



IAMCR 2018



Law Section

Abstracts of papers presented at the annual conference of the
International Association for Media and Communication Research¹

IAMCR

Eugene, Oregon, USA
20-24 June 2018

Report any problems with this document to support2018@iamcr.org

Version: 11/06/18

¹ We have endeavoured to ensure that these are the abstracts of the papers actually presented at the conference. Nevertheless, due to cancellations, additions and other factors, abstracts may be included here that were not presented and abstracts that were presented may not be included.

Id: 17237

Title: The view of Libyan journalists about (coverage, War and conflict zone) and what is the new legislative Freedom of opinion and expression law

Session Type: Individual submission

Authors:

Name: Miral EL Ashry

Email: miral_sabry@yahoo.com

Country: EG (Egypt)

Affiliation: Egypt

Abstract: Libyan revolution started on 17 February , was an armed conflict in 2011, in the North African country of Libya, fought between forces loyal to Colonel Muammar Gaddafi and those seeking to oust his government and the protests escalated into a rebellion that spread across the country transformed Libya's media landscape. This study focused on the legislative framework for freedom of opinion and expression Law and how the journalist coverage the conflict zone war in Libya , through interviews with 162 Libyan journalists and editors , the authors examine safety as the main challenge for journalists covering war and conflict in both local and international contexts. The study places a particular focus on the situation for Libyan journalists . The underreporting of legal aspects of international conflict, combined with less security, means less presence and more journalistic coverage based on second-hand observation. The result shows Libya's new constitution should feed into media law reform to end control over journalism by the executive branch of government, ruling party, state intelligence and security forces.

Libya should value and respect journalists and other news providers, and the work they do, and should end the physical and verbal violence to which they are often subjected in the course of gathering and imparting information. The arbitrary detention, abduction and threats to which they are constantly exposed in Libya ,the journalists need safety in the conflict hotspots owing to the tactical targeting of journalists might distort the coverage of wars and conflicts, and affect the quality of journalism in future.

Keywords: Libyan journalists, Libyan War , conflict zone) legislative Freedom and opinion and expression law .

Id: 17375

Title: Public policies, environment and government communication

Session Type: Individual submission

Authors:

Name: Sergio Quiroga

Email: CIENCIAXXII@yahoo.com.ar

Country: AR (Argentina)

Affiliation: Centre for Social Studies - ICAES

Abstract: This paper examines the communication policies of environmental legislation in the province of San Luis, Argentina. The Freedom of Expression of Thought and Information Act (Law No. I-0735-2010), which highlights in its articles 1 and 3 the freedom of the citizen to think, express, knows, inform and create.

Access to public information of the province of San Luis is legislated by Law No. V-0924-2015 that guarantees each person the right to request and receive information from any agency, in the corresponding support, under rules and times established. Article 1 states that Everyone has the right, in accordance with the principle of publicity of government acts, to request and receive complete, accurate, adequate and timely information from anybody belonging to: The Central and Decentralized Administration; the Autarchic Entities; the Inter-jurisdictional Organisms integrated by the province of San Luis; State Companies and Societies, Public Limited Companies with majority state participation, Mixed Economy Companies and all those other Business Organizations where the Provincial State has a stake in the capital, etc.

Environmental information is an essential requirement for the exercise, by citizens, of the human right to a healthy environment and the state must offer information and information on these issues through multiple actions and alternatives. Access to information favors openness and transparency in decision-making and allows citizens to trust the decisions made by the authorities. The informed citizen participation is also a mechanism to integrate the concerns and knowledge of citizens in the decisions of public policies that affect the environment.

Previous papers seek to examine the public communication policies exerted from the main media of the province of San Luis without analyzing the actions of the state in the establishment and development of public communication policies seeking greater citizen knowledge of public affairs. Arellano Gault & Blanco (2013: 27) point out that public policies in a democratic framework are "those decisions and legitimate government actions that are generated through an open and systematic process of deliberation among groups, citizens and authorities in order to solve, through specific instruments, situations defined and constructed as public problems".

Today, first national states seek to strengthen these procedures by promoting good environmental governance in the face of the growing demand of citizens for participating in decision-making that affects their environment and second, publicity and transparency of actions of government constitute a fundamental pillar in democratic institutions, whose institutional quality rises to the extent that citizens can receive, complete, accurate and timely information.

Id: 17598

Title: Social Justice and the First Amendment: A Case Study of *Elonis v. U.S.* and *Matal v. Tam*

Session Type: Individual submission

Authors:

Name: Chris Demaske

Email: cd2@uw.edu

Country: US (United States)

Affiliation: University of Washington Tacoma

Abstract: The United States is at a time of crisis regarding race relations. There is simply no way to overstate or exaggerate the severity of the problem. From confederate flags being placed across the campus at American University to torch bearing mobs chanting Nazi rhetoric in Charlottesville to President Trump's comments targeted at NFL players who refuse to stand for the national anthem, tensions are increasing exponentially. This increase is further evidenced by the August 2017 "early warning and action" statement issued by the United Nations Committee on the Elimination of Racial Discrimination, an admonition reserved for serious situations. Historically, the U.S. Supreme Court has supported the old axiom that the answer to speech we don't like is simply more speech, not restriction of speech. Traditional First Amendment scholars have echoed this position, calling for an almost absolutist protection of free speech. Those jurists and scholars have and continue to exercise what prominent legal scholar Steve Shiffrin recently called "free speech idolatry." However, the current treatment of hate speech in the U.S. is problematic in light of racial tensions that are continuing to escalate. The old arguments that free speech serves as a societal pressure valve and that open speech leads to truth hold little sway when, 200 years later, we are still entrenched in a society where hatred against groups based on their affiliation is rampant and insidious. This hard line on protection of hate speech becomes even more problematic when the global medium of the internet is brought into the conversation.

The focus of this presentation builds off of work previously presented at the IAMCR conference in Columbia in which I suggested that we shift the focus from protecting the rights of the autonomous individual to supporting a social justice based approach and, as a result, open up a space for the allowable restriction of some level of hate speech on the internet. This presentation seeks to further that work which is itself part of a larger, longer-term project. Specifically, I will draw on the theory of recognition developed by German philosopher Axel Honneth, a theoretical construct grounded in Hegelian thought and social justice. Honneth's work on recognition offers a possible way to bring the gap between where we are now and the development of a free speech strategy for the twenty first century. From that grounding, I develop a constitutionally viable framework for assessing hate speech restrictions on internet speech. Finally, I will apply the framework to two recent U.S. Supreme rulings – *Elonis v. United States*, which dealt with threatening speech on the internet, and *Matal v. Tam*, which questioned constitutionality of the disparagement clause of the Lanham Act of 1946. Analysis of these two cases will clarify the intricacies and difficulties of utilizing social justice theory as a foundation for First Amendment analysis and also will illustrate the parameters of speech restrictions recommended to best balance the promotion of a socially just society with the greatest amount of speech protection.

Id: 17643

Title: A 70 años de la DUDH ¿es la profesión informativa una actividad sostenible y sustentable en el tiempo'

Session Type: Individual submission

Authors:

Name: Fernando Gutiérrez Atala

Email: fgutierrez@ucsc.cl

Country: CL (Chile)

Affiliation: Universidad Católica de la Santísima Concepción (Chile)

Abstract: "El supremo deber del periodismo es proporcionar a la opinión publica el alimento adecuado para que pueda defender la democracia" manifestó Lippman (1919, p.71), pero en los últimos años, autores han descrito y debatido cómo la cobertura periodística abandona su labor de informar sobre relevancia general en favor de una cobertura orientada hacia lo fácil, entretenido y superficial (Pellegrini et.al, 2011).

La visión generalizada es que el modelo de negocio de los medios está en crisis: no innovan y no se adecuan a lo que el público consumidor necesita, pese a que éste va mutando, con nuevas necesidades informativas (Serrano, 2002). Esta supuesta crisis del periodismo, que puede llevarlo a su desaparición, no es una profecía nueva y ha estado presente a lo largo de la historia (Mahugo, 2010).

En resumen, todo el valor que tradicionalmente se le otorgó a la actividad informativa es desafiada por la tecnología, restando competencias a los periodistas. Proporciona a individuos, sin apoyo de una empresa periodística, la posibilidad de acceder a fuentes, tamizar información, determinar su relevancia y expresarla con eficacia (Picard, 2009).

Es por eso que "la profesión sufre cambios acelerados, tanto en composición como en sus funciones (...)" La palabra incertidumbre se ajusta a la ideación futura que hacen los periodistas "por el impacto que las nuevas tecnologías tendrán sobre el ejercicio y por la inseguridad que se vislumbra en las nuevas formas de producción en un contexto más competitivo" (Pérez, 2009, p.296).

Entonces, es válida y trascendente la pregunta: en este escenario ¿es la profesión informativa una actividad sostenible y sustentable en el tiempo?

Según el Artículo 19 de la DUDH "Todo individuo tiene derecho a la libertad de opinión y de expresión; este derecho incluye no ser molestado a causa de sus opiniones, el de investigar y recibir informaciones y opiniones, y el de difundirlas, sin limitación de fronteras, por cualquier medio de expresión". Por tanto, el titular del derecho a la información es la propia persona, el público y hasta ahora el periodista ha convertido el ejercicio de este derecho en un deber profesional, por delegación tácita de la sociedad ¿Y si aquella delegación tácita se esfumara, fruto de la presión social y del impacto global de fenómenos que dañan la imagen del periodismo como la pos verdad y las fake news ? ¿cuánto podría modificarse la identidad profesional?

El modelo de interacción POETA, diseñado por Otis Duncan en 1961, propone que la sustentabilidad/ sostenibilidad de una comunidad depende de las interrelaciones entre población, entorno, tecnología, organización y aspiraciones sociales (Guimarães, 1998, p.64). Si bien Duncan estableció sus teorías en el contexto económico y de disponibilidad de recursos ¿qué resultados arrojaría una proyección en la actividad periodística?

Esta ponencia apunta a presentar la primera parte de una reflexión crítica acerca de la satisfacción de las necesidades presentes, en tiempos donde se refuerza la necesidad de auto satisfacción informativa. Aquello se refleja principalmente en redes sociales y se convierte en un riesgo para el periodista y su actividad.

Id: 17678

Title: Net Neutrality as U.S. and global internet policy and regulation

Session Type: Individual submission

Authors:

Name: Richard Vincent

Email: rvincent@indstate.edu

Country: US (United States)

Affiliation: Indiana State University

Abstract: In recent years we have seen the United States take a regulatory lead on Net Neutrality or the Open Internet (Kan, 2017). The latest set of rule-making occurred in late 2017. U.S. actions have arguably influenced the European Internet market as well as other national Net Neutrality policies (Hern, 2015). Chile, Netherlands, Slovenia, Hungary, Sweden, Brazil and even Russia have all created versions of Net Neutrality. India is said to have perhaps the most open form of Net Neutrality to date.

