

## SOCIAL MEDIA, CENSORSHIP, AND CONTROL: BEYOND SOPA, PIPA, AND THE ARAB SPRING

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*Social media is more about human connectivity than it is about technology and marketing. People want to be involved in a movement more than they want to be moved by an ad.*<sup>1</sup>

### INTRODUCTION

The legal system has been caught off guard by the rapid proliferation of social media platforms that change faster than law-making processes can respond. Only members of the Web Generation understand the speed of change; they become first adopters while their parents' generation remains unaware of how Twitter functions. In this world where mobile apps and user-created content are published with remarkable speed, individuals are tasked with interpreting laws to accommodate rapid technological development. For a society to function and thrive, law must continue to evolve and keep pace with new issues and needs. This relationship between law and technological development has been starkly illustrated by the Arab Spring, particularly the Egyptian uprising, and the Occupy Wall Street (OWS) movement in the United States.

The Egyptian uprising was caused by the toxic effects of longstanding government corruption, social oppression, and economic stagnation, but also stems from a weak constitutional foundation in Egypt, which was never cultivated or enforced to protect the basic human, legal, and economic rights of the Egyptian people.<sup>2</sup> Similarly, the OWS movement, while distinguishable from the Egyptian uprising in its lack of revolutionary characteristics, was a reaction to widening economic inequality and the perceived ineffectiveness of legislation aimed at curbing financial excess in the United States. In both instances, the absence of legal remedies compelled people to utilize free digital media to voice their support of economic justice and institutional reform. In the case of the OWS movement, the rights of free speech and assembly, which are constitutional bedrocks in the United States, protected both the digital and offline content of the protests, as long as it did not interfere with anyone else's rights. In contrast, in the Egyptian uprising, such rights, if they existed at all, existed primarily on paper and not in reality. Indeed, the Egyptian uprising demanded that these rights, among others, be institutionalized and

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<sup>1</sup> ADEEL A. SHAH & SHEHERYAR T. SARDAR, *SANDSTORM: A LEADERLESS REVOLUTION IN THE DIGITAL AGE* 59 (2011).

<sup>2</sup> *Id.* at 6.

enforced for the social, political and economic benefit of the people.<sup>3</sup>

The defining characteristics of the use of digital media in the Egyptian uprising and the OWS movement, including free speech, rapid dissemination of information, and grassroots organizing, are equally evident in the immense protests that took place against the Protect IP Act (PIPA) and Stop Online Piracy Act (SOPA).<sup>4</sup> These two pieces of proposed legislation in Congress sought to regulate access to websites broadly based on content that could be considered infringing on copyrights. The legislation would have forced internet service providers (ISPs) to modify their behavior to reflect government standards.<sup>5</sup>

As analyzed below, the lack of a deeper, more nuanced understanding by government leaders, ranging from members of Congress to esteemed Supreme Court Justices, about how the digital world functions is a blind spot in law creation and enforcement. As content creation continues to advance at lightning speed, the question becomes whether the government will be able to control the use of digital speech without limiting or ending innovation and without further violating the First Amendment right to freedom of speech.

### I. LACK OF TECHNICAL AND USER UNDERSTANDING IN THE LAWMAKING WORLD

Social media is widespread and consists of a range of platforms, including text messaging, Twitter, Facebook, and Google+. These technologies have become a seamless part of everyday interaction for the Web Generation; not a day goes by without checking email, scanning Facebook, or, at a minimum, looking up an inane topic on Wikipedia. What the Web Generation considers routine use of the internet seems to be a complex technical skill set to lawmakers who are not well versed in the digital world.<sup>6</sup> In a 2010 Congressional hearing, Justice Scalia admitted to not knowing what Twitter is, stating that he has “heard it talked about.”<sup>7</sup>

In 2010, during oral arguments for *City of Ontario v. Quon*,<sup>8</sup> the Supreme Court also came under scrutiny by the digital media community. In this case, the Court examined whether police officers had an expectation of privacy in personal text messages sent on pagers issued to them by the city.<sup>9</sup> The Court seemed uncertain about the role of ISPs and the difference between email and pager text messages.<sup>10</sup> The questions regarding the use of social media devices and

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<sup>3</sup> See generally *id.* at ch. 1 (discussing the need for the changes and uprising to occur in Egypt, based on the continuously deterioration of social, political and economic rights).

