

## IS SOCIAL MEDIA A PUBLIC SPACE?

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### Abstract

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Public space is where individuals can discuss issues of the day in a free and unrestricted way. The term public is applied by researchers to new types of media, new settings, and new social practices. Considering the wide ambit of public space, how social media platforms have also been included in the umbrella term? If one believes that the social media is the new public square, or the new townhouse, it is more like a privately owned public space, with strict rules of admission and conduct. As discussions at an offline platform impacts one's behaviours, on the same lines, these days the social media platforms are providing the users with a forum which can too influence their mind-sets. Author has tried to analyse that if social media is considered to be a public platform, then what is the significance of protection of privacy?

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## **I. PUBLIC SPACE**

Public sphere is a system for communicating information and perspectives." The public sphere is fundamental part of sociopolitical organization since it is where individuals muster as citizens and eloquent their independent perspectives to influence the political organizations of society. Civil society is the composed articulation of these perspectives; and the connection between the state and civil society is the foundation of democracy. For Habermas the public sphere isn't so much a specific space as a specific type of communication, one that is available in assorted spaces and organizations. All the more explicitly, it underpins a type of argumentation that is accessible to all. A discussion is public not just in light of the fact that it very well may be heard and caught by others but since it very well may be aimed at anybody; this establishes its publicness.<sup>1</sup> While that romanticized gathering can comprise of a town meeting or a conversation in a salon, café, or association lobby where individuals are genuinely present and connect up close and personal, Habermas additionally perceived the significance of the print business papers,

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<sup>1</sup> Tatiana Mazali, „Social Media as a New Public Sphere, Leonardo“ (2011) Vol. 44, No. 3 (2011), pp. 290-291 <<http://www.jstor.com/stable/20869483>> accessed 20 June 2020

flyers, and books. These started to apply an amazing effect on political life, as their readership suggested the consciousness of a taking part perusing network that could be tended to through print, free of the state. He imagined this free, unitary, and available public sphere as a potential fair perfect - where people could examine national issues and come to common understanding. Be that as it may, this ascent of the general population is at the same time sabotaged by the logical inconsistencies and clashes of public space in the twentieth century.<sup>2</sup> Public space is where individuals can discuss issues of the day in a free and unrestricted way.<sup>3</sup> The term public is applied by researchers to new types of media, new settings, and new social practices.

## **II. THE WIDE AMBIT OF PUBLIC SPACE**

The material articulation of the public sphere differs in context, history, and innovation, yet in its present practice, it is unequivocally distinct from the exemplar type of eighteenth-century bourgeois public

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<sup>2</sup> George Dietz, „Habermas, the Last European: A Philosopher's Mission to Save the EU“ (2011) Spiegel Online International <<http://www.spiegel.de/international/europe/habermas-the-last-european-a-philosopher-s-mission-to-save-the-eu-a-799237.html>> accessed 8 June 2020

<sup>3</sup> Jürgen Habermas, „The Structural Transformation of the Public Sphere : an inquiry into a category of bourgeois thought“ (1989) Cambridge: MIT Press, 27, 89-116

sphere around which Habermas constructed his hypothesis. Physical space especially public space in cities as well as universities-cultural institutions, and informal networks of public opinion formation have consistently been significant components in moulding the development of the public sphere. And of course, as John Thompson has argued, media have become the significant part of the public sphere in the industrial society.<sup>4</sup> Besides, if communication networks of any sort structure the public sphere, then our society, the network society (Castells 1996, 2004a), organizes its public sphere, more than any other historical form of organization, in accordance with media communication networks (Lull 2007; Cardoso 2006; Chester 2007). In the digital era, this incorporates the assorted variety of both the mass media and Internet and wireless communication networks.<sup>5</sup>

The turn of events and expanding utilization and prominence of Social Networking Sites (SNSs) empowering decentralized and minimal effort access to data creation, intuitive correspondence focused on a social

chart and data proliferation through a carefully enabled interpersonal organization has changed the social association, the emblematic structure and the elements of the public sphere.<sup>6</sup>

