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One Platform, Two Presidents: Twitter's Suspension of President Trump's Account, President Buhari's Suspension of Twitter, and Platform Governance in the United States and Nigeria

Authors

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Abstract

This paper analyses two controversies involving Twitter and two sitting presidents: Donald Trump of the United States, and Muhammadu Buhari of Nigeria. In January 2021, a mob of Trump supporters attacked the United States Capitol in a bid to prevent Congressional certification of the election of Joe Biden as president. Twitter concluded that Trump had misused his @realDonaldTrump account to incite the attack, in violation of the platform's "Glorification of Violence" policy, and permanently suspended the president. In June 2021, the Nigerian government banned Twitter indefinitely in Nigeria, claiming that secessionists were using the platform to undermine Nigeria's "corporate existence." The suspension of Twitter was actually retaliation for the platform's deletion of a tweet by President Buhari, a retired general. The tweet had warned a banned secessionist organization that they "will be treated in the language they will understand." Twitter believed that tweet violated its "Glorification of Violence" policy, because it was a veiled allusion to the Nigerian Civil War in which millions of people had died.

Both Twitter "affairs" ended up in court. In the United States, Twitter's suspension of President Trump's account gave the Supreme Court an opportunity to clarify Internet governance. That legal issues had arisen in a case, *Knight First Amendment Institute v. Trump.* The question was whether Trump's Twitter account was a public forum under the First Amendment. Lower courts had ruled in the affirmative. On appeal, the U.S. Supreme Court reversed– after Trump had been suspended from Twitter. It ruled that Trump's Twitter account was not a public forum, and thus, the First Amendment was not applicable to it. The Court further ruled that Twitter's suspension of Trump's account demonstrated that the platform was a privately-owned entity, not a public forum. The Twitter "affair" in Nigeria also ended up in court. When the government banned Twitter, civil society organizations filed suit at the Community Court of Justice of the Economic Community for West African States (ECOWAS). The plaintiffs alleged that by banning Twitter, Nigeria had violated their right to freedom of expression, access to information, and media freedom contained in the Nigerian Broadcasting Act 1992. The issue before the Court was whether Nigeria had breached the right to freedom of expression, access to information, and media freedom. A three-judge panel ruled in the affirmative, holding that Nigeria's suspension of Twitter was "unlawful and inconsistent with the country's international obligations" under the African Charter on Human and Peoples' Rights, and the International Covenant on Civil and Political Rights. Since Nigeria and Twitter had reached a settlement that saw Twitter agree to stringent, censorious, content moderation conditions in exchange for reinstatement of its service–all that was left for the court

was to order Nigeria not to repeat an unlawful suspension of this nature in the future. The Twitter "affairs" in Nigeria and the United States demonstrate how soft law, the terms of service of online platforms, provided facts that were germane to hard law, the law in the books, in two different Internet governance regimes.

Key Words
Internet law, platform governance, Twitter suspension of Trump, Twitter, Nigeria.

Free Speech and the LGBTQ Community: Examining Increasing Attempts at Restricting Queer Expression

Authors

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Abstract

In March 2022, Florida Governor Ron DeSantis signed into law House Bill 1557, the Parental Rights in Education Act, which prohibits "instruction on sexual orientation or gender identity in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students." Since then, several states of followed suit, developing similar bills partly or wholly focused on restricting discussions about sexual identity or gender in public schools. Three district court rulings have upheld the law, although a group of parents, students and teachers continue to push for legal intervention on the grounds that the law is unconstitutional. In October, Congressional Republicans introduced the Stop the Sexualization of Children Act of 2022, a law that appears to be a national version of the Florida bill.

The Parental Rights in Education legislation and its progeny represent but a small sampling of the laws targeting LGBTQ people in the United States today. According to CNN analysis of data compiled by the ACLU, across the United States, lawmakers in 35 different states have introduced at least 162 bills this year aimed at stripping members of the LGBTQ community of their civil rights and liberties. That number, up slightly from the previous year, represents a record-breaking year for this type of legislation.

This presentation seeks to examine the multitude of ways in which the First Amendment rights of LGBTQ people are coming under assault by U.S. lawmakers. The presentation will focus predominantly on state and federal actions that have arisen since the passage of Florida's Parental Rights in Education Act. Additionally, this presentation will consider *303 Creative LLC v. Elenis, a public-accommodation case slated for argument in December 2022. In Elenis, the U.S. Supreme Court will rule on whether application of the Colorado Anti-discrimination Act to compel an artist to speak or stay silence is a violation of the First Amendment. Finally, this presentation also will consider recent state attempts to ban or limit live drag performances. By considering these disparate laws and cases simultaneous, this presentation seeks to draw attention to the recent concerted effort to severely limit or completely remove previously established free expression and association rights for members of the LGBTQ community.*

Key Words

Free speech, First Amendment Law, Communication Law, LGBTQ studies

Framing the violence: A typology of aggressions against journalists and press freedom in Peru

Authors

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Abstract

Over the last years, the world has seen a significant increase in the number of attacks against journalists. This trend is not limited to one region, as journalists face a wide range of threats and dangers, including negative comments from government officials and politicians, physical attacks, public displays of rejection, online threats, the release of sensitive information on social media, and even murder or kidnapping. The situation is not different in Peru, which was ranked 91st worldwide in the Press Freedom Ranking 2022 according to Reporters Without Borders. In 2022, the National Association of Journalists of Peru (ANP) registered 303 attacks on journalists, the highest number this century. Although there have been some isolated efforts from civil society organizations and foreign embassies to promote the safety of journalists, there are no official plans or strategies to address these issues.

In response to this pressing scenario, this paper proposes a new typology of attacks against journalists based on a situational diagnosis of these aggressions in Peru in 2022, a year marked by political turmoil (a failed Coup d'Etat by former president Pedro Castillo, his vacancy declared by the Congress and his replacement by then vice-president Dina Boluarte) and a dramatic increase in the number of attacks against journalists. This typology is intended to provide a tool for measuring the dangers faced by journalists and identifying the legal and institutional measures necessary to prevent, protect, and procure justice for journalists.

Following a holistic approach to address a complex phenomenon, our typology categorizes the attacks faced by journalists into six factors: 1) the type of harm inflicted; 2) the means of aggression; 3) the motivation behind the attack; 4) the identity of the attacker; 5) the frequency of the aggression; and 6) the vulnerability of the journalist. These criteria are directed to provide a useful framework for national and judicial authorities in Peru and other countries facing similar risks.

The data for this study was collected from three sources: reports of threats against journalists from the Instituto Prensa y Sociedad (IPYS), a regional NGO working on press freedom; reports of threats and harms against journalists from the National Association of Journalists of Peru (ANP); and quantitative and qualitative data obtained from a workshop for journalistic safety conducted by the authors in collaboration with UNESCO Peru and the British Embassy in Lima.

This paper aims to make a contribution to the existing literature on violence against journalists and press freedom, and serves as a starting point for discussions on public policies aimed at eradicating violence against journalists and implementing practical solutions in the areas of prevention, protection, and procurement of justice. Through our proposed typology, we hope to provide policymakers with the information they need to better address this issue and ensure the safety of journalists in Peru and other jurisdictions.

Key Words
Safety for Journalists, Press Freedom, Violence Against Journalists, Journalistic Activity

Trusted Flaggers and the European Digital Services Act: How Public Authorities embrace Private Standards for Content Moderation

Authors

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Abstract

The power over online free expression that private commercial digital platforms wield has led governments to intervene and make sure that they conform with democratic values and respect fundamental rights such as freedom of expression while, at the same time, making sure that illegal, undesirable, and potentially harmful content stays out of citizens' social media feeds.

