



**RUTGERS**  
Law School



# Spontaneous Freedom and Platform Regulation

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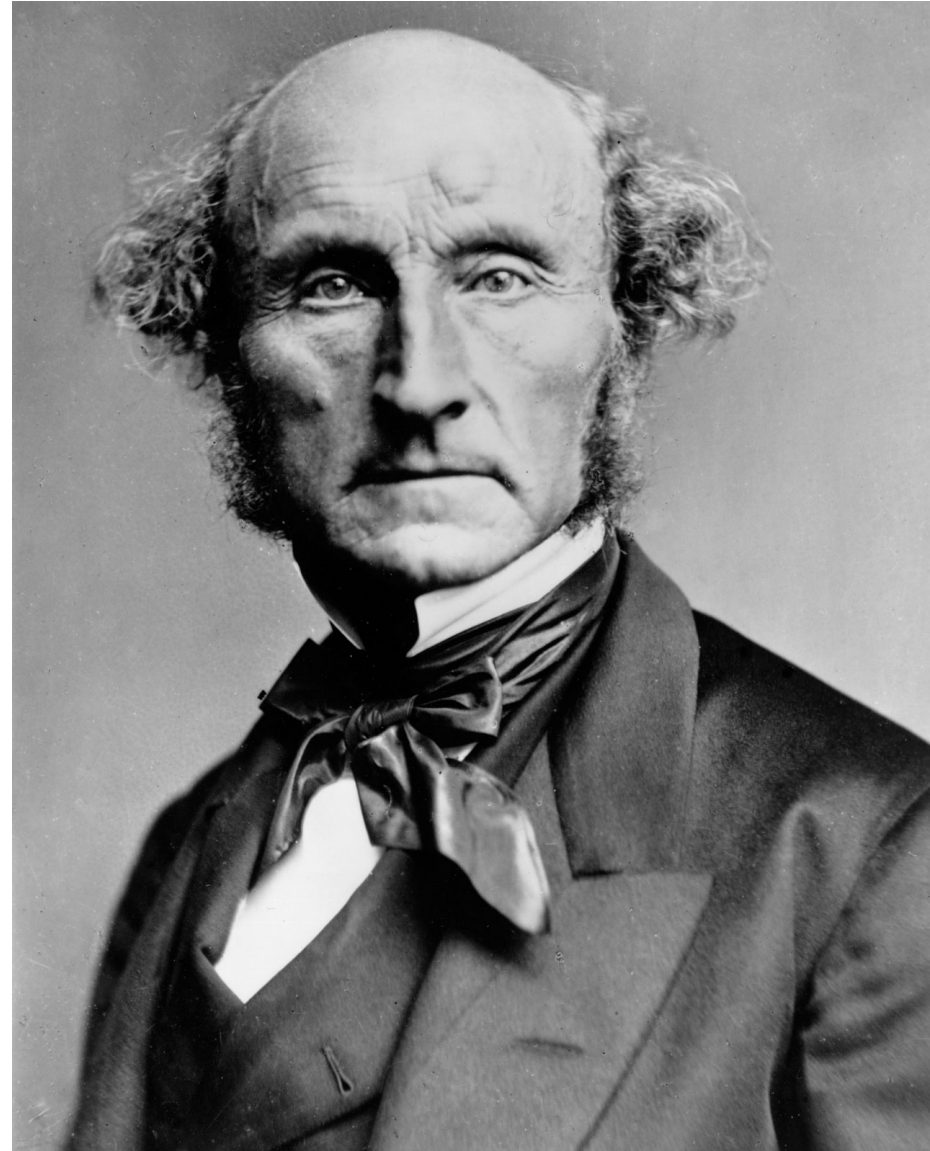
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FREEDOM AS CHOICE

# Freedom as Non-Interference

John Stuart Mill: “the only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it” (Mill 2003, 83) (emphasis added).



# Freedom as Non-Interference (with *choice*)

**Freedom as Non-Interference View (Negative Version):** I have all the political freedom that I could reasonably want, so long as others do not interfere with my acting as I choose.

**Freedom as Non-Interference View (Positive Version):** I have all the political freedom that I could reasonably want, so long as others do not interfere with my acting as I choose, and I can choose autonomously

# Freedom as Non-Interference

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## **The sort of freedom arguably required:**

- for someone to be criminally responsible for their actions
- for informed consent to be valid
- for laws and policies to be legitimate (?)