The United States stance on Net Neutrality is shifting markedly, in the direction of a dual-lane or multiple-lane Internet system that stresses speed and access for those willing to pay. Zero-rating is also an issue. Recent matters, particularly a court decision in the Netherlands in 2017, may very well mean continuing upheaval in Europe too (Anon, 2017). Whatever emerges in the U.S. and Europe is likely to serve as the preferred model for Internet structure and traffic throughout the world, both industrialized and developing regions and countries, from Asia, Latin America, Africa and elsewhere. There is even concern that U.S. developments will soon change how India continues to view Net Neutrality.

This paper will examine the status of Net Neutrality and more recent policy moves both in the United States and Europe. We will also consider alternative policy scenarios. At stake is the tradition of the Internet “commons” where the Internet is seen as a shared resource meriting a climate of collective responsibility.

Included will be consideration of free market principles that many believe should guide an Internet that fosters full and meaningful democratic participation. We address additionally the notion of knowledge creation and sharing that argues for an Internet that encourages innovation and competition. Overall we offer a challenging and reflective review of the various threads of debate and speculation on where policy and regulatory moves may be headed.

Sources

Anon. (2017, May 17). Dutch ban on zero-rating struck on own – major blow to net neutrality.

<https://edri.org/dutch-ban-on-zero-rating-struck-down-major-blow-to-net-neutrality/>

Hern, A. (2015, Oct. 27). EU net neutrality laws fatally undermined by loopholes, critics say. The Guardian. from the original on 13 February 2016.

<https://www.theguardian.com/technology/2015/oct/27/eu-net-neutrality-laws-fatally-undermined-by-loopholes-critics-say>

Kan, C.G. (2017, Dec. 16). FCC Repeals Net Neutrality Rules. New York Times.

<https://www.nytimes.com/2017/12/14/technology/net-neutrality-repeal-vote.html>

Id: 17685

Title: Intermediary Liability and the Digital Commons

Session Type: Individual submission

Authors:

Name: Lucas Logan

Email: loganp@uhd.edu

Country: US (United States)

Affiliation: University of Houston - Downtown

Abstract: This paper includes an overview of the current state of intermediary liability, or the legal principal that web-sites and ISPs are responsible for removing illegal content put online by their users at the request of rights-holders. I argue that the process of intermediary liability is ineffective for governing a sustainable digital commons in which creativity, community, and participatory dialog are allowed to flourish. The recent creep of intermediary liability law from its traditional domain of copyright to the areas of privacy and hate speech are, then, particularly concerning for the ecology of the Internet.

The paper opens with a critical legal and historical analysis of intermediary liability that focuses on how the process allows the ongoing struggles between copyright industries and tech companies to determine what content is allowed online. I also note how laws are often enacted at the discretion of the intermediary. For instance, Google does not police the EU's Right to be Forgotten with the same attentiveness that it does intellectual property laws. This creates an imbalance in digital rights wherein the IP sector is given great control of content online, and social rights to privacy are treated as secondary.

The second section of the paper focuses on recent intermediary liability policy and proposals. In particular, I analyze policies that weaken the safe harbor provisions found in many intermediary liability laws. "Safe harbor" refers to the right of an intermediary to not be responsible for the violations of their users so long as the intermediary removes the information at the request of a copyright holder or, in the instance of the EU's Right to be Forgotten, person who alleges a privacy violation. Recently proposed reforms by the Council of the EU to the European Copyright Directive and E-Commerce Directive in 2018 could weaken safe harbor protections for intermediaries. ISPs and web-sites in the EU would then face greater legal liability for their users' actions. I argue that this would lead to pre-emptive censorship and the removal of more legal content by intermediaries fearful of legal action.

I close with the argument that policymakers should move away from the model of intermediary liability as the lynchpin of digital copyright protections. The process is ineffective in policing IP, removes legal content, and is part of an unsustainable Internet policy model drafted in the 20th century. New policies should focus on strategies to help the digital commons flourish by creating laws and gaps in the law to protect creativity, speech, and privacy. Policymakers in the EU are creating precedent in the opposite direction, though, and weakening the safe harbors that protect intermediaries ratchets up the power of copyright holders and increases the likelihood for censorship.

Id: 17855

Title: The Public Interest Standard in Israeli Commercial Broadcasting Law

Session Type: Individual submission

Authors:

Name: Moshe Schwartz

Email: ms.comm.projects@gmail.com

Country: IL (Israel)

Affiliation: Ben-Gurion University of the Negev

Name: Amit Schejter

Email: schejter@gmail.com

Country: IL (Israel)

Affiliation: Ben-Gurion University of the Negev and Penn State University

Abstract: This study critiques and analyzes the meaning and design of the term "public interest" in commercial media legislation in Israel since the 1980s. Its main thesis is that the public and the public interest serve Israeli policymakers in order to achieve economic goals, as economic considerations became the central regulatory concern of the Israeli media market. Indeed, this endpoint marks the transition the public interest consideration has undergone over the years from its identification with national and state goals to its subordination to economic interests, in particular competition. Despite numerous amendments to the law governing commercial (free-to-air) broadcast media since it was enacted in 1990, the legislator has refrained from defining advancement of the public interest among the decision-making considerations of the regulator. In those few instances in which the law refers to the public interest, it does not offer a definition to the term nor propose criteria for its evaluation. A mapping and an analysis of the considerations the regulator needs to make in the process of awarding, extending or revoking broadcasting licenses, demonstrates that the public interest is more often than not seen as a reason - sometimes acknowledged and often implied - to revoke a previous decision or to rescind a license. Another pattern detected is the utilization of the public interest to provide justification and solutions for extraordinary circumstances: measured legislation, regulatory discretion in decision making and social pretense in decisions that may raise public controversy. In the single case in which the public interest is mentioned as a consideration for awarding licenses - the case of digital radio (D.A.B) - the law determines that it is the same public interest that may serve as the reason to delay launching the service itself. The actual launch is incumbent on serving competition, which is defined as the ultimate goal. This consideration, that in the past was reserved for decisions regarding the advertising market, has recently been seeping into the realm of the marketplace of ideas as well. As a result we can say that in contradiction to the three scaled public interest standard in the United States (relying on competition, localism and diversity) in Israel it stands on one leg only, that of competition. The combination of the neoliberal ideology that has taken over Israeli policymaking since the 1980s, with the prominence of large corporations in the policymaking process has contributed largely to this outcome.

Id: 17874

Title: Criminal defamation in India: Is it a 'reasonable restriction' on freedom of speech and expression'

Session Type: Individual submission

Authors:

Name: Ambrish Saxena
Email: ambrish.vips@gmail.com
Country: IN (India)
Affiliation: Zee Institute of Media Arts (ZIMA), Noida

Name: Susmita Bala
Email: susmitachitra@gmail.com
Country: IN (India)
Affiliation: Delhi Metropolitan Education (DME), Noida

Abstract: On the issue of defamation, particularly criminal defamation, the world appears divided. Activists and champions of liberty argue that criminal defamation laws strike fear in the hearts of citizens. Journalists hold back in their criticism of the government and political figures, and if they do they suffer. Thus, criminal defamation is said to be restricting freedom of speech and expression. "Criminal defamation laws are nearly always used to punish legitimate criticism of powerful people, rather than protect the right to a reputation", said Pansy Tlakula, African Union's Special Rapporteur on Freedom of Expression in 2013.

Many countries of the world have legislated criminal defamation laws punishable with imprisonment, fines or both. Most of the countries in the American continent keep criminal defamation laws. Mexico and the United States have no criminal defamation laws at the federal level, but certain states in these two countries still criminalize defamation. The majority of European Union countries including Germany have some form of criminal defamation though Britain is an exception. African countries are also carrying colonial era defamation laws. In Indian sub-continent, India, Pakistan and Bangladesh are keeping defamation laws even after their Independence.

Few countries have repealed criminal defamation laws over the years. In 2003, Sri Lanka revoked criminal defamation. In 2016, Zimbabwe struck down criminal defamation law to save journalists from persecution. India is struggling to repeal criminal defamation law in view of divided opinions. In India, the Law of Defamation has got a mention in Indian Penal Code (IPC), the provisions enumerated in Section 409-502. What amounts to defamation is defined by Section 499 IPC and to that extent there exist a thin line between criminal defamation and civil defamation. But the line widens when it comes to punishment; criminal law prescribes for arrest of the accused and jail term for the convict, while civil defamation imposes damages on the offender.

Indian Constitution keeps defamation under the bunch of "reasonable restrictions" which have been prescribed by Article 19 (2) on the freedom of speech and expression guaranteed by Article 19 (1) (a). Supreme Court in various judgments has clarified that "restrictions" should not be arbitrary or excessive; the restriction should impair the freedom 'as little as possible'. But, media houses and investigative journalists continue to suffer in the wake of criminal defamation cases filed against them by the powerful. During recent years, a number of petitions have been filed in the Supreme

Court by eminent politicians like Subramanian Swamy and Rahul Gandhi and senior journalists like Rajdeep Sardesai for decriminalization of defamation.

Is criminal defamation a reasonable restriction on the freedom of speech and expression in India?

This can be studied with the help of some recent legal cases and judicial

pronouncements/judgments. Case study method is to be used for this purpose. This paper is an attempt to examine and analyse the criminal defamation and the constitutional validity of this law, particularly in the backdrop of constitutionally guaranteed right of freedom of speech and expression.

Id: 17903

Title: User Rights and Terms of Use: An analysis of copyright clauses in streaming platform contracts and their relation to limits and exceptions and the Public Domain.

Session Type: Individual submission

Authors:

Name: Rodrigo Cetina Presuel
Email: rodrigo.cetina@gmail.com
Country: US (United States)
Affiliation: Lasell College

Abstract: In general, Copyright law grants users a certain degree of freedom with respect to what they can do with protected works. In the context of European Union law, statutory limits and exceptions serve to determine what lawful uses of works are possible without requiring authorization from the rights holders, and the law allows for works in the Public Domain to be used freely. However, as more and more content is made available and consumed through online streaming platforms, what users can and can't do is constrained by those platforms' interfaces and the terms of use contracts that govern each service.

By analyzing six terms of use agreements taken from six major platforms that offer streaming of content in the European market (Netflix, Amazon Prime Video, YouTube, Facebook, Spotify and Apple Music) and then navigating through them under the frame of three specific user scenarios (user as consumer, user as sharer & user as creator of content); this work analyzes the way in which contracts and interfaces regulate access, use and reuse of content available online and if they undermine the effectiveness of European copyright law provisions aimed at allowing individuals certain uses of content without authorization. Ultimately, the aim is to argue that online platforms that offer content through streaming only to those who agree to terms of service agreements, have enabled a private content control regime that goes beyond the scope of what copyright law intends and can even imperil the users' fundamental rights to freedom of expression and to privacy.

