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Social Media Terms and Conditions - The Delicate Balancing Act Between Online Safety and Free Speech Censorship

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Social media has provided an unfathomable explosion in the number of speech platforms for the modern-day individual. These platforms have largely been hailed by the public as a bastion of free, uncensored, and unfettered speech. As these platforms gained users and popularity, however, many individuals expressed concerns about the type of information being shared – wanting to protect themselves from racy, edgy, or lewd content. With these new communication forums, it is now much easier to target individuals, for whatever reason, without any fear of immediate repercussion for their actions.

As the internet becomes more normal, there is an outcry for protections from this type of targeted harassment. However, there is an ideological split, now, between individuals who want a safer, more productive internet, and those who view attempts at making the internet a safer place – directly or indirectly – as a means of censorship, sometimes removing content which would normally be protected under the First Amendment.[1] Private media platform's "terms and conditions" are arguably now the societal benchmarks of free speech[2], and there is a question as to if, or how, the government can safeguard normally constitutionally protected speech.

This paper will first explore this explosion of online social mediums – highlighting how these platforms have transformed our daily lives, and more importantly our daily communications, while at the same time attempting to preserve the First Amendment right to free speech. Then, this paper will highlight some of the more recent current events where these communication mediums and free speech have tenuously intersected. Further, this paper will analyze the current free speech protections – namely, section 230 of the Communications

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[1] U.S. Const. am. 1., *providing*, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

[2] Marvin Ammori, The "New" New York Times: Free Speech Lawyering In The Age Of Google And Twitter, 127 HARV. L. REV. 2259 (2014).

Decency Act ("CDA")[3] and section 512 of the Digital Millennium Copyright Act ("DMCA")[4] and how the advent of social media could potentially confront these protections. In conclusion, this paper will then discuss proposed solutions to this ever-delicate balancing act between online safety and free speech censorship.

I. Social Media Terms and Conditions – Public Content Censorship Through Private Means.

The data on the sheer number of current users of today's social media platforms is alarming. As of November 2016, nearly 80% of all online adults use Facebook.[5] That number is closer to 30% for sites such as Instagram, Pinterest, LinkedIn and Twitter.[6] These numbers drastically increase with younger users.[7] It is unquestionable that these types of mediums are more popular with younger generations, and will become even more popular as time goes on and the millennials of the current generation become the older generation in the future. But what is more important is what these mediums are now being used for – which is news gathering, the shaping of our political discourse, and as of 2016, winning Presidential campaigns.[8]

A majority of Americans now get their news on social media.[9] Reddit, Facebook, and Twitter all have the percentage of people who get their news on their sites at over 59%.[10] For an

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3 47 U.S.C. § 230.

4 17 U.S.C. § 512.

5 Pew Research, "Social Media Update 2016." Nov. 11, 2016. Greenwood, Perrin and Duggan. http://www.pewinternet.org/2016/11/11/social-media-update-2016/. (Last accessed Nov. 30, 2016).

6 *Id.*

7 *Id.*

8 *See* Shontavia Johnson, "*Donald Trump tweeted himself into the White House*". KING 5 WESTERN WASHINGTON. Nov. 13, 2016. http://www.king5.com/news/nation-now/donald-trump-tweeted-himself-into-the-white-house/350861703. (Last accessed Nov. 29, 2016) In this article, Johnson, an Intellectual Property Law Professor at Drake University, discusses the social media tactics used by President-Elect Donald Trump in his campaign cycle. The popularity and efficacy of Twitter in the campaign for the most powerful office in the world underscores the ever-emerging importance of regulating speech on social media platforms in the modern era.

9 Pew Research, "News Use Across Social Media Platforms 2016." May 26, 2016. Gottfried and Shearer. http://www.journalism.org/2016/05/26/news-use-across-social-media-platforms-2016/.

10 *Id.*

illustration of how these newer social media platforms have completely taken over media consumption, the leading traditional newspaper in 2015, the New York Times, averaged 60 million unique visitors reading both their print news and digital news per month.[11] Comparatively, Facebook has had over a billion unique visitors per month since 2012.[12] As the usage of social media increases, it is important to protect free speech and dissemination of ideas, while at the same time balancing hate speech and targeted harassment.

The terms and conditions of these sites have been designed by lawyers in order to protect speech. However, given the power and increased usage of these sites, many academics are now calling these sites the true masters and decision makers in free speech. Jeffrey Rosen, dubbed by the Los Angeles Times as "the nation's most widely read and influential legal commentator"[13] opined that social media lawyers and executives "exercise far more power over speech than does the Supreme Court."[14] These lawyers at Facebook, Twitter, Google, and the like have a monumental impact on free speech expression, given that these terms and conditions are used to dictate what gets shared in the most popular communication medium in the world. These lawyers must construct terms and conditions by weighing all applicable First Amendment precedents, theories and potential administrability in developing these rules.[15] As Marvin Ammori, one of the leading legal scholars on internet freedom issues, states: "[w]hile First Amendment lawyers

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11 *See* Ken Doctor, "*Newsonomics: 10 numbers on The New York Times' 1 million digital-subscriber milestone*". NIEMAN LAB. Aug. 6, 2015. http://www.niemanlab.org/2015/08/newsonomics-10-numbers-on-the-new-york-times-1-million-digital-subscriber-milestone/. (Last accessed Nov. 29, 2016).

12 *See* Statista, "*Number of monthly active Facebook users worldwide as of 3rd quarter 2016 (in millions)*", https://www.statista.com/statistics/264810/number-of-monthly-active-facebook-users-worldwide/. (Last accessed Nov. 29, 2016).

13 David J. Garow. "A modest proposal." LOS ANGELES TIMES. Jun 25, 2006. http://articles.latimes.com/2006/jun/25/books/bk-garrow25. (Last accessed Nov. 29, 2016). This phrase, "the nation's most widely read and influential legal commentator" has been repeated in all of Rosen's works and has been used to legitimize him in other circles.

14 Jeffery Rosen, *The Deciders: The Future of Privacy and Free Speech in the Age of Facebook and Google*, 80 FORDHAM L. REV. 1525, 1529 (2012).

15 Ammori, *supra*.

at leading technologies must of course reckon with decisions of the U.S. Supreme Court – and these decisions may shape these lawyers' mental frameworks – they must also contend with their own corporate and community objectives, with extremely important speech rules promulgated by acts of Congress, and with the laws and traditions of foreign nations that govern so many of their users."[16] These in-house technology lawyers must delicately balance ideals, but given the rise of these companies popularity in our daily lives, accept that their proposed terms and conditions will shape the public perception on free speech for years to come.

