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Monograph "5th Internet, Law and Politics Congress. The Pros and Cons of Social Networks"

ARTICLE

Poking Lawyers and Politicians

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Abstract

A report on the 5th Internet, Law and Politics conference hosted by the UOC in July 2009. The author, who attended the conference as rapporteur and wrote a 'live blog' during the two-day event, reviews some of the contributions, reflects on the theme of social networking sites ('pro or con?') and explores the different approaches of the disciplines of law and of political science, suggesting that the increased importance of such sites means that considerations such as privacy, security, political engagement and copyright are the subject of necessary and interdisciplinary public debate.

Keywords

social networking, Web 2.0, open government, Internet law

Subject

ICT and politics

Legisladores y políticos en el punto de mira

Resumen

Un informe sobre el 5.º Congreso sobre Internet, Derecho y Política organizado por la UOC en julio de 2009. El autor, que participó como ponente en la conferencia y escribió un blog en vivo durante los dos días que duró el evento, examina algunas de las contribuciones, reflexiona sobre el tema de los sitios de establecimiento de redes sociales (¿a favor o en contra?) y explora los distintos enfoques de las disciplinas del derecho y las ciencias políticas, sugiriendo que el aumento de la importancia de estos sitios es un reflejo de que consideraciones como la privacidad, la seguridad, el compromiso político y los derechos de autoría son objeto de un debate público necesario e interdisciplinario.

Palabras clave

establecimiento de redes sociales, Web 2.0, gobierno abierto, derecho sobre Internet

Tema

TIC y política

1. Introduction

The 5th annual UOC conference on Internet, Law & Politics took place in Barcelona on 6 and 7 July 2009, attended by participants from Spain, other EU states and a number of visiting speakers from the United States. Past conferences had dealt with themes such as e-commerce, privacy and cybercrime, but this year's event took as its starting point an issue that has often provoked enthused commentators to talk about major changes in media, communications and even the very nature of friendship: social network(ing) sites.

The OECD has characterised current developments in web services as the 'participative web', extracting a range of principles from the often amorphous idea of Web 2.0 (OECD, 2007). At the heart of this new model of Internet-facilitated interaction is the idea of the social networking website. Social network sites can be defined as including three features (Boyd & Ellison, 2007), which are the construction of a user profile (public or semi-public, within a system), a list of connected users ('friends' in many cases), and further interconnection between users, contacts and the contacts of contacts. Particular excitement has come from the idea that social networking sites provide opportunities for political engagement, whether it be the widespread desire to replicate the 'Obama effect' through the use of technology for political organisation and ultimately in successful campaigning including elections, or simply for groups like students to overcome various limitations that have prevented past protests from growing and continuing beyond certain limits (Biddix & Park, 2008)

There is a strong relationship between the websites that dominated discussions at this conference and other contemporary scholarly knowledge and the idea of 'user-generated content', with major representation from young users (the 'digital natives' that have grown up in the environment of pervasive digital technology and computer-mediated communication [Palfrey & Gasser, 2008]) in both contexts (Green & Hannon, 2007). Across social networking sites like Facebook and Bebo, blogging platforms like Wordpress and Blogger, and video sites such as DailyMotion and of course YouTube, or even those sites that combine various features (like MySpace), or new microblogging entrants such as the much-discussed Twitter, users have new opportunities to engage with each other and send materials to each other or, in many cases, to the wider public. The historic patterns of activity whereby a very small number of users were also contributors of their own content appears to be changing; amateur video production is a key feature of sites like YouTube, and increasing levels of use and engagement are found in social networking sites, a relevant point for the researcher (Gauntlett, 2009)

Understanding the factors of social and technological mediation between social networking sites and broader social practices (Livingstone, 2008: 396) requires a sober, thorough approach and the role of law in such remains quite controversial – indeed, not surprisingly, it has been the subject of frequent 'moral panics' (Roush, 2006). As Agustí Cerrillo, Director of Law and Political Sciences at the UOC, told the conference, there is great academic and social value to be found in an exploration of possible 'encounters' between different perspectives, where the common concern is the Internet. Participants in the conference also made use of social technologies of various sorts, which we will consider in a later section of this article. Over the two days, papers were given by academic researchers, elected representatives and community activists, with there being a focus on legal issues on the first day (in particular, the question of whether existing laws, domestic or European, are fit for purpose) and political science and discourses of policy on the second.

