Human Rights Online or on the line? The Role of New (social) Media in Human Rights Protection

Katharine Sarikakis & Joan Ramon Rodriguez-Amat

1. Introduction

It is hard to imagine modern life without some form of media and communication technology accompanying everyday activities: Human life is surrounded by technologies that provide us with the opportunity and means of information, connection, entertainment, education, creation of our own art or content, but also to conduct businesses, buy and sell and work. Not confined to the living room anymore, the media are mobile, versatile, converged, and available around the clock. The new media have been heralded as promising and liberating technologies: From their everyday use of posting photos of family and friends and connecting with them via Facebook, for example, to political participation, as in the recent Europe-wide protests for social justice and the Arab Spring, their role in times of crisis is multifaceted bringing together people and supporting democratic participation.

At the same time however, the new media forms prompt old questions anew with regards to common understandings and practices of upholding human rights. Digital technologies, global markets and shifts in political and other forms of constellation around the world, from situations of crisis and fear of terrorism to financial meltdowns and civil unrest, have provided the framework within which governmental organisations as well as private corporations have turned their attention to the ways in which digital communications can be used to serve their purposes. There are various issues in relation to the ways in which new communication technologies and in particular the digital media world pose new challenges to established - and yet fragile - human rights, not only in regions that are historically traumatised by human rights violations, but also in so-called Western democracies whose track record and official commitment to safeguarding of human rights is generally much better. The areas mostly affected by the new environment of digital communications are the right of freedom of speech and related right of assembly and association (see Nowak, "Freedom of Expression, Association and Assembly"), and the right to privacy (see Nowak "Right to Family Life and Privacy"). At the same time, the fact that information and communication technologies are so widely integrated into every aspect of life, has led many to argue for rights related to access to these technologies, in particular to the

internet. This accompanies claims for the introduction and inclusion of the right to communicate, as a widely encompassing right that aims to recognise the multifaceted functions and roles of human communication.

This chapter is organised in two main strands: on the one hand, the tension between freedom and security; on the other hand, the tension expressed in the opposition between the claim for free access to public (communication) services, private ownership and the protection of private property..

1. Tension between Freedom and Security

Social media have been hailed as spaces that enhance the possibilities of individual emancipation. They grant certain conditions of individual specificity, egalitarian participation, including rights to freedom of expression and to privacy, and the possibility of accessing a common culture as well as participating in the community. Digital network technologies, such as Facebook and Twitter, grant members a form of universal egalitarian recognition (). Platform users are considered to own the right to exist as equals and to express themselves, participate, and discuss with others. The terms and conditions in the moment of joining a virtual community refer to forms of respect and privacy expected inside the online community, for example, as Article 3 UDHR concerning security of the person and Article 12 UDHR concerning the right of individuals' privacy demand, as well as the social media specified rights of usage and limits of participation. The regulation of the latter often refer to the procedures and conditions of data protection (see Tschohl, "Data Protection") Whereas inside the social platforms there might be limitations to what can and what cannot be published, social media are founded on the principles of freedom of expression and opinion; in several cases, the participants are entitled to both denounce the abuse or the inappropriateness of certain published contents *and* to choose to the extent to which they can access such contents. Both mechanisms complement the assumption that there is a form of profound plurality and diversity in thought, opinion and expression in online participation.

Complementary to these assumptions related to the individual and her possibility of being, expressing and participating, there are human rights that protect the elaboration and development of those opinions, expressions, as well as the respect for diversity and the promotion of understanding and tolerance; and human rights that refer to the right of cultural participation and to the protection of economic, social and cultural conditions, that facilitate the formation of the individual's personality.