In constructing these terms and conditions, social media platforms have expressly tried to preserve freedom of speech while maintaining a sense of civility in their respective online communities. Google's official mission is "to organize the world's information and make it universally accessible and useful."[17] In Google's "terms and policies," the company speaks about the "delicate balancing act" between free expression and hate speech.[18] Facebook's official mission is "to give people the power to share and make the world more open and connected."[19] Facebook also says that [they] "don't tolerate bullying or harassment" in describing their community standards.[20] Twitter's former CEO called the platform "the global town square,"[21] and its former general counsel called the company "the free speech wing of the free speech

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16 *Id.* at 2262.

17 *About Google*, Google, http://www.google.com/about (last accessed Nov. 30, 2016).

18 *Terms and Policies*, Google, http://www.google.com/+/policy/content.html?hl=en&rd=1. (last accessed Nov. 29, 2016).

19 Gillian Reagan, *"The Evolution of Facebook's Mission Statement"*, N.Y. OBSERVER. Jul. 13, 2009. http://www.observer.com/2009/07/the-evolution-of-facebooks-mission-statement/. (Last accessed Nov. 30, 2016).

20 *Community Standards*, Facebook, https://www.facebook.com/communitystandards#. (Last accessed Nov. 30, 2016).

21 Karl Baker, "*Twitter CEO Costolo Focused on 'Building Global Town Square*,'" BLOOMBERG. Mar. 25, 2013. http://www.bloomberg.com/news/2013-03-25/twitter-ceo-costolo-focused-on-building-global-town-square-.html. (Last accessed Nov. 30, 2016).

party."[22] In their "[h]ateful conduct policy", Twitter says that "[f]reedom of expression means little if voices are silenced because people are afraid to speak up," and that they "do not tolerate behavior that harasses, intimidates, or uses fear to silence another person's voice."[23] But how do the express terms and conditions on bullying and harassment operate?

The actual terms and conditions between the companies are somewhat similar. All three social media titans make it a point to differentiate between hate speech and harassment.[24] In terms of hate speech, Google does not "support" any content that "promotes or condones violence against individuals or groups based on race or ethnic origin, religion, disability, gender, age, nationality, veteran status, or sexual orientation/gender identity, or whose primary purpose is inciting hatred on the basis of these core characteristics."[25] Facebook treats hate speech similarly towards the same classes, but also shares Google's "purpose" test in order to determine whether to remove content.[26] Facebook says they "allow humor, satire, or social commentary related to these topics."[27] Twitter also purports to protect the same classes, but lists an interesting caveat that "context matters" – in that some tweets may be abusive when viewed in isolation, "but may not be [abusive] when viewed in the context of a larger conversation."[28] Hate speech seems to be the most direct and most transparent of the social media terms and conditions policies because it directs moderators to look at specific means of content when making decisions on removal. Google and Facebook both leave room for content to be allowed that could

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22 Josh Holiday, "*Lawyer and Champion of Free Speech Alex Macgillivray to Leave Twitter*," THE GUARDIAN. Aug. 30, 2013. http://www.theguardian.com/technology/2013/aug/30/twitter-alex-macgillivray-free-speech. (Last accessed Nov. 30, 2016).

23 *Hateful conduct policy*, Twitter, https://support.twitter.com/articles/20175050#. (Last accessed Nov. 29, 2016).

24 Google and Facebook both have separate pages or paragraphs describing their policy on both hate speech and harassment. Twitter convolutes the two doctrines a bit more.

25 *Terms and Policies*, Google, *supra*.

26 *Community Standards*, Facebook, *supra*.

27 *Id.*

28 *Hateful conduct policy*, Twitter, *supra*.

be potentially hateful if the primary purpose of the content was satirical over hateful. Twitter, on the other hand, seems to have looser standards for determining what is hate speech.

In terms of harassment, Google takes a direct approach. The company commands: "[d]o not engage in harassing, bullying, or threatening behavior, and do not incite others to engage in these activities. Anyone using our Services to single someone out for malicious abuse, to threaten someone with serious harm, to sexualize a person in an unwanted way, or to harass in other ways may have the offending content removed or be permanently banned from using the Services."[29] Google has a separate page that gives tips on stopping harassment and bullying on their services.[30] Facebook again uses the "purpose" standard that they use in determining hate speech to determine whether certain conduct is considered bullying.[31] Any content that includes, "but is not limited to: [p]ages that identify and shame private individuals, [i]mages altered to degrade private individuals, [p]hotos or videos of physical bullying posted to shame the victim, [s]haring personal information to blackmail or harass people, and [r]epeatedly targeting other people with unwanted friend requests or messages" will be removed.[32] Twitter does not differentiate with the purpose of a particular tweet – saying that they enforce policies "when someone reports behavior that is abusive and targets an entire protected group and/or individuals who may be members."[33] Twitter again has the most loose and indirect standards when it comes to removing content.

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29 *Terms and Policies*, Google, *supra*.

30 *How to stop harassment & bullying on Google+*, Google, https://support.google.com/plus/answer/6006895?hl=en. (Last accessed Nov. 29, 2016).

31 *Community standards*, Facebook, *supra*.

32 *Id*. Interestingly, Facebook separates their policies on bullying and harassing between speech that targets private and public individuals. Public individuals are seemingly able to be "attacked" if it is an open and critical discussion and not a credible threat to safety.

33 *Hateful conduct policy*, Twitter, *supra*.

These terms and conditions highlight why private companies have the most important duty in shaping free speech doctrine. At the same time, these terms and conditions sometimes have similar functions as the First Amendment itself. Under Google and Facebook's terms and conditions, content could be banned that the First Amendment doesn't protect, namely: threats, incitement, and some pornography that could be considered constitutionally unprotected obscenity.[34] But as Marjorie Heins, founder of the Free Expression Project[35], says about social media companies censoring content, "there is no judicial determination of illegality – just the best guess of Facebook's censors."[36] And this is where potential free speech infringement can occur. Theoretically, speech that would normally be protected under the First Amendment could be censored and barred by social media platforms. A pertinent example that Hines gives is Facebook's power to suppress nude images and exercising that power over a photo of a nude statue in Kansas – where normally these types of displays would be protected under the First Amendment as art.[37] It is important to confront this disparity in regulated content versus normally protected content as these social media platforms to continue to grow in daily life, further solidifying the online public sphere as synonymous – if not more powerful – with the actual global public sphere.

Another problem with these rules from private companies is oversight or lack of an appeals process that would be more akin to censorship by a government agency. Facebook, for

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34 *See* Watts v. United States, 394 U.S. 705 (1969) (defining "true threats" as an exception to First Amendment protections; *See also* Miller v. California, 413 U.S. 15, 36-37 (1973) (defining the Miller test as determined by "community standards").

