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Framing human rights: exploring storytelling within internet companies

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ABSTRACT

This article explores human rights storytelling within two of the dominant internet companies, Google and Facebook. Based on interview with company staff as well as analysis of publicly available statements, the article examines how human rights are framed, made sense of and translated into company norms, products, and governance structures. The paper argues that the companies' framing in many respects resembles that of the United States' online freedom agenda, celebrating the liberating power of the internet and perceiving human rights as primarily safeguards against repressive governments. The companies see freedom of expression as part of their DNA and do not perceive any contradiction between this standard and business practices that may impact negatively on users' freedom of expression, such as terms of service enforcement. Likewise, there is no sense of conflict between the online business model and their users' right to privacy.

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Introduction

Internet companies play an increasingly important role as managers of the public infrastructure, public domain, and public life. In part, public life has always unfolded within private domains, from coffee houses to mass media (Benn & Gaus, 1983; Meyrowitz, 1985), yet the current situation is different in scope and character. In the online realm *the vast majority* of social interactions, discussions, expressions, controversies, etc. take place within platforms and services that are provided for by private companies. Moreover, the communications that people provide when socializing online are an essential part of the online business model, used to generate revenue (Bechmann, 2013; Fuchs, 2015; Goldberg, 2011; Turrow, 2011). As such, online services use a fundamentally different business model, compared to services in the pre-internet age.

Scholars have cautioned that we have entered an era of *surveillance capitalism*, and that current practices represent a largely uncontested new expression of power, coined by Zuboff as 'the big other' (Zuboff, 2015). The implicit logic of surveillance capitalism is constituted by the mechanisms of extraction and commodification of personal information that most major internet platforms and services excel in, while producing new markets of

behavioral prediction and advertisement. These practices challenge fundamental rights and freedoms and stand in contrast to the freedom-enhancing potential of the internet, which often relies on a conception of communication technologies as inherently liberating and egalitarian (Cohen, 2014; Earl & Kimport, 2011). They also counter the prime narrative on internet freedom told by several states such as the United States' commitment to preserve the open internet (Morozov, 2011; Powers & Jablonski, 2015).

While the internet as a public sphere is widely studied (Balnaves, 2011; Dahlberg, 2007; Goldberg, 2011; Jørgensen, 2013; Papacharissi, 2003; Rasmussen, 2008), not much of this research focuses on the frameworks and narratives of the companies that govern these services and platforms. Moreover, there is a lack of research on the implications for human rights of different company incentives and practices. In 2015, the UN Special Rapporteur on Freedom of Expression stated that he considers the role of private actors to be one of the most pressing human right issues in the digital age (Kaye, 2015). A similar statement was made by the UN Special Rapporteur on the right to Privacy (Cannataci, 2015).

In response to these challenges, this paper will focus on human rights storytelling *within* two of the major internet companies: Google and Facebook. Based on qualitative data, the paper explores first how human rights such as freedom of expression and the right to privacy are framed by staff within these companies, and second how these framings are embedded in concrete measures such as product features and governance mechanisms. The paper finds that there is a disconnect between the company discourse on freedom of expression and privacy and the external discourse and concern related to these issues. Internally, both companies see themselves as strongly committed to – and actively promoting – human rights. However, this commitment only extends to protecting against external threats from governments, and is largely blind to areas where the companies' business practices may have a negative impact on their users' rights and freedoms.

The paper proceeds as follows. First, it examines some of the characteristics of the online domain (referred to as the commodified public sphere). Second, it looks at the implications of these developments for human rights. Last, it presents the empirical analysis.

The commodified public sphere

Twenty years ago, *A seclaration of the independence of cyberspace* celebrated the internet as a new frontier, largely free from the powers and limits of the old world.¹ With implicit reference to Habermas' ideal public sphere (Habermas, 1989), the internet was seen to promise a new kind of communicative environment where anyone, anywhere could express his or her beliefs.² This initial vision has since been countered by a number of more nuanced accounts (Papacharissi, 2010; Silver, 2000; Sterne, 2006). Arguably, regardless of the internet's actual potential for unleashing democratic potential, its current trajectory is in the opposite direction, toward ever greater commercialization, commodification, and propertization (Elkin-Koren & Weinstock Netanel, 2002b, viii).- Whereas scholars in the early days of the internet were concerned with media monopolies, power distribution, and the political economy of old and new media (Granham, 2000; Hamelink, 2000; Mansell, 2004), attention is now shifting towards the powers and politics of the online platforms, and how these platforms affect fundamental rights and freedoms (Gillespie, 2010; Van Dijck & Poll, 2013).

