BATTLE FOR ONLINE FREEDOM OF SPEECH--IDENTITY:

AUTHENTICITY OR ANONYMITY

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ABSTRACT

Facebook profiles and Google IDs are tied to a person's real connections and real name, and increasingly to their activities across cyberspace, forming a single public identity that's an aggregated version of their offline past, the online present and their combined future. The old web, a place where identity could remain separate from real life, is rapidly disappearing from the computer screen. The regulation of authenticity of identity must not mean invasion of free speech, for freedom of speech is not absolute and system of law provides for some limitations on it, especially when freedom of speech stands in opposition to other individual's interests or public interests. What's more, even though social sites may request authentic identity for registration, the freedom still lies in our own hands to choose whether to register or not. Now that our actions on the web are more public, we need to make sure we manage the personal information we publish going forward, so that we can control what others see when looking back. If we have lived a squeaky clean and responsible life, both online and offline, then we have nothing to worry about when using our real identity in cyberspace.

KEYWORDS

Freedom of Speech, cyberspace, identity, authenticity, anonymity

1 INTRODUCTION

Facebook and Google want to link online and offline personas, while 4Chan [1] and other social sites prefer people to play with the freedom of pseudonyms [2]. Facebook profiles and Google IDs are tied to a person's real connections and real name, and increasingly to their activities across cyberspace. 'Users are familiar with logging into other services using Facebook or Google IDs, forming a single public identity that is an aggregated version of their offline past, the online present and their combined future [3]'. However, 4Chan boasts two new design features: 'first, its 20 million users do not register an account to participate and are therefore anonymous; second, there is no archive [4]'.

Before Facebook and Google became the megaliths of the web, the online world was a place where anyone could present themselves in any form they chose. The most famous online adage was, "on the internet, no one knows you're a dog". It seems the days when people were allowed to be dogs are coming to a close. What happens when your digital identity begins to merge with your real-world identity? 'The old web, a place where identity could remain separate from real life, is rapidly disappearing from the computer screen [5]'. Nicknames and pseudonyms, regardless of their longevity – and some have been in use for decades – are considered breaches of terms of service. Any profile on Facebook or Google that does not appear to be tied to an offline name is removed. 'What people do online now, and will be doing in the foreseeable future, is inherently tied to their offline selves. And this locks down what it

is considered acceptable to do and who it is acceptable to meet [6]'.

Some of the people stand for the pursuit of authenticity on line, as Aleks Krotoski [7] concluded:

'The pursuit of authenticity is creeping into the heart of most social media models and in the current internet landscape is playing an important role in how we engage with one another and with web content. For many people, Facebook and Google products are the sum total of their web interaction, and the value in creating a platform that provides confidence that a person is who they say they are, rather someone pretending to be them, is critical to a social network's success.'

But still others insist anonymity on line far outweighs authenticity. Andrew Lewman, executive director of the Tor Project, hopes to re-anonymise the web [8]:

'The ability to be anonymous is increasingly important because it gives people control, it lets them be creative, it lets them figure out their identity and explore what they want to do, or to research topics that aren't necessarily 'them' and may not want tied to their real name for perpetuity,' he says.

This article seeks to explore whether authenticity threatens the right of freedom of speech and whether free speech should or must mean people have the freedom to speak anonymously. And finally we will see how the new technologies such as Facebook in cyberspace have affected freedom of speech online.

2 JUSTIFICATIONS OF "FREE" PRINCIPLE

In order to have a clear perspective of the meanings of 'free', to see whether it contains the content of anonymous speech, we have to understand fully the nature and justification of the free speech principle. Historically, there are many arguments for a free speech principle. The most durable argument has been based on the importance of open discussion to the discovery of truth. 'If restrictions on speech are tolerated, then society prevents the ascertainment and publication of accurate facts and valuable opinion [9]'. 'Truth may be regarded as an autonomous and fundamental good, or its value may be supported by utilitarian considerations concerning progress and the development of society [10]'.

