



# AESTHETICS, TECHNOLOGY, AND REGULATIONS



BY  
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### AESTHETICS, TECHNOLOGY, AND REGULATIONS

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Technology companies have increasingly come under regulatory fire for impairing society, markets, competition, and free speech, among other things. The underlying belief is that consumers require protection in digital markets. Despite the spectrum of harms attributed to Big Tech, relatively sparse attention has been paid to society's relationship to aesthetics and image. In contrast to traditional forms of media where people passively view images of others, tech platforms allow people to manipulate their own photographs. By doing so, a belief is that unhealthy perceptions of beauty are supercharged compared to conventional mediums. This piece isn't necessarily claiming that tech's effects on aesthetic perceptions must come under greater regulatory scrutiny. Rather the goal is to discuss the nature and depth of a largely underspecified issue, which is related to many problems that have drawn the ire of commentators. It is indeed important to acknowledge how tech platforms influence perceptions of beauty and even views of self-worth in ways that were previously unknown — and whether this should implicate modern demands for tech regulation.

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# 01

## INTRODUCTION

Technology companies have increasingly come under regulatory fire for impairing society, markets, competition, and free speech, among other things. Whether these proposals to reign in “Big Tech” include antitrust enforcement, new legislation, or executive orders, the underlying belief is that consumers and “consumer welfare” require protection in digital markets. This movement has even united left and right wings with leaders such as Elizabeth Warren and Ted Cruz in general agreement about the need to regulate platforms and Big Tech.<sup>2</sup>

Despite the spectrum of harms attributed to Big Tech, relatively sparse attention has been paid to society’s relationship to aesthetics and image. The effects of media on perceptions of beauty and self-value are far from new, as scholars have long sought to understand how magazines, television, and other mediums influence individuals. The conventional belief is that people develop unrealistic views of beauty from witnessing altered images (e.g. photoshopped or airbrushed) of idealized models, but tech platforms might present even greater or specialized types of harms.

For instance, research has uncovered the dangers of when individuals use filters on Instagram (and other platforms) to “smoothen,” “enhance,” or even “fix” one’s face to match certain ideals. In contrast to traditional media where people passively view images of *others*, platforms enable individuals to manipulate their own photographs. By allowing persons to do so, a belief is that unhealthy perceptions of beauty are supercharged compared to conventional mediums.

A related issue concerns the impact of market concentration on societal perceptions of beauty. In current times, people use only about four platforms to share images and videos: Instagram, Facebook, TikTok, and Snapchat. And Facebook owns Instagram, leaving only three unique companies. The problem concerns wheth-

er the lack of options regarding filters and editing programs leaves people to augment images using a select few programs. This has allegedly standardized views of beauty; almost anyone who uses Instagram — 1 billion people at the moment — may be influenced by a singular program.

This piece isn’t necessarily claiming that tech’s effects on aesthetics must come under greater regulatory scrutiny. Rather the goal is to discuss the nature and depth of an underspecified issue, which is related to problems drawing the ire of Big Tech’s critics. It is indeed important to acknowledge how tech platforms influence perceptions of beauty and even self-worth — and whether it should implicate demands for tech regulation.

This Piece proceed in two parts. The first Part introduces a problem known to aesthetics scholars but has evaded legal scholarship: the effect of tech programs on perceptions of beauty and attendant dangers. Then the Second Part discusses the growing demand for regulations of apps, platforms, and tech companies in order to present potential ways that the law could ameliorate some of the alleged harms.

# 02

## INSTAGRAM FACE ETC.

Social media and similar technologies have altered views of beauty on societal and individual levels. While media has long influenced aesthetic perceptions, the unique and even heightened effects of modern technology is explained in this Part.

On a simpler level, technology has increased the amount of time that people focus on themselves.<sup>3</sup> For example, when Zoom emerged during the pandemic, concern for one’s appearance mounted as users could watch themselves on video — “One of the strangest things about zoom is you’re

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2 Jessica Guynn, *Ted Cruz Threatens to Regulate Facebook, Google, and Twitter over Charges of Anti-conservative Bias*, USA TODAY (Apr. 10, 2019, 3:41 PM), <https://www.usatoday.com/story/news/2019/04/10/ted-cruz-threatens-regulate-facebook-twitter-over-alleged-bias/3423095002/>; Cristiano Lima, *Facebook Backtracks After Removing Warren Ads Calling for Facebook Breakup*, POLITICO (Mar. 11, 2019, 6:32 PM), <https://www.politico.com/story/2019/03/11/facebook-removes-elizabeth-warren-ads-1216757>.

