Product Life Cycle Theory and the Maturation of the Internet

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INTRODUCTION

In recent years, Internet service providers have begun to experiment with a variety of innovative business practices and new forms of network management in an attempt to meet end users’ ever increasing demand for more bandwidth and more sophisticated applications. Perhaps most controversially, Comcast began to interfere with the peer-to-peer file sharing application known as BitTorrent by forcing connections associated with BitTorrent to terminate and reconnect. The Federal Communications Commission found Comcast’s practices to be unreasonable, only to see the

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courts overturn that decision as exceeding the FCC’s statutory authority.¹ Comcast replaced this technique with a protocol-agonistic approach to network management that does not target any particular application and is invoked only during times and in locations that are subject to congestion.²

Other network providers are conserving bandwidth by giving higher priority to traffic associated with applications that are particularly sensitive to delay. Among the most sophisticated is the UK’s Plusnet, which uses deep packet inspection (DPI) to divide the data stream into seven different levels of priority.³ Prioritizing traffic in this manner has enabled Plusnet to win numerous industry awards for the quality of its network connections and for customer satisfaction.⁴ AT&T’s U-verse takes a more limited approach to network management, compensating for its lack of bandwidth by giving priority to a single application: its proprietary video offering.⁵ Similarly, Comcast’s voice over Internet protocol (VoIP) offering operates over a channel that is completely separate from the public Internet and that does not share bandwidth with other Internet-based applications.⁶

Another development is the emergence of new forms of pricing. For example, Time Warner Cable recently attempted to adopt the practice long followed by digital subscriber line (DSL) providers’⁷ of offering different tiers of service that provide different levels of bandwidth, only to be forced

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³ Plusnet, Traffic Prioritisation http://www.plus.net/support/broadband/quality_broadband/traffic_prioritisation.shtml (last visited Feb. 23, 2010); see also Transparency the Key to PlusNet’s Success, STAR (Sheffield, UK), Apr. 9, 2008, http://www.thestar.co.uk/business/Transparency-the-key-to-PlusNet39s.3961139.jp.
⁵ Christopher S. Yoo, Network Neutrality after Comcast: Toward a Case-by-Case Approach to Reasonable Network Management, in NEW DIRECTIONS IN COMMUNICATIONS POLICY 55, 65–66 (Randolph J. May ed., 2009); see also AT&T and BellSouth Corp. Application for Transfer of Control, Memorandum Opinion and Order, 22 F.C.C.R. 5662, 5814 (2007) (specifically excluding AT&T’s Internet protocol television (IPTV) services from its voluntary network neutrality commitment).
⁷ See McGregor McCance, AT&T Broadband Plans Tiered Service, RICHMOND (VA) TIMES-DISPATCH, June 16, 2002, at D8 (noting that “[t]iered pricing has long been a staple of DSL providers”).
to back down by criticism from the public and from network neutrality advocates. Some backbones and content providers have begun to experiment with paid peering and other interconnection relationships that require payment for traffic that was previously settlement free.

Still other network providers are entering into strategic partnerships with device manufacturers and content providers. Perhaps the most salient recent example is Apple’s decision to make the iPhone available exclusively on the AT&T wireless broadband network. Network providers have also given particular search engines preferred treatment, such as the 2001 alliance of SBC—now AT&T—with Yahoo!; Google’s $500 million deal to serve as the default search engine on Clearwire’s new wireless broadband network; and Google’s recent efforts to negotiate a deal to become the default search engine for the Verizon Wireless broadband network, only to be outbid by Microsoft at the eleventh hour.

Proponents of the cluster of policy initiatives that fall under the banner of network neutrality have largely been skeptical of these developments. Some commentators have raised the concern that these types of practices would enable these network providers to act in an anticompetitive manner. Others argue that they threaten innovation in content and applications.

I have discussed these claims at length elsewhere and need not rehearse these arguments here. Instead, this Essay explores another possible ex-

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9 On paid peering, see Christopher S. Yoo, Innovations in the Internet’s Architecture that Challenge the Status Quo, 8 J. ON TELECOMM. & HIGH TECH. L. 79, 95–99 (2010). Another example is a service initially known as ESPN 360 and subsequently renamed ESPN3, which is unavailable to Internet subscribers unless their last-mile provider pays a fee to the content provider. See Yoo, supra note 8, at 238.


16 See Christopher S. Yoo, Would Mandating Broadband Network Neutrality Help or Hurt Competition? A Comment on the End-to-End Debate, 3 J. ON TELECOMM. & HIGH TECH. L. 23 (2004) [hereinafter Yoo, Comment on End-to-End]; Christopher S. Yoo, Beyond Network Neutrality, 19 HARV. J.L. & TECH. 1 (2005); Christopher S. Yoo, Network Neutrality and the Economics of Congestion, 94 GÉO. L.J.
planation for the emergence of these practices that the literature has completely overlooked, specifically the manner in which the nature of competition and innovation change as industries mature. Part I reviews the literature on the theory of the “product life cycle” developed by marketing scholars, which examines how the nature of competition changes as demand growth begins to flatten and the market begins to reach saturation. Part II discusses the scholarship on “dominant designs,” to see how standardization affects the nature of innovation. Part III examines the literature on the sociology of technology, which studies how the emergence of a technological paradigm affects scientific progress. Part IV considers the literature on transaction cost economics and complementary assets, which explains how market maturity affects market structure. Part V applies these various theories to the Internet and discusses the critiques and limitations of these theories. This Essay concludes that many of the business practices that are criticized in the current policy debate may well be nothing more than a reflection of the industry’s inevitable maturation.

Admittedly, product life cycle theory’s inability to predict precisely when and how the nature of competition will shift has limited its usefulness as a tool for business strategy. From the standpoint of regulatory policy, however, these shortcomings are less problematic. Recognizing that the nature of competition will change at some point cautions against regulatory policies that categorically prohibit the types of practices associated with market maturity even if the theory does not permit policymakers to anticipate exactly when these phase shifts will occur. A case-by-case approach that places the burden of proof on the party challenging the practice would give firms the flexibility they need to experiment with new solutions to respond to changing conditions. Any other approach might well prevent the industry from following its natural evolutionary path.

I. PRODUCT LIFE CYCLE THEORY: THE IMPACT OF DEMAND SATURATION ON THE NATURE OF COMPETITION

The best-known and best-established theory of market maturation is the product life cycle theory pioneered by marketing scholars during the 1950s and 1960s. Although variants of the product life cycle theory ex-
Product Life Cycle Theory

The predominant version posits that the sales history of a new product will follow an S-shaped curve over time and that the product will pass through the four stages of sales growth depicted in Figure 1.