Bibliography

- Amirmahani, A. (2015). Digital Apples and Oranges: A Comparative Analysis of Intermediary Copyright Liability in the United States and European Union. *Berkeley Technology Law Journal*, 30, 865-898.
- Behrnd-Klodt, M., & Prom, C. (2015). Rights in the Digital Era. Chicago: Society of American Archivists.
- Breakey, H. (2016). Intellectual Liberty. Natural rights and Intellectual Property. New York: Routledge.
- Bygrave, L. (2000). Privacy, Data Protection and Copyright. Their interaction in the Context of Electronic Copyright Management Systems. In P. Hugenholtz, Copyright and Electronic Commerce, Legal Aspects of Copyright Management (pp. 59-124). The Hague: Kluwer.
- Carys, C. (2017). Globalizing User Rights-Talk: On Copyright Limits and Rethorical Risks. *American University International Law Review*, 33(1), 1-73.
- Cetina Presuel, R. (2018). El derecho de autor desde el punto de vista del usuario. Madrid: Fragua.
- De Filippi, P. (2013). Law of the cloud: on the supremacy of the user interface over copyright law. *Internet Policy Review*, 2(3).

- Elkin-Koren, N. (2017). Fair Use by Design. *UCLA Law Review*, 64(5), 1082-1100.
- Garnett, N. (2006). Automated Rights Management Systems and Copyright Limitations and Exceptions. Geneva: WIPO.
- Karapapa, S. (2012). Private Copying. New York: Routledge.
- Maayan, P., & Elkin-Koren, N. (2017). Accountability in Algorithmic Copyright Enforcement. *Stanford Technology Law Review*, 19(3), 473-533.
- Mazziotti, G. (2008). EU Digital Copyright Law and the End-User. Berlin: Springer.

Id: 17923

Title: Thirty-Seven Years of Comparative Legal Studies on Speech Laws between the United States and China: A Content Analysis

Session Type: Individual submission

Authors:

Name: Shao Chengyuan
Email: shaocy@live.unc.edu
Country: US (United States)
Affiliation: 3rd-year Ph.D. student

Name: Li Tingting
Email: tiara_lee@yeah.net
Country: CN (China)
Affiliation: Sun Yat-sen University

Abstract: This paper performs a content analysis of law review articles published in Chinese and U.S. law journals between 1980 and 2016. These law reviews discuss free speech laws from a comparative perspective between China and the United States. Through comparing the U.S. and Chinese law review articles in theory mentioning, citation of local laws, cases, scholars, and consideration of cultural differences, this study sheds light on how closely U.S and Chinese scholars have looked into each other's free speech laws. Specifically, this paper examines whether scholars' discussions are contextualized in the local social and cultural background.

The articles on free speech laws analyzed in this study cover legal areas including freedom of speech, constitutional law, defamation, copyright, Internet access, human rights, and commercial speech. As scholars have pointed out, the enterprise of comparative law, especially between the West and China, is unavoidably always more than just academic-theoretical, but also ideological-political, in its selection of countries for comparison and identification of problems. This is shown in the different focuses between the U.S. and Chinese law review articles: while the Chinese articles talked more about U.S. commercial speech laws, the U.S. articles paid more attention to Chinese laws and policies on human rights and Internet access.

The statistical analysis showed that comparative legal studies of Chinese law in the United States are more contextualized than the critical scholars have asserted. U.S. legal scholars are not too "reluctant" to study Chinese law on its own terms. Study results also reveal for the first time the landscape of legal studies on freedom of speech in China. Chinese scholars, although under political pressure when writing on freedom of speech, have managed to publish, in the 37 years between 1980 and 2016, the same amount of comparative law review articles on free speech laws as the U.S. scholars. They have heavily cited U.S. free speech thinkers, Supreme Court cases, and most of all, the prominent free speech theories developed by U.S. scholars based on the American experience.

The limitation of this study is the lack of emphasis on scholar's elaboration of laws, cases, and concepts in the articles. The statistical results can only tell about whether certain laws, cases, and concepts were mentioned, but not the author's viewpoints and implications. However, merely

mentioning local context and cultural background shows valuable effort made by U.S. and Chinese scholars in bridging conversations on the issue of freedom of speech.

Id: 17925

Title: Cybersecurity Law of China and the Chinese Cybersecurity Framework

Session Type: Individual submission

Authors:

Name: Shao Chengyuan
Email: shaocy@live.unc.edu
Country: US (United States)
Affiliation: University of North Carolina at Chapel Hill

Abstract: In 2014, The Communist Party of China (CPC) established the Central Leading Group for Internet Security and Informatization, to which the Cybersecurity Administration of China report. The Central Leading Group initiated the drafting of a series of laws centralizing Internet regulation, including National Security Law, Counterterrorism Law, and Cybersecurity Law. These laws together form the framework of China's cybersecurity, addressing the crossroads of network security and foreign business and asserting China's own power to exercise sovereignty over the Internet within its boarder.

This study looks into the newly implemented Cybersecurity Law of China, the context in which the law was made, and the implications it has on China's emerging cybersecurity framework. In discussing the Cybersecurity Law, this paper asks about the genesis and framework of the law, how it differs from those of the EU and North America, and the implications this law has on China's emerging cybersecurity framework.

The Chinese Cybersecurity Law signifies a new stage of China's Internet control where cybersecurity has become a major priority for high-level decision-makers in the central government and the Politburo Standing Committee of the CPC. More than twenty years of Internet development has brought over 700 million Internet user to China. Looking back at Internet-related legislation in the past 23 years in China, every significant step of Internet growth brings about major policy changes. However, this latest stage of cyberspace regulation is in many ways more significant than the previous ones and has important implications on the emerging Chinses cybersecurity framework.

The establishment of a powerful policy-making body such as the Central Leading Group indicates that China's is developing an increasingly centralized cyberspace policy with higher legal force than ever before in the past twenty years. Meanwhile, cyberspace sovereignty as a proposed model for global Internet governance is written into law for the first time in China. China's long-time support for the extension of state sovereignty and non-interference to cyberspace represents a vision for the future of the Internet different from the single, connected global Internet model promoted by the United States.

However, although started strong with three national law related to cybersecurity in the past two year, China's cybersecurity framework is still in a formative stage. Opinions from both the international community and inside China are likely to shape the way Chinese lawmakers frame its cybersecurity strategy. The fact that China delayed full implementation of the "Data Transfer

Measures” and opens the new regulations on Critical Information Infrastructure protection for public comments demonstrates that, despite of the authoritative structure of the new policy-making body, fitting the pieces of related regulations under the Cybersecurity law is still an ongoing process, in which public perceptions matter for policymakers envisioning an ambitious cybersecurity framework from an increasingly confident China.

Id: 17936

Title: Legal Protection for Sustainable Business Models: Could Dicta Save Automated Journalism'

Session Type: Individual submission

Authors:

Name: Amy Kristin Sanders
Email: amy.sanders@northwestern.edu
Country: QA (Qatar)
Affiliation: Northwestern University

Abstract: In a short period of time, due in part to rapid technological innovation, journalism has undergone dramatic change. Deadlines have tightened. Copy desks have been eviscerated, and stories are now being written – at least in part – by algorithms. But, like journalism organizations, American courts too have lagged behind technological advancements – often taking a “wait and see” approach to the regulation of emerging media. As television, then cable and satellite, and finally the Internet developed into commonplace mediums, legal jurisprudence took shape in a patchwork fashion with courts often grafting old law onto new technologies. Recently, automated journalism – using algorithms to generate content – has gained traction as a possible cost-effective, sustainable way to produce news stories rooted in publicly available data. But, the practice also has possible legal pitfalls, should defamatory content be produced. Although the First Amendment sets a high bar for legal liability in defamation suits brought by public officials and public figures – who must prove actual malice – the standard for private plaintiffs – often negligence – is lower. As a result, news organizations are likely to face significant legal risks if they were to rely on algorithmically generated content about private plaintiffs – even when those plaintiffs are involved in matters of public concern. However, media attorneys might be able to rely on dicta from the U.S. Supreme Court’s 1974 *Gertz v. Welch* decision – holding that states may set the appropriate fault standard in defamation cases so long as private plaintiffs aren’t allowed to succeed on a theory of liability without fault – to defend algorithmically generated content. At the outset, this paper outlines the rise of automated journalism. It discusses legal protections for defamation in the United States, covering key cases. An in-depth analysis of *Gertz v. Welch* follows, with an evaluation of one significant passage:

"At least this conclusion obtains where, as here, the substance of the defamatory statement ‘makes substantial danger to reputation apparent.’ This phrase places in perspective the conclusion we announce today. Our inquiry would involve considerations somewhat different from those discussed above if a State purported to condition civil liability on a factual misstatement whose content did not warn a reasonably prudent editor or broadcaster of its defamatory potential. Such a case is not now before us, and we intimate no view as to its proper resolution."

Relying on Justice Powell’s opinion for the Court, the paper concludes with an argument that news organizations should not be legally liable for defamatory content produced by algorithms unless the content “makes substantial danger to reputation apparent” to the publisher, even in the case of private plaintiffs. Finally, the paper concludes that given the changing media ecosystem, courts must re-think existing legal protections for journalism to encourage continued – and sustainable – innovation in the distribution of truthful information.

Id: 17973

Title: Peaceful protests against government policy of assimilation- a human rights based approach.

Session Type: Individual submission

Authors:

Name: Peter Tiako Ngangum

Email: tiako_peter@hotmail.com

Country: BE (Belgium)

Affiliation: ULB

Abstract: Since October 2016, the English-speaking part of Cameroon has experienced serious repression and continuous human rights violations following a series of sit-in strikes and non-violent actions initiated by common law lawyers and teachers' trade unions in protest against government policy of assimilation through the imposition of civil law judges to preside over cases in common law courts and French-speaking teachers to teach in English schools. Civil society organizations coordinating the strikes and protest actions were banned on 17 January 2017.

Leaders, including Justice Ayah Paul Abine (Supreme Court Judge), Dr Felix Agbor Balla (prominent international human rights lawyer), Dr Neba Fontem (a university lecturer), Mr Mancho Bibixy (a civil rights activists), and hundreds of other activists and protesters were arrested and transferred to the nation's capital, Yaoundé (a civil law jurisdiction). They are being tried in a military court on charges of terrorism, which carries a death penalty if found guilty.

Drawing from literature review and documentary research informing the above subject as well as the case of the state of Cameroon v. Felix Agbor-Balla, Dr. Fontem A. Neba and Mancho Bibixy, this paper argues that Cameroon has consistently moved to restrict lawyers and teachers' organizations in their ability to criticize and peacefully protest against its policy of assimilation. Peaceful protests have been depicted as acts of violence, revolution, secession, collective rebellion, hostility against the state, terrorism and these qualifications have been used to call for far-reaching restrictions. The use of peaceful protests to further change in society is obviously not the exclusive domain of lawyers and teachers in Cameroon. In fact, it is embedded in history as a driver of positive change. Where demonstration do not engage in acts of violence, it is important for the public authorities to exercise tolerance towards peaceful gatherings if the freedom of expression and of assembly guaranteed is not to be deprived of all its substance.