EU authorities have been among the most active worldwide in attempting to reign in platforms, but they have run into challenges of jurisdiction and applicable laws in an online environment that operates seamlessly across national borders. Inside the EU, when imposing obligations for illegal content takedowns, authorities have run into the problem of having to deal with 27 national constitutions that set their own limits, at the local level, of a right to freedom of expression recognized at the EU level.

Eventually, EU authorities understood that they could not make determinations on the legality of online expression by contrasting it with 27 different legislative systems every time and be able to police the internet in any meaningful way. Instead, they opted for deciding on the adherence of a piece of content to the private community standards of social media platforms (which vary very little across countries, this is especially true in the EU) and reporting instances of content that were prohibited by those standards. This is what the Internet Referral Unit (IRU), operated by Europol, has been doing since around 2016 to take down terrorist-related content from social media platforms: reporting content to service providers so that they voluntarily consider if such content goes against their private standards and if it should be taken down. According to a a report (European Commission, 2016), around 90% of content referred by Europol was taken down voluntarily by platforms.

Fast forward to 2022, and the new Digital Services Act (DSA) mandates the removal of illegal content as a requisite for platforms to keep their intermediary liability protections and, among other provisions, mandates the adoption of "notice and action mechanisms" which allow "any individual or entity to notify… of the presence… of specific items of information (considered) to be illegal content" to platforms (art. 16 DSA). It also creates the concept of "trusted flaggers", entities granted such status by the Digital Services Coordinator of a Member State provided they met certain conditions (art. 22 DSA). Thus, essentially, the DSA codifies practices like those of Europol and broadens the scope to include other entities, including private ones.

While it is true that the DSA introduces governance mechanisms intended to strengthen respect for fundamental rights and democratic values by internet companies while enabling effective methods to combat illegal content, this work argues that it is necessary to determine if the DSA

will be capable of assuaging the following concerns: will the law be able to protect against potential overreach and potential over-censorship by trusted flaggers? Relying on private entities and private platforms standards and private notice and action procedures to make these determinations will guarantee adequate transparency, due process, and adequate judicial review? How will the DSA ensure that these decisions are fair and protect fundamental rights? To answer these questions, this work explores Europol's IRUs experience as a pre-DSA institutional flagger to then contrast this experience with the new DSA provisions regarding trusted flaggers.

By seeking answers to those questions, this work also seeks to reflect upon the following: even if the DSA can give enough guarantees inside the European Union, how can social platform users be preserved from potential overreach in other regions of the world? While a trusted flagger scheme seems like a good idea in a consolidated democracy, how would such a scheme work in a country that offers no such guarantees? What may seem like sensible policy in one context, may be dangerous when implemented in another. How wise would it be, then, to export DSA provisions into other legal regimes?

Key Words
Digital Services Act, Platform Regulation, Free expression, EU regulation

Medios tradicionales e internet: la evolución regulatoria en Uruguay y el contexto regional

Authors

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Abstract

Uruguay procesó tardíamente una reforma legal en su sistema mediático. Sancionó una ley de medios que reformó estándares regulatorios en 2014, al promediar un periodo de gobiernos de izquierda que dominaron la escena política durante 15 años. Los resultados de esa reforma regulatoria fueron de bajo impacto, manteniendo un sistema concentrado y con poca capacidad de innovación. Se trata, además, de una ley que no toma en cuenta la convergencia entre medios tradicionales e internet y que no afectó la compartimentación regulatoria y de mercados preexistente en el país, donde los medios no ingresan en el mercado de internet ni los operadores de telecomunicaciones en el de contenidos. A su vez se puede constatar la inexistencia de políticas regionales (Monje, 2021) y un rezago sintomático en la elaboración de políticas que intenten regular internet y eventos relacionados con el big data y la inteligencia artificial.

Uruguay puede resultar un caso singular, ya que su mercado se estructura en torno a un régimen de competencia en la telefonía celular, una alta concentración en los sistemas de medios tradicionales y un régimen de monopolio en el servicio de fibra óptica al hogar por parte de una empresa estatal (ANTEL) con una cobertura y velocidades que lo ubican en los primeros lugares de la región.

En el año 2020 se produjo un cambio de gobierno que propuso un giro liberal pro mercado. Actualmente está a estudio una reforma legal que rompería con la tradición de barreras altas entre los sistemas de medios y las telecomunicaciones, posibilitando el ingreso de operadores de televisión para abonados al mercado de internet (Beltramelli, Buquet y Kaplún, 2021). Esto sin embargo no evidencia una actualización regulatoria que atienda aspectos convergentes, así como tampoco elementos cruciales como el big data.

A partir de una metodología de process tracing, en esta comunicación presentamos un avance de investigación que ubica el caso uruguayo en su evolución histórica y sus particularidades en relación a la región. Analizaremos también el rezago regional y local en materia de regulación sobre big data, internet, ambientes convergentes e inteligencia artificial (Valente, 2022). Si bien Uruguay cuenta con estándares asimilados a la Unión Europea en protección de datos personales, algunos eventos muestran la casi nula capacidad de intervenir en favor de la ciudadanía. El debate sobre la reforma de los sistemas mediáticos y telecomunicaciones no incluye aspectos claves como los planteados en la normativa a estudio en Europa en la Digital Services Act (DSA) y Digital Markets Act (DMA).

Key Words

Regulaciones, medios de comunicación, internet, Uruguay, América Latina

Distintos nombres, misma preocupación: los medios alternativos, periféricos o extrasistémicos y su influencia en las decisiones político-electorales de los jóvenes chilenos en el Plebiscito Constitucional 2022

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Abstract

Del Fresno (2012) señala que la irrupción de Internet terminó con el cómodo monopolio de la producción de noticias e información de forma vertical dominante durante los últimos 170 años. Esta situación invadió las fronteras de los diferentes medios de comunicación, ocupando espacios intocables y creando escenarios nuevos y complejos, pues no se necesita ser profesional ni una estructura empresarial y/o tecnológica para intermediar en los mensajes.

Un juicio del autor, la irrupción de Internet ha obligado a los medios de comunicación a convivir con los “Social Media” de manera no voluntaria. Los medios de comunicación de masas han tenido como objetivo la divulgación intencional y pública por parte de una minoría, de símbolos y significados dirigidos a grandes audiencias, recibidos de manera más o menos pasiva para conformar la opinión pública. Los “Social Media,” en tanto, producen símbolos sociales e intencionalmente y significados con diferentes grados de confianza y generan climas de opinión que se presentan de forma pública como alternativa para la toma de decisiones de las personas en sus roles como ciudadanos y consumidores.

Así, los “Social Media”, pseudomedios, medios alternativos, periféricos o extrasistémicos, irrumpen como alternativa informativa, con especial predilección del público juvenil, influyendo en la más amplia gama de decisiones de este grupo etario, particularmente en el ámbito político y electoral. Sin embargo, su aparición y posicionamiento por lo general se da fuera del espectro de reconocimiento legal, alejados de las exigencias existentes en la normativa vigente a los medios que componen el sistema informativo tradicional y comprometiendo el pluralismo exigible.

Los efectos que los “Social Media” están teniendo en las audiencias juveniles constituyendo un eje fundamental para el levantamiento de información y resultado fruto de la investigación, así como la difusión de estos en el plano comunitario. En el plano global, de acuerdo con la Clínica Mayo, una encuesta realizada en 2018 por el Pew Research Center (Centro de Investigación Pew) a casi 750 jóvenes de entre 13 y 17 años revela que el 45 % está conectado prácticamente todo el tiempo y que el 97 % utiliza una plataforma de medios sociales, como YouTube, Facebook, Instagram o Snapchat.