Figure 1: The Product Life Cycle

During the introduction stage, the product’s novelty dictates that it will initially achieve only low sales volumes and slow sales growth, during which time the slope of the sales curve will remain relatively flat. If the product is successful, this initial stage gives way to the growth stage, during which the upward slope of the sales curve increases, as market penetration accelerates and the product gains acceptance with a broader range of consumers. Over time, market saturation causes the product market to enter the maturity stage, during which the sales curve again flattens, and revenue is generated predominantly by sales to existing customers rather than to new customers. Eventually, the product enters the decline stage, as the emergence of technologically superior substitutes causes the sales curve to slope

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Empirical research has confirmed that many, if not most, product markets follow the pattern predicted by product life cycle theory.\footnote{See SAK ONKVISIT & JOHN J. SHAW, PRODUCT LIFE CYCLES AND PRODUCT MANAGEMENT 97–98 (1989) (reviewing the empirical evidence and citing study concluding that more than eighty percent of products investigated followed the classic product life cycle curve); Peter Doyle, The Realities of the Product Life Cycle, Q. REV. MKTG., Summer 1976, at 1, 3 (reviewing the empirical literature and concluding that “[s]ales of most, though not all, products broadly follow the PLC pattern”); David R. Rink & John E. Swan, Product Life Cycle Research: A Literature Review, 7 J. BUS. RES. 219, 221–22, 238 (1979) (reviewing the empirical literature and concluding that “[t]he weight of evidence suggests that the most common curve is the classical, but it is not the only PLC”).}

One key insight of product life cycle theory is that the nature of competition will change as products proceed from one stage to the next.\footnote{For overviews of changes in the nature of competition during each stage of the product life cycle, see, for example, GRANT, supra note 17, at 271; KOTLER & KELLER, supra note 17, at 281–88; PORTER, supra note 17, at 159–61; Nariman K. Dhalla & Sonia Yuspeh, Forget the Product Life Cycle Concept!, HARV. BUS. REV., Jan.–Feb. 1976, at 102, 104.} During the introduction stage, firms focus on inducing potential early adopters to try the product. Little focus is placed on price and product quality, in part because early adopters tend to be risk tolerant and price insensitive and in part because low sales volumes prevent firms from standardizing production processes, realizing any significant economies of scale, or obtaining any significant benefits from learning by doing. As the industry transitions from the introductory phase into the growth phase, firms expand beyond early adopters to target the mass market and engage in what is sometimes called “extensive” competition, in which firms race to serve new customers who are entering the market segment.\footnote{See Richard Gabel, The Early Competitive Era in Telephone Communications, 1893–1920, 34 LAW & CONTEMP. PROBS. 340, 345 (1969).}

The most important transition for the purposes of this Essay is the shift from the growth phase to the maturity phase of the life cycle. Extensive competition, which focuses on obtaining new customers, gives way to “intensive” competition, which focuses on delivering more value to customers who are already in the market and on stealing customers already in the market from competitors.\footnote{KOTLER & KELLER, supra note 17, at 288; Levitt, supra note 17, at 89.} Firms compete by improving quality, offering a broader range of product flankers targeted at market segments, and bundling their core product with other services.\footnote{GRANT, supra note 17, at 271; PORTER, supra note 17, at 159.} The flattening of sales growth and the standardization of products also intensifies price competition.\footnote{See Dean, supra note 17, at 52; Levitt, supra note 17, at 83; Patton, supra note 17, at 12–13.} Price competition is sharpened further by the growing sophistication of customers, as they become more familiar with the product and how it is
The intensification of price competition often causes an industry shakeout and places a higher premium on reducing costs. The sales history of black-and-white televisions provides an apt illustration of the dynamics of the product life cycle. During the introduction stage, television sets had small screens and significant technical problems. These problems did not prove insuperable, as early adopters were relatively tolerant of poor performance.

As the market for televisions entered the growth stage, sales skyrocketed to the point where retailers struggled to keep sets in stock. The number of manufacturers exploded, numbering as many as sixty within two years and exceeding one hundred within four years of the product’s introduction. Manufacturers engaged in a race for the market, both in terms of capturing distribution channels and consumers. The strength of the market demand ensured that margins and profits remained very high. The shift to the mass market and customers’ growing sophistication made them more demanding and less tolerant of performance problems.

As the market transitioned into the maturity stage, the slowdown in sales growth caused the nature of competition to change. Price competition intensified, with the number of manufacturers dwindling to thirty-five. Firms became increasingly cost conscious, and instead of trying to capture new customers, they began to offer products that were higher in quality as well as portable televisions and other line extensions that were targeted at niches within the larger market.

Product life cycle theory provides important insights of how the nature of competition changes as markets mature. As consumer adoption approaches saturation, future revenue growth depends not on attracting new customers, but rather on delivering greater value to customers who are already in the market.

II. DOMINANT DESIGN THEORY: THE IMPACT OF PRODUCT STANDARDIZATION ON THE NATURE OF INNOVATION

While marketing-oriented management scholars analyzed how the pattern of sales growth affected the nature of competition, a parallel line of research pioneered by William Abernathy and James Utterback explored how

27 Patton, supra note 17, at 71–72.
28 Id. at 72.
29 Id. at 76.
30 Id. at 77.
market maturation affects the nature of innovation. Although inspired by product life cycle theory, dominant design theory differs in that the key milestone turns on the standardization of the product rather than sales growth. While Abernathy and Utterback initially argued that innovation proceeds in a series of three distinct phases, they later simplified the analysis into two basic phases, with the division between those two phases marked by the emergence of a dominant design.

According to Abernathy and Utterback, when a technological breakthrough first emerges, considerable uncertainty exists about which product features will appeal most to consumers and about the best technological means for providing those features. During this period, product design remains in a state of flux, as firms experiment with different technological approaches to satisfying consumers’ needs. Furthermore, the lack of product standardization offers little reward to specialization in operations and instead gives the advantage to production processes that remain flexible.

At some point, the basic product features and the preferred technological means for delivering those features to consumers coalesce into a dominant design. The product standardization implicit in the emergence of a dominant design heightens price competition in a manner similar to that predicted by product life cycle theory. At the same time, the emergence of a dominant design also brings about a number of changes to the nature of innovation. For example, standardization increases the cost of major product changes while also providing greater rewards to process innovations. What little product innovation that remains will be limited to minor modifi-
cations that do not require any major revisions to the product’s basic design. 40

Figure 2: Dominant Design Theory and the Shift from Product to Process Innovation

The reduction in uncertainty associated with the emergence of a dominant design also causes research and development to become more formalized and systematic. As a result, innovation becomes more science-oriented, less driven by trial and error, 41 and tends to become more incremental. 42 The empirical literature largely corroborates the predictions of dominant design theory. 43 As a result, dominant design theory has appeared prominently in many of the leading books on industrial organization and business strategy. 44

40 ABERNATHY ET AL., supra note 33, at 24.
42 Abernathy & Townsend, supra note 41, at 391.
44 See, e.g., MICHAEL E. PORTER, COMPETITIVE ADVANTAGE 194–95 (1985); OLIVER E. WILLIAMSON, MARKETS AND HIERARCHIES 215–16 (1975).
Again, the history of black-and-white televisions provides a useful case in point. During the industry’s initial stages, the product was highly non-standardized, employing both round and rectangular screens in a wide variety of sizes. The fast pace of technological improvements required that manufacturers redesign the product each year, which led them to employ a wide number of models and chassis. But the emergence of a dominant design slowed the pace of product innovation and placed greater emphasis on manufacturing expertise.

