

UNBUNDLE FACEBOOK & GOOGLE ?

Why digital media monopolies are a threat to democracies

Wolfgang Hagen

In May 2018, after one of her careful and inconspicuous keynote speeches at the conference of the "G7/G20 - Global Solutions Initiative", Chancellor Angela Merkel suddenly showed herself to be an unusually passionate discussant:

"I currently see a huge challenge for shaping globalisation: that is the fact that the raw material of the 21st century is the data, not coal and steel. (...) Basically we are all data suppliers, and for the fact that we permanently supply these data, we get nothing at all so far, and others earn from it beautifully. (...) [W]e now also want to tax Facebook, Apple, Google, Amazon. (...) The pricing of data, especially of consumers, is in my view the central problem of justice of the future - otherwise we will experience a very unjust world."¹

I put this quote at the beginning of this article because it observes a politician while she's thinking: One of Europe's most important state leaders cursory circles her thoughts around two fundamental issues of the digital epoch without coming to a conclusive solution. On the contrary, she asks the scientists present for advice on this "central justice problem of the future".

PROBLEM ANALYSIS: INTERNAL MARKET, DATA ASYMMETRY, MICRO-TARGETING

In order to give a dimension to the nature and scope of the "digital single market", the European Commission - as of March 2018 - has compiled the facts: on any given day of the year, European Citizens send a total of 20 trillion emails, search 650 million times the Internet, write 500 000 blog posts, give 150 million messages in the "social media", watch 800 million videos on the net, upload 40 million photos. The 500 million users generate 400 million gigabytes of data traffic on the Internet every day, with EU statisticians predicting a "digital single market" of "up to 415 billion euros a year", which will "create jobs and change our public services"², but without being of tax significance for the European economies so far.

This has to do with the fact that the currently richest US world monopolies, called "Frightful Five" or FAMGA (Facebook, Amazon, Microsoft, Google and Apple), with a total market value of 3500 billion dollars, choose the country with the lowest corporate tax for their European branches: Amazon is located in Luxembourg, Facebook and Microsoft in Ireland, Google in Ireland and the Netherlands. They pay an average of only 9 percent instead of the usual 23 percent for non-European companies.³

¹ Merkel, Angela (2018): Zum Rohstoff Daten - Auszug aus der Diskussion, <https://www.youtube.com/watch?v=bHSAAr9s1kY> - 2. Global Solutions Summit am 28.05. Vom Autor transkribiert und leicht gekürzt.

² Europäische Kommission (2017): Ein faires und effizientes Steuersystem in der Europäischen Union für den digitalen Binnenmarkt, COM(2017) 547 final Brüssel, den 21.9., S. 2.

³ a.a.O., S. 7.

Even if all of Facebook's advertising revenues generated in Germany were taxed under German law, either under "equalization tax" or "withholding tax" or under some new form of levy from "revenues from the provision of digital services or advertising revenues" , this would still not answer the question of what is actually the activity of companies such as Facebook or Google.

In fact, the "activity" of the corporations Facebook or Google is Janus-faced. When something is "done", at least two parties are always involved - the users and the company. In terms of media ecology, this is called a reciprocal but asymmetrical context of conditions: the more active users act, search, like, click, share, comment, the more targeted and "deeper" the advertising clusters become, or to put it in Facebook technical language: the "Broad Categories" and "Campaigns", with which each user receives advertising tailored precisely to their profile. That's the business model. Built into this is a direct effectiveness check by so-called offsite pixels, which Facebook, for example, offers its advertisers so that they can find out whether an ad has also led to an effective click on their own page (such as buying an item in the advertising online shop). Conversely, advertisers can pass on their contact details to Facebook in order to launch an even sharper campaign.

Connectivity and asymmetry

In this way, the "relationship between surface and depth", which sociologist Niklas Luhmann declared to be the fundamental structural scheme of advertising, changes fundamentally. "Once like the divination techniques of wisdom," says Luhmann, "advertising uses rulings of the surface to reveal depth. (...) But depth, that is not fate now, but the non-binding nature of advertising. Advertising cannot determine what its addressees think, feel or desire."⁴ This was and still is true for development in the classical mass media: in the end, only demoscopic methods can determine who is watching or listening.

