

Freedom of Expression in the Internet Era

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Abstract: One of the most important human rights is the freedom of expression, yet in an era of the Internet's explosive growth, the communicative character of speech has undergone significant change. The lines between legitimate and illegal forms of expression have also blurred, and if they do, they may have a huge negative impact on society, such as when hate speech is used. It is often assumed that only public authorities are responsible for governing freedom of expression, but nowadays, private companies also play a crucial role. The paper begins with a succinct explanation of freedom of expression and then analyses two typical methods used by public bodies in the US and the EU to regulate that right. After that, it presents about how private firms like Facebook and Twitter handle the right to free speech. Finally, it demonstrates that cooperation between public authority and private corporations is required to ensure freedom of speech under the objective circumstances of the rapid technological growth of private firms.

Keywords: Freedom of Expression; Hate Speech; Private Companies; Public Authorities.

1. Introduction

In today's society, with the spread of the internet and social media, the issue of freedom of expression is becoming more and more significant. Freedom of expression is a fundamental human right. It refers to the right of people to express, publish and disseminate their views and opinions without interference. It is enshrined by different domestic law and international human rights laws, such as Article 19 of the International Covenant on Civil and Political Rights. It enables people freely engage in debate about a wide range of political, economic, cultural, and other topics since it facilitates the exchange of knowledge and perspectives.

Public authorities and private companies play a crucial role in governing the issue of freedom of expression, and it is only through joint cooperation between governments and private actors that governance of cyberspace can be driven towards a more equitable, healthy and secure social environment.

The essay opens with a brief overview of the methods of speech governance in the US and the EU, which is followed by an examination of how the two systems differ from one another. In the second section, the significance of private firms in regulating speech is discussed and justified. Facebook and Twitter are used as examples to highlight the reality and necessity of private companies in governing speech. Finally, the analysis and demonstration of how crucial collaboration between the public authorities and private sectors is to managing discourse.

2. The Role of Public Authorities in Governing the Issues of Freedom of Expression

2.1. The EU Approach

The EU has long attached great importance to freedom of expression as a fundamental human right. It has explicitly enshrined the protection of freedom of expression in the European Convention on Human Rights, on which it was founded, and sees it as a core value of a democratic society. The EU, however, has also taken a number of steps to limit the freedom of expression in order to stick balance citizens'

freedom of expression with other social values, such as the protection of personal privacy and cyber security. Two of the most representative regulations are the Network and Information Systems Security Directive (NIS Directive) and the General Data Protection Regulation (GDPR).

The NIS Directive greatly limits free speech and has a significant influence on it, setting out a number of cybersecurity requirements and measures, such as the technical and administrative measures that network operators must take to secure their networks, among others. It has given rise to a lot of controversy. Some people believe that it may have a negative impact on freedom of expression, for example, by potentially restricting users' right to speak in cyberspace.[1] Although the GDPR does not directly address freedom of expression, the regulation may have implications for promoters of freedom of expression, such as the media and news organizations. For example, the GDPR imposes stricter restrictions on the use of material such as photographs and videos in news reporting, which may result in some media outlets having to abandon the use of certain material, thereby affecting the authenticity and integrity of their reporting. Meanwhile, some EU countries, such as Germany, have enacted strict restrictions on freedom of expression, such as the 24-hour deletion rule in some cases.[2]

2.2. The US Approach

The First Amendment to the US Constitution clearly states that: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

According to the legislation, public expression related to hate of racial, ethnic, and religious groups is covered by the Constitution's protection of free speech sometimes.[3] which is also reflected in the case *Colin v Smith*. [4]

But it is worth noting that the US public authorities do not fully support absolute freedom of expression, and they have clearly defined the scope of legal and illegal speech. For example, obscenity, defamation, fraud, incitement, fighting words, true threats, speech integral to criminal conduct, and child pornography are considered as illegal speech.[5] These

restrictions can also serve to maintain social order and public morality in some ways. And the US government's Anti-Online Sex Trafficking Act (FOSTA), enacted in 2018, aims to combat sex trafficking and illegal sexual practices, includes increased regulation of websites, apps and online advertising platforms that engage in sexual services or prostitution on the internet, as well as the removal of exemptions for related businesses from provisions such as those set out in Section 230 of the Communications Act. This means that if an Internet Service Provider (ISP) is found to have knowingly promoted or infringed on sex trafficking, they could be subject to civil prosecution and face fines of up to US\$2.5 million.

2.3. The Distinctiveness of the EU and US Approaches

On the whole, the US and the EU differ in their approaches and preferences for regulating freedom of expression, but both are committed to balancing freedom of expression with other social values.