Valtysson, for example, examines Facebook through the system/lifeworld lens, arguing that despite the emancipatory potential of the platform it is corporate power that designs and dictates the environment through which communication unfolds (Valtysson, 2012). Gillespie illustrates how the architectural features of online platforms reflect specific policy choices and set the boundaries for public discourse (Gillespie, 2010). More generally, the internet's potential as a new or extended public sphere (Balnaves, 2011; Bang & Esmark, 2007; Benkler, 2006; Hansen, 2011; Rasmussen, 2008) has been researched extensively, in particular the extent to which open architecture of the internet might enhance democracy. The conclusions so far are not optimistic. While the online domain has provided for new public spaces, this is not synonymous with a strengthened public sphere. There is no indication that the new online spaces and modalities have in fact led to a strengthened democracy (Papacharissi, 2010).³

Research on the online public sphere has revealed several concrete points. First, *commercialization* is presented as one of the main concerns that prohibit the transition from a public space to a public sphere, where the former is simply a forum for discussion and the latter promotes democratic exchange of ideas (Papacharissi, 2010, p. 124). Indeed, since Habermas' original work on transformations of the public sphere, various aspects of commercialization has been raised and widely elaborated in relation to the increasing power of private media corporations over public discourse, not least related to their economic and institutional configurations, with less emphasis on the micro-level (Verstraeten, 2007, p. 78). In contrast, commercial aspects of the online public sphere is still under-researched, such as how the configurations of internet platforms affect social practices and public discourse, and what kind of public sphere derives as a result. Second, *a variety of interactions in a variety of public-private configurations* constitute public life, rather than the ideal of public discourse associated with Habermas, 'These commercially public spaces may not render a public sphere, but they provide hybrid economies of space where individuals can engage in interaction that is civic, among other things' (Papacharissi, 2010, p. 129).

In sum, the online domain represents a fragmented, diverse, and privatized public sphere, where companies set the conditions for a broad array of practices related to social participation. In the following section, I will consider the human rights implications of these characteristics.

Online rights and freedoms

It has become customary to state that human rights apply online as they do offline (United Nations Human Rights Council, 16 July 2012), however, in practice this presents a number of challenges (Cannataci, 2016; Kaye, 2016). These relate to the all-pervasive nature of data capture (Schneier, 2015; Zuboff, 2015), the commodification of online participation (Elkin-Koren & Weinstock Netanel, 2002a; Fuchs, 2015), and the shortcomings of human rights law in a privatized information domain (Ammori, 2014; Kim & Telman, 2015; Rosen, 2012).

First, *ubiquitous data capture* is the online default. Three of the world's seven billion people are computer-mediated in a wide range of their daily activities, which would have been beyond imagination just a decade ago. As a result, nearly every aspect of the world is rendered in a new symbolic dimension in which events, objects, processes, and people become visible, knowable, and shareable (Zuboff, 2015, p. 77). The logic of

accumulation is institutionalized in the functions of a global infrastructure that is regarded by most people as essential for social participation.

It's not reasonable to tell people that if they don't like data collection, they shouldn't e-mail, shop online, use Facebook, or have a cell phone ... Opting out just isn't a viable choice for most of us, most of the time; it violates what have become very real norms of contemporary life. (Schneier, 2015, p. 60–61)

Moreover, contributing to the online economy via online expressions, habits, and preferences has become a premise for participation in the networked public sphere. The taken-for-granted context of this business model is problematic, however, since its assumptions are largely tacit, and its power to shape the field of possibilities largely invisible (Zuboff, 2015, p. 77).

Second, *the infrastructure used to exercise freedom of expression has merged with the infrastructure of data capture and surveillance*. The technologies, institutions, and practices that people rely on to communicate with each other are the same that public and private parties employ for data capture and surveillance (Balkin, 2014). 'Many of the same features of the digital infrastructure that democratize speech also make the digital infrastructure the most powerful and most tempting target for speech regulation and surveillance' (Balkin, 2014, p. 2024). As a result, control over the information infrastructure constitutes new expressions of power and new asymmetries in power. The internet destabilizes some mechanisms of power and control, yet it also constitutes new ones. As information becomes crucial to every aspect of professional, social, and private life, those who control the information flows greatly affect the ability to participate in modern life (Elkin-Koren, 2012, p. 2). In other words, corporate control over most, if not all, major internet platforms and services have implications for human rights protection within these spaces, as the following section demonstrates.