### **III. SOCIAL MEDIA: ESSENTIAL INSTITUTIONAL FRAMEWORK OF PUBLIC SPACE**

Media is considered as the most significant institutional framework of the public space. The media might be considered as 'a mediator of public consent' by means of consistent rambling exchange in the public sphere both with regards to rousing the requirement for political activity and to legitimizing political choices. The media serves three elements: establishing 'a domain of shared experiences, 'an interface in the relations inside and among institutions'' and of „systematizing a political public sphere“. From this perspective, the media adds to the cohesion of society by connecting its separated parts together on an emblematic level. The media might be considered to deliver 'the emblematic examples that make the imperceptible tissue of society on the social level'. While these jobs had earlier been doled out to mass media, it is

<sup>4</sup> Thompson, John B., „Political scandal: Power and visibility in the media age“ Cambridge, UK: Polity.

<sup>5</sup>Manuel Castells, „The New Public Sphere: Global Civil Society, Communication Networks, and Global Governance“

<<http://www.jstor.com/stable/25097995>> accessed 10 June 2020

<sup>6</sup> D.M. Boyd and N.B. Ellison, „Social network sites: Definition, history, and scholarship“ (2001) *Journal of Computer-Mediated Communication*, 13(1) 1

significant to note how in the present times, social media has likewise satisfied all these functions in equivalent or different capacities.<sup>7</sup>

#### **IV. USE OF SOCIAL MEDIA AS A PUBLIC SPACE: IMPACTING DECISIONS AND BEHAVIOURS**

Social Networking Sites connect individuals within a digital system. Social networks are significant in light of the fact that people and masses get benefits by their hidden social structure. One of the incredible capacities satisfied by systems is to connect people who are nearby and likewise on a global scale, permitting local phenomenon to be spread over the whole system and to deliver worldwide impacts. However, this bridging ability is dependent upon the structural characteristics of the network. Social media sites are public space and government mass reconnaissance of this public space subverts our majority rule government.<sup>8</sup> As we spend increasingly more of our lives on digital mediums the government is observing freely accessible social media information like

never before. India has about 376.1 million social media users.<sup>9</sup> Individuals utilize social networking sites to communicate thoughts, investigate new thoughts and connect with comparable and different thoughts.<sup>10</sup>

At the point when individuals are associated by a network, they may impact each other's conduct and choices, offering ascend to social procedures where singular practices are accumulated through the system to deliver aggregate results. Information cascades are one of those social procedures happening when individuals make choices sequentially, can watch others' choices so as to draw discerning inductions from those choices and mimic those choices dependent on their surmisings. Numerous social wonders, for example, design, the prominence of VIPs and hits and the spread of mechanical decisions and news, are described by data falls. Users can without much of a stretch see what their connections do and settle on derivations and choices dependent on those perceptions, which

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<sup>7</sup>C. Haythornthwaite, „Social networks and Inter net connectivity effects“ (2005) Information, Communication, & Society, 8 (2), pp. 125-147

<sup>8</sup> Map: Social Media Monitoring by Police Departments, cities, and Coountries, Brennan Center for Justice (Nov.16,2016) <<https://www.brennancenter.org/analysis/map-social-media-monitoring-police-departments-cities-and-countries>> accessed 11 June 2020

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<sup>9</sup> Number of social network users in India from 2015 to 2018 with a forecast until 2023, <<https://www.statista.com/statistics/278407/number-of-social-network-users-in-india/>> accessed 9 June 2020

<sup>10</sup> Clay Shirky, „The Political Power of Social Media: Technology, the Public Sphere, and Political Change, Foreign Affairs“ (2011) JANUARY/FEBRUARY 2011, Vol. 90, No. 1 (JANUARY/FEBRUARY 2011), pp. 28-41

thusly are engendered further along the network.<sup>11</sup>

While social media has exhibited that it can empower political activism, it has genuine deficiencies related to individual privacy. Exclusive social networks, from Facebook to Twitter to Google+, adequately create a privatized public. This new type of public sphere raises a range of moral issues. While privacy is a significant issue with regards to social media it is by no means the only significant issue and it appears as time passes by the Social Networking Sites (SNS) moral scene extends.<sup>12</sup> Social Networking Sites can be and are tracked. Employers examine Social Networking Sites of people before settling on employing choices. Lawyers access social media to gather implicating data in divorce and custody cases. Social Networking Sites present peril to members and society as a whole if inappropriately accessed. The ethical landscape is shown by the recent issues with facebook-Cambridge Analytica scandal when 87 million information profiles were shared. Melrose clarifies that Data Selves were harvested by Cambridge Analytica

