

Using Social Networking Sites

“A Legal or a Social Liability”?

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Ladies and Gentlemen, at this session we will try to examine whether limiting online users when using SNS should be mainly a regulatory issue rather than a social liability and how much the regulatory instruments serve the social needs.

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1. Regulating online behavior

a. **What is defined, as regulation?** Regulation is a rule, principle, or condition that governs procedure or behavior and in most of the times it is generated by the legislative authorities such is the parliament, the respective ministry or the relevant NRAs. This intervention is formed to rules and limits in rendering or/and using the relevant sources (both scarce and not) and services. Thus, the regulation turns to form at least a base line of any online activity.

b. Do we still need regulation?

Is a common knowledge that freedom in online activity is a fundamental principle and as big as the governance of the online resources¹. The typical reaction is that Internet must be free and open². Everybody declares that this is, probably, the last (virtual) space where everybody is able to freely express himself and many are those who actively defend this option. Studies say that only in EU more than 107 million users will be active in online social networks in 2012. The risks at stake are enormous³.

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¹ For a list of methods to oppress freedom of online speech see a relevant report by the "Committee to Protect Journalists" <http://www.cpj.org/reports/2011/05/the-10-tools-of-online-oppressors.php>.

² There are hundreds of organizations declaring that Internet means freedom of speech. As most of them say "There is no freedom of information without *Internet freedom*".

³ As categorized by the "International Working Group on Data Protection in Telecommunications" in its published "Report and Guidance on Privacy in Social Network Services - "Rome Memorandum" - 43rd meeting, 3-4 March 2008, Rome (Italy)". The Working Group consists of representatives from the national data protection supervisory authorities and from international data protection organisations, as well as of independent scientists, representatives from industry and other specialists in privacy and telecommunications.

What is defined as Social Networking? “Social Networking is a term given to sites and applications that facilitate online social interactions that typically focus on sharing information with other users referred to as “friends.” There are a number of moral values that these sites call into question⁴.

Shannon Vallor uses the Aristotelian theory that humans realize a good and true life through virtuous friendships and gives four key dimensions of Aristotle's so called “virtuous friendship”: reciprocity, empathy, self-knowledge and the shared life, “elements that are common in online social media in ways that can actually strengthen friendship”⁵. Johnny Hartz Søraker argues⁶ “for a nuanced understanding of online friendship rather than a rush to normative judgment on the virtues of virtual friends”.

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c. How much regulation?

Regulation should intervene where users should be protected. That means that regulation regarding public interest activities (as e.g. the online gambling, e-commerce, online financial services and protecting of minors) is usually welcome and accepted as soon it lies within the limits of the human rights. Regulation aiming to protect an indefinite “public interest” or from “public enemies” is being seen with suspicion, because usually that means more surveillance of the users behavior and less respect to fundamental civil rights and thus it remains ineffective.

⁴ The definition of SNs as set by Sullins, John, “Information Technology and Moral Values”, *The Stanford Encyclopedia of Philosophy (Summer 2012 Edition)*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/sum2012/entries/it-moral-values/>

⁵ Vallor, S., 2010, “Social Networking Technology and the Virtues,” *Ethics and Information Technology*, 12(2, Jan. 6): 157–170

⁶ Johnny Hartz Søraker “How shall i compare thee? Comparing the prudential value of actual virtual friendship” *Ethics Inf Technol* DOI 10.1007/s10676-012-9294-x

d. What is going on in EU?

Several regulatory schemes aim to safeguard online users and draw a line on their freedom based on the respect of personal data, dignity and network integrity. The most important changes are the ones regarding the **a.** Access to personal data, **b.** The establishment of a “right to be forgotten”, **c.** improved data subject approval procedures, **d.** pan-European harmonization of the relevant legislation, **e.** transparent terms on data protection even outside the EU⁷ and **f.** net neutrality. But remains to be proved how much the US and other jurisdiction shall tolerate such limitations in data mining and process⁸.

All these new elements provide a more secure environment for users of the online social networks and at the same time motivate fair competition among the operators of these services especially those referring to SNS. “Europe’s competition frameworks and the EU Directives for electronic communications already guarantee the openness of the Internet and transparency for consumers while recognizing the need for innovation in networks and business models. With the fast increase in data traffic over fixed and mobile network, smart management of networks is essential for offering service quality to all end-users and for developing new innovative services”⁹.

e. Data Retention – The problematic Directive

On the other hand Europe recently introduced a really problematic directive regarding obligatory data retention. This new Directive (2006/24/EC) gave to many governments the opportunity to impose more privacy-free legislation as the French Government which recently defined data that must