Since the early 2000s, however, we have been living in a period of massive media transformation, in Germany and worldwide. Because in "connectivity media"⁵ such as Google or Facebook, there is a one-to-one relationship of use at all times. ARD doesn't know who is watching "Tatort", but Facebook does know who is online, when, where and how. Advertising in connectivity media has nothing more to do with "divination" or prophecy, but is based on concrete data of the advertised. The new data protection basic regulation of the EU does not change this, as far as Facebook is concerned. As before, the user has to prevent profile-"fair" advertising by OptOut, i.e. by targeted deselection.

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⁴ Luhmann, Niklas (1996): Die Realität der Massenmedien, 2. Auflage, Opladen, S. 64.

⁵ I use this term in connection with Eugene Thacker, Netzwerke - Schwärme - Multitudes, in: Eva Horn (ed.), Schwärme - Kollektive ohne Zentrum. A knowledge story between life and information, Bielefeld 2007, pp. 27-68.

advertising. Advertising cannot determine what its addressees think, feel or desire.”⁶ This applied and still applies to advertising in the classic mass media: in the end, only demoscopic methods can determine who is watching or listening.

Here one can see what Merkel considers to be the "central justice problem of the future". Indeed, the asymmetry of data in connectivity media such as Facebook or Instagram appears unfair. It lies in the discrepancy between the knowledge of the advertiser and the knowledge of the advertised - even if everything the advertiser knows follows from the behaviour of the advertised. But the applicants click, like or share without knowing which relational profiles can result from this algorithmically. These algorithms are trade secrets, the recombined data belong solely to the platform operator. The same applies to Facebook as well as to my car repair shop, which reads out the engine data of my vehicle, according to an expert opinion of the justice ministers of the federal states: "Automatically generated data is assigned according to applicable law (...) to the person who can actually access it, i.e. who can store, process, sell or delete it.”⁷

Really? In the Federal Ministry of Transport (BMVI) one is not so sure. In 2016, for example, the European Court of Justice declared dynamic IP addresses for personal data, i.e. addresses only assigned temporarily. Every user has one when they are on the Internet. This address is person-related, because it is possible to "enter the relevant the person on the basis of the supplementary information held by that person's Internet access provider.”⁸ Thus, the BMVI concludes that "even data that are prima facie 'merely' technical in nature are personal". The technical development in the field of data evaluation of driving and steering behaviour is meanwhile so advanced that it is possible to determine the position without classical location data (such as GPS or mobile radio) and thus create motion profiles.⁹ They would then be personal, so it's "my" data if it's my car.

Micro-Targeting

Facebook doesn't care about any of this. In addition to the rights to uploaded photos and contributions, the Company guarantees in its Terms of Use all rights resulting from the dynamic use of its own service: "We collect information about how you use our products, (...) the functions you use, the actions you perform, the people or accounts you interact with, and the time, frequency and duration of your activities. For example, we log when you are using our products or when you last used them, and what reviews, videos, and other content you view in our products. We also collect information about how you use features like our camera.”¹⁰ That's plain language. On the basis of proprietary algorithms, "micro targeting" is created, i.e. the exact cutting of paid messages for the individual user. Although the user offers Facebook an activity log that chronologically lists their likes, comments, shares, etc., the personality profile that Facebook creates from it remains hidden.

⁶ Niklas Luhmann, Die Realität der Massenmedien, O den1996 2 , S. 64.

⁷ Working Group "Digital Restart" of the Conference of Ministers of Justice of the Länder, Report of 15 May 2017, p. 76.

⁸ European Court of Justice, C-582/14 (Breyer/Germany), 19. 10. 2016.

⁹ BMVI, "Property order" for mobility data? A study from a technical, economic and legal perspective, Berlin 2017, p. 48.

¹⁰ www.facebook.com/about/privacy/update

Researchers such as Michal Kosinski, Samuel Gosling, Sandra Matz and others have found out in recent years how few for an algorithm is necessary, for example, to create a dense, individual profile within the "Big Five" model. With the help of this model, a character can be expressed through the respective expression of five independent characteristic fields. These include "openness to experience, conscientiousness, extroversion, friendliness and neuroticism".¹¹ The scientists prove that not only likes and likes, but also written things can be included in such profiles.¹² Facebook only shows users what they already know. Which profile, which personality models, which characteristics, which psychometric design results from it, they do not experience; that remains the trade secret of Facebook. We don't even know according to which of the countless personality models that exist in marketing research the company actually proceeds.¹³ The crucial thing is not so much that a living person, the user, is reduced to a personality model. The data masses with which the model is equipped are decisive: they enable statements with a statistically high probability about what the user will do in the future - for example, when confronted with political messages she has never seen before.¹⁴ This is indeed a completely new, but very real kind of injustice. The scandal surrounding the data illegally sold by Facebook to Cambridge Analytica for the micro-targeting of Trump voters - a "mistake" for which CEO Mark Zuckerberg "apologized" to the US Senate - makes us forget that this illegal business would not have been necessary: our own models are sufficient to provide better predictions for the future behavior of individuals than even close relatives or spouses could.¹⁵