It is the responsibility of each government to respect the right to freedom of expression and to justify any restriction to it. Government statements which wrongfully equate the exercise of this right by lawyers and teachers with hostility against the state, revolution, collective rebellion, propagation of false news, terrorism and secession should be condemned. Such false allegations can have a dangerous chilling effect. It has the tendency to undermine the activities of the person or organization involved, endangering the further exercise of freedom of expression. Even more, by labelling its critics terrorists, the government may discourage other citizens from voicing their opposition to official policy of assimilation.

Keywords: Cameroon/peaceful protests/human rights/ assimilation/ Anglophone/Southern Cameroon/

Id: 17988

Title: [Panel] Revisiting 25 years of Internet Law after the Web (1993) - State of the Art, Panel Description

Session Type: Panel Submission

Authors:

Name: Loreto Corredoira
Email: loretoc@ucm.es
Country: ES (Spain)
Affiliation: Complutense University Madrid

Name: Leopoldo Abad
Email: abad.fhm@ceu.es
Country: ES (Spain)
Affiliation: Universidad CEU San Pablo

Name: Roy Gutterman
Email: rsgutter@syr.edu
Country: US (United States)
Affiliation: Syracuse University

Name: Rodrigo Cetina
Email: rodrigo.cetina@gmail.com
Country: US (United States)
Affiliation: Lasell College, Boston

Name: Pedro Anguita
Email: pedroanguitar@gmail.com
Country: CL (Chile)
Affiliation: Universidad de los Andes

Name: Jose Manuel Martinez Sierra
Email: jose_martinez@harvard.edu
Country: US (United States)
Affiliation: Harvard University

Abstract: During the first decades of ARPANET (1969) and TCP/IP protocol launching (1982), little external regulation was needed. Even when the first commercial ISP Internet access and websites were introduced (1989), with the exception of DNS, there were no regulations governing the Internet. However, since CERN launched the “web” in 1993, Internet law has developed rapidly.

From that time, the development of policies, regulations and laws which have sought to rescue “cyberspace” from utter chaos and anarchy, have contributed to a relatively stable and predictable digital space. But this has come with a cost: hyperregulation.

A decade of uncertainty followed the Internet's inception and in its wake came the first investigative studies of impact followed by political action. The new millennium did not bring a digital disaster as many feared (the hype about Y2K), but rather a major threat to content creators and distributors, in the form of digital piracy, counterfeit and fraud. Hence, came legislation governing copyrights for intellectual property (DPI). More recently with the emergence of Social Networks, “machine learning”, “big data” and the “internet of things”, governments can't seem to keep pace thought their policies, regulations and laws to protect the privacy, security and even identity of its citizens. Technological innovation in the digital domain is exponential and it seems to move at the speed of light. European regulations protecting privacy have become very restrictive and, at times, even chaotically contradictory, threatening with extinguishing nearly all innovation and equal access to opportunities in the digital society. Extreme forms of regulation suffocate both technological innovations and open access opportunities in the digital society.

In this panel, scholars from Chile, Spain, and the US will discuss some of the key issues in regulation during this period of time: copyright, net neutrality, universal access and media regulation.

Id: 18090

Title: Online Harassment of Women Journalists and its Impact on U.S. Press Freedom

Session Type: Individual submission

Authors:

Name: Caitlin Carlson

Email: carlso42@seattleu.edu

Country: US (United States)

Affiliation: Seattle University

Abstract: Enduring misogynistic hate speech and threats from anonymous posters or “trolls” online is now part of the job description for many women working in journalism. This investigation seeks to understand the impact of this phenomenon on women’s free expression. Does the name-calling and vitriol aimed at women journalists in the United States have a chilling effect on the type of issues or topics covered? Or, does it embolden these women to push their investigative efforts further?

Globally, almost two-thirds of the 149 women journalists polled as part of the 2013 study, “Violence and Harassment Against Women in the News Media,” said they had experienced intimidation, threats, or abuse in relation to their work (International Women’s Media Foundation, 2013). More than 25 percent of the verbal, written or physical attacks, including threats to family or friends, took place online and much of it was overtly misogynistic (International Women’s Media Foundation, 2013).

Recognizing the threat to free expression this problem poses, the Organization for Security and Co-operation of Europe’s (OSCE) Representative on Freedom of the Media released a collection of essays in 2016 entitled, “New challenges to freedom of expression: Countering online abuse of women journalists.” This work begins to explore this problem and its solutions, but more insight is needed. In addition, the OSCE has launched the Safety of Female Journalists Online campaign (#SOFJO), which is now in its third year (2017). The project connects journalists and academics to share their experiences, along with resources for combating online hate speech and harassment. Unfortunately, there is no similar effort to address the growing amount of online abuse aimed at women journalists in the United States. Legal scholars such as Danielle Keats Citron (2014) have explored the relationship between online hate speech and democratic participation. In Hate Crimes in Cyber Space (2014), Citron argues that online harassment and hate speech make it difficult for those targeted to engage in the process of digital citizenship, which includes the exchange of ideas that takes place online. Feminist scholar Karla Mantilla refers to vitriolic online harassment directed at women as “gendetrolling,” a process marked by the participation of many people, gender-based insults, vicious language, credible threats, intense/ lengthy attacks, and reactions to women speaking out (2009).

This study surveys women journalists in the United States to learn whether they encounter online harassment and if so, what the nature and impact of those interactions is. The intersectional issues associated with the racist and misogynistic comments directed at journalists of color are also explored. The paper concludes with recommendations for minimizing the amount of viral hate

directed at women journalists. In the United States the First Amendment protects almost all hate speech, but vitriolic expression aimed at any reporter threatens press freedom. By addressing this problem directly, the voices of women journalists will be more likely to reach the public sphere, where they can help set the public agenda and frame important issues.

Id: 18116

Title: [Panel] The "Right to Be Forgotten" Four Years After: Taking Stock of Google Spain's Global Impact, Panel Description

Session Type: Panel Submission

Authors:

Name: Kyu Ho Youm
Email: khyoum52@gmail.com
Country: US (United States)
Affiliation: University of Oregon

Name: András Koltay
Email: koltay.andras@gmail.com
Country: HU (Hungary)
Affiliation: Pázmány Péter Catholic University

Name: Stefan Kulk
Email: s.kulk@uu.nl
Country: NL (Netherlands)
Affiliation: Utrecht University

Name: Edward Carter
Email: ed_carter@byu.edu
Country: US (United States)
Affiliation: Brigham Young University

Name: Yik Chan Chin
Email: yik-chan.chin@xjtlu.edu.cn
Country: CN (China)
Affiliation: Xi'an Jiaotong-Liverpool University

Abstract: The “right to be forgotten” (RTBF), which was permanently recognized by the European Court of Justice in a landmark decision of May 2014, is exerting a sweepingly global impact. In Google Spain v. AEPD, the highest court in the European Union held that Google and other search engines must remove search links to information that is outdated or no longer relevant. The new EU General Data Protection Regulation, which will replace the DP Directive, will go into effect on May 25, 2018. Most significantly, RTBF will be expanded by the Regulation. And it's more urgent than ever to take stock of RTBF as a matter of informational privacy vs. freedom of expression in the Internet century.

As George Brock, author of *The Right to Be Forgotten: Privacy and the Media in the Digital Age* (2016), probably the best analysis of Google Spain's broad implications for freedom of speech and the press, observed cogently, the ECJ decision has left “important questions unresolved,” including a key issue that revolves around the right’s territorial scope and enforceability in the borderless Internet world.

Indeed, in November 2017, a federal district court in the United States granted Google a motion for preliminary injunction against enforcement of a Canadian court's ruling to de-index a global search result. Meanwhile, France's Conseil d'Etat, the country's highest administrative court, asked the ECJ to decide whether Google, Bing, and other search engines must apply RTBF globally instead of limiting it to Europe.

Not surprisingly, RTBF is no longer limited to Europe. Google Spain has inspired non-EU countries to revisit privacy as an overriding counterpoint to access to information. In Asia and Latin America, RTBF is given more attention by jurists, lawmakers, cyberspeech advocates, and others. Journalists are increasingly concerned about RTBF within the context of freedom of the press. "Journalists must guard against the misuse of a right to be forgotten," Brock has stated. "The right ... is an extension of privacy and data protection which is too broad and blunt for the news media to accept without careful monitoring, debate and redesign."

This proposed panel aims to offer a timely forum for IAMCR to evaluate the retrospective and prospective status of RTBF as a global topic.

Four experts from Asia, Europe, and North America are being asked to speak about the balance between privacy and freedom of expression that ECJ tried to strike in 2014 and that is now being built into the new EU law. The speakers have been invited on the basis of their established records as communication law scholar-teachers.

Id: 18117

Title: Press Freedom and the Right to Be Forgotten

Session Type: Panel Submission

Authors:

Name: András Koltay

Email: koltay.andras@gmail.com

Country: HU (Hungary)

Affiliation: Pázmány Péter Catholic University

Abstract: In Google Spain, the European Court of Justice did not discuss the relationship between search engines and the architecture of the contemporary—online—public sphere. But Internet search engines are necessary for the public debates, so they may have been accorded the same legal status as “media.” In fact, they exercise “editorial” activity on a daily basis, which also makes them somewhat similar to the traditional press. In Europe, media is governed—amongst other restrictions—by privacy laws, which in cases similar to Google Spain would be enough to provide protection for individuals against breaches of their rights, even by search engines. If Google would have been considered as “media,” then Google Spain could have been decided differently.

Id: 18118

Title: The Right to Be Forgotten: Lessons from Europe

Session Type: Panel Submission

Authors:

Name: Stefan Kulk

Email: s.kulk@uu.nl

Country: NL (Netherlands)

Affiliation: Utrecht University

Abstract: Four years after the European Court of Justice recognized in Google Spain that people can delist outdated search results, it is time to look back and look ahead. Google Spain related to search results only. But the new EU General Data Protection Regulation introduces a more general right to be forgotten and offers additional rules. What will the introduction of this new law mean for the removal of online information in Europe? This presentation will also zoom in to how the right is implemented in one particular EU member state: the Netherlands. Issues covered are the balancing of privacy and freedom of expression, the treatment of criminal and other sensitive personal data, and territoriality.

Id: 18119

Title: The Emerging Right to Be Forgotten in Latin America

Session Type: Panel Submission

Authors:

Name: Edward Carter

Email: ed_carter@byu.edu

Country: US (United States)

Affiliation: Brigham Young University

Abstract: I propose to discuss RTBF in Latin America. Among other recent developments, the Supreme Court of Chile in 2016 adopted RTBF and applied it in the case of search-engine results relating to an individual convicted of a crime more than a decade ago. In adopting the right, the Chilean jurists acknowledged that the country's legislative branch has discussed but not yet adopted RTBF. Still, the court based its decision on reputation and privacy protections in the American Convention on Human Rights. I will also discuss RTBF in other portions of Latin America, including Argentina and Mexico. In Mexico a regulatory body (Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales, INAI) has applied RTBF since 2015. Finally, I will discuss my co-edited 2018 book on RTBF in the Americas that will be launched at a ceremony in Mexico City on February 5, 2018.

