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Does Social Media (online sites) discriminate against speech that is protected by UK Law and the EU Human Rights Act 1998?

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Abstract

This report shows if the giant social media tech companies intentionally discriminate against people for views that should be protected under UK law, mainly the Human Rights Act and Public Order Act. In this report, it will show case-law and news articles to show the points of the questions and answer at the end of the report which explains these companies do in fact discriminate against views they don't like. The research was hard to find case law which mentioned social media, so the author decides to use case law which is not linked to the internet and then linked it to the internet through the public space argument. It was more straightforward to find news articles but had to use fewer know sites because the mainstream media doesn't talk about these issues much.

Key Words

Human Rights, Public order, free speech, social media, Facebook, Twitter, freedom of belief, news articles, legislation, and issues.

1 Introduction

This investigative report will be talking about the large social media tech companies that might be discriminating against speech which is protected by the Human Rights Act 1998 and Public Order Act 1986. At this point everyone has heard of social media, from Facebook with 2.271 Billion users to twitter with 326 Million users, (Statista, 2019). There are several distinctive types of social media throughout the world, but this report is about the two most famous which is Facebook and Twitter. Since them both say they advocate for free speech and free ideas on the surf but is there an underlining agenda which got caught up in the judicial aspects of the HRA and POA. This report will explore both sides of the argument from the social media companies to the public which this affects. The material used to construct this report are from the case law and news articles from all aspects of the news media from left to right, to expose the truth behind the question of the report.

This report will have 5 main sections, which have sub-sections within them. This is to keep the report more organised and well structured. Section 2 will include the technological, economic and social issues. Section 3 will include the discussion of the legal aspects of the legislation that will be talked about, which include the Human Rights Act 1998, article 8, 9 and 10. It will additionally include the Public Order Act Section 4. At the end of this section, it will include the case law and articles that were used to deliver these points. Section 4 will be the summary + conclusion of the report it will include the key findings for the question on both sides of the coin. After all of these is Section 5 which will include all the references used for this report in alphabetical order and Harvard style referencing.

1.1 Setting the Scene + Trigger Article

After searching the web and multiple news sites from the left to the right, looking for a new interesting topic to research. The question was created before the article was found so there was a bit of bias and once the question can decide on, the article was easier to search for. It came to 2 news articles with two different opinion pieces the first is from the Brookings Institution which is titled "Regulating free speech on social media is dangerous and futile" and according to the media bias/fact check website it says the Brookings Institution is Left-centre, (Media Bias/Fact Check, 2016). This article talks about social media having a political bias and concludes the article saying the political bias of the social media companies become more concerning as more Americans turn to these kinds of platforms for the news and because of this it turns them into the new news organisations. He furthermore says despite these concerns, he believes that we all should accept the

bias and refrain from having the tech companies regulated or even mandate them to attain a political diverse workforce, (Yaraghi, 2018). By just reading this article to shows they cannot talk as freely as they would like to, because under this article is a disclaimer saying Facebook and Google are donors to the Brookings Institution, it also says the conclusion posted in this piece are those of the author and where not influenced by any of these donations, (Yaraghi, 2018). Which is extremely sceptical about the validity of this article.

The second article used is from The Independent and is titled "Trump claims social media 'discriminating' against right-wing voices." This title alone drawn the writer to this article. It then talks about the quotes of President Donald Trump, in short, asserting the opinions of Republicans and conservatives are being closed down. The writer then tries to connect Trump to the notorious conspiracy theorist Alex Jones which was suspended from Twitter and banned from YouTube. This news article is viewed to be left centre like the Brookings, (Media Bias/Fact Check, 2016).

2 Discussion of the Issues involved

In this section there will be three sub-sections, the first is technological issues which will talk about the technological issues from how this happens and why these are used. Next will be the Economic Issues which will talk about the impacts having people censored will have on these people, the people who talk to or get involved with them and the other side why it benefits the company to censor these voices. Then social issues will talk about what would happen to people that are censored and the public's views on these social issues, then it will also include the ethical issues of the companies and the government to keep the space fair for all people, no matter their background or views.