## **The harm principle**

- to be legitimate, any law or policy must either be necessary to prevent some people from harming others, or the law must avoid undermining or reducing any individuals' freedom of choice

# SPONTANEOUS FREEDOM

# Spontaneous Freedom

- Spontaneous Freedom: the freedom of acting in ways that are unplanned and unscripted—either by oneself or by others—and that one experiences as such. (Gingerich 2022a)
- The sort of freedom that we associate with...

# Spontaneous Freedom

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...free spirits...



Image by Pabak Sarkar,  
<https://www.flickr.com/photos/pabak/14288121382>



# Spontaneous Freedom

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...the freedom of the open road...

Image by Tommy Clark,  
<https://www.flickr.com/photos/tommyscapes/10566021336>

# Spontaneous Freedom

...free as a bird...

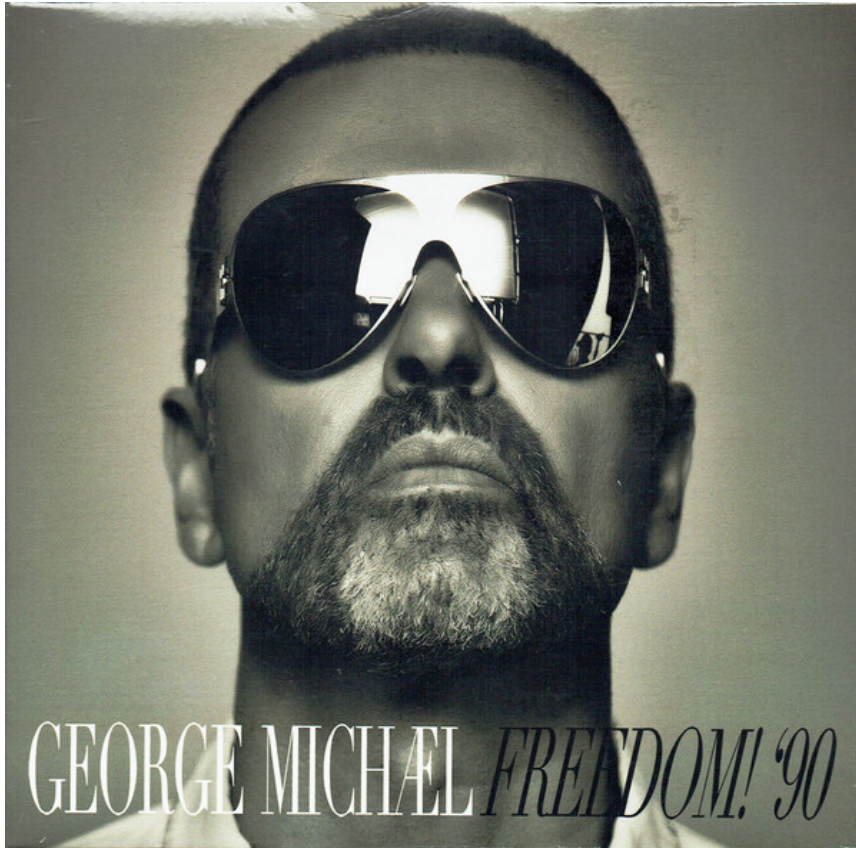


Image by Andreas-photography,  
<https://www.flickr.com/photos/sheepies/4538748526>

# Spontaneous Freedom

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...rock & roll...



Columbia Records, 1990

# Spontaneous Freedom

- Spontaneous freedom is **distinct from freedom as choice**: We can lack spontaneous freedom even when we have maximal freedom of choice.
- Spontaneous freedom is **scalar**
- Spontaneous freedom is not **moralized**
- Experiences of spontaneous freedom can be **illusory** or **veridical**

# The Value of Spontaneous Freedom

- Experiencing spontaneous freedom allows us to exercise ‘natality’: the central human capacity ‘of beginning something anew’ (Arendt 1998, 9).
- A world in which people have ample opportunities to experience spontaneous freedom is more likely to give rise to the ‘individual vigor and manifold diversity’ that combine themselves in ‘originality’ (Mill 2003, 122-23 [quoting Wilhelm von Humboldt]).
- Only veridical spontaneous freedom fully realizes the values associated with spontaneous freedom