3 See generally Liraz Margalit, *The Rise of “Instagram Face,”* PSYCHOLOGY TODAY (May 5, 2021), <https://www.psychologytoday.com/us/blog/behind-online-behavior/202105/the-rise-instagram-face>.

looking at yourself, usually we don't look at ourselves when we meet with other people.”<sup>4</sup> This has, as we'll see, driven reliance on filters as well as inspired users to seek out plastic-surgery.<sup>5</sup>

Far from isolated to Zoom, usages of filters prevail on each of the platforms. For instance, FaceTune cures “imperfections” and edits faces on about *one million images* exported to third parties *daily*.<sup>6</sup> One observer estimated that 95 percent of the most followed individuals rely on FaceTune.<sup>7</sup>

In fact, the manner in which platforms enable users to edit pictures of themselves may do more to create unhealthy perceptions of beauty than conventional media. As an observer described, “what is taking it to the next level with these filters is it's not just seeing an image of a celebrity who is unrealistic and measuring yourself against that person, it's measuring your real self against a pretend imagine of yourself.”<sup>8</sup> This phenomenon is exacerbated when edited versions receive likes and comments, generating a positive feedback loop. To this end, observers have coined the term “Snapchat Dysmorphia” after witnessing individuals seek out plastic surgeons<sup>9</sup> — per the American Academy of Facial Surgery, a majority of plastic surgeons have noted performing a procedure to conform a person to their snapchat images.<sup>10</sup>

On a societal level, the popularity of only a few filters has driven a narrow view of beauty. For instance, commentators have discussed “Instagram Face,” which is an aesthetic ideal prominent among celebrities.<sup>11</sup> While many descriptions of Instagram Face exist — e.g. “It's a young face, of course, with poreless skin and plump, high cheekbones... It looks at you coyly but blankly, as if its owner has taken half a Klonopin and is considering asking you for a private-jet ride to Coachella”<sup>12</sup> — a consensus has generally emerged.<sup>13</sup> By providing 1 billion users with a selection of filters, Instagram has not only created a community spanning the world but also an “extremely specific aesthetic.”<sup>14</sup>

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“**Social media and similar technologies have altered views of beauty on societal and individual levels**

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4 Anna Haines, *From “Instagram Face” to “Snapchat Dysmorphia”: How Beauty Filters Are Changing the Way We See Ourselves*, FORBES (Apr. 27, 2021; 1:19PM), <https://www.forbes.com/sites/annahaines/2021/04/27/from-instagram-face-to-snapchat-dysmorphia-how-beauty-filters-are-changing-the-way-we-see-ourselves/?sh=38c477d54eff>.

5 *Id.*

6 *Id.*

7 Jia Tolentino, *The Age of Instagram Face*, THE NEW YORKER (Dec. 12, 2019), <https://www.newyorker.com/culture/decade-in-review/the-age-of-instagram-face>.

8 *Id.*

9 Kamleshun Ramphul & Stephanie G. Mejias, *Is “Snapchat Dysmorphia” a Real Issue?*, 10 CUREUS 1,1 (2018).

10 Margalit, *supra* note 3.

11 Catherine Wright, *What is “Instagram Face” and Which Celebrities Have It?*, CELEBRITY CHEATSHEET (Jun., 22, 2020), <https://www.cheatsheet.com/entertainment/what-is-instagram-face-and-which-celebrities-have-it.html/>.