Así, es válido y pertinente la pregunta ¿cuánto están influyendo los “Social Media” en el consumo informativo y el comportamiento político[1]electoral de jóvenes en Chile y cómo estas plataformas

interactúan con los medios tradicionales, particularmente frente a una circunstancia sensible desde la perspectiva político-ideológica como es el plebiscito estipulado para validar o rechazar la propuesta de redacción de una nueva Constitución para el país, en septiembre de 2022?

La ponencia presentará los resultados de la aplicación de grupos focales con la participación de más de 40 jóvenes universitarios de las Región del Bío Bío (sur de Chile) a fines del año 2022. Los primeros hallazgos demuestran que los jóvenes en Chile están reconociendo, validando y utilizando los denominados “Social Media” como fuente de información principal, desplazando el interés y uso los soportes tradicionales considerados en el sistema informativo tradicional. El desplazamiento que estos “Social Media” están generando es especialmente relevante en consumo de información político-electoral, lo cual puede evidenciarse a la hora de analizar el comportamiento de este grupo etario en el contexto político-electoral. El carácter excluyente de los “Social Media” en tanto medios periféricos del sistema con las estructuras, normas y orientaciones los dejan fuera del espectro normativo-legal y -por lo tanto- sin la posibilidad de establecer los efectos de la mencionada interacción en asegurar el pluralismo informativo como garantía constitucional establecida en la Constitución Política de la República de Chile y la Ley 19.733 (Ley de Prensa), tanto en los hechos que informan como en los contenidos que producen y difunden.

Key Words
Jóvenes, medios alternativos, medios tradicionales, elecciones, Constitución

Fair Play: A Dawn for the Copyrightability of Video Game Rules in China

Authors

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Abstract

Piracy and clone are serious threats to video game industry. As a paradigm of innovative creation in new media and content, video game industry inevitably encountered the challenges from imitators and copycats, and one of the dilemmas is the lack of legal protection for the “game rules”. Rules are the soul of video games. However, for a long time, the boundary of protecting the “game rules” of video games under the legal framework of copyright law has been relatively vague in different jurisdictions. Despite being condemned as unethical, piracy and clone on the game rules have not been ruled as illegal in major jurisdictions, as current copyright laws do not list the "game rules" of video games as a protected type of work, nor do it give any advice on how to protect them. Although the legislation provides alternative remedies and countermeasures, but limitations still exist in many aspects by nature. The proliferation of video games with similar game rules caused not only severe homogeneous competitions, but also a deteriorated environment for innovation in digital media and content. To solve this dilemma, this article first examined the history and practice of legal remedies for “game rules” in the US and China, explored the scope of legally protectable “game rules” and discussed feasible approaches to protect “game rules” in current Chinese legal regime. In addition, through the interpretation on the amendments in the China Copyright Law 2020, this article argued that such amendments will fundamentally adjust the scope of protected works as per definition and equip the judiciary authorities with greater discretions on regulating those unethical piracy and clone with enhanced legal certainty. Thus, such legislation may eventually provide better coping strategy under the rapid ever-changing reality for the copyrightability of the “game rules” as to secure the fair play in the competitions of the global video game market.

Key Words

game rules, copyrightability, video game, China copyright law amendment

From Internet to Metaverse: An exploration on the legal basis for a globalized Metaverse

Authors

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Dr. Xuan WU - Wuhan Textile University

Abstract

The attention and debates on metaverse have been raised and heated recently. Capitals were keeping flowing into this novel investment hotspot, but the term “metaverse” seems to remain a concept rather than a sophisticated system. Premature metaverse is facing challenges from undeveloped hardware and software, adverse social impacts of online echo chambers and digital alienation, as well as safety and privacy loopholes. To date, while major jurisdictions have developed complex judicial environment to protect the operation of internet and the stakeholders thereof, however, there is no specific laws or regulations that were designed to regulate the metaverse. Industrial autonomy still plays a crucial role on metaverse platform governance, while laws pertaining to internet safety, personal privacy protection and online crimes extend their applications to the arena in question. To fill this gap, this study intended to define the metaverse as a completely immersive 3D digital environment that is capable, accessible, and affordable to majority of global population. In addition, this study further argued that the legal basis for such megaproject shall base on the consensus of relevant international laws and treaties, of which the subjects shall include but not limited to (1) the foundation of a competent international authority to government the entire globalization of metaverse; (2) the foundation of a unified currency or a currency exchange mechanism; (3) the foundation of online trading system that cover both virtual goods and services; (4) establishment of rules that apply to users and governing authorities; (5) establishment of dispute settlement mechanism, from private to public, from regional to global. Moreover, this study also suggested that the dynamic interaction between states’ physical sovereignty and digital sovereignty will inevitably affect the foundation and the development of the metaverse and only through a competent supernational governing authority with adequate dispute settlement body, can we secure.

Key Words

Metaverse, Legal basis, International treaty, Digital Sovereignty, Dispute Settlement Body

The Social Science Deficit in AI Regulation: An Analysis of the Composition of the European Commission's High-Level Group of Experts on Artificial Intelligence and Implications for Technology Regulation.

Authors

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Abstract

Artificial intelligence (AI) is a rapidly developing technology with a potentially significant impact on human rights. Previous work has suggested a range of emerging concerns related to bias and discrimination and that the public expects strong AI regulation (Kerr et al., 2020). There is a growing concern that AI regulation should take into account the perspectives and considerations of a wider variety of disciplines, such as ethics, sociology, anthropology and philosophy (Beckert, 2021; Munn, 2022; Sartori and Theodorou, 2022; Sloane and Moss, 2019). The Directorate General for Communications Networks, Content and Technology of the European Commission (DG CNECT) is the leading DG for Draft AI Act for the European Union (EU). DG CNECT also set up a High-Level group of experts on AI (AI-HLEG) in 2018, consisting of 30 members[1] in three types of memberships.[2] The official reports and working papers of the AI-HLEG were significant inputs to the EU's Draft AI Act.

This paper draws upon the first stage of an ongoing PhD project. It asks firstly, "What disciplines and perspectives were represented in the AI-HLEG (2018-2022)?", and secondly, "What is the impact of the underrepresentation of social science professionals in AI-HLEG on the development of the EU's Draft AI Act?" This paper builds upon previous research on the affiliation and backgrounds of the members of AI-HLEG (Palladino, 2021). However, it conducts a more comprehensive socio-legal exploration of the dominant professional backgrounds of group members and of the AI Act itself.

The paper examines the disciplinary backgrounds of AI-HLEG members using qualitative document analysis and affiliation network analysis. The documents were obtained from the official websites of the EU, and inputs to Draft AI Act by the AI-HLEG are examined. Reports and documents prepared by AI-HLEG between 2018 and 2022 are also analysed. Additionally, affiliation network analysis is conducted via NodeXL considering the personal websites, and public LinkedIn profiles of members of the AI-HLEG. The study found that the composition of AI-HLEG and the dominant background of group members was, and is, engineering or computer science, leading to questions about non-representation of different disciplines in technology policy making. The initial findings of this ongoing study indicate that the perspective of social sciences may not have been adequately reflected in Draft AI Act. An initial analysis of Draft AI Act has found that some of the

provisions lack clarity and are narrow in scope from a legal perspective, which raises questions about the applicability of the Act. This raises important considerations for wider technology regulation.

[1] However it is not limited, CNECT may extend this number. Also, CNECT establishes a reserve list of up to 30 suitable candidates. See T< https://ec.europa.eu/newsroom/dae/redirection/document/50251 > accessed 12 October 2022.

[2] For the types, type A is for individuals appointed in a personal capacity, type B is for representatives a common interest shared by stakeholders and type C is for the organisations in the broad sense of the word, including academic institutions, companies, consumer organisations, research centres, trade unions, religious organisations, civil society interest groups.

