

## **Negotiating boundaries: How platforms shape human rights**

The vast majority of us will increasingly find ourselves living, working and being governed in two worlds at once (Schmidt and Cohen, 2013, p. 6).

### **Introduction**

The human rights implications of internet use have been debated and negotiated for more than 20 years, and there is now common international agreement that human rights apply online as they do offline. In practice, however, the modalities of the online realm generate significant challenges for human rights protection, many of which remain unresolved. One major challenge concerns the fact that users exercise their rights within private platforms that have no direct responsibility under human rights law.

While the internet as a public sphere is widely studied (Goldberg, 2011, Papacharissi, 2003, Dahlberg, 2007, Jørgensen, 2013, Balnaves, 2011, Rasmussen, 2008), little of this research focuses on the nature of the companies that govern online services and platforms. Despite the increasing role that these private actors play in facilitating people's democratic experience online, the governance of online public life has largely been left to companies to address through corporate social responsibility frameworks, Terms of Service, and industry initiatives (Laidlaw, 2012, 3). Moreover, research rarely relates company incentives and practices to their human rights implications.

Responding to this, the paper explores how Facebook and Google set boundaries for public and private life on the internet. The question is examined through a qualitative study of how the companies frame and deploy the right to privacy and to freedom of expression within their platforms. The two rights are chosen as examples of human rights that are strongly influenced – and addressed – by the companies. The paper argues that both companies are guided by narratives that speak to their products as freedom of expression enablers, yet effectively enforce boundaries for expressions based on a complex mix of company policies and legal standards. Concerning privacy, the ability of users to exercise control is limited to adjustments on how they share information, while they have no means of limiting the data collection that takes place as a premise for using the services.

### **Methodology**

The paper relies on a context-oriented qualitative approach, including interviews and online material as key sources of data (Huberman and Miles, 1994). Over the course of 2015 and 2016, I conducted 21 semi-structured interviews with current and former staff of the two companies (13 from Google and 8 from Facebook), and supplemented this with conversations and observations carried out at policy events such as the global Internet Governance Forum in Brazil, the Danish Internet Governance Forum, the VoX-Pol workshop in Budapest, the Global Network Initiative Learning Forum at Stanford University, the Digital Single Market Meeting in Copenhagen, and the Child Safety Summit in Dublin. The interviewees were primarily policy staff, though I also

spoke to technical and legal staff. Access to the companies has been a challenge, but through a combination of personal contacts and persistence, I eventually managed to establish contact with staff within both companies. As part of the data collection, I have also analysed 20 public talks by either founders or key staff from the two companies, and visited the US as well as the international (Dublin) headquarters of Google and Facebook. The data collection has focused on the companies' sense-making related to freedom of expression and privacy; including how this sense-making manifests itself in specific norms, policies and governance measures. Quotes from the interviews are presented in an anonymized form, while quotes derived from public presentations are referenced with name and organization.

This paper is structured as follows. First, it opens with a brief introduction to the human rights literature related to the online domain, including the specific challenges related to human rights protection in the realm of private actors. Secondly, it addresses the online public sphere from the perspective of commercialization, in particular the inherently economic aspects of online participation. Thirdly, it presents empirical findings, focusing on the way in which Google and Facebook frame and incorporate their human rights responsibility.

### **Human rights and the online domain**

Scholarship related to human rights and the internet is scattered around different disciplines spanning from international law and internet governance to media and communication studies. Since the topic began to surface on the global internet policy agenda during the first World Summit on the Information Society in 2003, a large number of books, reports, and soft-law standards, especially from the Council of Europe, UNESCO, OSCE and the UN Special Rapporteur on Freedom of Expression, have been produced. The majority of these sources, however, are not anchored in a theoretical framework but present empirically grounded studies of 1) opportunities and threats to established human rights standards by use of communication technology, in particular the right to privacy and the right to freedom of expression (Mendel, 2012, Deibert et al., 2010, Benedek and Kettmann, 2014, Brown, 2013, Korff, 2014, Akdeniz, 2016, APC and HIVOS eds., 2014, MacKinnon, 2012), or 2) cases that focus on the use of technology for human rights and social change (Souter, 2009, Comminos, June 2011, Earl and Kimport, 2011, Bakesha et al., 2008), or 3) standard-setting that seeks to establish norms for human rights protection in the online domain (Council of the European Union, May 12, 2014, Council of Europe, April 16, 2014, United Nations General Assembly, December 18, 2013, United Nations Human Rights Council, July 14, 2014). At present, there is a lack of scholarship connecting the human rights challenges raised by these numerous studies with their theoretical context.