A second major theory of free speech sees it as an integral aspect of each individual's right to self-development and fulfillment- 'restriction on what we are allowed to say and write, or to hear and read, inhibits our personality and its growth [11]'. This theory might regard freedom of speech as an intrinsic, independent good; alternatively, its exercise might be regarded as 'leading to the development of more reflective and mature individuals and so benefiting society as a whole [12]'. 'Without this kind of freedom, people cannot participate in the give-and-take that broadens their views of the world and their understanding of themselves. Individuals will not grow and mature if their speech is repressed [13]'. 'The emphasis on the importance of self-expression and self-fulfillment of individuals through their autonomous action is considered as one of the defining features of liberal theory [14]'. In other words, the value of autonomy, as a rule, 'prevails over the disvalue which specific consequences of an autonomous action may have [15]'.

Another theory is about citizen participation in a democracy. This is probably 'the most easily understandable, and certainly the most fashionable, free speech theory in modern Western democracies [16]'. Democracy requires that citizens be free to receive all information which may affect their choices in the process of collective decision-making and, in particular, in the voting process. 'Consequently, all speech that is related to this collective self-determination by

free people must enjoy absolute (or near-absolute) protection [17]'. This is fundamental to the need to protect the right of all citizens to understand political issues in order to participate effectively in the working of democracy.

If we regarded the above three justifications as positive theories for free speech protection, a fourth theory argues that there are particularly strong reasons to be suspicious of government in this context; 'it is a negative argument in that it highlights the evils of regulation, rather than the good of free speech [18]'. 'It is difficult to draw a line between speech which might appropriately be regulated and speech which in any liberal society should be tolerated [19]'. 'This point is particularly evident in areas like hate speech or the publication of sexually explicit material, where a law proscribing extremist speech or hard-core pornography can too easily be applied to cover the expression of radical or subversive ideas [20]'. 'Governments, moreover, have strong reasons to fear the impact of these ideas, so they are naturally tempted to repress them. A free speech principle is necessary to counteract this tendency [21]'.

3 "ANONYMITY" UNDER THE FREE SPEECH PRINCIPLE

When free speech principle applies to the speech in cyberspace, we can see the same needs and effects, characteristics or consequences of speech: it is needed for the discovery of truth, or human self-fulfillment or autonomy. 'Some people may want to speak, but do so anonymously. They may fear retribution, either in their personal lives or in their jobs [22]'. We have to admit that anonymity in identity does bring us myriad benefits.

Anonymity acts as a way of protection of speech. Anonymity has made it possible for people who might normally be restricted from communicating with the outside world to speak out without fear of the repercussions of their actions, which could put them in danger if carried out using their real personal information. 'Concealing one's true

identity online has made it possible for free speech to break through the physical barriers enforced by governments and dictatorships across the world [23]'. Without anonymity, these actions can result in public ridicule or censure, physical injury, loss of employment or status, and in some cases, even legal action. 'Protection from harm resulting from this type of social intolerance is a definite example of an important and legitimate use of anonymity in cyberspace [24]'.

Anonymous ways of communication make people open. Anonymity is beneficial because it gives people an outlet for their opinions, even controversial ones. This may have a cathartic effect in that it allows people to articulate their feelings without physically hurting people of other cultures, races, etc. Additionally, being anonymous on the web offers people a chance to discuss sensitive and personal subjects, such as physical abuse, medical conditions, sexual orientation, minority issues, harassment, sex lives, and many other things, which may not available for discussion face to face, without those actions affecting their everyday lives in a potentially harmful or negative way.

4 CHALLENGES OF "FREE" PRINCIPLE

The right to freedom of speech is guaranteed in very similar terms by both Article 19 (2) of *International Covenant on Civil and Political Rights* (ICCPR) [25], which is ratified by 165 States, and Article 19 of the *Universal Declaration on Human Rights* (UDHR) [26]. The former and latter state as followings:

> Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
> Everyone has the right to freedom of opinion and expression; this right includes freedom to

hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Both ICCPR and UDHR only regulated the *manner* (to seek, receive and impart) and the *form* of expression (regardless of frontiers: orally, in writing or in print, in the form of art, or through any other media of his choice), these are afforded strong protection, but from them we can hardly tell whether "free" should mean or include anonymous speech or not. From another aspect, the regulation of authenticity of identity not must mean invasion of free speech.