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<sup>11</sup> J.L. Austin, „How to Do Things with Words“ (1962) Cambridge MA: Harvard University Press

<sup>12</sup> Alissa Ardito, „*Social Media, Administrative Agencies, and the First Amendment*‘ (2013) 65 Admin. L. Rev. 301

utilizing a computerized personality test along with gathering personal data within their Facebook profiles and data about their companions on Facebook. It was people as data who were the extremely valuable wares there to be mined and thusly utilized for a deceitful reason.<sup>13</sup> There exist concealed issues, as all users know: the owners of these sites track all the data and even sell it so as to all the more likely comprehend, break down, and showcase their networks' consumptive practices. Through the standard act of information mining, investigation, and selling, online gatherings concealed and activities are progressively undermined. This shows the inconceivability of privately-held commercial space, whether on the web or off, working as a genuine public space.<sup>14</sup>

## **V. SOCIAL MEDIA MONITORING SOFTWARE**

With the rise of social media, numerous organizations currently give social media observing software that the government can use to scrutinize the vast amount of data

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<sup>13</sup> Melrose, R., „Facing up to Responsibility“ (2018) <http://elasticcreative.co.uk/2018/03/23/facing-up-to-responsibility/> accessed 12 June 2020

<sup>14</sup> Edward Velasco, „Tumacha Agheneza, Kerstin Denecke, Göran Kirchner And Tim Eckmanns, Social Media and Internet-Based Data in Global Systems for Public Health Surveillance, The Milbank Quarterly“ March 2014, Vol. 92, No. 1 (March 2014), pp. 7-33, <<http://www.jstor.com/stable/24369819>> accessed 22 June 2020

made by social media. Social media observing software is utilized in an assortment of ways to examine the “big data” got from gathering social media data. The software is not just used to search for catchphrases, yet in addition track the location from which social media posts are coming, identify relationships between individuals, monitor events and decide a person’s potential for violence, among numerous different capacities.<sup>15</sup>

For instance, a privately-demarcated sidewalk or privately-owned shopping mall may preclude political conversations or solicitation. So also, up to a web based life stage is privately held, it works in the way of a shopping mall and not that of a public street. Private ownership impinges in different manners-there is the ever-present chance that government pressure may cause Facebook to suspend activists' records and group pages used to design rallies, maybe for enigmatically indicated reasons.<sup>16</sup> Beyond information-mining and checking social sites, governments can likewise shut sites

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<sup>15</sup> Derek E. Bambauer, „Privacy Versus Security, The Journal of Criminal Law and Criminology“ (1973), Summer 2013, Vol. 103, No. 3 (Summer 2013), pp. 667-683, <<http://www.jstor.com/stable/43895376>> accessed 20 June 2020

<sup>16</sup> Joanne McNeil, „Occupy the Internet,“ N+1 OWS Gazette 1“ <<http://www.nplusonemag.com/OCCUPY-GAZETTE.pdf>> accessed 8 June 2020

down, as has occurred in Egypt, Iran, and China during times of social unrest. Like numerous countries, Egypt despite everything has tracts with Internet service providers (ISPs) that permit its legislature to restrict Internet access nationally. It can likewise utilize its own state-owned service providers to harass and/ or potentially distinguish Internet-based organizers. Such regimes can also use social media for their own purposes, spreading disinformation on clandestinely supported blogs.<sup>17</sup>

As long as a social media platform is claimed by a business element, as with Facebook, Twitter, or Google+, it is open to government reconnaissance, in spite of the fact that organizations may endeavor to conceal this data from their members lest they lose personal data to different sites. Similarly as managers utilize web based life locales to overview workers, countries watch their residents' political exercises. Just as employers use social media accounts of their employees to survey them, nations watch their citizens’ political exercises. As a matter of course, the auxiliary arrangements of the Internet records everything during the