THE REAL PROBLEM: DATA WORK & DATA OWNERSHIP?

In her government statement Merkel asks: "Is the individual being exploited in a new way because the data belong to private monopolies (...)"¹⁶ Language-wise, the Chancellor thus shifts the problem of injustice onto the field of economic use. "The question of whether and how ownership of data can be structured must be tackled swiftly",¹⁷ says in the coalition agreement. Posting the proper kind of advertisements on the result pages of a search or in "Facebook Home" columns is possible only because of the users, but what kind of activity is it? Are the users working? Are they playing? Are they entrepreneurs? Or must the question be: What are they selling?

¹¹ Sandra Matz/Yin Wah Fiona Chan/Michal Kosinski, Models of Personality, in: Marko Tkalčič et al. (Hrsg.), Emotions and Personality in Personalized Services. Models, Evaluation and Applications, Cham 2016, S. 35–54, S. 42.

¹² Vgl. Michal Kosinski et al., Mining Big Data to Extract Patterns and Predict Real-Life Outcomes, in: Psychological Methods 4/2016, S. 493–506.

¹³ Vgl. Cristina Segalin et al., What Your Facebook Profile Picture Reveals about Your Personality, in: Computer Science, 13. 8. 2017, .

¹⁴ See Kosinski (Note 12).

¹⁵ Vgl. Niels Buus Lassen/Lisbeth la Cour/Ravi Vatrapu, Predictive Analytics with Social Media Data, in: Luke Sloan/Anabel Quan-Haase, The Sage Handbook of Social Media Research Methods, London 2017, S. 328–341.

¹⁶ German Bundestag, Government Statement by Chancellor Merkel, Plenary Protocol of 21 March 2018, p. 19.

¹⁷ CDU/CSU, SPD, A new beginning for Europe. A new dynamic for Germany. A new cohesion for our country, Coalition Agreement between CDU, CSU and SPD, 12. 3. 2018, p. 129.

Data Work

"Facebook is more than a platform for sociality or a specific form of organization of the infosphere. Essentially, it's a way of production - a way of getting people to work that generates the value that enables the platform to perform all the other functions that are ascribed to it." ¹⁸ In this sentence, media scientist Mark Andrejevic summarizes a discussion which, far from Merkel, has been conducted for almost two decades now under the heading "immaterial labour". The term was coined by the Italian sociologist Maurizio Lazzarato in 1996 ¹⁹ and describes how value is generated from affective and cognitive activities - in film watching, in series reception, on game consoles, on fan sites, etc. "work" in other words, which is commercialized in various ways in capitalist economies. As far as Facebook is concerned, art curator Laurel Ptak pointed it out in her manifesto "Wages for Facebook". In a way, it is based on Silvia Federici's 1975 text "Löhne für Hausarbeit" ("Wages for housework"): "They say it's friendship. We say it's unpaid work. With any kind of chat, tag or pusher, our subjectivity will help you make a profit. They call it sharing. We call it theft." ²⁰ An anti-capitalist critique that operates with the Marxian argument of alienation, but cleverly puts its finger on the factual reinterpretation of user data through Facebook algorithms: "Demanding wages for Facebook means making visible that our opinions and emotions on the Internet have been twisted for a specific function, and then thrown back on us as a model to which we should adapt if we want to be accepted in this society." ²¹ An anti-capitalist critique that operates with the Marxian argument of alienation, but in doing so cleverly puts its finger on the factual reinterpretation that user data experience through Facebook algorithms: "Demanding wages for Facebook means making visible that our opinions and emotions have been twisted for a specific function, and then thrown back on us as a model to which we should adapt if we want to be accepted in this society. This point is overlooked by the many diagnoses of double sharing, the double sharing of data (with friends/with Facebook): namely that the data shared on the user interface are very different from those in the algorithms, they are, so to speak, data in different aggregate states. Nevertheless, Ptak does not go beyond an artistically activist symbolism. She does not suggest concrete forms of remuneration.