To some extent, the free speech principle does mean that governments must show strong grounds for interference, but it need not entail absolute protection for any exercise of freedom of expression. 'Most proponents of strong free speech guarantees concede that its exercise may properly be restricted in some circumstances, for example, when it is likely to lead to imminent violence [27]'. Freedom of speech is not absolute and systems of law provide for some limitations on it. Article 19 (3) of the ICCPR explains the basic and fundamental principle of when to choose anonymity or authenticity:

> The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
> (a) For respect of the rights or reputations of others;
> (b) For the protection of national security or of public order (ordre public), or of public health or morals.

When freedom of speech stands in opposition to other individuals' interests or public interests, it may therefore be subject to certain restrictions. According to the Freedom Forum Organization,

legal systems, and society at large, recognize limits on the freedom of speech, particularly when freedom of speech conflicts with other rights or values. Limitations to freedom of speech may follow the ' offence principle ' or the 'harm principle', for example in the case of hate speech, or pornography. Limitations to freedom of speech may occur through legal sanction or social disapprobation, or both.

There are words in cyberspace that hurt, and that produce harm to other people and to entire communities. 'The damage produced by words in cyberspace may be very high; for example, public statements that express racial hate or contempt for an entire group of people hurt their victims more than many other unpleasant words [28]'.

5 "AUTHENTICITY" UNDER THE FREE SPEECH PRINCIPLE

There are many positive ways to use anonymity in cyberspace, but there can always be very destructive side effects too, which are all by-products of a digital world occupied by anonymous individuals who believe they are unidentifiable. Extreme abuse and illegal activity in cyberspace are the most visible drawbacks to anonymity, specifically, examples of the these actions include racism, bullying, kidnapping, terrorism, harassment, personal threats, hate speech, financial scams, disclosure of trade secrets and exposure of personal information or secrets, among other things. 'One user expressed the desire to ban anonymity from the internet because he had no recourse against an anonymous user who posted his address, phone number and the name of his employer on the internet in retaliation for something that he had said [29]'.

A small minority of people who use anonymity servers which do not need users provide their real names and information are sociopaths who are attracted by the ease with which they can avoid responsibility and accountability for their actions. When these kind of damaging activities are carried

out online, a lot of the time the perpetrators simply cannot be identified and therefore cannot be held accountable. How can the offenders ever be held accountable for their behaviours when they are almost entirely untraceable in the virtual world? 'The offending individual hides behind a pseudonym, masking his or her true identity and protecting themselves from the repercussions of their actions [30]'.

Increasingly, things are starting to change. 'The rise of identity-centric social networks like Facebook, Google and LinkedIn, make it gradually more and more difficult to live an anonymous life in cyberspace [31]'. The Facebook Registration and Account Security Message states: 'Facebook users provide their real names and information, and we need your help to keep it that way. You will not provide any false personal information on Facebook, or create an account for anyone other than yourself without permission [32]'. 'These platforms are inherently social and rely on you, as a user, to establish a network of friends and acquaintances. This effectively creates an online version of your real life that relies on your true identity in order to function [33]'.

You will not provide any false personal information on Facebook, or create an account for anyone other than yourself without permission. Authenticity of identity in cyberspace encourages cyberspace users to be open, honest and direct in the here-and-now. It builds trust and confidence in your online relationship. We have to say that authentic communication in a manner that is completely honest is beginning to make contributions to our society. Alex Masters said:

> 'We are already beginning to see positive side effects due to these new levels of transparency. Bullying, offensive comments and other forms of abuse are becoming less widespread now that people are no longer able to hide behind a mask. Offenders are often discouraged when they are no longer anonymous, so the benefits are immediately

obvious. Not quite so obvious however, are the negative side effects that can occur when your personal history collides with your online identity [34]'.

6 RIGHT TO DELETE

Once our identity turns out to be authentic, and recalling that the online world has the ability to remember everything, will our unwise postings follow us around forever or can we ever be forgiven for our mistakes? What happens when we have a criminal conviction, confidential history, or have been impersonated by someone who has subsequently tainted our reputation?

These questions are becoming increasingly more vital as our identities, both online and offline, continue to merge into one. Some U.S. privacy advocates have called for stronger rules here, Chris Conley of the American Civil Liberties Union of Northern California argued for the 'Right to Delete' as quoted by James Temple, Without a right to delete, 'we may lose our ability to invent and reinvent ourselves, and instead find ourselves constrained by actual records of our past or feared records in our future,' he wrote. 'The right to privacy, a right many consider fundamental to our society, may be rendered impotent if our private actions can be reconstructed from countless permanent records [35]'.

