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## **HIDING ELEPHANTS IN MOUSEHOLES: INFLUENCE OF GATEKEEPING BY SOCIAL MEDIA PLATFORMS ON SOCIAL MEDIA ACTIVITY**

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#### **ABSTRACT:**

The power of media has shifted from corporations that owned traditional mainstream media to new media entities namely Internet content providers such as social media platforms taking on the role played by traditional mainstream media in terms of being tools for freedoms, the Fourth Estate and the platform for democratic discourse. This is phenomenon is seen in terms of how citizens are engaging with each other and the world in the realm of socio-political discourse and that these social media platforms have emerged as tools of freedom of expression and speech, particularly in the context of citizen journalists on the Internet. However, information that is posted on these platforms is subjected to a filtering process influenced by ownership and internal policies which has the effect of censoring information, news and commentary. In terms of ownership, traditional media in democracies has been nationally subjected to a requirement of diversity - from the viewpoint of ownership, content, politics and culture - imposed by laws and regulatory bodies. The article enquires into the need to subject social media platforms owners to such standards. In terms of internal policies imposed on users, by reference to case studies, the article explores the impact of these internal policies on information posted on social media platforms and whether these policies impinge on socio-political discourse produced by citizen journalists on the Internet. Reference will be made to political theories namely the deliberative democracy theory, as well as media-related theories such as Habermas's Public Theory and Marketplace of Ideas Theory that bears heavily on the role of media entities. The policies reviewed are seen in the global context with references to several national legislative frameworks.

**KEYWORDS:** Social media, citizen journalism, democratic discourse, freedom of speech

#### **INTRODUCTION**

The last few years have evidenced the shifting power of media, from corporations that owned traditional mainstream media to new media entities namely internet content providers such as social media platforms. These new media entities have usurped to a certain degree the role played by traditional mainstream media in terms of being tools for freedoms, the Fourth Estate and the platform for democratic discourse. This is particularly seen in terms of how citizens are engaging with each other and the world in the realm of socio-political discourse. Political theories - namely the deliberative democracy theory, as well as media-related theories such as Habermas's Public Theory and Marketplace of Ideas Theory - bears heavily on the role of media entities. These theories inform and advocate debates about the media, its evolution and the evolution of medium of the media. The development of social media platforms for socio-political discourse appear to sync with these theories' prevalent theme that freedom of expression and speech is a necessary condition in a just and democratic society.

An initial view of social media platforms is that these have emerged as tools of freedom of expression and speech, particularly in the context of citizen journalists on the Internet. However, information that is posted on these platforms is subjected to a filtering process influenced by

ownership and internal policies which has the effect of censoring information, news and commentary. If social media entities have escaped the requirement of pluralism for diversity in ownership and content through state regulation or regional standards (for purposes of this paper, the discussion is limited to the requirement for diversity of content), then the demand to address these entities as platforms for the pluralistic voice is vital. Traditional media in democracies has been nationally subjected to a legal requirement of diversity - from the viewpoint of ownership, content, politics and culture - imposed by laws and regulatory bodies. If social media platforms are to continue to carry out the democratic function equivalent to that of traditional media entities, such platforms have to rise up to such standards, in the absence of legal regulation imposing the same.

In terms of internal policies imposed on users, the article explores the impact of these internal policies on information posted on social media platforms and whether these policies impinge on socio-political discourse produced by citizen journalists on the Internet with reference to instances where these policies have been enforced. These will reveal that the violations of the terms and conditions of use claimed by the administrators of these platforms and in essence, the practise of filtering creates bottlenecks to information and choke-points for the dissemination of information, expression and speech. The paper also appreciates the difficulties the administrators of these platforms face when balancing free speech against harmful and offensive speech.

The policies reviewed are seen in the global context with references to international and national legislative frameworks where relevant. The methodology involves reference to incidences of content removal on three social networking sites, namely, *Facebook*, *YouTube* and *Twitter*. These are resourced from online sources, mainly news reports.

## **SHIFTING POWERS OF MEDIA – TRADITIONAL TO NEW MEDIA ENTITIES**

The Internet and the *World Wide Web* means different things to different people and considering the varied uses of the Internet, there is no doubt that perhaps, for the last 20 years or so, it has changed the way we conduct our lives, interact and behave. The impact on society has been manifold. One of its contributory characteristics is its ability to allow communication with ease. This has naturally led to the evolution of the Internet into a platform for speech which has attracted its supporters as contributing positively to societal progress and equally its critics arising from the availability of this platform for the negative elements that arise from the ability to freely speak. As a platform for speech and expression, the ability for individuals to speak and have their voice heard, whether an opinion, a comment, to disclose wrongdoings, or simply make a contribution to a community, national or international conversation, has seen its significant impact in the recent times – such as the emergence of online cyberdissidency by political bloggers in countries where freedom of speech is suppressed, the use of social network sites to organise opposition and in the case of the Arab Springtime, a revolution. Conversely, these same platforms have been used in promoting harmful speech,<sup>1</sup> organizing illegal activities and assemblies, making nefarious statements, denigrating reputation of individuals and demonstrating both a lack of accountability and credibility.

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<sup>1</sup> These may vary from state to state. In the context of Malaysia, harmful speech includes seditious speech which may incite racial and religious disharmony. The Malaysian Sedition Act 1948 defines that an act is "seditious" when it is applied to or used in respect of any act, speech, words, publication or other thing qualifies the act, speech, words, publication or other thing as one having a seditious tendency; and "publication" includes all written or printed matter and everything whether of a nature similar to written or printed matter or not containing any visible representation or by its form, shape or in any other manner capable of suggesting words or ideas, and every copy and reproduction or substantial reproduction of any publication. Section 3 of the Act enumerates what may be tantamount to "seditious tendency". In the context of harmful speech on social networking sites now includes new types of harmful speech such as "trolling" .

Some of this speech on social media platforms has seen the emergence of the citizen journalist on the Internet. The citizen journalist has the potential to contribute to socio-political discussion which carries a public interest value in a manner similar to that of the role played by the traditional media in acting as the Fourth Estate where the position of the media, or more precisely the press, is of having 'a duty to speak the truth, whatever the consequences; and having the primary obligations to the public and to its readers.'<sup>2</sup>

Citizen journalism is a type of journalism in which ordinary citizens, who are neither independent professional journalists nor employed by mainstream media, adopt the role of a journalist in order to participate in newsmaking normally as a first-person eyewitness during times of crisis by utilizing various tools such as audio or video recordings, using mobile technology such as mobile and smart phones which are then shared online through social media platforms.<sup>3</sup>

The platforms utilised by citizen journalists on the Internet are a new medium of communication for news and information. When these platforms host and disseminate information generated by citizen journalists, it augments their role as journalistic tools. These include *inter alia* blogs,<sup>4</sup> social networking sites (hereinafter referred to as 'SNS')<sup>5</sup> and microblogs<sup>6</sup> that are made possible by Web 2.0<sup>7</sup> technology which allows user-generated content (hereinafter referred to as 'UGC') to be published. This media is empowered by a read/write web run by social networks and independent publishing platforms. The practical and growth factor popularizing citizen journalism is the availability and accessibility of this technology comprising of user-friendly and low-cost content-management tools available online.<sup>8</sup> Blogs and videos have attracted the

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<sup>2</sup> Denis McQuail, *Media Accountability and Freedom of Publication* (OUP 2003).