12 *Id.*

13 *Id.* (“When you look at Kim, Megan Fox, Lucy Liu, Halle Berry, you'll find elements in common,” a Beverly Hills plastic surgeon told Tolentino in the New Yorker: “the high contoured cheekbones, the strong projected chin, the flat platform underneath the chin that makes a ninety-degree angle.”); <https://www.michigandaily.com/michigan-in-color/the-instagram-face-and-its-implications/> (“1. A youthful, heart-shaped face 2. A small button nose with an upturned tip 3. Full lips with a defined philtrum 4. Full, but well-groomed brows. 5. Upturned, cat-like eyes 6. A defined, forward-pointing chin and a chiseled jawline to match 7. High cheekbones 8. Defined lashes sometimes achieved through extensions 9. Tan, dewy skin 10. The length of the nose perfectly trisects the rest of the face 11. Distance between the eyes being equal the width of one eye 12. Natural-looking makeup 13. Voluptuous bust and buttocks 14. A tiny waist with defined abdominals 15. Long, shiny hair 16. Never repeating an outfit and always trendy.”).

14 Poorva Misra-Miller, *You Look Familiar — “Instagram Face” and the De-racialization of Beauty*, SWAAY (Oct. 27, 2020), <https://swaay.com/instagram-face-and-the-de-racialization-of-beauty>.

Exacerbating this issue is artificial intelligence and machine learning. When users interact with platforms, apps, and filters, the programs receive input, incorporate it, and then improve the interface based upon this feedback. It creates a snowball effect whereby users seek out a certain aesthetic and then apps and platforms evolve whereby they promote the ideal back to users.<sup>15</sup>

Also notable are the effects levied on adolescents who average over 5.5 hours per day online as well as young women. It was found by one researcher that “52% of girls use filters every day and 80% have used an app to change their appearance before the age of 13.”

In sum, a new form of body dysmorphia has seemingly emerged, turbo charged from prior iterations. Instead of motivated from exogenous sources (i.e. a picture of someone else), a primary catalyst comes from a person’s ability to edit themselves; one surgeon “noticed that if in the past patients came to him and brought pictures of celebrities they wanted to look like, today they come for with filtered pictures of themselves.”<sup>16</sup> So should aesthetics and body dysmorphia demand digital regulations?

# 03

## BIG TECH AND REGULATION

Big Tech has become a relentless target of regulators, though scholars and legislators have rarely cited unhealthy views of beauty as a reason. This raises questions of what the way forward should resemble. Part A examines the demands to regulate apps, platforms, and tech companies and then Part B discusses whether current or proposed forms of regulation can or should be applied to the effects of tech on dysmorphia and perceptions of beauty.

### A. Regulation of Platforms in General

A frequent source of regulatory anxiety is that platforms and apps alter or even manipulate behaviors. Rather than passive players, tech companies collect and analyze data gathered from users — typically in conjunction with artificial intelligence and machine learning — to constantly improve their platforms.

But the term “improve” is loaded. While this could constitute enhancing a user’s experience, it is notable that tech companies generate revenue by increasing the amount of time spent and engagement on their apps (e.g. clicks, swipes, scrolls, etc.). This is because greater interactions allow firms to advertise, collect insights, target products, and build value. So the concept of “improving” can refer to generating usage or even addiction — even if users do not find an app to be materially “better.” Platforms have thus come under regulatory scrutiny for allegedly designing manipulative and exploitative techniques.<sup>17</sup>

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“*Big Tech has become a relentless target of regulators, though scholars and legislators have rarely cited unhealthy views of beauty as a reason*”

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For instance, Facebook has incurred volleys of criticisms for its strategies meant to allegedly increase a user’s attention. One method has involved promoting posts on feeds when it garners a greater number of angry emojis versus happy ones.<sup>18</sup> The intended effect was supposedly to increase the amount of time spent by users reading, engaging, and debating “angry posts” but it has also, as scholars allege, fostered societal polarization, misinformation, and anxiety.<sup>19</sup> While Facebook had unlikely wanted to polarize America, it seems like a foreseeable result.

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15 Liraz Margalit, *The Rise of the “Instagram Face,”* CMS WIRE (May 3, 2021), <https://www.cmswire.com/digital-experience/the-rise-of-the-instagram-face/>.

16 *Id.*

17 Gregory Day, *Attention, Antitrust, and the Mental Health Crisis*, 106 MINN. L. REV. \_\_, \_\_ (forthcoming in 2022).