35 The Free Expression Policy Project, http://www.fepproject.org/fepp/aboutfepp.html. (Last accessed Nov. 28, 2016). The FEPP is an organization "devoted to assisting researchers with assembling information related to freedom of speech, media democracy, and copyright, and advocating for these issues."

36 See Marjorie Heins, "*The Brave New World of Social Media Censorship: How 'terms of service' abridge free speech.*" 127 HARV. L. REV. F. 325, 326. Jun. 15, 2014.

37 *See* Lee Rowland, *Naked Statue Reveals One Thing: Facebook Censorship Needs a Better Appeals Process*, ACLU. (Sept. 25, 2013), https://www.aclu.org/blog/technology-and-liberty-national-security/naked-statue-reveals-one-thing-facebook-censorship. (Last accessed Nov. 29, 2016).

example, employs a team of over a hundred employees to monitor published content.[38] More companies use their actual users to censor content – users can report a YouTube video, a tweet, or a Facebook post by flagging it for violation of rules.[39] But, for example, if the Federal Communications Commission ("FCC") receives complaints regarding a certain type of broadcast on television, or other traditional media forms, and subsequently censors it, the broadcaster does specific receive reasoning for why the content was censored, and can appeal a decision to the agency or a court, since it is a governmental organization and provides more oversight.[40] By contrast, OnlineCensorship.org[41] provides in their most recent report that, of the users that reported takedown of their content to the organization, 44.7% chose to appeal its removal through company policies.[42] Under half of these appeals resulted in the restoration of the censored content.[43] The problem is, however, that these appeals do not provide the same transparency as do governmental agencies. Private companies have a lot more room to determine their own applicability of their terms and conditions, and are struggling to enhance oversight while at the same time providing transparency to its users when their content is censored.

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[38] Ammori conducted multiple interviews with technology companies in his law review article, and this statistic is from an interview with Facebook that was conducted in 2013.

[39] *See* Contact Us, YouTube, http://www.youtube.com/t/contact_us (last accessed Nov. 29, 2016) ("to report an inappropriate video on YouTube, please click the 'Flag' link under the video."); How to Report Things, Facebook, https://www.facebook.com/help/191495968648557 (last accessed Nov. 29, 2016).

[40] *See* "The FCC and Freedom of Speech," Federal Communications Commission. https://www.fcc.gov/consumers/guides/fcc-and-freedom-speech. (Last accessed Nov. 29, 2016.)

[41] OnlineCensorship.org is an organization that "seeks to encourage companies to operate with greater transparency and accountability towards their users as they make decisions that regulate speech." https://onlinecensorship.org/about/what-we-do. (Last accessed Nov. 29, 2016). The organization seeks to provide data on censorship in the social media context.

[42] *See* Jessica Anderson, Carlson, Stender, West, York. *"Censorship in Context: Insights from Crowdsourced Data on Social Media Censorship."* ONLINECENSORSHIP.ORG. Nov. 16, 2016. https://s3-us-west-1.amazonaws.com/onlinecensorship/posts/pdfs/000/000/088/original/Censorship_in_Context_November_2016.pdf?2016

[43] *Id.* at p. 20.

YouTube has recently received criticism for its new policy on self-policing its content. Its users that host content have expressed ire over YouTube's new "YouTube Heroes" program, introduced in September of 2016, fearing a "mob rule" of censorship from disgruntled users.[44] In this program, YouTube gives certain rewards to users who flag inappropriate videos that violate their community guidelines.[45] But, flagging of their videos is not the only negative repercussion felt by vloggers. One famous YouTuber, Phillip DeFranco, in a video entitled "YouTube Is Shutting Down My Channel and I'm Not Sure What To Do," claimed that YouTube had demonetized some of his videos after the program was implemented, preventing DeFranco from earning revenue from certain videos YouTube had deemed "not advertiser friendly."[46] The video, posted August 31, 2016, now has over 5,690,000 views.[47] Forbes called the program "moderation via gamification."[48] DeFranco's situation does highlight an important point – if DeFranco or other vloggers are indeed losing revenue for content being considered as a loose standard "not advertiser friendly' – there is a stronger argument that YouTube's action is indeed a form of censorship.

While censorship in America is more of a tenuous conversation, given the view of freedom of speech protections via the First Amendment, it is important to remember that these private companies are dealing with a global user base. Google's head of global policy says that "wrestling with the limits of freedom of expression for a billion users, in more than one hundred

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44 Fruzsina Eordogh, "*YouTubers Fear Mob Rule With New YouTube Heroes Initiative*" FORBES. Sep. 26, 2016. (Last accessed Nov. 29, 2016) "many YouTubers, predictably, reacted with outrage and fear."

45 *See* "Get started with YouTube Heroes." https://support.google.com/youtube/answer/7124236?hl=en. (Last accessed Nov. 29, 2016.)

46 *See* Olivia Blair, *"Youtube clarifies it has not changed its policy after vlogger Phillip De Franco accuses website of 'censorship'."* INDEPENDENT UK. Sep. 3 2016. http://www.independent.co.uk/news/people/philip-de-franco-youtube-clarifies-policy-accused-censorship-monetisation-advertiser-friendly-a7223866.html; (Last accessed Nov. 29, 2016).

47 *See* Phillip DeFranco, "YouTube Is Shutting Down My Channel and I'm Not Sure What To Do." Aug. 31, 2016. https://www.youtube.com/watch?v=Gbph5.

48 Eordogh, *supra*.

countries with different laws and cultural norms, is a challenge we face many times every day."[49] As of 2013, around 80% of Facebook's active users were international.[50] Also as of 2013, Twitter has an international user base of 75% of its total.[51] These private companies must struggle with the complex and nuanced cultural norms of these international nations, many of whom do not share the same heightened appreciation for absolute freedom of speech as does the United States. These daily struggles have been highlighted in public events over the last few years.

II. Recent Global Incidents And The Social Media Harassment/Free Speech Dichotomy

Not surprisingly, there have been a wide variety of public incidents that have highlighted the issues between censorship of content and perception of free speech. Google had a very public battle with a controversial YouTube video that had a large impact on the global political landscape. Facebook tried to navigate a free speech with controversial cartoon drawings that incited international terror. And Twitter has recently come under fire for its censorship of users for incitement of harassment and hate speech using a sometimes-opaque policy on banning its users accounts. This paper will now explore these events, touching on the delicate balance between free speech and protecting its users from harassment, hate speech, and conflicting cultural ideology.