#### *Human rights and private actors*

Privacy and freedom of expression are some of the most debated human rights in relation to the online domain. For freedom of expression, specific challenges relate to new means of curtailing expression rights, spanning from overly broad legislation to the disruption of services or the blocking and filtering of content (Korff, 2014, Jørgensen et al., 2016). In relation to privacy, issues include expanding surveillance regimes; the profiling of users' online behaviour; and the retention and exchange of

personal information between private companies and public authorities, without the required safeguards (Deibert, 2013, Floridi, 2014, Solove and Schwartz, 2015).

One cross-cutting challenge concerns the fact that the online domain is largely controlled by private actors, whereas human rights law is binding on states only. The interface between human rights law and private actors has, however, received increasing attention, resulting in the adoption of soft law standards<sup>1</sup> and multi-stakeholder initiatives such as the Global Network Initiative (Maclay, 2014). In 2011, the baseline in this field was adopted – the United Nations Guiding Principles on Business and Human Rights (UNGPs) (United Nations Human Rights Council, March 21, 2011). The UNGPs focus on the human rights impact of any business conduct and elaborate the distinction that exists between the state duty to protect human rights and the corporate responsibility to respect human rights. In short, each company has a moral responsibility to assess the way their practices, services and products impact on human rights, and to mitigate negative impact. The framework has been widely praised by both states and companies, but also criticised for its slow uptake, ineffectiveness, and lack of binding obligations on companies (Aaronson and Higham, 2013, Bilchitz, 2013).

In relation to Facebook and Google, the framework implies that the companies have a normative obligation to respect the standards set by human rights law. These standards stipulate minimum guarantees that must be fulfilled for any state intervention in the rights. Also, both companies are part of the Global Network Initiative (GNI) set up in 2008 to strengthen human rights compliance by internet companies. Based on international law, the GNI has developed a set of standards that members must follow to counter potential privacy and freedom of expression violations caused by governments. Google is a founding member of GNI and was assessed for compliance with GNI standards in 2013 and 2016. Facebook joined GNI in 2013 and was assessed in 2016.<sup>2</sup> Moreover, both companies were ranked on their human rights performance in November 2015 by the *Ranking Digital Rights Corporate Accountability Index*, based on publicly available material concerning top-level commitment to human rights, accessible policies, grievance mechanisms, and other criteria. The index gave Google a score of 65% and Facebook a score of 41% in its overall ranking. In total eight internet companies and eight telecommunication companies were ranked.<sup>3</sup>

### **The online public sphere**

The development of the online public sphere is often framed as the migration of an already existing public sphere to the online platform and/or the advent of a new type of public sphere facilitated by the internet (Goldberg, 2011, p. 741). Numerous scholars have examined the claims for a new or extended virtual public sphere (Goldberg, 2011, Papacharissi, 2003, Dahlberg, 2007, Jørgensen, 2013, Balnaves, 2011, Rasmussen, 2008), in particular the extent to which the open architecture of the

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<sup>1</sup> See for example the OECD Guidelines for Multinational Enterprises, available at: <http://mneguidelines.oecd.org/text/>

<sup>2</sup> See <http://globalnetworkinitiative.org/content/public-report-201516-independent-company-assessments-0>

<sup>3</sup> See <https://rankingdigitalrights.org/>.

internet might revitalise and remedy the deficits associated with the public sphere.<sup>4</sup> The online domain has arguably provided for a variety of new public and private spaces, but this is not synonymous with a strengthened public sphere. There is no indication that the new online spaces and modalities have in fact contributed to a strengthened democracy (Papacharissi, 2010, p. 124).<sup>5</sup> On the contrary, *commercialization* has been identified as one of the characteristics that prohibit the transition from a public space to a public sphere (ibid.).<sup>6</sup> Indeed, since Habermas' original work on transformations of the public sphere, various aspects of commercialization have been raised and widely discussed in relation to the increasing power of private media corporations over public discourse, particularly their economic and institutional configurations (Verstraeten, 2007, p. 78). In contrast, the commercial aspects of online participation are still under-researched, not least in relation to how the commodification of social interaction affects the premises for public discourse, and what kind of public sphere might develop as a result. 'The inherently economic quality of internet participation contributes to the production of a different and under-examined mode of power than is presumed in scholarship of the public / virtual sphere' (Goldberg, 2011, p. 744).

