

Reg No 177/2008-2009

ISSN: 2322-0325

PSSH PERSPECTIVE *of*
SOCIAL SCIENCES
and HUMANITIES

An International Multidisciplinary Refereed Research Journal

VOL 2, NO 2

JULY - DECEMBER 2013

Biannual

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Deoria (UP)

Publisher

Herambh Welfare Society

Varanasi (India)

Development of Social Media and It's Pillars of Regulation

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The Social media revolution in last decade was largely powered by communication technology advances, most notably by the spread of the internet. Social media is an integral part of the way many of us communicate, do business and express ourselves. It is hard to imagine the world without it. Social media sites have transformed society on both a micro and macro level by enabling perpetual communication. On the micro level, individuals are able to keep track of their friends and family on a daily basis.¹ People can upload pictures, offer commentary on a topic of their choice, or voyeuristically view the activity of others. With a single click, a person can receive updates on a friend who is on the other side of the world.² On the macro level, social media has enabled mass gatherings, helped to organized strikes, and facilitated revolutions around the world. No one could have predicted the way the Internet developed, spreading beyond borders to become an accepted (and expected) reality of everyday life. Early commentators questioned how governments would respond to the spread of the Internet and whether an international approach to internet governance would develop. When we talk about social media we're describing the web-based tools and services that allow users—ordinary people—to create, share, rate and search for content and information without having to log into a portal site or destination. In other words, although in 1998 you might have gone to Yahoo or America Online to post pictures, send emails, and chat in real time, today you go to various web services sites to perform various functions— which, nowadays, usually involve commenting, rating, communicating or creating

¹ See Jan H. Kietzmann et al. *Social Media? Get Serious! Understanding the Functional Building Blocks of Social Media* 241 (2011), available at <http://pewinternet.org/~/media/Files/Reports/2009/The%20internet%20and%20civic%20Engagement.pdf>.

² See **DAVID KIRKIATRICK, THL FACEBOOK EFLCT 7-8** (2010) (providing examples of how Facebook has changed the **world**).

and sharing content. These tools that post pictures and share news are now considered “social” because in addition to the core functions they perform they are created in ways that also integrate users sharing and communicating with one another. Not that this is the opposite of the portal model, where a one-way flow of expert to user was the norm and community was not part of the experience. Indeed the sheer numbers of us using social media are quite phenomenal.

SOCIAL MEDIA: ADVANTAGES AND RISK

Social media is an integral part of the way many of us communicate, do business and express ourselves. It is hard to imagine the world without it. Indeed the sheer numbers of us using social media are quite phenomenal. According to a statement provided to the United Kingdom’s Leveson inquiry by Twitter, Inc (the operator of the Twitter service based in San Francisco, California), its service has more than 100 million active users who send more than 250 million tweets per day. Facebook has around 800 million users worldwide. The majority of tweets, retweets and postings on social media sites generally are uncontroversial. However, as illustrated by a number of high-profile legal cases recently, some are not and can have damaging consequences. But is it really possible to regulate the use of social media sites like Twitter and Facebook? The generalized use of the Internet has given rise to a new type of community: a virtual, digital, technological, electronic, one known as the *Information Society*. The Internet has caused the unprecedented explosion of information as never before seen in history. Thanks to what has come to be known as the *network of networks*, an unparalleled capacity to access an immeasurable volume of information exists today.¹

What is apparently a simple dispute for control or a power struggle constitutes, however, a crucial factor for the development of an international society, and for the correct use of all the technical media that the Internet places at our disposal. The future of the Social Media is in the balance. The facets of life affected by the Internet are practically innumerable, though the following

1 A European Information Society for growth and employment available at http://eurlex.europa.eu/LexUriServ/site/es/com/2005/com2005_0229esol.pdf.

are worth highlighting:

- Information (digital versions of newspapers, magazines, television channels and radio stations, information and news websites, etc.)¹, research (virtual libraries, e-books, etc.)², education and culture (personal and institutional web pages with all sorts of specific information, virtual museums, e-learning, etc.)
- Entertainment, recreation, etc.;
- Communication: videoconferences, e-mail, Voice over Internet Protocol (VoIP), etc.;
- Commercial transactions: e-commerce, e-banking, etc.;
- Telecommuting
- E-administration, electronic signatures, electronic ID, etc.;
- Citizen participation: chats, blogs, message boards, electronic voting, etc.

Together with the possibilities for development, a number of risks arise that societies may wish to unite to prevent or minimize, exercising the right control and appropriate regulation. Among these risks, without the intention of being exhaustive, we can point out:

- Risks derived from possible exaggerated information (that hinders us from discerning what is important from what is secondary); the absence of quality control for the veracity of what is placed at the disposal of society; or, illicit content (racist, violent, defamatory, offensive, etc.);³
- Risks derived from lack of availability of digital networking, which would give rise to greater

¹ The study *Pew Internet and American Life Project* (March 22 2006) affirms that Internet is gaining in importance as a dissemination channel of political news. For many home broadband users, the internet is a primary news source, available at <http://pewinternet.org/pdfs/PJPNews.and.Broadband.pdf>.