Another classic example is the automobile industry. During its earliest years, the Ford Motor Company developed and produced five different engines, which employed anywhere from two to six cylinders. The manufacturing facility was organized flexibly as a job shop, employing trade craftsmen wielding general-purpose tools. Once the Model T emerged as a dominant design, Henry Ford was able to embark on his now legendary deployment of mass production processes that lowered product costs dramatically. These examples illustrate the key role that the emergence of a dominant design plays in shaping the nature of competition, innovation, and industry structure.

III. TECHNOLOGY TRAJECTORIES AND DESIGN HIERARCHIES: THE IMPACT OF THE SOCIOLOGY OF TECHNOLOGY ON TECHNOLOGICAL CHANGE

Although the original proponents of dominant design theory conceded that the movement toward a single technological approach may “stop for long periods, or even reverse,” the overall thrust of their arguments suggested that the movement toward standardization was generally unidirectional and that any deviations from this pattern would be extremely rare. The significant changes to the automobile industry effected by the oil shocks and the entry by Japanese automakers during the 1970s, however, forced these scholars to grapple with the dynamics of industry “dematurity,” in which an industry may move away from a dominant design. Even so, they tended to attribute such changes to exogenous forces, such as the

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45 Patton, supra note 17, at 72.
46 Id. at 74–75.
47 Abernathy & Utterback, Industrial Innovation, supra note 31, at 44.
48 Utterback & Abernathy, Dynamic Model, supra note 31, at 645.
49 Murmann & Frenken, supra note 43, at 935 (“In the original formulation of dominant designs, Abernathy and Utterback (1978) suggest that dominant designs emerge once in the evolution of a particular product class.”); see also James M. Utterback & Fernando F. Suárez, Innovation, Competition, and Industry Structure, 22 RES. POL’y 1, 17 (1993) (noting that while an industry’s movement toward a single dominant design “is not necessarily irreversible, the evidence to date indicates that it is highly directional”).
development of new technologies, shifts in consumer demand, or changes in government policy.51

A. Technological Trajectories

Later scholars began to explore a more endogenous theory of how the dynamics of innovation can change based on the sociology of technology. The analytical foundation for this line of research is Thomas Kuhn’s seminal work on the history of science, which was initially published in 1962 and republished in subsequent editions in 1970 and 1996. Kuhn argued that each field of technological inquiry tends to be organized around a scientific “paradigm,” which he regarded as “the entire constellation of beliefs, values, techniques, and so on shared by the members of a given community.”52 After a paradigm has been established, technological progress takes the form of “normal science,” which focuses on solving the puzzles posed by the paradigm rather than challenging the paradigm itself.53 The establishment of a scientific paradigm plays a key role in promoting scientific progress. As an initial matter, paradigms serve as filters for determining what is relevant.54 At the same time, the paradigm “provides a map whose details are elucidated by mature scientific research.”55 Indeed, such a map helps organize the discipline around a discrete number of research areas: “By focusing attention upon a small range of relatively esoteric problems, the paradigm forces scientists to investigate some part of nature in a detail and depth that would otherwise be unimaginable.”56

In other ways, however, paradigms restrict scientific development. Paradigms thus ensure that the field consists of researchers who “have undergone similar educations and professional initiations.”57 In the process, they establish an orthodoxy by determining “legitimate methods, problems, and

51 ABERNATHY ET AL., supra note 33, at 27–29; Abernathy & Clark, supra note 50, at 18.
53 KUHN, REVOLUTIONS, supra note 52, at 144.
54 See id. at 15 (“In the absence of a paradigm . . . , all of the facts that could possibly pertain to the development of a given science are likely to seem equally relevant. As a result, early fact-gathering is a far more nearly random activity than the one that subsequent scientific development makes familiar.”).
55 Id. at 109.
56 Id. at 24.
57 Id. at 177.
Moreover, during periods of normal science, each paradigm provides a “criterion for choosing problems that . . . can be assumed to have solutions. To a great extent these are the only problems that the community will admit as scientific or encourage its members to undertake.” Moreover, paradigms induce a form of tunnel vision that can cause scientists to overlook or disregard data and findings that contradict the paradigm: “[I]n fact those that will not fit the box are often not seen at all.”

Kuhn further posited that every paradigm contains the seeds of its own destruction. Eventually, researchers pursuing normal science make unexpected discoveries that reveal anomalies that the current paradigm cannot explain. At some point, when “an anomaly comes to seem more than just another puzzle of normal science, the transition to crisis and to extraordinary science has begun,” during which “formerly standard solutions of solved problems are called in question.” These scientific developments are often reinforced by social and economic forces from outside the scientific community that place greater emphasis on these anomalies. This conflict induces a period of “crisis” that is often quite painful for the participants and is often characterized by miscommunication, hostility, and “pronounced professional insecurity.” Eventually a new paradigm emerges that can “solve the problems that have led the old one to a crisis,” and the cycle of incremental technological progress—interrupted by intermittent periods of radical technological change—begins again.

A number of technology scholars have built on Kuhn’s work to offer more elaborate theories of technological change. Devendra Sahal argued that technological progress results less from the efforts of the “heroic entre-

58 Id. at 48.
59 Id. at 37.
60 See id. at 24; see also id. at 5 (noting that “[n]ormal science . . . often suppresses fundamental novelties because they are necessarily subversive of its basic commitments”); id. at 37 (noting how the technical community rejects research challenging the paradigm “as metaphysical, as the concern of another discipline, or sometimes as just too problematic to be worthy the time”); id. at 75 (noting that many new paradigms “had been at least partially anticipated during a period when there was no crisis in the corresponding science; and in the absence of crisis those anticipations had been ignored”).
61 Id. at 24 (“[N]ormal science possesses a built-in mechanism that ensures the relaxation of the restrictions that bound research whenever the paradigm from which they derive ceases to function effectively. At that point scientists begin to behave differently and the nature of their research problems changes.”).
62 See id. at 5 (noting that eventually “a normal problem, one that ought to be solvable by known rules and procedures, resists the reiterated onslaught of the ablest members of the group within whose competence it falls”); id. at 97 (observing the emergence of “recognized anomalies whose characteristic feature is their stubborn refusal to be assimilated to existing paradigms”).
63 Id. at 82–83.
64 Id. at 181.
65 Id. at 6, 88, 90–91.
66 Id. at 67–68, 148–50.
67 Id. at 153.
preneur” posited by neoclassical theory and more from the emergence of “technological guideposts” that direct subsequent research along particular “innovation avenues.” Sahal appears to have regarded the establishment of a new technological guidepost as an exogenous development, determined either by chance or by the confluence of two lines of technology that were previously thought to be separate.