#### *Public participation as a commercial act*

It has long been recognised that the design of a system affects the freedoms and control that the system enables (Lessig, 1999).<sup>7</sup> Services that collect personal information as a prerequisite to participation inevitably place power firmly in the hands of the companies providing them. Although part of public life has always unfolded within commercial domains such as the commercial press, the current situation is different. Previously, the commercial press comprised only part of the system of free expression, supplemented and countered by 'political party press, government subsidized media, civic associations, and street corner pamphleteers' (Elkin-Koren and Weinstock Netanel, 2002, p. vii). These institutions were also to some degree driven by public interest. Arguably, this is not the case with online public life. Online participation is part of an underlying transaction that transforms social activity into advertising revenue. "On the internet, there is no 'debating and deliberating' that is not also 'buying and selling' (to use Fraser's term); participation is a commercial act" (Goldberg, 2011, p. 747). Yet we know little of how these commercial drivers challenge the basic assumptions and freedoms associated with public life. As cautioned by Cohen, the shift to "black box" platforms for public participation makes the processes of mediation more difficult to understand or possibly to contest (Cohen, 2013, p. 1914). Moreover, in relation to legal protection of freedom of expression, these platforms are essentially different from public forums

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<sup>4</sup> For an account of critique related to the public sphere e.g. concerning its legitimacy, fragmentation and power structures, see for example FRASER, N. 2007. Transnationalising the public sphere: On the legitimacy and efficacy of public opinion in a post-westphalian world. *Theory, Culture & Society*, 24, 7-30.

<sup>5</sup> In contrast to this overall conclusion, many empirical examples demonstrate the way communication technology has empowered actors and groups at local level. See e.g. MACKINNON, R. 2012. *Consent of the networked: The world-wide struggle for Internet freedom*, New York, Basic Books, APC AND HIVOS 2011. Global Information Society Watch 2011 - Internet Rights and Democratisation. Johannesburg: APC and HIVOS.

<sup>6</sup> Access to information and reciprocity of communication are two other major concerns.

<sup>7</sup> There is also an extensive body of literature from science and technology studies (STS) exploring the way technology provides for specific affordances, see e.g. JASANOFF, S. & SOCIETY FOR SOCIAL STUDIES OF, S. 1995. Handbook of science and technology studies.

and streets. Whereas state regulation of speech in public forums is subject to strict judicial scrutiny, companies are relatively free in the restrictions they can place on expression on their platforms.

#### *The personal information economy*

The personal information economy (PIE) is a notion used to describe the online business model that derives its economic value from users' personal data, preferences and behaviour (Elmer, 2004). According to this model, every instance of online participation involves "a transfer of data which has been economized" (Goldberg, 2011, p. 747). On a legal level, the commodification of personal information implies "the organized activity of exchange, supported by the legal infrastructure of private-property-plus-free-contract" (Radin, 2002, p. 4). The PIE model has been so successful that, in a remarkably short time, it has created some of the richest companies of our time. In 2015, Facebook commissioned a report on how to "sustainably maximize the contribution that personal data makes to the economy, to society, and to individuals" (Ctrl-Shift, 2015, p. 3). The report explains how mass production is being replaced by mass customization, enabled by specific information about specific things and people. "Today's practices, whether they drive the production of a coupon or a digital advertisement, employ data analysts and complex computational power to analyse data from a multitude of devices and target ads with optimal efficiency, relevance and personalization" (ibid, p. 9). The report highlights that the business model has given rise to a number of concerns, such as a lack of reasonable mechanism of consent, a sense of 'creepiness', fears of manipulation of algorithms, and unaccountable concentrations of data power. As we shall see below, the industry response to these concerns focuses on increased user control, thus expanding the radius of user action (privacy settings) within the present economic model. On the assumption that privacy is a core element in sustaining critical discourse and personal boundary management (Cohen, 2013, p. 1905), the PIE model disrupts one of the basic elements of personal development and societal discourse, since it extracts value from the analysis, prediction and control of all our mediated experiences, with no appreciation of a space outside the reach of this economic paradigm.

#### **Human Rights Framing within Google and Facebook**

In the following section, I explore how Google and Facebook's framing and operationalization of the right to privacy and freedoms of expression affect the protection of these rights in the online domain. As illustrated below, both companies see themselves as strongly committed to – and actively promoting – human rights. The framing, however, focuses primarily on potential human rights violations caused by governments, and pays less attention to areas where the companies' business practices may have a negative impact on their users' rights and freedoms.

#### *The power of Google and Facebook*

In 2013, Google executives Eric Schmidt and Jared Cohen argued that modern technology platforms such as Google and Facebook are even more powerful than most people realize, and that the world will be "profoundly altered by their adoption and successfulness in societies everywhere" (Schmidt and Cohen, 2013, p. 9). Their power is ascribed to their ability to grow and the speed at which they are able to scale up. "Almost nothing short of a biological virus can spread as quickly, efficiently or aggressively as these technology platforms, and this makes people who build, control

and use them powerful too” (ibid., p. 10). An important element of the power narrative is the companies’ unique position in the markets they dominate; search, online expression and social networking. Since the stories of both companies are described extensively in the literature (Levy, 2011, Vise and Malseed, 2005, Kirkpatrick, 2010, Jensen and Tække, 2013), I will only point to a few key figures to give an indication of the companies’ ability to grow.