Key Words
AI Act, AI-HLEG, Social Science Deficit, technology policy-making, technology regulation

Legal Activism in Heirs' Property Law Reform: A Legal Rhetorical Paradigm for Social Change

Authors

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Abstract

This study explores heirs' property reform in the United States. My research studies the problems and potential solutions and investigates rhetorical ways that lawyers gain cultural competence to better interact with publics and empower citizens to work toward reform and make use of the law. There are four target audiences for this work: 1) the lawyers themselves 2) advocacy organizations 3) property owners who want to self-advocate by learning about the nature of heirs' property law, and 4) scholars working on the relationship between rhetoric and law.

I study legal scholars' and activists' mobilization of personal and community narratives into the law. Specifically, the movement of public discourse into the law, focusing on the transformative qualities of law that are grounded on public narratives and grassroots movements. Two aspects of heirs property reform stand out in this study: 1) the history of racism that has both directly influenced the law and distorted its implementation, resulting in institutional structures that disadvantage specific populations, and 2) the rhetorical problem of how we get individuals to feel that they have a voice and can talk back to and engage with their problems, focusing particularly on the agency of property owners and legal activists as they seek to both change and work within institutional structures.

This research's theoretical contribution is to advance a legal rhetorical paradigm for social change as a model for how we might forge *hope* among Black landowners and other historically oppressed people through the law. Hope to motivate them to use the legal system, participate in public discourse and build coalitions to fight for better laws. As a "blueprint" of rhetorical practice, this paradigm privileges the militancy of legal activists and scholars who use the underpinnings of legal realism to strategically mobilize legal stories to create change in the law and alleviate oppressive situations. I argue that legal scholars not only wield power in how we understand the law but dictate the "responsible" and "strategic" means of creating meaning.

Research Questions

RQ1: How did heirs' property become a problem?

RQ2: How can we understand legal realism as a rhetorical practice?

RQ3: How can Thomas Mitchell's practice be used as a model for legal activism?

RQ4: How do legal scholars mobilize landowners' narratives to advocate for legal change?

Methods

My research draws from rhetoric, legal theory, decolonial theory, critical race theory, social movement theory, and the digital humanities to study how African American landowners are disproportionately affected by injustices in property law through white supremacy and discourses of exclusion. To this purpose, I use discourse analysis to survey the mechanisms of oppression hidden in the law by juxtaposing a historical revision of property law and land loss narratives. Second, I use rhetorical analysis to identify and examine the rhetorical practices used by legal activist, Thomas Mitchell, to address the historical and legal issues explored beforehand. Third, I use rhetorical theories to develop a rhetorical legal paradigm based on the practices of Thomas Mitchell and the underpinnings of legal realism.

Key Words
Publics, Citizen action, Digital Activism, storytelling, social movements, legal activism

Intermediary Liability, Algorithms, and Governance of Digital Platforms

Authors

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Abstract

This paper offers an analysis of current and potential future regulatory regimes that govern the digital public sphere in the European Union. I evaluate three inter-related, but separate, problems – intermediary liability, algorithmic policing of communication, and that major digital platform operators including Facebook, Twitter, and Google are massive global actors not headquartered in the European Union. I argue that solutions may be found through what Flew (2021) details as transparent co-regulatory agreements between governments and private actors, but the success of this regulatory model relies on good faith from tech companies that prioritize advertising revenue and other profits.

Intermediary liability laws that protect online service providers from legal accountability from illegal and potentially harmful user-generated content. These protections may encompass copyright, privacy, data breeches, hate speech, and, increasingly, misinformation or "fake news" that is harmful to public discourse and democratic norms. The primary criticism of these laws is that they offer too much power to digital platform operators that engage in lax enforcement. For instance, Google has received criticism for not policing the privacy standards of the E.U.'s General Data Protection Regulation (Logan, 2019). Intermediary liability is still the consensus form of policy supported by digital rights groups as a way to protect and enhance free expression and innovation, though, as it prevents incentives for intermediaries to over-censor through overreaching algorithms out of fear for legal repercussions (Center for Democracy and Technology, 2012).

The strongest criticisms of algorithmic policing of the public sphere come from critiques of copyright policies. For instance, Articles 11 and 13 of the E.U.'s Directive on Copyright in the Digital Single Market force intermediaries to filter all user-generated content through a likely problematic database of copyrighted material (Logan, 2019). I argue that these algorithmic regulatory mechanisms are even more erratic when applied to civil discourse. Namely, as noted by Bechman and Bowker (2019) and Llanso (2020), artificial intelligence and machine learning lack the contextual abilities to discern the nuances of discourse, and can end up amplifying misinformation. A purely algorithmic approach tied to laws that hold digital platforms responsible for misinformation or hate speech potentially lead to the censorship of legitimate civil discourse at the benefit of questionable or harmful content.

The final problem I address is that digital platforms are massive global corporations headquartered in the United States that do not incentivize transparency. A European response to this problem, and the problems of simply enforcing algorithms and liability, should involve outreach to tech companies, clear communication channels, and some type of regulatory enforcement that carries

weight without alienating the private sector. This is a difficult, if not impossible, task that nonetheless is necessary in order to facilitate and health and vibrant public sphere in the EU.

Key Words
Platform regulation, digital intermediaries, algorithms, transparency, liability

How does Legal Traditions Matter in Information Governance? The Diffusion of Freedom of Information Laws among OECD countries (1949-2013)

Authors

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Abstract

Information has always played a crucial role in governance, especially in the big data era. However, throughout much of the last century, governments in most liberal democracies have built up statutory provisions to restrict the flow of government information until the late 1940s when Freedom-of-Information (FOI) laws began to spread. FOI legislation has been regarded as an innovative device for promoting democracy, reducing corruption, advancing political accountability, and improving press freedom (Besley and Burgess 2002; Hazell, Worthy, and Glover., 2010; Lin, 2020; Nam, 2012; Reinikka and Svensson 2004; Roberts 2003).

Most studies on the diffusion of FOI laws have emphasized the "regime effect" – an institutional commitment to democracy is the precondition of adopting FOI laws. Even though offering insightful understanding, these studies fail to explain the variation in the timing of adoption among democracies. For instance, the United States passed the FOAI Act in 1966, while the United Kingdom only did so in 2000. Why did some democratic countries adopt the laws earlier than others? If the institutional commitment to democracy alone is not enough to explain the diffusion of FOI laws, what other mechanisms facilitated the globalization of FOI laws? Regarding FOI laws as a legal innovation, this study is interested in how legal traditions affect the diffusion of legal innovation.

Method and Analysis:

I collected data for each of the 30 OECD countries starting from 1949 to 2013. The data for each country was censored in the year that each country adopted the FOI law or in 2013. Thus, our sample consists of 1463 country-year observations. For each country, the following variables were collected as proxies of theoretical interests to explore how legal traditions shape the timing of adopting FOI laws.

- *FOI legislation* is a dummy variable to indicate if a country in a particular year has passed FOI legislation.
- *Legal tradition.* The FOI legislation is presumably embedded in the legal tradition of each country. Following La porta et. al. (1997, 1999, 2008), we classified the legal traditions into five categories: common law tradition, civil law tradition with French origin, civil law tradition with German origin; and civil law tradition with Scandinavian tradition; and legal tradition in countries having a history of socialism.

- *Herfindahl-Hirschman Index level (HHI)* measures the degree of domestic political power concentration. It is a sum of the squared seat shares of all parties in the parliament.
- *International Trade Connection* is measured by the percentage of a country's imports from countries that have adopted FOI laws.
- *Civil society* is measured by a five-year-averaged *female secondary school enrollment ratio* (Baum and Lake, 2003; Subbarao and Raney, 1995; Welzel, 2006; Welzel and Inglehart, 2006)

In addition to the explanatory variables described above, we also controlled for other domestic factors including *per capita GDP*; the *growth of the public sector* since significant public sector expansion has been a necessary condition for the adoption of an FOI law (Bennett,1997); and key events that signify the global legitimacy of FOI laws.