More or less contemporaneously with Sahal, Giovanni Dosi put forth a more nuanced conception and socially determined theory of how technologies evolve. Specifically, Dosi explicitly invoked Kuhn to argue that industries tend to be guided by “technological paradigms” that frame the way each field identifies the problems worth solving and the most promising technological solutions. Importantly, technological paradigms have both inclusionary and exclusionary effects, steering research away from certain directions and toward others. Like Kuhn, Dosi viewed the decision about whether to establish a technological paradigm as one driven as much by economic forces as by science. Drawing on the work of Nathan Rosenberg, Richard Nelson, and Sidney Winter, Dosi also argued that once established, a technological paradigm guides innovation along a “technological trajectory” which creates a pattern of “normal” problem solving activity.

Philip Anderson and Michael Tushman offered a similar theory that combined the view of “technological change . . . as a sociocultural evolutionary process of variation, selection, and retention” that encompassed both Kuhn’s insights and dominant design theory. The process begins with the stochastic emergence of a technological breakthrough that conveys new and decisive cost or quality advantages. These radical advances launch what Anderson and Tushman called an “era of ferment,” during

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68 Devendra Sahal, Technological Guideposts and Innovation Avenues, 14 RES. POL’Y 61, 71 (1985); see also Devendra Sahal, Patterns of Technological Innovation 32–36 (1981) (analyzing and providing examples of how technological guideposts shaped the pattern of innovation).
69 Sahal, supra note 68, at 78–79; Utterback & Suárez, supra note 49, at 6 (noting that under Sahal’s theory, technological guideposts emerge largely by chance).
70 SAHAL, supra 68, at 36; Sahal, supra note 68, at 70.
72 Id. at 153.
73 Id.
75 Philip Anderson & Michael L. Tushman, Technological Discontinuities and Dominant Designs: A Cyclical Model of Technological Change, 35 ADMIN. SCI. Q. 604, 605 (1990). This paper expanded on their earlier work. See Tushman & Anderson, supra note 35.
76 Anderson & Tushman, supra note 75, at 604–05.
which new technologies compete both with each other and with the preceding technological regime.\textsuperscript{77} The era of ferment is brought to an end by the adoption of a dominant design, which they equate to Sahal’s technological guideposts and Dosi’s technological paradigms\textsuperscript{78} and which they argue is selected not by technical but by social or political processes.\textsuperscript{79} After this point, the industry enters an “era of incremental change,” during which “[t]he focus of competition shifts from higher performance to lower cost and to differentiation via minor design variations and strategic positioning tactics.”\textsuperscript{80} Once entrenched, the dominant design becomes difficult to dislodge, in part because of the realization of scale economies and learning by doing\textsuperscript{81} and in part because social structures—such as operating procedures, organizational power structures, and institutional frameworks—tend to reinforce the status quo.\textsuperscript{82} Other scholars building on this work have suggested that network economic effects can play a similar role.\textsuperscript{83} The result is what some have called “punctuated equilibria,” in which long periods of incremental innovation are interrupted by periodic technological discontinuities.\textsuperscript{84} Anderson and Tushman reviewed the history of four industries, which they concluded provided empirical support for their theories.\textsuperscript{85}

Interestingly, Anderson and Tushman emphasized that not all technological discontinuities create a paradigm shift.\textsuperscript{86} Some technological discontinuities are “competence-enhancing” in that they build on existing know-how in ways that are largely consistent with the existing technological paradigm.\textsuperscript{87} Because competence-enhancing changes complement the status quo, they are less likely to trigger a new era of ferment or radical changes to industry structure.\textsuperscript{88} Other technological discontinuities are “competence-destroying,” in that they require new skills, abilities, and

\textsuperscript{77} Id. at 610–12.
\textsuperscript{78} Id. at 613.
\textsuperscript{79} Id. at 617.
\textsuperscript{80} Id. at 617–18 (citing PORTER, supra note 44).
\textsuperscript{81} Id. at 614.
\textsuperscript{82} Id. at 618.
\textsuperscript{83} Murmann & Frenken, supra note 43, at 935; Steven Klepper, Industry Life Cycles, 6 INDUS. & CORP. CHANGE 145, 150 (1997); Suárez, supra note 43, at 274.
\textsuperscript{84} Tushman & Anderson, supra note 35, at 439–41, 444, 450, 455, 460; Ron Adner, When Are Technologies Disruptive? A Demand-Based View of the Emergence of Competition, 23 STRATEGIC MGMT. J. 667, 667 (2002); Utterback & Suárez, supra note 49, at 7; see also Abernathy & Clark, supra note 50, at 14 (“[T]he advancement of science is characterized by long periods of regular development, punctuated by periods of revolution.”).
\textsuperscript{85} Anderson & Tushman, supra note 75, at 618–27; see also Tushman & Anderson, supra note 35, at 450–59 (finding empirical support in the history of the minicomputer, cement, and airline industries).
\textsuperscript{87} Tushman & Anderson, supra note 35, at 442.
\textsuperscript{88} Id. at 445.
knowledge.\textsuperscript{89} It is these changes that initiate periods of technological fermentation and that disrupt industry structure.\textsuperscript{90}

Important, Anderson and Tushman underscore that because technological dominance cannot be known in advance, it will be determined largely by intraorganizational political processes.\textsuperscript{91} The inherent uncertainty surrounding the likely success of any particular technological advance means that the adoption of an industry standard depends on social, political, and organizational processes more than technical merit.\textsuperscript{92} In short, “[t]he passage of an industry from ferment to order is not an engineering issue as much as a sociological one” that involves “a complicated array of organizational and collective forces,” including strategic alliances, industry associations, and government agencies.\textsuperscript{93} Once an industry standard becomes entrenched, scale economies and learning by doing make it very hard to dislodge.\textsuperscript{94}

\textbf{B. Design Hierarchies}

Another line of research examined how technological change is shaped by what Kim Clark called “design hierarchies.”\textsuperscript{95} Drawing on the work of Nathan Rosenberg, Clark noted that most innovations are not standalone technological developments, but rather part of a web of interdependent technological processes.\textsuperscript{96} In addition, not all of the various components that make up these technological processes are of equal importance. Some are central or core, in that they affect all others within the domain. These concepts are placed at the top of the design hierarchy.\textsuperscript{97}

The emergence of a particular design hierarchy establishes a technical agenda for a particular product’s development that directs further innovation along particular lines.\textsuperscript{98} Once the technological agenda has been set, production processes become more focused and specialized.\textsuperscript{99} Moreover, the hierarchical nature of the design systems has a tendency to facilitate certain types of innovation and to obstruct others. Specifically, innovations that refine the concepts established by the existing hierarchy (which Clark called movements “down” the design hierarchy), are relatively easy to de-

\textsuperscript{89} Id. at 442.
\textsuperscript{90} Id. at 444–46, 461–62.
\textsuperscript{91} Id. at 462.
\textsuperscript{92} Anderson & Tushman, supra note 75, at 605–06, 611, 616–17, 627–28.
\textsuperscript{93} Id. at 627–28.
\textsuperscript{94} Id. at 614.
\textsuperscript{96} Id. at 237 (citing ROSENBERG, supra note 74, at 108–25).
\textsuperscript{97} Id. at 243.
\textsuperscript{98} Id.
\textsuperscript{99} Id. at 247.
ploy, as they reinforce and strengthen existing commitments. Innovations that depart from existing approaches and challenge the core elements that define the design hierarchy (which Clark called movements “up” the design hierarchy) can be more difficult to realize in that they destroy the value of established commitments and competence. Later scholars have taken a more network-based approach that views the importance of a particular concept not in terms of its level of generality within a conceptual hierarchy, but rather the extent of a concept’s interconnections with other concepts, with changes to core concepts having a significantly lower probability of success.