In February 2016, Google (Alphabet) became the world’s highest valued company (a place it has since lost to Apple and Microsoft) worth 560 billion USD. Google was founded in 1998 with the mission to “organize the world's information and make it universally accessible and useful”<sup>8</sup> and has since then developed its services from search to advertisement, maps, library, glasses, self-driving cars, artificial intelligence, robotics, and a wide range of other areas. In August 2015, Google restructured to become Alphabet, although commercially Google still represents the vast majority of Alphabet’s revenues, and almost all of its major businesses is located under Google.<sup>9</sup> As for Facebook, its February 2016 value was 348 billion USD, just three years after it became listed on the US stock exchange. Founded in 2004 with the mission “to give people the power to share and make the world more open and connected”,<sup>10</sup> it has become the fastest company in the S&P 500 Index to reach a market value of 250 billion USD.<sup>11</sup> With 1.65 billion users in 2016, founder Mark Zuckerberg is now the 6th richest person in the world.

### *Privacy*

The business model of the personal information economy underpins both companies. Google remains the undisputed leader in total US digital advertisement revenues with 32 billion USD revenue and 37.4% of the market; Facebook comes second with 8 billion USD revenue and 13.2% of the market in 2015.<sup>12</sup> Essentially, the business model implies that the information, patterns, preferences, likes, habits, etc. of billions of users is stored, analysed and used to sell targeted advertising.<sup>13</sup> Since the business model extracts economic value from knowing as much as possible about the users its core market incentive is to maximize the number of users and the corresponding data collection. “This may sound a little ridiculous to say, but for us, products don’t really get that interesting to turn into business until they have about 1 billion people using them”.<sup>14</sup> Both companies make a clear distinction between being data brokers (a term clearly associated with low business ethics), and the business they are in, i.e. offering targeted advertisement based on their users’ data. “We try to keep a high ethical stand, we don’t sell our users data. Like data brokers, we don’t do that” (Google, #6). “We never sell your information. Advertisers who are using the site never get access to your information”.<sup>15</sup>

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<sup>8</sup> <https://www.google.com/about/company/>

<sup>9</sup> <http://www.statista.com/statistics/266249/advertising-revenue-of-google/>

<sup>10</sup> [https://www.facebook.com/facebook/info/?tab=page\\_info](https://www.facebook.com/facebook/info/?tab=page_info)

<sup>11</sup> <http://www.cnn.com/2015/06/23/>

<sup>12</sup> <http://www.emarketer.com/article.aspx?R=1012954&RewroteTitle=1#sthash.0UF4eOmf.dpuf>

<sup>13</sup> Facebook has the largest social network dataset in the world, commonly referred to as the social graph.

<sup>14</sup> Zuckerberg quoted in “Facebook Q3 2014 Earnings Call” (2014). Zuckerberg Transcripts. Paper 153.

<sup>15</sup> Zuckerberg interview by Time (Stengel) 2010, available at: [http://content.time.com/time/video/player/0,32068,711047870001\\_2037225,00.html](http://content.time.com/time/video/player/0,32068,711047870001_2037225,00.html)

When questioned about the business model and its potential conflict with the right to privacy, three lines of arguments are generally brought forward. First, the business model is seen as integral to the provision of a free service, something that both companies take great pride in. “Our mission is to connect every person in the world. You don’t do that by having a service people pay for.”<sup>16</sup> “We can offer someone in Africa the same product as the President of the United States. And we don’t have to take any extra money for it.”<sup>17</sup> Second, it is stressed that having extensive knowledge about the user adds value to the user experience by enabling better services. “If you’re willing to let a company like Google know more about you, we can deliver much better services.”<sup>18</sup> “One of the best ways to improve relevance is to help advertisers reach the right audience with their messages. Facebook’s age and gender targeting is 45% more accurate than the digital industry average.”<sup>19</sup> Third, while both companies attribute great importance to privacy, they do not see a conflict between privacy and the business model, as privacy is primarily taken to mean user control over what information to share with other users. “Everything is bundled around how people share. Not being aware is like driving a car without a licence (#8, Facebook). “We have designed our platform with a view to giving people power and control over their own experiences”.<sup>20</sup> “To get privacy right, to provide a solution of choice – is the leadership mantra” (#8, Google).<sup>21</sup> The emphasis on user choice is exemplified by Facebook privacy features such as the *Privacy Assistant*, *Privacy Checkup*, and *Data Takeout*, and in Google features such as *Incognito Mode*, *Data Takeout*, and the *Privacy Dashboard*, which are repeatedly mentioned as examples of how the idea of user control is implemented into the design of the platforms. In relation to user control over advertisement, particular attention is drawn to Facebook’s *Ad Preferences* and Google’s *Ads Settings*. In short, privacy is seen and implemented as points of control by means of which users may adjust their boundaries for sharing with other users, e.g. deciding on levels of sharing for a number of pre-defined categories. At Facebook, users can choose between *Global*, meaning everyone, *Friends of Friends*, *Just Friends*, or *you only*. At Google, users with a Google account may via the Privacy Dashboard manage the use of data collected by different Google products. None of the people I spoke to associate the company’s dedication to privacy with limits on the information that is collected about its users. Data collection and targeted advertising is the taken-for-granted context in the sense that it is a premise for using the service. As such, there is no opting out of the business model, except to stop using the service. Users may adjust their sharing preferences and choose not to see personalized ads, however, they cannot opt-out of the ad-model as such.<sup>22</sup> These features are part of the