I then conducted Discrete-time Event history analysis (EHA), a "gold standard" approach to the empirical testing of diffusion (Berry and Berry, 1999; Tuma and Hannan 1984), to model FOI law expansion as a dynamic process.

Results:

Our empirical data reveal that diffusion of legal innovation occurs through both internal and external mechanisms. Internally, power competition and human capital are significant channels to stimulate legal innovations. Externally, trade connections with other countries and global norms push the spread of FOI laws around the world. Legal traditions do matter and their influences are channeled through mediating both internal and external mechanisms. **Table 1 (http://bit.ly/3RJQhxg)** summarizes how the three mechanisms (political competition, trade connection, and societal education) vary in countries with different legal origins.

The findings from the OECD countries offer implications for the current discussion on information and governance in the post-pandemic era and among non-democratic countries. The "engagement approach" is more effective than the containment approach when international organizations want to introduce change in governance. Connecting with information transparency advocators through international trade connections can expedite the FOI diffusion process. This explains the recent diffusion of FOI laws among countries with little institutional commitment to democracy. During the pandemic, all countries more or less adopt the containment approach to fight against the virus. Thus, such an engagement approach calls for more attention in the post-pandemic era for the sake of building a resilient global environment for future shocks.

Key Words

democracy, Freedom of Information laws, diffusion, legal origins, OCDE countries

'The Lady Doth Protest Too Much': Overlooking Calls from Victims to Reform Gender-Based Cyberviolence

Authors

Ms. Sheila Lalwani - University of Texas at Austin

Abstract

The story of efforts by women's groups to address gender-based cyberviolence in the months leading up to the passing of the *Network Enforcement Act*, the landmark German law that holds social media platforms liable for hate speech, fake news and disinformation, provides a unique insight into why gendered online abuse persists. Before Germany passed the *Network Enforcement Act* in 2017*,* it invited feedback from stakeholders. A number of civic groups stepped forward to indicate that the online attacks that women face were more than concerning, i.e., they were dangerous, and cited examples of instances of when online attacks became real. Despite numerous comments from women lawyers, judges and advocacy groups, no substantive changes based on gender were made in the law. In the years since the *Network Enforcement Act* went into force, studies indicate that gender-based cyberviolence has actually worsened, and not just in Germany, but in every country with similar laws in place.

This Article reconstructs efforts on part of civil society groups to advocate for strong platform governance laws to address gendered cyberviolence. More than 24 testimonials from public consultations, interviews, Twitter and Facebook were analyzed as part of this Article. The primary methodology is an analysis of public strategies, including online advocacy, civic discourse, media interviews and written statements and testimonials from these groups, to advocate for stronger penalties for cyber violence. To date, no scholarship catalogues, situates or contextualizes the public comments and testimonials made during this process as emblematic of modern German society and the fundamental challenges democracies face in addressing and prosecuting gender-based cyberviolence.

This Article analyzes and contextualizes the data as a clear example of the limits involved in regulating the internet. The purpose of this Article is to advocate against leaving women and girls behind in the content moderation lawmaking process and contribute to new understandings of making platform governance more inclusive. Such an undertaking becomes critical when considering that the European Union recently adopted the *Digital Services Act,* which includes platform governance, and that many countries look to Germany's NetzDG as a legal model.

This Article draws from feminist jurisprudence as its main theoretical framework. This legal theory is based on the belief that the law has been fundamental to women's historical subordination. Findings indicate that, despite warnings from gender-focused civil society groups, their warnings were largely unheeded. This Article argues that in legal formation public participation is necessary in legal formation but fruitless when ignored. Identifying this circumstance becomes an important

step in finally addressing the problem, especially since Germany guarantees equal protection under the law and gender-based cyberviolence is on the rise.

Key Words
Platform governance, Feminist Legal Theory, Public action and Citizen participation/consultation

How far are we from personal information security: a comparison of privacy policies of Chinese social media platforms

Authors

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Dr. Qing Wen - Institute of Communication Studies, Communication University of China

Abstract

English Version

Background: The privacy of personal information is increasingly (Jayasekara, 2020) developing into an important object of social regulation, along with the penetration of the e-commerce industry (Khan et al., 2019), the expansion of user interfaces, the effectiveness of information algorithms (Li et al., 2021), and the tendency to marginalize the cost of technology. People's concerns and society's awareness of the urgency and significance of personal information protection on social media platforms have been heightened by recent disclosures of leaks of citizens' personal information (Li et al., 2020). Therefore, what is the current state of social media networks' privacy clauses? The focus of the current investigation is on how to implement corrective measures.

Methods: In this article, we use the textual analysis method. According to the contract law theory of "reciprocity of rights obligations," we separate the privacy clauses into three parts: general content, rights of personal information processors, and rights of users. To investigate the differences, benefits, and drawbacks, we first evaluate and contrast the privacy clauses of the three social media platforms. Second, the rights of users and the personal information processor are creatively placed on an equal footing from the standpoint of reciprocity of rights and obligations in civil law. Last but not least, relying on the theory of legal doctrine, we highlight the relationship between the privacy clauses created by social media platforms and the current laws.

Results: We found that Weibo, WeChat, and Tiktok all employ a minimum of technical jargon in their privacy clauses, which makes the interpretation of technical jargon essential. Weibo, WeChat, and Tiktok do not specifically say how long user information is held; instead, they obliquely refer to it as "a suitable amount of time." Regarding the right to notify consent, the privacy clauses of WeChat, Weibo, and Tik Tok make it abundantly clear that users' permission or consent is required for the collection, use, sharing, and modification of information; however, the notification of the aforementioned content is infrequently covered.

Conclusions: Privacy clauses, a model contract offered by personal information processors, make safeguarding the personal data of social media users crucial. In the future, we should clarify the rights and obligations of users and personal information processors, which inevitably involve a variety of technical terms. So, the privacy clauses should strengthen the use of hyperlinks and the explanation of technical terms, and they should also distinguish between the different types of

user consent. Also, we should protect the user’s right to implement important social media functionalities even if they choose to reject the privacy clauses. Besides, establish fair "safe harbor" principles in the privacy clauses and strike a balance between the rights and obligations of users and the platform, as well as between users. Only if they are upheld and observed will privacy clauses serve their intended purpose. To be more precise, we must first improve surveillance within social media networks. In terms of the platform's substance, the privacy clauses can be somewhat advanced. For instance, introducing the right to be forgotten and defining the precise notice period, etc.