Clark refined this analysis and added an institutional dimension to this framework in subsequent work co-authored with Rebecca Henderson. They note that integrating components into a system requires two distinct types of knowledge: “First, it requires component knowledge, or knowledge about each of the core design concepts and the way in which they are implemented in a particular component. Second, it requires architectural knowledge or knowledge about the ways in which the components are integrated and linked together into a coherent whole.” These analytical constructs yield the following two-by-two matrix for identifying distinct types of innovation.

Innovations can have dramatically different impacts on competition depending on the extent to which they change each type of knowledge. Obviously, innovations that reinforce current component knowledge and do not require significant changes to current architectural knowledge (which Henderson and Clark called “incremental innovation”) are the least disruptive. Conversely, innovations that require significant changes to both component and architectural knowledge (“radical innovation”) pose the greatest challenges to established firms, since it is these types of innovations that are most destructive to established firms’ existing capabilities.

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100 Id. at 249.
101 Id.
102 Murmann & Frenken, supra note 43, at 940–42; see also Michael L. Tushman & Johann Peter Murmann, Dominant Designs, Technology Cycles, and Organizational Outcomes, 20 RES. ORG. BEHAV. 231, 249–51 (1998) (noting that “products are composed of hierarchically ordered subsystems that are coupled together by linking mechanisms” in which “core subsystems are either tightly connected to other subsystems or represent a strategic performance bottleneck,” while “a peripheral subsystem is one that is only weakly connected to other subsystems”); Michael L. Tushman & Lori Rosenkopf, Organizational Determinants of Technological Change: Toward a Sociology of Technological Evolution, 14 RES. ORG. BEHAV. 311, 334 (1992) (“Not all subsystems are of equal importance. Those subsystems with greater linkages to other subsystems are more central to the system than those subsystems that are peripheral.”).
103 Henderson & Clark, supra note 35. This article refined ideas initially explored in Abernathy & Clark, supra note 50, at 7–13.
104 Henderson & Clark, supra note 35, at 11.
105 Id. at 13.
106 Id.
What is most illuminating is a comparison of the two diagonal boxes of the matrix. Firms accommodate changes to components that do not require changes to the system’s architecture ("modular innovation") relatively easily.\footnote{Id. at 12 fig.1.} Interestingly, it is innovations that change the architecture without changing the components ("architectural innovation") that pose the greatest challenges.\footnote{Id. at 12.} The emergence of a dominant design tends to stabilize architectural knowledge and leads firms to stop focusing on alternative architectural configurations and instead concentrate on improving the components within the context of the existing configuration.\footnote{Id. at 13.} Moreover, once a particular architectural vision becomes dominant, “it tends to become embedded in the practices and procedures of the organization.”\footnote{Id. at 14–15.} In particular, “an organization’s communication channels will come to embody its architectural knowledge of the linkages between components that are critical to effective design.”\footnote{Id. at 15.} In addition, the filters that organizations employ to manage the constant barrage of information also come to embody its architectural knowledge.\footnote{Id.} Yet these structures mean that information about changes in the manner in which components relate to one another might become screened out. As Henderson and Clark noted, “organizations facing threats may continue to rely on their old frameworks—or in our terms on their old architectural knowledge—and hence misunderstand the nature of a
threat. They shoehorn the bad news, or the unexpected new information, back into the patterns with which they are familiar.\(^{114}\) This systematic, institutional commitment to the status quo makes it harder for established firms to recognize when change is necessary and make it more costly for them to retool.\(^{115}\)

One potential solution to the complexities of design hierarchies is modularity. Clayton Christensen has linked the emergence of modularity to the product life cycle.\(^{116}\) During the initial stages of a technology, when firms cannot yet meet most consumers’ demands for performance, the need to maximize the potential of the existing technology leads firms to experiment with new and untested configurations of components.\(^{117}\) As a result, firms tend to employ nonstandardized, highly interdependent, and proprietary architectures, rather than modular architectures.\(^{118}\) This characteristic may be attributed to the fact that standardization would necessarily force firms away from the technological frontier.\(^{119}\) In addition, product designers need to be free to engage in an unstructured technical dialogue that is not tied to any particular architectural conception.\(^{120}\) Once the functionality of the available products begins to exceed customers’ expectations, the focus of competition shifts away from functionality and toward other considerations, such as speed of service, flexibility, customization, and price, which makes modular architectures better suited to the business environment.\(^{121}\)

However, even proponents of modularity recognize the theory’s limits. For example, certain tasks may be so interdependent that they require a higher degree of coordination than modular architectures allow.\(^{122}\) Modularization also limits producers’ ability to compete on the basis of cost or superior design\(^{123}\) and tends to create information silos.\(^{124}\) Because the standards needed to implement a modular approach are typically established by industry organizations or regulatory agencies, adopting a modular architec-

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114 Id. at 17 (citations omitted).
115 Id. at 17–18.
118 Id. at 962.
119 Id.
120 Id.
121 Id. at 964–65; CHRISTENSEN, supra note 116, at 214–15, 218–19.
123 Christensen et al., supra note 117, at 977.
124 Chesbrough & Teece, supra note 122, at 65–66.
ture in effect subjects that industry to bureaucratic control. Perhaps most importantly, changes in the technological and economic environment can lead two previously distinct modules to be provided more efficiently by a single integrated system. This occurred, for example, when computers began to integrate functions previously performed by peripheral devices into their primary CPUs and when cable modem and DSL providers began to offer services that consolidated both last-mile and middle-mile functionality. The danger is that modularization may inhibit systemic innovation by creating organizational structures and economic pressures that tend to lock the existing interfaces into place.

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Together, these sociological theories have important implications for how technological innovation emerges in mature industries. A number of basic economic factors, such as scale economies, learning by doing, and network economic effects, make transformative change particularly difficult after a technology has coalesced around a particular paradigm. Moreover, paradigms and institutional structures tend to retard radical architectural changes by framing and filtering the way that researchers and organizations perceive new technological developments and information. These problems are likely to be particularly severe for innovations challenging an entrenched design hierarchy, in which the interdependence of multiple subsystems is particularly resistant to change and many researchers and industry players have professional and economic investments in the status quo. These effects can limit the number of dimensions along which firms can compete and can prevent new architectural approaches from emerging.

125 See RAYNOR & CHRISTENSEN, supra note 122, at 19 (“Companies that are integrated across modular interfaces suffer from the inefficiencies that seem inevitably to stem from the heavy hand of bureaucratic control.”).