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<sup>16</sup> Zuckerberg quoted in Time (Grossman) 2014, available at: <http://time.com/facebook-world-plan/>

<sup>17</sup> Page quoted in, One for All – Larry Page, Zeit Online, available at:

<http://www.zeit.de/wirtschaft/unternehmen/2015-05/larry-page-google-inventor/seite-4>

<sup>18</sup> Drummond quoted in Freedom of expression: how Google sees the world, 2010, available at: [https://www.youtube.com/watch?v=4IKm6YQ\\_7wc](https://www.youtube.com/watch?v=4IKm6YQ_7wc)

<sup>19</sup> Sandberg quoted in “Facebook Q3 2014 Earnings Call” (2014). Zuckerberg Transcripts. Paper 153.

<sup>20</sup> Safety at Facebook, p. 9 (‘You’re in Charge’ section).

<sup>21</sup> As stressed by several scholars, there is an inherent conflict between privacy as individual control and the networked privacy that social media platforms afford. In short, users may restrict their own sharing of information, yet still be exposed via tagging etc. from friends with more liberal privacy settings. See e.g. ALICE, E. M. & DANAH, B. 2014. Networked privacy: How teenagers negotiate context in social media. *New Media & Society*, 16, 1051-1067.

<sup>22</sup> <https://www.facebook.com/about/ads/#568137493302217>



‘technological unconscious’ (Beer, 2009, p. 988), and a basic premise for taking part in the online experiences that the services facilitate.

At the legal level, the collection and use of personal information is codified in the privacy policy of both companies. These policies are rather similar and both emphasize that data is collected in order to provide better services. Google’s privacy policy states: “We collect information to provide better services to all of our users – from figuring out basic stuff like which language you speak, to more complex things like which ads you’ll find most useful, the people who matter most to you online, or which YouTube videos you might like”.<sup>23</sup> Google distinguishes between information provided by the user, and information about the user, such as information on devices, logs, location, unique application numbers, local storage, and cookies. It is stressed that the data is used to “offer tailored content” and to provide “more relevant search results and ads”. When consenting to the terms of use, users consent to sharing their personal information with companies, organizations or individuals outside of Google. Likewise, Facebook’s Data Use Policy stresses that information provided by the user, as well as by the users’ devices, including location data provided by GPS, Bluetooth, and Wi-Fi signals, third party apps and websites, friends, etc. are collected and used to offer a personalized and rewarding user experience.<sup>24</sup>

In terms of governance, both companies have seen an internal evolution of privacy, with an increasing awareness of the importance of privacy over the past years, not least due to numerous European cases. At organizational level, this is reflected in an extensive internal system of control and governance around privacy, including several layers of checks and balances to ensure that no product revision or new product is released without data protection clearing. “At Google we have something called a privacy design document. So whenever a new product or feature is conceived of, the tech lead for that project has to complete a document that includes a lot of information about how information is going to be collected, processed, shared, used, deleted” (Enright, 5 May, 2015).<sup>25</sup> “Every staff member gets privacy training when joining the company” (Facebook, #8). Also, both companies have formalized procedures for handling external requests for user data by government and law enforcement.<sup>26</sup> As such, there is a corporate sense of paying great attention to privacy and pushing back against government requests for user data with due diligence standards. The enormous data extraction and analysis that both companies excel in, however, is not framed as a privacy problem.

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<sup>23</sup> Facebook’s privacy policies from 2005 to 2015 have been ranked based on Patients Privacy Rights indicators. The findings suggest decreased accountability and transparency over time. SHORE, J. & STEINMAN, J. 2015. *Did You Really Agree to That? The Evolution of Facebook’s Privacy Policy* [Online]. Available: <http://techscience.org/a/2015081102/>

<sup>24</sup> [https://www.facebook.com/full\\_data\\_use\\_policy](https://www.facebook.com/full_data_use_policy). The changes in default settings for personal information on Facebook in the period 2005-2010 has been illustrated by McKeon, available at: <http://mattmckeon.com/facebook-privacy/>. See also STUTZMAN, F., GROSS, R. & ACQUISTI, A. 2012. Silent Listeners: The Evolution of Privacy and Disclosure on Facebook. *Journal of Privacy and Confidentiality*, 4, 7-41.