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49 *See* Claire Cain Miller, *Google Has No Plans To Rethink Video Status*, N.Y. TIMES, Sept. 14, 2012, http://www.nytimes.com/2012/09/15/world/middleeast/google-wont-rethink-anti-islam-videos-status.html?ref=clairecainmiller. (Last accessed Nov. 29, 2016).; Ammori, *supra*.

50 *See* ANI, *Facebook's International Users Account for 80 Percent of Likes and Shares*, BGR. Dec. 17, 2013. http://www.bgr.in/news/facebooks-international-users-account-for-80-percent-of-likes-and-shares. (Last accessed Nov. 29, 2016).

51 *See ¾ of Twitter's Members Abroad, Generates Only ¼ of Its Revenue*, TECH2. Nov. 7, 2013. http://tech.firstpost.com/news-analyis/34-of-twitters-members-abroad-generates-only-14-of-its-revenue-215661.html.

The first incident, which was subject to a global geo-political crisis as well as free speech battle within United States courts, involved Google (which owns YouTube) and a satirical anti-Islam video posted to YouTube in July 2012 called "The Innocence of Muslims."[52] The video gained international scrutiny in September 2012, after people in a few Middle Eastern countries – namely, Egypt, Libya and Pakistan, began rioting and violent demonstrations after they perceived the video to mock the Prophet Mohammed as a womanizer, child molester and a killer.[53] Over 15,000 people participated in demonstrations in Pakistan.[54] The video was erroneously attributed as the reason for the notorious Benghazi attack on an American embassy in Libya, killing four American military personnel.[55] Google first voluntarily blocked the video in Egypt and Libya, citing extraordinary circumstances, and then blocked the video in India and Indonesia, saying that the video violated local laws.[56] The White House requested that the video be taken down due to the political climate, but initially Google said that they would not comply with the request – since the video did not violate its terms of service as it did not specifically target Muslim people, only Islam as a religion.[57]

The video stayed online for the duration of the crisis, but two years later, its availability was subjected to litigation – not on free speech grounds, but on copyright grounds. On February 26, 2014, the United States Court of Appeals for the Ninth Circuit ordered to remove the video

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52 *See* Dion Nissenbaum, James Oberman, Erica Orden, "*Behind Video, a Web of Questions*." THE WALL STREET JOURNAL. Sep. 13, 2012. http://www.wsj.com/articles/SB10000872396390443884104577647691429314660. (Last accessed Nov. 29, 2016).

53 *See* "*Death, destruction in Pakistan amid protests tied to anti-Islam film.*" CNN. Sep. 21, 2012. http://www.cnn.com/2012/09/21/world/anti-islam-film-protests. (Last accessed Nov. 29, 2016).

54 *See* "*'Our beloved Prophet is our honor!*': *Thousands rally in Pakistan against anti-Islam video*," RT. Sep. 29, 2012. https://www.rt.com/news/rally-pakistan-movie-us-297/. (Last accessed Nov. 29, 2016).

55 *See* Washington Wire, "*Flashback: What Susan Rice Said About Benghazi.*" THE WASHINGTON POST. Nov. 16, 2012. Both then-Secretary of State Hillary Clinton, as well as President Barack Obama, both mentioned the protests stemming from the YouTube video, and many conservative pundits have tried to pin blame for erroneously attributing the terrorist attacks to the *Innocence of Muslims* video.

56 *Miller*, supra.

57 Id..

from its website via a preliminary injunction filed by one of the actresses in the video.[58] Garcia had said she had been duped into performing in the video – originally not knowing the subject matter of the movie during production as it was later dubbed over in Arabic – and had become the subject of multiple *fatwas* (a religious decree from an authority given in Islamic law) calling for her death.[59] Garcia, who had two lines in the film, argued that she had a copyrightable interest in the film, and therefore the video should be removed given all that had occurred after its production.[60] Seven months later, sitting *en banc*, the Ninth Circuit reversed its own decision, removing the preliminary injunction and giving Google the discretion on whether the video can remain.[61] The decision was celebrated as a victory for free speech.[62] The video is now available on YouTube.[63]

Although the subsequent battle over the availability of the video centered around copyright law, the free speech implications surrounding it were dire. Google did hold its ground during the international crisis, keeping the video online in the United States in the face of opposition from the highest branch of American government. Google's actions (or more pertinently, inactions) highlight the overarching theme of this paper – that private companies have the most power in shaping free speech law and discourse in the United States. During the crisis, Tim Wu, a Columbia University law professor, said: "[n]otice that Google has more power over this than either the Egyptian or the U.S. government. Most free speech today has

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58 Garcia v. Google, 766 F.3d 929 (9th. Cir. 2014).
59 *Id.*
60 *Id.*
61 Garcia v. Google, 786 F.3d 733 (9th Cir. 2015).
62 *See* Mark Joseph Stern, "*Innocence of Muslims Can Go Back On YouTube. Good.*" SLATE. May 19, 2015. http://www.slate.com/blogs/future_tense/2015/05/19/innocence_of_muslims_is_back_on_youtube_good.html. (Last accessed Nov. 29, 2016).
63 See "*Sam Bacile – The Innocence of Muslims Trailer*", YOUTUBE. May 19, 2015. https://www.youtube.com/watch?v=YJBWCLeOEaM&bpctr=1480471749.

nothing to do with governments and everything to do with companies."[64] Wu is correct – and this incident was not, and was never going to be, the first of its kind of social media companies battling with both domestic and international free speech doctrines.

The second incident was somewhat similar, as Facebook also had to confront sensitive content in a free speech battle. On January 7, 2015, two Al-Qaeda gunmen forced their way into the offices of French satirical cartoonist newspaper, Charlie Hebdo, killing twelve and injuring eleven.[65] Charlie Hebdo had become very controversial in years prior to the attack, publishing non-conformist cartoon covers, often mocking religious figures – and particularly publishing cartoons of the Prophet Mohammad, which is banned in certain sects of Islam.[66] Shortly after, journalists, cartoonists, and free speech supporters around the world rallied around the tragedy and the #JeSuisCharlie (in French, literally, "I am Charlie") hashtags on social media.[67] Mark Zuckerberg, founder and CEO of Facebook, posted two days after the attack from his own personal Facebook account, saying that he would not "let one country or group of people dictate what people can share across the world [. . .] I won't let that happen on Facebook. I'm

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64 *See* Craig Timberg, *"Google's restricting of anti-Muslim video shows increasing clout of Web firms"*. THE WASHINGTON POST. Sep. 14, 2012. https://www.washingtonpost.com/business/economy/googles-restricting-of-anti-muslim-video-shows-role-of-web-firms-as-free-speech-arbiters/2012/09/14/ec0f8ce0-fe9b-11e1-8adc-499661afe377_story.html?utm_term=.928062c09049. (Last accessed Nov. 29, 2016).