7 CONCLUSION

While freedom of speech is not absolute, people might enjoy abundant freedom within the lawful frontiers in cyberspace to seek, receive and impart information and ideas of all kinds. However, when it stands in opposition to other individuals' interests or public interests, such as privacy, reputation or national security, restrictions and limitations of freedom of speech should be taken into account and it asks for delicate balance.

Identity that used in cyberspace whether

authenticity or anonymity is in question is not a matter of invasion of freedom of speech. It seems much more like a self-regulation thing. Law leaves to social sites great discretion in managing speech; the wants and needs of society prompt them to perceive clearly how to manage and choose the right path. Reasonable and rational strategies are always welcomed, accepted and might have a large and popular market in social society and the statistic of 99 New Social Media Stats for 2012 in the worldwide proves it as a truth: 62% of adults worldwide now use social media, with 22% of time online spent on channels like Facebook and Pinterest. 42% of mobile users share multimedia via Facebook. Google+ is the second-most used social network for sharing multimedia content from a mobile device (10%) [36]. Figure as below:
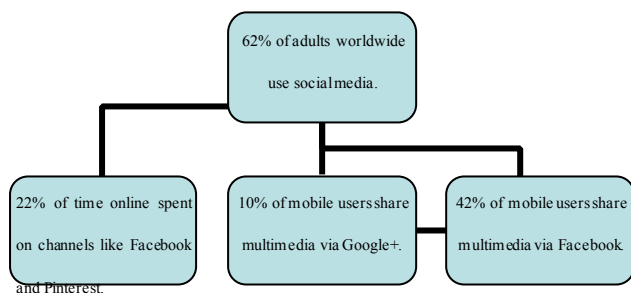

Figure 1. 99 New Social Media Stats for 2012

Even though many social sites may request us to register using our own authentic identity, we still have the right or freedom that lies in our own hands to choose whether to register or not. If you dislike the authentic way, absolutely, you have the freedom to play with other social sites, which only allows anonymous identity. Nevertheless, once you choose to be bound by authentic identity, you have no choice but obey all the rules and regulations that social sites established.

'Now that our actions on the web are more public, we need to make sure we manage the personal information we publish going forward, so that we can control what others see when looking back [37]'. If we have lived a squeaky clean and responsible life, both online and offline, then we have nothing to worry about when using our real

identity in cyberspace.

In my view, in the battle of online freedom of speech, authenticity should win, especially when referring to the destructive side effects of anonymity. It's of great necessity to sacrifice the freedom of anonymity but gain the secure environment of free speech.

8 REFERENCES

1. 4chan is a simple image-based bulletin board where anyone can post comments and share images. There are boards dedicated to a variety of topics, from Japanese animation and culture to videogames, music, and photography. Users do not need to register an account before participating in the community. Feel free to click on a board that interests you and jump right in! See 4 Chan, What is 4chan? <http://www.4chan.org/>.

2. Krotoski, A.: Online identity: is authenticity or anonymity more important? The Guardian <http://www.guardian.co.uk/technology/2012/apr/19/online-identity-authenticity-anonymity>.

3. Krotoski, A.: Online identity: is authenticity or anonymity more important? The Guardian <http://www.guardian.co.uk/technology/2012/apr/19/online-identity-authenticity-anonymity>.

4. Krotoski, A.: Online identity: is authenticity or anonymity more important? The Guardian <http://www.guardian.co.uk/technology/2012/apr/19/online-identity-authenticity-anonymity>.

5. Krotoski, A.: Online identity: is authenticity or anonymity more important? The Guardian <http://www.guardian.co.uk/technology/2012/apr/19/online-identity-authenticity-anonymity>.

6. Krotoski, A.: Online identity: is authenticity or anonymity more important? The Guardian <http://www.guardian.co.uk/technology/2012/apr/19/online-identity-authenticity-anonymity>.

7. Krotoski, A. has been writing about interactivity since 1999. She has a PhD in the social psychology of relationships in online communities. Aleks is the host of the Tech Weekly podcast. See < http://www.guardian.co.uk/profile/alekskrotoski.

8. Krotoski, A.: Online identity: is authenticity or anonymity more important? The Guardian

<http://www.guardian.co.uk/technology/2012/apr/19/online-identity-authenticity-anonymity>.