The final point concerns *the state-centric nature of human rights law*. The human right to privacy protects individuals from unlawful or arbitrary interference with their privacy, family, home, or correspondence, whereas the right to freedom of expression protects the right not only to impart information, but also to seek and receive it, regardless of frontiers.⁴ The rights are stipulated in international and regional human rights law, yet only states are bound by these treaties – not companies. Whereas states have a responsibility to ensure that private actors do not violate human rights, referred to as the horizontal effect of human rights law (Knox, 2008), this positive obligation has not been invoked in relation to internet companies. Effectively, the human rights responsibility of companies such as Google and Facebook is guided by soft law standards. The most important benchmark in this field is the *Guiding principles on business and human rights* (United Nations Human Rights Council, 21 March 2011) that assert a global responsibility for businesses to avoid causing or contributing to adverse human rights impacts through their activities. The Guiding Principles has been widely praised by states as well as companies, yet the framework has also been criticized for slow uptake, for ineffectiveness, and for not creating binding obligations on companies (Aronson & Higham, 2013; Bilchitz, 2013).

Methodology

The empirical analysis is based on semi-structured interviews with company staff, primarily in Europe and the United States, as well as platform policies and terms of service. The

interviews focus on the internal discourse related to human rights; the translation of this normative basis into specific product features, and the governance mechanisms set up to enforce the norms. The interviewees were staff with responsibility for human rights, public policy, privacy, community operations (Facebook), and removal requests (Google). However, meetings have also been conducted with technical staff (Google), as well as more research-oriented staff working on education and user experience (Google). In total, 21 interviews were conducted (13 Google/8 Facebook), including two interviews with staff that are no longer with the company. Additionally, 15 publicly available talks were analyzed in relation to the above themes. When conducting the analysis, the material was examined for patterns and recurring arguments; drawing out cross-cutting themes and references and including multiple sources of evidence where possible (Yin, 2009, p. 41).

In terms of data collection, access has been a considerable challenge. Practical obstacles varied from lack of publicly available contact details to lack of response to e-mails. Additionally, despite trying to contact staff with diverse expertise across the organization, I would often be referred to a few selected points of contact. One of the avenues that proved useful was to focus on spaces where the two companies were present, such as internet policy meetings and more specific industry events. Attendance to these meetings was fruitful, both as a means of establishing follow-up contact, and in terms of engaging in conversations outside the interview setting. Also, I received valuable help from individuals in both organizations that enabled visits to the companies' headquarters in California, as well as the European headquarters in Dublin. The visits were extremely useful in terms of getting a sense of the physical surroundings and company culture. Quotes from the interviews are presented in an anonymized form, while quotes derived from presentations in the public domain are referenced fully.

Human rights sense-making

The analysis on the corporate human rights framing revealed that, while both Facebook and Google talk about human rights issues, it is largely according to their own framing of what human rights entail. The discourse reflects the Silicon Valley culture: a free flow of information, skepticism towards government regulation, and a strong belief in the free market. Although there are certainly cultural differences between Google and Facebook, both companies seem to be guided by a strong belief in the power of technology, and in finding technical solutions to complex societal problems such as power inequality and uneven access to information. Generally, the interviewees shared a belief that their products contribute positively to social and economic development by enhancing opportunities for everyone. 'We believe that, if more people are connected, the world will be more successfully economically and socially' (#4, Facebook). 'What we do will help make the world a better place' (#3, Google).

When questioned about specific human rights standards, interviewees' main focuses are freedom of expression and privacy. However, non-discrimination is also a point of interest, especially in relation to Facebook. Noticeably, staff at both companies see their mission as closely connected to freedom of expression. 'Funny you ask whether we have a freedom of expression policy, that what it's all about – to empower people to connect and share with friends and families' (#7, Facebook). 'Freedom of expression is an integrated part of everything we do' (#4, Facebook). 'Freedom of expression is part of our

founding DNA' (#3, Google). 'Freedom of expression runs deep in the engineering culture' (#10, Google).