# Threats to Spontaneous Freedom

- Spontaneous freedom is undermined by conditions that make the courses of our lives more predictable or that prevent us from deviating from our plans or those of other people.
- This includes things like:
  - Poverty that forces people to spend their time planning out how to satisfy their basic material needs
  - Rigid race and gender norms
  - Certain forms of nudges, algorithmic influence, and content recommendation systems

# AUTOMATED CONTENT RECOMMENDATION SYSTEMS

# Culture-Mediating Content Recommendation Systems

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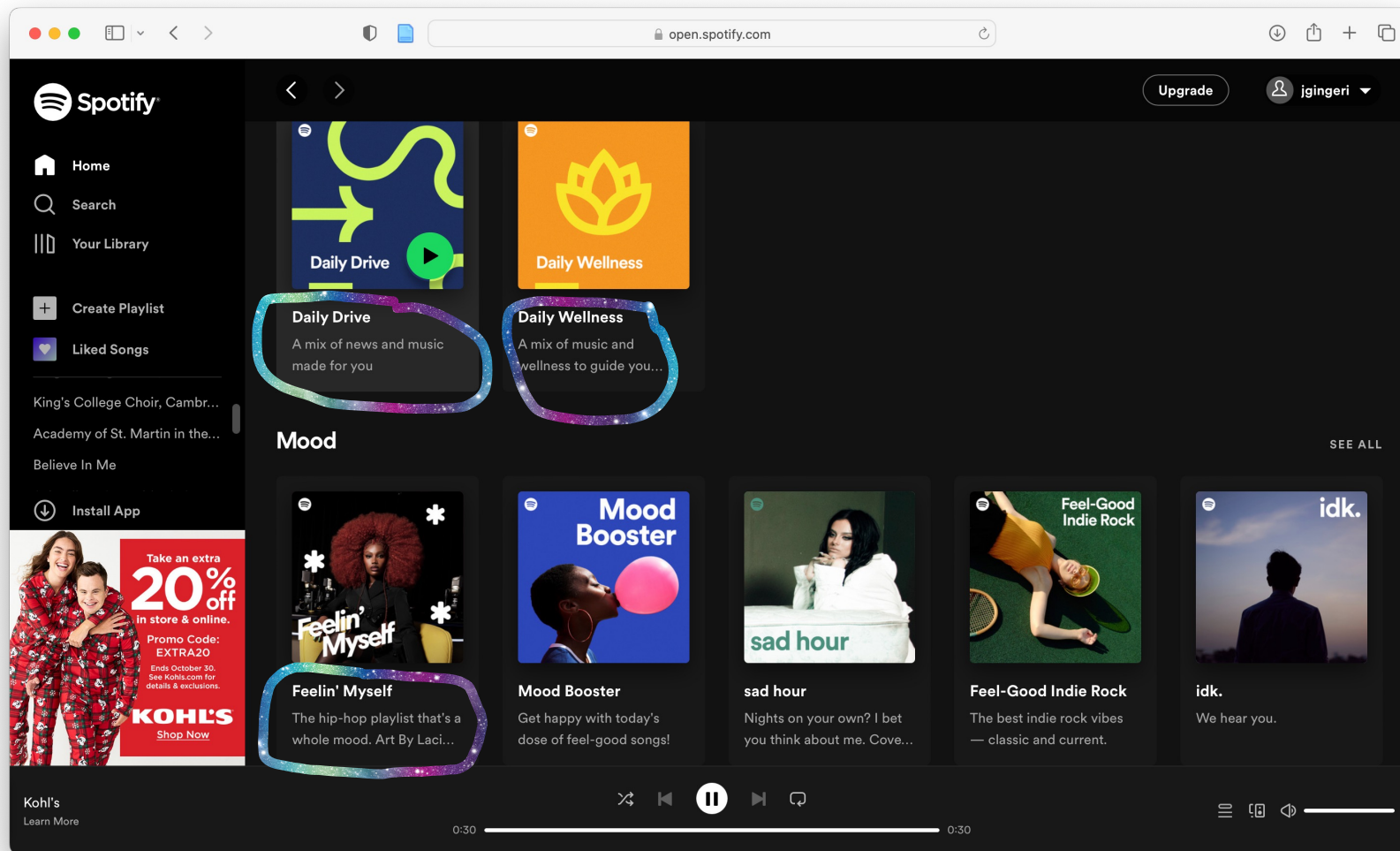
- Culture-mediating artificial intelligence
  - Using algorithms to automatically sort, moderate, or edit cultural materials and present them to individual users as candidates for their attention
  - “Subjective” decisions that are not correct or incorrect according to any simple or commonly agreed standard