² Jane C. Ginsburg, *Digital libraries and some of the copyright issues the Raice*, **169** Rev. Int. Der. Adm. (1996) (1996); David L. Hayes, *Advanced copyright issues on the Internet* (1998)

³ For Umberto Eco, Internet annuls this possible valuation, available at <http://www.libertaddigital.com:83/php3/noticia.php3?fecha edi on=2004-10-ol&num edi on=1446&cpn=1276234163&seccion=AME D> (last visited: August 8, 2007)

discrimination with respect to the less privileged social sectors, whose lack of Internet would limit their opportunities for progress (finding a job, information, a commodity or article for sale at a better price, etc.) compared to those that do have access to Internet;¹

- Risks to personal privacy, and consequently, to personal development due to intrusions into private areas or fields of the user (navigation and database security);²
- Risks to the weaker social sectors, such as minors (child pornography, propositions of pedophilia, etc.);³
- Risks to the integrity of computer hard- and software (viruses, hacking or online intrusions and seizure of control of the system, etc.);⁴
- Risks to national security, as charged by India against the service Google Earth.⁵

REGULATORY PRINCIPLES OF SOCIAL MEDIA

A. THE PRINCIPLE OF FREEDOM

The mentality inherited from contemporary philosophy involves considerable conditioning for average citizens when it comes to making decisions about their lives and any of life's aspects. The Kantian school of thought later dedicated thousands of pages to rationalizing absolute freedom to maintain that freedom is not just another means to achieve our individual and social happiness, but really an end in itself we must attain as human beings; everything else is a function of our striving for this goal.⁶ Undoubtedly such an idea and understanding of freedom

¹ Manuel Castells, *La galaxia Internet* (2001).

² Brian H. Murray, *Defending the brand: aggressive strategies for protecting your brand in the online arena*, (c2004); Tony Bradley & Harlan Carvey, *Essential computer security: everyone's guide to e-mail, internet, and wireless security* (c2006).

³ Dick Thornburgh & Herbert S. Lin (editors) *Youth, pornography and the Internet* (c2002).

⁴ Douglas Thomas, *Hacker culture* (c2002)

⁵ <http://www.clarin.com/diario/2007/02/20/um/m-o1367027.html>

⁶ Immanuel Kant, *Grundlegung zur Metaphysik der Sitten* (1967), *Kritik der praktischen Vernunft*, (1974); Manfred Kuehn, *Kant: a biography* (2001); Katrin Flikschuh, *Kant and modern political philosophy*, (2000); Paul Guyer, *Kant and*

is most attractive for us inasmuch as it includes an absence of limitations, or at least maintains that limitations cannot be imposed beyond the supposed public dimension of the person,¹ furthermore, always with personal consent and never without it. This was the first concept of freedom when use of the social networking sites became widespread. It still enjoys the most acceptance among users. Known as the *libertarian concept* of freedom, it leads to a minimum of restrictions in regulating the Social Media. The more detailed explanations of cyber libertarian legal mentality mainly come from two jurists, David Post and David Johnson, who start from the reality of an independent Internet. The justification lies in its technological peculiarity that allows for the interrelation among people located in very distant places and impedes geographic interceptions and discrimination. Traditional policy is of no use in this new world, for it is based on territorial States incapable of controlling the flow of information throughout the Internet. As a consequence, individual States cannot regulate the behavior of Internet users. The users themselves would be the most adequate in establishing their own legal order.²

Furthermore, computer techniques such as firewalls, encryption programs, digital certificates, and filter systems offer different measures of security to counter assaults on rights and legal interests. With respect to their establishment, those initially focused on the family, are gaining greater acceptance in other areas such as educational centers and private companies. The former, university centers included³, are of the idea that the ends (educational, research, relations with students, professors or researchers) must be preserved for those who invest public or

the experience of freedom: essays on aesthetics and morality, (1993). Sobre las ideas jurídicas de la Escuela kantiana see Francisco Carpintero, *La Cabeza de Jano* (1989); Robert Nisbet, *History of the Idea of Progress*, 1980.

¹ Here a change of mentality is called for with respect to the content of the norms in effect: maximum freedom of expression, broadens the concept of tolerance, withstands the strongest of criticisms, and forgets the present legislation that protects honour and fame.

² David J. Johnson & David G. Post, *Law and Borders - The Rise of Law in Cyberspace*, 48 *Stanford L. Rev.* (1996), available at <http://www.cli.org> (last visited March 7, 2006). About this subject, see also Manuel J. Rodríguez, *Libertad y Derecho en Internet. El mito del ciberespacio* 43s (2007).