In particular, in the EU, freedom of expression has been considered for decades as one of the essential foundations of a democratic society and one of the basic conditions for the progress of society and the development of each individual, but it is also subject to certain restrictions in order to protect other rights and interests, such as the right to personality, the right to privacy, the right to dignity, etc. In relation to freedom of expression, the EU places a strong emphasis on striking a balance between various rights and interests, paying particular attention to restrictions on radicalism, hate speech, and discriminatory expression, among other things. Countries in the EU often enact and implement stricter laws, including policing social media sites and punishing users who engage in such unlawful expression. On the other hand, in the United States, the First Amendment to the Constitution protects freedom of expression as a fundamental right, and a more conservative attitude has been adopted toward governmental limits on that right. According to US law, there is a high threshold to limit freedom of expression, only under very specific conditions, such as when it is "directed at inciting or producing imminent lawless action, child pornography, and threats and among others."^[6] This divergent tendency is also reflected in judicial practice, as in the United States, where courts have held that restrictions on freedom of expression because of inappropriate speech are unfair and unbalanced, while the European Court of Human Rights has firmly held that freedom of expression is not a license to undermine justice and social peace.^[7]

"At the heart of the First Amendment is the inescapable relationship between the free flow of information and a self-governing people, and American courts have not hesitated to remove obstacles that obstruct this flow."^[8] Therefore, the preservation of freedom of expression is consequently typically prioritized in the United States, and even hate speech is also allowed unless there is a severe legal infringement that can be distinguished from the principled protection approach, which is a highly valued individual right.^[9] "It reflects hard-learned lessons about what is needed to adequately protect the right of dissent in a democratic society."^[10]

In conclusion, the EU is more concerned with defending society and the public interests, including limiting illegal expression like hate speech, whereas the US is more focused on defending individual freedom of expression. This different strategy mirrors various historical, cultural, and legal traditions and has led to distinguished viewpoints and

procedures for controlling both legitimate and illegal expression.

3. The Role and Legitimacy of Private Companies in Governing the Freedom of Expression

Governing freedom of expression by private companies is one of the current hot topics of debate in society. Professor José van Dijck stated that "online digital platforms have penetrated every sector of society, disrupting markets, labor relations and institutions, while changing social and civic practices, and the dynamics of the platforms have affected the very heart of the democratic process."^[11] With the popularity of the internet and social media, people are increasingly inclined to express their opinions and views on these platforms.^[12] However, this has also led to a number of problems such as online violence, hate speech and false information. To address these problems, the major social media companies have taken a number of measures, including setting up codes of conduct, implementing content scrutiny and establishing complaint mechanisms.

From the perspective of obligations, private enterprises, as a vital component of cybersecurity regulation, are required to abide by the pertinent conventions and legislative regulations. There is a basic sense, as Professor Boddewyn points out, in which the public authorities must impose certain limitations on the sector in order to maintain social stability.^[13] Technically, it is impossible and impractical to reasonably monitor the speech of community speakers, because of the vast and ambiguous nature of Internet speech, through only public authorities to identify offensive speech such as hate speech, racial discrimination, incitement to terrorism, etc. From the perspective of rights, private internet companies are usually profit-oriented, and the company has the right to set its own rules and terms in order to maintain the stability of its operations and the effectiveness of its management, thus achieving a positive platform environment and long-term stable operation. At the same time, freedom from state interference is one of the rights of private companies. However, restrictions on freedom of expression can also have the adverse effect of violating civil rights. Private enterprises which overly restrict free speech risk alienating the public, sparking discontent and perhaps a public protest. Therefore, private subjects should be implemented within the framework of the public authorities.

3.1. The Cases of Two Private Companies in Governing Issues of Freedom of Expression

As one of the world's largest social media platforms, Facebook plays an essential role in regulating speech and preventing negative influences such as extremism, hate speech and violence. First of all, Facebook has established stringent community norms that classify unlawful speech, such as hate speech, pornography, disinformation, and fraud, and employs its own technological resources and human review to identify and remove such content, permitting highly effective enforcement. In addition, in terms of hate speech, Facebook defines it as "a direct attack against people related to race, ethnicity, national origin, disability, religious affiliation, caste, sexual orientation, sex, gender identity and serious disease".^[14] Second, Facebook makes use of a variety of administrative procedures, such as automated

“before the act” detection, to guarantee that community rules are properly upheld.[15] Another illustration is the application of “geo-blocking,” which, depending on the location of the nation, determines whether it is illegal to the content.[16] Once more, it has created an independent Oversight Board (OSB) to guarantee fair resolution of conflicts involving speech. The Board will “pay particular attention to the impact of the removal of content in accordance with human rights norms protecting freedom of expression” in carrying out its duty, applying a human rights-based approach based on international human rights law rather than Facebook’s content norms and principles.[17]

Similarly, Twitter has established its own standards and guidelines, which are guided by law, to maintain legal, ethical and moral standards for content on the platform. For example, hate speech, disinformation and specific speech such as violence and terrorism are regulated. In the case of hate speech, Twitter prohibits “acts of hate” rather than specific hate speech, a category defined as containing threats of violence, involving potential damage to individuals or groups, incitement to fear, slurs or referring to violent events.[18] In terms of management tools, Twitter relies on a combination of artificial intelligence, user reports and staff known as content managers to enforce rules regarding appropriate content.[19] When a user’s speech violates the guidelines, Twitter takes a number of management actions, such as removing the offending content, warning the user or restricting the user’s access to account operations, which makes users aware that their speech has violated the law, promoting citizen compliance and then platform or even social stability.