9. Barendt, E.: Freedom of Speech. Oxford University Press, 7 (2005).

10. Barendt, E.: Freedom of Speech. Oxford University Press, 7 (2005).

11. Barendt, E.: Freedom of Speech. Oxford University Press, 13 (2005).

12. Campbell, T.: 'Rationales for Freedom of Communication' in Campbell T. and Sadurski W. (eds), Freedom of communication. Aldershot: Dartmouth, 33-34 (1994). See also Barendt, E.: Freedom of Speech. Oxford University Press, 13 (2005).

13. Trager, R., Dickerson, D.L.: Freedom of Expression in the 21st Century. Pine Proge Press, 6 (1999).

14. Sadurski, W.: Freedom of Speech and Its Limits. Kluwer Academic publishers, 16 (1999).

15. Sadurski, W.: Freedom of Speech and Its Limits. Kluwer Academic publishers, 17 (1999).

16. Barendt, E.: Freedom of Speech. Oxford University Press, 18 (2005).

17. Sadurski, W.: Freedom of Speech and Its Limits. Kluwer Academic publishers, 21 (1999).

18. Barendt, E.: Freedom of Speech. Oxford University Press, 21 (2005).

19. Barendt, E.: Freedom of Speech. Oxford University Press, 21 (2005).

20. Barendt, E.: Freedom of Speech. Oxford University Press, 21 (2005).

21. Barendt, E.: Freedom of Speech. Oxford University Press, 21 (2005).

22. Trager, R., Dickerson, D.L.: Freedom of Expression in the 21st Century. Pine Proge Press, 173 (1999).

23. Masters, A.: Identity on the Internet: The pros and cons of anonymity. The Independent < http://blogs.independent.co.uk/2011/09/19/identity-on-the-internet-the-pros-and-cons-of-anonymity/>.

24. Rigby, K.: Anonymity on the Internet Must Be Protected. Ethics and Law on the Electronic Frontier <http://groups.csail.mit.edu/mac/classes/6.805/student-papers/fall95-papers/rigby-anonymity.html>.

25. International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976. art 19 (2).

26. Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/180 (1948).

27. Barendt, E.: Freedom of Speech. Oxford University Press, 21 (2005).

28. Sadurski, W.: Freedom of Speech and Its Limits. Kluwer Academic publishers, 36 (1999).

29. Rigby, K.: Anonymity on the Internet Must be Protected. Ethics and Law on the Electronic Frontier <http://groups.csail.mit.edu/mac/classes/6.805/student-papers/fall95-papers/rigby-anonymity.html>.

30. Masters, A.: Identity on the Internet: The pros and cons of anonymity. The Independent < http://blogs.independent.co.uk/2011/09/19/identity-on-the-internet-the-pros-and-cons-of-anonymity/>.

31. The emergence of single sign-on plugins, such as 'Facebook Connect', has rapidly increased the adoption of real world identities across the web. They enable users to auto-fill profile and registration form details on third-party web sites by securely linking to their verified Facebook profile information. See, Identity on the Internet: The pros and cons of anonymity. The Independent < http://blogs.independent.co.uk/2011/09/19/identity-on-the-internet-the-pros-and-cons-of-anonymity/>.

32. Facebook, The Agreement of Facebook <htt://en-gb.facebook.com/legal/terms>.

33. Masters, A.: Identity on the Internet: The pros and cons of anonymity. The Independent < http://blogs.independent.co.uk/2011/09/19/identity-on-the-internet-the-pros-and-cons-of-anonymity/>.

34. Masters, A.: Identity on the Internet: The pros and cons of anonymity. The Independent < http://blogs.independent.co.uk/2011/09/19/identity-on-the-internet-the-pros-and-cons-of-anonymity/>.

35. Temple, J.: Trying to balance privacy, free speech on Internet. SFGate <http://www.sfgate.com/business/article/Trying-to-balance-privacy-free-speech-on-Internet-3202437.php>.

36. Ping, C.: 99 New Social Media Stats for 2012. The Social Skinny <http://thesocialskinny.com/99-new-social-media-stats-for-2012/>.

37. Masters, A.: Identity on the Internet: The pros and cons of anonymity. The Independent < http://blogs.independent.co.uk/2011/09/19/identity-on-the-internet-the-pros-and-cons-of-anonymity>.