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<sup>17</sup> Marko Papie and Sean Noonan, „Social Media as a Tool for Protest“ Stratford Global Intelligence, 3 February 2011, <<http://www.stratfor.com/weekly/20110202-social-media-tool-protest>> accessed 22 June 2020

process of converting text, pictures and recordings before they are transmitted and reproduced over the network. The structural capacity makes it possible for intelligence organizations to trace individuals from online groups and email. In light of expanded reconnaissance, dissenters continue finding better approaches to activate Internet resources to their potential benefit—Syrian dissidents could as of late be believed to be continually making new outlets for data and organizing news. Dissidents use certain web proxies (to sidestep reconnaissance texting programs (which some contend are progressively hard to track), and old-school word of mouth. In other countries witnessing unrest, people use mobile devices to capture video and spread it virally. In many countries, those who want to purchase a SIM card must provide data, which the government can use to track these individuals. This puts protestors in an undeniably dangerous position, as social media becomes the primary space of organization. Online transmissions of discussions can be traced and hence are not secure. The digital trail of online data raises the likelihood that each activity is presently possibly traceable—not just by the state but also by anyone able to pay for that data.<sup>18</sup>

<sup>18</sup> John Kleinig, Peter Mameli, Seumas Miller,

## **VI. IMPORTANCE OF PRIVACY IN PUBLIC**

The concept of “privacy in public” can appear to be a paradoxical expression from the outset, yet the idea is significant in well-functioning democracy.

Numerous social media users display a mistaken subjective expectation of privacy on social platforms even in circumstances where the user’s privacy settings are set to “public.” The fact that so much information is being gathered about so many people will have implications for the privacy of the people to whom that information relates. This will influence their lives in numerous ways. The privacy ramifications of publishing so much personal data online are as of now being found in the courts of England and Wales. In one of the landmark cases, *Bucknor*,<sup>19</sup> the appellant had been indicted for a gang-related homicide. The prosecution entered statements and pictures taken from social networking sites suggesting he was a member from a posse. His conviction was later overturned on appeal, not least in light of the fact that the trial judge had failed to ascertain who had

Douglas Salane and Adina Schwartz, „Surveillance Technologies and Economies“, <<http://www.jstor.com/stable/j.ctt24h8h5.12>> accessed 22 June 2020

<sup>19</sup> [2010] EWCA Crim 1152.

created the statements and images being referred to.<sup>20</sup>

Journalists, or rather, those engaged in "journalistic activities", are one group who may utilize information taken from such social networking sites. The privacy and data protection ramifications of their preparing of this information brings up especially interesting issues, not least in light of the fact that those rights must be offset with the special protections afforded to freedom of expression by the European Charter of Human Rights and now the EU's Charter of Fundamental Rights, which was given effect by the Lisbon Treaty. Journalistic utilization of information taken from social networking sites is commonplace. The news that Osama Bin Laden had been assassinated was first unveiled by Donald Rumsfeld on his Twitter account, from where it was picked up by the mainstream media.<sup>21</sup>

Likewise with any other publication, publishing or utilizing material from social networking sites may offer ascent to claims

for breach of privacy. In any case, such activities may demonstrate difficult to sustain, at least where the individual whose privacy is being breached is the person who uploaded material to a social networking site in the first place.<sup>22</sup>

Facebook is, all things considered, a public space, much like the public road. Much of social networking data lies within closed networks. In the cases, where the publisher has made an active effort by constraining the social network's privacy setting to social media "friends," the person in such a case has closed out strangers and has demonstrated that "he tries to safeguard something as private. Does this have any effect on the reasonable expectation of privacy against the government access of this data? This doesn't have any effect on the utilization of this information by the government."<sup>23</sup>

With social media communications, the publisher knows that the material is being recorded on the site's platform. To the extent

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<sup>20</sup> Jeramie D. Scott, „Social Media and Government Surveillance: The Case for Better Privacy Protections for Our Newest Public Space“ (2017), 12 J. Bus. & Tech. L. 151

<sup>21</sup> Brian Mund, „Social Media Searches and the Reasonable Expectation of Privacy“, (2017) 19 Yale J.L. & Tech. 238

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<sup>22</sup> Denis Kelleher, „Social Networking, Privacy And The Future of News, Irish Jurist“ (2011), New Series, Vol. 46 (2011), pp. 191-201  
<<http://www.jstor.com/stable/4402709>> accessed 21 June 2020