<sup>4</sup> Sheheryar T. Sardar, *Stop Piracy, or Innovation?*, THE BROAD STREET TIMES (Dec. 2, 2011), <http://broadstreettimes.com/stop-piracy-or-innovation/> (stating that “[s]ince their introduction in May 2011, the bills have been met with severe backlash, with oppos[ition] calling them ‘innovation killers’ and ‘patently unjust.’”).

<sup>5</sup> *Id.*

<sup>6</sup> SHAH & SARDAR, *supra* note 1, at 6 (stating that “[f]or this generation, ‘digital’ is not change or technological advancement: it is the landscape of life.”).

<sup>7</sup> Carrie Dann, *On ATMs, Tweets, and ‘Twitting’*, MSNBC (May 21, 2010, 6:11 PM), [http://firstread.msnbc.msn.com/\\_news/2010/05/21/4439641-on-atms-tweets-and-twitting](http://firstread.msnbc.msn.com/_news/2010/05/21/4439641-on-atms-tweets-and-twitting).

<sup>8</sup> *City of Ontario v. Quon*, 130 S. Ct. 2619, 2629 (2010).

<sup>9</sup> *Id.*

<sup>10</sup> *Technical Difficulties at the Supreme Court*, DC DICTA (Apr. 19, 2010), <http://lawyersusaonline.com/dcdicta/2010/04/19/technical-difficulties-at-the-supreme-court-2/> (stating “Justice Antonin Scalia wrangled a bit with the idea of a service provider. ‘You mean (the text) doesn’t go right to me?’ he asked. Then he asked whether they can be printed out in hard copy. ‘Could Quon print these spicy little conversations and send them to

platforms asked by members of the Court are not surprising given the generational gap in the use of these technologies.<sup>11</sup> However, members on the digital frontier are beginning to wonder whether this lack of knowledge may disqualify lawmakers from creating laws regulating technologies that affect Constitutional rights in the digital age.<sup>12</sup> The severe pushback against PIPA and SOPA by the digital media community was a powerful demonstration of this problem.<sup>13</sup>

#### A. SOPA and PIPA: The First Attempt at Legislative Censorship

The controversy over SOPA and PIPA was initially described as a fight between Hollywood and Silicon Valley. Maplight, a site that researches how money influences politics, showed that thirty-two sponsors of the controversial legislation “received four times as much in contributions from the entertainment industry as they did from software and Internet companies.”<sup>14</sup> This was not the first attempt by the entertainment industry to curb the digital world,<sup>15</sup> but it was the first time that a largely unconstitutional law to police the Internet was being pushed through Congress without careful deliberation.<sup>16</sup>

SOPA and PIPA were designed to provide government and copyright holders with power to block public access to websites considered “rogue” that meet the definition of “dedicated to infringing [on copyrights] or counterfeit goods.”<sup>17</sup> However, the determination of what content is

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his buddies?”).

<sup>11</sup> David Carr, *The Danger of an Attack on Piracy Online*, N.Y. TIMES, Jan. 2, 2012, at B1, available at [http://www.nytimes.com/2012/01/02/business/media/the-danger-of-an-attack-on-piracy-online.html?\\_r=3&pagewanted=1&ref=davidcarr](http://www.nytimes.com/2012/01/02/business/media/the-danger-of-an-attack-on-piracy-online.html?_r=3&pagewanted=1&ref=davidcarr) (quoting Yancey Strickler as saying, “[t]he schism between content creators and platforms like Kickstarter, Tumblr and YouTube is generational . . . It’s people who grew up on the Web versus people who still don’t use it. In Washington, they simply don’t see the way that the Web has completely reconfigured society across classes, education and race. The Internet isn’t real to them yet.”).

