

# The Intersection of Law and Social Media – some preliminary points

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This discussion introduces some questions arising with the intersection between law and the State with regards to the regulation of social media. The current environment in which social media exists, can in some contexts pose severe challenges for the State in terms of regulating social media and its users. Never before has something posed such challenges for regulators. A number of questions are raised by any imposition of regulation regarding the use of social media. What is the legitimacy of, and normative limits to the State's coercive regulatory powers regarding social media?

The corollary of such an inquiry is to ultimately explore the extent to which the State can legitimately regulate and make incursions into the lives of the citizenry through the regulation of something that is increasingly seen by many as being above regulation – both in the physical sense because it's 'just a bit too hard' to track everyone; but also in the ethical sense as to what is deemed appropriate enforcement by the State.

There is little question regarding the pervasiveness of social media upon Western society. While there is some doubt as to the benefits and the corresponding deleterious effects that social media has on people, there remains a series of fundamental questions that need to be addressed in order to better understand how society will ultimately come to treat the phenomenon in its legal context. These questions seek to better understand the extent to which the State can and should use its coercive powers in regulating the use of social media. Much the same way that other important normative questions have been asked involving the legitimate extent of State power over other matters such as censorship, freedom of expression, gun control, pornography or any other area of society involving the possibility of the subjugation of citizens' rights.

Questions regarding the legitimate control of the citizen by the State are not new and have existed for as long as the concept of the 'State' has existed. These questions ultimately go towards addressing fundamental questions regarding the limits of State authority. In the present context, a further description of this question can be

described as an exploration into the realms of social media and its intersection with the law.

The creation and diffusion of social media represents an epoch that can be described as one of the defining characteristics of the contemporary Western world. Despite the widespread and rapid adoption throughout society, how social media is dealt with by law, remains an evolving yet unknown eventuality. As a consequence, the use of social media largely remains untouched by State intervention. Why is this so? Why is there a seeming reluctance on the part of law makers to introduce legislative reforms targeting social media – particularly when more and more reports are surfacing of individuals suffering harm as a result of using social media?

The answer to this, in part at least, could rest with two fundamental reasons. The first relates to the array of technical and logistical problems in regulating the use of social media. These include jurisdictional problems, policing, and enforcement. The second reason why the State may not wish to assume a legislative interest in regulating social media *per se* goes to the very foundations of Western values where the imposition of regulation around social media encroaches on fundamental rights associated with certain freedoms for which we hold very dear.

The State simply neither knows, nor fully understands, how to classify social media and how such a phenomenon should be regarded in a social and legal sense. Social media is both a tool and a weapon. The result of this is that the use and ‘enjoyment’ of social media largely remains unregulated since it is an ‘unknown’ quantity. Rather the State is reliant upon existing legal structures and norms to regulate offensive behaviour generated by the use of social media.

Is such an approach adequate? Should there be further regulation and if so, how and to what extent should regulation go towards addressing any real or perceived harms stemming from social media?

Future discussions will attempt to shed some light on these questions associated with regulating social media.