Mandarin Version

背景：随着电子商务行业的渗透（Khan 等人，2019）、用户界面的扩展、有效性，个人信息隐私日益（Jayasekara，2020）发展成为社会监管的重要对象信息算法 (Li et al., 2021)，以及边缘化技术成本的趋势。最近披露的公民个人信息泄露事件加剧了人们的担忧和社会对社交媒体平台上个人信息保护的紧迫性和重要性的认识（Li et al., 2020）。因此，社交媒体网络隐私条款的现状如何？目前调查的重点是如何落实整改措施。

方法：本文采用文本分析法。根据“权利义务互惠”的合同法理论，我们将隐私条款分为一般内容、个人信息处理者的权利和用户的权利三部分。为了研究差异、优点和缺点，我们首先评估和对比三个社交媒体平台的隐私条款。其次，创造性地从民法权利义务对等的角度，将用户与个人信息处理者的权利置于平等地位。最后但并非最不重要的是，依靠法学理论，我们强调了社交媒体平台创建的隐私条款与现行法律之间的关系。

结果：我们发现微博、微信和 Tiktok 都在其隐私条款中使用了最少的技术术语，这使得技术术语的解释必不可少。微博、微信、抖音并没有具体说明用户信息的保存时间；相反，他们间接地将其称为“适当的时间”。关于通知同意权，微信、微博、抖音的隐私条款中充分明确了信息的收集、使用、分享、修改等需要征得用户许可或同意；然而，上述内容的通知很少被涵盖。

结论：隐私条款是个人信息处理者提供的合同范本，使保护社交媒体用户的个人数据变得至关重要。未来，我们要明确用户和个人信息处理者的权利和义务，这就不可避免地涉及到各种专业术语。因此，隐私条款应加强超链接的使用和技术术语的解释，并区分不同类型的用户同意。此外，我们应该保护用户使用重要社交媒体功能的权利，即使他们选择拒绝隐私条款。此外，在隐私条款中确立公平的“避风港”原则，平衡用户与平台、用户与用户之间的权利与义务。只有当它们得到维护和遵守时，隐私条款才能达到其预期目的。更准确地说，我们必须首先改善社交媒体网络内部的监控。就平台的实质而言，隐私条款可以稍微先进一些。例如引入被遗忘权，明确通知期限等。

Key Words

social media, personal information protection, privacy clauses, optimization path

Towards Legal Censorship: The Curious Case of India's BBC Documentary Ban

Authors

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Dr. Saravanan A - Indian Institute of Managament, Ahmedabad

Abstract

This proposed article is part of a larger research project that examines the Indian government's (GoI) new Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules) and its amendments. Most legislation regulating the media (broadcast and digital) has always been viewed as a reactive measure and the country's struggles to develop a relevant IT policy is a continuation of the same (Gupta & Srinivasan, 2023). This article specifically looks at the various legal processes that were followed by the current Indian government to ban the BBC documentary *India: The Modi Question*. It then charts the steps taken to ensure that the documentary couldn't be viewed across video streaming platforms like YouTube or mentioned/discussed on social media platforms like Twitter.

As the ban fueled a desire amongst India's population to watch the documentary – a pattern best explained by the "Streisand effect" (Jansen & Martin, 2015) – the country's ideological and repressive state apparatuses (Althusser, 2014) were utilized to prevent both the watching of the documentary and the potential discussion of material from the documentary in public spaces. With prominent members of the nation's civil society challenging the government's move in the nation's highest court (the Supreme Court of India) and it is important to note that the constitutional validity of the IT Rules, 2021 has been challenged before the same court and its decision is pending.

It is in this connection the proposed paper holistically examines this case using qualitative methods from both legal studies and media studies to highlight how the ban needs to be understood in a broader social context. It seeks to argue that this act (of banning the BBC documentary) can be deemed as censorship which in turn creates a spiral of silence and a chilling effect (Noelle Neumann, 1974; Liang, 2015) amongst the nation's population and subsequently disintegrates the public sphere (Jansen, 1983;1991). This case must be viewed as a violation of the fundamental right to free speech and as a measure in a series of measures taken by a government that has strived to regulate and discipline its online publics by using restrictive and violent approaches (Arun, 2014). The ban then, is only made possible by the demands of a set of laws created and ratified by a Parliament where the current government enjoys an overwhelming majority. This creates a precedent for stifling dissent in a country that claims to be the world's "largest democracy.

Key Words

Censorship, India's draft IT rules, spiral of silence, chilling effect

El debate sobre la desinformación en el Sistema Interamericano de Derechos Humanos en especial el caso de Chile

Authors

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Abstract

La desinformación y la circulación de las llamadas fake news concentran hoy en día la atención en el ámbito del derecho a la información tanto en los ordenamientos jurídicos nacionales e internacionales, y también más ampliamente al funcionamiento mismo de la democracia, motivo por la cual diversas instituciones gubernamentales y estatales, entidades de factcheking, medios de comunicación y plataformas tecnológicas han propuesto varios caminos de actuación. Aunque las soluciones no deben prescindir de la evidencia que aporta la ciencia, el derecho como disciplina normativa al operar en base a principios distintos no pretende arbitrar y discernir entre las propuestas verdaderas y falsas que circulan en una sociedad, por el contrario, se limita a crear condiciones para que a la deliberación y debate público puedan comparecer quienes desean expresar sus ideas, opiniones, informaciones y preferencias en todos los ámbitos relevantes como el político, social, económico, moral, religioso. Por lo anterior uno de los derechos más valorados y protegidos en las actuales sociedades democráticas ha sido la libertad de expresión, en donde la búsqueda de la verdad constituye uno de los fundamentos más antiguos y persuasivos. En el s. XV dicha libertad se proyectó a la imprenta, en el s. XVI a la prensa, y luego la radio y la televisión en el s. XX.1 Sin embargo, tal protección se ha planteado en periodos históricos diferentes a los tiempos actuales, pues la aparición de Internet, las plataformas digitales y luego las redes sociales han posibilitado que los intereses auto expresivos de las personas no requieran de la intermediación de medios de comunicación y periodistas. Si bien las plataformas digitales y las redes sociales han ampliado las libertades comunicativas de las personas, al sortear fronteras físicas e imaginarias, ha provocado como suele ocurrir con todos los nuevos tecnológicos algunas consecuencias adversas en el campo del debate público que es necesario mitigar.

En la presentación expondremos varias estudios, informes y propuestas regulatorias sobre desinformación que se han presentado en el ámbito del Sistema Interamericano de Derechos Humanos el que posee tres instituciones relevantes en dicho campo: la Comisión; la Corte de Derechos Humanos y la Relatoría Especial de Libertad de Expresión. También abordaremos el caso específico de Chile que ha tenido en los últimos años muchos procesos electorales que es donde la desinformación más se han concentrado la atención de gobiernos, parlamentos e instituciones supranacionales.

Key Words

Desinformación, fake news, regulación, derecho información, democracia

Nuevos desafíos del derecho a la información ante el avance tecnológico. Chile y el mundo

Authors

Dr. Francisco Leturia - Presidente del Consejo para la Transparencia

Abstract

La libertad de información es un derecho, aunque íntimamente vinculado a las libertades de expresión y de prensa, diferente y autónomo de ellas. Se caracteriza por su función institucional, que supone que cierto tipo de expresiones, al informar a la comunidad de asuntos de interés colectivo, mejoran el conocimiento y la calidad de los análisis y debates sobre asuntos relevantes y así la toma de decisiones.

La democracia, al sustentarse en las decisiones mayoritarias libremente tomadas, requiere que se ponga a disposición el máximo de información, puntos de vista y análisis posibles, ya que, sin ellos, su ejercicio se deteriora significativamente. Por tanto, la calidad de la democracia dependerá del espacio que se reconozca a la libertad de información, y, más concretamente, a la capacidad de entregar a la opinión pública información veraz y suficiente en tiempo y forma.

Por eso, la tendencia en las legislaciones mundiales ha sido dar cada vez un mayor espacio a la libertad de información, regulándola en forma autónoma. Ella se funda en elevar a calidad de "bien jurídico protegido" la formación de la opinión pública, entendida como un procedimiento de formación de opinión por medio de la concurrencia libre y pluralista de la información para que quede a disposición de los actores sociales titulares de la soberanía política, cuyo resultado es imposible de anticipar.

Junto con esto, es innegable que la irrupción de las nuevas tecnologías digitales ha tenido un impacto significativo en la búsqueda, difusión y recepción de información, y, con ello, en el proceso de formación de la opinión pública. Si bien trajo consigo una mayor horizontalidad, la disminución de las barreras de entrada a los medios de comunicación, la desconcentración en la propiedad de estos y, consecuentemente, la diversificación de contenidos, ha generado también dificultades al pluralismo informativo, e incluso –para algunos– las ha radicalizado.