65 *See* John Henley and Kim Willsher, "*Charlie Hebdo attacks: 'It's carnage, a bloodbath. Everyone is dead.*'" THE GUARDIAN. Jan. 7 2015. https://www.theguardian.com/world/2015/jan/07/charlie-hebdo-shooting-paris-magazine-target-raid. (Last accessed Nov. 29, 2016).

66 Charlie Hebdo had been attacked by radical terrorists before. In 2011, their offices were fire-bombed and its website was hacked; *See "French satirical paper Charlie Hebdo attacked in Paris"*. BBC NEWS. Nov. 2 2011. http://www.bbc.com/news/world-europe-15550350. (Last accessed Nov. 29, 2016); If interested, for or a more in-depth analysis on the laws of Islam surrounding whether depictions of Muslims are allowed, *see also* "Depictions of Muhammad". WIKIPEDIA. https://en.wikipedia.org/wiki/Depictions_of_Muhammad. (Last accessed Nov. 29, 2016.)

67 *See* Lucy Cormack, "*Paris terrorist attack: Charlie Hebdo shooting video provokes social media backlash.*" THE SYDNEY MORNING HERALD. Jan. 8 2015. http://www.smh.com.au/world/paris-terrorist-attack-charlie-hebdo-shooting-video-provokes-social-media-backlash-20150107-12jvhf. (Last accessed Nov. 29, 2016).

committed to building a service where you can speak freely without fear of violence. [. . . .] #JeSuisCharlie [.]"[68]

Zuckerberg's words, however, proved to be somewhat hypocritical as time elapsed after the tragedy. Only two weeks after his post, Facebook censored images of Mohammad (even the same images that were thought to have elicited the Charlie Hebdo attacks) in countries such as Turkey after the government requested that the content be removed.[69] Facebook has tried to be transparent as possible when dealing with the tricky global free speech landscape, however, as the company publishes data on the government requests they receive around the world in an interactive map.[70] The last available report, encompassing data from July 2015 to December 2015, has some interesting numbers. In this time-period, the French government made 37,695 content removal requests – the most of any country in the world.[71] These results are intriguing – as Caityln Dewey writes in the Washington Post – "it seems disingenuous" for Facebook to comply with governmental takedown requests, while "simultaneously styling itself as the patron saint of political speech."[72] Again, the Charlie Hebdo story shows that complying with foreign

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[68] *See* Mark Zuckerberg, Facebook. Jan. 9, 2015. https://www.facebook.com/zuck/posts/10101844454210771. (Last accessed Nov. 29, 2016).

[69] *See* Caitlyn Dewey, "*Two weeks after Zuckerberg said 'je suis Charlie,' Facebook begins censoring images of prophet Muhammad.*" THE WASHINGTON POST. Jan. 27, 2015. https://www.washingtonpost.com/news/the-intersect/wp/2015/01/27/two-weeks-after-zuckerberg-said-je-suis-charlie-facebook-begins-censoring-images-of-prophet-muhammad/. (Last accessed Nov. 29, 2016).

[70] *See* Government Requests Report, Facebook. https://govtrequests.facebook.com/#. (Last accessed Nov. 29, 2016).

[71] *See* Facebook-Government-Report-2015. Facebook. Click "*View the Government Requests Report: July 2015 – December 2015*". https://govtrequests.facebook.com/#. (Last accessed Nov. 29, 2016). Although Facebook lists 37,695 content restrictions stemming from France, only 54.22% of requests for user data from the French government were granted. India has the second most content restrictions, with 14,971, followed by 2,078 in Turkey. The United States seems more concerned with requests for user data than it is censoring content – as the United States requested for user data 19,235 times, referencing 30,041 individual accounts (both the most in the world). This resulted in 0 content based restrictions.

[72] Dewey, *supra*.

censorship laws is one of the many hurdles that Facebook and other social media platforms have to confront.

In America, most of the recent free speech discourse has stemmed from Twitter's actions regarding the rising "alt-right" movement in conservative politics.[73] The first of these incidents commenced in the Summer of 2016, and centered on a feud between conservative columnist Milo Yiannopoulos and famous actress Leslie Jones. In July, Yiannopoulos wrote a scathing review of Jones' new blockbuster *Ghostbusters* movie.[74] Many of Yiannopoulos' followers took to harassing Jones, who was subjected to racist, vile, and derogatory tweets that were in clear violation of Twitter's terms and conditions.[75] Yiannopoulos and Jones exchanged tweets, with Yiannopoulos accusing Jones of "playing the victim", and hiding behind accusations of racism and sexism to gain favor in the media for the *Ghostbusters* movie underperforming at the box office.[76] Jones, through Twitter, reached out to Twitter's CEO Jack Dorsey, eventually deleted her Twitter account, and a few hours later, Yiannopoulos' account was permanently banned from Twitter.[77] Twitter says that Yiannopoulos violated the company rules "prohibiting participating

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[73] The "Alternative Right" has come under fire recently in American politics. *Compare* Allum Bokhari and Milo Yiannopoulos, "*An Establishment Conservative's Guide To The Alt Right,*" BREITBART. Mar. 29, 2016. http://www.breitbart.com/tech/2016/03/29/an-establishment-conservatives-guide-to-the-alt-right/. (Last accessed Nov. 29, 2016), *with* Southern Poverty Law Center ("SPLC"), "*Alternative Right."* https://www.splcenter.org/fighting-hate/extremist-files/ideology/alternative-right. (Last accessed Nov. 29, 2016). Breitbart, long hailed as the most legitimate news outlet for the alt-right, gives a more lenient view of the alleged fringe group. The SPLC views the alt-right as a white nationalist hate group. Both readings should give an idea as to the nuances of both defining the group, as well as dealing with the group in modern political discourse.

[74] *See* Milo Yiannopoulos, *"Teenage Boys With Tits: Here's My Problem With Ghostbusters.*" BREITBART. Jul. 18, 2016. http://www.breitbart.com/tech/2016/07/18/milo-reviews-ghostbusters/. (Last accessed Nov. 29, 2016).

[75] *See* Kristen V. Brown, "*How a racist, sexist hate mob forced Leslie Jones off Twitter."* FUSION. Jul. 19, 2016. http://fusion.net/story/327103/leslie-jones-twitter-racism/. (Last accessed Nov. 29, 2016).