⁷ http://ec.europa.eu/justice/data-protection/index_en.htm

⁸ We should also take account of the distance between “regulate” and “apply”: «Europeans have a long tradition of declaring abstract privacy rights in theory that they fail to enforce in practice» «The Right to Be Forgotten», Jeffrey Rosen, Professor of Law, The George Washington University, Legal Affairs Editor, *The New Republic* <http://www.stanfordlawreview.org/printer-friendly/online/privacy-paradox/right-to-be-forgotten>

⁹ Luigi Gambardella, ETNO Executive Board Chairman (<http://pr.euractiv.com/press-release/open-internet-maintaining-openness-internet-and-supporting-new-and-innovative-business>).

be retained “at the transmission or modification of online content, by the hosting companies, including video sharing and blog hosting services allowing for the identification of any person having contributed to the creation of online content”.

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2. Self-Regulation

The regulation that derives from an agreed set of mutually accepted norms is the Self-regulation which is defined as **“when industry administers and enforces its own solution to address a particular issue without formal oversight or participation of the regulator or government.** In particular, there is no *ex ante*, legal backstop in a self-regulatory scheme to act as the ultimate guarantor of enforcement”¹⁰. **Self-regulation or self-restriction, on the user’s side, is the voluntary acceptance of a series of norms** set by the administrator or a social group usually independently or further to governmental supervision, laws, or the like. The most usual forms of self-regulation are the Code of Conduct and the Terms of Use and both rely on the user’s good intentions to respect them and its fair use of the respective services.

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a. Is the Self-regulation effective?

Self regulation was started at the mid 90’s as the preferred means of setting rules for online activity. **As the technology progressed, though, and the internet became a real battlefield for financial wars the self-regulation schemes turned to be inadequate and often misused. “The concept of self-regulation is now being used in a way that extends far beyond its initial meaning to cover activities that are neither “self-” nor “regulation” but**

¹⁰ www.ofcom.org.uk

devolved enforcement, surveillance and extra-judicial punishment of allegedly illegal activities”¹¹.

b. Terms of Use (or Terms and Conditions) as self-regulation schemes

Service providers offering online social networks and blogging services have implemented the majority of these principles in their terms of use.

“One cannot go online today without eventually being asked to accept a set of so-called Terms of Service (or TOS). These "terms" are actually purported legal contracts between the user and the online service provider despite the fact that users never get a chance to negotiate their contents and can often be entirely unaware of their existence. In the unregulated and unpredictable world of the Internet, such arrangements often provide the necessary ground rules for how various online services should be used. Yet TOS agreements also raise a number of concerns for the consumer, as they can be a vehicle for abuse by online service providers, as they tend to end up being one-sided in the service provider's favor, and are often designed to be beyond any judicial scrutiny”¹².

Now, seriously, does anyone believe that all users respect the relevant terms? As we have seen these rules were breached many times by the users. Online bullying is often happening in social networks and the same applies with sharing or publishing not authorized content (IP protected, photos of persons not consent etc.).

c. Is self-regulation still an option?

The continuous battle for governance of the Internet and the increased number of stakeholders involved led to a situation in which, as ETNO

¹¹ EDRI [“The slide form self regulation to corporate censorship”](http://www.edri.org/files/EDRI_selfreg_final_20110124.pdf) (http://www.edri.org/files/EDRI_selfreg_final_20110124.pdf).

¹² <https://www.eff.org/issues/terms-of-abuse>

recognizes, “the Internet is *de facto* co-regulated by National Governments — that intervene however without strongly co-ordinating among themselves — by professional entities — whose competencies overlap and which are not always legitimate — and instances of technical standardization — that are very dynamic, but that lack strong institutional roots. This present institutional framework is problematic for at least two reasons: it is partly inefficient in the sense that there are incompletenesses, conflicts and defaults in enforcement in the set of implemented rules; and the current processes used to establish these rules do not guarantee that the interests of all the stakeholders are fairly taken into account”¹³.

For Robert Madelin (Director General for the Information Society and Media) in order self-regulation to succeed it must be founded on three basic principles¹⁴:

1. Transparency. All stakeholders must be involved from the start
2. Accountability. All the parties must set goals and agree the principles
3. Monitoring. Agreed metrics are vital

We have to accept that a lack of regulation cannot be accepted in a democratic society when addressing the social effects of this new phenomenon. **We cannot allow the creation of a chaotic world in order to preserve an undefined and unlimited liberty. As Morozov says “What if the liberating potential of the Internet also contains the seeds of depoliticization and thus dedemocratization? ¹⁵”.**

¹³ Open Internet - Maintaining the openness of the Internet and supporting new and innovative business models to foster network development published by ETNO (www.etno.org) on Tuesday 19 Apr 2011.