<sup>12</sup> See generally Ned Potter, *SOPA Blackout: Wikipedia, Google, Wired Protest ‘Internet Censorship’*, ABC NEWS (Jan. 18, 2012, 11:00 AM), <http://abcnews.go.com/blogs/technology/2012/01/sopa-blackout-wikipedia-google-wired-join-protest-against-internet-censorship/> (discussing lawmakers’ general confusion over the impact of SOPA and PIPA).

<sup>13</sup> *Id.*

<sup>14</sup> Carr, *supra* note 11, at B1.

<sup>15</sup> Corbin Hiar, *Could SOPA and PIPA Interfere with State Dept.’s Global Internet Freedom Agenda?*, NAT’L L. REV. (Jan. 20, 2012), <http://www.natlawreview.com/article/could-sopa-and-pipa-interfere-state-dept-s-global-internet-freedom-agenda> (stating “Alec Ross, the State Department’s senior advisor for innovation, pointed out that that this issue is bigger than California. If done wrong, anti-piracy legislation could restrict the rights of Internet users across the country – and put U.S. diplomats in a very awkward position.”).

<sup>16</sup> See Joshua Kopstein, *Dear Congress, It’s No Longer OK to Not Know How the Internet Works*, MOTHERBOARD, (Dec. 16, 2011), <http://motherboard.vice.com/2011/12/16/dear-congress-it-s-no-longer-ok-to-not-know-how-the-internet-works> (quoting Representative Mel Watt of North Carolina who stated “[n]o legislation is perfect, . . . [implying] that the goal of the House should be to pass *anything*, despite what consequences it may bring.”); see also Declan McCullagh, *SOPA Bill Won’t Make U.S. a ‘Repressive Regime,’ Democrat Says*, CNET, Nov. 16, 2011, [http://news.cnet.com/8301-31921\\_3-57325905-281/sopa-bill-wont-make-u.s-a-repressive-regime-democrat-says/#ixzz1neFekBhC](http://news.cnet.com/8301-31921_3-57325905-281/sopa-bill-wont-make-u.s-a-repressive-regime-democrat-says/#ixzz1neFekBhC) (discussing Representative Lofgren of California’s observation that during the hearings, witnesses were stacked in favor of SOPA supporters and that “it was a mistake for SOPA’s backers to dismiss criticism from people and companies who would be affected by it. ‘It hasn’t generally been the policy of this committee to dismiss the views of the industries that we’re going to regulate,’ Lofgren said.”).

<sup>17</sup> Sardar, *supra* note 4.

“rogue” is “out of the hands of the general public, the companies hosting the content, and anyone with direct understanding of the content and its use.”<sup>18</sup> The legislation would have allowed the government to “prevent public access to websites with ‘no significant use’ other than copyright infringement, or enabling such infringement.”<sup>19</sup> Critics also alleged that under the legislation, unauthorized media streaming would be considered a felony, and web publishers and hosting services could be held liable for the actions of users.<sup>20</sup> The bill went so far as to enable the United States Justice Department to obtain court orders that would force ISPs to prevent users from visiting “blacklisted” websites.<sup>21</sup> The ISPs receiving such orders from the Justice Department would be required to alter records in the Domain Name System (DNS), a database that translates a computer’s fully qualified domain name into an Internet Protocol address (IP).<sup>22</sup> Theoretically, the legislation would have given unprecedented censorship power to the United States government and to influential corporations with strong lobbies.

Despite this dramatic infringement on Constitutional rights, members of Congress were willing to approve the law even while they joked that they did not actually understand the technology behind this technology-related bill. Representative Mel Watt of North Carolina dismissed expert testimony claiming that SOPA would weaken the foundation of the Internet, even though Watt stated “I’m not a nerd. . . [and] not the person to argue about the technology part of this.”<sup>23</sup> Representative Maxine Waters of California was paraphrased, when issues of security were brought up, as implying that “any discussion of security concerns is ‘wasting time’ and that the bill should move forward without question, busted internets be damned.”<sup>24</sup> Coverage of the hearings on SOPA and PIPA demonstrate that Congress wanted to pass something quickly, without taking time to understand the importance or functioning of the technology behind a law aimed at regulating the use of that technology.