2. Questions of Law

2.1. Saving Facebook

The keynote address was given by James Grimmelmann, an associate professor of law at New York Law School and an important voice within the necessarily global academic community of cyberlaw scholars. Grimmelmann's research draws upon his own background as a programmer and legal scholar, and a number of his publications have dealt with emerging web services (Grimmelmann, 2004), as well as search engines and the controversial Google Book Search project that NYLS has brought to public attention through the Public Index project (e.g. Grimmelmann 2009a). In discussing social network sites, at the conference and in a subsequently published article (Grimmelmann, 2009b), he argued that it was necessary to focus on the social components, meaning that when

considering an issue like privacy, the tools of social assessment (particularly the heuristically focused 'cognitive shortcuts' that people use to assess risk) and the concepts of social harm were at least as important (if not more so) than attributing problems to a given technology. On the latter point, Grimmelmann builds on Solove's taxonomy of privacy (Solove, 2006), highlighting examples of perceptions of freedom and privacy but also the ways in which sites can facilitate hitherto unlikely opportunities for unfriendly acts or accidental privacy infringements by third parties. While technical controls have been at the heart of public discussion on social networking and privacy, it is still true that only a small minority of users ever change things like user-controlled privacy settings - although a telling experiment showed that the conference participants were much more likely to understand (and amend) privacy settings than the public at large. An emerging issue is that of 'peer-produced' privacy violations (i.e. between users), which challenges the tradition of seeing public (and in some cases, powerful private) authorities as the major threat to individual privacy.

2.2. What is privacy?

The idea of privacy itself is far from static, but can be problematised in a number of ways. The notion of 'human dignity', a basic right of great importance, can include certain things that are clustered or referred to as privacy. At a very fundamental level, this can be very important in shaping the terms of privacy protection legislation and governmental action. Antoni Roig presented various points in relation to the right to dignity. He argued that clauses relating to this can be used to provide an 'update' for inadequate legislative provisions, as the idea of human dignity is more persistent and adaptable than specific ideas of data protection, although privacy-enhancing technologies also have a very important part to play, particularly if considered before a technology is widely available. Another perspective that was influential and provoked debate among participants was that of Franck Dumortier. His analysis of decontextualisation and Facebook addressed questions not unlike those at the core of Grimmelmann's research, while the use of theoretical approaches to privacy and autonomy served as a useful link between detailed depictions of social networking sites and overarching fundamental rights. Dumortier traced the roots of privacy, including possible tensions between the right to be left alone and the right to contextual integrity.

Illustrating a key point with a wry discussion of how information on one's sexual life is appropriate in certain contexts and wholly inappropriate in others, Dumortier took a sceptical approach to some of the claims of social networking sites, arguing that identity itself was being challenged by the way in which information is stored and shared. He also presented a useful argument regarding the distinctions between 'privacy' and 'data protection', with some criticism of the language and framing of the latter. Nonetheless, this idea of putting rights into practice is still strongly associated with the European Union's role in data protection, which, while initially and still formally (and troublingly) rooted in the 'internal market' and the harmonisation of national laws so as to avoid protectionism and market distortion, is perceived internationally as a high level of privacy protection, certainly more comprehensive than the mix of sectorial and self-regulatory approaches that prevails in the United States.

If the conference had been attended by members of the EU's Article 29 Data Protection Working Party, they would certainly have shed more than a few tears of joy at how its publication on online social networking (Article 29 Working Party, 2009), published in June 2009 (just a few weeks before the conference), influenced the presentations and interventions of so many participants. The Working Party, set up as a result of the original Data Protection Directive of 1995, has in recent years played an important role in shaping the European-level debate, and has been known to engage with national authorities, the private sector and the academic community regarding various points, some very controversial. The Working Party's support for the idea that IP addresses are personal data, for example, (Article 29 Working Party, 2007) is still contested by some. In the case of social network sites, then, its contribution was eagerly awaited. While the report is neither a source of law in its own right nor an accurate predictor of further legislative action, its suggestions (in the context of various provisions of EU law) regarding user rights and provider obligations, and even the notion that users should only upload pictures of others where consent has been established, are quite far-reaching.