126 See Transamerica Computer Co. v. IBM Corp., 698 F.2d 1377, 1382–83 (9th Cir. 1983); Cal. Computer Prods., Inc. v. IBM Corp., 613 F.2d 727, 744 (9th Cir. 1979); ILC Peripherals Leading Corp. v. IBM Corp., 448 F. Supp. 228, 231–32 (N.D. Cal. 1978), aff’d sub nom., Memorex Corp. v. IBM Corp., 636 F.2d 1188 (9th Cir. 1980) (per curiam); Telex Corp. v. IBM Corp., 367 F. Supp. 258, 342 (N.D. Okla. 1973), rev’d on other grounds, 510 F.2d 894 (10th Cir. 1975).


128 Chesbrough & Teece, supra note 122, at 65–66; Jacobides & Winter, supra note 128, at 404.
IV. COMPLEMENTARY ASSETS AND THE IMPACT OF MARKET MATURATION ON INDUSTRY STRUCTURE

Although the literature on market maturation has focused primarily on the nature of competition and innovation, it also has implications for industry structure. This Part considers the impact of market maturation on horizontal market concentration, the relative benefits of incumbency for innovation, and vertical market structure in turn.

A. Horizontal Market Structure

Market maturation theory has embedded in it a particular vision of how the horizontal market structure of an industry will evolve. For example, product life cycle theory predicts that the prospect of strong sales growth will attract a substantial number of new firms to enter the market during the growth stage. As the market enters the maturity phase, the increase in price competition causes an industry shakeout as market participants merge or exit the market.\(^\text{130}\)

Dominant design theory offers similar predictions about the evolution of horizontal market structure. During the initial stage, when product design is in flux, entry by new competitors deconcentrates the market.\(^\text{131}\) Throughout this period of flux, newer, smaller firms utilizing flexible, labor-intensive production processes have the advantage over larger firms, which rely on more specialized, high-volume production processes.\(^\text{132}\) The internal organization and communications structure of large firms tend to make them less able to adjust to this dynamic environment.

The shift in the nature of competition after a dominant design emerges tips the competitive balance in favor of larger firms. Market adoption of a design paradigm causes research and development to become less entrepreneurial and more science-driven and systematic.\(^\text{133}\) At the same time, product standardization limits firms’ ability to use product innovation as a source of competitive advantage. Competition increasingly focuses on price, which in turn rewards those firms that can improve their production

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\(^{131}\) Utterback, supra note 50, at 30–31, 33–47; Utterback & Suárez, supra note 49, at 1, 5; see also Michael Gort & Steven Klepper, Time Paths in the Diffusion of Product Innovations, 92 Econ. J. 630, 631 (1982) (providing analytical support for the rapid growth in the number of producers during the early stages following the introduction of a new product); Mueller & Tilton, supra note 31, at 574 (“[O]ne usually expects a rush of firms entering a newly formed industry.”).

\(^{132}\) Abernathy & Utterback, Industrial Innovation, supra note 31, at 42, 44; Mueller & Tilton, supra note 31, at 574; Utterback & Suárez, supra note 49, at 1, 5.

\(^{133}\) Abernathy & Utterback, Industrial Innovation, supra note 31, at 45; Mueller & Tilton, supra note 31, at 576–77.
processes and can best realize economies of scale.\footnote{Klepper, supra note 35, at 573–74, 580.} In addition, as discussed in the next section, larger firms are more likely to possess the complementary assets needed to commercialize the innovation.\footnote{David J. Teece, Profiting from Technological Innovation: Implications for Integration, Collaboration, Licensing and Public Policy, 15 RES. POL’Y 285, 301 (1986).} The resulting emphasis on economies of scale and scope causes an industry shakeout,\footnote{ABERNATHY ET AL., supra note 33, at 131–32; UTTERBACK, supra note 50, at 30–31, 33–47, 87–88; Klepper, supra note 35, at 562, 564, 574; Utterback & Suárez, supra note 49, at 5.} resulting in what Dosi calls “oligopolistic maturity.”\footnote{Dosi, supra note 71, at 157.} A recent survey of the literature on dominant designs finds strong empirical support for the idea that industries will tend to follow this inverted-U pattern of entry and exit.\footnote{Murmann & Frenken, supra note 43, at 931.} Thus, market maturation theory posits that markets will grow increasingly concentrated as the industry matures regardless of whether one applies the demand-driven approach underlying product life cycle theory or the more technologically oriented approach embodied in dominant design theory.

B. Vertical Market Structure

To date, product life cycle and dominant design theorists have devoted relatively little attention to vertical market structure.\footnote{Klepper, supra note 83, at 152.} The initial work adopted a fairly simplistic approach, positing that the emergence of a dominant design would lead to an increase in vertical integration as firms try to assert greater control over their production processes.\footnote{UTTERBACK, supra note 50, at 90; Utterback & Suárez, supra note 49, at 4 (observing that Abernathy & Utterback, Industrial Innovation, supra note 31, considered vertical integration to be an “inevitable outcome of technological evolution in an industry”). This conclusion contrasts with George Stigler’s assertion that maturing industries would exhibit greater vertical disintegration, as the growth of sales volumes made greater specialization possible. See George Stigler, The Division of Labor Is Limited by the Extent of the Market, 59 J. POL. ECON. 185, 190 (1951).} Later scholars recognized that firms could accomplish the same objectives through contracts establishing closer relationships with suppliers and distributors instead of through formal vertical integration.\footnote{Klepper, supra note 83, at 152.} Commentators attempting to assess the empirical evidence on vertical integration found it to be mixed on this point.\footnote{Utterback & Suárez, supra note 49, at 49, at 4, 18.}

A line of research initiated by David Teece drew upon the insights of transaction cost economics to offer a more refined theory of vertical market structure. Teece’s work sought to solve a persistent riddle of innovation: Why, despite the presence of strong first-mover advantages, do initial inno-

\footnote{See Klepper, supra note 83, at 159, 164 (finding that although the auto industry exhibited greater vertical integration as it matured, six other industries did not follow any consistent pattern of vertical integration).}
vators so often lose to follow-on competitors?\(^{143}\) The traditional analysis focused almost exclusively on the presence of patent protection or some other means for ensuring that the initial innovator is able to appropriate the lion’s share of the available surplus.\(^ {144}\)

While Teece recognized the importance of appropriability,\(^ {145}\) he pointed out that there was another force at work. Teece observed that innovations generally are not products in and of themselves. Most must be combined with other complementary assets before they can be commercialized.\(^ {146}\) In such cases, the commercial success of an innovation depends not only on the strength of the appropriability regime, but also on the innovator’s ability to bargain effectively with the firms that control these key complementary assets.\(^ {147}\)

Complementary assets do not play a significant role during the initial stages of a technology’s deployment, since during that time the emphasis is on identifying the optimal product design rather than improving production processes.\(^ {148}\) Moreover, production volumes are so low prior to that time that investments in complementary assets are unlikely to yield significant benefits.\(^ {149}\) The situation changes radically once a dominant design has emerged. At this point, access to complementary assets becomes a critical success factor.\(^ {150}\) An innovator with an ironclad, patent-protected monopoly in a particular technology may have to bargain with another monopolist with exclusive control over a complementary asset that is critical to the technology’s commercialization.\(^ {151}\) The owner of the complementary asset may be in a stronger bargaining position than the owner of the new technology, in which case the owner of the complementary asset is more likely to capture the lion’s share of the benefits created by the new technology.\(^ {152}\)

The strength of the innovator’s bargaining position also depends on whether the complementary assets in question are specialized or generic. If the complementary assets needed to commercialize the innovation are generic, the market is likely to be competitive, and the complementary asset owner will not have to bear the risk of making significant relationship-

\(^{143}\) Teece, supra note 135, at 285.