"In the Fordist epoch of capitalist production, that is, in the time of industrial assembly line work, working time was time of effort (...), while leisure, as Herbert Marcuse noted in the 1950s, was 'the time of Eros'. In contemporary capitalism, play and work, eros and thanatos, pleasure principle and death instinct converge more and more, expecting workers to have fun while at work, while playing becomes productive and worklike. Game and working time overlap, and the whole human time of existence tends to be exploited for capital accumulation. The exploitation of Facebook labor is an expression of these changes in capitalist production and the associated transformation

¹⁸ Mark Andrejevic, Facebook as a new production method, in: Oliver Leistert/Theo Röhle, Generation Facebook. About life in Social Net, Bielefeld 2011, pp. 31-49, here pp. 31.

¹⁹ Maurizio Lazzarato, Immaterial Work. Social activity under the conditions of postfordism, in: Antonio Negri et al. (ed.), Vagabond producers. Immaterial Work and Subversion, Berlin 1998, pp. 39-52.

²⁰ Laurel Ptak, Wages for Facebook, 2014, .

²¹ José van Dijck, Flickr and the Culture of Connectivity Sharing Views, Experiences, Memories, in: Memory Studies 4/2011, S. 401-415.

of the drive structure." ²² That's why media scientist Julian Kücklich called these working players "Playbours" back in 2005. ²³

In her analysis of the "subjectivation regime" on Facebook, sociologist Carolin Wiedemann has emphasized the aspect that on this platform all users, whether they like it or not, must become entrepreneurs in order to look good in their profiles and postings. "Express yourself: Set up your Facebook profile. (...) What information best shows who you are?"²⁴ Facebooks Ideal is a neoliberally understood world in which everything is subject to (good) market forces. This means that Facebook wants to "ensure that individuals use their freedom in a certain way: namely, in an entrepreneurial (...) concise like a brand, the users have to present themselves. Like a product that's advertised." ²⁵ According to Wiedemann, profile building on Facebook as a whole comes close to the "model of checking personality traits", as is common practice today in assessment centres in recruitment procedures, for instance. The user as self-advertising entrepreneur becomes one with Facebook's internal recycling grid. If I already expose myself to Facebook according to the "Big Five" personality model, there is hardly any need to reshape my data. Or in other words: Anyone who consistently profiles himself in the sense of Facebooks does not work, does not play, or "playbour", but "undertakes" himself as a self that has become a brand and a commodity on a market where he meets again through appropriate advertising and consumer demands. A perfect circle in an ideal neoliberal market.

data ownership

Angela Merkel is also concerned with new markets to solve this "central justice problem" (surprisingly: neither the EU nor the BMVI mention this aspect). However: Data are not potatoes. Data is nothing tangible, nothing physical, no material assets with a "credit structure" . ²⁶ Data is information based, as information theory has known since the 1940s, on distinctions. A fact that makes a distinction is an information, a date. My name is Müller, not Miller. Data are distinctions from distinctions. Property, on the other hand, is a thing over which, as lawyers say, one gains "power of domination" when it belongs to one.

The experts of the BMVI know, despite all advocacy, how legally precarious the concept of data ownership remains. They are therefore more concerned with "raising awareness that data is a marketable good: So that users of online services in particular can make truly private decisions about the release and disclosure of their data." ²⁷ On the other hand, the working group "Digital

²² Christian Fuchs, The Political Economy of Privacy on Facebook, in: Television & New Media 2/2012, S. 139–159, hier S. 146.

²³ Julian Kücklich, Precarious Playbour: Modders and the Digital Games Industry, in: The Fibreculture Journal 5/2005, <http://five.fibreculturejournal.org/fcj-025-precarious-playbour-modders-andthe-digital-games-industry>

²⁴ Facebook Help cited by Carolin Wiedemann, Self-marketing on the Net - a governmentality analysis of the social networking site 'Facebook', Saarbrücken 2010, p. 65.

²⁵ ibid

²⁶ Karl-Heinz Fezer, Representative Data Property. A civil society civil right, Konrad-Adenauer-Stiftung, Berlin 2018, p. 59.

²⁷ BMVI (Note 9), S. 5.