When questioned about perceived threats to human rights, all respondents refer to government intervention either at formal or informal level. The examples include, shutting down or blocking access to services, requesting access to user data, or attempting to gain greater control over the platforms. 'There is a push by some countries, in the name of terrorism, to increase platform liability over content. And to have greater access to user data' (#3, Facebook). 'Our main focus is to minimize harms from governments' (#7, Google). Also, several governments are described as aggressive on how to extend their own jurisdiction, for example, via demands for data localization. 'Data localisation would provide for privileged access to data for that government' (#3, Facebook). There is a sense that the companies continuously push back against governments and that data is safest on United States soil. Government regulation is perceived as overly protective, as in the case of the 'the right to be forgotten' ruling.⁵ The case is brought forward several times as an example of a dangerous path, whereby search engines are requested to make decisions on freedom of expression implications. 'The obligation should rest on the webmaster, not on the search engine. They are capable of much more nuanced solutions. Some of these removal requests are hard judgement calls' (#10, Google).

As for privacy, this is emphasized as an important norm, yet it is largely seen as user controlled, and thus deliverable through increased transparency and more user choices in the products and services. None of the interviewees see a conflict between their collection and use of personal data and the right to privacy. On the contrary, personal data are referred to as an economic asset that is inherently linked to the internet economy and the provision of free services. As such, the business model is presented as a prerequisite for the vision of a globally connected world where everyone can access and share information. 'Our mission is to connect every person in the world. You don't do that by having a service people pay for'.⁶ 'I don't see a conflict between the business model and privacy, provided individual users are in control' (#4, Facebook).

A frustration I have is that a lot of people increasingly seem to equate an advertising business model with somehow being out of alignment with your customers. I think it's the most ridiculous concept. What, you think because you're paying Apple that you're somehow in alignment with them?⁷

'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'.⁸

When questioned about their human rights commitment, both companies point to the Global Network Initiative (GNI) formed in 2008 to strengthen human rights compliance by internet companies (Maclay, 2014). Based on international law, the GNI has developed a set of standards that members must adhere to. Google is founding member of GNI and was assessed for compliance with GNI standards in 2013. Facebook joined GNI in 2013 and was positively assessed in 2016.⁹ Both companies were also ranked on their human right performance in November 2015 by the *Ranking Digital Rights Corporate Accountability Index*. The index is based on publicly available material (company disclosure) concerning top-level commitment to human rights, accessible policies, grievance mechanisms, etc.¹⁰

Human rights as product features

The second part of this analysis focuses on the ‘translation’ of the normative base into specific product features. Essentially, both companies have very explicit policies, procedures, and product features related to privacy, whereas freedom of expression is described as inherent in the services themselves, and less visible at policy or feature level. As discussed in the following section, enforcement of terms of service is not seen as a freedom of expression issue, and the procedures governing content removal are largely invisible to the user.

Facebook’s perceived link between freedom of expression and the ability to connect and share creates the impression that the platform itself promotes freedom of expression. The platform interface is designed to maximize users’ sharing of both professional and personal information, placing Facebook at the center of online social interaction. In line with this, the search feature is seen as a social function whereby users may find information (photos, posts, videos, links, etc.) and people by searching within their Facebook networks, thus placing Facebook at the center of the search for information.¹¹ ‘As of last month, on average more than a billion search queries are made every day on Facebook ... It shows we’re in a unique position to answer a lot of questions for people’.¹² The emphasis on the social factor – what do my friends think? – stands in contrast to the ‘neutral’ notion of information search that Google advocates. The latter, in contrast, presents search as an objective process of locating the most-sought information from all available sources on a given topic.

At Facebook, the ability to connect is spoken of as a basic right, comparable to other basic services.

So, you go home, you turn on the lights, right? You’re probably not like, Yeah, electricity! Right? It’s just like, it needs to work. And my goal is that the ability to communicate and connect with people should be like that.¹³

The statement was made in relation to *Free Basics*, the controversial initiative that offers access to a Facebook-defined internet platform for free.¹⁴ According to Facebook founder Mark Zuckerberg, the idea is to promote basic access to public services such as police, medical assistance, and education.

The model that we consider this to be most similar to is 911 in the U.S. So even if you haven’t paid for a phone plan, you can always dial 911, and if there is a crime or a health emergency or a fire, you get basic help, and we think there should be an equivalent of this for the Internet – where even if you haven’t paid for a data plan, you can get access to basic health information or education or job tools or basic communication tools.¹⁵

When asking Facebook staff about Free Basics, the general response was that critics are from the connected elites telling the marginalized that no internet access is better than a restricted access. There is a strong disconnect between the internal framing of providing basic internet services for free, and the external critique of Facebook violating net neutrality principles.¹⁶

The imperative of connecting everyone is reflected in the promotion of the services in as many languages as possible, and also in a deliberate effort to integrate ‘empathy’ at technical level. One example of the latter is the way ‘empathy with users’ has been engineered, that is, making engineers work within the conditions of a developing context.