\(^{144}\) See Giovanni Dosi, Sources, Procedures, and Microeconomic Effects of Innovation, 26 J. ECON. LITERATURE 1120, 1139 (1988) (reviewing the literature). Other bases of appropriability include trade secrets, lead times, costs of duplication, learning-curve effects, and superior sales and service efforts. Id.

\(^{145}\) See Teece, supra note 135, at 287, 290–92.

\(^{146}\) Id. at 288.

\(^{147}\) Id. at 291–92.

\(^{148}\) Id. at 291.

\(^{149}\) Id.

\(^{150}\) Id.; see also Suarez, supra note 43, at 282 (noting that complementary asset providers become more important as the market for the dominant design grows).

\(^{151}\) Teece, supra note 135, at 292.

\(^{152}\) Id.
specific investments.\textsuperscript{153} Under these circumstances, the innovator should have little trouble negotiating contracts to obtain access to those assets.\textsuperscript{154}

Bargaining becomes considerably more complicated when the complementary assets needed to commercialize the innovation are specialized. As an initial matter, owners of specialized complementary assets are more likely to possess market power. If so, they will inherently possess greater bargaining power and will be in a better position to appropriate a greater proportion of the surplus.\textsuperscript{155} Moreover, contracting is likely to be especially difficult if a contract requires the owner of the complementary asset to undertake irreversible investments that would be valueless if the relationship between the innovator and the complementary asset owner were to fall apart.\textsuperscript{156} When that is the case, the owner of the complementary asset may have to be given some ex ante assurances before undertaking such investments.\textsuperscript{157} In addition, the parties are vulnerable to being held up ex post.\textsuperscript{158}

The classic solution to this problem is for the innovator to eliminate the need to bargain by vertically integrating and provide all of the complementary assets needed to commercialize the invention itself.\textsuperscript{159} That said, vertical integration is expensive—a burden that is likely to weigh particularly heavily on startups.\textsuperscript{160} Requiring all firms to obtain access to complementary assets through vertical integration would have the inevitable effect of raising the cost of entry, which in turn would render the market less competitive.\textsuperscript{161} Innovators can avoid these costs by foregoing formal vertical integration and instead entering into strategic partnerships with providers of complementary assets.\textsuperscript{162} Although the presence of relationship-specific investments may cause risks of opportunistic abuse so severe as to render contractual solutions untenable, under the proper circumstances strategic partnerships can represent an alternative institutional solution that facilitates innovators’ commercialization of their products.\textsuperscript{163}

\textsuperscript{153} Id. at 291.
\textsuperscript{154} Id. at 290, 291.
\textsuperscript{155} Id. at 292.
\textsuperscript{156} Id. at 294.
\textsuperscript{157} Id.
\textsuperscript{158} Id. at 290; see also Joshua S. Gans & Scott Stern, The Product Market and the Market for “Ideas”: Commercialization Strategies for Technology Entrepreneurs, 32 RES. POL’Y 333, 334, 339–40 (2003) (describing how firms that control specialized complementary assets necessary to commercialize an innovation can act opportunistically to “hold up” the innovation); Scott Shane, Technology Regimes and New Firm Formation, 47 MGMT. SCI. 1173, 1177 (2001) (describing how specialized complementary assets can provide advantages to incumbents).
\textsuperscript{159} Teece, supra note 135, at 290, 295.
\textsuperscript{160} Id. at 293.
\textsuperscript{161} Id. at 302.
\textsuperscript{162} Id. at 293–94.
\textsuperscript{163} Id. at 294.
This perspective suggests that the growing use of strategic partnerships may be nothing more than a natural part of a market’s evolution after it matures. Thus, Teece concludes that strategic partnerships “ought to be seen not as attempts to stifle competition, but as mechanisms for lowering entry requirements for innovators.”

Other scholars have explored alternative ways to reduce the transaction costs of obtaining access to complementary assets aside from vertical integration and vertical contracting. In particular, these scholars suggest that modularity can create “technologically separable interfaces” that permit inter-firm transactions in places where they otherwise could not occur. Through this process, modularity makes it possible for small, non-vertically integrated firms to specialize in ways that allow them to maximize the benefits of their technical expertise.

As noted earlier, however, modularity facilitates innovation within the context of the existing architecture at the expense of inhibiting innovations that would transform the existing architecture. Many modularity scholars have argued that vertically integrated companies are better at systemic innovations, with integrated solutions being more appropriate when the architecture is interdependent, knitting together component pieces. In addition, the unstructured technical dialogue on which architectural innovation depends may best be undertaken within the boundaries of a firm. Integrated firms may be better positioned to manage the subsequent fluctuations between interdependence and modularity.

V. Market Maturation Theory’s Implications for Internet Policy

Market maturation theory would appear to have clear implications for U.S. Internet policy. The empirical data on the penetration rates of U.S. Internet usage collected by the International Telecommunication Union and

164 Id. at 302.
166 Arora et al., supra note 165, at 254–55; Christensen et al., supra note 117, at 964–65, 985; Jacobides & Winter, supra note 128, at 403–04; see also Klepper, supra note 83, at 169–74 (providing empirical support for such specialized firms in maturity).
167 Chesbrough & Teece, supra note 122, at 65.
168 See Raynor & Christensen, supra note 122, at 16–19.
169 Christensen et al., supra note 117, at 962–63.
by the Pew Research Center indicate that penetration stands at between 76% and 79%.171

*Figure 4: Penetration of U.S. Internet Usage*172

Measured solely in terms of broadband connections, U.S. subscriber-ship has risen rapidly over the past decade. But the growth rate began to taper off in June 2008, as the growth curve passed the inflection point, suggesting that the market may be approaching saturation and may be starting to enter its mature phase.173


On a technological level, the Internet initially served as an experimental testbed that allowed researchers to try out a wide variety of network technologies. Moreover, the fact that the Internet was initially sponsored by the Defense Department meant that the architecture placed little emphasis on efficiency or on how costs were allocated. The commercialization of the Internet and its emergence as a mass market phenomenon is naturally leading network providers to deploy increasingly specialized equipment and to place greater emphasis on cost, efficiency, and accountability.