Id: 18120

Title: The "Right to Erasure" (Right to Be Forgotten) in East Asia

Session Type: Panel Submission

Authors:

Name: Yik Chan Chin

Email: yik-chan.chin@xjtlu.edu.cn

Country: CN (China)

Affiliation: Xi'an Jiaotong-Liverpool University

Abstract: The “right of erasure” under the EU General Data Protection Regulation enables an individual to request the removal of personal data where there is no compelling reason for its continued processing. The right to erasure has been discussed and/or applied in China, Japan, and Hong Kong. Although the Asian countries share Confucian values, their approaches to balancing privacy with informational access vary from society to society. China, Japan, and Hong Kong are compared with each other on the right to erasure’s applications and its legislative histories. The latest court cases and their reasoning will be given attention in analyzing how the three Asian jurisdictions weigh the right to erasure against its conflicting interests.

Id: 18122

Title: [Panel] Is the First Amendment a Global Touchstone? If So, Should It Be' Panel Description

Session Type: Panel Submission

Authors:

Name: Kyu Ho Youm
Email: khyoum52@gmail.com
Country: US (United States)
Affiliation: University of Oregon

Name: Charles Glasser
Email: charlesglasseresq@gmail.com
Country: US (United States)
Affiliation: New York University

Name: Edward Carter
Email: ed_carter@byu.edu
Country: US (United States)
Affiliation: Brigham Young University

Name: Amy Sanders
Email: amy.sanders@northwestern.edu
Country: QA (Qatar)
Affiliation: Northwestern University in Qatar

Name: Ahran Park
Email: ahranpark2@gmail.com
Country: KR (Korea, Republic Of)
Affiliation: Korea Press Foundation

Abstract: In The Right to Speak Ill, Professor Andrew Kenyon of the University of Melbourne and his co-authors stated: "The principles embodied in [New York Times v.] Sullivan derived from the First Amendment, yet they spoke to values common to all democracies, particularly after the Second World War when the discourse of rights grew powerfully."

No doubt the free speech values that informed the U.S. Supreme Court in Sullivan in 1964 have exerted varying degrees of influence on many countries. The "central meaning" of the First Amendment, which was eloquently articulated as rejection of seditious libel, has for nearly 55 years led some foreign and international law to evolve toward more protection of freedom of expression.

It is true that the gap in free speech jurisprudence between the United States and the rest of the world remains considerable. Few dispute the fact that American free speech law is decidedly more media-friendly than those of other nations. Nonetheless, the First Amendment, more often than not, has been viewed abroad as a source of inspiration, if not embraced in toto, to expand freedom of speech and the press as a fundamental right.

Within the context of what American media law scholar Edward Carter discerningly identified as “one fruitful area for exploring free-speech values” for mass communication law and policy research, our proposed panel examines the actual or perceived impact of the First Amendment as a topic for foreign, international, and comparative law. This is all the more timely and relevant to IAMCR in the global 21st century, since the influence of the American Constitution is often viewed to be declining.

Indeed, First Amendment scholar Steven Shiffrin argues in *What's Wrong with the First Amendment?* that “the alternative approaches to free speech” in Europe and Canada deserve attention as a reverse perspective on Americans’ “free speech idolatry.” Also, Yale law professor Owen Fiss has admonished the reformers in Eastern Europe in the mid-1990s to draw on the American experience with a free press “only selectively,” because “[t]hey must create for the press a measure of autonomy from the state without delivering the press totally and completely to the vicissitudes of the market.”

The invited speakers for our First Amendment panel are well established in journalism and law in the United States and abroad. Charles Glasser, one of the speakers, has global experience as a working journalist, media litigator and educator. He currently teaches at New York University. He will place the theme of our panel topic in context, before his co-panelists examine how the First Amendment has been accepted (or rejected) for one reason or another in Asia, Middle East, and Latin America.

Id: 18123

Title: Adopting American Defamation Law: Two Questions Worth Exploring

Session Type: Panel Submission

Authors:

Name: Charles Glasser

Email: charlesglasseresq@gmail.com

Country: US (United States)

Affiliation: New York University

Abstract: Most journalists, publishers, and free-speech advocates around the world view American libel law with some envy as the “gold standard” because it maximizes the amount of breathing room for the expression of ideas, particularly on matters of public concern. That said, there are two questions that ought to be explored when discussing the adoption of American law in other jurisdictions. First, while the focus has been on the “twin towers” of American libel law (namely, the “actual malice” standard and the public figure trigger of that standard), as a practical matter, lesser understood doctrines and procedural standards are worth considering and are much more likely to improve press laws world-wide. The second issue worth considering is a cultural and ethical one: defamation laws – particularly the key element of defamatory meaning – are reflective of the culture enforcing them. Thus, being called gay may be defamatory per se in one jurisdiction while considered innocuous in another. Similarly, being accused of imbibing alcohol is not defamatory in most of Europe, yet may bring serious disrepute in many Islamic-based cultures. No matter how much commonality we can obtain through globalization of certain media law concepts, the reflective nature of societal norms can never be truly overcome.

Id: 18124

Title: Free Speech in Latin America: Influence of the First Amendment Without the Name

Session Type: Panel Submission

Authors:

Name: Edward Carter

Email: ed_carter@byu.edu

Country: US (United States)

Affiliation: Brigham Young University

Abstract: Freedom of speech in Latin America is uneven, as evidenced by relatively large numbers of journalists killed in recent years as well as autocratic measures such as large administrative fines against media companies, targeted regulation and other government efforts at controlling the marketplace of ideas. Yet there is a burgeoning commitment to freedom of expression in national courts as well as the Inter-American Court of Human Rights. In cases such as Herrera and Donoso, the Court has applied the American Convention on Human Rights in a First Amendment-esque fashion, without explicitly invoking the U.S. Constitution. These cases are increasingly accepted throughout Latin America as giving definition to a uniquely Latin American right to freedom of speech that nonetheless parallels the U.S. First Amendment.

Id: 18125

Title: Cybercrime and Criminal Defamation Threaten Free Expression in the Middle East and Africa

Session Type: Panel Submission

Authors:

Name: Amy Sanders

Email: amy.sanders@northwestern.edu

Country: QA (Qatar)

Affiliation: Northwestern University in Qatar

Abstract: The outlook for freedom of expression in the Middle East and throughout Africa is bleak. According to Freedom House's 2017 Freedom of the Press rankings, 33 of the countries in the region were rated "Not Free," 31 are "Partially Free" and only 3 – Cape Verde, Sao Tome and Principe, and Mauritius – are categorized as "Free." Throughout the Middle East, fears of hacking and other cybercrime resulted in the enactment of draconian laws that either stiffen existing criminal penalties for expression or create new ones. In much of the region, truth is not a defense to defamation – as it would be under the First Amendment and Commonwealth-based stare decisis. Criminal defamation laws exist – and are utilized – in many African countries despite Article 9 of the African Charter. However, a 2015 decision by the African Court on Human and Peoples' Rights suggests there may be some support for American-style protections for freedom of expression among some in Africa.

Id: 18126

Title: The "First Amendment" in Asia: Lighting the Path to a Free Press

Session Type: Panel Submission

Authors:

Name: Ahran Park

Email: ahranpark2@gmail.com

Country: KR (Korea, Republic Of)

Affiliation: Korea Press Foundation

Abstract: Few Asian countries have embraced “actual malice” or other American free speech principles as such. Yet it does not necessarily mean that the First Amendment is irrelevant to the judicial interpretations of freedom of expression in Asia. South Korean courts has not yet accepted the “actual malice” doctrine of the United States, but they have recognized the “public figure” doctrine. In 2015, a high court in Korea, drawing on New York Times v. Sullivan (1964), stated that debates on public issues must not be hindered, even when they entail “vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” Chinese judges have rejected the “actual malice“ rule. Nonetheless, Chinese scholars have noted the “public figure” doctrine since a Chinese district court invoked the doctrine in 2002. First Amendment law was more direct in its impact on the Philippines and Taiwan, where the “actual malice” rule has been applied.

Id: 18207

Title: Social Democracy, the right to communicate and the consequences of the mass press in Imperial Germany

Session Type: Individual submission

Authors:

Name: Maria Löblich

Email: maria.loeblich@fu-berlin.de

Country: DE (Germany)

Affiliation: Institut für Publizistik- und Kommunikationswissenschaft, FU Berlin

Abstract: This abstract takes up on one of IAMCR law section's areas of interest: the history of the right to communicate. It studies the historical development of this norm within an organization: within the Social Democratic Party in Imperial Germany. The development of this norm within the party was paradoxical: On the one hand, from its beginnings, the Social Democratic movement demanded the right to communicate. This demand also resulted from the party's experience of state suppression, especially of the Social Democratic press, and from the experience of being victim of press campaigns. On the other hand, during the process of establishing its own party press (often in party ownership), Social Democracy also established structures of control. There were watchdog committees, for instance, in order to make sure that party newspapers adhered to the official party position. Party leaders emphasized that the Social Democratic press had to serve party goals. Journalists who wrote for "bourgeois" newspapers were put under (moral) pressure (Hall 1977; Leesch 2014). Against that background, an internal debate about the individual right to communicate emerged around 1900. Party journalists complained that party board and local party committees would restrict freedom of opinion (Calwer 1906; Pernerstorfer 1912).

The aim of my presentation is to study this paradox: Which ideas of the "right to communicate", "press" and "journalism" had emerged within Social Democracy? How did the party try to manage its "cognitive dissonance", having been a strong supporter of the right to communicate throughout the 19th century on the one hand, but creating a party press with close ties to party committees on the other? How can we understand this paradox against the background of the emerging mass press and the political system? What were the consequences for the further development for Social Democratic Press and its relation to communication norms?

The theoretical framework of this historical study combines mediatization and discursive institutionalism (Schmidt 2008). It studies the discourse within Social Democratic party, as well as the institutional contexts (e.g. spread of mass press, political constraints). The time period covers 1875 (party foundation) until the end of the Empire and the rise of Weimar Republic (1919).

Sources are minutes of annual party congresses, articles in party journals, biographical material (such as letters between party leaders and journalists).

The presentation makes the point that the history of press freedom and communication rights is not a linear success story. The example of Social Democracy in Imperial Germany provides insights into the difficulties, disruptions and ambivalences that are part of the history of these norms.

Calwer, R. (1906). Disziplin und Meinungsfreiheit. Sozialistische Monatshefte. 10-12, 1, 36-40.

Hall, A. (1977). Scandal, Sensation and Social Democracy. The SPD Press and Wilhelmine Germany 1890-1914. London: Cambridge University Press.