[76] A full list of tweets between the two parties can be found at this archive: https://abload.de/img/nerointeractionslesli60u03.png. (Last accessed Nov. 29, 2016).

[77] *See* Jamie Altman, "*The whole Leslie Jones Twitter feud, explained.*" USA Today. Jul. 25, 2016. http://college.usatoday.com/2016/07/25/the-whole-leslie-jones-twitter-feud-explained/

in or inciting targeted abuse of individuals."[78] Proponents of Yiannopoulos argue that the ban was improper since there was no clear evidence that Yiannopoulos directly incited any abuse, and should not be held accountable for his followers' actions.[79] Jones eventually returned to Twitter.

The Yiannopoulos-Jones feud illustrates the delicate balance social media platforms are tasked with – between protecting hate speech and promoting free speech. On one hand, the tweets that Jones was subjected to were objectively vile, and social media terms and conditions should protect users, if they choose, from this type of sensitive and harassing material. However, the First Amendment has characterized protection of speech broadly. Yiannopoulos' words, in the pure First Amendment context, are completely legal. Without a clear policy on what can trigger an outright ban on Twitter, and with Twitter becoming a more legitimate news site by the day, there is a stronger argument that eventually, Twitter could be infringing on the free speech rights of Americans if they ban accounts with an opaque terms and conditions policy. Critics of social media companies and proponents of free speech say that these companies and platforms cannot arbitrarily ban users, and instead must be completely transparent about specific actions in which they are censoring content or in cases like Yiannopoulos, banning users.

More recently, Twitter has come under fire for banning Twitter users entirely on viewpoints, and not on individual action, as the company removed Richard Spencer and other alt-right leaders from their site.[80] David Frum, editor in-chief at The Atlantic, wrote a scathing op-ed about how Twitter is making the wrong choices in censoring ideas, essentially giving more

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78 *See* Abby Ohleiser, "*Just how offensive did Milo Yiannopoulos have to be to get banned from Twitter?*". The Washington Post. Jul. 21, 2016. https://www.washingtonpost.com/news/the-intersect/wp/2016/07/21/what-it-takes-to-get-banned-from-twitter/.

79 *Id.*

80 *See* David Frum, "*Twitter's Misbegotten Censorship*." THE ATLANTIC. Nov. 16, 2016. (Last accessed Nov. 29, 2016).

power and ammunition to fringe radical groups.[81] However, Frum notes a few pertinent caveats: "Twitter is a private actor; it has no First Amendment obligations to anybody. [. . .] It can turn away anyone it likes, subject only to non-discrimination laws – and personal belief is not a forbidden ground of discrimination. Twitter is acting wholly within its rights."[82] Secondly, Frum opines that "[S]ocial-media platforms are not common carriers. They are entitled to turn away customers who behave in ways inconsistent with the platform's identity and purpose."[83]

These caveats are true. Twitter is a private company, and has the liberty to choose what content they decide is in violation of their policy. The law does not protect users that contractually choose to participate with a private company's social media platform. But what if the law could change? What if – due to the exploding popularity of social media sites – these platforms could be considered something completely different in the law? What if lawmakers' subject private social media platforms like Twitter to governmental regulation in an effort to protect the individual right to free speech – while at the same time protecting people from harassment or hate speech? This paper now will explore this topic.

III. Current Laws and Potential Solutions to the Censorship Problem.

This section will first analyze the current law in relation to free speech and private social media platforms. Then, it will explore any potential options or changes in proposed solution to the problem, whether it be through re-categorization in regulation, or through future legislation. The most obvious problem and hurdle facing any sort of free speech protection on content within social media platforms is that private companies can restrict what they want from users. As Frum

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81 *Id.*
82 *Id.*
83 *Id.*

describes, if you don't like what Twitter, or Facebook, or Google, or any other social media cite is censoring, you have the freedom of choice to explore other methods of communication. But, what happens when an individual's livelihood is affected? DeFranco on YouTube complained that new terms and conditions policies affected his monetary earning potential. The same could be said for a journalist who gets their Twitter or Facebook accounts deactivated or banned – they lose potential page views, chances for advertising revenue, or directing traffic to increase their brand. As it stands now, these affected individuals cannot take any action against private companies for censoring content on their platforms.

The two major laws outside of the First Amendment that govern free speech online is section 230 of the CDA and Section 512 of the DMCA. Section 230 of the CDA explicitly creates immunity from liability for all internet users who disseminate content not of their own creation for defamation, harassment, hate speech, invasion of privacy, or literally anything else except for violations of intellectual property and copyright.[84] Within this law, social media platforms like Google, Facebook, and Twitter do not have to actively censor any content. The major function of section 230 is to deter private-industry censorship and liability, because of the interest of free speech in American societal discourse.[85] However, the more relevant part of section 230 for censorship in social media is the portion that affirmatively allows censorship by private companies.[86] Section 230(c)(2)(A) provides: "[n]o provider or user of an interactive computer service shall be held liable on account of – (A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be

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84 47 U.S.C. § 230(c)(1).

85 *See* "*CDA 230: The Most Important Law Protecting Internet Speech*," ELECTRONIC FRONTIER FOUNDATION. *https://www.eff.org/issues/cda230*. (Last accessed Nov. 30, 2016). The EFF notes that the function of section 230 is ironic, given that the main crux of the CDA bill was to restrict content – namely, online pornography during the budding popularity of the internet.

86 47 U.S.C. § 230(c)(2).

obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected [. . .]."[87] This is the main problem with the current law – social media platforms, through broad and sometimes vague terms of conditions, can censor content that is otherwise protected by the First Amendment.

Social media companies who are given statutory protections from section 230 of the CDA, have used the other pertinent online free speech law, section 512 of the DMCA, as an incentive to quickly remove content and escape any liability for any action they take.[88] Section 512 of the DMCA grants internet service providers (as well as social media platforms) a safe harbor from any potentially copyright infringing material from their users, so long as their users comply with take-down notices that, unfortunately, "do not require any advance judicial determination," and at times are "mass-generated by bots [. . .] employed by the entertainment industry or its hired hands."[89] The alleged infringing content must be taken down "expeditiously," and at many times is never reinstated unless the user appeals the decision directly to the provider.[90] Section 512 of the DMCA is called "a legislative gift to the media industry," since it gives the power to companies to suppress content – sometimes permanently – without any tangible judicial oversight.[91] With the CDA and DMCA, social media platforms escape liability for any action they take – from both user harassment of other users, as well as for censoring any content. The imbalance between lack of free speech protections online and the

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87 *Id.*

88 *See* Ammori, *supra*; Heins at 329.