2.3. Intellectual Property

The question of intellectual property can be broken down into a number of different but related points. The presentations that focused in most detail on issues of copyright law,

both in the United States and the European Union, were those of Jane Ginsberg and Alain Strowel. First of all, there is the role of the terms of use or end user license agreements that popular sites make heavy use of. Although users are in many cases unlikely to have access to independent legal advice, or ever have the intention of reading or considering the documents that they 'agree' to by clicking a button while signing up, these documents are undoubtedly important sources of law and affect the treatment of uploaded content now and in the future. This issue becomes more relevant as the amount of content distributed, particularly photo, audio and video materials, continues to increase. Of course, it is not the case that the assignment or licensing of rights is a legal or social question created by Facebook, but the scrutiny (and possible restriction) of unfair terms is indeed quite a pressing concern. Another aspect of copyright and 'Web 2.0' is how the idea of 'use' or 'distribution' is affected by the new ways in which content can be shared. An example of this is the definition of an 'intermediary' or the subset, 'hosts'. This was a difficult statutory definition initially, particularly as reflected in the Digital Millennium Copyright Act (DMCA) in the United States and the Electronic Commerce Directive and Copyright Directive in the European Union, and the various compromises, definitions and broad concepts used in the 1990s continue to dominate legal debate. On the second day of the conference, Jordi Graells discussed Creative Commons licensing in Catalonia. Although there are many positive stories and examples of good practice, there is an ongoing dialogue between creativity and bureaucracy, and the challenge for those involved in this project goes beyond understanding the extent of copyright law, with a need to explain the purpose of a given license and deal with misconceptions and myths as they occur. Where there are inconsistent approaches to the purpose(s) of intellectual property law (which are easy to find, even within a single jurisdiction), defining how copyright affects social network sites and the broader read-write Web will continue to be difficult. Copyright, a multifaceted and internally contradictory ideal, affects all involved in the new Web, whether provider, user or author.

3. Government and the Web

3.1. Credit crunched

"In a time of crisis, the international community turns its attention to the Information Society". So it is said in the updated Avanza plan of the Spanish government. It is common at this stage in the development of the Internet for government to assume that information and communications technologies play an important and – some would say – decisive role in the development of new economies focussed on services or information. The historical disadvantages of under-industrialised regions, for example, could possibly be addressed through the 'shrinking' of distance. Now, though, the idea seems to be that the problems of the current economic situation could be the subject of public spending or cost savings through the application of new technologies. Now, we are perhaps more interested in public services and political context rather than in attracting large industries for hardware and software development alone. The next Spanish presidency of the EU, which commences on 1 January 2010, will take forward important topics such as safety on the network, e-commerce, and copyright protection. Oscar Martinez, from the Ministry for Industry, explained the relevance of this approach. On the specific issue of safety, the role of 'confidence, security and accessibility' helps us to understand why it matters. However, it is important to situate this work in the context of recommendations of the Council of Europe, the OECD, the ITU and others. In summary, knowing that there are interesting projects at a national level that can be a building block for international co-operation, the security environment will remain high on the list of political and defence priorities.

3.2. Open government, open political parties and future policy directions

Jose Manuel Alonso argued that open government, as distinguished from mere e-government, is a goal worth pursuing. His three pillars of citizen-centred services, designed with transparency and accountability, and the fostering of innovation, underline the role of open data in the broader government project. He criticizes the focus on availability rather than use in some of the metrics and research available at present. Usefully, then, Nacho Alamillo's discussion of security risks, and the need to foster a culture of security, creates an important link between electronic administration and the need for protection and proper planning. European legislative instruments have attempted to foster a culture of safety, in three strands: privacy, security, and electronic administration. Given that Catalonia is deploying electronic government services, there is a need to ensure protection of various sorts – for the system as well as for the data.