- Pernerstorfer, E (1912). Meinung und Partei. Sozialistische Monatshefte, 16-18, 19/20, 1150-1154
- Leesch, K. (2014). ‚Vorwärts‘ in ‚Die neue Zeit‘. Die sozialdemokratische Presse im langen 19. Jahrhundert. Leipzig: Ille & Riemer.
- Schmidt, V.A. (2008). Discursive Institutionalism: The Explanatory Power of Ideas and Discourse. Annual Review of Political Science, 11, 303-326.

Id: 18247

Title: Internet Law between anarchy and hyperregulation

Session Type: Panel Submission

Authors:

Name: Loreto Corredoira

Email: loretoc@ucm.es

Country: ES (Spain)

Affiliation: Complutense University Madrid

Abstract: During the first decades of ARPANET (1969) and TCP/IP protocol launching (1982), little external regulation was needed. Even when the first commercial ISP Internet access and websites were introduced (1989), with the exception of DNS, there were no regulations governing the Internet. However, since CERN launched the “web” in 1993, Internet law has developed rapidly.

From that time, the development of policies, regulations and laws which have sought to rescue “cyberspace” from utter chaos and anarchy, have contributed to a relatively stable and predictable digital space. But this has come with a cost: hyperregulation.

How could the Internet have been regulated? Looking for equity in the Law of jurisprudence The diversity of world views, competing interests (public/private), corporate, human integrity, common good/private interests coupled with complexity of regulation, and the dichotomies produced seems to only benefit lawyers. These dilemmas consistently point to a single question as a recurring theme of the 25 years of literature tracking the internet and its progress: Can the Internet be regulated? If so, how and by whom and for what purpose? What is the paradigm for laws governing the Internet? How can the law regulate new technology, while avoiding hyper-regulation which can stifle innovation?

To illustrate these two extremes consider the absence of regulation of personal data in the 1990s in Europe (which allowed the marketing companies to sell and exchange personal data freely) to the recent EU Regulation on Data in 2017. Socially speaking, we see the change also in the 90s litigation cases of workers in the 1990s asking for privacy in the access to their email or their browsing record at the office to the so called “right to be disconnected” from work duties in the so current mobile scenario. Or, in the Copyright field, from the total anarchy in the “copy&paste” practice until the “criminalization” of links. These polarized extremes merely highlight the need for a balanced Law.

No one denies that digital technology disrupted mass media and communication. But with this upheaval comes the view of some that the Internet should be beholden to none. At the other end of the spectrum is the state or world power that determines it is the arbitrator of such law and regulation.

The goal of this panel and study is to continue the revision of scholarly on Internet Law We will review several authors contributions, BRAMAN , SAMUELSON , LESSIG, STEPHENS, KULESKA, COTINO-CORREDOIRA (2013), DE MIGUEL (2011) STEPHENS (2005) y KULESZA (2012) have weighed in on this debate underscoring the need to make distinction that

protect freedom of expression and the new paradigm of social communication including journalism that is the Internet .

Id: 18248

Title: LA REGULACIÓN DE INTERNET EN CHILE Y LOS SUS DESAFÍOS FUTUROS

Session Type: Panel Submission

Authors:

Name: Pedro Anguita

Email: pedroanguitar@gmail.com

Country: CL (Chile)

Affiliation: Profesor Facultad de Comunicación. Univ. Los Andes

Abstract: La primera conexión a Internet de Chile ocurre en 1992 desde el Centro de Computación de la Facultad de Ciencias Físicas y Matemáticas de la Universidad de Chile, que envía a través de un ruteador un conjunto de datos a Maryland, EE.UU. Desde aquel tiempo, la conectividad a Internet ha ido crecido progresivamente tanto en el número de personas como en la velocidad con que acceden a dicha tecnología. Para septiembre de 2017, existía en Chile casi 18 millones de accesos a Internet fijos y móviles, que coincidente con la población total del país. Dicho crecimiento, se ha dado, en especial en los últimos 4 años, con lo cual a fines del año 2018 Chile podría alcanzar el 100 % de accesos a Internet. Tal desarrollo ha sido fruto de la empresa privada. El Estado ha intervenido como proveedor en aquellas zonas del país que, por sus características geográficas o escaso poder adquisitivo de sus habitantes, no les resulta rentable para las empresas de telecomunicaciones instalar una red. Sin embargo, el desarrollo descrito, y la importancia que ha adquirido Internet en la llamada sociedad de la información, no se ha acompañado de una regulación normativa adecuada. En los últimos años, la regulación de la red Internet ha experimentado importantes modificaciones. El año 2010 entró en vigencia la ley que garantizó la neutralidad de la red y también se reformó la Ley N° 17.336 de Propiedad Intelectual (1970), que introdujo un régimen de responsabilidad de intermediarios, impulsada sin duda, por los compromisos adquiridos por Chile con EE.UU. en el Tratado de Libre Comercio que nuestro país suscribió con dicho país. Subsisten, sin embargo, varios ámbitos en los cuales no se han adecuado a Internet, como el campo penal, donde se han aplicado el Código Penal que protejen dos derechos fundamentales como la honra y la vida privada.

En el ámbito de la vigilancia y la interceptación de las comunicaciones privadas hubo una iniciativa gubernamental durante el año 2017 que intentó por vía reglamentaria acceder a datos de navegación de los ciudadanos, aunque la Contraloría General de la República estimó ilegal. La protección de datos personales ha sido otra materia cuya regulación no ha prosperado pese la firma del amplio Tratado económico, político y de cooperación con la Unión Europea y el ingreso de Chile a la OCDE.

Desde el fin del segundo gobierno civil luego de la restauración del régimen democrático bajo la presidencia de Eduardo Frei Ruiz-Tagle en 1999, Chile ha reconocido la necesidad de impulsar una política nacional de desarrollo digital como parte de su estrategia para potenciar el crecimiento económico y la inclusión social. El trabajo describirá el progreso de tales medidas y una evaluación crítica de la última y actual agenda gubernamental en el desarrollo digital del país.

Id: 18252

Title: Net Neutrality in the United States

Session Type: Panel Submission

Authors:

Name: Roy Guterman

Email: rsgutter@syr.edu

Country: US (United States)

Affiliation: Syracuse University

Abstract: Since commercial and civilian use of the modern internet exploded in the early to mid 1990s, governments around the world have wrestled with how to regulate this vast communications network and community. In the United States, the government has largely had a hands off approach with limited governmental interference. This limited role facilitated growth and a practically unlimited capacity for self expression, communication and artistic and creative development. Even good, bad and ugly content.

In December, the US Federal Communications Commission instituted a new regulatory scheme that will essentially alter the cyber landscape and scrap the concept on net neutrality. The implementation and effects this policy shift will engender are unknown at this time, but some skeptics fear the policy shift could alter the future of internet based communications. This paper and presentation will look at the laws that govern the internet and the policy implications of these policies, including the businesses and privately operated public fora that enable users and citizens around the world to express themselves, engage in dissent and free speech.

Id: 18253

Title: UN NUEVO PACTO SOCIAL ANTE LA BRECHA DIGITAL

Session Type: Panel Submission

Authors:

Name: Leopoldo Abad

Email: abad.fhm@ceu.es

Country: ES (Spain)

Affiliation: Profesor Titular (Acr.) Universidad San Pablo CEU

Abstract: En los 25 años que han transcurrido desde el lanzamiento de la Web por el CERN, la evolución de la Red ha generado una serie de problemas que ni aventuramos imaginar en aquel momento. Uno de estos problemas a los que nos enfrentamos en la actualidad es la denominada brecha digital, entendida como las diferencias en cuanto al acceso y uso de las nuevas Tecnologías de la Información en diferentes entornos sociales y regionales. Estas limitaciones están produciendo dos civilizaciones distintas: quienes viven dentro de las puertas electrónicas del ciberespacio y los que viven en el exterior. Las nuevas reglas globales de comunicación digital, debido a que son omnipresentes e integrales, tienen el efecto de crear un espacio social nuevo y totalizador; que margina a quien no es encuentra en su interior. Ante esta realidad, se requiere del planteamiento de un nuevo paradigma de convivencia que denominamos Pacto Social Digital, que incluye la necesidad de asegurar el uso provechoso de las posibilidades que ofrece Internet a través del aseguramiento tanto del acceso a las infraestructuras de Red en condiciones de igualdad para todos los ciudadanos con independencia de su situación socioeconómica, así como de la necesaria alfabetización digital de todos los ciudadanos. Asegurar estos derechos como actualizaciones de los derechos de acceso a la información (art. 19 DUDH) y educación (art. 26 DUDH). Este Pacto Social Digital, tanto nivel nacional como internacional, requiere de la concienciación y participación de todos los sectores sociales (poderes públicos, sociedad civil y mundo empresarial) como forma de asegurar su éxito y evitar una sociedad de dos velocidades, germen innegable de marginación, conflictos sociales e injusticia.

Id: 18257

Title: More Control and Fewer Rights: 25 Years of European Copyright Regulation Online

Session Type: Panel Submission

Authors:

Name: Rodrigo Cetina
Email: rodrigo.cetina@gmail.com
Country: US (United States)
Affiliation: Lecturer

Abstract: The EU currently has ten directives that constitute the Copyright regulatory framework for Europe. Almost 25 years ago, The Satellite and Cable Directive of 1993 addressed copyright in broadcasting and retransmissions and since then we have seen others like the Database Directive (1996), the InfoSoc Directive (2001) perhaps the most prominent one, the Portability Directive of 2017 and others, aimed at regulating the internal market and the rules that govern protected goods and the services that offer access to them.

Over the last two decades, we have witnessed the so-called copyright wars, we have seen seismic changes in the ways copyrighted content is accessed, used and shared. New players have entered the market, and the way works are sold, distributed and consumed has evolved greatly. But, despite the emergence of some new actors, large, multinational rights holders remain largely the same and critics argue that both technology and the law have given them even greater control over protected works. Meanwhile, even if users should be able to access, share and manipulate content with great ease thanks to digital and communication technologies, the question of if those activities do not infringe current legislation still remains and critics argue that the EU's harmonization efforts through the directives, particularly the system of limits and exceptions contained in the InfoSoc Directive, and court decisions have not helped to improve the situation. Furthermore, European legislation has enabled the rise of contractual and private copyright and in practice, terms of use agreements, algorithms and interfaces dictate what users can and can't do with content made available through online streaming platforms, despite the actual scope of the law and the fundamental rights that the EU purports to guarantee to the user.

This work reviews the last 25 years of European Copyright, including the most relevant Directives and Court decisions to assess the current state of control, access and use of copyrighted content online in the internal market. Finally, the work looks at the proposed changes to legislation that we expect to see in 2018 and beyond.

Bibliography

- Angelopoulos, C. (2017). Communication to the Public and Accessory Copyright Infringement. Cambridge Law Journal, 76(3), 496.
- Behrnd-Klotz, M., & Prom, C. (2015). Rights in the Digital Era. Chicago: Society of American Archivists.
- De Filippi, P. (2013). Law of the cloud: on the supremacy of the user interface over copyright law. Internet Policy Review, 2(3).
- Mazziotti, G. (2008). EU Digital Copyright Law and the End-User. Berlin: Springer.
- Postigo, H. (2012). The digital rights movement: the role of technology in subverting digital copyright. Cambridge: MIT Press.

