

# Listeners' Choices Online

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*The First Amendment and Listener Interests  
Southern California Law Review Symposium*

*University of Southern California  
November 8, 2024*

*Listeners' Choices*

90 U. COLO. L. REV. 365 (2019)

# Speech as a matching problem

- Instead of focusing on the *content* of speech, analyze the *matching* of who speaks to whom
- Key moving parts:
  - *Choices* made by speakers and listeners
  - *Scarcities* of bandwidth and attention

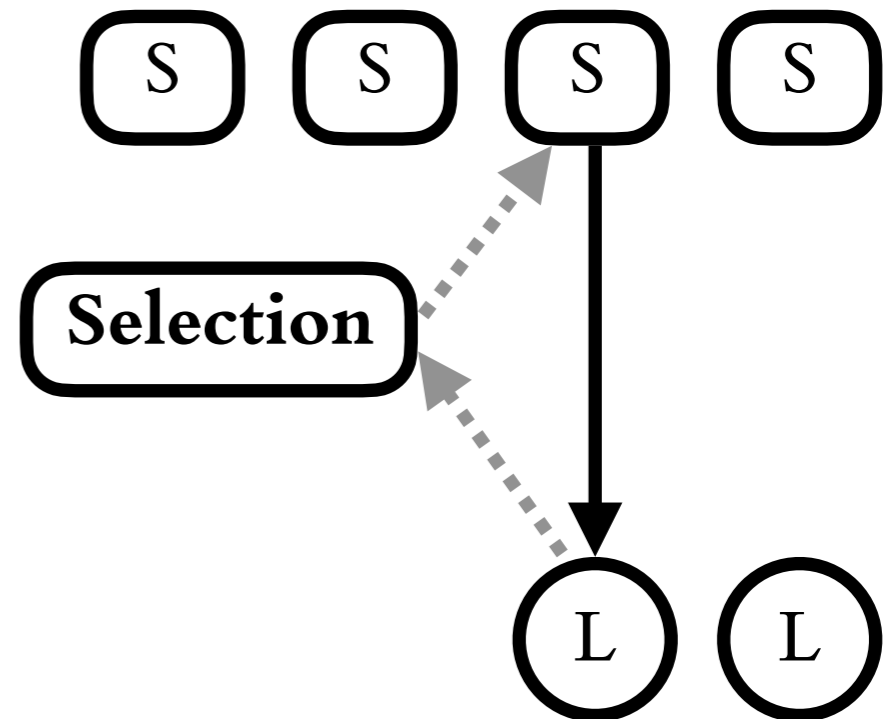
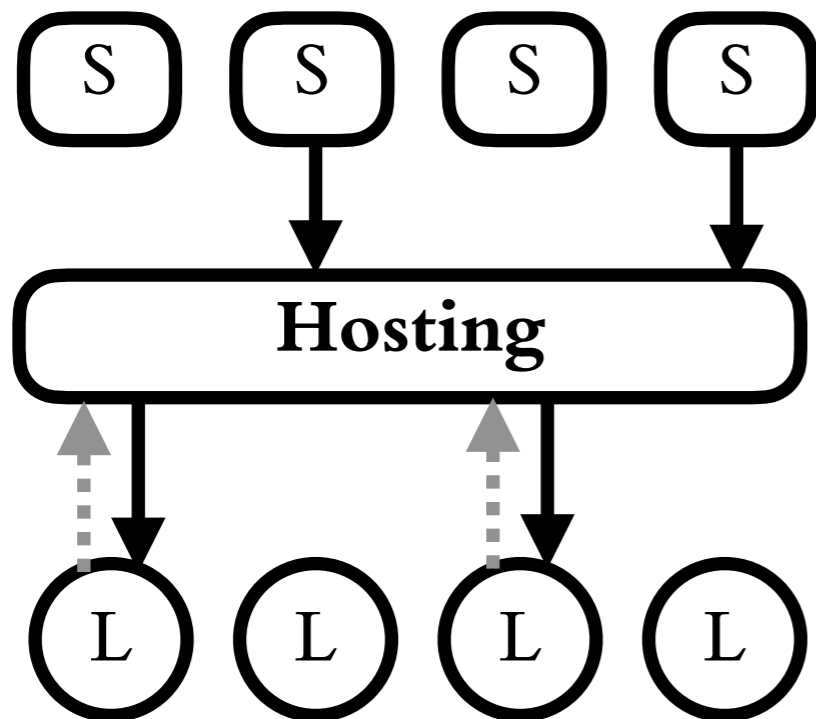
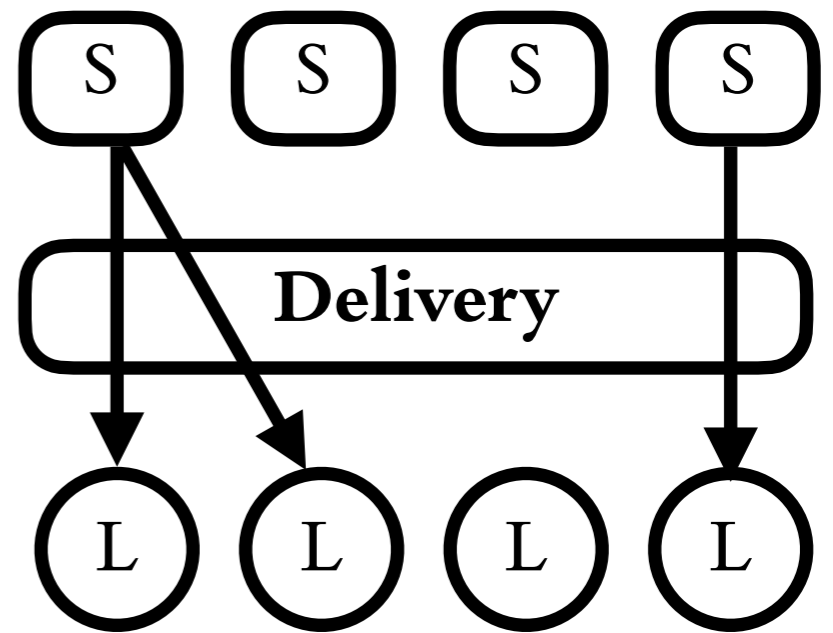
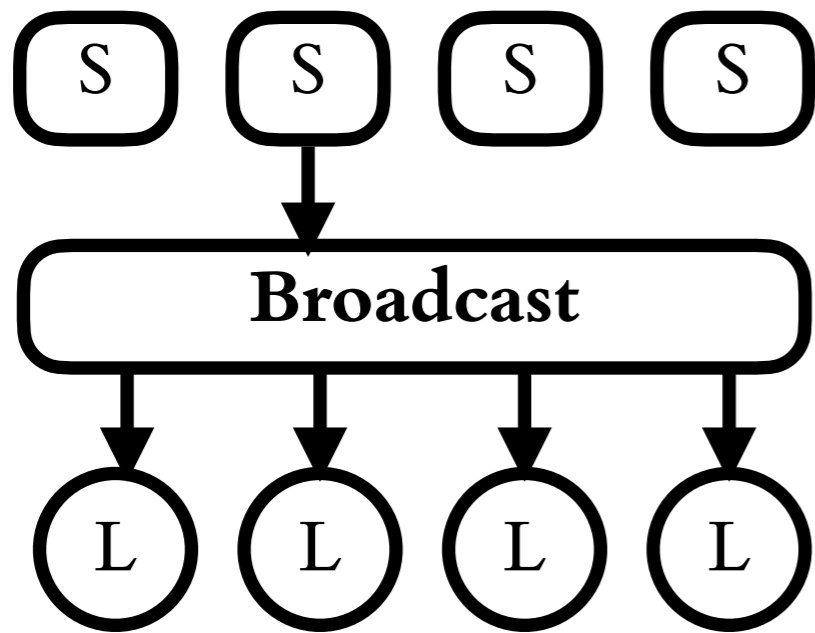
# Some tentative conclusions