<sup>3</sup> Adapted from Barbie Zelizer and Stuart Allan, *Keywords in News & Journalism Studies* (McGraw Hill 2010) 18-19, and, Sue Robinson and Cathy DeShano "Anyone can know": Citizen journalism and the interpretive community of the mainstream press' [2011] 12 *Journalism* 963, 965. The phrase was first coined during the South Asian Tsunami of December 2004 where the aftermath of the disaster was channeled mostly through individual accounts and imagery. "Citizen journalism" in the context of the research question focuses on socio-political discussion on the Internet generated by users. "Socio-political" in this context goes beyond its plain meaning of involving a combination of social and political factors but it means how these are factors affecting society which are issues the society views as essential, both nationally and internationally, and requiring democratic involvement of citizens in their discussion and determination. "New media" refers to the various social media platforms and forums found on the Internet that carry this discussion and is commonly referred to as "social media".

<sup>4</sup> 'Blog' is short for 'Web log'. Definitions of 'blog' on the Web commonly refer to it as an online journal or web journal which allows an individual or groups of individuals to share a running log of events and personal insights. Blogs often allow visitors to make comments or postings in response to the opinions made by the blogger or even post questions. The word 'blog' is defined as 'an online diary; a personal chronological log of thoughts published on a Web page'; Webster's New Millennium Dictionary of English, Preview Edition (v 0.9.6) <<http://dictionary.reference.com/browse/blog>> accessed 23 January 2012. The term 'blogger' refers to the author of a blog. Defining what counts as a "blog" is not an easy task. Some say that a blog has three main features: the postings appear in reverse chronological order, the content is unfiltered, and it permits comments from readers. See, Michael Conniff, 'Just What Is a Blog, Anyway?' (*Online Journalism Review*, 29 September 2006) <<http://www.ojr.org/ojr/stories/050929/print.htm>> accessed 23 January 2012.

<sup>5</sup> Examples of social networking sites include *Facebook*, *Tumblr*, *Twitter*, *Flickr*, *Bebo*, just to name a few.

<sup>6</sup> Microblogs such as *Twitter*, *Tumblr* and *Plurk* are limited to the exchanges of short messages.

<sup>7</sup> Web 2.0 is an expression which was used for the first time in 2004, a phrase coined by O'Reilly Media and referred to the second generation of Internet. See Tim O'Reilly, 'What Is Web 2.0: Design Patterns and Business Models for the Next Generation of Software' (O'Reilly, 30 September 2005) <<http://oreilly.com/web2/archive/what-is-web-2.0.html>> accessed 20 January 2012. The main characteristics of new era in Internet is connected with its constant development and delivering services tailored to the needs of each user that emphasize online collaboration and sharing among users. Some of these applications include wikis, blogs and Flickr. Since 2006, there have been several visionaries who are attempting to define Web 3.0 representing the third decade of the web from 2010 to 2020 which is presently in its evolutionary stage. The phrase was coined by John Markoff of the New York Times in 2006. To Tim Berners-Lee, Web 3.0 is perceived as the Semantic Web "which is a place where machines can read Web pages much as we humans read them, a place where search engines and software agents can better troll the Net and find what we're looking for"; Cade Metz, 'Web 3.0' (PCMag.com, 14 March 2007) <<http://www.pcmag.com/article2/0,2817,2102852,00.asp>> accessed 29 January 2012.

<sup>8</sup> Neil Thurman, 'Forums for citizen journalists? Adoption of user generated content initiative by online news media' (2008) 10(1) *New Media and Society* 139, 140.

most attention but the recent trend is in getting news across as it happens in bite-sizes with the use of microblogs such as *Twitter*.<sup>9</sup>

Initially, the most popular of these platforms were blogs. Some have acquired mainstream media-like status such as *Huffington Post* - acquired by AOL in March 2011. The power of tools utilised by citizen journalists on the Internet is seen when a video or image turns viral<sup>10</sup> as part of a message to the world giving *YouTube* its iconic status as a meaningful medium for democratic action and citizen empowerment. The ever-increasing reliance on social networking sites as part of daily activity naturally saw the use of such sites, primarily *Facebook* and *Twitter*, increase in popularity as tools of citizen journalism with *Facebook* pages and *Twitter* accounts dedicated to social causes and socio-political commentary attracting huge numbers of users and followers. The ability to share and embed information with these tools has led to the shift from UGC to UEC<sup>11</sup> where a story or commentary on these sites can be shared with others. There are also dedicated websites such as *NowPublic* or *Storify* that allows users to share news and stories that have possibly missed the attention of the traditional mainstream media coverage with other users.

Social media activity has evolved into a cultural activity. It is the outlet for the need to speak out to the world, to anyone who may "listen". The ability of the Internet to bring attention to the voice of a single individual has enormous democratic appeal. The natural ability for that voice to be supported by anyone sharing the same opinion allows the Internet to appear as the next venue for an "assembly" of like-minded people. In reference to democracy in the wired world, Riley referred to the "new democracy" in 2000 – a view point which is increased in relevance in the context of social media activity:

The new democracy we see surfacing is more the expression of individual voices that congeal into a collective whole over ideas that the society of peoples on-line develop into a consensus. And while a consensus might be formed on major issues, individual people are still in a position to express their individual thoughts and ideas (even if they range from the erudite to the opinionated).<sup>12</sup>

A "bottom up" model of democracy emerges as anyone with access to a computer connected to the Internet can express and share their views. The greatest appeal of citizen journalism in the use of new media and technology 'lies in the opportunities they offer for re-establishing direct relationships between citizens and political exponents, as well as giving life to new forms of participation in democratic processes. It has seemed as if, in one fell swoop, the cure has been identified for suffering democracies, to the point of attributing to ICTs the power to save them.'<sup>13</sup>

Citizen journalism fills the vacuum created by the traditional mainstream media and acts as an alternative news source. The news, opinion or commentary by citizen journalists on social media platforms appeals to a readership who finds it informative and important. The vacuum results from a selective criterion of coverage of news material by traditional mainstream media. The mechanism of selection is known as gatekeeping which is rooted in the decision making powers

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<sup>9</sup> See <[www.twitter.com](http://www.twitter.com)> accessed 14 January 2012. It is a short messaging service platform where the short messages known as "tweets" which cannot exceed 140 characters. A person who has a twitter account can follow other users' tweets and be followed.

<sup>10</sup> A slang word used to describe a video or image that becomes popular over a short span of time particularly as a result of viewers' sharing of the link to the said video or image, often attracting large amounts of hits or views.

<sup>11</sup> "UEC" is an acronym for "user-empowered content" created by the author to refer to tools on websites that allow sharing of information.

<sup>12</sup> Thomas B Riley, *Electronic Governance and Electronic Democracy: Living and Working in the Wired World* (The Commonwealth Secretariat 2000) 108.

<sup>13</sup> Sara Bentivegna, 'Rethinking Politics in the World of ICTs' (2006) 21 *European Journal of Communication* 331, 338.

of an individual editor or a group of individuals comprising of the editor, sub-editor and/or writer in line with the interpretive element of professional journalism where the professional journalist determines on behalf of the public what the public sees, hears and reads about the world.<sup>14</sup> The process leaves the reader disengaged and disinterested in news stories or restricts the information available to the reader. The consequences of gatekeeping and agenda-setting by mainstream media results in 'the deficits in mainstream media'.<sup>15</sup> These deficits are a consequence of, *inter alia*, state regulation,<sup>16</sup> or the dumbing down of news – where the social and political role played by journalism is not carried out in a manner consistent with the duty and obligation of informing the masses with matters of public interest.<sup>17</sup> The duty of 'informing' is tied in with the right for the public to be 'informed'.<sup>18</sup> The justification in supporting citizen journalism through new media lies in its capacity for enriching democratic debate and action,<sup>19</sup> free from national stereotyping and that it allows the higher ideals of freedoms to be meaningful at the individual level, transcending social barriers, inhibitions and impediments, whether geographical, legal, social or even psychological. The degree and extent of the deficit and reliance on citizen journalism generated through new media may differ from country to country owing to a variety of reasons.