We re-created with the Ericsson network guys the network conditions that you have in rural India ... It's like, Hey, come and test your applications in these conditions! Nothing worked. It was a revelation: for most of humanity, the Internet is broken. I force a lot of the guys to use low-end phones now. You need to feel the pain.¹⁷

In the Facebook headquarters, 'empathy stands' are available around the building for visitors to try out the low-tech examples. Also, staff are encouraged to 'ship love' and to care about their users in everything they do. As such, love and empathy is promoted as a corporate value that should direct staff in their interaction with users. 'My goal for our culture over the next 10 years is to build a culture of loving the people that we serve, that is as strong if not stronger than our culture of hacking at Facebook' (Zuckerberg, 2014).

Turning to Google, the vision of making information available to everyone is based on an underlying belief that more information will empower individuals and thereby make the world a better place. 'We believe that society is better, the world is better off when people know about what's going on' (David Drummond, 8 July 2010).¹⁸ Since the initial idea of Google Search, the goal of making more information available has transferred into Google product such as Maps and Street View. Contrary to Google Search, these products expand into the offline world, and offer the physical surroundings in a symbolic dimension, making them searchable, accessible, and controllable in new ways, with implications for privacy.

At first Google maps was just a digital map. But then with street view, it was a ten foot vision of the world, and the notion of privacy had to change. I am now outside the fence of your home. I can be walking in pretty much any public space, and there would be a Google car. (#13, Google)

Like Facebook, Google has no explicit freedom of expression policy, however, the norm is emphasized at policy level.

We believe in free expression and the free flow of information. We try hard to make information available except for narrowly defined cases like spam, malware, legal requirements and preventing identity theft.¹⁹

The normative association with freedom of expression (and privacy) does not mean that human rights play a prominent role in the internal discourse. 'We don't speak of these issues as human rights' (#3, Google). Rather, the prevailing topics are related to technical problem solving, and to constantly improve users' interaction with the world of information. '80% of our time is spent considering what is meaningful for the user' (#4, Google). 'We use the toothbrush test: our products have to change billions of people's lives. And it has to be used at least twice a day' (#4, Google). Not surprisingly, the company has a strong belief in the power of algorithms. 'Algorithms are scalable, so when we make an improvement, it makes things better not just for one search results page, but for thousands or millions'.²⁰ The king of Google algorithms is the search algorithm, PageRank, which is spoken of as the 'opening move' that kick-started Google's position as the dominant search engine. 'PageRank should be thought of as the opening move in an on-going chess game' (Alma Whitten, 2010). 'Our algorithm is constantly developed. The latest version is kept in a safe-box in Mountain View' (#6, Google). In contrast to Facebook's focus on finding information through connected friends, Google Search is referred to as an 'objective locator' of the most-sought information, amongst all possible

sources, and thus essentially different from searches based on social connections. The search algorithm is stressed as non-commercial and objective, providing results based on a 'vote' from all sites. Closely linked to the algorithmic ability of providing objective information ranking, is an emphasis on the structural inability of online advertisers to influence search results, 'We have a crucial separation between those who deliver search results and those who deliver ads' (#6, Google). 'We never manipulate rankings to put our partners higher in our search results and no one can buy better PageRank'.²¹ The principles of online advertisement are generally that 'ads should be a positive part of the user experience' (#9, Google) and that users may adjust the ads shown to them via their *Ads Settings*.

Although essential different from Facebook's Free Basic initiative, Google has its own variation of making everyone on the planet a Google user, called the Loon project. 'Project Loon is a network of balloons traveling on the edge of space, designed to connect people in rural and remote areas, help fill coverage gaps, and bring people back online after disasters'.²² The project has not been subjected to the same public debate as Free Basics, and is generally less controversial since it does not provide a Google-defined internet access for underserved areas.

In terms of privacy, neither company views data collection as a privacy concern. Privacy is not enshrined through either specific limits or general minimization of data collection.²³ Rather, both companies frame privacy as user controlled, giving individuals the ability to foresee and control the sharing of personal information. Essentially, as long as the maxim 'users should not get surprises' is observed and users have measures of control, interviewees felt there is not a conflict between the right to privacy and their company's collection and sharing of data. User control is mainly framed in relation to other users (front-stage control), but there is increasing focus on user control in relation to advertisement and third party applications (back-stage control).