<sup>23</sup> Simon Rogerson, „Wireless and Social Media Influence“ (2018) Int'l J. Data Protection Officer, Privacy Officer & Privacy Couns. 12



that a publisher “takes a risk that the [social media connection] may repeat all he hears and observes, the publisher knows that the social media connection has access to all the recorded data. The social media connection can repeat the shared data to anybody including government authorities. It is submitted that when an individual shares his information with a third party, then that third party is not prohibited to pass on that information to the government authorities despite the fact that the data was shared on the supposition that it will be utilized only for a limited purpose.”<sup>24</sup>

The ability of a person to control what happens in such a space was considered in *Hickey v Sunday Newspapers Ltd.* The plaintiff all things considered was the mother of a young boy and had been the subject of media attention, both wanted and undesirable. Photographs had been taken of her and the child's father going to a register office to register the child's birth. The photographs indicated that the child was being held by the mother at that point, though his face was not noticeable. The mother sued for her own behalf and as next friend of her son looking for damages. The defendant successfully applied to have the

claim dismissed. The litigant effectively applied to have the case excused. Two of the contemplations that Kearns P., who gave judgment distinguished as being fundamental to his determination of the issues are especially intriguing when applied to social networking sites. These were:

- "the photographs were taken when both the photographer and the plaintiffs were in a public place and performing a standard public function"; and
- "the photographs do not reveal anything that could not have been seen by anyone else who turned up at the Registry Office at the applicable time."<sup>25</sup>

What is clear from *Hickey* is that the courts will take into account whether an unwanted photograph is taken or published of a private person in a public place constitutes a breach of privacy."

Whether or not Facebook or other social networking sites are in fact public spaces will rely especially upon the facts of the specific case which may, in practice, show how an individual has set his or her privacy settings. An individual who picked a setting with an elevated level of privacy protection

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<sup>24</sup> United States v. Miller 307 U.S. 174 (1939)

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<sup>25</sup> *Hickey v Sunday Newspapers Ltd.* [2010] IEHC 349

may have the option to contend that their Facebook page was still not a public space; someone who picked a public setting would find an a lot harder contention to make. Social media exposes us to all the information which is easily accessible. An enormous number of pictures and videos are posted on social media. These posts expose what once was completely obscure and inaccessible. Beyond removing the obscurity to public information and making it accessible and transparent, social media monitoring takes that information and analyzes it to derive additional informational value from the large amount of personal information that is now available.<sup>26</sup>

The privacy in public for social media means there is no-government surveillance to indiscriminately analyze and access all social media including what was said, who said it and the associations of social media poster in an attempt to draw conclusions about the speaker regarding criminal or national security threats which is not

practically possible, right to privacy not being an absolute right.<sup>27</sup>

## **VII. LIABILITY OF SOCIAL MEDIA PLATFORMS FOR PROHIBITED SPEECH**

As of late, Internet intermediary responsibility for prohibited content posted by the users of those intermediaries has been at the center of attention. U.N. Human rights experts have proposed that Facebook has an important role to play in spreading hate speech which contributes to human rights infringement to a larger extent. The general perception, as echoed by multiple agencies, is that Facebook and other social media giants are unprepared and ill-equipped to regulate user-generated content on their platforms.<sup>28</sup> In such a scenario what extent of liability the government must impose on these social networking sites to maintain peace and order in the country?

In the past few years, social media has profoundly transformed the media landscape and has become firmly connected with the freedom of expression. In the past, media

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<sup>26</sup> John Pavolotsky, „Privacy in the Age of Big Data, The Business Lawyer“ (2013) November 2013, Vol. 69, No. 1 (November 2013), pp. 217- 225,<  
<http://www.jstor.com/stable/43665655>> accessed 20 June 2020

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<sup>27</sup> Steven Bingo, „Of Provenance and Privacy: Using Contextual Integrity to Define Third-Party Privacy“ (2011), The American Archivist, Fall/Winter 2011, Vol. 74, No. 2 (Fall/Winter 2011), pp. 506-521, <<http://www.jstor.com/stable/23079048>> accessed 23 June,2020