89 *See, e.g.*, 17 U.S.C. § 512; Heins at 329; Laura Quilter & Marjorie Heins, "*Intellectual Property and Free Speech in the Online World*." 2007. http://www.fepproject.org/policyreports/quilterheinsreport.pdf. (Last accessed Nov. 30, 2016).

90 17 U.S.C. § 512(c)(1)(A)(iii); 17 U.S.C. § 512(g).

91 Heins at 329.

massive power platforms have with no potential liability "tips the scales too heavily against free speech."[92]

Social media platforms have enjoyed these protections and have capitalized on the easy ability to remove, in the words of section 230 of the CDA, "otherwise objectionable" content.[93] This "otherwise objectionable" content is a very lenient and subjective standard. There could potentially be room to re-work this loose CDA standard with the massive development of internet technology, given that the CDA was enacted in 1997. The subsequent explosion of social media platforms was unfathomable to lawmakers at the time of the law's passing. With the rapid change in internet culture, there is potential room for a tweaking in the law, or a complete rework of it. In *Reno v. ACLU*, a case shortly after the passing of the CDA, the Supreme Court struck down the anti-indecency provisions of the CDA as too overbroad.[94] Justice O'Connor, joined by Justice Rehnquist, wrote a concurring opinion that left open the possibility of re-working certain provisions of the CDA, or re-working how internet law should function. O'Connor said that creating different "adult or children zones" on the internet, where certain individuals would be permitted to access certain sections of the internet, would be constitutionally sound, only if future technology could make it possible.[95] While creating adult and children zones on the internet could be feasible – it still does not adequately address the issue of free speech in the online harassment and terms and conditions dichotomy. However, the O'Connor concurrence shows that at the highest level of the judiciary, the CDA was already being primed for a subsequent refining once technology permitted. Now nearly twenty years later, a re-working of

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92 *Id.*
93 47 U.S.C. § 230(c)(2).
94 Reno v. ACLU, 521 U.S. 844 (1997)
95 *Id.* at 866, (J. O'Connor, concurring).

the doctrine is long overdue given the explosion of social media platforms and a complete change in online communication.

This is a very prospective area of the law. Not much has been written about reforming the CDA to protect free speech from censored content, but on the other side, there has been some academic writing on reforming the CDA section 230 protection for companies against victims of defamatory content posted about them on the internet. Critics of the CDA in this context argue that the CDA has been interpreted too broadly, and that there should not be a complete immunity for internet service providers and website operators who maintain some sort of editorial oversight on content.[96] If the CDA were to be overturned on this basis, courts would then apply the common law framework to internet defamation cases – dividing entities that disseminate third-party materials into publishers, distributors, and common carriers – all which have different protections under the common law.[97] Since there is no common law or case law surrounding the protections of social media users, it is hard to conceive of any particular category that social media platforms would fit into, however, it is feasible to begin to think about classify them as something that requires more oversight. Given the platforms' current functional role as the arbiters of free speech doctrine in the digital age, it may be a good idea to begin this conversation in Congress.

There are a few developments in the internet context that support elevating social media platforms to a different type of regulatory category, whether it be via the FCC in elevating social media sites to a "common carrier," or in any prospective legislation. One of these is the potential

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[96] *See* Matthew G. Jeweler, The Communications Decency Act of 1996: Why § 230 is Outdated and Publisher Liability for Defamation Should be Reinstated Against Internet Service Providers, 8 U. PITT. J. TECH. L. & POL'Y 3 (2007).

[97] *Id.*

elevation of the user's roles on the sites themselves. In 2013, Illinois Senator Dick Durbin explored elevating bloggers to journalists in the context of media shield laws in an interview with Fox News.[98] Durbin stated, "the media shield law [. . .] still leaves an unanswered question [. . .]. What is a journalist today in 2013? We know it's someone that works for Fox or AP, but does it include a blogger? Does it include someone who is tweeting? Are these people journalists and entitled to constitutional protection? We need to ask 21st century questions about a provision in our Constitution that was written over 200 years ago."[99] While media shield laws apply to situations in which the reporter can deny any revealing of sources, it is interesting to note how certain lawmakers are now looking at the changing media landscape in updating the legal framework surrounding it. The most pertinent part of Durbin's interview was his view of tweeting. It can be argued, that by tweeting, one is performing the same act as a traditional publisher would be at the time of the Constitution's founding. Media law has yet to grapple with the explosion of communication mediums the internet has brought about, and free speech protections could potentially be granted to users of private social media platforms if these forums become large enough.

Can private social media platforms be regulated like a public utility? Twitter's CEO Dorsey explicitly thinks they can. In an interview with The New Yorker in 2013, Dorsey characterized his vision for Twitter. "[H]e insists that Twitter is neither liberal nor conservative; it's a public utility, like water or electricity."[100] If social media companies in practice are becoming more engrained in our daily lives, and as they continue to become more engrained in

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98 *See* Doug Mataconis, "*Bloggers, Media Shield Laws, And The First Amendment"*. OUTSIDE THE BELTWAY. May 28, 2013. http://www.outsidethebeltway.com/bloggers-media-shield-laws-and-the-first-amendment/. (Last accessed Nov. 30, 2016).

99 *Id.*

100 D.T. Max, "*Two-Hit Wonder*." THE NEW YORKER. Oct. 21, 2013. http://www.newyorker.com/magazine/2013/10/21/two-hit-wonder. (Last accessed Nov. 30, 2016.)

our daily lives, what is to say that the government cannot regulate the companies as if they were providing a similar service as utility companies? The public versus private dichotomy is one that will eventually prove to be controversial in any regulation of the social media companies – however, at one point, this controversy existed for other utilities – just like water and electricity, and could conceivably be applied to social communication mediums. Another interesting phenomenon is that social media platforms are becoming international utilities in places like Canada and Europe, where socialization and regulation is beloved.[101] Places like these may lead the way in online regulation, and America may have to follow these regulations in an ever-globalizing world.

The biggest argument against increased regulation for social media sites is that the free market will take its course. Heins calls a potential common carrier categorization a "legal strait jacket that would prohibit content-based terms of service."[102] Heins also argues that the market will eventually level out the playing field for companies like Twitter who arbitrarily censor content – namely, that users will look to other companies who are more free in how they deal with censorship.[103] Some critics argue that this leveling of the playing field has already begun to take shape – as some of the disgruntled alt-right Twitter users have started to use a new, purportedly freer form of social media called "Gab."[104] Gab's CEO, Andrew Torba, says that while not explicitly marketing themselves to a conservative user base, Gab does not explicitly

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101 Danah Boyd, "*Facebook is a utility; utilities get regulated*." Zephoria. May 16, 2010. http://www.zephoria.org/thoughts/archives/2010/05/15/facebook-is-a-utility-utilities-get-regulated.html (Last accessed Nov. 30, 2016.