<sup>25</sup> Hot Topics in Privacy: A Conversation with Facebook, Google and Microsoft, 2015, available at: <https://www.youtube.com/watch?v=msc15s52ejc>

<sup>26</sup> Reporting practices related to US government requests for user information are examined in a recent survey that looks at 43 companies, including Google and Facebook. Available at: [https://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/Final\\_Transparency.pdf](https://cyber.law.harvard.edu/sites/cyber.law.harvard.edu/files/Final_Transparency.pdf)



In sum, both companies have brought in control points at different stages in their privacy evolution, reflecting an increasing attention to the topic. These control points are implemented at organizational level with risk assessment before any product release, in the privacy policy that users consent to, and at technical level. The privacy settings provide users with a pre-defined means of restricting the flow of their information, yet the business model largely dictates the boundaries for exercising this control. In short, it is not possible to engage with the platform's offerings of information search, public discourse, social sharing, and so on without submitting to the underlying model of data extraction, profiling, and advertisement. Interviewees did not perceive this as a contraction of user privacy, but as an integral part of the online business model that enables the provision of free services.

### *Freedom of expression*

Whereas the ability of individuals to exercise privacy rights is closely connected to the online business model, the boundaries for freedom of expression are defined in a grey zone between legal frameworks and company norms. Also, as we shall see below, users play a crucial role in the process of content moderation. The notion of content moderation refer to the processes whereby online services decide on the boundaries for appropriate speech in the public domain (Crawford and Gillespie, 2016, Roberts, 2014).<sup>27</sup> Since its launch, Facebook has been subject to continuous criticism for not doing enough, e.g. to protect children, and for doing too much, e.g. removing content that is legal within a given jurisdiction. As for Google, its capacity to provide access to allegedly harmful content frequently results in external pressure to restrict access to content via its services (Hoboken, 2012, p. 233).

All the interviewees express a strong commitment to freedom of expression. Freedom of expression is seen as a crucial element of the corporate identity, or as formulated by some of the interviewees: "Freedom of expression is an integrated part of everything we do" (#4, Facebook). "Freedom of expression is part of our founding DNA" (#3, Google). In line with this, interviewees take great pride in the way their services enable people to search, share and express opinions around the globe: "What we do will help make the world a better place" (#3, Google). The commitment to freedom of expression translates into organizational processes set up to ensure that external requests for interference with the ability of users to freely search or express themselves, for example a government request to remove certain content, meet the requirements of human rights law. Both companies stress that they push back fiercely against government attempts to narrow the boundaries for allowed expressions whenever these attempts fail to meet such requirements. "Any law enforcement agency with lawful authority can submit a request and then our team will evaluate those requests and if they're lawful, consistent with international human rights standards, and consistent with prevailing law, then they will work with law enforcement in those places" (Richard Allen, May 7 2013).<sup>28</sup> "In countries where we are presented with a valid court order, which we verify, we look at the law, we look to see whether the agency giving us the request is authorized under the law; if it actually is illegal then that is the only time it would come down" (Nicole Alston, July 1

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<sup>27</sup> See also coverage in The Verge (2016), available at: <http://www.theverge.com/2016/4/13/11387934/internet-moderator-history-youtube-facebook-reddit-censorship-free-speech> and in the New Republic (2013) available at: <https://newrepublic.com/article/113045/free-speech-internet-silicon-valley-making-rules>

<sup>28</sup> Panel at Re:publica 2013, available at: <https://www.youtube.com/watch?v=1gSTwaYVERo>

2014).<sup>29</sup> In short, international standards on freedom of expression contribute to the production of boundaries for allowed expressions, yet only serve as benchmarks in relation to government requests. As we shall see below, company policies are another source which accounts for a much larger volume of content moderation. These policies are informed by national laws as well as company norms regarding the types of expression allowed. Operating a global online service across diverse national jurisdictions, effectively means that various national standards have to be taken into account. Compliance with national laws is stated as a given, and particularly with US law since both companies are headquartered in the US. “In many ways when a new internet company is created it is like an offshore island but it is attached to a host jurisdiction. So it has to comply with the rules, the jurisdiction, the framework of the host jurisdiction and that can lead to differences. I mean many of the big internet services are offshore islands off the coast of California by origin.” (Richard Allen, May 7 2013).<sup>30</sup>

Legal requirements, however, are only part of the picture. In practice, a number of norms guide the numerous decisions taken with regard to content takedown each day. A reading of the community standards of Facebook or YouTube reflects the complex set of issues that may justify content removal. The justifications for content removal (and account deactivation) range from content that is illegal under US law – e.g. child exploitation, terrorism, copyright violations, fraud, criminal activity – to content that is legal but outlawed by the community norms, e.g. pseudo-identity (Facebook), harassment of others, harmful or hateful content, nudity and sexually explicit content, and certain categories of graphic content. Needless to say, the content categories are not black and white, and with more than a millions posts flagged each day at Facebook<sup>31</sup> or 400 hours of video uploaded each minute at YouTube,<sup>32</sup> drawing the line represents a formidable challenge. According to Facebook’s community standards, nudity, for example, is restricted “because some audiences within our global community may be sensitive to this type of content - particularly because of their cultural background or age”.<sup>33</sup> In line with Facebook, YouTube specifies that the service “is not for pornography or sexually explicit content”.<sup>34</sup>