We've heard clearly that you want more control over how you're sharing with apps and this new Log In is all about giving you that control, but we've also heard that sometimes you can be surprised when one of your friends shares some of your data with an app, and the thing is, we don't ever want anyone to be surprised about how they're sharing on Facebook. I mean, that's not good for anyone. (Zuckerberg, 2014)

'To get privacy right, to provide a solution of choice – is the leadership mantra' (#8, Google). Facebook features such as *the Privacy Assistant*, *the Privacy Checkup*, and the *Data Takeout*, and Google features such as *Incognito mode*, *Data Takeout*, and the *Privacy Dashboard* are repeatedly mentioned as examples of how the idea of user control is implemented into the design of the platforms. Facebook's *ad preferences tool* and *privacy check-up tool* and Google's *Ads Settings* and *Dashboard* (Google) are examples of features for user control over third party applications and advertisement. The privacy features offered by the two companies are somewhat similar, just as both have developed tools to unify the privacy policy across products and services.

When interviewees were questioned about the public criticism of their company's privacy practices, for instance Google's sniffing of Wi-Fi-data or its controversial privacy policy from 2012 that enabled sharing of personal information across its services, responses stressed that there have been clear mistakes in the past, and that generally the company has been struggling to understand the European privacy concern. 'Many Americans don't

understand what privacy is for Europeans, they don't understand the link to identity' (#9, Google). 'The company is walking back a bit, acknowledging that there are different modes, different audiences. You could create more separation between the services, and we are moving in that direction' (#9, Google). At Facebook, the new Login feature is mentioned as a recent response to the privacy critique related to third party data sharing. 'Facebook login is such a marvellous innovation, so you don't have different logins. You don't have to trust the apps individually' (#8 Facebook). The Login is accompanied by a Facebook audit of apps that require more than what Facebook defines as 'basic user data' that is, the users' public profile, list of friends, and email address. However, there is also a sense that the critics lack understanding of how the online business model works. 'The business model is set up to collect data, yet the discourse is framed by the policy environment prior to the internet, before data collection was the key' (#4, Facebook). It is stressed that the privacy discourse essentially represents a negotiation between user convenience and user control, that is, opt-in versus opt-out. Several of the interviewees speak to the level of granularity in choices vis-a-vis usability. 'If you have settings that are very granular for "power users", normal users would be overwhelmed' (#8, Facebook).

Human rights governance

The final part of this analysis focuses on the companies' governance structures related to human rights. In relation to privacy, staff at both companies express that they have strict and formalized procedures for data protection compliance in relation to new products and services, including a privacy council which evaluated any new or revised products for potential data protection problems. It is stressed that the privacy discourse has matured over the past years and reached the top levels of management, not least due to the many European complaints. In contrast to Zuckerberg's infamous 2009 quote 'privacy is dead, get over it', he now iterates that 'privacy is one of the most fundamentally important issues on the internet'.²⁴ At Google, it is emphasized that whereas privacy used to be addressed as a subset to security, it is now addressed on its own merits with a whole organization around privacy. 'People feel passionate about it. Whenever there is a public discourse on something related to privacy, you can be certain it's going on internally as well' (#9, Google).

Concerning freedom of expression, there is a crucial distinction between requests from governments, and terms of service enforcement. Whereas external requests are governed as freedom of expression issues, terms of service enforcement is not. At Facebook, the 'constitution' for allowed/not allowed content is the *community standard* which stipulates the rules that users must adhere to. These rules are seen as closely linked to the overarching goal of connecting users. 'We want people to talk, to share. They are not going to do that if they feel that they are unsafe or that they're being attacked based on their race or religion' (Monica Bickert, 1 July 2014).²⁵ The community standards are at work across a number of national norms to ensure that a global user base can co-exist. Alleged violations are reported via user flagging and enforced by a combination of external and internal reviewers according to a set of guidelines that specify, for example, types of nudity allowed or not allowed.

The art is really in crafting those implementation guidelines in a way that allows reviewers to act consistently and quickly and that they can ensure that a reviewer that is sitting in Dublin will make the same decision as a reviewer who is sitting in Texas. (Monica Bickert, 1 July 2014)

The system is supplemented by ‘social resolution tools’, that is, tools to support users in resolving disputes among themselves. The system works via pre-defined messages that provide suggested language based on user demographics ‘to increase the likelihood that a) that person will send a message to me and b) that I’ll actually respond to the message’ (Monica Bickert, 1 July 2014).

