functions as a sign or “a mask for the real seat of agency, which is not the consumer but the producer and the many forces that constitute production” (p. 16). The consequence of imagining the participating subject as this sort of consumer is that, despite the appearance of public consultation, the regulatory process itself hasn’t fundamentally changed and largely remains captured by the private interests that stand to benefit from the way net neutrality is legislated, and, more importantly, enforced (Barratt & Shade, 2007).

CONCLUSION: RECONFIGURING PARTICIPATION

In considering the participatory condition as the context for contemporary internet policy-making, the choice to focus on net neutrality regulation in particular is not accidental. There is an illustrative parallel between the way participation can be discursively deployed to maintain existing power differentials and the way net neutrality has been framed in terms of a neutral context for unrestricted consumer choice. As Sandvig (2007) argues, the idea of “neutrality” misses the point that what is at stake is not whether service providers discriminate but *how* discrimination is exercised across networks, which requires “a normative vision of what public duties the internet is meant to serve” (p. 137). Correspondingly, a blunt emphasis on public participation in policy-making often fails to ask vital questions about “why the public is participating [...] or who indeed properly constitutes *the public*” (Salter, 2007, p. 294, emphasis in original). As demonstrated by the examples of the US, Canada, India, and the EU, net neutrality public consultations tend to reinforce a particular version of participation according to the way the participatory condition suggests that the public interest can be expediently located in technologically constituted networked publics.

In order to get past the way that public participation can be reduced to “lip service” on the part of regulators (Fischer, 2003, p. 208), as well as the structuring inequalities of networked publics, policy processes need to be designed in a way that deeply considers what sorts of publics are being consulted (e.g., Nanz & Steffek, 2004). As Gurumurthy and Chami (2016) note about the Indian case, certain “access imaginaries [are] delegitimised in public discourse”, and as such, regulators must actively seek to instil participatory parity in the consultation process (n.p.). Participatory parity is a concept developed by Nancy Fraser (1990) that suggests the need to first address systemic inequalities in public space before assuming that democratic participation can function. In the example of net neutrality consultations, this would entail a reconsideration of how internet platforms are used to represent a public interest perspective, but would also necessitate structural changes to internet policy-making’s technocratic character. Such changes might include concerted steps to rebalance the naturalisation of neoliberal values in policy-making (e.g., Feedman, 2006), but also those that reconsider the inherent structural barriers around expertise in this space (e.g., Fischer, 1990). In both cases, what is required is a thorough critique of the participatory condition as it is supported by the promises of digital technology; technology that, like regulation, is largely configured according to neoliberal values that reinforce the political economy of exploitation.

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FOOTNOTES

1. Such appeals to neutrality have of course appeared increasingly untenable as continued revelations emerge about the role of social media platforms in large-scale misinformation campaigns, as seen in the polarisation of US voters via Facebook during the 2016 federal election.