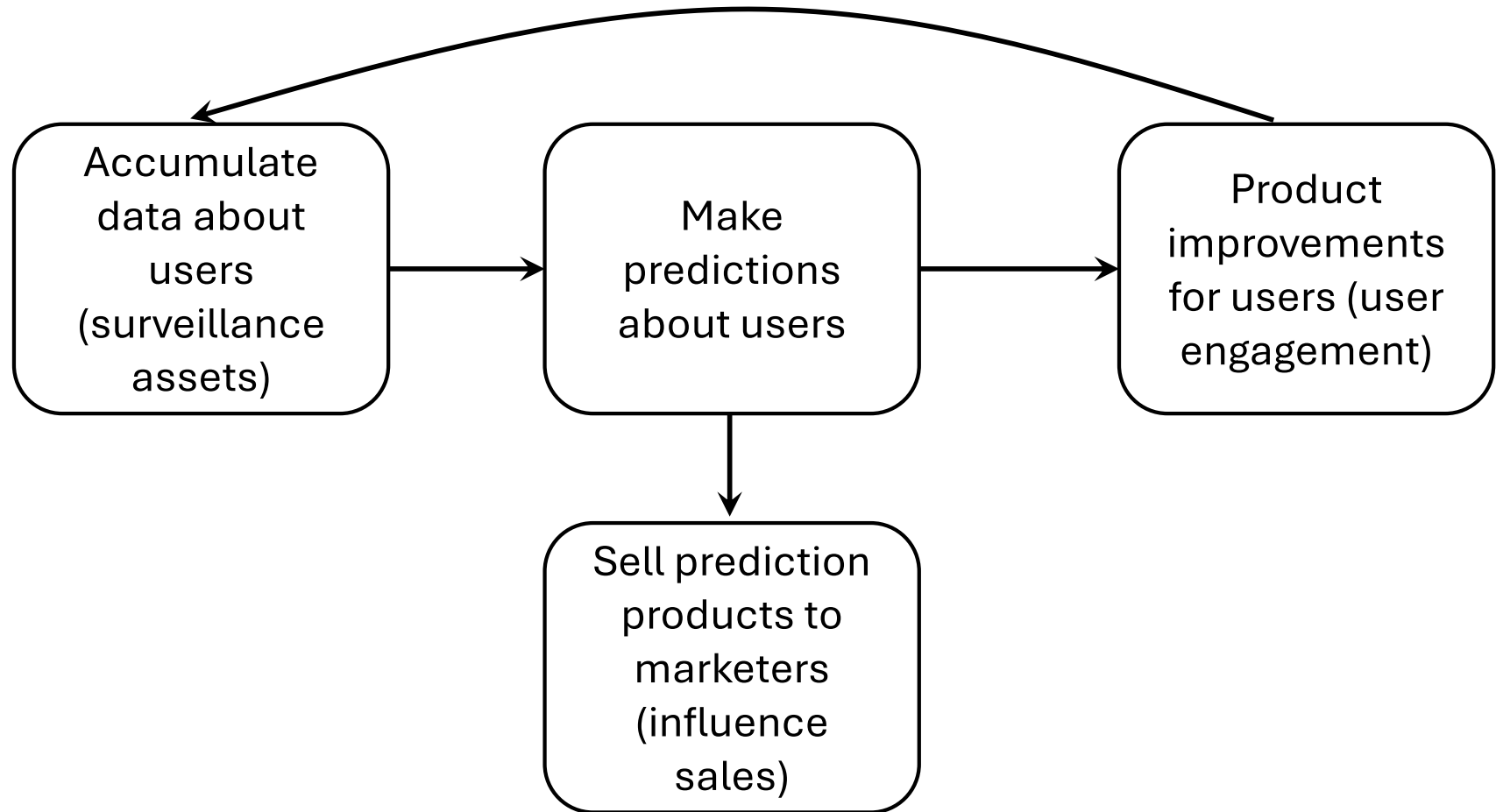
**NETFLIX**



# How “Shpotify” Works



# How “Shpotify” Works



# CONTENT RECOMMENDATION AND SPONTANEOUS FREEDOM

# **Culture-Mediating Content Recommendation Systems and Spontaneous Freedom**

- Users are less likely to engage directly and spontaneously with cultural materials,
  - responses are more likely to be habitual
  - users are more likely to tune out from or skip over dispreferred materials

# Is Spotify Bad for Spontaneous Freedom...

- Compared to getting CDs from a library?