Restart" of the Justice Ministers of the Länder sees no need for action: it is "not discernible that the data trade could be promoted by introducing an absolute right to data".²⁸ Any granting of a right to use personal data is already possible with today's data protection.

PREDICTIVE PERSONALITY PROFILE INSTEAD OF FREE SUBJECT

But as good and globally recognised as European data protection is, it cannot eliminate the asymmetry in connectivity media data. The sale of property would perhaps offer compensation in the form of compensation, and wages for immaterial labour or for "Playbour" might have a similar effect. However, when viewed more closely, these are models that miss reality - for various ideological reasons. For what exactly is the "central justice problem of the future" that Merkel addresses?

We can now give it a more analytical description: The reinterpretation of user data on Facebook or Google²⁹ into predicative personality profiles, which remain hidden from users although they predict their future behaviour, contains a deep cultural and social injustice, not so much an economic one in the narrower sense. For what becomes socially powerful here is a change in the concept of the person, the subject and thus the image of man, a change against which the normal user remains powerless. Data that Facebook markets is data with a new cultural semantics and with new political effects; because it shifts the concept of the natural person to a mere instance of personality models - and thus structurally undermines the democratic freedom of the individual. The only thing that helps is what has already happened more than 270 times³⁰ in the industrial history of the USA: the unbundling and de monopolisation of large corporations. Given the two-thirds dominance that Facebook and Google have achieved in the online advertising market, and the 75 percent that Amazon holds in market power in the online book trade, the Guardian and Wall Street Journal last year increasingly recalled that Standard Oil also dominated over 80 percent of the market at the end of the 19th century, and the Supreme Court in 1911 successfully smashed John D. Rockefellers. Today, similar demands are being made above all against Facebook, Google and Amazon.³¹ In the USA, the series of socially and economically effective unbundling ranges from the so-called Paramount judgment of 1948 (in which the film company lost its cinema chains in the country, which also meant the end of the so-called studio system in Hollywood) to the smashing of AT&T in the 1980s and the Microsoft judgment of 2000, which ordered the company to be split into two parts, but which was ultimately overturned by the Bush government's Ministry of Justice through the assignment of a new judge.³²

²⁸ „Digitaler Neustart“ (Anm. 7), S. 70

²⁹ Google and Facebook are representative of the countless other portals, apps and devices that collect our data.

³⁰ William H. Page/John E. Lopatka, *The Microsoft Case. Anti trust, High Technology, and Consumer Welfare*, Chicago–London 2007, S. 4.

³¹ Vgl. Larry Elliott, *Is it Time to Break up the Tech Giants Such as Facebook?*, 25. 3. 2018, ; Greg Ip, *Facebook's Monopoly Is Ripe for Regulation*, 12. 4. 2018, . www.theguardian.com/business/2018/mar/25/is-it-time-to-break-up-the-tech-giants-such-as-facebook www.marketscreener.com/FACEBOOK-10547141/news/WSJ26327169

³² Page (Note. 30), S. 34.

If one takes the Microsoft judgement as a reference, there is the possibility for the operative way of unbundling Google and Facebook to separate the front end from the back end of the applications in an entrepreneurial way. As you know, Google Search shows a search and a results page; the latter is the front end. Google's back end are the "crawlers" and "spiders" that search, index and weight the net, these are the databases that feed the front end of the answer list in milliseconds.³³ For Facebook, the back end would be the algorithms that create the personality profiles. In order to separate the two, it is necessary to reveal the structure of the masses of data that corporations are hoarding. This would open up the market, as other front and back end operators could now enter the market.

Just as US federal judge Thomas Penfield Jackson decided in 2000 that Microsoft should be split into a company that only makes operating systems and another that develops all other "office" applications, so Google and Facebook would have to be split into a company that sells what the user sees and one that offers data processing and micro targeting profiles. This would make the record of a user (from the front end) visible for the first time. We would become acquainted with a standardised interface and would thus gain transparency that cannot be reliably achieved by any other regulatory means: Namely, how our data is actually transferred and what the data set looks like that represents our personality profile. The basic train of thought here is that users gain freedom of choice as to which company they entrust their data to, and then potentially also that different companies can offer different degrees of data use. We would create clarity through competition and with it alleviate the "central justice problem of the future".

³³ Cf. Amy N. Langville/Carl D. Meyer, *Google's PageRank and Beyond: the Science of Search Engine Rankings*, Princeton Oxford 2006.