As a result of these deficits, the emergence of social networking sites as platforms for discourse have taken a prominent place in the role originally played by traditional media. The concerns of gatekeeping has now transcended from traditional mainstream media to new media. Gatekeeping practices commonly involve these platforms prescribing as their terms of use a set of community guidelines and standards. The concern arises from the impact gatekeeping activity has on the role of these platforms as tools of the transformed Fourth Estate – as tools for the exercise of the freedom of expression/speech.

## **USURPING THE ROLE OF THE FOURTH ESTATE: TRANSFORMATION TO THE FIFTH ESTATE – A TOOL FOR FREEDOM OF EXPRESSION AND SPEECH**

Journalism plays a vital role in society and the role in contemporary society extends beyond merely publishing information and news. McNair states that the role of journalism in society is said to be 'one of the key social and cultural forces in our society'<sup>20</sup> in influencing opinion and acting as a source of information about the world. He draws the conclusion that journalism performs a 'unique and essential social function.'<sup>21</sup> He further extends the role of journalism beyond the basic social function by emphasizing that 'journalism is said to perform a political role in liberal pluralist societies, feeding and sustaining the democratic process by supplying citizens with the information which they require to make rational electoral and economic choices.'<sup>22</sup> This 'underpins democratic institutions by keeping voters informed about the things they need to

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<sup>14</sup> Mark Deuze, 'What Is Journalism? Professional identity and ideology of journalists reconsidered' (1995) 6(4) *Journalism* 442, 451.

<sup>15</sup> Description by Briggs and Burke and quoted in Jay Blumler and Michael Gurevitch, *The Crisis of Public Communication* (Routledge 1995).

<sup>16</sup> This was seen particularly in the Arab Springtime Revolution where media in North African and Middle-east states was regulated by repressive, anti-democratic nature of the regimes whereby the revolution relied on new social media tools such as *YouTube*, *Facebook* and *Twitter* to firstly coordinate and then communicate to the world the news from within the state involved in the uprising bypassing the state controlled media; see Simon Cottle, 'Media and the Arab uprisings of 2011: Research notes' (2011) 12 *Journalism* 647, 648-50.

<sup>17</sup> Anthony Sampson, 'The crisis at the heart of our media' (1996) 17(3) *British Journalism Review* 47.

<sup>18</sup> *McCartan Turkington Breen v Times Newspapers Ltd* [2001] 2 AC 277, 290-91 (Lord Bingham).

<sup>19</sup> Democratic action here could result in change in the general elections outcome in a country, eg. Malaysia or democratic change in the removal of repressive regimes eg. In Libya and Egypt as a result of Arab Springtime Revolution.

<sup>20</sup> Brian McNair, *News and Journalism in the UK* (Routledge 1999) 19.

<sup>21</sup> *ibid.*

<sup>22</sup> *ibid.*

know.<sup>23</sup> The task of journalism is 'to make information publicly available',<sup>24</sup> this being 'one basic ingredient of the public sphere...required for public participation in discussion and decisions'. Pondering on McNair's polemic, has journalism in certain societies failed in fulfilling its social and political role? And could it be suggested that citizen journalism could, to a certain degree, make good this failure?

Political journalism or the role of the media as that of the Fourth Estate has seen its passionate beginnings, its failings, its critics and continued transformation. From the late 17<sup>th</sup> century in Europe, newspapers, apart from reporting events, advocated social and political change. McNair states this element as being essential from then to the present to the role of journalists in a liberal democracy.<sup>25</sup> The origin of the phrase "Fourth Estate" is unclear. The first reference was made by historian Thomas Macaulay when referring to the Press gallery in Parliament in an essay in 1828 and later by Thomas Carlyle.<sup>26</sup>

The role of the press as the Fourth Estate is as an informative press crucial in its role as the democratic press.<sup>27</sup> From the 19<sup>th</sup> century and into present time, this view of the press is embedded in liberal theory where democracy and a check on the state are vital. Siebert *et al* wrote that the press:

...serve as an extra legal check on government...to keep officers of the state from abusing or exceeding their authority...to be the watchdog over the workings of democracy, ever vigilant to spot and expose any arbitrary or authoritarian practice... [and] to be completely free from control or domination by those elements it was to guard against.<sup>28</sup>

Curran and Seaton added to the liberal theory perspective of the press that whilst press freedom is the right of the publisher to be utilized on behalf of society, its role has to be consistent with the public interest as their actions are regulated by the free market.<sup>29</sup> The role of the media as the Fourth Estate is often assumed in recent discussions. McNair comments:

That the actions of government and the state, and the efforts of competing parties and interests to exercise political power, should be underpinned and legitimized by critical scrutiny and informed debate facilitated by the institutions

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<sup>23</sup> *ibid.*

<sup>24</sup> Klaus Bruhn-Jensen, *Making Sense of the News* (Aarhus University Press 1986) 31; quoted by McNair, *supra* n 20, 21.

<sup>25</sup> Brian McNair, *Journalism and Democracy: An Evaluation of the Political Public Sphere* (Routledge 2000) 62.

<sup>26</sup> Thomas Carlyle, *On Heroes, Hero Worship and the Heroic in History* ([1841] 1993) 141. In 1840, Carlyle made reference to the press as the Fourth Estate in his infamous quote: '[Edmund] Burke said there were Three Estates in Parliament; but in the Reporters' Gallery yonder, there sat a Fourth Estate more important far than they all. It is not a figure of speech, or a witty saying; it is a literal fact...Printing...is equivalent to Democracy...Whoever can speak, speaking now to the whole nation, becomes a power, a branch of government, with inalienable weight in law-making, in all acts of authority. It matters not what rank he has, what revenues or garnitures: the requisite thing is that he have a tongue which others will listen to; this and nothing more is requisite.'

<sup>27</sup> This importance was seen particularly in the US from the 1870s which saw the rise of the informative press, free from political influence to act as a check on government, and political decision-making as a whole, disclosing political activities and engaging debates. In 19<sup>th</sup> century Britain, McQuail adds that the said 'expression and idea' was adopted by 'serious newspaper press, increasingly conscious of its influence.' He adds the essential elements of this role as 'autonomy from government and politicians; having a duty to speak the truth, whatever the consequences; and having primary obligations to the public and to readers.' See Denis McQuail, *Media Accountability and Freedom of Publication* (OUP 2003) 52.

<sup>28</sup> Frederick S Siebert, Theodore Peterson, Wilbur Schramm, *Four Theories of the Press: The Authoritarian, Libertarian, Social Responsibility and Soviet Communist Concepts of what the Press Should Be and Do* (University of Illinois Press 1963) 56.

<sup>29</sup> James Curran and Jean Seaton, *Power Without Responsibility: Broadcasting and the Press in Britain* (6<sup>th</sup> edn, Routledge 2003) 346-347.

of the media is a normative assumption uniting the political spectrum from left to right.<sup>30</sup>

Citizen journalism on the Internet has morphed into a form of advocacy and digital democracy. One of the strongest characteristics of citizen journalism is its democratizing nature. Many new phrases have found their way into our daily usage when referring to what has been called the third media revolution which has led to sparking a keen interest in citizen media or UGC media. The impact that this has had in Malaysia is phenomenal. The phenomenon is elevated to a level of greater importance when such media functions to promote a particular value that may benefit the society whether in a nation, as is the case in Malaysia, or in a global context. This value can be seen as playing a social role, as a new form of expression and a new form of advocacy. In this case the basic functions of media and information and communication technology merge to form a new tool of democratization, or a tool that facilitates democratic actions, evolving from a tool which merely magnifies and multiplies the spread of news and expression. The fact that the Internet was a tool of democratization was referred to by Dalzell DJ in *ACLU v Reno 1* at a time when the Internet was in its infancy and well before the advent of UGC.<sup>31</sup> Dalzell referred to Internet communication having democratizing effects where 'individual citizens of limited means can speak to a worldwide audience on issues of concern to them...making it the most potent democratizing tool ever devised.'