Since enforcement of community standards is not framed as a freedom of expression issue, it is not subjected to the same type of legal review or transparency reporting as government requests. ‘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. We don’t take down political speech, its hate, pornography, etc.’ (#6, Facebook). In contrast, government requests to take down content is clearly seen as a human rights issue, and each company set up procedures to maximize freedom of expression compliance and push back against illegitimate requests.

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, 7 May 2013)²⁶

The distinction between government requests and terms of service enforcement is echoed at Google, with only the first one being framed as a freedom of expression issue.

We have to protect speech even if it is offensive or controversial ... 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, 1 July 2014; see note 25)

As for terms of service enforcement, this is based on user flagging and internal response teams who review the reported content. ‘Given the scale of information uploaded every day, it would not be feasible for us to have review prior to upload. We depend on user flags. Also, the reviewers are trained and have special instructions’ (#7, Google).

The focus on government requests is also reflected in the transparency reporting that Google initiated amongst internet companies in 2010. ‘Any time that we take content down it is reported on the report, updated every six months and you can see the number of requests we get from every country and you can see the reason we took it down’ (Nicole Alston, 1 July 2014).²⁷ The framing echoes that of the GNI, which focus only on the axis between companies and governments, rather than *all business processes* that might have an impact on human rights, as recommended in the United Nations Guiding Principles. When questioned about whether the transparency reports could include terms of service enforcement, the response from staff was generally negative. One of the interviewees explained that nobody has paid attention to this issue until now, but it would be necessary to address it in future. ‘Pressure is raising. But it will be a lot of work. You have to keep data in a consistent way, and the volume is huge’ (#10, Google).

Conclusion

The analysis pointed to a disconnect between the internal discourse on freedom of expression and privacy at Google and Facebook, and external concerns related to these issues. Internally, both companies see themselves as strongly committed to – and actively promoting – human rights. The framing, however, is limited to external threats caused by

governments, and is blind to areas where the companies' own practices may have a negative impact on their users' rights and freedoms. Consequently, removal of content based on a government request is defined as a freedom of expression issue, whereas removal of content based on internally defined criteria is not. The companies' enforcement of self-defined boundaries for content, ranging from illegal to distasteful and anything in between, are largely invisible, and guarded from any kind of public scrutiny. As for privacy, there is a corporate sense of paying great attention to privacy and to push back against government requests for user data with due diligence standards. Likewise, an extensive system is in place to detect and react to privacy problems whenever a new product or revision is introduced.

The enormous data extradition and analysis that both companies excel in, however, is not framed as a privacy problem. Privacy is seen to be protected through user control, not through limits on data collection. The idea of personal data as the economic asset of the internet economy is taken for granted. Given this assumption, there is no recognition among the companies that their business model may, at a more fundamental level, preclude individual control. As such, both companies praise the internet's emancipatory potential and their role in facilitating it worldwide, while not acknowledging that the infrastructure and services they control are key to people's ability (or inability) to exercise human rights. The way that Facebook sets boundaries for communication may – in many countries of the world – have a greater impact on its user's ability to exercise public debate than any government action. Likewise, the amount of personal data that both companies collect from users across their services creates and sustains a power imbalance that fundamentally threatens individuals' right to control data and decisions about themselves.

The strong belief in the liberating power of technology echoes the United States online freedom agenda,²⁸ which largely focuses on threats to the free and open internet from repressive governments and pays less attention to the fact that rights such as freedom of expression, freedom of information, freedom of association, and so forth are exercised within private platforms – and the boundaries and modalities for these rights and freedoms thus set by companies. Also, there is limited attention to the privacy implications of an online business model based on commodification of personal information, which implies maximizing rather than minimizing data collection. When the infrastructure used to exercise both public and private life are controlled by companies, the modalities that govern these interactions are beyond individual and democratic control and largely invisible. Moreover, the fact that social interactions are part of a business model reinforces the imbalance between these companies and the individual. Whereas users are provided with some control over their privacy settings, this control is exercised on the backdrop of big data collection, and primarily concern how they wish to *share data* (e.g., in relation to other users, or in relation to ad preferences), without any means of limiting *the data collection itself*.

