Regulation
Ethics
Accountability

Regulating social media
REGULATING LIFE (AND LIVES)

A report on the workshop "Social Media, Regulation and Freedom of Expression" in May at Hong Kong Baptist University

By Yik Chan Chin

Social media is characterised by convergence, participation, openness and the transcendence of national borders. Its growth poses challenges to traditional media policy and regulation making, which are based on the type of medium and on national borders, and also triggers new legal issues of both a criminal and civil nature around the world.

The workshop addressed the implications of social media for media policy and regulation, particularly with regard to freedom of expression, access and service provision, content, data protection and regulatory mechanisms. Leading legal, regulatory, and media experts, plus journalists from different jurisdictions, including mainland China, Hong Kong, Taiwan, the US, Britain, Malaysia and Brazil, presented their research at the workshop.

Topics heading the workshop's agenda? The global legal framework of social media, internet censorship, and how people use social media in innovative ways.

Regulating social media, regulating lives?

Concerns about social media – such as privacy, data protection, hate speech, incitement, bullying, and copyright issues – are driving regulation. However, is self-regulation or regulation of social media ever feasible?

Speakers at the workshop's plenary section, "Self-regulation in the Age of Convergence", agreed that self-regulation is not sufficient and that additional regulatory tools such as public supervision, legislations or even administrative measures are required in the digital and convergent online platform.

However, some of the speakers also expressed concerns regarding government's intervention of free speech. A constitutional approach such as the Royal Charter in the UK is preferred to legislation by the government. Professor Chen Changfeng, from the Tsinghua University in China, provided a case study of the internet self-regulation agency, the Beijing Internet Association.

The self-regulation mechanism consists of an online supervising volunteer, an internet self-regulation commissioner and a mother jury. Chen pointed out that questions of who are the players, what are the purposes of regulation, who regulation will benefit, and what are the ethical principles of regulation, are keys to self-regulation of social media. However, she said that they lack universal concerns and principles.

Gao Shangang, Secretary of Secretariat of All-China Journalists Association (ACJA) in mainland China, stressed that both self-regulation by the ACJA and regulation by third party and government are needed to curb fake news spread on China's social networking sites.

According to him, media that publish unverified information released by blogs or internet forums have contributed to the "biggest and most common" problem of online fake news, featured by its "high covertness and deceptiveness".

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news do not need to pay a high cost."

To solve the problem of false information, media literacy researcher Masato Kajimoto, from the University of Hong Kong, advised social media users and media practitioners to be alert to the information on websites and use multiple sources to identify the truth.

He said sometimes it might be difficult to separate professional and private life. He offered some practical tips on how to identify and verify news and online pictures, such as Google reverse image search and exif viewer, which can help to identify rumours and false pictures.

While fighting against fake news is the priority of ACJA's agenda, the Hong Kong Press Council (HKPC), Hong Kong's local newspaper industry regulatory body, focuses on unethical conduct such as privacy intrusion and sensational or indecent publication, said Professor Joseph Man Chan, who chairs the council which handles complaints from members of the public against local newspapers.

Chan stressed that HKPC's operation has to be transparent in order to establish its credibility. "All the cases that we deal with are open, and we would list our reasons if we condemn any misconduct."

Dr Kuang Chung-shiang, from the National Chung Cheng University in Taiwan, said Taiwan's news industry is scrutinised by co-regulation consisted of self-regulation, public supervision and legislation.

The Taiwanese model, put forward by a coalition of media reform in 2005, has been challenged by the fast-changing media ecology on the island in recent years, especially after the Hong Kong-based mass media group Next Media started its operation in Taiwan four years ago.

"Journalists in Taiwan are constantly facing a battle between their conscience and rating. They have to compromise themselves in order to make a living, and they can never uphold their professionalism without any protection of their rights. So we need regulation from outside and the protection of the labour union," he said.

One of his students, a journalist turned flight attendant, shared her experience at the workshop about working for *Apple Daily*, a tabloid owned by Next Media. "Due to such work culture and low pay, ambitious journalism students would rather be doing other jobs instead of becoming reporters," she said

Peter Noorlander, CEO of Media Legal Defence Initiative in the UK, said self-regulation is an ideal model but in some places including Britain, it does not work very well. However, Noorlander stressed that the

failure of the UK's self-regulatory Press Complaints Commission should not be seen as the failure of a self-regulation model itself.

In his view, social media is not media, but life. It is not possible to regulate life. Therefore, "regulation must be underpinned by human rights standards" and only be regulated when "necessary".

But the internet has already been heavily regulated. The question is: are new laws of regulation truly necessary? Will they ever have the chance of being implemented?

Interestingly, Dr Cho Wenchu and Dr Wenting Shan from Taiwan interpreted internet censorship as a smoke screen for unfair competition in the internet industry in favour of domestic dotcoms. Apart from China, many countries have applied domestic laws that function in a protectionist manner, or at least, with a protectionist result, to obstruct American dotcoms' access to foreign markets.