Social media also constitute spaces of community sharing extensive cultural contents, and are often explicitly used as platforms for education: teaching, distributing, exploring. In this sense, social media also contribute to the formation of human beings as competent members of a community, by supporting them in gaining critical intellectual capacities to participate in the political and cultural spaces of their online and *offline* communities. Furthermore,

social media platforms are cultural spaces on their own and contribute to the expansion and development of a whole extension of meanings, languages, artistic expressions, remix activities of cultural products ranging from irony to criticism, from common places to vanguard. Several scholars explain that the culture of sharing, the practices of crowdsourcing and the forms of collective production are generating new forms of literacy, new forms of knowledge and ultimately new forms of solidarity, social awareness and reflexivity. This corresponds to the right of members to freely participate in the cultural life of the community.

The sense of community is not only of fundamental value because it provides the "comfort" of belonging and solidarity among community members, but also because it is a requisite to political participation in the democratic process. Freedom of expression through online debate, the formation of a common culture and ultimately the possibility of constituting associations, and of organising social mobilisation are structural pieces for a further formation of a self-aware public that participates in the public sphere. Article 21(3) UDHR states that the will of the people shall be the basis of the authority of government (see Stern, "Right to Political Participation"). It is arguable that the capacity of social media to facilitate culture and community formation contributes to the formation of a people for democracy. Moreover, the formation of new communities may be seen as contributing to the development of personality as expressed in Article 29(1) UDHR; "Everyone has duties to the community in which alone the free and full development of his personality is possible. (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

Thus, one can argue that , online communities may foster basic forms of self-governance based on rules that are fair to the members of the community, since they are the same for all and are being monitored by the online communities themselves ie by peers. Such a self-regulatory possibility for communities can be seen for instance in recent processes of social mobilisation, demonstration and protest as in the case of the *Indignados* who during the spring 2011 structured a network community around the squares of the urban centres in Greece and Spain. Another example of political action started a process of democratisation in several South-Mediterranean countries such as Tunisia, Egypt and Libya in early 2011. The social and political processes taking place in the three countries have earned the name of *Twitter revolutions* because it is considered that social media contributed actively to criticise, mobilise and articulate the protests. Social media might work, also, as an instrument to denounce the abuse or lack of human rights. These practices of denunciation also belong to possibilities of social media to claim against regulations involving them. The paradox is that social media can work as instrument to denounce regulatory measures of internet or the digital

networks: For instance, the creation of executive non-judicial bodies designed to shield copyrighted works on the internet such as in the cases of France, Spain or the United Kingdom, were denounced as a form of unfair tribunal that also undermines the presumption of innocence by implementing a three strike rule, a system of graduated response that castigates reincidence. In new regulation on internet the three strikes rule starts with a warn and increases until the blocking of internet access

These forms of regulating internet content are implemented on a global-scale under the 'mandate' of fighting piracy and counterfeit and protecting intellectual property. The complexities of regulating intellectual property create a loop of three conceptual difficulties: immaterial property, cultural contents and the moral rights of authorship (. The protection of private (intellectual) property, private data and personal privacy necessitates to strike a balance between those conflicting rights/interests.

1. Tension between Public Access and Private Ownership

Access plays a major role in the human rights debate with regard to digital media. . In Finland, for example, access to adequate broadband is considered a human right, and in the EU internet service providers (ISPs) must offer a minimum of bandwidth. At regional, local and urban levels, public initiatives set public and free hotspots for wireless internet access. These public initiatives assume that online access is a right and that public institutions have the duty to provide it. Hence, according to this argument, online social networks are considered public and common interest.

These initiatives have consequences for the consolidation of human rights: They are granted not only to the inhabitants of the physical region but also to online "visitors" who cross borders, irrespectively of their documentation status, in contrast to the physical world which distinguishes between documented or undocumented migrants. Granting free universal access to the internet as a public initiative might serve as a starting point for debates on identity and rights of political participation.

However, whereas internet was created publicly, the devices that allow access to internet are now highly privatised – computers, smartphones, tablets are expensive and commercialised goods. Moreover, most ISPs are private companies as are the most important social media platforms. Therefore, the social media are inevitably modulated according to business interests opening three major strands of discussion: first, to what extent private agreements between free individuals can be examined from a human rights approach; second, debates about the processes of production, ownership and labour, as a matter of the right to work, rights in work and the right to leisure; third, the question of intellectual property and the conflict between the right to access shared, common and collective culture and the cultural industry, authorship and private property of intellectual works .