2.1 Technological Issues

The issues with the technological side of the question are getting more problematic every year because of the unprecedented growth of technology mainly in handheld devices. For example, Facebook was launched in early 2004, and the technology of smartphones was in its infancy. Therefore, because of this most users were on computers, but throughout the years the internet became more affordable and accessible and with the increase of better and better smartphones though out the years more and more people started to join up to social media. When Facebook was launched it had only 1 million users when only 745 million people had the internet at the time being 11.5% of the world, and with more people having access to the internet so did the social media users grow. Today Facebook has 2.271 Billion users there are 4,346 Billion people with access to the internet, (internetworldstats, 2019).

So, because of this social media has had more different kind of unfavourable opinions than any of the website created, on Facebook in every 60 seconds there are 317,000 status updates, 400 new users, 147,00 photos uploaded and 54,000 shared links, (Chen, 2018). These large social media companies us AI and content moderations to scan photos, posts, etc. It is used to try and take down "speech" which they do not want on the site. Facebook uses two types of screens to moderate flagged content from the AI to 15,000 human moderators, (Knight, 2018). There are issues to these methods the first one is the lack of Intelligence to understand the meaning of the words and current Memes, which are complicated cultural artefacts. Memes are very hard to understand if you are not in on the joke or the meaning behind it, (Marsakis, 2018).

So, because of the growth in active users of social media the gradual growth of polarising views will also change, grow and shrink. Typically depending on the user's possible experiences in life and on these social media sites.

2.2 Economic Issues

There are two main factors for the economic issues, and that is the social media companies itself and the users that use the platforms for business. Let's start off with advertisers, without Facebook and other social media companies will not be operating, so it goes without saying that to keep the investors and advertiser satisfied with the site. But in February 2018 one of the world largest advertisers informed the companies that it will pull its ads from the online networks, Unilever's chief of the marketing officer, Keith Weed called on the Silicon Valley tech giants to better police the content on their sites from the 'toxic online environment' which they said was propaganda, hate speech and other disturbing content, (Shaban, 2018). Because of these kinds of companies pulling ads social media companies have to respond and start to ban, take down the post. So, these ads were not seen in these types of content.

There are benefits to policing the sites because it can bring in more advertisers. Which will make Facebook more profitable. But by banning, censoring and blocking user's accounts, posts, etc it can affect these people that might use Facebook as a promoting technique for their business. For example on October 11th 2018, 'Facebook shut down thousands of Facebook accounts for their political opinions stating that they don't have a legitimate political argument', said Brain Kolfage an Disabled veteran, after his page was deleted without warning and losing \$300,000 dollars for Facebook ads for his right-wing news pages and business page for Military Grade Coffee which gives 10% off all profits goes to veteran organisations, which will affect other people lives which are not linked with the owner, (Nolan, 2018). They are lots of these types of example but are very hard to find, because the main media rarely talks about these topics.

2.3 Social Issues

There is a large number of social issues which can arise from users getting censored on social media. In this subsection it will talk about the dangers of this kind of censorship, from forming more radical views, have echo chambers in different social media sites like Gab, some people can become violent and might insight others to be violent as well.

Let's start off with the echo chambers that can happen because of the social Medias censorship, there are multiple places for people to go to if they have been banned from the large social media companies, Like Gab which call themselves the Free Speech Social Network. But other people say Gab is a popular gathering place for the alt-right activists and even white nationalists which views are banned or unwelcome on the other social media sites like Facebook and Twitter. The early members of this site are Milo Yiannopoulos, Andrew Anglin who is the founder of the neo-Nazi news site the Daily Stormer, it also includes Alex Jones and Carl Benjamin, (Graham, 2018). After visiting Gabs popular page on the website, it shows the type of people that use this platform by scrolling through the popular page is mostly right wing to hard right and even far-left, just reading these posts shows there are racists posts on the most popular page meaning these types of posts get the most interaction and shows the main use of this social media site. There is note if any intellectual debates talking about ideas or even being exposed to other ideas, which could change their views. Because of mainstream social media like Twitter and Facebook banning these people they have not had the interaction of different views which could bring them more to rational views. But just banning them is pushing them to the extreme and can be very dangerous. For example, the recent mass shooting that happened in New Zealand it is reported that he was radicalised online via anonymous forums like /pol/ or 8chan, they even mined his social media sites and was reportedly on Facebook, Twitter, and Gab, (Feldman, 2019). Another mass shooter was Robert Bowers and was charged with killing 11 people and wounding 6 others at a synagogue in Pittsburgh and was a frequent user of Gab, which the article said was beloved by extremists, (Roose, 2019).