¹⁴ Speech on the 16th March, 2011. Crowne Plaza Hotel. Brussels.

¹⁵ Evgeny Morozov «The Net Delusion: The Dark Side of Internet Freedom», PublicAffairs (January 4, 2011).

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d. Self-Regulation in SNS

Social networking sites have changed the way we communicate and of course they have forced the introduction of new technologies to all the age groups and especially the young teenagers. As Morozov says “Social media – by the very virtue of being "social" – lends itself to glib, pundit-style overestimations of its own importance. In 1989, the fax-machine industry didn't employ an army of lobbyists – and fax users didn't feel the same level of attachment to these clunky machines as today's Facebook users feel toward their all-powerful social network”¹⁶.

It is obvious that despite all those legal instruments the numbers show that especially amongst the younger little have been achieved.

“In EU a quarter of children on social networking sites say they have their profile open to public. One fifth of children whose profile is public say this profile displays their address and/or phone number. In 15 out of 25 countries, 9-12 year olds are more likely than 13-17 year olds to have public profiles. Only 56% of 11-12 year olds say they know how to change privacy settings on their social network profile. Older youngsters have better skills with 78% of 15-16 year olds saying they know how to change their privacy settings”¹⁷. A recent survey also showed that 70% of the teens hide online behavior from parents¹⁸.

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The change to come was not unknown, though. In the very beginning of Internet Richard Mason (Professor of Management Information Sciences at the Edwin L. Cox

¹⁶ In its Article “Facebook and Twitter are just places revolutionaries go” published online (<http://www.guardian.co.uk/commentisfree/2011/mar/07/facebook-twitter-revolutionaries-cyber-utopians>)

¹⁷ Digital Agenda: children using social networks at a younger age; many unaware of basic privacy risks, says survey Reference: IP/11/479 Date: 18/04/2011

¹⁸ <http://edition.cnn.com/2012/06/25/tech/web/mcafee-teen-online-survey/>

School of Business at Southern Methodist University) expressed the view that the coming changes in information technologies “would necessitate rethinking the social contract”¹⁹. This creates a basic principle on how to react to new behavior stereotypes. As Moor says “The very fact that this change is so rapid and momentous has caused some to argue that we need to deeply question the ethics of the process of developing emerging technologies”²⁰. John Sullins argues that this constant change of information technology is also changing our ability to even fully understand moral values as they change²¹. Lorenzo Magnani insists that acquiring knowledge of how those changes confounds our ability to reason morally “...has become a duty in our technological world”²². The famous legal theorist Larry Lessig warns that **“the pace of change in information technology is so rapid that it leaves the slow and deliberative process of law and political policy behind and in effect these technologies become lawless, or extralegal”**. This is due to the fact that by the time a law is written to curtail, for instance, some form of copyright infringement facilitated by a particular file sharing technology, that technology has become out of date and users are on to something else that facilitates copyright infringement²³.

James Parrish²⁴ following Mason recommends four policies that a user of social media should follow to ensure proper ethical concern for other's privacy:

1. When sharing information on SNS (social network sites), it is not only necessary to consider the privacy of one's personal information, but the privacy of the information of others who may be tied to the information being shared.

¹⁹ Mason, R. O., 1986, Four ethical issues of the information age. *MIS Quarterly*, 10(1): 5–12.

²⁰ Moor, J. H., 1985, “What is Computer Ethics?” *Metaphilosophy*, 16(4): 266–275.

²¹ All this paragraph comes from the excellent legal analysis of John Sullins, “Information Technology and Moral Values”, *The Stanford Encyclopedia of Philosophy (Summer 2012 Edition)*, Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/sum2012/entries/it-moral-values/>

²² Magnani, L., 2007, *Morality in a Technological World: Knowledge as Duty*, Cambridge, Cambridge University Press

²³ Lessig, L., 1999, *Code and Other Values of Cyberspace*, New York: Basic Books

²⁴ Parrish, J., 2010, “PAPA knows best: Principles for the ethical sharing of information on social networking sites,” *Ethics and Information Technology*, 12(2): 187–193

2. When sharing information on SNS, it is the responsibility of the one desiring to share information to verify the accuracy of the information before sharing it.
3. A user of SNS should not post information about themselves that they feel they may want to retract at some future date. Furthermore, users of SNS should not post information that is the product of the mind of another individual unless they are given consent by that individual. In both cases, once the information is shared, it may be impossible to retract.
4. It is the responsibility of the SNS user to determine the authenticity of a person or program before allowing the person or program access to the shared information.

