



**Human Rights
Law and Policy
Forum**

Human Rights and the Business of Social Media

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The Human Rights Law and Policy Forum (HRLF) hosted a Roundtable discussion on the issue of ‘Human Rights and the Business of Social Media’ on Monday, 25 June 2018.

Surya Deva, Associate Professor at the CityU School of Law and an Associate Director of the HRLF, welcomed scholars from across the world as well as academics, lawyers and civil society members from Hong Kong to the School of Law of City University of Hong Kong (CityU) to discuss myriad human rights issues presented by the explosive growth of social media in recent years.

The Roundtable was framed around two major strands of the debate: first, the role of social media in shaping identities, relationships, media, human rights, businesses and states; second, the human rights responsibilities of social media companies and the different means by which the implementation of these responsibilities could be ensured.

Sarah Joseph, Professor and Director of the Casten Centre for Human Rights Law at Monash University, Australia, began the discussion. She highlighted the increase in ‘mob justice’ that has followed the proliferation in social media use, focusing on the case of Roseanne Barr, star of the US sitcom *Roseanne*. The actor was fired from her eponymous sitcom after tweeting a racist comment about an ex-adviser to Barak Obama, Valerie Jarrett. Professor Joseph highlighted the complexities of the case, noting that the immediacy of social media allows unguarded comments to filter into the public domain much more readily, and that other users are increasingly likely to contest that speech. Professor Joseph next turned to the issue of data privacy. Here she focused on the case of Cambridge Analytica, a company that violated Facebook’s rules by harvesting the data of about 87 million users, the majority of whom had not explicitly given Cambridge Analytica permission to access this data. The firm was involved in many political campaigns, particularly with the US Republican Party, and is now facing criminal investigations.



Professor Joseph looked at the issue of the apparent ‘democratization’ of the media through social media platforms. While noting the veracity of this, complemented by blogs and other easily accessible platforms, she voiced concern over the relative weakening of more accountable and reliable traditional media sources. Numerous traditional sources, for example, are now loss-making, and the market for detailed investigations is less profitable. The other issue raised was that of ‘fake news’, as unaccountable sources proliferate. She argued that both states and businesses can use social media for brand management, which has negative and positive connotations. Businesses have become highly responsive to online critique, but this responsiveness may come with a dark side. Business showed its power over employees in the Roseanne case, and Professor Joseph questioned whether businesses should have a right to terminate employment in such cases.



Jernej Letnar Čerňič, Associate Professor at the Graduate School of Government and European Studies, Slovenia, highlighted some more challenges and opportunities. He turned to issues in authoritarian states and the potential of social media to undermine repression of discourse. He noted that in many countries the media has historically been controlled either by the state or by business conglomerates, greatly restricting the flow of information. In such situations, social media may have transformative potential. He also voiced concerns about the growing scale of data collection online, noting the Cambridge Analytica case and other instances in which the right to privacy appears to be under serious threat. Data collection may be abused by businesses for marketing purposes, states for surveillance or political purposes, as well as by individuals to blackmail or extort. Professor Čerňič argued that data collection may also have positive benefits for bottom-up challenges to powerful entities. As was a theme throughout the conference, the notion that social media and its related components are tools which can be used in both positive and negative ways formed a key part of the presentation.



Following these comments from the lead discussants, we turned to questions from the audience. Two key issues are worth highlighting. First, whether social media produced political polarization, or merely reflected and magnified extant polarization, was raised. Various views were offered, with most agreeing that there had been an increase in polarization in recent years. Second, the issue of increasing control of lives by business, and to some extent state, through ‘values’ was highlighted. Businesses increasingly express ‘values’, such as non-discrimination, and expect their employees to live these values at all times. This, said Professor Joseph, amounted to 24/7 control of behavior by employers, and was not something she supported even if the values expressed were positive ones.

Larry Catá Backer, Professor of Law and International Affairs at Penn State University, USA, discussed the regulatory quandaries of social media. He argued that there were enormous difficulties in terms of the regulatory targets, jurisdictional issues, and the balance between social media users as rights-claimants and duty-bearers. All social media users are potential abusers and victims, and these two positions may often be coterminous, as abusers face retaliatory abuse. He proposed a complex mapping of the layers at which regulation would be required to work, noting the range of issues to be dealt with, from state funded political campaigning, to privacy, to online abuse. As one possible entry point for regulation, he flagged the expanded scope of tort case emerging in the UK, arguing that this could be a means of addressing some issues arising out of the online regulatory morass.



Finally, Surya Deva, Associate Professor at the CityU School of Law, spoke about some of the regulatory difficulties concerning the social media content and social media companies. The volume of users on social media means that there are too many regulatory targets. Any attempt at creating firm rules could be abused by states to censor free speech, in the same way that ‘terrorism’ has been defined broadly in some states to legitimize greater restrictions. The transnational element poses jurisdictional issues: a Hong Kong-based user might use a US-owned platform to abuse a victim in Malaysia. Social media companies could be perceived as having jurisdiction over the ‘territory’ of their platform, but it is difficult to trust these firms to regulate effectively, particularly around issues important only in smaller markets, as Facebook’s role in the Rohingya case may have demonstrated. The issue of ‘mob justice’ and responsibility was also raised, using an example from India where WhatsApp groups are triggering lynching of people of minority communities allegedly selling or eating beef. In these cases, Professor Deva cautiously proposed that group administrators could be held responsible, while also noting difficulties with this approach especially in non-democratic states. Finally, he raised the point that social media firms may have positive responsibilities to protect free speech from state intervention.



The final discussion period focused on regulatory options. The possibilities of product liability were raised in relation to the addictive qualities of social media and concomitant harm to the right to health. It was mentioned that following the lead of tobacco legislation could be a possible option, and options under tort law were also discussed. The US-centric nature of social media company's concerns, and the lack of capacity to regulate these innately transnational issues, were both seen as major obstacles to improved regulation of the field.

The Roundtable provided an opportunity to brainstorm about complex issues related to the role of social media companies in society and their human rights responsibilities. It was suggested that one way to continue the discussion could be to invite Roundtable discussants and participants to contribute to a blog symposium on this theme for the *Business and Human Rights Journal*.