Other sites which people are forced to /pol/ (4chan) and 8chan, which are an anonymous forum or some kind of social media depending on who you talk to. Pol is a politically incorrect discussion board on 4chan, they say the boards intended use is "discussion of news, world events, political issues, and other related topics." The Logo for this discussion board is a Nazi logo with politically incorrect written around it. Just by looking at it, you would know it is a place of alt-right people and views and if a website will host this forum it shows that they are ok with what goes on within this discussion forum. After exploring these sites with a Tor browser to help with the privacy and keep the visit anonymous. Which most if not all of these people do to avoid getting caught by the authorities, for what the view and or post. After scrolling through a couple of pages, it shows that there are not discussions on these sites just mainly hate speech from racists to all kinds of people, sexist and extremists' views and commentary on recent news information. For example, hateful things about the recent bombings in Sri Lanka. Another example of more censorship that after the Christchurch shooting, New Zealand has banned 8chan in their country. But the owner of 8chan Jim Watkins released a video after the event took place saying that the forum or other social media platforms should not be held responsible or censored in the wake of the shooting, (Seavers, 2019). He is also an advocated for free speech, which he says is the core intent of 8chan and includes that the people posting should be responsible for what they say, (Seavers, 2019).

A next social issues point will be the public or single out raw of violence. This links with the last section that if people are not exposed to new or opposing ideas to challenge their way of thinking and thought process, they will likely get more extreme in their views are more likely to lash out in public. One big example which has happened recently is about Tommy Robinson which was permanently banned from Facebook and Instagram in February of 2019. The reasons for his banning are after repeatedly breaking hate speech policies, (Dearden, 2019). But recently Tommy Robinson has been involved and even organised some rally and marches, about "Day for freedom". Which some people said is about promoting far-right ideology and not about free speech, (Bailey, 2018). Because of these types of marches, they will get more news coverage and reach a larger audience than a social media post. Some marches prompt fears of violent clashes, for example, far-right demonstrations saw metal barriers and bottles were thrown at police offices in London in July of 2018, this demonstration was in support of jailed Tommy Robinson of 2018, Independent (2018).

The social issues are very important as it cannot just affect the user but their family, friends, neighbours and general public.

2.4 Ethical Issues

The ethical issues are just as fundamental as the other issues. The essential point of having and abiding by ethical issues is mainly for social media sites. For example, make sure the polices don't infringe on the user's home countries laws, for example having a Russian user being protected under USA Law, because they have different laws on free speech the social media should apply these laws to the correct user. Or have a worldwide policy which everyone most abides by but having this which most social media companies have, can and will infringe on the user's rights in their home country which when can lead to class action lawsuits against these companies. Another issue would be if the social media policies give the user more rights than their home country and can get them arrested for something Facebook, Twitter could allow. It becomes a very touchy subject and is almost impossible to fix these issues. Without social media having contact with the governments to establish regional policies for them.

3 Discussion of legal Aspects

This section will have sub-sections, which include the relevant legislation which is used to protect the views or not to protect them but the general public. It will include the Human Rights Act 1998 mainly talking about article 9 and 10. Then the Public Order Act 1986 which will talk about section 4. It will then have the case law that is used or referenced in these subsections and articles which talk about the issues. Since doing some research there are a lot of newer articles that have been published that case law in this area since it is a very new concept.

3.1 Relevant Legislation

In the legislation that can be used to protect all speech and views, but the law says that this freedom may be subject to formalities, conditions, restrictions or penalties, which is decided by the Law and Courts and should not be controlled by the social media companies. In the following sub-sections, it will discuss the human rights act with article 9 and 10, then the public order act with section 4. These two legislations do not give 100% free speech, freedom of religion, etc. It only protects you once someone is offended by your speech and or views. Unlike the American constitution's First Amendment right, which says all speech is protected unless they incite violence, which it should be. There is no place for people who incite violence on people or groups of people. Then in section 3.2 will show some case law for these legislations and how they link to the new online format and show some news articles that might not have gone to court and find what people think out it.