Two existent cases demonstrate it is possible and vital for private companies to govern freedom of expression. Both have developed community norms, regulatory processes, and remedies within the framework of law and even international law, among other complex factors, which serve as indispensable subjects in regulating and maintaining social stability. But it is also worth noting that speech regulation imposed by private companies can also be controversial, as was the case when Twitter once removed the account of former US President Donald Trump, which caused great dispute. There is no doubt that Internet platforms wield a great deal of power when it comes to regulating speech, especially in the Internet age. It is, therefore, necessary for public authorities to examine their data governance arrangements in a rapid and timely manner,[20] and to encourage them to use this resource for public interest purposes. [21]

4. The Cooperation of Public Authorities and Private Companies

Given the dominant role that private governance plays in the exercise of digital rights like freedom of expression and access to information by users.[22] But national and even international laws are the foundation for effective, legitimate and lawful regulation, such as a clear definition of unlawful speech, which is a national responsibility. Therefore, we ought to shift from a dualistic paradigm that places the state and its control over speakers at the center to a “pluralistic” or “triadic” approach.

4.1. The Cooperation of Public Authorities and Private Companies in Protecting the Freedom of Expression

The purpose of freedom of expression is to protect and promote a democratic culture, and this core purpose of freedom of expression is highlighted in the digital age. Under a public-private partnership model of freedom of expression regulation, public authorities’ legislation can create a stable and predictable environment in which private businesses are at liberty to operate and make a profit, and private businesses can manage platform content technologically, using tools like artificial intelligence to filter harmful information and remove and restrict undesirable speech in order to protect the right of freedom of expression and limit it rationally and proportionally. Governments and private companies should, therefore, work together to protect freedom of expression while preventing it from being abused to infringe on the rights of others.

In reality, safeguarding freedom of expression is also an essential part of availing the public interest, for which the public authorities and private companies are responsible. Freedom of expression is not only a right but also a function as “a social watchdog,” as social wrongdoing and the exercise of public authority against private subjects, such as corruption and bribery, can infringe on the public interest of the state and society. In order to address the governance gap in human rights protection on the ecosystem of social media platforms, the State, as the duty bearer of human rights, has a responsibility to ensure a legislative response based on human rights law.[24] For example, speech on serious issues such as national security, social stability and public interest can be regulated in detail, thus guiding private subjects to make legitimate constraints in a way that protects freedom of expression as much as possible.[25] Private companies, on the other hand, can adopt various methods, such as strengthening the vetting mechanism, increasing complaint channels and enhancing user education, improving the quality of Internet users and promoting the right of freedom of expression.

In short, in our new world of the digital age, the most viable way to protect individuals’ rights to freedom of expression is to seek to have governments meet their international human rights obligations on speech and to encourage companies to align their codes with these standards.[26]

4.2. The Cooperation of Public Authorities and Private Companies in Governing Illegal Speech

As many techniques of speech regulation need some capacity to comprehend what end-users are “speaking” in order to decide if it breaches the law, speech regulation in the digital age frequently relies on data monitoring. However, private infrastructure owners are essential for efficient data gathering and monitoring.[23]

Firstly, it appears that the technical capacity of owners of online platform infrastructure to identify and remove content far exceeds that of most public authorities and moreover, it continues to advance over time, attributing not only because of market competition and the demands of business partners but also as a result of constant political pressure from the state and the EU. As a result, engaging private corporations to carry out these tasks for governments is more efficient. In the digital era, public-private collaborations are a key trend in regulating the freedom of expression.

Second, as opposed to public powers, platforms do not have the authority to impose penalties, like levying fines or damages, and they have limited mechanisms in place for regulating users who behave illegally.[27] As a result, perhaps the government could set up a specialized body tasked with overseeing cyberspace in general, cooperating with private companies to take advantage of their technology to detect and delete harmful content. Private companies, on the other hand, should play their part as active arbiters by setting standards for content review, using advanced technology to filter out false information and harmful content, and identifying and blocking malicious accounts.[28]

In short, both public authorities and private companies have an important role to play in governing illegal speech. They complement each other. Public authorities provide the basis for private actors to regulate unlawful speech, setting the fundamental framework and regulations, providing legitimacy and rationality, guiding private actors to regulate unlawful information within a reasonable and legal framework, combating and preventing malicious behavior, and preventing the dissemination of false information and harmful content, in order to achieve the public interest of community harmony.

5. Conclusion

Cooperation between governments and private companies is necessary to protect freedom of expression, address harmful content, enhance personal data protection, limit freedom of expression, prevent the spread of disinformation and prevent malicious behavior. Only by doing this will we be able to advance cyberspace governance and create a model of administration that is rational and legal.

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