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Carr, *supra* note 11, at B1 (noting that under the House version of SOPA “private companies would be allowed to sue Internet service providers for hosting content that they say infringes on copyright. That represents a very big change in the current law as codified in the Digital Millennium Copyright Act, which grants immunity to Web sites as long as they act in good faith to take down infringing content upon notification.”).

<sup>21</sup> *Id.* (stating “even if [SOPA] made some progress toward reining in rogue sites, the collateral damage would be significant. Under the terms of each proposed bill, the federal Department of Justice, as well as copyright holders, could seek a court order against a Web site that illegally hosts copyrighted content and then wall off the site permanently.”).

<sup>22</sup> See generally James Plotkin, *How SOPA Will Change the Internet*, THE MARK (Jan. 3, 2012, 12:09 AM), <http://www.themarknews.com/articles/7905-how-sopa-will-change-the-internet> (stating that under SOPA “the attorney general would be able to order that sites that are *allegedly* infringing on copyright laws be de-indexed from search engines”).

<sup>23</sup> Wiley Book, *Meet the Nation: SOPA and PIPA Dead for Now*, THE SOUNDS (Feb. 13, 2012), <http://thesoundsnews.com/meet-the-nation-sopa-and-pipa-dead-for-now/> (noting that “[t]his was a running theme throughout the proceedings. Many supporters of the bill admitting that they had no idea what the bill would actually do, but still supporting it. This goes against the entire point of representative democracy.”).

<sup>24</sup> Kopstein, *supra* note 16. Kopstein’s open letter to Congress printed on this site became one of the first sources to note the lack of understanding, and perhaps willful blindness, that Congress had toward the content creators and the Web-Generation. The letter noted that “for some committee members, the issue did not stop at mere ignorance. Rather, it seemed there was in many cases an outright *refusal* to understand what is undoubtedly a complex issue dealing with highly-sensitive technologies.” *Id.*

### B. Unconstitutionality of Digital Censorship

While SOPA and PIPA have been defeated by a skilled and robust digital protest by citizens and technology-focused companies,<sup>25</sup> many onlookers were surprised by how far both pieces of legislation progressed in Congress, given the numerous constitutional violations they contained.<sup>26</sup> SOPA, especially, was rife with red flags indicating likely constitutional issues. Two sets of First Amendment rights would be involved in any such regulation: the rights of the speaker and the rights of the receiver.<sup>27</sup>

The most patently unconstitutional portion of SOPA is Section 103(a), which allows for a private party to suppress speech without a judicial hearing.<sup>28</sup> Parties could stop online advertisers and credit card processors from doing business with a particular site simply by filing a unilateral notice against the site.<sup>29</sup> There is no requirement that the notice be provided to the allegedly infringing party or that a court find any such infringement. Further, the language of the Section is vague when referring to sites that are “dedicated to the theft of U.S. property.”<sup>30</sup> The statement allows for arbitrary classification of sites as “dedicated” to copyright theft, targeting sharing sites such as YouTube, Pinterest, and other such platforms.<sup>31</sup> In simple legal language, this section violates the First Amendment<sup>32</sup> under the Prior Restraint Doctrine as it restrains speech without due process of law and without any determination of whether that speech violates any laws at all.<sup>33</sup>

The Prior Restraint Doctrine<sup>34</sup> provides that “under the First Amendment and our notions

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<sup>25</sup> Book, *supra* note 23 (discussing how on Jan. 18, 2012, Internet powerhouses, including Wikipedia, Google, and Reddit, protested SOPA and PIPA by shutting down their sites or changing the format to raise awareness about the issue. Strikingly, “Google alone managed to get 4.5 million signatures added to a petition to stop SOPA and PIPA in a single day.”).