Following from this, naturally then that social media platforms or the Internet in general are viewed as tools of free speech. The Internet has been seen to play the function of promoting freedom of speech and expression in a democratic society, very similar to the role seen to be played by the mainstream media. Whilst the utility of these platforms are essential in placing citizens' speech in the marketplace, there is also the need to appreciate that not all speech contributes to socio-political discourse such as harmful speech.

Barendt's statement that the Internet has yet to play the Fourth Estate role is dated. The Internet has been called the "Fifth Estate", a term used by *Open Net Initiative*, to refer to the space for networking individuals created on the Internet by digital technologies.<sup>32</sup> Whilst the purpose of both the Fourth Estate and the Fifth Estate is to promote checks and balances and proper governance of the state, the distinction lies in the entity acting as the "estate" – in the case of the former, the mainstream media, and in the latter, the individual using social media platforms.

Some of the most frequently occurring concerns with such media is the authenticity of the information, perhaps even its neutrality or objectivity, and its increasing popular outreach. This characteristic may have damaging effects arising from harmful or false speech. The Internet with its openness allows many-to-many conversations to take place and to a large extent a large amount of this speech is anonymous where users create pseudonyms under the cloak of anonymity where inhibitions to speak freely are removed. However, in the case of socio-political discourse that may be harmful, libellous, insidious or nefarious, this type of speech and its speaker must be made accountable. Therefore, one of the fundamental areas to explore is the need to achieve a balance between public order and liberties.

Tied in with this role is that of the role of playing 'public watchdog'<sup>33</sup> which has to be executed with integrity whilst at the same time the execution is heavily laced with factors such as

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<sup>30</sup> Brian McNair, *Journalism and Democracy: An Evaluation of the Political Public Sphere* (Routledge 2000) 1.

<sup>31</sup> 929 F Supp 824 US DC Penn (1996), 881.

<sup>32</sup> Open Net Initiative's Fifth Estate project, *Oxford Internet Institute*, <<http://www.oii.ox.ac.uk/research/projects/?id=57>> accessed 21 January 2012.

<sup>33</sup> Brian McNair, *Journalism and Democracy: An evaluation of the political public sphere* (Routledge 2000); *Observer and Guardian v UK* (1992) 14 EHRR 153 [59].

responsibility, balancing freedom of expression with national security, public safety, prevention of disorder, privacy and other similarly toned qualifications.

Reliance on the sentiments of the US Supreme Court justices namely Cardozo<sup>34</sup> and Brandeis,<sup>35</sup> who view free expression as the basis for the existence of liberty and justice and that the lack of such freedom will result in repression with dangerous consequences, articulates the essence of the motivation for socio-political discourse that provides credence to citizen journalists on the Internet. Brandeis's phrase - 'public discussion is a political duty' - exemplifies the importance of such discourse. The freedom of speech and expression whether in terms of the First Amendment to the US Constitution or Article 10 of the European Convention, has been the basis for the functioning of the traditional mainstream media's multifarious roles as public "watchdog", acting as conduit between state and citizenry or between citizens, and the publisher of news, information, commentary on matters of public interest. The elevated position of the press in playing this role in First Amendment jurisprudence rests on its ability for professional journalists, to be the "provider" of news and information and all other ancillary roles – to publish, distribute, write, and to investigate.

The harnessing of these abilities and skill is currently employed by citizen journalists on the Internet. The basis for according traditional mainstream media the importance of this role could be extended to citizen journalists on the Internet who publish information on socio-political issues of public interest who are indeed executing a similar role. The statement by Lord Bingham in *McCartan*,<sup>36</sup> referring to the media being 'a small minority of citizens who can participate directly in the discussion and decisions which shape the public life' has to be qualified as the hegemony of the traditional media of stimulating discourse, debate and shaping public life has been diluted. On a similar note, the ECtHR referred to the press in *The Observer and Guardian* case,<sup>37</sup> of the task of the press in imparting information and ideas of public interest in playing its roles as a "public watchdog" could similarly extend to the citizen journalist on the Internet if the publishing of information, debate, commentary and opinion has the same effect.

## THEORETICAL FOUNDATIONS

The discourse around the theories that prevail in media studies and media theory reshape the role of journalism and media and presently, citizen journalism. These theories are key theories that inform debates about the media, both in the past and present. Discussion of the theories reinforces the role of the citizen journalist in socio-political discourse and as an outlet for expression/speech.

### Deliberative Democracy and Public Journalism

One of the landmark developments in journalism, in the early 1990s in the US, is its attempts at re-engaging with the public in democratic debate and discourse. The level of public participation in open debates in matters of national interest and all forms of democratic processes needed to practise deliberative democracy, which in turn allowed the media to act as the mediator particularly when the media advocated public journalism. Its philosophical antecedent is Habermas's theory of the public sphere, discussed *supra*. The school of public journalism holds that a genuine and effective democracy is reliant on a form of journalism committed to promoting active citizen participation in democratic processes. In furtherance of deliberative democracy, Haas submits that 'journalists would need to change the ways in which they traditionally have conceived of the public and of their own role in public life.' Hence, the public

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<sup>34</sup> *Palko v Connecticut* 302 US 319 (1937).

<sup>35</sup> *Abrams v US* 250 US 616 (1919); *Whitney v California* 274 US 357 (1927).

<sup>36</sup> *McCartan Turkington Breen v Times Newspapers Ltd* [2001] 2 AC 277.

<sup>37</sup> *The Observer and Guardian v UK* (1991) 14 EHRR 153.

which has been seen as "thrill-seeking spectators" or "consumers", needs to be treated as an engaged public, part of a responsible citizenry who are not only interested in active democratic participation but also capable of participating in the same. Public journalism not only creates an opportunity for the public to engage but more importantly for those who are indeed interested and capable of democratic participation.

Citizen journalism on the Internet as a form of community journalism appears to effectively revive and implement the practices of public journalism where the citizens are seen as the mediator between the state and other citizens, or between groups and citizens, or purely between citizens.

## Habermas's Public Sphere

Habermas's<sup>38</sup> propositions of the public sphere and communicative action are a vital reference in any study of media theory. Writers such as Peters<sup>39</sup> have linked Habermas's understanding on democracy and the public sphere to the American notion of the marketplace of ideas, discussed *supra*. Media theorists have often referred to two of Habermas's volumes of work, namely, *Theory of Communicative Action* and *The Structural Transformation of the Public Sphere*. The need and maintenance of a "political public sphere" seem to strengthen the idea that perhaps the Internet has come to represent that political public sphere, for at least some countries. This idea that the Internet could be the new public sphere is a change from the traditional one that Habermas was referring to. The public sphere is in essence a space, independent of government, where individuals can debate public affairs.

Habermas's "public sphere" is relevant in media discourse particularly when the mass media have usurped the role as the chief institutions of the public sphere. Williams suggests that this attraction stems from the focus on the political dimension of the media and the relationship that the media has with democracy and political process.<sup>40</sup> The "public sphere" is the forum that mediates between the state and society where private individuals can debate public affairs and question authorities. In order for these activities to take place, there must be free flow of information and hence, media entities play an effective role in facilitating this free flow of information. The task of journalism is 'to make information publicly available',<sup>41</sup> this being 'one basic ingredient of the public sphere...required for public participation in discussion and decisions'. In each country, there is a need to evaluate whether the media represents a properly functioning "public sphere" – as Habermas calls it - that communal communicative space in which 'private people come together as a public'.<sup>42</sup>

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<sup>38</sup> Jürgen Habermas, *The Structural Transformation of the Public Sphere* (1989); *The Theory of Communicative Action* (1981); *Moral consciousness and communicative action* (1983).