- Listener choice is good, actually
- Willing listeners > unwilling listeners
- Unwilling listeners > speakers, *when no other listeners are affected*

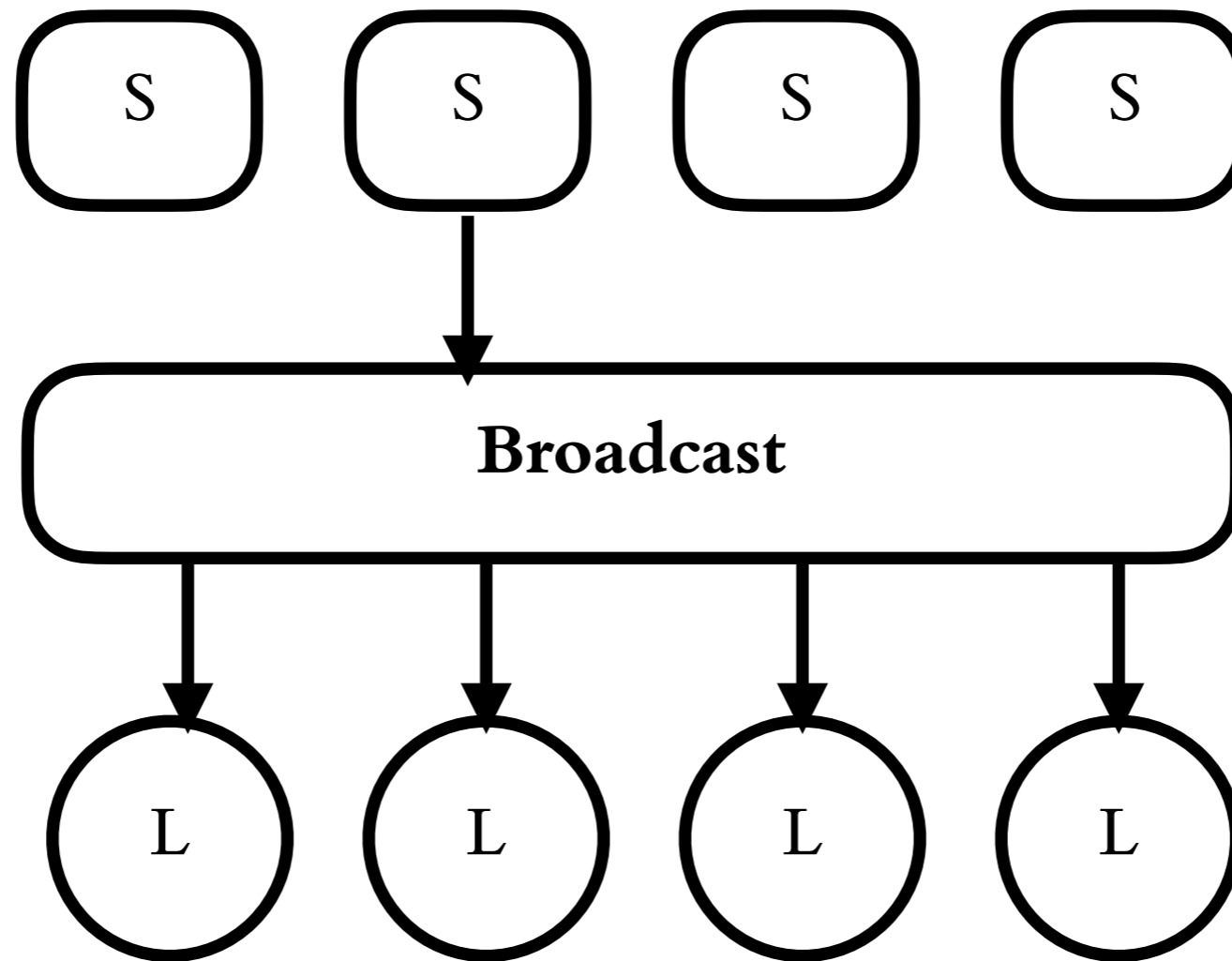
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S. CAL. L. REV. (forthcoming)

# Four media functions



# Broadcast



# The structure of broadcast

- *E.g.*, TV, radio (free and open)
  - *Quasi e.g.*, cable and satellite (subscription)
- Extensive reach but limited bandwidth
- A few speakers are chosen to have access ...
  - ... and listeners choose from among them



