Insight

How Technology Policy Enables COVID-19 Responses

JENNIFER HUDDLESTON | MARCH 25, 2020

- The United States' largely permissionless approach to regulating technology has allowed innovators and companies to build services that make social distancing more achievable and tolerable for many.
- User-generated content on social-media platforms has both enabled useful information to spread and provided helpful diversions, and while user-generated content can create problems with misinformation, policymakers should maintain the Section 230 liability protections that have facilitated the explosion of user-generated content.
- Innovators' and entrepreneurs' responses to the to the current crisis highlight areas for additional policy reform, particularly in reducing regulatory barriers for emerging technologies that could assist in responding to COVID-19.

Introduction

In recent days, many Americans have found themselves working from home, in virtual classrooms, and more generally just staying home. A decade or two ago, such a transition would have resulted in much more friction for many workers and students (if it was possible at all). The rapid pace of technological innovation, however, is enabling a new normal to emerge. In addition to making it easier to stay home, technology is also assisting in efforts to respond to the COVID-19 virus, from helping share important information to innovative ideas for responding to potential shortages. The approach to technology policy that has allowed new technologies to develop rapidly with few barriers to entry is proving to be particularly beneficial right now. Policymakers should recognize the way America's permissionless approach has made social distancing and other responses to the pandemic a more achievable reality and also consider removing barriers to certain emerging technologies to further the response to COVID-19.

Social Distancing Made Easier Thanks to Innovation

FaceTime is around a decade old. According to Pew Research, it was about 12 years ago that the majority of Americans had broadband internet at home. Streaming via services such as Netflix and Amazon Prime Video became available around 2007, while services like Instacart and DoorDash have yet to celebrate a decade in business. Yet in the recent days of social distancing whether for work, school, or keeping up with friends, we've embraced how these and many other tools make it far easier to stay home. If the pandemic had occurred a decade ago, the options available for working from home and staying connected would have been more limited.

Why have we experienced such rapid technological advancement? America has largely embraced a regulatory framework that empowers innovators and entrepreneurs, particularly in information technology, to offer their products with minimal regulatory interference. This approach has kept barriers to entry low compared to more regulated industries or countries that have taken an overly precautionary approach. As a result, America is home not only to many of the largest tech companies but also to many smaller companies that may arise to fulfill specific needs. This robust innovation ecosystem has benefitted American consumers by providing both a wide variety of choices and, in particular, free and low-cost options for services that are available now in a time of crisis.

Underlying many of these services is improved internet connectivity and speed. The Federal Communications Commission (FCC) and many telecommunications providers have shown great leadership to ensure Americans stay connected during this time. The FCC's Keep Americans Connected voluntary pledge has been adopted by hundreds of telephone and broadband service providers who have promised not to disconnect services for 60 days, to waive late fees in the same period, and to open up WiFi hotspots to any American that needs them.

Because they are operating under a policy framework that does not have overly precautionary barriers to entry, innovative companies have been able to develop new products that have improved our lives in an especially trying time. For example, video chats help us stay more connected and are growing faster than ever. Meanwhile, a number of internet platforms have helped provide important information about COVID-19. For example, Google launched a coronavirus information website with state-based information and safety and precaution tips as well as enhanced search results with information related to the pandemic. Facebook hosted a live conversation between the director of the National Institute of Allergy and Infectious Disease Dr. Anthony Fauci and Mark Zuckerberg encouraging young people to take the disease seriously.

But wealth of information on internet platforms is not just driven by the platforms themselves, but by the content generated by their users—and a specific law, Section 230, has largely enabled the flourishing of such user-generated content. Section 230 limits the liability of platforms for the content that users post, a protection that makes such platforms viable. Most recently, coronavirus-related searches and hashtags have dominated online conversations, but user-generated content extends far beyond those. Many have found welcome relief in the zoos and aquariums posting videos of animals exploring their relatively human-free locations, while parents who now find themselves helping teach children have access to various message boards, lesson plans, and more.

With user-generated content comes the risk of false or misleading information, and there have been concerns about misinformation on COVID-19 as well. and many platforms signed a joint statement to work with government health care agencies to combat fraud and misinformation about the virus. Some platforms are also looking beyond just potential misinformation and choosing to police online ads and sales in effort to prevent predatory behavior such as hoarding or price gouging. Facebook banned advertising and marketplace sales of face masks, hand sanitizer, surface wipes, and COVID-19 test kits. Amazon and eBay have also cracked down on secondary marketplace sellers that were inflating prices of such supplies.

Reducing Barriers for New Technologies to Respond to the COVID-19 Pandemic

In addition to technologies keeping us connected, there are several emerging technologies that are helping or could help the response to the pandemic. Reducing regulatory barriers for technologies such as drones and 3-D printing could further assist in the response to the global pandemic.

One of the key concerns about COVID-19 is the potential strain it may place on the current stock of medical equipment such as ventilators and protective equipment. Some start-ups have been working together to come up with a way to 3-D print crucial ventilator valves at a lower cost, increasing the overall production of these critical devices. In Montana, a doctor has been 3-D printing masks to help deal with shortages. This type of behavior at times can be in violation of requirements for the regulation of medical devices and in other cases raise potential patent concerns. Yet as with other cases such as 3-D printing prosthetics for children, this type of evasive entrepreneurship (as Mercatus Center scholar Adam Thierer has called it) likely does more good than the harm resulting from violating approval regulations.

Drones could also play a role in enabling deliveries both for those in quarantine and for medical supplies. A couple on the Diamond Princess reportedly ordered wine delivery by

drone while the ship was quarantined. In some countries even prior to the COVID-19 pandemic, drones have been used to deliver critical medical supplies such as blood. Now might be a good time to consider reforming the regulatory barriers that prevent such usages in the United States.

In some cases, policymakers already seem to be aware of and embracing the opportunity to remove regulatory barriers. For example, the CARES Act provides increased opportunities to use telemedicine by increasing the flexibility for Medicare reimbursement for these visits and allowing them to count toward the deductible for high deductible health plans. This important technology could be particularly useful in rural areas with fewer medical providers as well as providing a way to relieve some of the strain on emergency rooms and hospitals for initial screenings.

Ideally, given their advantages, such policy changes will stay in place after the initial pandemic ends. Innovators and entrepreneurs are thinking of creative solutions to the challenges of the COVID-19 pandemic, and policymakers should look to remove regulatory red tape that may prevent such response. If such regulations are unnecessary during a time of crisis, then policymakers should reconsider the purpose behind them more generally. One way to go about such re-evaluation would be to sunset such regulations, which would force policymakers to review them and actively move to extend them.

Conclusion

The United States has been a leader in innovation and many emerging technologies thanks to an approach that encourages experimentation and limits barriers to entry. The current crisis is only demonstrating the value of such a regulatory approach to technology. After the pandemic, policymakers should seek to continue the United States' generally permissionless approach that has allowed technologies to emerge and flourish.