<sup>39</sup> John Durham Peters, 'Distrust of representation: Habermas on the public sphere' (1993) 15(4) *Media Culture and Society* 541.

<sup>40</sup> Kevin Williams, *Understanding Media Theory* (Hodder Arnold 2003) 69.

<sup>41</sup> Klaus Bruhn-Jensen, *Making Sense of the News* (Aarhus University Press 1986) 31; quoted by Brian McNair, *News and Journalism in the UK* (Routledge 1999) 21.

<sup>42</sup> Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* (Polity 1989) 27. Jürgen Habermas, Sara Lennox and Frank Lennox, 'The public sphere: an encyclopedia article (1964)' (1974) 3(1) *New German Critique* 49-55. Habermas articulates his concept of the public sphere as follows: 'By "the public sphere" we mean first of all a realm of our social life in which something approaching public opinion can be formed. Access is guaranteed to all citizens. A portion of the public sphere comes into being in every conversation in which private individuals assemble to form a public body...Citizens behave as a public body when they confer in an unrestricted fashion – that is, with the guarantee of freedom of assembly and association and the freedom to express and publish their opinions – about matters of general interest. In a large public body this kind of communication requires specific means for transmitting information and influencing those who receive it. Today newspapers and magazines, radio and television are the media of the public sphere.'

Web 2.0 and its ability to allow individuals to have conversations with each and provide input almost immediately could perhaps be envisaged as resembling Habermas's coffee houses in a 21<sup>st</sup> century setting but only far improved from the 17<sup>th</sup> and 18<sup>th</sup> centuries versions owing to its inclusive nature where these conversations could be held by anyone. The ability of technology in neutralizing levels of education, wealth and class, Web 2.0 being the new "political public sphere" also minimises the influence of media as well as blurring the division between capability and opportunity for the public to engage in media-type activities. However, in the context of Malaysia, the public sphere on the Internet is a unique one where not all of the features of Habermas's public sphere exist. Whilst access to the public sphere is guaranteed to all citizens, in that non-censorship of the Internet is guaranteed under the law, there is however no guarantee of freedom to express and publish opinions.

### Marketplace of ideas theory

The "marketplace of ideas" theory was originally derived from Mill and was given judicial recognition by Brandeis J and Holmes J in the US Supreme Court.

The "marketplace of ideas" theory of free speech has been enormously influential in the American jurisprudence. Developed by Holmes J in his dissenting judgment in *Abrams v US*,<sup>43</sup> the theory suggests that the truth would emerge from 'free trade in ideas' or intellectual competition and that the regulation by government distorts the working of a free market for the exchange of ideas resulting in the courts undertaking great scrutiny as a result of a mistrust of government intervention even when it is meant to foster free speech.

Holmes J in *Abrams* held that the truth will emerge from a 'free trade in ideas':

But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas – that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out.<sup>44</sup>

Brandeis J affirmed this in *Whitney*, affirming that the 'freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth.'<sup>45</sup>

In short, if ideas are available and compete with or counter each other, the "good counsels" will prevail.<sup>46</sup> It is essential to note that both Holmes and Brandeis JJ laid out 'the clear and present danger' test that may restrict speech in the marketplace whereby speech will not be protected where there is 'a clear and present danger that will bring about the substantive evils that Congress has a right to prevent.'<sup>47</sup>

### Emerging themes

The theme emerging from these theories is that freedom of speech is a necessary condition for a democratic and just society. The speech maker, whether the professional journalist or the citizen journalist expresses opinions and the public are free to debate, interact and express their own opinions. The citizen journalist is capable of this engagement, because s/he has the opportunity and is able, and in the process removes the elitist idea that perhaps the press was *the* entity

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<sup>43</sup> *Abrams v US* 250 US 616 (1919), 630-31 (Holmes J).

<sup>44</sup> *ibid.*

<sup>45</sup> *Whitney v California* 274 US 357 (1927) 375 (Brandeis and Holmes JJ dissenting).

<sup>46</sup> David A Strauss, 'Persuasion, Autonomy and Freedom of Speech' (1991) 91 *Columbia Law Review* 334, 348.

<sup>47</sup> *Schenk v United States* 249 US 47 (1919) 52.

capable of this engagement. If the press's freedom is rooted in the freedom to publish in the free market as it serves democracy, then the potential for citizen journalism to do the same must premise on the same. If truth is the most important element to emerge from free speech, then the potential for this to happen is even more probable with interactive social media platforms. The platforms emerge as the "public sphere" meeting the characterization set out by Habermas. But the enlarged democracy of the "public sphere" may result in the need for the important development of ethics and norms which cut across local, national and international values and cultures – an enormous task on any account. This is precisely the challenge faced by social media platforms.

The "marketplace of ideas" theory is in essence descriptive of the type of free trade of ideas carried out by citizen journalists through social media platforms. However, the promoters of the theory were cautious to develop a qualification of such a marketplace in the form of the "clear and present danger" test. This type of qualification is typical of the wordings in Article 19 of the International Covenant on Civil and Political Rights and Article 10 of the European Convention of Human Rights. The need for the right to free speech and expression to be a qualified one presents the dialectic in not only journalism but in all forms of speech and expression. Any type of speech emanating from the Internet originating from citizen journalists must recognize the important role which they help function and more importantly, the need for such role to be executed with accountability and responsibility as a tool for free speech can equally transform into a tool for hate, anger and abuse. The need for community standards and guidelines on social networking sites is justified along these lines.

## IMPORTANCE OF PLURALISM AND THE RISK OF LOSS OF PLURALISM

The cornerstone of liberal media that carries out the essential functions in democratic societies is pluralism. The essence of pluralism is diversity in media. The presence of different and independent voices and varied political opinion and representations is vital to ensure that the media plays its role – whether it is traditional media or new media.

The rationale for upholding the principle of pluralism is to oppose media concentration premised on promoting freedom of speech values. The US Supreme Court, in particular Justice Hugo Black when delivering the opinion of the court in *Associated Press v US*, held on to the principle that:

[the First] Amendment vests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the Welfare of the public.<sup>48</sup>

Pluralism is defined by Doyle as:

...generally associated with diversity in the media; the presence of a number of different and independent voices, and of differing political opinions and representations of culture within the media.<sup>49</sup>

Doyle stresses that there is an expectation and need on the part of the citizens for the diversity and plurality of media content and media sources which is linked to the fundamental right to freedom of expression enshrined in Article 10 of the European Convention of Human Rights.<sup>50</sup> Doyle emphasises that in the absence of '...an open and pluralistic system of media provision,

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<sup>48</sup> (1945) 326 U.S. 1, 20.

<sup>49</sup> Gillian Doyle, *Media Ownership: The Economics and Politics of Convergence and Concentration* (SAGE 2002), 11.

<sup>50</sup> *ibid* 12. See also A Lange and A Van Loon, *Pluralism, Concentration and Competition in the Media Sector* (IDATE/IVIR 1991) 13-26.

the right to receive and impart information might well be curtailed for some individuals or groups within society.<sup>51</sup>

The Council of Europe's *Committee of Experts on Media Concentrations and Pluralism Media* stated that pluralism could be understood as:

...diversity of media supply, reflected for example in the existence of a plurality of independent and autonomous media and a diversity of media contents available to the public.<sup>52</sup>

Diversity is to exist in terms of ownership and output or content. Diverse ownership is seen as external pluralism where there are a range of suppliers. Diverse content is seen as internal pluralism which is pluralism within the firm.