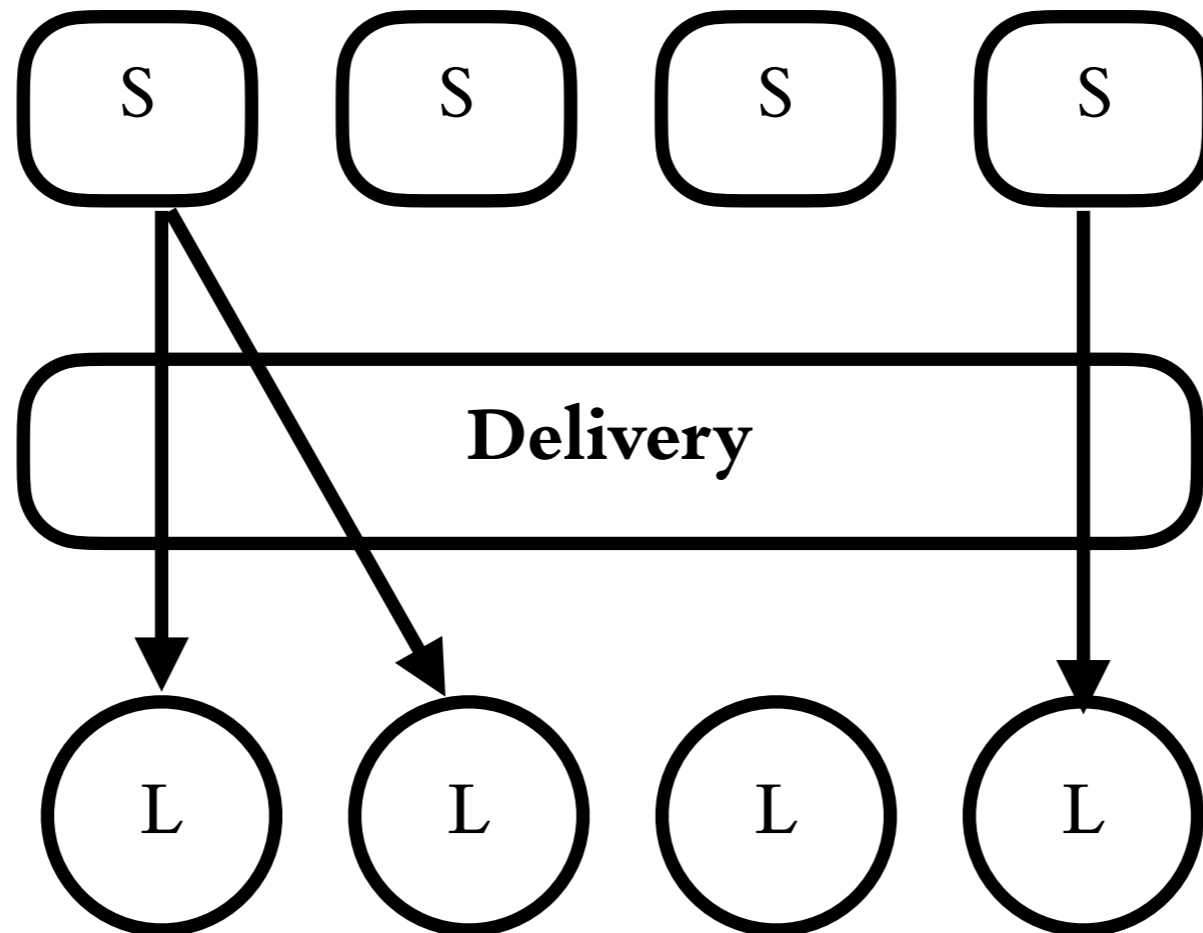
# Access to broadcast

- No general right of access to broadcast
- Subject to some limited access rules (e.g., the equal-time rule ) that ...
  - ... were justified by listeners' interests
  - ... gave rights to speakers instead
  - ... were often unconcerned with *actual* listeners' choices (e.g. FCC format-change proceedings)

# Filtering broadcast

- Unwilling listeners can change the channel
- *But see Pacifica*: listeners cannot practically avoid indecency, so it can be prohibited
- *Cf.* cable and satellite, where listeners can choose not to subscribe

# Delivery



# The structure of delivery

- E.g., mail, telephone, email, Internet service
- One-to-one delivery from a speaker to a listener
- The speaker selects ...
  - ... the content
  - ... the listener