Image of Newark Public Library by Libraries of Our Lives,  
<https://librariesofourlives.files.wordpress.com/2014/07/npr12-e1405127735982.jpg>

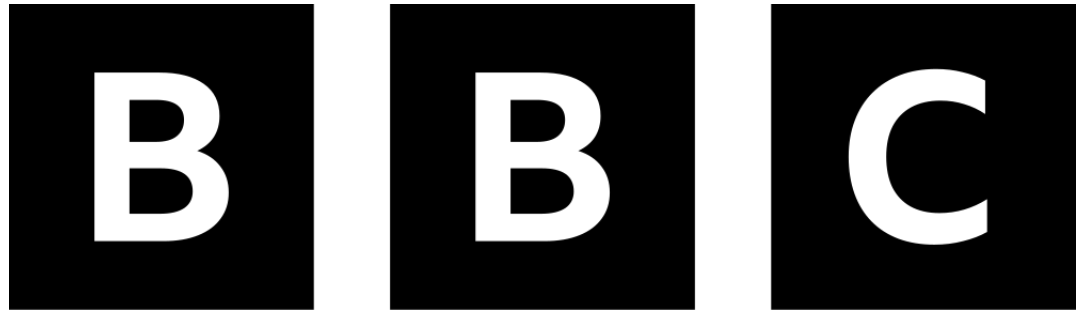
# Is Spotify Bad for Spontaneous Freedom...

- Compared to listening to top-40 radio?



# Is Spotify Bad for Spontaneous Freedom...

- Compared to less profit-focused digital alternatives?



# REGULATION



# Spontaneity-Promoting Regulation of Platforms

## User representatives

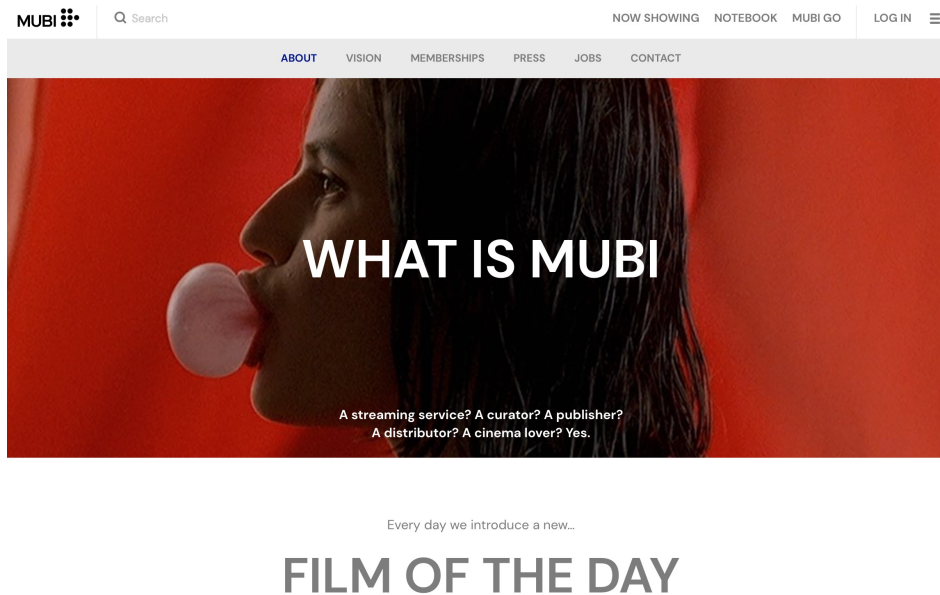
- E.g., user representatives on the model of German worker representatives on corporate boards

## Regulatory imposition of more robust internal governance structures

- Based on Facebook's Oversight Board

## Public alternatives

- Platforms like MUBI



# CONCLUSION

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