<sup>26</sup> See Carr, *supra* note 11, at B1 (referencing Laurence H. Tribe, First Amendment Lawyer, who wrote an open letter stating that SOPA would “undermine the openness and free exchange of information at the heart of the Internet. And it would violate the First Amendment.”).

<sup>27</sup> See generally *FCC v. Pacifica Found.*, 438 U.S. 726, 748-750 (1978) (noting the need to balance the First Amendment rights of broadcasters with the government’s interest in protecting the rights of listeners to not be exposed to “indecent material”).

<sup>28</sup> Stop Online Piracy Act, H.R. 3261, 112th Cong., § 103(a) (2011) (indicating that a “qualifying plaintiff” need only send the infringing website a notification of a “good faith” belief supported with specific facts that an IP infringement has occurred, that such infringement will result in immediate and irreparable injury, and that they are authorized to act on behalf of the IP holder, in accordance with §103(b)(4)).

<sup>29</sup> *Id.* § 103(b).

<sup>30</sup> *Id.* § 103(b)(4).

<sup>31</sup> *Id.* (targeting sites that engage in, enable, or facilitate IP infringement, a very broad classification).

<sup>32</sup> See *Pacifica Found.*, 438 U.S. at 748 (stating that the Supreme Court has “long recognized that each medium of expression presents special First Amendment problems”).

<sup>33</sup> Thomas I. Emerson, *The Doctrine of Prior Restraint*, 20 LAW & CONTEMP. PROBS. 648, 648 (1955).

<sup>34</sup> The Supreme Court has said that “prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.” *Telco Commc’ns, Inc. v. Carbaugh*, 700 F. Supp. 294, 300 (E.D. Va. 1988) (quoting *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 559 (1976)). Additionally, the Court has stated that “any system of prior restraints of expression comes to th[e] Court bearing a heavy presumption against its constitutional validity.” *Id.* (quoting *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70, 83 (1963)). Thus, “a free society prefers to punish the few who abuse rights of speech after they break the law than to throttle them . . . beforehand.” *Id.* (quoting *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546 (1975)).

of a democratic society, freedom of expression is the rule and constraint the exception.”<sup>35</sup> For constraint to be constitutional, it must be explicit and not general as to be all encompassing similar to SOPA.<sup>36</sup> The vague language of SOPA has been described as calling for the “disappearing” of an entire website if any portion of it is allegedly in violation of SOPA provisions.<sup>37</sup> This breadth creates practical complications in the world of social media where the use of platforms such as Facebook, Flickr, Pinterest, and YouTube is constant and continuous. Each site has legitimate and legal content, but each site also has the *possibility* of hosting content that would violate SOPA, even though it does not necessarily belong to the user or to the provider. Without explicit clarification as to what would be considered a violation, and concrete designation as to whom is responsible for a violation, the entire platform and all its members are at risk of being shut down by unilateral acts under SOPA. This consequence is reminiscent of blacklisting under the Red Scare during the McCarthy era, but on a digital level. The provisions would have the effect of chilling innovation and harshly punishing social interactions on the web without providing notice or reason.

The next heavily criticized portion of SOPA is Section 102.<sup>38</sup> This section essentially creates a legally sanctioned mechanism for blacklisting otherwise constitutionally protected digital speech. The section gives the U.S. Attorney General the power to file suits against foreign-held websites that purportedly act as facilitators of infringement under U.S. law.<sup>39</sup> If the foreign entity does not contest the allegations in a U.S. court, the Attorney General can move forward *in rem* and obtain an order against the site without real due process of law.<sup>40</sup> This section may be construed essentially to allow the government to blacklist sites at whim, without real justification, if a *single page* on the entire site is considered to have content that violates SOPA.

By barring access for arbitrary causes to digital content created outside the United States, SOPA was on its way to violating the Constitution and further blocking individuals from accessing potentially critical information which would, in effect, be barred by unchecked government censorship. The section proposes to censor foreign media heavily, while the U.S. State Department is pushing to prevent censorship in other countries. Secretary of State Hillary Clinton urged lawmakers to “ensure that citizens have the right to access the open Internet” in order facilitate the exchange of ideas across borders.<sup>41</sup> Her statements are supported by well-established U.S. law stating that the right to “receive information and ideas from abroad” is a “component of the First Amendment.”<sup>42</sup> Based on these numerous concerns, the proposed legislation had to be tabled.