Whereas Facebook and YouTube are framed as communities with boundaries for ‘appropriate / non-appropriate’ content, Google Search is described as a service that “gives users exactly what they want”.<sup>35</sup> The search engine has to reconcile the ideal of facilitating access to *all online material* with the promise of providing information that is *valuable for the user* (Hoboken, 2012, p. 233). The process of locating the most

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<sup>29</sup> Panel on the Future of Free Speech at the Aspen Ideas Festival, available at:

<https://www.youtube.com/watch?v=7LH-dt72RTM>

<sup>30</sup> Panel at Re:publica 2013, available at: <https://www.youtube.com/watch?v=1gSTwaYVERo>

<sup>31</sup> Monika Bickert at SXSW Harassment Summit 13 March 2016, available at:

<https://www.youtube.com/watch?v=WNgvICuS6cc>

<sup>32</sup> Juniper Downs at SXSW Harassment Summit 13 March 2016, available at:

<https://www.youtube.com/watch?v=WNgvICuS6cc>

<sup>33</sup> <https://m.facebook.com/communitystandards/?section=1>. Research suggests that Facebooks’ “parallel norm space” is inspired by the fact that the platform has to cater to users as young as 13 (Wagner 2013, p. 137)

<sup>34</sup> <https://www.youtube.com/yt/policyandsafety/communityguidelines.html>. Research have found that Google affords more attention to issues related to pornography compared to other issues, reflecting the norms of the advertisers CAFAGGI, F. 2011. New Foundations of Transnational Private Regulation. *JOLS Journal of Law and Society*, 38, 20-49.

<sup>35</sup> <https://www.google.com/about/company/products/>

relevant information is based on user preferences following the Pagerank algorithm. In practice, each click on Google is part of a global recording of user preferences that inform future decisions on what content is presented to users. Also, Google Search may remove certain content according to their removal policies.<sup>36</sup> This includes content that is allegedly illegal (e.g. child sexual abuse, copyright violations), as well as “sensitive personal information” such as credit card numbers, and nude images shared without consent. Moreover, following the so-called ‘right to be forgotten’ ruling (Rustad and Kulevska, 2015), European users may request to have personal information removed from the search index.

While government requests at both companies are governed by international freedom of expression standards, enforcement of community standards is not. Instead, the incentive to maximize the freedom of users to express themselves is countered by competing norms related to “safety”, “disorder” and “community expectations”. “We want to deal with harmful content or deal with content that leads to a disorderly space, or a space that a massive community of people don’t want to be in because they feel unsafe” (Richard Allen, May 7 2013).<sup>37</sup> In both companies, users are directly involved in the process via the flagging of inappropriate content which is then subjected to review by globally distributed teams of reviewers. “Our Community Operations teams work in offices around the world, 24 hours a day, 7 days a week, and in multiple languages. These teams are always ready to review things you report to make sure Facebook remains safe”.<sup>38</sup> And, in similar language from YouTube: “Our staff reviews flagged videos 24 hours a day, 7 days a week to determine whether they violate our Community Guidelines. When they do, we remove them. Sometimes a video doesn’t violate our guidelines, but might not be appropriate for everyone. These videos may get age-restricted”.<sup>39</sup> At both platforms, users play a critical role as “content police” or “neighbourhood watch”, since the system depends on them flagging problematic content, thereby shaping the norms for what is allowed. As has been pointed out by scholars, these user flagging processes are not an uncomplicated representation of community sentiment (Crawford and Gillespie, 2016, p. 413). A recent survey of 161 user reports on content removal on social media platforms found that there is “a lack of transparency surrounding content moderation decisions, as well as the processes through which users can appeal to restore their content when it is removed” (Anderson et al., March 31, 2016, p. 3).<sup>40</sup> The majority of the reports (127) concern Facebook takedowns, whereas 8 reports relate to YouTube takedowns (ibid., p. 6).

A cross-cutting issue in the empirical data has been the public-private nature of the services that the companies provide. On one hand, Facebook and Google are private companies, with freedom to conduct their business within certain limits; on the other hand, they provide services that have come to resemble and be understood as public utilities. “These companies have become the 21st-century public utilities” (Jon Carr,

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<sup>36</sup> <https://support.google.com/websearch/answer/2744324?hl=en>

<sup>37</sup> Panel at Re:publica 2013, available at: <https://www.youtube.com/watch?v=lgSTwaYVERo>

<sup>38</sup> *Safety at Facebook* folder, section on Reporting and Blocking.

