

## Social Media: Salvation or Satan?

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Is social media salvation or Satan? There are those who argue that social media has opened the world to communication. People in all sorts of uncivilized places, are now exposed to the world community and have the ability to exercise their “right of free speech”. This is a right which is ignored in most of the world, but which everyone talks about as though it were a reality.

The truth is that social media has created a forum for discussion, dissent and information throughout the world. Regimes like those in China and Iran regularly shut down the internet in order to prevent social media from becoming an engine for unstabilizing totalitarian regimes. For the most part, those nation states that degrade and debase the internet and social media have been successful.

Enter the quirkish, and sometimes brilliant, Sacha Baron Cohen. The English comedian has created a number of fictional satirical characters with the intent of exposing bigotry. Among other “noteworthy” achievements, Cohen has taken the Candid Camera concept to new heights. Cohen talked his way into Roy Moore’s company, subjecting him to a mock pedophile detector test. The crude impersonation by Sacha Baron Cohen made the point of showing how naïve and gullible Moore was, but landed Cohen in court.

Recently, the comedian gave a speech to the Anti-Defamation League in which he ripped the social media aspect of the internet. The serious comedian is now talking about legislation to prevent people like Mark Zuckerberg from controlling the internet, spreading lies and enabling maniacal control freaks of all kinds. The British actor-comedian has even called for jail time for those who abuse free speech rights under the guise of social media communication.

The question is whether there is reasonable regulation that should be considered with respect to social media. There are those in Congress and politicians worldwide who are now clamoring for some control over the internet and its dissemination of false information. There is no question that tyrants of all sorts can use the internet to influence elections and stir the emotions of base bigots. Perhaps even more stressing is the act of participation of social media giants with respect to the encouragement of both positive and negative dissemination of so-called information.

Social media companies use “algorithms”, which are, simply speaking, a means of feeding people information based upon what the user has already looked at. If you look at Toyota cars on the internet, you will receive all kinds of advertisements and messages about Toyota cars and other automobiles as well. People buy the right to communicate with the consumer based upon what are perceived to be consumer preferences. Likewise, if someone looks up Holocaust denial websites, they will continue to receive racist, bigoted and anti-Semitic material. It is this use of algorithms which incense people like Sacha Baron Cohen, lawmakers and individual users.

Some of the legislation that is being considered clearly would be a violation of free speech principles. While it is true that private companies do not enjoy free speech under the United States Constitution, when a forum becomes as public as the internet, free speech considerations cannot be shunted aside. It is also correct that false speech or publications do not receive First Amendment protections in full. Public figures, on the other hand, must prove actual malice to receive any damages. The defamation laws have always nodded in respect to free speech considerations.

The question as to whether the internet is a public or private entity, subject to the whim and will of the user or advertiser, is a debate which is only ramping up currently. There will doubtless continue to be societies that control the internet and social media, cutting it off based upon political expediency. We would expect more robust democracies to have respect for the open forum concept embraced by the internet, but at the same time to pass laws enabling government entities to collect taxes on sales, and to prevent outright defamation. Impersonation is another distressing component of the internet and social media. In New York State, one case was thrown out where a well-known professor had been impersonated by one of his rivals. The New York Appellate Court said that the impersonator had a First Amendment right to pretend that he was someone else! How outrageous does it get? Nevertheless, the impersonator was convicted on other lesser charges.

The bottom line is that we have to look at current laws and make sure that they do apply to the internet and social media. In that respect, the current law of defamation, false light, interference with business relations and a host of other principles which currently exist must be revised so that they can be utilized in the 21<sup>st</sup> century as a shield and not a sword.

This is a complex subject and one which will not go away. Organizations like the American Law Institute, which has a great history in reviewing and updating statutory principles, needs to look at the internet and social media in a principled and informed way. As a Life Member of the American Law Institute, this is an issue that I hope to bring to the top officials at that organization.

In the meantime, be careful what you say and how you say it. Do not hesitate to respond to false and bigoted posts and social media. Bullying and harassment by communication is a crime in most states and needs to be applied to the internet as well.

While the full story of internet regulation has yet to be written, it is a subject worthy of robust debate.

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