Second, the ways these issues are framed also have policy implications. Facebook and Google speak of users, products, services, and markets, situating their discussions firmly within a market place metaphor. This framing iterates the free market, and the power of user choice. In contrast, and as argued initially, the academic discourse increasingly addresses these platforms as part of a public infrastructure and public sphere. Essentially, it makes a difference whether Facebook and Google are framed as an important part of the public sphere and public debate, with attached obligations, or whether they are merely

seen as pieces of software. Do they provide a social infrastructure, the governance of which has a direct impact on its users ability to exercise rights and freedoms, or are they merely one amongst many search engines that users may choose to use? The competing framings are important in order to understand the conflicting expectations of, and the disconnect between, external and internal discourse. The concerns related to the commodified public (and private) space do not resonate within the companies because the necessity of their online business model is taken for granted, and because they see themselves as supporting human rights via products that enhance their users ability to exercise freedoms. In sum, there is limited reflection on the power that these internet giants exercise over public participation in the online domain, and the responsibility that follows in terms of systematically assessing all business practices for potential negative impact on their users' rights and freedoms.

Notes

1. The declaration was published in 1996 by Electronic Frontier Foundation co-founder John Perry Barlow, available at: <https://www.eff.org/cyberspace-independence>.
2. Habermas' ideal model of the public sphere has met strong criticism for being too rationalistic and for excluding women and private matters of public concern. It is often overlooked that Habermas later work address the public sphere as a highly complex network branching into a multitude of arenas (Habermas, 1996).
3. In contrast to this overall conclusion, many empirical examples speak to the way communication technology have empowered actors and groups at local level. See Mackinnon (2012).
4. See Article 12 and 17 of International Covenant on Civil and Political Rights. The two rights are also enshrined in a number of regional conventions such as the European Convention on Human Right and the American Convention on Human Rights. Within EU countries, the right to privacy and data protection is protected as part of the EU Charter on Fundamental Rights, and the General Data Protection Regulation.
5. The ruling mandates Google to de-index search results in specific cases. See http://ec.europa.eu/justice/data-protection/files/factsheets/factsheet_data_protection_en.pdf.
6. Zuckerberg quoted in *Time* (Grossman) 2014, available at <http://time.com/facebook-world-plan/>.
7. Zuckerberg quoted in *Time* (Grossman) 2014, available at <http://time.com/facebook-world-plan/>.
8. Page quoted in *Zeit online*, 2015, available at: <http://www.zeit.de/wirtschaft/unternehmen/2015-05/larry-page-google-inventor/seite-4>.
9. For the assessment of Google see: <https://globalnetworkinitiative.org/sites/default/files/GNI%20Assessments%20Public%20Report.pdf>. The assessment of Facebook is not public as of June 2016.
10. <https://rankingdigitalrights.org/>.
11. <http://search.fb.com>.
12. Facebook, 'Facebook Q2 2014 earnings call' (2014). *Zuckerberg Transcripts*. Paper 152.
13. Zuckerberg, Mark, 'Q&A with Mark Zuckerberg' (2014). *Zuckerberg Transcripts*. Paper 157.
14. The initiative has been criticized for violating net neutrality and for Facebook's role in determining what websites users of the service may access.
15. Zuckerberg quoted in *Bloomberg Business*, 19 February 2015.
16. See for example, Susan Crawford *Less than Zero*, 7 January at: <https://backchannel.com/less-than-zero-199bcb05a868#.6y9avwesk>.
17. Oliván quoted in *Time* (Grossman) 2014, available at <http://time.com/facebook-world-plan/>.
18. Freedom of expression: How Google sees the world, available at: https://www.youtube.com/watch?v=4IKm6YQ_7wc.
19. <https://www.google.com/insidesearch/howsearchworks/policies.html>.

20. <https://www.google.com/insidesearch/howsearchworks/policies.html>.
21. <https://www.google.com/about/company/philosophy/> (no. 6).
22. <https://www.google.com/loon/>.
23. These are established data protection principles and part of the EU's General Data Protection Regulation.
24. Zuckerberg quoted in *Bloomberg Business*, 19 February 2015.
25. Panel on the Future of Free Speech at the Aspen Ideas Festival, available at: <https://www.youtube.com/watch?v=7LH-dt72RTM>.
26. Panel at *Re:publica* 2013, available at: <https://www.youtube.com/watch?v=1gSTwaYVERo>.
27. <https://www.google.com/transparencyreport/>.
28. <http://www.state.gov/e/eb/cip/netfreedom/index.htm>.

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