A study<sup>53</sup> conducted in relation to the European Media Pluralism Monitor<sup>54</sup> highlights several risk domains where pluralism is required. The domains also include cultural pluralism and political pluralism apart from the basic need for pluralism in ownership and content.<sup>55</sup> Political pluralism is defined in the study as 'referring to fair and diverse representation of and expression by various political and ideological groups, including minority viewpoints and interests, in the media.'<sup>56</sup> There is a risk of political pluralism not existing if there is, *inter alia*, 'excessive or exclusive representation or promotion of the political ideas and interests of the governing party (parties) in the media, by positive/negative propagandistic coverage of selected political actors'.<sup>57</sup> Cultural pluralism is defined in the study as 'referring to fair and diverse representation of and expression by various cultural, linguistic, religious, ethnic groups, disabled people and women in media...comprises plurality and a variety of themes and voices brought to the media...'.<sup>58</sup> As in Europe and many countries and parts of the world, cultural diversity is a key value and a sense of identity.<sup>59</sup>

Pluralism is commonly imposed on national traditional mainstream media through either statutory regulation, co-regulation between state and media entities or self-regulation. It is clearly a safeguard that needs to be in place in ensuring effective protection of free speech provisions in constitutions, international law such as Article 19 of the Universal Declaration of Human Rights or regional laws as in the form of Article 10 of the European Convention of Human Rights.

Thomas Gibbons articulates the need for some form of regulation and what it should aim to promote:

The values that justify the special status of speech (truth, democracy, self-fulfilment) and which characterise its purpose (communicative autonomy, multiplicity of viewpoints and enhancement of public debate) are the ones that justify active policy measures to ensure that it is worthwhile. In order to enhance

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<sup>51</sup> *ibid.*

<sup>52</sup> (n 49 ) 12.

<sup>53</sup> P Valcke, R Picard, M Sükösd, B Klimkiewicz, B Petkovic, C dal Zotto, R Kerremans, "The European Media Pluralism Monitor: Bridging Law, Economics and Media Studies as a First Step towards Risk-Based Regulation in Media Markets" (2010) 2 (1) *Journal of Media Law* 85-113.

<sup>54</sup> A measurement tool developed by the European Commission arising from *Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach* (Final Report, June 2009). See <[https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/final\\_report\\_09.pdf](https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/final_report_09.pdf)> accessed 18 August 2014.

<sup>55</sup> (n 50) 93.

<sup>56</sup> *ibid* 98.

<sup>57</sup> *ibid.*

<sup>58</sup> (n 50) 100.

<sup>59</sup> *ibid.*

the worth of speech, state regulation can take measures to increase the amount of speech available. Structural regulation, such as media ownership rules or merger rules, are intended to increase the plurality of sources of information, allowing others to speak and enabling audience to experience more speech. Content regulation may be used to increase the diversity of material (for example, requirement for a variety of genres and reflection of a range of views, requirements about impartiality and context, and rules providing for access to the media in general or at least during elections). All these are consistent with a stronger conception of freedom of speech.<sup>60</sup>

Gibbons adds that the alternative approach to be adopted is to improve the quality of free speech which involves an element of interference in terms of a particular speaker exercises the freedom to speak in order to attain a standard or quality in the speech overall.<sup>61</sup> He adds that the measures to such as those impose, for instance through broadcasting regulations to achieve accuracy, impartiality and fairness, 'will not be regarded as being too intrusive if a strong conception of freedom of speech is accepted since that entails access to a conversation or dialogue.'<sup>62</sup>

## SPEECH SUBJECTED TO FILTERING PROCESS

The three social networking sites that have been selected are the ones with the highest level of permeation based on number of users. These are *Facebook*, *YouTube* and *Twitter*.

The platforms are essentially the property of the owners of these platforms and the users merely hold a licence to use these platforms. Community standards or guidelines that form part of the terms of use of these platforms are rationalised on the ground that a degree of accountability and responsibility is imposed on the user in upholding a set of values determined by the said platforms in preserving a degree of civility which is subjected to a process that involves other users reporting violations, moderation by the administrators of the platforms and action if any.

The use of these guidelines has resulted in a plethora of incidents which appear to result in a form of unilateral censorship. The incidents have been collated from reports on Internet-related sites and news reporting.

### Facebook

The terms of use are titled "*Facebook Community Standards*". The objective of the standards is 'To balance the needs and interests of a global population, *Facebook* protects expression that meets the community standards outlined on this page.' The aim is to help the user understand the type of expression that is acceptable and the type of content that can be subject to a report and removal action by the administrators of *Facebook*. There are various headings that are stipulated in these community standards that set out the types of expression viewed as unacceptable such as, *inter alia*, violence and threats, self-harm, bullying and harassment, hate speech, graphic content and nudity. Users may report any violation of these standards. A notification will be sent to the alleged-abuser to bring to his/her notice that the alleged abuse has been reported with the option to delete the post and also informing the alleged-abuser that *Facebook* will look into whether the community guidelines have been violated as such. The user who had reported will receive a notification if *Facebook's* review reveals no violation of community standards. Repeat violations may lead to permanent removal of the account.

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<sup>60</sup> Thomas Gibbons, 'Free Speech, Communication and the State' in Merris Amos, Jackie Harrison and Lorna Woods (eds), *Freedom of Expression and the Media* (Martinus Nijhoff Publishers 2012) 19, 39.

<sup>61</sup> *ibid* 40.

<sup>62</sup> *ibid*.

Table 1 lists a series of incidences where the subject matter involved either an image or text. Images were removed on the basis that they violated community guidelines such as display of nudity on photographs or images that are deemed to offend resulting in accounts being suspended. In one instance, the image was not a photograph but a work of art resulting in the photograph being reinstated. Photographs can be seen as art or as tools to relay a powerful message.

The suspension of several accounts which were seen as anti-government was restricted only nationally and not globally. Whilst it may be justifiable to remove messages that fan hatred and violence, Facebook accounts that promoted positive values or healthy discourse were blocked nationally. In the case of blocking accounts in Pakistan highlighted in Table 1, the issue that this type of country-to-country blocking will result in the demise of democratic discourse is evident. In reference to that particular instance, in a statement, Facebook commented:

While we never remove this type of content from the site entirely, like most Internet services, we may restrict people from accessing it in the countries where it is determined to be illegal...Before we restrict the content, we take significant steps to investigate each unique claim, consult with local counsel and other experts in the country, and will only remove content in the most limited way possible...We restricted access in Pakistan to a number of pieces of content primarily reported by the Pakistan Telecommunication Authority and the Ministry of Information Technology under local laws prohibiting blasphemy and criticism of the state.

Subject matter	Content that was deemed violation of Community Guidelines	Action Taken
2013 Image	A photo of a gay Sikh kissing a man during a 'Global Day of Rage' protest in Toronto against India's ruling criminalizing homosexuality. Photo attracted both love and hate – but the user appreciated the visibility of the discourse.	Photo removed. Facebook account suspended for 12 hours
2013 Image	A picture of a naked woman by French photographer Lauren Albin Guillot in an exhibition at the Jeu de Paume Contemporary Art Museum in Central Paris.	Photo removed. Facebook account suspended for 24 hours
2012 Image	A nude photograph by Gerhard Richter, titled 'Ema' displayed on the Pompidou Center's (France) Facebook page.	Image removed. Facebook later apologised for confusing the image with a photo.
2013 Image	A photo of Ann Marie Giannino-Otis displaying her post mastectomy scars on a Facebook community page dedicated to breast cancer survivor's in order to support women undergoing breast cancer treatment.	Removal of photo. Facebook reinstated the photo after support for it and protest against the removal. Facebook remarked that 'Mastectomy photos don't violate their standards.'
2014 Text	Block of Facebook page dedicated to Pakistani liberal and anti-Taliban band "Laal" on request of Pakistan's government including other anti-Taliban pages such as "Taalibansarezalimans" (The Taliban are oppressors) and "Pakistani.meem" which promotes democracy and secularism.	Facebook blocks accounts.
2014 Text	Political activist, Moses Kuria from Kenya had his Facebook account terminated as a result of fanning hatred and propagating violence	Facebook blocks and then terminates account.