<sup>35</sup> Emerson, *supra* note 33, at 655.

<sup>36</sup> See generally *Telco Commc'ns, Inc.*, 700 F. Supp. at 300 (emphasizing the need for specific restraint).

<sup>37</sup> Corynne McSherry, *Disastrous IP Legislation Is Back – And It's Worse Than Ever*, ELECTRONIC FRONTIER FOUNDATION (Oct. 26, 2011), <https://www.eff.org/deeplinks/2011/10/disastrous-ip-legislation-back-%E2%80%93-and-it%E2%80%99s-worse-ever>.

<sup>38</sup> H.R. 3261, 112th Cong. § 102 (2011).

<sup>39</sup> *Id.* at § 102(b).

<sup>40</sup> *Id.*

<sup>41</sup> Hiar, *supra* note 9, at 1. In January 2010, Hillary Clinton stated, “[g]overnments should not prevent people from connecting to the Internet, to websites, or to each other. The freedom to connect is like the freedom of assembly, only in cyberspace. It allows individuals to get online, come together, and hopefully cooperate.” *Id.*

<sup>42</sup> *Walsh v. Brady*, 927 F.2d 1229, 1235 (D.C. Cir. 1991); see also *Abourezk v. Reagan*, 592 F. Supp. 880, 886 (D.D.C. 1984) (noting that “[t]he Supreme Court has held that the First Amendment protects not only speech but also the right to receive information and ideas”).

## II. SOCIAL MEDIA & GOVERNMENT INTERFERENCE: THE CASE OF TERRORISM

Though both PIPA and SOPA have lost traction due to a public backlash due to the unconstitutional provisions, the question remains: what is the role of government in the digital world?

In 2012, the United States government once again caused uncomfortable ripples when it announced the “Tag Challenge,” a social media-style “game” funded by the U.S. State Department and the U.S. Embassy in Prague.<sup>43</sup> Tag Challenge would award \$5,000 to the first player who found and uploaded photographs of five “bad guys” (actors wearing Tag Challenge tee shirts).<sup>44</sup> The game would take place in New York City, Washington D.C., London, Stockholm, and Slovakia.<sup>45</sup> The game seems innocuous enough, similar to the popular “Where’s Waldo.” The official website, however, notes that the game “intends to test the ability of social networking and law enforcement, telling its sponsors ‘whether and how social media can be used to accomplish a realistic, time-sensitive, international law enforcement goal.’”<sup>46</sup> The so-called “game” acts as a testing ground for government data gathering and may challenge “the precedent of ‘innocent until proven guilty,’” which many consider to be the bedrock of the criminal justice system.<sup>47</sup> Critics of Tag Challenge note that uploading pictures of suspects and sending them out to thousands of people, as well as putting power of law enforcement into the hands of the public, dilutes the idea that an individual must be *proven* guilty.<sup>48</sup> However, the government is moving forward on the theory that the benefit outweighs public concern.

Also in early 2012, the Federal Bureau of Investigation (FBI) officially announced that it is asking contractors to develop an app that will search social networking sites such as Twitter and Facebook for terrorist and gang activity, though the definition of “terrorist and gang activity” is not readily available to the public.<sup>49</sup> Agents plan to search social media posts for buzzwords like “gangs,” “leak,” “terrorist,” and “2600.”<sup>50</sup> Each one of those words can be utilized in a thousand innocuous ways that do not lend themselves to illegal activities. This form of data mining would affect all individuals, not only those who are suspected of terroristic or gang-related incidents. Some critics consider the surveillance unconstitutional, regardless of the potential benefits,<sup>51</sup> their objection similar to the outcry against the 2012 surveillance of Muslim American students based on their ethnic and religious identities by the New York City Police Department.<sup>52</sup> If the FBI

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<sup>43</sup> Lorien Crow, *U.S. Government to Use Social Media to Catch Criminals in Online Games*, MOBILEMEDIA (Feb. 10, 2012, 12:11 PM), <http://www.mobiledia.com/news/127671.html>.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Crow, *supra* note 43 (explaining that “[r]ecent efforts in Germany to track down missing persons and criminals using Facebook produced positive results, but protesters argued the government had no right to publicly post photos and private information about citizens suspected, but not yet convicted of, illegal activity”).