Esta nueva realidad ha elevado la competencia por la publicidad de los avisadores, ha aumentado la exigencia de volumen de noticias de forma exponencial, perjudicando a la prensa escrita, y ha acentuado las inequidades relacionadas con el uso y el rendimiento de las tecnologías entre personas de distinto nivel educacional y rango etario.

Han surgido una serie de nuevos riesgos asociados, tales como la desinformación, el discurso de odio, las amenazas a la producción local de información, la sobreabundancia de información disponible, la censura arbitraria y la desprotección de datos. Asimismo, los tribunales se han visto enfrentados a resolver situaciones antes inimaginables, como el régimen de publicidad de las

comunicaciones electrónicas de los funcionarios públicos o de los algoritmos que usa el Estado al aplicar una política pública.

Todas estas problemáticas desafían a las legislaciones, que deben actualizarse a las nuevas necesidades de esta sociedad digital, y Chile no es la excepción. Por medio de este artículo, abordaremos este fenómeno desde las herramientas que nos da nuestra legislación, y frente a ello, analizaremos las tendencias dominantes en el derecho comparado, rescatando elementos útiles. Finalmente, guiados por el pluralismo informativo, propondremos una actualización a la legislación nacional.

Key Words
Derecho a la información, libertad de información, medios digitales.

Communication law and policies in Brazil: an overview of the Jair Bolsonaro government (2019-2022) / Legislación y políticas de comunicación en Brasil: un panorama del gobierno de Jair Bolsonaro (2019-2022)

Authors

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Dr. Elton Bruno Pinheiro - University of Brasília

Dr. Ana Beatriz Lemos da Costa - University of Brasília

Abstract

This article makes an analysis of the legislation and communication policies discussed and implemented during the Bolsonaro government (2019-2020) in Brazil. The analysis is carried out in three phases. The first presents the regulatory initiatives during the Bolsonaro government, including regulatory bodies, broadcasting, telecommunications, internet access, data protection, digital platforms, public media and institutional communication. In the second stage, we analyse the role of the federal government in relation to proposed and or implemented policies. In this case, it is shown how the Bolsonaro administration has led regulatory initiatives vis-à-vis the initiatives of other Powers of the Brazilian Republic, such as Parliament and the Judiciary. Finally, an analysis of these listed communication legislations and policies is presented considering the framework of human rights in communication elaborated by Unesco.

Far-right populist Jair Bolsonaro has led a series of authoritarian communication policies during his first two years as President of Brazil. Known as a politician linked to conservative, religious and military groups, Bolsonaro has a historic career in the Brazilian Parliament defending traditional moral values. Elected in 2018 with a strong anti-establishment discourse, a strategic use of disinformation on digital platforms and an agenda against the civil rights of social minorities, Bolsonaro has implemented initiatives on different fronts in the Brazilian media and communications system.

Bolsonaro's election to the Presidency in 2019 occurred after almost 15 years of centre-left government. Since 2011, different right-wing groups gained strength from street protests (Tatagiba, 2014) and the use of digital platforms (Alves, 2017). The conservative turn was led by privileged middle-class and white political actors, military groups, neo-Pentecostal religious leaders, groups linked to agribusiness and the mainstream media (Chagas-Bastos, 2019), it was also supported by popular classes in peripheral areas (Pinheiro Machado and Scalco, 2020).

The Bolsonaro government's policies aimed to facilitate corporate performance, relax rules for radio and TV stations and dismantle national public service media structures (Paulino et al., 2022), notably the Empresa Brasil de Comunicação (EBC) (Nitahara and Luz, 2021). In the area of telecommunications, a reform of the legal framework was undertaken that dismantled the public

obligations of operators and the regulatory instruments for the design of access policies to these services, including Internet services.

Internet access policies were minimal, either through limited connectivity programs or in the implementation of mobile connection through 5G technology without obligations to serve excluded and more vulnerable segments. In the field of data protection, the federal government contributed to hindering the entry into force of the General Law on Data Protection, approved in 2018, and its implementation. In addition, it has equipped the National Data Protection Authority by subordinating it to the Presidency of the Republic.

In the field of digital platforms, the government had an erratic posture, trying to implement controls on these agents at some times and allying with them to avoid legal initiatives at others (Valente, 2022). Its motivations were related to the approach was built around ensuring a permissive normative environment for the spread of disinformation, hate speech and political violence. These contents permeated his institutional communication.

The article identifies how Bolsonaro led initiatives to implement this agenda and articulated with private agents in proposed laws and regulations aimed at relaxing the Brazilian normative environment. In light of the references formulated by UNESCO in the McBride report, it is argued that the policies implemented went anti-democratic, pro-market, an produced citizens' right.

Key Words
Media law, media policy, Brazil, Bolsonaro government, regulation

Análisis de la regulación subnacional sobre los medios de comunicación en México

Authors

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Abstract

Esta propuesta se enfoca al análisis de la normatividad relacionada con la operación, participación y alcance de los medios de comunicación en las leyes estatales de México. De esta manera, se atiende un vacío de conocimiento al identificar y clasificar, en términos descriptivos, el conjunto de mandatos legales que ordenan distintos asuntos relativos a lo mediático en las entidades federativas mexicanas. El objetivo de la investigación es el de analizar los mandatos legales sobre los medios de comunicación existentes en las leyes vigentes de las entidades federativas en la República Mexicana, con la finalidad de conocer críticamente el estado del marco jurídico subnacional relativo a la actividad mediática. La metodología se basa en la elaboración de una base de datos original a partir de la recuperación los artículos de las leyes locales que se relacionan con los medios de comunicación en México, y la posterior aplicación de la técnica del análisis argumentativo. Los primeros resultados nos han permitido avanzar en el reconocimiento y clasificación de los ordenamientos y dejan ver que, en las leyes, los medios aparecen bajo tres acepciones: a veces como instrumentos, en otras ocasiones como aliados y, en otros momentos, como adversarios, para el alcance de las metas sociales.

Key Words

Legislación, Medios de Comunicación, Democracia, Estudios subnacionales

FUTURE REGULATIONS FOR HEALTH DATA IN EU

Authors

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Abstract

Today, with the development of technology in the globe, online activities increased which has removed the national borders of the countries. The new information technologies enable rapid recording and transfer of personal data of individuals more easily than before.

New digital technologies currently monitor the activities of the people and personal data are recorded at any reason by state institutions, companies, social media platforms and health institutions. Although various measures are taken in order to protect the private lives of the individuals, data collection, storage and usage may cause threat in some cases for the people. Therefore states and institutes have been developing national and international legal regulations for data security.

In the last decade, big data is a growing subject in all over the world in relation with AI systems. In AI technologies, big amounts of data are kept about the habits and lifestyles of individuals which sometimes cause breach of privacy. Like many countries, EU has been dealing with the new regulations on AI, data protection, and privacy concerning fundamental rights and principles The studies in this context show that norms on Big Data and artificial intelligence should be set for regular data flow concerning GDPR and related regulations inside the society which guide the governments and users. Currently, in parallel with the technological developments, legal drafts such as Artificial Intelligence Act, Data Governance Act, Data Act, European Health Data Space, are prepared by EU institutions, to regulate the new technologies.

As health data is considered as sensitive data in GDPR, the processing of health data is subject to strict rules. Regarding the processing of health data, European Health Data Space (EHDS) is another upcoming Act that the proposal has come in February 2022. The draft creates a common space in the area of health and allows improved access to own electronic health data and sharing it with other health professionals. The Act supports not only digital health services, but also clarifies the security of artificial intelligence in health issues.