18 Jeremy B. Merrill & Will Oremus, *Five Points for Anger, One for a ‘Like’: How Facebook’s Formula Fostered Rage and Misinformation*, WASH. POST (Oct. 26, 2021), <https://www.washingtonpost.com/technology/2021/10/26/facebook-angry-emoji-algorithm/>.

19 Adrienne LaFrance, *History Will Not Judge Us Kindly*, ATLANTIC (Oct. 25, 2021), <https://www.theatlantic.com/ideas/archive/2021/10/facebook-papers-democracy-election-zuckerberg/620478>.



Similar examples of manipulation have surfaced. For instance, scholars have discussed Snapchat’s “streaks” which are linked with “Snapchat depression”<sup>20</sup> or YouTube’s algorithm designed to select videos, which is said to curate extremist content.<sup>21</sup> It can indeed be difficult to differentiate whether an app is producing an intended effect or negative externality, or a mix of the two.

This has drawn a significant response in favor of regulating Big Tech. Proposals have included increasing or altering antitrust enforcement to govern digital markets.<sup>22</sup> Commentators have also proposed new types of regulations intended to promote privacy,<sup>23</sup> free speech,<sup>24</sup> competition,<sup>25</sup> mental health,<sup>26</sup> and/or data integrity.<sup>27</sup> Whether these proposals are supposed to remedy a specific injury or consumers in general, the belief is that apps, platforms, and tech companies levy too much harm for them to operate with free rein. So what about aesthetics?

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## **B. Regulating Tech’s Effects on (Mis)perceptions of Beauty?**

Notably absent in this discourse has been tech’s effects on aesthetics, body image, and beauty. The inference is that tech firms understand the deleterious consequences yet promote filters anyway.<sup>28</sup> In 2021, the *Wall Street Journal* published an exposé entitled “Facebook Knows Instagram Is Toxic for Teen Girls, Company Documents Shows.”<sup>29</sup> Facebook determined, as the article revealed, that “Thirty-two percent of teen girls said that when they felt bad about their bodies, Instagram made them feel worse” and, per a slide in an internal Facebook presentation, “We make body image issues worse for one in three teen girls.”<sup>30</sup> Nevertheless, the manner in which platforms lead to injuries such as Instagram Face and Snapchat

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20 Nassir Ghaemi, *Snapchat Depression*, Tufts Now (Apr. 17, 2018), <https://www.now.tufts.edu/articles/snapchat-depression>.

21 Casey Newton, *How Extremism Came to Thrive on YouTube*, VERGE (Apr. 3, 2019), <https://www.theverge.com/interface/2019/4/3/18293293/youtube-extremism-criticism-bloomberg>.

22 See e.g. Gregory Day & Abbey Stemler, *Infracompetitive Privacy*, 105 IOWA L. REV. 61 (2019).

23 *Id.*

24 See e.g. Marco Rubio, *Rubio Introduces Sec 230 Legislation to Crack Down on Big Tech Algorithms and Protect Free Speech*, MARCO RUBIO U.S. SENATOR FOR FLORIDA (JUN. 24, 2021), <https://www.rubio.senate.gov/public/index.cfm/2021/6/rubio-introduces-sec-230-legislation-to-crack-down-on-big-tech-algorithms-and-protect-free-speech>.

25 Cecilia Kang, *Lawmakers, Taking Aim at Big Tech, Push Sweeping Overhaul of Antitrust*, N.Y. TIMES (JUN. 29, 2021), <https://www.nytimes.com/2021/06/11/technology/big-tech-antitrust-bills.html>.

26 Day, *supra* note 17..

27 Day & Stemler, *supra* note 22.

28 Elle Hunt, *Faking It: How Selfie Dysmorphia Is Driving People to Seek Surgery*, THE GUARDIAN (Jan. 23, 2019; 1:00PM), <https://www.theguardian.com/lifeandstyle/2019/jan/23/faking-it-how-selfie-dysmorphia-is-driving-people-to-see-surgery> (“She liked the sense of having a platform, she says, with the average selfie getting 300 replies. “It was like, ‘Oh my God, I’m so popular – I’ve gotta show my face.’” But the filters were also part of the appeal. The Londoner had long been insecure about the slight bump in her nose. Snapchat’s fun effects, which let you embellish your selfies with dog ears, flower crowns and the like, would also erase the bump entirely. “I’d think, ‘I’d like to look how I look with this filter that makes my nose look slimmer.’”).