- Sinnreich, A. (2013). *The piracy crusade: how the music industry's war on sharing destroys markets and erodes civil liberties*. Amherst: University of Massachusetts Press.
- Towse, R. (2017). Economics of music publishing: copyright and the market. *Journal of Cultural Economics*, 41(4), 403-421.
- Wang, S. (2017). The cloud, online piracy and global copyright governance. *International Journal of Cultural Studies*, 20(3), 270-286.

Id: 18268

Title: [Panel] The right to one's own image in Ibero-America, Panel Description

Session Type: Panel Submission

Authors:

Name: Sebastian Zarate

Email: szarate@uandes.cl

Country: CL (Chile)

Affiliation: Universidad de los Andes, Chile

Abstract: The protection of a person's own image in Ibero-America –Latin America and Spain – is considered a human right directly linked to human dignity. Whether or not this is an autonomous right or as part of the right to privacy –which is still up to debate in academic and legal circles- it nonetheless appears in some of the Iberian American constitutions and in most countries, the courts protect it as part of the right to privacy.

The protection of this right in Ibero-America has three distinct characteristics, which contrast with the way in which the American legal system recognizes this right. The first one is the broader scope of application of this right in terms of who and what is being protected. In other words, the protection of a person's own image is not limited to economic aspects -what is known as the right of publicity in U.S. law- but also includes any unauthorized use of a person's likeness or voice that may affect said person's dignity.

A second difference is that the right does not necessarily have a match in other legal protections, such as the public disclosure of private facts or appropriation torts, and in general, any of the four privacy torts; nor does it identify itself with children's privacy protections or intellectual property infringement. While such circumstances may occur, and, for example, the publication of a person's likeness may be deemed highly offensive or derogatory, justifications for the right to the protection of one's image have its own characteristics, which is why most legal literature considers it an autonomous right.

A third difference is that in the U.S. the right of publicity is protected at a state level, and thus, the degree of protection varies. Some state law establishes torts while in other states common law applies and the right is defined by the courts. The same is true for wiretapping regulation. In general, and regarding the development of fundamental rights, civil law Ibero-American countries protect this right at the federal (or national) level and their courts limit themselves to interpret constitutional or legal provisions.

The few exceptions to the right to own image include the publication of images of public officials and public figures, as long as those images are taken in public; or images that belong to facts that are deemed a matter of public concern.

This panel seeks to study the right to the protection of one's image in the context of Ibero-American Communication Law, and includes the participation of scholars from Chile, Spain, and the United States which speak about this right from their own perspectives and their presentations will enable us to discuss this right from a comparative law perspective during the session.

Id: 18298

Title: Los desafíos del retorno del Estado a través de la regulación de la Comunicación desde la mirada de los periodistas ecuatorianos

Session Type: Individual submission

Authors:

Name: Fernando Casado

Email: casado.fernando@gmail.com

Country: EC (Ecuador)

Affiliation: Instituto de Altos Estudios Nacionales

Name: Rebeca Sanchez

Email: resanchez09@gmail.com

Country: EC (Ecuador)

Affiliation: No

Abstract: Desde lo que llamó Ramiro Beltrán la “Década del Fuego” durante los años setenta, hasta nuestros días, uno de los temas más álgidos en materia de Comunicación es la necesidad o no de regular este campo. Ecuador tras la arremetida del neoliberalismo que se tradujo en una desregulación en materia de Comunicación dio en la última década un viraje de ciento ochenta grados. La aprobación de la Constitución del año 2008 y posteriormente una consulta popular en el año 2011 tuvieron como resultado que en el año 2013 entrara en vigor la Ley Orgánica de Comunicación. Esta nueva Ley de Comunicación se inserta en la ola regulatoria de corte postliberal resultado de las políticas públicas desarrolladas en algunos países de América Latina como Argentina, Venezuela o Bolivia.

Estas nuevas regulaciones y el nuevo status quo establecido no han estado exentos de duras críticas por parte de diversos actores relacionados con la comunicación.

¿Ha permitido la nueva Ley una democratización de la Comunicación o una regresión de derechos? Estas son las preguntas a la que pretendemos dar respuesta los investigadores que elaboramos el presente trabajo. Sin embargo, lo novedoso del planteamiento es que las posibles respuestas no las dan directamente los investigadores sino los periodistas que fueron entrevistados durante la investigación.

La metodología llevada a cabo se basa en un total de 50 entrevistas realizadas a periodistas de medios públicos y privados a los que se realizaron entrevistas semiestructuradas sobre la Ley Orgánica de Comunicación del Ecuador.

Durante las conversaciones mantenidas con los periodistas se quiso ahondar sobre temas como la importancia de la profesionalización de quienes ejercen la profesión de periodista; el reparto del espectro radioeléctrico entre medios públicos, privados y comunitarios; o la existencia de censura previa por parte del Estado a los periodistas en la imposición de la Ley, entre otros temas.

La ponencia que presentamos aborda los temas tratados desde las distintas aristas y el sentir de quienes están a cargo de generar la información en Ecuador. El debate aspira a recoger las opiniones en muchas ocasiones encontradas, pero también coincidentes, de quienes han visto afectado su trabajo de una u otra forma tras la entrada en vigor de la nueva regulación.

La investigación recoge los argumentos de los profesionales de la comunicación y los pone a dialogar para tratar de dilucidar los conflictos y nudos críticos de un tema que levanta apasionados

debates entre las distintas posturas ideológicas que se encuentran entre quienes están a favor y en contra de la regulación de la comunicación. Nuestro trabajo no quiere llegar a conclusiones taxativas, pero si enriquecer el debate desde la perspectiva de los trabajadores de la Comunicación.

Id: 18377

Title: False promises of electronic government. Active Transparency Index in Latin America 2017

Session Type: Individual submission

Authors:

Name: Matias Ponce

Email: matias.ponce.m@gmail.com

Country: UY (Uruguay)

Affiliation: Universidad Católica del Uruguay

Abstract: Today, Latin America has common scenarios and challenges regarding state of active transparency as a central element in government communication, but requires an instrument to compare between its different governments. The general goal of the article is compare the status of active online transparency of national governments in Latin America in ten Latin American countries: Argentina, Bolivia, Brazil, Chile, Ecuador, Panama, Peru, Paraguay, Uruguay and Venezuela in the year 2017. Through a methodology of quantitative documentary analysis reviews the active transparency of ministries that make up the central government of each selected country, an Online Transparency Active Index is built to compare the various performances in the region.

The comparison between the different countries is favored to look for their similarities and differences in the type of information dissemination they make towards the citizenship and what are the interaction and participation schemes that they propose through the websites to the people.

Web pages in government communication promised to be facilitators of access to public information, but this is not being fulfilled in the major of Latin American countries.

Id: 18425

Title: Right to Data: Analysis based on "Sina microblog" v. "Maimai"

Session Type: Individual submission

Authors:

Name: Lili Lei

Email: LLL305@sina.com

Country: CN (China)

Affiliation: Dalian University of Technology

Abstract: "Sina microblog" is a social media platform. Users can choose to public their mobile phone number, avatar, name (nickname), gender, personal profile to all public, and they can set the disclosure scope of their information.

Maimai is a mobile-based social networking APP. It serves users by analyzing the data of Sina microblog and mobile phone address book, so they can find new friends, get in contact with potential clients or partners.

From 11th Sept.2013 to 15th Aug. 2014, Maimai cooperated with Sina microblog in the model of "Open API" (Open Application Programming Interface) , according to which Maimai can obtain Sina microblog users' information through certain application interfaces if it gets users' permission. Later after their cooperation terminated, Sina microblog sued Maimai for unfair competition, including illegal data mining-Maimai take Sina microblog users' education and occupation information without the authorization from Sina microblog, and illegal access and use of the information of Sina microblog users who are not Maimai's users. In 2016, "Maimai" was adjudicated unfair competition.

Right to data involves three kinds of relationship:

1. The relationship between user and network operator

It is mainly determined by the service agreement formulated by network operator. According to "Maimai service agreement" in this case, Maimai's users need to upload the address book of their mobile phone; otherwise, they can not enjoy the services that Maimai offers. Therefore, the future regulation of data rights should fairly coordinate the powers and functions of right to data between network operators and net users.

2. The conflict between network operators

It can be understood as conflict between data's usufructs. The complaints in this case are mainly about illegal data mining and extracting, and illegal access and use of corresponding relationship between users' mobile phone contacts and Sina account through unauthorized access to Sina from the back-end interface or through the network "crawler" from the front interface. Since data have become commercial resource and important competitive advantage for internet companies, the ICT legislation should coordinate the conflict of competitive interests of data between different network operators.

3. The legal risk of the relationship between users or between users and non-users

Users' online activities may dispose others' personal information without data owners' permission. As in this case, if Maimai's users accept "Maimai service agreement", according to which they need to upload their address book, it may infringe the right of the people in their mobile phone list.

In conclusion, data that ISPs fight for are collections or connections of personal information.

Generally, according to service agreements, users entitle ISPs to occupy, use and benefit from their

data, and ISPs need to ensure the security of personal data in accordance with the law. Since data is economically valuable and can improve efficiency, support innovation, data protection is actually just one side of the issue, and emerging technologies call for balance among protection, exploitation and utilization of data, and among all subjects involved in cyberspace.

Id: 18536

Title: On Media, Memory and Laws - The Israeli Law Commemorating the Exile of Jews from Arab Countries and Iran (2014) as a case-study

Session Type: Individual submission

Authors:

Name: Noam Tirosh

Email: noam.tirosh.ps@gmail.com

Country: IL (Israel)

Affiliation: Ben-Gurion University of the Negev

Name: Yifat Gutman

Email: gutmany@bgu.ac.il

Country: IL (Israel)

Affiliation: Ben-Gurion University of the Negev, Israel

Abstract: Laws, bills, legal procedures, and the juridical discourse, constitute together a social arena in which society's memory is being constructed, evaluated and debated by political actors. Legal scholars tend to focus on the language of the laws or court decisions, while memory and media scholars shy away from the law and examine mediated sites, such as monuments, museums, ceremonies, history books, films, TV shows, and digital arenas of remembrance. This paper joins the ongoing, yet marginalized, scholarly attempt to connect between law, memory and the media.

Often, the law defines what society should remember by designating commemoration days, by constructing memory sites and by allocating funds for their operation. Yet, a distinct attention should be given to the media as they play a distinctive role in this effort. The media cover the public negotiations between different actors that lead, eventually, to the enactment of laws. Yet, more importantly, laws often aim to influence the media and to turn them into a sphere commemorating a designated historic narrative. As such, it is the interaction between laws, media and memory that can uncover the social struggles over memory and the underlying issues regarding present problems, interests, and conflicts, which the official outcome does not give away.