For instance, Chinese indigenous dotcoms, Baidu, Sina Weibo and Renren, with similar services to their American counterparts, quickly seized the market share left by the expellees. China can ban specific content instead of whole websites (as Thailand does). Thus, the blocks on Google, YouTube, Twitter, and Facebook do not seem proportionate in relation to political motives.

A panoramic view of legal frameworks

Legal experts at the workshop agreed that international human rights law can serve as the global standard in legal regulation of social media. Professor Dominic McGoldrick, from the University of Nottingham's Human Rights Law Centre, analysed the UK's legal regulation of free speech on Facebook and other social network sites, and suggested that "relevant [domestic] statutory provisions need to be thoroughly modernised to ensure their compatibility with international human rights standards" amid the rise in prosecutions and "astonishing" growth of social media.

McGoldrick warned journalists and social network users that Facebook is not a private sphere but a public sphere, and users need to keep their private and work life as separate as possible, as privacy is no longer a social norm in the digital world.

Dr Yik Chan Chin, from Hong Kong Baptist University, also supported the importance of international human rights law jurisprudence in domestic legal regulation by examining China's defamation law and freedom of expression protection under the scope of the International Covenant of Civil and Political Rights (ICCP). Chin suggested that China's defamation law merely treats reputation protection and its infringement as a tort, while international human rights law such as ICCPR and European Convention on Human Rights (ECHR) define the rights of reputation as a restriction to freedom of expression, therefore its protection needs to fulfil the three-part test of "provided by law; legitimate aim; necessary and proportional".

Chinese defamation law has chilling effects on individual freedom of expression. She raised the question of whether China will ratify the ICCPR and what the impacts of ICCPR will be on domestic law.

With a case for reverse perspective on free speech law, Professor Kyu Ho Youm, the Jonathan Marshall First Amendment Chair Professor at the University of Oregon, introduced the global context of media law and the first amendment right, and his comparative view on US and foreign law on media.

Private censorship of the internet by global companies like Google and Twitter actually has more impact than public regulation.

While freedom of speech is no longer exclusive to the US first amendment, its jurisprudence is still relevant to the rest of the world as an important reference. Its right to defame governments and the notion of "responsible journalism" helped bring about the 2013 Defamation Act of the UK.

He also raised the issue that private censorship of the internet by global companies like Google and Twitter actually has more impact than public regulation. The take-down requests for Google, the auto-complete charge in Japan, and the European "right to be forgotten" are typical illustrations.

How to reform the domestic legal regulation to reflect the technological advancement and participatory nature of social media is another important question. McGoldrick suggested new law is needed for online activities, and its protection thresholds of online free speech should be much higher. Besides, employers should provide clear guidance to employees for disciplinary action against online activities.

Professor Hu Yong, from Peking University in China, pointed out that China's internet legislation is inferior in legal hierarchy, and an essentially control-based law, which still falls under the category of departmental regulation and rule-making. The legislative body is under the supervision of the executive branch of government, i.e. the state council.

This regulatory structure has provided a bed for abuse of administrative power by government departments. Professor Hu thus argued for regulation using statutory law set down by state legislatures, i.e. the National People's Congress, to avoid abuse of administrative power.

The need for a better law and better law-making procedure was also endorsed by Professor Zhan Jiang, from China's Beijing Foreign Studies University, and Dr Huang Jin and Ms Dai Xiaoling, from China University of Political Science and Law.

Zhan challenged the legal foundation and legitimacy of China's social network site real-name regulation. First, real-name regulation is based on laws that existed prior to social media's debut and that regulate the internet services providers rather than the users; secondly, the procedures of legislation and jurisdiction are also illegal and inappropriate; and, thirdly, real-name regulation violates people's privacy.

As a solution, Zhan urged the legislation of a new codified media law. Huang and Dai's research on user-generated video (UGV) legal regulation also revealed that, though it is an emerging market, the UGV is governed within the same traditional legal framework of TV in China, and a lot of legal rights issues are left uncovered under the current legislation.

Social media as innovative tools

One of the main themes of the workshop was the innovative role of social media. Professor Tian Zhihui, from China Communication University, believes online communication platforms transfer and aggregate user-generated content, and that social media constructs a new relationship, changing traditionally passive audiences into active information producers and helping the dialogic construction between the government and the public.

Professor Wang Qing analysed the relationship between popular entrepreneurs' social media use and the fluctuation of stock markets. She believes that people trust those entrepreneurs who become the spokespersons and gatekeepers of many social and political issues.

Dr Chun-hung Li and Tang Chao analysed healthcare social media and how patients ask for advice on the internet and the problems of healthcare websites in China and the US. Li said healthcare social media is a platform for people to post medical complaints and share opinions about different hospitals. However, he noted that sometimes those reviews would be removed due to conflicts of interest of different parties, and difficulties in verifying the authenticity of online reviewers.

Professor Guo Zhenzhi presented how the social media and netizens were involved in the investigation and heated discussion of two law cases. Netizens' participation into re-investigation is not only truth-seeking, but also for fear of becoming the victim of trial manipulation by the authority. In all, the case reveals the increasing awareness of civil rights and distrust against the authority's manipulation in the legal system, the pressure on freedom expression and the struggle of truth-seeking on the social media platform.

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