³ Universities like that of Navarra or the Polytechnic of Madrid

private funds in installations that permit Internet access. In Spain, institutions like the Ministry of Education and Science¹ universities like that of Navarra² or the Polytechnic of Madrid³ use them.

Nevertheless, the liberties most affected by Internet use are ideological freedom, religious freedom, freedom of thought, and especially the freedom of expression. The case of the US government's taking legal action against North American companies for having contributed to the restriction of freedom in China is also known. This was the case of Google, Yahoo!, Cisco Systems, and Microsoft, that had to appear in court to testify in February 2006 for alleged collaboration with the Chinese authorities. Google had modified the manner of searching so that the search engine itself would eliminate possibilities of unfavorable information for the Chinese government. In the case of Yahoo!, criticism sprang from having furnished sufficient information to uncover a dissident journalist leading to his arrest and imprisonment. Yahoo! justified its collaboration with the Chinese authorities in its censorship effort on the grounds that they were respecting the customs of that country. In its official declaration, as well as in later statements to the media, Yahoo! maintained they had no choice but to collaborate with the authorities as that was what was stipulated in the laws of its country.⁴ Hence, freedom should be one of the fundamental principles when establishing norms in order to regulate the Internet but not to the extreme of converting it into a supreme end. The Information Society must protect freedom, in the aspect of Internet access as much as what a person expresses over it.

B. PRINCIPLE OF EQUALITY

The second principle that should characterize Social Media

¹ <http://www.mec.es>

² <http://www.unav.es>

³ <http://www.upm.es>

⁴ The American Republican Christopher Smith put these events forth as proof in order to propose in the Lower House the Global Online Freedom Bill that would protect the freedom of expression of citizens of any country from censorship attained via cooperation with North American companies. The law permits them to go to US courts and press charges against the company.

(<http://www.nytimes.com/2006/02/15/technology/5cndinternet.html?eX=1297659600&en=1id>

2dee56f6c4a728&ei=5o88&partner=rssnyt&emc=rss).

regulation is equality. Equality is definitely not about obtaining a regulation to make all human beings uniform when it comes to Internet use and the new technologies, but about making the same opportunities of personal development available to everyone with access. The principle of equality demands that it is not enough to respect the freedom of access of those voluntarily wanting to use the Internet, but it implies at the same time the entitlement to demand that authorities do all they can to facilitate access to all members of the community regardless of the social sector they might come from, or of the place of residence, or of their cultural level. In other words, equality is about facilitating the participation in the Information Society of all those who wish to do so, immaterial of the personal resources they have at their disposal.

At present, the main economic, social, political and cultural activities of the entire planet are structured according to the Internet. That is why to be alienated from the Net is one of the more serious forms of exclusion that can be suffered nowadays.¹ In this context, the principle of equality means - for the diverse legislators who might participate in the regulation of the Internet - that an indispensable objective of the norms should be the elimination of the *digital breach*.²

From this it can be inferred that the principle of equality is what must offer "promotional" and "integrative" orientation for the norms that regulate the Information Society. In this sense, societies should seek not only to increase the number of users, but that this increase should also be equitable, making it more accessible to the social sectors with less means. This promotion can be executed on three levels. First, society should promote access, from homes as well as places of work, irrespective of urban or rural areas. Some suggestions that could be taken into consideration are: the establishment of public aid for broadband connection; the promotion of free or low-cost Wi-Fi networks for underdeveloped areas; the total liberalization of prices and diversity of fees according to services; the facilitation of changing service providers by making it free and removing obstacles; sanctioning misleading advertising and *Spamming* on the part of

¹ Manuel Castells, *La galaxia Internet* 17 (2001).

² José J. Megias, *Un nuevo paso en la Sociedad de la Información*, 9 *Revista de Contratación Electrónica* 61, 95 (2000).

the service providers; and, at the same time, fostering confidence and promoting safety with more secure web servers.¹ Second, computer acquisition (with public aid or accessible financing) and free software should be promoted. Finally, the promotion of education and training for new users: Internet in schools, Internet in the university, Internet for retired people and pensioners, and, help centers in the form of call centers or online help.