The inherent capacity of web 2.0 to allow free expression online has been used by online software platforms as an infinite source of unpaid work, such

as the translation of software to minority languages – Twitter has recently been translated into Catalan thanks to the voluntary effort of many users. Since private companies monetise such a voluntary effort, some human rights such as the right to equal pay for equal work, might be put at stake. But the fragmentation and the difficulty of finding common spaces of people doing the same work online probably obstruct efforts to form trade unions and collectively protect their interests as workers. On the other hand, the possibility of internet access through several mobile devices creates the fiction of permanent connection that is easily extended to the effect of permanent visibility, and permanent work.

The notion of private ownership of the digital platforms raises questions about the rightful owner of online media content, especially if there is a collision between the original author of a particular product and the new author of a remix of works that borrows from previous works. In other cases, the name of *author* is denied so that the contributor, the participant, the user is not considered as author and therefore does not earn the rights of authorship. Finally, the classic conflict between author and owner of a copyright finds a new space of struggle in the social media where ownership falls between the platform, the interface and the software in which the user has published or created her work, and by doing so has conceded all rights of exploitation to the platform. In terms of authority, the owners of social media have the capacity of establishing rules of behaviour for the users and rules involving published content. This means that the initially assumed freedom of expression can be strategically adapted according to particular interests of the owners who can freely decide what is and what is not publishable. Therefore, as long as the social media are profit-oriented, the data they contain can be considered part of the product and can be collected, analysed, sold, shared, and eventually used for more profit in advertisement and social ordering through control by the State. In this case, the traded data is private information concerning users and their practices which raises issues concerning privacy.

1. Universal Rights, Global Humanity

Social media are promising spaces of enhancing democracy and human rights and spaces of control at the same time. Freedom of expression and protection of privacy are assets compatible with the conditions of real time transnational participation in public debate, in the formation of cultural community and the integration of individual differences. These participatory social platforms might even break the rigid structures of undemocratic regimes. For some, this is a symptom of the revolutionary and liberating capacities of the social media and of their possibilities as multipliers, diffusors and practitioners of human rights.

However, these promises demand a critical look at the national structures of sovereign regulations and the plea for security sparked by claims of

threatening piracy, violation of privacy, theft of personality and worse. Private ownership of social media has to be an anchoring point for a broader reflection on profit, authorship, labour and several other practices that might use the liberating dream as mask for a smart violation of (human) rights.

Social media are part of a broader process of globalisation that started as a promise of cosmopolitan equalitarianism which also entailed practices of domination. The promise of universal participation could also be masking a crooked interpretation of human rights. It is important therefore to consider social media as dependent on what Article 28 UDHR requires: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized".

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Policy documents

Civil Society Declaration to the WSIS 2003 *Shaping Information Societies for Human Needs.* available at http://www.itu.int/wsis/docs/geneva/civil-society-declaration.pdf.

Further Information

Universal declaration of Human Rights available at http://www.hrweb.org/legal/udhr.html

Charter of Fundamental Rights of the European Union (2000/C 364/01) available at http://www.europarl.europa.eu/charter/pdf/text_en.pdf

Short Bios of the authors

Katharine Sarikakis, PhD. Professor of Communication Science and Media Governance at the University of Vienna. Founding co-editor of the *International Journal of Media and Cultural Politics* Chair of the Communications Law and Policy Section of the European Communication Research and Education Association (ECREA). Former tenured and visiting positions held at the University of Leeds; Karlstad University, Sweden, McGill University and Hainan University, China. Www.sarikakis.info

Joan Ramon Rodriguez-Amat Dr. Assistant Professor at the Institut für Publizistik- und Kommunikationswissenschaft at the University of Vienna. Review editor of the *International Journal of Media and Cultural Politics*. Former lecturer at the University of Vic (Barcelona, Spain) with teaching and research periods in Germany, United Kingdom and France.