<sup>28</sup> Scott E. Solomon, „Using Social Media—What is the Risk?“ <<https://www.jstor.org/stable/resrep13937.8>> accessed 20 June 2020

houses were controlled by the government and the citizens had a little say in it to express their perspectives. However, social media has made a virtual public space for free expression with a global audience. In the traditional media, the content goes through different rounds of editing before it is published but this is not the situation with the social media, as such sites allow anyone to upload his or her views instantly on the internet without any earlier approval. In spite of the fact that Facebook is creating artificial intelligence which will aid in identifying the questionable material uploaded but Mark Zuckerberg himself expressed that such tools will remain an imperfect solution. Even recruiting more number of moderators would not be of any assistance as the content available to review is huge. In such a case, the liability of such platforms for posting offensive content becomes relevant. In United States, social media platforms are encouraged to block offensive content without holding them accountable if they do it inappropriately. Herein, the social media platforms are not considered as publishers of this offensive content and ergo are not held liable for the same. Whereas in Thailand, such platforms are held liable for supporting such content on their sites. If they do not remove such

objectionable data from their sites within a particular time window, their consent is considered to be implied.<sup>29</sup> In Germany too, a legislation came up which stated that all social media platforms have to take down objectionable content from their sites within 24 hours failing which they will be liable to pay a fine amount. But both these approaches may violate other human rights guaranteed to all, ergo, India must adopt a more practical approach as done by Brazil and Chile, wherein social media platforms are held liable but only in certain circumstances. Liability is imposed on social media platforms only when they do not comply with the court order for removing any objectionable material from their respective sites.<sup>30</sup> This approach is preferable over the other two as the social media platforms play a role of facilitation and not publication. This approach is also in consonance with article 19(1) of Constitution of India which provides for

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<sup>29</sup> John R. Drake, „Asking for Facebook Logins: An Egoist Case for Privacy“, *Journal of Business Ethics*, December 2016, Vol. 139, No. 3 (December 2016), pp. 429-441, <<http://www.jstor.com/stable/44164234>> accessed 24 June 2020

<sup>30</sup> Daniel J. Solove, „Speech, Privacy, and Reputation on the Internet“ <<http://www.jstor.com/stable/j.ctvjf9zc8.4>> accessed 24 June 2020

freedom of speech and expression but with reasonable restrictions.<sup>31</sup>

### **VIII. CONCLUSION**

Inquiries about the changing status of the public sphere keep on emerging. The transformative power accessed and hid within social media technologies is not generally positive. In contrast to Habermas's unitary public, notwithstanding, today's social media is compromised and contradictory, gleaming between visibility and invisibility. This indirect audience is technologically dependent and along these lines unstable.<sup>32</sup>

For whatever length of time that there is a likelihood that these sites may be taken offline for any number of explanations behind (for example, through state political interference or an emergency response), or monitored and conversations traced, there is a huge diminishment in Habermasian democratic discourse. Social media technology has numerous dimensions and might be repurposed for different objectives. Governments regularly limit and control data,

notwithstanding making their own content for political goals. The design and interpretation of a technology may at first stabilize, offering analytical closure, however recently pertinent social groups or interpretations may later destabilize it. The attributes of social media, its auxiliary properties—its commercialization of the market economy, its lopsided accessibility, and its surveillance—all influence the social environment and in this way impact individuals and their behaviors.<sup>33</sup> They complicate boundaries and collapse distinct social contexts, all of which challenges the supremacy of physical place in encircling public agency. As exhibited by Internet activism, social media has not only permanently altered the discursive context of the historical public sphere; it has concurrently opened up a philosophical territory ripe for reconsideration.<sup>34</sup>

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31 Zi En Chow, „Evaluating the Approaches to Social Media Liability for Prohibited Speech“(2019) 51 N.Y.U. J. Int'l L. & Pol. 1293

32 Nancy Fraser, „Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy, Social Text“ 1990, No. 25/26 (1990), pp. 56-80, <<http://www.jstor.com/stable/466240>> accessed 22 June 2020

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33 Danah Boyd, „Taken Out of Context: American Teen Sociality in Networked Publics“ (PhD diss., University of California- Berkeley, 2008), 32.

34 Thérèse F. Tierney, „Disentangling Public Space: Social Media And Internet Activism“ Thresholds, No. 41, Revolution (Spring 2013), pp. 82-89, <<https://www.jstor.org/stable/43876499>> accessed 8 June 2020