<sup>49</sup> Janet Maragioglio, *FBI to Mine Social Media, Raises Privacy Concerns*, MOBILEMEDIA (Jan. 26, 2012, 2:49 PM), <http://www.mobiledia.com/news/125651.html> (stating that “[t]he Federal Bureau of Investigation is asking contractors to create an early warning system for possible domestic and global threats based on intelligence gathered from social networking sites such as Facebook, Twitter, the photo sharing site Flickr, and YouTube”).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Sunita Surabji, *Muslims Outraged by NYPD Surveillance*, NEW AMERICA MEDIA (Feb. 24, 2012),

proceeds with this plan to monitor social networking sites, individuals are submitting themselves to FBI monitoring simply by being part of a digital generation that utilizes social networks. This gives rise to important questions: whether there is an expectation of privacy in a digital network, and whether the government has a right to breach that privacy.<sup>53</sup>

Similar questions were debated when the government green-lighted the Patriot Act in 2001. While the climate following the 9-11 attacks was drastically different, critics pointed out that allowing law enforcement and the government to overreach would result in a huge sacrifice of social liberties and the unnecessary surveillance of American citizens.<sup>54</sup> The government claimed that the greater good of public safety trumps individual civil liberties in the United States. However, these decisions seem arbitrary as the administration supports the freedoms of privacy and speech abroad, particularly when foreign citizens are protesting and organizing against their own governments. The dichotomous and often irreconcilable tension between privacy and freedom of speech, on the one hand, and a reactionary security and monitoring apparatus, on the other, has culminated into a worldwide push for a relatively free digital community.

### III. THE CASE FOR A FREE SOCIAL MEDIA

In 2009, Secretary of State Hilary Clinton and the U.S. State Department asked Twitter to stay up and running during presidential election protests in Iran.<sup>55</sup> Twitter had a pre-planned site shutdown scheduled for routine maintenance, but after being contacted by the U.S. State Department, the site decided to reschedule the downtime.<sup>56</sup> Clinton stated, “[i]t is a fundamental right for people to communicate.”<sup>57</sup> She further explained that the importance of social media “keeping that line of communications open and enabling people to share information, particularly at a time when there was not many other sources of information, is an important expression of the right to speak out and be able to organize.”<sup>58</sup>

Clinton made a valid point when referring to the lack of other sources of information for

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<http://newamericamedia.org/2012/02/muslims-outraged-by-nypd-surveillance.php> (explaining that “Muslim student associations at several East Coast campuses, including Yale, Rutgers, Columbia and the University of Pennsylvania, were being monitored daily online, primarily through their web sites, blogs and even e-mails”). The surveillance created a severe uproar amongst civil rights groups, and no action has been taken against the NYPD. *Id.* Mayor Bloomberg supported the NYPD, stating, “[I]t’s very cute to go and blame everybody and say we should stay away from anything that smacks of intelligence gathering. The job of our law enforcement is to make sure that they prevent things. And you only do that by being proactive.” *Id.*

<sup>53</sup> *Id.* (explaining that the “FBI’s plan raises concerns over privacy and free speech rights. People post to social media sites under the expectation they can control who sees the information they share, and that they are safe to say whatever they choose without fear of legal repercussions.”.)

<sup>54</sup> Stefanie Olsen, *Patriot Act Draws Privacy Concerns*, CNET NEWS (Oct. 26, 2001, 1:25 PM), <http://news.cnet.com/2100-1023-275026.html> (noting that “civil rights advocates have consistently cautioned against expanding surveillance powers unnecessarily, arguing that there is little evidence that tougher surveillance laws could have prevented the tragedy”).