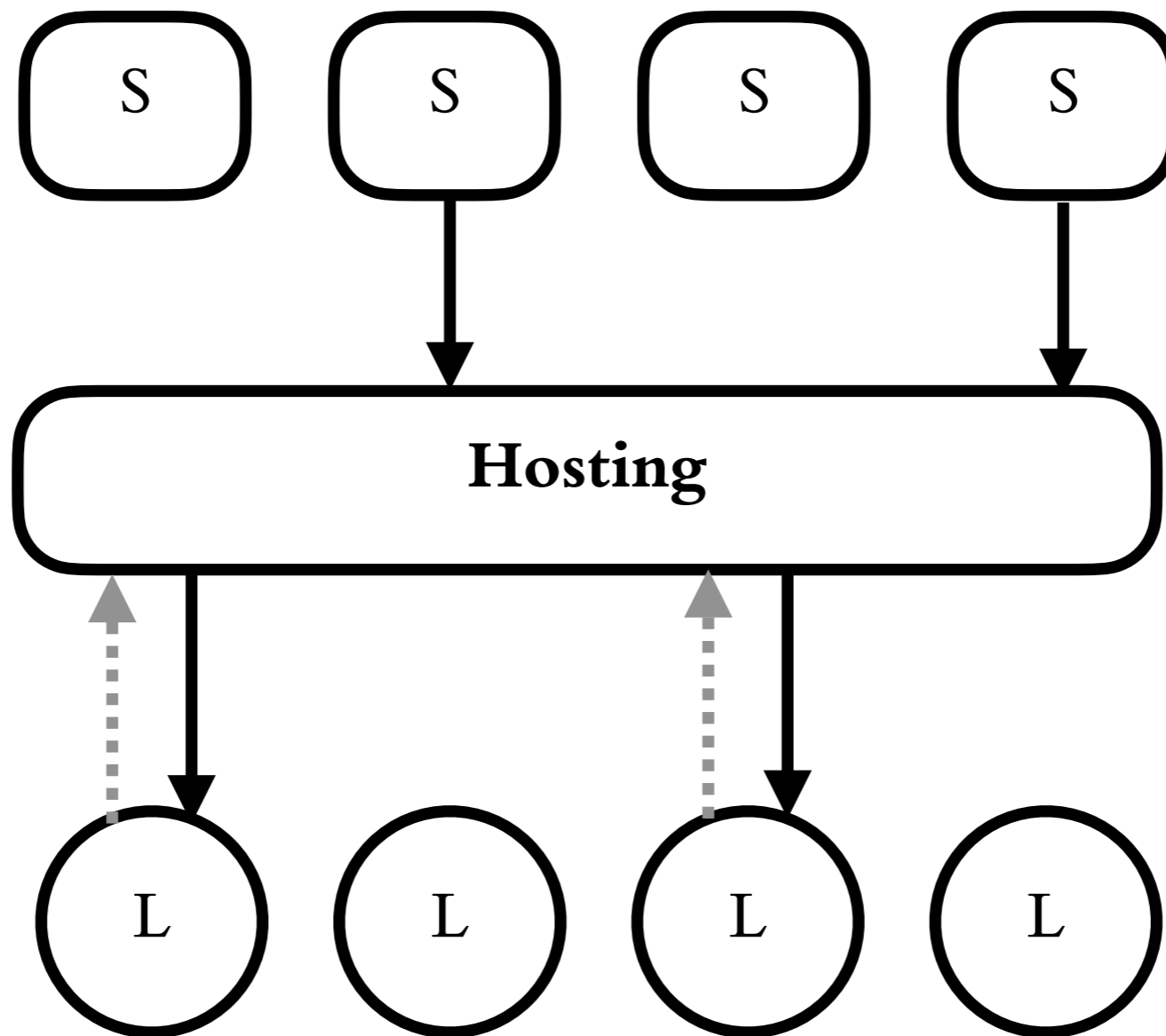
# Access to delivery

- A general right of access ...
  - ... was common for pre-Internet media
  - ... is controversial for ISPs, email, etc.
- Common carriage is easy to define and to justify

# Filtering delivery

- Tailored laws protecting unwilling listeners from individual delivery are generally constitutional
  - Anti-harassment laws
  - Commercial speech (CAN-SPAM, TCPA, Do-Not-Call, JFPA)
  - Carriers can filter or block at user request
  - Speakers must sometimes identify themselves

# Hosting



# The structure of hosting

- E.g., YouTube, Medium, AWS, Squarespace, iOS App Store, Steam
- A speaker provides content to an intermediary ...
  - ... and the intermediary provides it to individual listeners upon request