3.1.1 Human Rights Act 1998

The Human Rights Act also known as HRA. Was created in 1998 which gives everyone the fundamental rights and freedoms, and if you feel that your rights have been infringed upon you can seek justice in the British courts instead of going to the European Court of Human Rights in Strasbourg, France. One of the fundamental issues with the Human Rights Act is that your rights are not absolute because if they affect anyone else's rights they don't apply to you. This section will talk about article 9 and 10 and how they affect the users of social media and social media themselves.

3.1.1.1 Article 9 (more work)

Article 9 protects your right to freedom of thought, belief, and religion. This should mean your views and actions should be protected by the law under HRA article 9. This is also included in a public place as long as you are not harming any person's rights. Because of this, most people believe the social media giants are the new public space. One example is Justice Kennedy of the Supreme Court in the US issued an opinion saying the first amendment protects access to the internet the same as access to a street or park. The first amendment is very similar to the Human Rights Act article 9 and 10, Starzak (2017). Therefore, these views should be protected and should have the right to express these views, from religious belief in private and public, (Equalityhumanrights, 2018).

3.1.1.2 Article 10

Article 10 is the article which is mostly recognised by most people in the UK. It preserves your right to hold your own opinions and be able to express them freely in public and private without government interference. In this article, it says you are allowed to express your views allowed, through public protest, published articles, books, leaflets, television, radio broadcasting, works of art, the internet and social media, (Equalityhumanrights,2019). Again, this right is subject to such formalities, conditions, restrictions or penalties. Therefore, put differently, you have free speech until someone takes offence. Because of Article 10 social media should be unable to delete posts, ban users and have these views censored because of the Human Rights Act, but these social media do and when a user complains or gets reported on by the news they unblock the account allowing them to come back showing they did nothing illegal, just the employees might not have liked what

they said or did. For example, a Twitter employee on their last day deletes President Trumps Twitter account because they didn't prefer the policies he held, (Ingram, 2017).

3.1.2 Public Order Act 1986

Public Order Act is also known as the POA and was created to group a load of different offences under one law. It obtains a very wide range of situations and is mostly used by the police. The law relating to the POA offences is very complex. But in this report, we will be focusing on section 4 and 4a which added some extra points to section 4. This Law will predominantly be used to counter the views which the government does not like when they are displayed online.

3.1.2.1 Section 4

The main title for this section is Intentional harassment, alarm or distress. It says a person is guilty of this offence if they use threatening, abusive or insulting words or behaviour, or disorderly behaviour, etc, in the legislation (Public Order (England) Act 1986). It then carries on saying under this section someone can be committed in a public and private place. Just by reading section 4 it shows you can state what you want until someone gets offended and reports your activities to the authorities. The Public Order Act is remarkably similar to the Human Rights Act article 9 and 10 because you can demonstrate your beliefs, views, and speech but once someone has been affected by the acts you do, you then don't have the rights which these legislations try to protect. Being convicted of this offence can carry up to 6 months imprisonment or a fine not exceeding a level 5 on the standard scale or both.

3.2 Case Law / Articles

In this subsection, it will show the case law used for the human right act and public order act. It will additionally include news articles because of the lack of case law in this area. After searching for case law for article 10 of the Human Rights Act there is a very little amount of case law and none of these are linked to freedom of expression which is linked to online forums like social media. One example is offline meaning this event did not happen on social media, but it might open up the way to use this ruling on social media. It is called, "Naming you Abusers" Armes v Nottinghamshire County Council [2016]. The main subject of this case law is it the right of the claimant to name the people who abused her which prevailed over the right of the perpetrators and others to have a private and family life, (Metzer, 2016). Because of this ruling, it will then allow people to name people that have abused/harassed them over social media. The case law is about online comments on a news web site. Called Delfi AS v Estonia [2013], this case was about the liability of an internet news portal for the offensive comments that were posted by readers, the decision of the court held that the finding of liability by the Estonian courts was justified on the portals right to freedom of expression, meaning the companies where not at fault and if the person wants to sue anyone they should find the commenters to sue, but it was said it would be almost impossible to find their real names, (English, 2013). The next case law is very controversy nicknamed the 'gay cake,' also called Lee v. Ashers Baking Company Ltd. Very recently the case has been closed and people do and not like the outcome, where people can turn down business to individuals that they don't support for this instance Gay marriage. The ruling of the case gives welcomed affirmation of the fundamental importance of freedom of conscience and freedom of speech. Then the court emphasised that refusing to provide goods or services to anyone because of a protected characteristic is unlawful discrimination. They also continue saying this judgment show not give anyone any ideas that discriminating against anyone is not acceptable. But the court made clear that the purpose of the equality law is to protect the people, not the ideas and no one should constantly be made to by law to make a statement or any kind of message with they do not agree with, in this case, it is defended by the religious belief, (Henderson, 2018).