**Table 1: Instances of moderation of content by Facebook**

Several of the removals attracted protests from other users and the general public and were seen unfavourable and the action of the moderators as misguided. The response from Facebook on such occasions is an apology for removing the said content. A good instance of this was the reversal of the ban on images of women breastfeeding their babies. On the other hand, Facebook has in the past refused to take down content that is objectionable, for instance, the removal of misogynistic content glorifying violence against women resulting in a global campaign on social media for Facebook to address the outcry.<sup>63</sup> In attempting to answer the question as to where the line is drawn in deciding violations, the question is a complex one but more importantly, an organically developing one, evidenced by Facebook's issuance of a statement that it will improve its guidelines and monitoring systems.<sup>64</sup>

## YouTube

YouTube's Terms of Service contains a section title "Community Guidelines" and under Clause 6 titled "Your Content and Conduct" in para E, users have to agree that they will '...not submit to the Service any Content or other material that this contrary to the YouTube Community Guidelines...'.<sup>65</sup>

The guidelines prohibits video content that contains, *inter alia*, pornography or sexually explicit content, animal abuse, drug abuse, bomb making, graphic or gratuitous violence, videos of accidents, dead bodies and similar things, and hate speech (based on race or ethnic origin, religion, disability, gender, age, veteran status, and sexual orientation/gender identity).<sup>66</sup>

Videos that are flagged as inappropriate are reviewed to determine any violation of the Terms of Use. The removal or take-down is not automatic but only upon a review being carried out. A notification of the violation is sent to the user. If there are continued violations of terms by the same user, it could lead to a termination of the account without the opportunity to create a new account.

Subject matter	Content that was deemed in violation of Community Guidelines	Action Taken
2007 Promotion of violence	Videos depicting human rights violation and torture posted by Wael Abbas, an Egyptian human right's activist including police brutality, voting irregularities and anti-government demonstrations.  He defended his videos, stating that the brutality in the images made an "impact on public opinion" by highlighting issues relating to abuse.	Account suspended due to the element of graphic violence in the videos. YouTube reinstated access.
2009 Political discourse	Suzannah B Troy posted videos criticising the change in laws that allowed Michael Bloomberg to run for a third term as New York City's mayor	Account blocked. YouTube reinstated access later.
2010 Promotion of violence	Links to Anwar al-Awlaki' speeches, an American-born cleric in which terrorist violence was advocated.	Video removed

<sup>63</sup> Laura Bates, 'Does Facebook have a problem with women?' (*The Guardian*, 19 February 2013) <<http://www.theguardian.com/lifeandstyle/2013/feb/19/facebook-images-rape-domestic-violence>> accessed 18 August 2014.

<sup>64</sup> 'Controversial, Harmful and Hateful Speech on Facebook' (Facebook, 29 May 2013) <<https://www.facebook.com/notes/facebook-safety/controversial-harmful-and-hateful-speech-on-facebook/574430655911054>> accessed 18 August 2014.

<sup>65</sup> See <[https://www.YouTube.com/t/community\\_guidelines](https://www.YouTube.com/t/community_guidelines)> accessed 18 August 2014.

<sup>66</sup> *ibid.*

2011 Hate Speech	Rabbi Yehuda Levin's video claiming the US East Coast earthquake is a direct result of the legalisation of gay marriages in the state of New York. He made statements such as, 'The Talmud (Jewish sacred text) states, "You have shaken your male member in a place where it does not belong. I (God) too, will shake the earth".'	Video removed.
2011 Rights discourse	<i>Feminist Frequency</i> posted a remix video consisting of video game clips to criticise violence in those games from a feminist perspective.	Video removed. Video was reinstated after 18 days on efforts by the author and a 'public interest' lawyer.
2013 Depiction of Violence	<i>Prison Planet.com</i> uploaded a video where the US-backed Free Syrian Army brutally hacking off the head of a civilian with a machete to highlight US administration's involvement with the violent Jihadi group.	Video removed.

**Table 2: Instances of moderation of content by YouTube**

Table 2 lists videos that were removed as they breached *YouTube's* community guidelines. *YouTube* has a policy of blocking videos on a national basis as they may offend the citizens of a particular country based on, *inter alia*, religion (eg. Visual depiction of the Prophet in Muslim states) or national values (eg. Offending the Monarch in Thailand). In 2012, a *Google* Executive was arrested after *Google* refused to take down a political video from *YouTube* criticising a candidate running for a mayor's position. *Google*, who owns *YouTube*, had to succumb by blocking the video in Brazil. They have to block the videos in countries where the content violates local laws, customs and beliefs. Country based filtering. In the same year, an anti-Islamic video posted mocking the Prophet Muhammad resulted in violence the worst of result in the killing of a US ambassador and violence in Pakistan. The position taken by *YouTube* was that there was no violation of community standards as it did not meet the definition of hate speech. In a statement, *Google* commented that the video was 'clearly within our guidelines and so will stay on *YouTube*...However, given the very difficult situation in Libya and Egypt, we have temporarily restricted access in both countries.'<sup>67</sup>

As Tim Wu commented – 'We are just awakening to the need for some scrutiny or oversight or public attention to the decisions of the most powerful private speech controllers...'.<sup>68</sup> Jonathan Zittrain, professor of law at Harvard commented that *YouTube* has '...had a number of years to be thinking about free speech issues...'. He adds that *YouTube* does not want to '...go down the slippery slope of entertaining more and more demands to take things down. That can be corrosive in the longer haul...'.<sup>69</sup>

## Twitter

*Twitter's* Terms of Service<sup>70</sup> stipulates in Paragraph 8, its "Restrictions on Content and Use of Services" which makes reference to compliance with "The *Twitter* Rules".<sup>71</sup> Amongst the content boundaries is the prohibition of the use of *Twitter* to publish or post threats of violence,

<sup>67</sup> Gerry Shih and Sue Zeidler, 'Google blocks YouTube clip only in Egypt and Libya' (Reuters, 12 September 2012) <<http://www.reuters.com/article/2012/09/13/net-us-usa-libya-google-idUSBRE88B1HF20120913>> accessed 18 August 2014.

<sup>68</sup> Somini Sengupta, 'Free Speech in the Age of YouTube' (New York Times, 22 September 2012) <<http://www.nytimes.com/2012/09/23/sunday-review/free-speech-in-the-age-of-youtube.html?module=Search&mabReward=relbias%3Aw>> accessed 18 August 2014.

<sup>69</sup> Rachael Fergusson, 'YouTube clip blocked in Egypt and Libya' (Engineering and Technology Magazine, 13 September 2012) <<http://eandt.theiet.org/news/2012/sep/YouTube-google.cfm?origin=EtOtherNews>> accessed 10 August 2014.

<sup>70</sup> See <<https://twitter.com/tos>> accessed 18 August 2014

<sup>71</sup> See <<https://support.twitter.com/articles/18311-the-twitter-rules>> accessed 18 August 2014.

prohibits use for unlawful purposes or in furtherance of illegal activities and use of pornographic images on the profile photo, header photo or user background.

Twitter will investigate and respond to reports of violations of the rules and terms of service by other users or third parties.<sup>72</sup> In case where there has been a violation, the Rules allow Twitter to immediately terminate the account without further notice.