To prove this arguments, we focus on two apparently dissimilar types of "memory laws" that were legislated in Israel in recent years: 'The Nakba Law' of 2011, and the 'Law Commemorating the Exile of Jews from Arab Countries and Iran' of 2014. We analyze the heated debates that accompanied the enactments of the laws in Israel's three largest newspapers and we examine the influence of these laws on their outputs during the days of remembrance.

On the surface it seems that the two laws stand in opposition. The Nakba law aims to facilitate collective forgetting as the law negates recognition of the Palestinian catastrophe (al-Nakba) that took place as a result of the 1948 war. The second law aims to encourage collective remembering by making official another long-silenced counter-memory - the dispossession and suffering inflicted on Jewish residents of major Arab states and of Iran by the local authorities as a reaction to the establishment of Israel in 1948.

However, a systematic analysis of the two laws, of the mediated discourse that followed their enactment and of the media fare on these commemoration days, demonstrates that the laws are more similar than meets the eye at first. It seems that the two laws were enacted to serve the same grand “memory project” - the dominant Israeli Zionist narrative. This study, thus, proves the importance of studying memory laws and their connections to media in order to unravel foundational aspects of society’s memory process in the contemporary media sphere.

Id: 18831

Title: Restraining the Surveillance Society: Adopting Policies for Automated License-Plate Readers

Session Type: Individual submission

Authors:

Name: Kearston Wesner
Email: Kearston.Wesner@quinnipiac.edu
Country: US (United States)
Affiliation: Quinnipiac University

Name: Katie Blevins
Email: katieblevins@uidaho.edu
Country: US (United States)
Affiliation: University of Idaho

Abstract: In the past few years, the use of automated license-plate readers (ALPRs) has become more widespread in many countries, including the United States. ALPRs are small cameras affixed to police cruisers (mobile ALPRs) or on fixed structures such as utility poles (stationary ALPRs). Law enforcement uses ALPRs to automatically capture the license plates that come into frame, recording plates, time, and location. The value to law enforcement is obvious: the simple and relatively inexpensive technology captures the license-plate information of passing vehicles and can be used to detect stolen vehicles, ferret out drivers with active warrants or expired licenses, or ascertain whether a particular vehicle was involved in a crime. These plate scans are also stored in the databases; the information retained in those databases includes all vehicles recorded, even those not suspected of any crime.

While this technology has undeniable benefits, its use poses significant privacy problems. First, some law enforcement officers have employed this technology to abuse their “surveillance discretion,” by targeting individuals in low-income areas or in communities of color. Second, there are natural concerns inherent in enabling the government to store such a massive amount of citizens’ data. To date, agencies have adopted wildly varying policies regarding data storage and some agencies lack a policy altogether.

In 2012, the United Kingdom, which has been called “one of the most surveilled nations in the world,” adopted data collection and retention policies in the Protection of Freedoms Act. In 2013, the Home Office drafted a Surveillance Camera Code of Practice that establishes a set of “guiding principles” for the use of surveillance camera systems, including ALPRs.

Since 2013, however, the Surveillance Camera Commissioner recognized the special “risk potential for intrusion on citizens” and the need for stronger cybersecurity protections for issues like hacking. Furthermore, recent news stories indicate “misreads” by the ALPR technology, which could have tremendous consequences for those erroneously targeted. The UK policies alone do not sufficiently address the issues presented.

Thus, this paper argues that current U.S. practices regarding ALPRs is untenable. The paper has two aims: (1) to compare and contrast the policies central to ALPR use in the United States and the United Kingdom; and (2) to articulate clear guidelines that ensure law enforcement accountability regarding the use and retention of citizens' data. These guidelines will be written for consideration in a variety of countries where ALPR technology is being used.

Surprisingly, relatively little research has been directed at this area. The bulk of the research has centered on the U.S. Constitution, particularly Fourth Amendment issues of unreasonable searches and seizures, but the use of ALPRs – gathering data in order to determine whether to conduct a later search – does not trigger Fourth Amendment concerns. Additionally, the widespread use of this technology raises generalized privacy concerns outside of any one country's legal framework. This paper hopes to provide a framework for both potential problems and guidelines for effectively working with ALPRs.

Id: 18866

Title: Transparency Regulation & its Application to the Internet

Session Type: Individual submission

Authors:

Name: Justin Brown

Email: justinsbrown@usf.edu

Country: US (United States)

Affiliation: University of South Florida

Abstract: Transparency, in the form of consumer notice and consent, is being lauded as an important policy remedy to address a range of important Internet issues concerning network neutrality, cybersecurity, copyright and privacy (data collection, use and sharing). Although broadband Internet access providers, social media services and wireless apps increasingly rely on this form of transparency through terms of use and service agreements, transparency itself is nothing new to communications regulation.

Effective regulation and policy is based on the availability of public information through processes of disclosure and transparency. Citizens, corporations and government simply may not understand, debate, maintain or enforce law and regulation if they do not have the ability to access current industry rules and practices, assess what conduct or actions are acceptable and understand sanctions that may be rendered. Transparency is typically conceptualized as information that the public may access to effectively monitor government and industry and hold them accountable. Sunshine and freedom of information laws and processes exist to make as many government meetings and records open as possible to the public.

In terms of regulatory transparency, administrative agencies like the Federal Communications Commission (FCC) also follow due process provisions within the formal rulemaking process to comply with the Administrative Procedure Act (APA) in an effort to allow citizens and stakeholders to be informed and participate in shaping public policy. Beyond the APA, transparency in the regulatory context also means firms, specifically those who are regulated, may be compelled to disclose information to the public and government.

This paper addresses the role that disclosure and transparency play historically in U.S. communications regulation. Outside of the APA, the FCC, for instance, holds common carriers accountable to extensive filing and disclosure requirements and requests multichannel video program distributors (MVPDs), Internet service providers, and wireless carriers to report annual subscription and revenue data. As a condition of their license, all broadcast stations maintain and make available a public inspection file upon request that discloses how they fulfill their public interest obligations. Most recently, through the enhanced transparency provisions of the Open Internet rules, broadband Internet access providers must disclose quality of service measures and network management practices to their customers.

This paper employs both legal and social science research to better conceptualize and understand transparency in the regulatory context, asking specifically, what is transparency as it relates to

communications regulation? What are the different types of regulations and practices that exist that are centered on information disclosure? Preliminary research indicates four distinct types of transparency regulations that may be organized around notions of information disclosure, namely: 1) consumer 2) structural 3) content and 4) process. This paper articulates definitions and extended examples of these conceptions and draws conclusions on how transparency-focused communications regulation may better inform Internet policy, especially in terms of the growing dependence on terms of use and service agreements.

Id: 18911

Title: Democratizing Surveillance: Power, Technology and the People's Right to Gather News

Session Type: Individual submission

Authors:

Name: Erik Ugland

Email: erik.ugland@mu.edu

Country: US (United States)

Affiliation: Marquette University

Abstract: Revelations about the United States and other governments' surveillance activities and the harvesting of private data by social media platforms, advertisers and corporations, has sparked outrage and resistance by people across the world and has focused attention on restoring individual autonomy and privacy. In response to people's demands for greater protection, many government officials are using existing laws and some new legislation to limit the use of certain technologies, such as sensors, recording tools (e.g., Google Glass), RFID chips, GPS devices, and drones, among others, as a response to public concerns about excessive surveillance.

Most of these legislative efforts are targeting the use of these technologies by citizens and corporations, however, rather than by government officials. Indeed, government officials are often specifically exempted from penalties or explicitly authorized to use these technologies. This is having the perverse effect of exacerbating the imbalance of power in society by taking these tools out of the hands of citizens, activists and journalists who could use them monitor and check government officials and other powerful interests, while maintaining or expanding the authority of government – particularly military, intelligence and law enforcement officials – to use these technologies against citizens.

Getting even less attention are the parallel efforts in the U.S. and parts of Europe to prosecute and intimidate whistleblowers and non-traditional journalists, particularly those who use online technology and surveillance techniques to expose corruption. Through trumped-up charges, disproportionate penalties and mischaracterizations of their activities as hacking or cybercrime, government officials are creating a culture of fear to deter this citizen-activist-journalist surveillance of government while also seeking to withhold tools, such as encryption, that are essential for people to confidentially share information and communicate with sources.

In some of these situations, government officials are deliberately seeking to shut down their critics and limit disclosure. In other situations, officials simply misunderstand the technology or are just enforcing existing privacy laws without recognizing the ways in which they impair newsgathering or other public-interest activity. Either way, the result is the same: government power is expanding and citizen power is contracting.

This paper will provide a detailed description of some of these trends and their effects and will propose a set of specific reforms for enabling greater newsgathering and surveillance capability by citizens, limiting government excesses, and securing a more equitable distribution of social power.

Id: 19174

Title: How technology impacts citizens' rights: law making.

Session Type: Panel Submission

Authors:

Name: José Manuel Martínez Sierra

Email: jose_martinez@harvard.edu

Country: US (United States)

Affiliation: Harvard University

Name: Victoria Alsina

Email: victoria@thegovlab.org

Country: US (United States)

Affiliation: Harvard University, and GovLab, New York University

Name: Jose Angel Camisón Yague

Email: jcamyag@unex.es

Country: ES (Spain)

Affiliation: University of Extremadura

Abstract: The 1789 Declaration of the Rights of Man and of the Citizen, in its article 16 stated that a society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all. From an historical point of view, technology is the most relevant opportunity and challenge that citizens' rights are facing. This paper discusses how technology impacts citizens rights as recognized in traditional constitutions, both in a positive and in a negative way.

In the first place, facing the positive side, it studies the possibilities that new technologies offer for actual implementation of a substantive democracy, as well as the opportunity it offers to citizens for better access to public information and control of government activity. It also deals with law making improvement and direct participation of citizens in key decision-making processes.

Dealing with the negative side of the technology and citizens rights interaction, we study how technologies are erasing some fundamental rights: lack of access to new technologies and its consequences, the right to data protection, the right to be forgotten on the Internet, election hacking or data theft.

Id: 19216

Title: Securing the Human as Protecting Data'

Session Type: Individual submission

Authors:

Name: Preeti Raghunath

Email: preetimalaraghunath@gmail.com

Country: IN (India)

Affiliation: University of Hyderabad

Abstract: In an increasing datafying world, protection of data created and generated as a result of everyday interactions assumes imperativeness. This year, Europe looks to adopt the General Data Protection Rules (GDPR), and other national (like India) and regional juridical bodies seek to work out frameworks that address data protection. This paper looks at some possible ways to think about Data Protection legislations and practices in South Asia. By alluding to ideas of data justice (Taylor, 2017; Dencik, Arne & Cable, 2016) and underscoring the idea of 'multiplicity' of data regimes, this paper draws on the idea of human security (King & Murray, 2001) as central to thinking about data protection legalities. This is does, by placing the protection of the essence, proprietary and otherwise, of the human, at the centre of this legal exercise of formulating data protection legislations, to uphold data democracy.