Recently a famous comedian (Owen Benjamin) in America was permanently banned from Twitter because he was expressing conservative views that might have set Benjamin on a path to social isolation and radicalisation, (Mandel, 2019). Since then his content on YouTube has become quite far to the right, and don't believe it would have gotten that far if he was not banned from Twitter.

Another big news item in America was about an anti-abortion film, they claimed the official twitter account of the movie called Unplanned was suspended and then was reinstated after the widespread outcry, it then found out its followers were removed, and others were incapable to follow the account. It then came to light that the movies ads for the movie where refused to be displayed by Google, (Freiburger, 2019).

Another short was about a woman was guilty of 'racist' Snoop Dogg rap lyrics on an Instagram post. Just that title alone shows how bad it has gotten when you can't copy and paste rap lyrics to a social media post. But when reading into the story the courts say this is a hate crime. The woman said the lyric was to pay tribute to a boy who died in a road crash, (BBC News, 2018). She was given 8-week community order and placed on an 8-week curfew and was notified to pay £3500 and an £85 victim surcharge.

In 2017 the police published that they are making 9 arrests a day to fight against web trolls. They are getting arrested for posting allegedly offensive messages online, these arrests have been made to combat the social media hate speech. In 2016 alone more than 3,300 people were detained and questioned by the police for so-called trolling on social media sites. About half of these were dropped before they were brought to prosecutions, because of this increase there was criticism from the civil liberties campaigners, which they said the authorities were over-policing the internet and was threatening free speech, (Parker, 2017).

4 Summary + Conclusion

In this section, it will show the conclusion of this report on both sides of the coin.

Firstly, it shows that social media are discriminating against views they don't like and is protected by the Human right act, for example, the Lee v. Ashers Baking Company Ltd case law which protects religious views but shows twitter censoring a religious movie called the unplanned movie in section 3.2 Case law /articles. It also shows the biased in the women getting arrested because of Instagram rap lyric posts. They are lots of these kinds of news articles on the internet. It is believed this is because of the location of the tech companies which happens to be Silicon Valley which is mainly left-wing viewpoints. Early in the report in section 1.1, there are some articles showing that these large social media companies have a left-wing bias. Such as researching for this report it is reported that Google News and Google News search engine appear to show a "strong preference" for media organisation that are on the left wing of the political spectrum, in this report provided by the AllSides media technology group it says there is no evidence Google had intentionally altered the search results it happens to be the media reporting on fake news which pushes Google search results to the left and makes it look like they are biased against the ring wing views, (Hofacker, 2018). These should be protected by these laws, but it seems that the opinions of free speech are moving with younger people, for example 40% of Americans under the age of 35 tell pollsters that free speech is dangerous because they believe it might hurt someone's feelings, and in the same age range millennial think free speech is not dangerous with 58%, (Rizzo, 2018).

Secondly, it shows that social media sites are trying to become a safe place for people to browse interact and feel safe while online. Just by reading the news you can see social media is trying to ban extremist views from spreading online to introduce it to new users. But when the social media

platforms do this they are infringing on the UK and other countries rights which is set in law. If the comment is determined to be hate speech the authorities should be called or notified, and they can then proceed to charge them on the public order act section 4a. Other issues with banning users are, where they go after being banned they will end up migrating to the far-right social media sites like Gab, 4chan, 8chan where it will be echo chambers and will produce harmful ideas, speech and views and even actions like we witnessed at Christchurch in New Zealand. Things should never reach that far in western society, Aristotle once said: "it is the mark of an educated mind to be able to entertain a thought without accepting it". This quote shows that people are able to be exposed to views they don't like but it does not affect their way of thinking or affect them mentally, it is the best solution to filter out these kinds of hateful views.

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