C. PRINCIPLE OF SOLIDARITY

If the ideals of the French Revolution were the pattern to be followed, instead of solidarity it would now be the turn of fraternity, along with liberty and equality. The years following that Revolution clearly showed that so-called "fraternity" was nothing more than a sham, capable of neither eradicating the selfishness of the mighty nor the exclusion of the weak. Solidarity was the value or principle that came to fore in the 1980s when the foundations of third generation human rights were being laid.² It meant surpassing the libertarian and egalitarian rhetoric that marked previous generations, advocating individual rights (or at most, rights of limited groups) and exclusive of others' rights. Solidarity encompasses everyone, those who live now and future generations. Everything we do today that would determine the lives of those to come should be carefully considered and decided with them in mind. Solidarity should prevail in the world of the Information Society because the good of each one depends on the good of all. We have the obligation, without the implication of the elimination of rights, to think of others, to act with others in mind. Only then can we collaborate in the gestation of a more just, pleasant, and caring society.³

It is quite evident how the needs of information technology, such as hardware, software, and the necessary training for their correct use, remain for the moment outside the reach of millions of men and women in underdeveloped and developing countries. This translates into a significant limitation of access to knowledge (education, training, research, etc.), which leads to a widening of

1 It should not solely consist of an increase in the number of users but also an increase in the services on offer and the promotion of the services already on offer. The i2010 initiative of the European Union is aimed at this.

2 7IYoneji Masuda, *The Information Society as Post-Industrial Society* (1980).

3 See Amitai Etzioni, *The New Golden Rule: Community and Morality en a Democratic Society* (1997), per totum.

the gap between the North and South, so to speak. It is for this reason that cooperation and international solidarity are vital in bridging this digital divide. The law cannot remain indifferent in the face of poverty; here we include *digital poverty* and *marginalization*¹ that affects the poorest and the defenseless. The rights of solidarity demand the uniting of efforts and the sociability of a *wellordered society* and of a *shared concept of justice*. Unselfish recognition, cooperative and non competitive, of another and their equality in spite of their difference, and which possesses a distinct sense of the common good, are all reasons that justify its existence against selfish prejudice, exclusion, and market laws.²

CONCLUSION

There is redress for serious wrongdoing on social media sites and it is not an unregulated medium. There is some way to go before a culture change is achieved within parts of the user group of social media sites which recognises that what is posted is actionable in certain circumstances. Though more challenging to pursue, in certain cases it is possible to rely on the existing civil and criminal laws to pursue the makers of damaging, untrue and grossly offensive statements published on social media sites. The issue remains under close scrutiny and will continue to evolve as all interested agencies and parties consider the most effective ways of pursuing serious wrongdoing without there being a chilling effect on freedom of expression.

Complexity was previously mentioned as a salient characteristic of the legal regulation of the Internet. One of the consequences of the diversity of the goods at stake is the obligatory intervention of different normative authorities. It does not seem reasonable to defend a monopolistic legal system, be it state or derived from self-regulation. The collaboration of all of these is necessary: state law, international law, corporate practices,

¹ JeSiS BalleSterOs, Postmodernidad. Decadencia o Resistencia 44 (2d ed.2000).

² See Philippe Van Parijs, *Sauver la solidaritd (1995)* and R-fondner la solidaritd (1996), cit. by E. Vidal, "Los derechos de tercera generacion", in Jos6 J. Megias et.al, *Manual de Derechos HumanOS 127-8 (2006)*.

support contracts, user self regulation.¹ As one would expect, social media sites like Twitter and Facebook operate user content policies. Complaints can be posted about offensive or bullying content. Abusive users can be reported where, for instance in the case of Twitter, they have posted private, personally identifiable information, or made a credible violent threat which the service operator will then consider. As a result of a consideration of a complaint, social media providers may consider the activity breaches their user content policy and block access to posts or close down accounts.

A similar posture is defended by Cass R. Sunstein². In reality, the debate posed by these authors is a reflection of an even greater debate: greater or lesser margin of state intervention in the market. Finally, the intention of cyber libertarian jurists such as Post and Johnson, fantastic allegations aside, is to assign a predominant role to the market within the Internet. The argument cannot be resolved opting radically for one alternative or the other. A thorough, exhaustive understanding of the capacities of the different regulatory instruments will cast light on the issue of Internet regulation.

Internet norms and standards have become accepted by users around the world. As social media use has become pervasive, people have grown to expect that certain norms will be respected. For example, the people of Egypt used social media sites to spread news, discuss their political opinions, and organize protests. Although the freedoms of expression and privacy have never been traditionally accepted norms of the Egyptian state, the people demanded the acceptance of these norms. Similarly, there was outrage in the United Kingdom and the United States after government officials threatened to shut down social media.

Governments, in turn, have responded with a security rationale, arguing that they have the authority to act to protect the public. Government authorities also have attempted to argue that security is an established internet norm that it is trying to protect. Recent events have proven this argument to be unpersuasive.

¹ Stuart Biegel states that complexity of the Internet makes it necessary to distinguish different regulative possibilities in accordance with the problems that arise in it. See *Beyond Our Control? Confronting the Limits of Our Legal System in the Age of Cyberspace*, 211 (2003).

² See *Repblica.com. Internet, democracia y libertad* 122S (2003).

While governments may have authority to act to protect public safety, they must be careful to avoid excessive responses. When attempting to regulate social media, the government must act within accepted internet norms and standards in order to maintain legitimacy in its actions.