102 *Heins*, at 327.

103 *Id.*

104 *See* Adam Shaw, *"As Twitter cracks down on alt-right, aggrieved members flee to 'Gab."* FOX NEWS POLITICS. Nov. 28, 2016. http://www.foxnews.com/politics/2016/11/28/as-twitter-cracks-down-on-alt-right-aggrieved-members-flee-to-gab.html. (Last accessed Nov. 29, 2016.)

edit any content, but gives users the ability to mute phrases, words, hashtags and other users.[105] Time will tell if Gab gains any online prominence close to Twitter's user base, but its recent popularity does highlight the fact that the market does try to neutralize any companies who are criticized for censoring content.

Another cutting argument against the desire to regulate social media sites like a public utility is that currently, these sites do not possess the same qualities as public utilities. Adam Thierer from the Mercatus Center[106] at George Mason University wrote a policy paper in 2012, arguing that for two specific reasons, social media platforms should not be considered public utilities in need of regulation.[107] First, "social media do[es] not possess the potential to become natural monopolies. The[re] are virtually no costs to consumers and competitors have the ability to duplicate such platforms, and there is no way for the government to determine which platform is going to become popular next."[108] While Thierer is correct that technology is rapidly changing – and therefore tough to gauge what the next Facebook, Twitter or Google is – it remains to be seen that the potential to become a natural monopoly is absolutely impossible. Facebook's current numbers are staggering, as around 80% of American adults use it.[109]

Second, Thierer opines that "[s]ocial media [platforms] are not essential facilities. Those who claim that Facebook is a 'social utility' or 'social commons' must admit that such sites are not essential to survival, economic success, or online life. Unlike water and electricity, life can

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105 *Id.*

106 The Mercatus Center is a non-profit, free-market-oriented research think thank that works with policy experts, lobbyists and government officials to connect academic learning and real-world practice. https://www.mercatus.org/. (Last accessed Nov. 30, 2016).

107 Adam Thierer, "*The Perils of Classifying Social Media Platforms as Public Utilities*," MERCATUS CENTER. Mar. 19, 2012. https://www.mercatus.org/system/files/PerilsClassifyingSocialMediaPublicUtilities.pdf. (Last accessed Nov. 30, 2016).

108 *Id.*

109 Pew Research, "*Social Media Update 2016*," *supra*.

go on without social networking services."[110] However, you would be hard pressed to find many millennials or generation Z-ers who would ascribe to this notion. And as Zeynep Tufecki from the Berkman Klein Center for Internet and Society at Harvard[111] puts it so eloquently, "[p]resence on the internet is effectively a requirement for fully and effectively participating in the 21st century as a citizen, as a consumer, as an informed person and as a social being."[112] Further, with the transition to digital journalism and media, many people now make their living from a presence on social media platforms. Thierer's hypothesis will become harder to defend as time goes on and digital life becomes more synonymous with our daily lives. If social media continues this explosive trend, the companies who become large enough should be regulated at some level.

To protect both free speech and harassment, however, Congress can explore a potential law, or creation of a regulatory agency, that, in the right context, gives users of platforms remedies for having their content censored. Any prospective Congressional action should consider the popularity of the social media platforms. Perhaps, only platforms that have over a certain percentage of the American population – enough to make it a "utility" – using it should be potentially held liable for censoring content or allowing harassment by its users. Any potential Congressional action should also look at how the user is being affected – if they are a journalist who has lost earning potential for having First Amendment protected speech censored, have that journalist try and quantify that damage. On the other side, if someone has been harassed publicly

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110 Thierer, *supra*.

111 Berkman Klein Center, *About.* https://cyber.harvard.edu/about. (Last accessed Nov. 30, 2016). The Berkman Klein Center for Internet and Society is a research center that lists its mission as "to explore and understand cyberspace; to study its development, dynamics, norms, and standards; and to assess the need or lack thereof for laws and sanctions.

112 Zeynup Tufecki, "*Google Buzz: The Corporation of Social Commons*," Dec. 24, 2010. http://technosociology.org/?p=102. (Last accessed Nov. 30, 2016).

or has been the victim of targeted harassment, have them prove that it was especially egregious or that they were emotionally damaged. These ideas should be floated in Congress as a measured way to protect free speech while at the same time protecting those who fall victim to online harassment.

Even with the potential under current laws for social media platforms to as a better free speech in internet technology situation than other parts of the world. China has taken extreme measures to deal with offensive content, employing a nation-wide internet firewall to block certain websites and information from reaching its people.[113] This firewall, called the "Golden Shield," has been coined "The Great Firewall" by Wired Magazine, alluding to the actual Great Wall of China.[114] The United States has actually classified the shield as a barrier to trade, as eight of the twenty-five most globally trafficked sites are blocked.[115] The American Chamber of Commerce in China says that 4 out of 5 of its member companies report a negative impact on their business from Internet censorship.[116] But, still, the firewall works for China. China has maintained an enormous amount of economic growth, and to date, has not seen many major human rights violations on its people. However, this paper is not advocating for an all-out, fully governmental regulatory content ban, nor suggesting that one is even feasible, given America's modern view on freedom of speech, way of life, and government. Showing China's solution to their problem illustrates that American free speech still has not been drastically altered or infringed on these social media sites, given the context of other countries. However, there are

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113 *See* Simon Denyer, *"China's scary lesson to the world: Censoring the Internet works."* The Washington Post. May 23, 2016. https://www.washingtonpost.com/world/asia_pacific/chinas-scary-lesson-to-the-world-censoring-the-internet-works/2016/05/23/413afe78-fff3-11e5-8bb1-f124a43f84dc_story.html?utm_term=.ec92bf980088.

114 *Id.*

115 *Id.*

116 *Id.*

more measurable options to proactively prevent any issues between free speech and online harassment.

In conclusion, the potential for regulation is rapidly approaching, and Congress needs to begin to have conversations on how to protect both victims of online harassment and free speech on social media platforms. Google, Facebook, Twitter, and others, have all seen their actions or inactions have an impact on the global world. They are becoming integral in shaping our global perceptions, awareness, and social discourse. Lawyers at these companies have the power to shape free speech doctrine as we know it today, and must be effervescent in protecting First Amendment rights to free speech in an ever-changing world. In short, the potential for abuse and negative impact to American rights and viewpoints about culture exists – and therefore, Congress should begin to explore action on this delicate balance between social media's protection of harassment and hate speech and its relationship to free speech.