29 Georgia Wells, Jeff Horwitz, & Deepa Seetharaman, *Facebook Knows Instagram Is Toxic for Teen Girls, Company Document Shows*, WALL ST. J. (Sept. 14, 2021; 7:59AM), <https://www.wsj.com/articles/facebook-knows-instagram-is-toxic-for-teen-girls-company-documents-show-11631620739>.

30 *Id.*

Dysmorphia have received little or no regulatory scrutiny.

So what could be accomplished if anything? A factor exploring regulatory *restraint* is that popular media has always harmed bodies and fostered dysmorphia. Given the costs and unintended effects of regulation, the question is whether it's even worth attempting to regulate tech's effect on aesthetics.

But if we should regulate Big Tech, an initial suggestion comes from antitrust law, which observers have frequently cited when endeavoring to regulate digital markets. The inkling is that tech's harms are embellished by concentrated markets; if more competitors existed, it would ostensibly introduce more and better products valuing privacy, mental health, and other virtues.<sup>31</sup> To this end, a potential solution would be to enhance antitrust's presence in digital markets, which would theoretically encourage entrants to design products meant to limit dysmorphia. It could also add variety, limiting the greater effects of Instagram Face where the dominance of one filter or app renders societal consequences. Whether antitrust enforcement may actually achieve this goal, however, is doubtful.

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There is also potential in enacting agency rules or new legislations. For instance, the UK's Advertising Standards Authority announced in 2021 that social media influencers must cease using “misleading” filters, though the regulation was primarily intended to ban influencers from deceptively filtering their faces to appear like makeup — the harm was false advertising.<sup>32</sup> But commentators have proposed similar rules in hopes of tempering unrealistic perceptions of beauty.<sup>33</sup> These sentiments have been expressed by celebrities such as Jameela Jamil.<sup>34</sup>

Perhaps a more viable way of limiting Snapchat Dysmorphia concerns raising awareness rather than enacting regulations. As discussions of tech's effects on aesthetics emerge, numerous companies have released media campaigns pledging not to use filters or editing programs to promote more realistic versions of beauty and bodies — e.g. Dove's “Reserve Selfie” campaign.<sup>35</sup> Firms have also pledged to hire models representing a greater and more realistic scope of bodies and faces. Other possibilities include installing parental controls on editing programs. If these techniques prove effective, it would reflect a more organic manner of neutralizing Big Tech's relationship with body and face dysmorphia.

Again, this Piece isn't meant to advocate for greater regulations or a specific law. It is intended to highlight research from the field of aesthetics that has largely gone unseen in legal scholarship. Given the volumes of criticisms levied at Big Tech, it seems relevant to understand Snapchat Dysmorphia, Instagram Face, and similar issues. Perhaps there is no legal answer, or maybe greater attention might spark a solution.

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31 Day & Stemler, *supra* note 22.

32 Chloe Laws & Laura Hampson, *Influencers Can No Longer Use “Misleading” Filters on Beauty Ads, ASA Rules*, GLAMOUR MAG. (Feb. 3, 2021), <https://www.glamourmagazine.co.uk/article/enhanced-photos-social-media-law>.

33 Ella Bennett, *London Influencer Calls for Social Media Platforms to Ban Filters in Bid to Tackle Unrealistic Beauty Expectations*, MY LONDON (Apr. 24, 2021), <https://www.mylondon.news/lifestyle/london-influencer-calls-social-media-20429487>.

34 *Id.*

35 Amy Houston, *Ad of the Day: Dove Deepfakes Highlight Toxic Beauty Advice on Social Media*, The Drum (Apr. 27, 2022), <https://www.thedrum.com/news/2022/04/27/ad-the-day-dove-deepfakes-highlight-toxic-beauty-advice-social-media>.

# 04

## CONCLUSION

Perhaps because unhealthy perceptions of faces and bodies have long posed problems, the effects of platforms and apps have largely gone unnoticed by regulators. Or maybe the problem is that regulating the issue might be too difficult or even impossible. Whether this issue is a matter for regulators or not, this Piece's goal is certainly to increase attention.

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