The truth about web and SNS is that they are universal and with no physical boundaries; they form a virtual international village where rules and jurisdictions create a complex system of behavior control. The legal instruments applied when it comes to data protection, defamation, bullying, terrorism, sex offences etc. are often applied differently when it comes to the resident of the parties implemented and the jurisdiction of the company that renders the relevant services. In order to better understand how big is the problem even when we have a purely Greek jurisdiction issue that does not mean that the US authorities do not have the right to access all data stored in the servers located in the US²⁵.

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²⁵ «The Patriot Act makes any data that is kept by a U.S. company, *both within or outside the U.S. borders*, susceptible to a possible U.S. Government seizure or unwarranted search. A basic example shows that Google and Microsoft, despite having subsidiaries in other countries like Google UK and Microsoft UK, are both U.S. companies and fall under the umbrella of the Patriot Act» (USA Patriot Act and Cloud Hosting: What You Need to Know <http://blog.fpweb.net/usa-patriot-act-cloud-hosting/>) και «Foreign Cloud Privacy Issues Dismissed by U.S. Officials» http://www.cio.com/article/698312/Foreign_Cloud_Privacy_Issues_Dismissed_by_U.S._Officials.

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3. Conclusions

Mind that World Wide Web is an oxymoron by its nature since even though it is a virtual space it has achieved to convey the biggest (ongoing) revolution of our century. It gave voice to anyone feeling suppressed, minority or expelled by the conventional media it produced a new electrical stimulator for the freedom of expression and the human behavior. **Millions of people transfer and share their own message every day; billions of texts are typed and sent to this chaotic space.** What we should point out is that the roles in this interactive world are changing rapidly since everyone can criticize and be criticized the very same moment, expand his freedom and depress someone else's freedom at the same time, accuse and being accused, like and being liked etc. **Networks are the notorious mechanism that can save the world but that can also turn you to a demon, it's all in the way you use it.**

That said, we realize why it is overwhelming and over demanding (not to mention how fair it is) to ask from all and any user to proactively control his behavior in an absolute level. The average user wants to share its enthusiasm, its bitterness, its passion, its disappointment, its frustration and so many other feelings and very often does that without being very careful or professional. In addition all behavior in the SNS cannot be categorized as meant to produce the same liability. It is totally different to see a kid writing against his teacher than to see an adult trying to ruin a reputation. Not all messages are seriously posted to harm someone and surely the vast majority of them cannot be justified as an offense or even a preparation of committing an offense²⁶. The so called "digital mob" exists but it lacks the main characteristic which is intension to act as a mob. Let's think what consists a mob in real life and how dangerous is to transfer this to the virtual world.

²⁶ Al Murray on the Twitter joke trial: 'Problem is, the law don't do funny'
http://www.guardian.co.uk/law/2012/feb/11/twitter-joke-trial-al-murray?CMP=tw_t_gu

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To my opinion what we should take as a criterion for improper behavior is the general climate in a specific web site and the way an idea is used and not the expressed idea itself. We have to see into the specific conditions under which an expressed view was posted and examine the character of the site where it was posted. Most of the times it is easy to tell whether a behavior is light and, somehow, expected behavior and when we have unjustified attack aiming to devastate a person²⁷.

The ideas expressed and circulated in SNS every minute are able to make people angry, to induce them to revolt, to force public persons and authorities to change mind or to quit, to create pressure groups and new classes in the structure of the society and also to unite them with the value of a common dream, the creation of a new community, creating a new social cohesion and self-determination.

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We are moving in parallel paths with those of the industrial revolution 200 years ago. Now as then we seem to live the new era of wisdom and folly of the new, the novelty of the season and the farm, the new era of enlightenment, but at the same time a dark age²⁸, as Dickens would say. All we can do is preserving what it was given through proper education and consciousness of the new rights, by creating a new generation of citizens, the e-citizens. **For that reason the internet must be managed carefully, transparently and lightly**²⁹. **We need to create a new generation of e-citizens that will be inspired by the traditional elements of**

²⁷ BGH, Urteil v. 23.6.2009 - VI ZR 196/08: The Federal Court of Germany ruled that a web site (www.spickmich.de) where students were expressing their views for their teachers cannot be justified as unlawful since the freedom of expression is a superior right, unless the students were committing offences.

²⁸ «... it was the age of wisdom, it was the age of foolishness...», Charles Dickens, "Tale of two cities".

²⁹ Neelie Kroes European Commission Vice-President for the Digital Agenda "The internet belongs to all of us Press conference on Net Neutrality Communication" Brussels, 19th April 2011.

respect and fairness and pass them to the new promise land. Online behavior is primarily a social issue because it affects both our physical and mental state as Aristotle would have defined.