The biggest controversy involving Twitter was the introduction of the "New Censorship Policy" in 2012 which allowed Twitter to censor tweets on a country-specific criteria based on national laws. It championed its policy as being good for expression, transparency and accountability. Reporters without Borders in a letter to Twitter's Executive Chairman stated therein that:

By finally choosing to align itself with the censors, Twitter is depriving cyberdissidents in repressive countries of a crucial tool for information and organization...We are very disturbed by this decision, which is nothing other than local level censorship carried out in cooperation with local authorities and in accordance with local legislation, which often violates international free speech standards. Twitter's position that freedom of expression is interpreted differently from country to country is unacceptable. This fundamental principle is enshrined in the Universal Declaration of Human Rights.<sup>73</sup>

Table 3 reveals the types of request addressed to Twitter by governments or government bodies to block accounts or tweets. Although the criticism against the country-by-country blocking has been that it will silence the voice of dissent, however, in the first country who took advantage of the policy, Brazil, it was used to cease the publishing and posting of tweets by Twitter users to alert drivers to police road blocks, speed traps and drunk-driving checkpoints as it disrupted police operations in cases of reducing road-traffic accidents, auto theft and the transportation of drugs and weapons.<sup>74</sup>

Subject matter	Content deemed inappropriate by Twitter's New Censorship Policy	Action Taken
2012	Account belonging to @boltai, a group of Russian hackers who leaked "sensitive state documents" among other things.  The Russian government lodged a case against an "unnamed individual concerning 'personal data'".	The Account was withheld within the country but available to readers and followers outside it in accordance with a court order.
2012	Posts of an account belonging to a group deemed illegal in Germany for carrying neo-Nazi messages such as "incitement against people, particularly for racial reasons" and the toppling of the government.	Twitter agreed to withhold content although its content was still available in the US.  In September 2012, German government contacted Twitter to delete the account which it did not. However, a raid on the group and subsequent confiscation of computers in Germany effectively ends all tweets and the group is dissolved.

<sup>72</sup> See <<https://support.twitter.com/groups/56-policies-violations/topics/238-report-a-violation/articles/15789-how-to-report-violations>> accessed 18 August 2014.

<sup>73</sup> See <<http://en.rsfsf.org/letter-to-twitter-ceo-urging-him-22-01-2012.41775.html>> accessed 18 August 2014.

<sup>74</sup> Rob Waugh, 'Brazil first country to try and use Twitter's new censorship policy to silence its citizens' (*The Daily Mail*, 10 February 2012) <<http://www.dailymail.co.uk/sciencetech/article-2099391/Brazil-country-use-Twitter-new-censorship-policy-silence-citizens.html#ixzz3AhOJQyIH>> accessed 18 August 2014.

2012	Request by French government – objected to the hash tag “#unbonjuif” which attracted anti-Semitic tweets.	Twitter blocked tweets in France as these were violations of French laws.  Interestingly, the hashtag was used to denounce anti-Semitism – whereby users objected to the anti-Semitic theme of the hashtag, changing the nature of the hashtag from promoting to denouncing anti-Semitism.
2014	Request by Pakistan Telecommunication Authority to block the following - Accounts, tweets and searches labelled “blasphemous” and “unethical” including “crude drawings of the Prophet Muhammad, photographs of burning Quran, a handful of messages from anti-Islam bloggers” and a porn star attending Duke University.	Twitter immediately blocked of those accounts, tweets and searches within local borders.
2014	Account belonging to a Ukrainian ultra-nationalist group, Ukraine's Pravy Sektor (Right Sector) that is managed by the national political party.	The account is blocked in Russia by a Russian court order.
2014	Request by Turkey government to block the following - Three accounts dedicated to act as whistleblowers and managed to bring to light incriminating evidence of corruption in Turkey including over 100 tweets that are not “political in nature or revolutionary in tone” but considered an embarrassment to the Turkish government.	Content blocked within the country but available to readers outside Turkey based on a court order.  Twitter claims that the user's privacy and details are still protected.  Twitter lifted the block one month later. after facing harsh criticism by freedom of speech groups.

**Table 3: Instances of moderation of content by Twitter after the implementation of the New Censorship Policy**

Twitter's justification for the policy is clear – that it has to respect the differing culture, norms and laws that exist in the cross-section of its user community globally. It responded with the following opening statement in its blog:

As we continue to grow internationally, we will enter countries that have different ideas about the contours of freedom of expression. Some differ so much from our ideas that we will not be able to exist there. Others are similar but, for historical or cultural reasons, restrict certain types of content, such as France or Germany, which ban pro-Nazi content.<sup>75</sup>

There is no denying the fact that balancing the opposing interests of governments, citizens, free speech advocates and Internet content providers would present a challenging and complex conundrum. Whilst Internet content providers such as Twitter are faced with this herculean task, it must accept the fact that its actions will come under global scrutiny.

<sup>75</sup> 'Tweets still must flow' (Twitter, 16 January 2012) <<https://blog.twitter.com/2012/tweets-still-must-flow>> accessed 18 August 2014.

## **IS THE PRIVATE GATEKEEPING BY SOCIAL MEDIA PLATFORMS IMPINGING ON SOCIO-POLITICAL DISCOURSE?**

With much of speech moving online, Internet content providers initially allowed for it to flourish without impediments at a point of time when its full potential was not exploited. The main purpose of social networking sites was for social purposes. But as users became aware that these could act as tool of free speech, more precisely, as an alternative news source for democratic discourse and engagement, the quality and nature of the speech came into question. Social networking sites who merely provide a service to communicate now transformed into guardians of speech and of our society, whether global or national. Standards, guidelines, rules, terms, conditions – by whatever name the guarding is known by, it has an impact on the speech that is posted, published, shared and communicated on these platforms. The dialectic is if speech is removed, then the discourse ends but if speech remains, then platforms are validating the said speech.

The first challenging determination is what amounts to content that counteract with good speech. Content that is "harmful", "offensive", "violent", "inciting", "seditious" and the list goes – requires these platforms to exercise care so as not to negate the importance of speech as prescribed in the freedom of speech tenets in the US's First Amendment, European Convention of Human Rights and the Universal Declaration of Human Rights. The determination of the type of speech to be preserved - when based on local customs, laws and normative values of a country - may result in removing the voice of valid dissent and opposition which views these platforms as alternatives to the controlled tools of speech available within the country. This will simply remove pluralism of content as the potential for diversity of opinion and sources is reduced. To simply filter or censor information that is claimed to go against the norms practised in a country is seen as too simplistic an approach. The determination must then be taken a step further – are these national or domestic customs, laws and values uphold civil dignity and human rights?

The second determination is the action to be taken when faced with removal of content or termination of users' accounts. The pressure on the gatekeepers of these platforms is to determine the right course of action to take. Should there be summary termination without notice – as stipulated in *Twitter's* rules? Are these rules upholding the basic rules of natural justice – an opportunity to be heard? The incidences of removal followed by reinstatement suggest that perhaps the gatekeepers should be less quick to remove and block content. The onus is then to keep the offensive content up to avoid wrongful censorship.

Should there be independent moderation? In the case of certain countries, such as the UK, complaints of content in the mainstream media are made to an independent regulator. In ensuring that the standards imposed by the platforms leave the Internet with a strong conception of freedom of speech/expression, validation by an independent body, in the absence of any state imposed law, of any action or decision taken by these platforms will provide a mechanism for check and balance.

To ensure a healthy marketplace of ideas and a functioning public sphere, these platforms are mindful that their evolved role as the Fifth Estate is not to be taken lightly and that the exercise of balancing opposing interests in controlling free speech is a delicate one. There is no place for an "absolutist" approach to free speech. The right to participate on these platforms must conform to some rules of civility. If the realm of social networking platforms remains unfiltered, where negative elements thrive, where there is more attacking views than challenging ones, this will merely discourage users to use these platforms in order to participate in socio-political discourse. The platforms will not be seen as the "marketplace of ideas". It will be the end of a vital outlet for free speech.

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