

The Enigma of Social Media in the Internet Era: Censorship on Social Media Platforms

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Essay Writing Competition
March 15, 2019

In a time of horse drawn carriages, pigeon post, and no electricity, the French Revolution would seem limited by the means of communication. However, this was an era and an atmosphere brimming with political and social discourse. After all, it was a time of great upheaval, and individuals were eager for their voices to be heard. The threat of revolution led the authorities to spend a substantial amount of time and energy censoring the written press, caricatures, theater, and other forms of popular media at the time¹. Flash forward 200 years, and media in the Internet era has been radically transformed; today, anyone with web access can effortlessly project their thoughts and opinions to hundreds, if not thousands, of individuals via an assortment of social media platforms. However, these modern-day media outlets, most of which are owned by large corporations, creates an enigma around the interplay of non-traditional media, the First Amendment, and company policies. Whether they practice politically driven censorship or not, a careful examination of the policies and procedures of these social media companies, along with US judicial cases relating to social media and censorship, is needed.

Analyzing the policies and procedures of all top social media companies is beyond the scope of this essay. That in mind, I will focus on Twitter since they have recently been in the spotlight for censorship and free speech. Twitter moderates its platform by the "Twitter User Agreement", which is comprised of the Twitter Rules, Privacy Policy, and Terms of Service agreements². Within the Twitter rules are the company's policies on content boundaries, abusive behavior, use of spam, and security. Twitter argues that their policies are in place in order to protect the experience and safety of people who use their platform². Furthermore, Twitter CEO Jack Dorsey was recently on the Joe Rogan podcast and claimed that Twitter does not look at speech itself, but the conduct, or how the tool is being used instead³. Dorsey brings up the idea of a megaphone and how it is not about the speech of an individual, but instead the amplification of the message⁴. In order to determine the level of misconduct observed, Twitter uses metrics such as the number of account blocks, mutes, and reports⁴. Dorsey goes on to admit Twitter has problems with coordinated conduct by people opening multiple accounts or coordinating with accounts they don't own, through vectors such as the retweet and quote tweet functions. The entire process of analyzing amplification and account activity of millions of daily tweets is automated by machine learning and deep learning algorithms⁶. It is clear to me that one of Twitter's top priorities is trying to manage malicious, or botnet-like behind the scenes activities. This is understandable based on the recent revelations of Russia's involvement in the 2016 elections by Russian troll farms⁷. Having a better understanding of Twitter's view on conduct moderation, it is equally important to analyze recent judicial precedents about social media and censorship in the modern era, to see if there are any apparent or obvious contradictions.

¹ Goldstein, Robert J., "The French Review" Vol. 71, No. 5 (Apr., 1998), pp. 785-796

² "The Twitter Rules." Twitter, <https://help.twitter.com/en/rules-and-policies/twitter-rules>

³ "Joe Rogan Experience #1236 – Jack Dorsey", 34:17

⁴ "Joe Rogan Experience #1236 – Jack Dorsey", 34:40

⁵ "Joe Rogan Experience #1236 – Jack Dorsey", 35:50

⁶ "Joe Rogan Experience #1236 – Jack Dorsey", 36:30

⁷ Barrett, Devlin, et al. "Russian Troll Farm, 13 Suspects Indicted in 2016 Election Interference." The Washington Post, WP Company, 16 Feb. 2018

In June of 2017, the Supreme Court of North Carolina ruled in an appeal for *Packingham v. North Carolina*, No. 15-1194, that the state law prohibiting sex offenders from accessing social media websites violated the First Amendment. In an opinion for the court, former Associate Justice Anthony Kennedy argued that “Foreclosing access to social media altogether thus prevents users from engaging in the legitimate exercise of First Amendment rights.” Additionally, he likened social media to the “modern public square”, claiming it to be “one of the most important places to exchange views”⁸. Another recent case relating to social media and censorship, is *Knight First Amendment Institute v. Trump*. On May 23, 2018, Judge Naomi Reice Buchwald of the Southern District of New York, ruled that Trump blocking people on Twitter violates the First Amendment by infringing on individual’s rights to participate in a “designated public forum”⁹. Furthermore, *Manhattan Community Access Corp. v. Halleck*, No. 17-702, is the most recent Supreme Court case set to shed light on First Amendment rights and social media platforms. The case pertains to whether a private operator of a public access television network is considered a state actor, which can be sued for First Amendment violations¹⁰. While the case itself has nothing to do with social media, it will provide the Supreme Court an opportunity to weigh in on private companies and First Amendment liabilities. While citing just a few judicial cases on this topic, it is evident there has not yet been a case that directly relates to the sort of Twitter-like, analytically based censorship on social media platforms. It appears likely it will take a very significant controversy to spur judicial action in the future.

With all the research taken into consideration, there are no easy answers to the question of should social media platforms be able to censor controversial speech. One could argue that in the Internet era, being censored from one platform does not limit your ability to pursue other mediums of social media. However, in today’s age, when corporations control large market share and the attention of billions of people, starting your own personal blog would be like a French Revolutionist giving an impassioned speech alone in his new café. High ranking government officials using platforms like Twitter and Facebook to partake in political discourse could be enough for the Supreme Court to support First Amendment rights on social media platforms. It is of my opinion, that social media platforms should not be permitted to censor controversial speech, yet they should be able to moderate their platform based on conduct. Moderating based on conduct should be of utmost importance; effectively doing so would help prevent situations such as Russian troll farms influencing public elections. Nonetheless, there are still countless stories of individuals, like former U.S Foreign Service employee Peter Van Buren, who have been banned from these platforms with no warning or mention of why¹¹. Undoubtedly, large social media platforms like Twitter need to have a more transparent, non-biased moderating process. Without it, they run the very real risk of First Amendment plaintiff claims, judicial setback, or increased regulation.

⁸ *Packingham v. North Carolina*. Oyez, 3 Mar. 2019, www.oyez.org/cases/2016/15-1194.

⁹ *Knight First Amendment Institute v. Trump*. No. 1:17-cv-05205. Southern District of New York. 23 May 2018.

¹⁰ Higgins, Tucker. “The Supreme Court Will Hear a Case That Could Decide Whether Facebook, Twitter Can Censor Users.” CNBC, CNBC, 17 Oct. 2018, www.cnbc.com/2018/10/16/supreme-court-case-could-decide-fb-twitter-power-to-regulate-speech.html.

¹¹ Buren, Peter Van. “I Was Banned for Life From Twitter.” *The American Conservative*, 9 Aug. 2018, www.theamericanconservative.com/articles/i-was-banned-for-life-from-twitter/.