Aside from the economic situation, though, trust in politicians is at an all-time low, with the example of the expenses of British members of parliament cited by Ismael Peña López during his chairing of a panel on government and data. In doing so, he paid tribute to a tool developed by the Guardian (a British newspaper) that enabled users to assist in the massive project of reviewing the disclosed documents; the affair, of course, also involved the use of Freedom of Information legislation, and remarkably, one of the proposals made by the UK government in response to the understandable furore was the appointment of Tim Berners-Lee as an adviser charged with reformulating UK government policy on data. José Antonio Donaire suggests that there is a 'crisis of authority', although Alberto Ortíz reminds us that no political party can win an election on a promise to digitise the administration alone! Also speaking at the conference, Ricard Espelt distinguished between 'political spaces 2.0' and mere 'politics 2.0', showing how, even at a local level, the concerns of the citizen can be put at the centre of new models. His virtuous circle of complaints, resolutions and reforms in an analysis of the town of Copons is a remarkable case study and serves as a timely reminder that consideration of social networking and its social context should not begin and end with the Obama campaign. Indeed, Marta Cantijoch suggests in her research that those individuals whose political outlook can be characterised as being in a 'critical' category are attracted by unconventional or extra-representative forms of participation, and new technology can facilitate that. Web 2.0 can mean new exchanges, new exposure to information, more interactivity, more young people, and drawing on Spanish research into political activity, Cantijoch argued that certain uses of the Internet can promote participation in non-conventional ways, meaning the distance between the individual and the institutional sphere is somewhat modified.

There is a danger, though, of assuming that either data or platforms can resolve all problems and not be subject to criticism. Alonso discussed, for example, applications like 'Are You Safe Washington DC', which make use of information from the 'data catalog' that the US capital's government makes available on the Web as the basis for an iPhone application that provides information on the crime statistics of a given location, based on the location-awareness facilities built into the device. This creative use of public data can also pose questions regarding the social

and ethical consequences of the immediate and visually striking 'blacklisting' of a neighbourhood (imagine, for example, the use of such devices by taxi drivers). There is a related point too of the power wielded by Apple, which maintains total control over the applications that can be included in the iTunes App Store (whether the application is free of charge or not), which has proven to be controversial on a number of occasions to date.

4. Conclusion

4.1. Themes

The legal discussions focused on the role of law as facilitator of innovation and protector of an open, activist culture. We must also consider whether existing laws are being enforced, and the social consequences of non-enforcement, particularly in the area of data protection and privacy. Social networking forms a very important part of present-day life, but certain issues have been the subject of ongoing academic attention (e.g. Turkle, 1995). The conference presentations, particularly those in the political science track, were characterised by the experience of learning what has been happening in practice, not just by national governments but by sub-national entities and international collaboration, and through the actions of users as they explore the parameters of new social and media spaces. But many questions still remain: what will we do with these new websites, as they become established, and how will we stay safe? Are social network sites and the corporations that back them too powerful? 'Wait and see' has been a strong meme in earlier conferences in various locations, but discussions in Barcelona in July suggest that a point has been reached where legislative intervention will either happen in the very near future, or be set aside for the foreseeable future as wholly undesirable or inappropriate.

4.2. Technologies

The use of social media and various technologies by the conference participants is an appropriate subject for a final comment. Using the tag 'idp2009', it was simple for both participants and distant audiences to track content from a range of authors and across different forms of

media. As author of this article, I had an official role in the event as a 'rapporteur', but intriguingly the brief was not simply to present an end-of-day report in the traditional fashion, but to write a 'live blog' of each session, using a laptop to take notes, publishing a summary of each session as it ended or shortly after. This is of some use to the wider audience for academic research and can contribute to the impact of research from one nation, through rapid and inexpensive dissemination, but it is also a change in the operation of an academic conference, and may bring its own challenges in terms of expectations of immediacy and the type of presentations that are made.

Indeed, all of the above underlines the importance of the researcher not as an unabashed fan of every new service, but as an engaged and critical participant-observer. With the experience of many attendees in the use of social networking sites, as well as the research and regulatory dimensions that others are familiar with, each person has a major responsibility for highlighting problems, potential gaps in the legal or political systems, and long-term implications. Furthermore, if we had considered earlier conferences, the sites being discussed would have been different – a lot more MySpace and a lot less Twitter. The latter service is particularly important; some of the most vibrant discussions and comments were disseminated through this controversial platform, using English, Spanish and Catalan (noting of course that the actual presentations were in all three languages, using conventional, on-site simultaneous translation with skilled interpreters and a wireless audio system). The social, political and legal challenges posed by emerging services such as Twitter will certainly be the subject of future research, and perhaps even future conferences in this series.

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