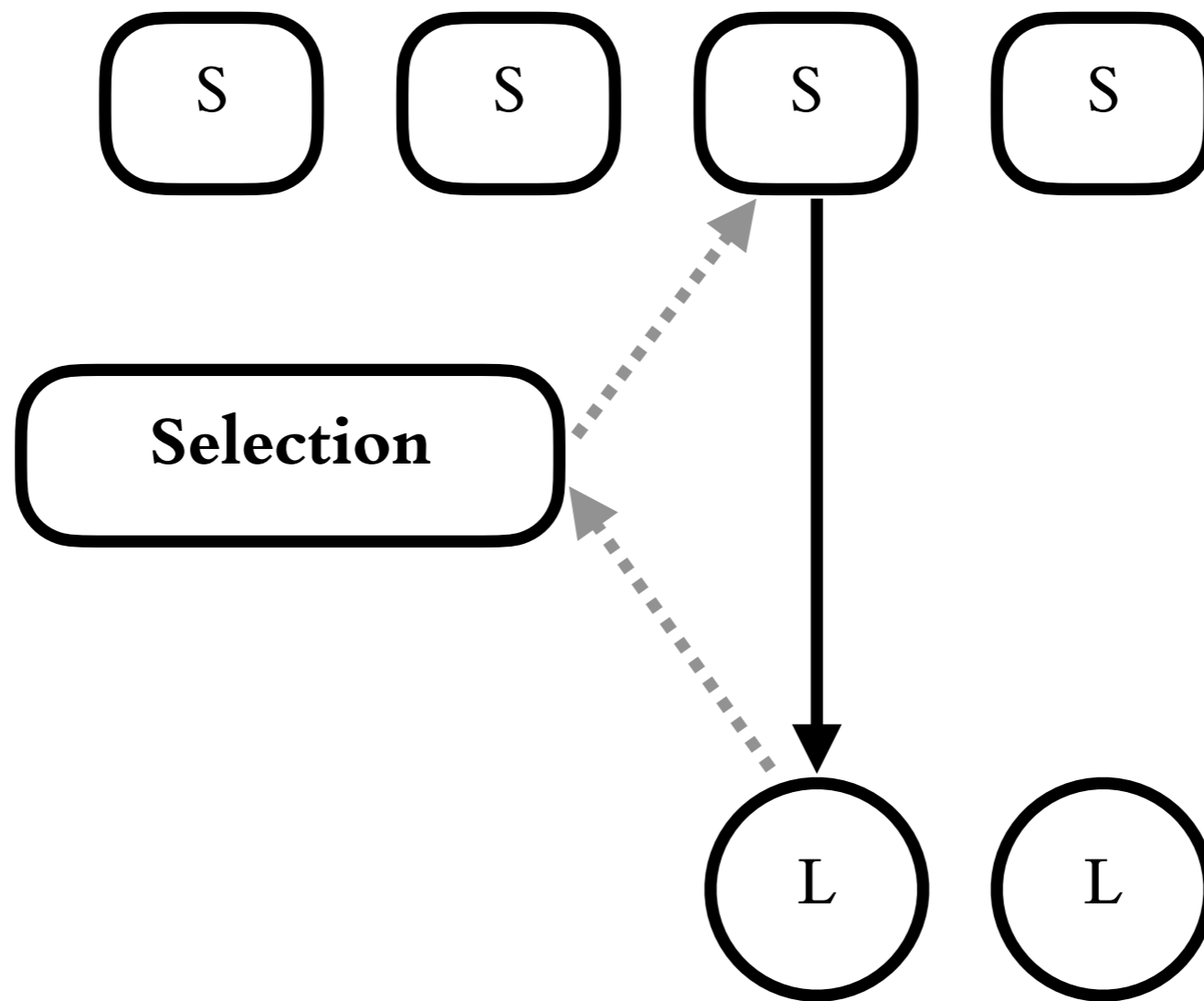
# Access to hosting

- There is not a close historical analogue to hosting
- Scarcity is mostly a non-issue
- Common carriage is easy to define and justify

# Filtering hosting

- Can unwilling listeners avoid unwanted speech?
- *Sable*: various filtering technologies could give access to willing adults while blocking minors
- *Playboy Entertainment Group*: household-level blocking could prevent signal bleed
- Common pattern: devolution of choice to individual listeners/households

# Selection



# The structure of selection

- E.g., Google, YouTube search, iOS App Store search, Facebook news feed, TikTok next video
- A selection platform recommends content to a listener, which they can then consume, or not
- The Internet means that selection ...
  - ... is utterly necessary
  - ... can be separated from hosting and delivery

# Access to selection

- Interfering with listeners' chosen selection platform interferes with their choice of speech
  - *E.g., Moody* is right for the wrong reasons
- Possible exceptions:
  - Prohibiting self-preferencing
  - Structural separation
  - An unranked-feed option

# Filtering selection

- Listeners use selection to avoid unwanted speech
- Middleware attempts to devolve control over selection to individual listeners
- *Cf.* federation, shareable blocklists

# Lessons

# Internet law for listeners

- Resist broadcast analogies!
- Disaggregate delivery, hosting, and selection
  - Delivery and hosting as common carriers?
  - Focus on the selection-listener relationship
- What if the problem is not *too much* listener choice among speakers but *too little*?



Questions?