Forthcoming regulations on AI and related topics in EU legislation may generate new challenges for the existing ethical and legal framework of GDPR. Especially in the ICT technologies which collect huge amounts of personal data, the balance between the use of data and the principles of fundamental rights should be kept in balance and the compliance of these drafts with each other should be ensured. Recently, there are some new regulations that seem likely to enter into EU legislation in the next years, such as Artificial Intelligence Act, Data Governance Act, Data Act, and European Health Data Space. As EU aims to achieve a high common level of cybersecurity all across EU in collaboration with the society, it should be clarified how these new future regulations affect

each other. This presentation aims to discuss the new legal developments about health data in the EU legislation within the technological implementations.

Key Words
Health data, Digital Health, Technology society, Privacy, EU regulations, GDPR

Write or Fight: SLAPPs against journalists in Brazil, the United States, and Spain

Authors

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Ms. Svea Vikander - University of the Basque Country

Mr. Victor Vicente - University of Sao Paulo

Abstract

The European Commission defines Strategic Lawsuits Against Public Participation (SLAPPs) as unfounded court proceedings containing elements of abuse such that it is reasonable to assume they are intended to prevent, restrict or penalize public participation. Journalists face SLAPPs that target their professional lives and may threaten fines and jail time. No matter the outcome, such cases require an exorbitant amount of money and time, precious resources in a struggling industry. While researchers have examined the vulnerability of journalists to the harm SLAPPs can cause, more research is needed on the specific mechanisms that allow for these impacts. We examine case studies from Brazil, the United States, and Spain to understand how SLAPPs are used as an intimidation tool in each of these contexts.

In 2008, Brazilian journalist Elvira Lobato was the target of 111 nearly identical lawsuits after reporting on a powerful Christian Church. Lawsuits against her were registered across the country, requiring her to visit over a hundred courts. Lobato won every lawsuit but the stress of facing them hastened her retirement.

In 2017, American journalist Moira Donegan created the “Shitty Media Men” list, a Google document for women to anonymously disclose their experiences with sexual misconduct. Donegan removed the list after only 12 hours. Stephen Elliott, one of the accused on the list, claims he suffered significant harm in that time. Elliott launched a suit against Donegan and 30 Jane Does who contributed to the list; Donegan continues to fight to have the case withdrawn.

In 2018, Spanish journalist Raquel Ejerique was accused defaming Cristina Cifuentes. Cifuentes was president of the Community of Madrid and objected to Ejerique’s investigations into inconsistencies in Cifuentes' academic record. Ejerique’s editor Ignacio Escolar was also charged; the regional court of Madrid eventually declared both not guilty.

Using Adele Clarke’s Situational Analysis methodology, we examine a range of cultural artefacts relating to each case including legal documents, social media posts, and news articles. To highlight the cases’ shared and disparate elements, we compare their active and implicated human actors, political/economic elements, temporal elements, sociocultural/symbolic elements, spatial elements, legal elements, and discursive topics.

Initial results indicate that while all three journalists faced accusations of defamation, there was great variation in the legal frameworks and processes through which such accusations were implemented. All three cases required the journalist’s time and financial expenditures. Two (Spain

and Brazil) were decided decisively in the journalist's favour; one (USA) is ongoing. In all three cases, the accuser positioned themselves as a victim, both within legal documents and in the press despite having significant institutional power over the defendant. Two of the cases (USA and Spain) included calls for the exposure of anonymous sources and the journalist's steadfast refusal to do so. Making use of feminist legal theory, we identify these lawsuits' elements of discrimination and structural oppression. We position some aspects of the cases, such as the disregard for journalistic norms of anonymity, within greater anti-democratic trends.

Key Words
SLAPP, democracy, feminist legal theory, defamation suit, Brazil, America, Spain,

Responsabilidad de las plataformas digitales en temas de autolesiones en menores y jóvenes

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Abstract

La autolesión no suicida (ANS) se entiende como todo acto para hacerse daño de manera directa y deliberada sobre el propio cuerpo, sin la intención de provocar la muerte, son principalmente cortes autoinflingidos (Nock, 2010). Desde 2010, ha habido un aumento de estudios de la conducta autolesiva entre menores y adolescente que se centran en tres temas principalmente: perfil de los menores que se autolesiona (Barrocas et al, 2011; Klonsky, 2011; Muehlenkamp, Claes, Havertape y Muehlenkamp y Gutiérrez, 2004). Los jóvenes que se infringen estas autolesiones están creando comunidades en las redes intercambiando contenidos muy sensibles que en muchas ocasiones promueven esta conducta. Se reflexionará sobre tres cuestiones jurídicas relativas a la responsabilidad de las plataformas como Twitter, Instagram o Tik Tok que permite la promoción de contenidos sobre este tema. 1) Se cuestiona si empresas privadas, como Twitter o Instagram se les debería permitir que sus algoritmos busquen contenidos de autolesiones mediante la recolección de datos personales relativos a la salud y que, en muchas ocasiones, son de menores (DSA, considerando art.71) . El pretexto es evitar esos comportamientos, pero en la red están presentes etiquetados como contenidos "sensibles" (Barnett y Torous, 2019; Broer, 2020). 2) La Ley 13/2022, de 7 de julio, General de Comunicación Audiovisual, expresa que los responsables editoriales son los creadores de contenidos y no las empresas que ofrecen ese servicio (art.2) pero si estos jóvenes no tienen esa capacidad ¿no deberían tener las plataformas alguna responsabilidad?. 3) Las políticas de estas plataformas se reflejan en sus contenidos o hay contenidos sobre autolesiones que pueden promocionar estas conductas en la red y sus políticas de uso solo es un brindis al sol.

Key Words

Plataformas, industria, menores, jóvenes, contenidos, autolesiones, datos personales, responsabilidad jurídica.

When Believing is Seeing: A Multimodal Exhibition about the Power and Limitation of Video Evidence

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Abstract

This paper examines the importance of multimodal research approaches to studying the relationship between visual culture and the law. Specifically, it discusses the epistemological, methodological, and ethical considerations involved in the production of *When Believing is Seeing*, a publicly engaged multimodal project that the authors of this paper exhibited in February 2023 at a research university in the U.S. As much is lost in the translation of images in words, this multimodal project was designed with the specific aim of scrutinizing the power and limitation of video evidence on its own audiovisual terms.

The underlying research question is how the proliferation of video is challenging existing legal practices regarding its presentation and use as evidence in U.S. courts. The Bureau of Justice Assistance (2016) at the U.S. Department of Justice estimates that video now appears in about 80 percent of criminal cases. Yet U.S. courts, from state and federal all the way to the Supreme Court, lack clear guidelines on how video can be used and presented as evidence. The underlying pervasive assumption is that video evidence need not be governed by unified standards because seeing is intuitive—that is, what we see is the truth. This prevalent misconception prevents court systems from incorporating safeguards to ensure rigorous visual interpretation. As a result, judges, attorneys, and jurors treat video in highly varied ways that can lead to unequal and unfair renderings of justice.

The paper argues that multimodal approaches are well suited to think about guidelines for video evidence in U.S. courts by facilitating a direct engagement with the particularities of audiovisual ways of knowing. *When Believing is Seeing* was thus structured in two parts – an interactive viewing exercise involving a real court case and an experimental room where people could engage with different research studies on the factors shaping visual perception and interpretation. The exhibit was also accompanied by an interactive interface so that viewers could see in real time how others had responded to the viewing exercises, giving them further information about existing practices and possible solutions. By discussing the production and reception of the exhibit, the paper highlights how and why engagement with visual epistemologies through theory and practice across media and the law is critical for ensuring that justice works for the public good.

Key Words

multimodal research, video evidence, U.S courts