<sup>39</sup> <https://www.youtube.com/yt/policyandsafety/communityguidelines.html#communityguidelines-enforce>

<sup>40</sup> The survey is based on user reports from November 2015 to March 2016 covering six social media platforms, including Facebook, YouTube and Google+. Available at: [https://s3-us-west-1.amazonaws.com/onlinecensorship/posts/pdfs/000/000/044/original/Onlinecensorship\\_Report\\_-\\_31\\_March\\_2016.pdf?1459436925](https://s3-us-west-1.amazonaws.com/onlinecensorship/posts/pdfs/000/000/044/original/Onlinecensorship_Report_-_31_March_2016.pdf?1459436925).

11 April 2016).<sup>41</sup> In relation to enforcement of community standards, for example, it is stressed that as private companies they have the right to define and enforce the rules for allowed content on their platforms. “It will impact the scope of expression, but we don’t consider ourselves to be deciding on freedom of expression. We take decisions on a specific product” (#6, Facebook). “We have rules; we don’t want bomb making and other dangerous activities although it is protected speech in the US” (#7, Google). But these companies also emphasize the perception of themselves as neutral platforms that play an important role as enablers of freedom of expression. “Everyone who has a Facebook account has a voice” (Zuckerberg, December 15 2010).<sup>42</sup> “My hope is to provide instant access to anything anybody wants in the future” (Brin, 24 January 2013).<sup>43</sup> “We think it is important that we remain a neutral public space, albeit a public space that’s privately managed (...). In a sense we believe that we run one of those very important public spaces like many of the spaces that I move within during my daily life” (Allen, May 7 2013).<sup>44</sup> In short, the companies acknowledge that they perform functions of a public nature, yet require the freedom to set and enforce their own rules of engagement. While they effectively set the rules for public discourse, they frame themselves as open and neutral platforms.

## Conclusion

The analysis has illustrated how Google and Facebook produce and reproduce online boundaries via algorithms (e.g. search results), design features (e.g. privacy settings that codify user affordances), company norms (e.g. community standards), and governance mechanisms (e.g. review teams). All of these elements work together to establish specific boundaries and in this way represent “its owner’s attempt to steer users’ activities in a certain direction” (Van Dijck, 2013, 144). Moreover, public and private are presented as two competing yet co-existing narratives. Concerning freedom of expression, the boundaries are governed differently depending on the type of interference request. For government requests, both companies commit to the due diligence standards derived from human rights law. However, for user requests, of which there is a much greater volume, content policies are defined and enforced in a highly invisible way. Since freedom of expression sets out to defend particularly those expressions that raise controversial or critical issues, one conflict is between the desire to keep the community happy and the decision to protect expressions that may be unwanted yet would be allowed under international human rights law. “Often the communities that are most impacted by online censorship are also the most marginalized—so the people that are censored are also those that are least likely to be heard” (Anderson et al., March 31, 2016, p. 21). In short, having companies define, and users police, unwanted expressions, thus creating a kind of global “neighbourhood watch” programme, creates a narrower space for allowed expressions, compared to legal provisions on freedom of expression. With regard to privacy, one area of conflict is between privacy as a human right and privacy as a property right – essentially, the tension between privacy as a fundamental type of

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<sup>41</sup> Interview in the Guardian, available at: <https://www.theguardian.com/technology/2016/apr/11/facebook-twitter-google-urged-to-step-up-online-abuse-fightback>

<sup>42</sup> Zuckerberg interview by Time (Stengel) 2010, available at: [http://content.time.com/time/video/player/0,32068,711047870001\\_2037225,00.html](http://content.time.com/time/video/player/0,32068,711047870001_2037225,00.html)

<sup>43</sup> Corporate Valley interview with Larry Page & Sergey Brin, 2013, available at: <https://www.youtube.com/watch?v=0vv0NKieCoI>

<sup>44</sup> Panel at Re:publica 2013, available at: <https://www.youtube.com/watch?v=1gSTwaYVERo>

“breathing room” crucial for individual development and free societies, and privacy as something that can be waived as part of an economic transaction. At the heart of both Google and Facebook lie narratives concerning the liberating power of technology which see no contradiction between the individual’s right to privacy and the personal information economy. As such, free communication and free commerce are seen as complementary ideals, or as two sides of the same coin (Patelis, 2013, p. 3). Both the Facebook narrative (giving all individuals the ability to share and connect) and the Google narrative (making all the world’s information accessible) feed the endless accumulation and processing of personal data as a premise for providing the services for free. In sum, there is no perceived contradiction between providing a public space where users exercise fundamental rights and the harnessing of these communications as part of the online value chain. The narratives speak to civic-minded metaphors, yet online public participation via these platforms is effectively anchored in a commercial rather than civic domain.

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