<sup>55</sup> *Hillary Clinton Defends Twitter-Iran Position*, BILLING & OSS WORLD (June 18, 2009), <http://www.billingworld.com/news/2009/06/hillary-clinton-defends-twitter-iran-position.aspx>.

<sup>56</sup> *Id.* (noting, however, that “Twitter’s co-founder said the decision had nothing to do with pressure from the government. He said they would have done it anyway because of the importance of the situation.”).

<sup>57</sup> *Id.*

<sup>58</sup> *Hillary Clinton: Twitter Important for Iranian Free Speech*, ALTERNET (June 17, 2009), [http://www.alternet.org/rss/1/62367/hillary\\_clinton:\\_twitter\\_important\\_for\\_iranian\\_free\\_speech/](http://www.alternet.org/rss/1/62367/hillary_clinton:_twitter_important_for_iranian_free_speech/).



many people. While she was discussing the needs of individuals outside the United States, the same problem exists domestically. During the Arab Spring, there was an apparent media blackout on the incidents taking place in the Middle East and North Africa.<sup>59</sup> What little coverage was available came through social media platforms such as blogs and YouTube channels that were tweeted, facebooked, and emailed to digital networks around the world.<sup>60</sup> Without social media users creating and publishing content continuously, the U.S. public would know very little about the crises in Egypt and Tunisia. The same issues arose when media powerhouses unfairly covered the Occupy Wall Street (OWS) movement: social media users and OWS supporters utilized digital platforms to have their voice heard. Without the free, uncensored use of social media, these perspectives would not get reposted or go viral because users would be too afraid of breaking the law by some inadvertent copyright violation or pervasive government surveillance.

A similar problem occurred on a larger scale during the 2010 coverage—or lack of coverage—of the Pakistan floods. Instead of covering the floods and providing news to the public, the media chose to ignore the situation. *Time* magazine purposefully changed the cover of their September 20, 2010 U.S. edition to ignore the floods, while all foreign *Time* editions focused on the floods.<sup>61</sup> In the United States, the only real coverage of the Pakistan floods was available through social media platforms. Users in Pakistan provided content to users around the world and in the United States. Social media platforms served as the main channels for information about how to help flood victims and how to organize and deliver that help. Several user-generated videos on this subject went viral, leading to a surge of support at the grassroots level. Meanwhile, the traditional media was silent on the topic.<sup>62</sup> Without free social media, the American public would lose access to information that it has the right to have.

#### IV. CONCLUSION: MOVING FORWARD

Social media evangelists<sup>63</sup> and enthusiasts cite grassroots support and on-the-ground information as the bedrock benefits of social media use. From entrepreneurs working to advertise about their businesses to bloggers combating the lack of diverse voices in the traditional press, each social media user claims the power of the pen and has a voice in the digital realm. Censoring access to this platform would have a crippling effect on innovation, while simultaneously giving unchecked power to media powerhouses that control the dissemination of information.

Critics of social media claim that the unchecked use of digital platforms creates an untrustworthy web with too much power in the hands of social media corporations. The digital media related regulations introduced in Congress thus far, however, have enabled censorship and government involvement in digital media space and have consequently been criticized for potentially unconstitutional surveillance of users. As digital media proliferates rapidly, social media companies and users will have to develop mechanisms to educate lawmakers so that they can work towards a joint resolution on how, if at all, the digital world can be managed.

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<sup>59</sup> SHAH & SARDAR, *supra* note 1, at x.

<sup>60</sup> *See generally id.* at x.

<sup>61</sup> *Id.* at 21.

<sup>62</sup> *Id.* The media was widely criticized by other journalists on this lack of coverage and blatant bias against the victims of the Pakistan floods, drawing into question journalistic ethics and the importance of citizen journalism. *Id.*

<sup>63</sup> This term is used by social media enthusiasts to describe themselves in the digital world; it is not a derogatory or offensive term.