Thus, as the market matures, policymakers should expect firms to shift from extensive to intensive competition and to focus on reducing costs and customizing offerings to deliver greater value to existing customers through differentiation and bundling of services, as reflected by last-mile providers’ growing interest in monetizing video streams. Indeed, market maturation theory reminds us that product differentiation can represent an important

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175 Juan D. Rogers, Internetworking and the Politics of Science: NSFNET in Internet History, 14 INFO. SOC’Y 213, 215 (1998).
source of competitive rivalry.\textsuperscript{177} The theory also suggests that policymakers should be tolerant of new institutional relationships, particularly the growing use of more strategic partnerships. The Internet is characterized by precisely the type of relationship-specific investments that counsel in favor of such strategic partnerships.\textsuperscript{178} Finally, the impediments to architectural innovation that surround industries characterized by elaborate and complex design hierarchies suggests that policymakers should be concerned that industry players will engage in too little architectural innovation and experimentation rather than too much. The growing consensus in the engineering literature is that the Internet is in need of significant architectural change, but that the network seems incapable of evolving out of its current architecture.\textsuperscript{179}

Before condemning particular deviations from the current architecture as harmful to competition and innovation, one should bear in mind that the general concern raised by the literature on network economic effects is that networks to can be too slow to adopt new technologies where the presence of a large installed base causes the network to remain locked into a standard long after it has become obsolete.\textsuperscript{180} One should also bear in mind that experimentation and competition over standards are generally regarded as signs of innovative health\textsuperscript{181} and that “divided technical leadership,” in which firms operating in adjacent markets with similar technical and marketing capabilities attempt to seize control over key platform elements, can represent an important source of competition during Kuhnian eras of normal science.\textsuperscript{182} Consequently, regulatory intervention that locks the interfaces between the various components of the design hierarchy into place might actually serve to dampen rivalry rather than enhance it.

Market maturation theory is subject to a number of limitations. Despite the popularity of the various market maturation theories and the attention that management scholars have focused on them, these theories to date have been somewhat disappointing as a guide for managerial decisionmaking. As an initial matter, critics have raised questions about the market ma-

\begin{itemize}
\item \textsuperscript{178} Christopher S. Yoo, \textit{Vertical Integration and Media Regulation in the New Economy}, 19 YALE J. ON REG. 171, 260–65 (2002).
\item \textsuperscript{180} Yoo, supra note 8, at 244.
\item \textsuperscript{181} Shane Greenstein, \textit{Glimmers and Signs of Innovative Health in the Commercial Internet: A Reflective Essay}, 8 J. ON TELECOMM. & HIGH TECH. L. 25, 42–55 (2010).
\end{itemize}
turation theory’s generality. For example, although reviews of the empirical literature on the product life cycle have concluded that most industries conform to the pattern depicted in Figure 1, critics recognize that many studies reflect a wide variety of other patterns.183 Similarly, many empirical tests have failed to bear out the dropoff in innovation or the shift from product to process innovation predicted by dominant design theory.184

The somewhat inconclusive state of the empirical record is partly attributable to the considerable confusion about the proper unit of analysis. For example, under product life cycle theory, it is unclear whether products should be aggregated at the level of the brand (e.g., Miller), product form (e.g., light beer), or product (e.g., beer).185 With respect to dominant design theories, studies have struggled to determine what constitutes a dominant design.186 In addition, studies have varied the unit of analysis, with some analyzing technologies at the product level and others analyzing technologies at the subsystem level.187 The difficulty in identifying the key turning points has led some scholars to criticize market maturation as only knowable in retrospect,188 which greatly limits its usefulness to business strategists.

Dominant design theory also assumes that some degree of technological product differentiation is possible. Otherwise, products will standardize quickly without passing through any extended period of uncertainty. Furthermore, in assuming that products will standardize and firms will compete increasingly on the basis of price, the dynamics posited by market maturation theory also implicitly assume that consumer preferences are homogeneous.189 Heterogeneity of consumer preferences can prevent a dominant

183 See Kotler & Keller, supra note 17, at 278–79; Rink & Swan, supra note 19, at 221–22; Gerald J. Tellis & C. Merle Crawford, An Evolutionary Approach to Product Growth Theory, J. Marketing, Fall 1981, at 125, 126.

184 For studies finding continued innovation after maturity, see Adner & Levinthal, supra note 177, at 623; Clayton M. Christensen, Exploring the Limits of the Technology S-Curve, 1 PRODUCTION & OPERATIONS MGMT. 334, 338–41 (1992); Rebecca Henderson, Of Life Cycles Real and Imaginary: The Unexpectedly Long Old Age of Optical Lithography, 24 Res. Pol’y 631, 634 (1995); Klepper, supra note 83, at 158–60, 167–68. For studies failing to find a shift from product to process innovation after maturity, see Adner & Levinthal, supra note 177, at 623; C. De Bresson & J. Townsend, Multivariate Models for Innovation—Looking at the Abernathy-Utterback Model with Other Data, 9 Omega Int’l J. MGMT. SCI. 429, 435 (1981); Klepper, supra note 83, at 175.

185 Day, supra note 25, at 61; Dhall & Yuspeh, supra note 20, at 103–04, 105; Rink & Swan, supra note 19, at 225–27.

186 Murmann & Frenken, supra note 43, at 933.

187 Id. at 933–34.


189 Porter, supra note 44, at 196.
design from ever emerging.\textsuperscript{190} Moreover, demand heterogeneity may lead firms to continue to make product improvements in maturity.\textsuperscript{191} In addition, the market structure predicted by market maturation theory depends on the presence of significant economies of scale, since the continued viability of custom manufacturing would permit small firms to continue to survive.\textsuperscript{192}

Most importantly, market maturation theory has struggled to find a theory of market renewal. As Theodore Levitt demonstrated, firms can often find new uses for a product that can revitalize and restart the product life cycle.\textsuperscript{193} However, product life cycle theory provides no basis for analyzing when that might occur. Similarly, Abernathy and Utterback’s initial exposition of dominant design theory presumed that a dominant design would arise only once in the history of any industry.\textsuperscript{194} Since that time, they recognized that industries may go through different cycles.\textsuperscript{195}

The problems associated with employing market maturation theory as a guide for business strategy do not necessarily undercut its usefulness as a guide for regulatory policy. Unlike business managers, policymakers need not determine in advance the precise moments when the nature of competition and innovation will change or which technology will emerge as dominant. Rather than trying to manage the details of these technological transitions, policymakers can simply focus on creating regulatory structures that are flexible enough to allow the industry to evolve as it matures and to give firms the room to experiment with new solutions to whatever changes in the business environment may arise, as would be accomplished by a case-by-case approach that places the burden of proof on the party challenging the practice in question.\textsuperscript{196} More aggressive intervention would have the unfortunate effect of preventing ambiguous practices from going forward and runs the risk of biasing technological choices or creating barriers

\textsuperscript{190} Anderson & Tushman, supra note 75, at 628.
\textsuperscript{191} Adner & Levinthal, supra note 177, at 623, 625.
\textsuperscript{192} See PORTER, supra note 44, at 195–96; De Bresson & Townsend, supra note 184, at 435.
\textsuperscript{193} Levitt, supra note 17, at 87–93.
\textsuperscript{194} See Murmann & Frenken, supra note 43, at 935.
to innovation by increasing costs or uncertainty. A more measured, case-by-case approach that places the burden of proof on the party challenging the practice in question would seem to strike a better balance between permitting business practices to evolve with the changing conditions while also providing a remedy for any anticompetitive harms that may emerge.

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