

# **Law, Governance and Technology Series**

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Ben Wagner

# Global Free Expression - Governing the Boundaries of Internet Content

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# Preface

As I descended down the rabbit hole to write this PhD thesis that eventually became a book, I have struggled to find a narrative that could encompass the many issues involved. What started as an interest in the relationship between speech and power has evolved to encompass the absurd claims made on the ‘right to speech’ in everyday life and their powerful weight in political discourse. It continues to baffle me that so few social scientists have embarked on a deeper study of speech and speech norms, particularly the ‘critical’ ones who claim to be analysing discourse. While I am by no means the first person to work this out,<sup>1</sup> I’m surprised that there has been so little practical research on the boundaries of possible human expression. All that Internet technology does is to provide these borders of what can be said online as easily accessible precoded lists. The boundaries themselves have always existed.

While writing, I have also frequently encountered the boundaries of the English language. As a native bilingual English/German speaker, it was easy to use ‘die Grenzen der Sagbarkeit’ (‘the borders of what can be said’) instead, which to my mind describes most accurately what this book is about. However, I realise that this transition will not be so easy for most readers, and I will strive to convey a compelling English narrative, even when I feel that the appropriate words do not exist.

Writing this book has also been a struggle to keep all of the various interested communities ‘happy’ and to do justice to the narratives and arguments of my interview subjects. From social scientists to activists of all shapes and sizes to government people and corporate lobbyists, all have argued that their own frame is the most reasonable. I have found myself torn between what has at times felt like political correctness and an innate desire to fundamentally disagree, to both keep my own ethical convictions and yet remain a sufficiently impartial actor for academic research. And yet, I too have self-censored and hopefully with good reason. While it seems at times laborious to continually write about child sexual abuse material (CSAM), there are powerful ethical arguments that make this term infinitely preferable to any of the other terms or their abbreviations.

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<sup>1</sup> See, for example, Polanyi, M. (1962). *Personal knowledge: Towards a post-critical philosophy*.

Moreover, I come to this project with personal bias, having coordinated the Dynamic Coalition on Freedom of Expression and Freedom of the Media at the Internet Governance Forum from 2009 to 2012. When I started this project in 2010, I initially hoped to be able to ‘write away’ any concerns of bias by being extremely critical of both sides of the debate. There is much to criticise about both ‘free speech warriors’ and their adversaries on ‘the other side.’<sup>2</sup> I have since come to realise that my critique is far more fundamental than a simple matter of sides and rather goes to the heart of many of the debates about ordering information in modern societies, the process of globalisation and the functioning of liberal democracy.

Those are large claims and I hope that the following narrative is sufficiently compelling to support them. While I am very grateful to have been pushed in this direction by my brilliant and inimitable supervisor, Sven Steinmo, some lingering doubt about the breadth of my own claims remains. If the reader finds these claims imperfect, incoherent or simply disagreeable, they are encouraged to disagree, and disagree loudly. Rather, this book is an attempt to stimulate a long overdue debate in the social sciences and beyond on what can and cannot be said within societies and what effects these boundaries of sayable speech have on those societies. In pursuing this endeavour, I will be forever grateful for the support of my mum – Eva Wagner – who read and improved every single chapter of both theses and book to ensure that ‘normal people can read it too.’ It would be absurd to write a book about things that cannot be said and then make the content so complex that it could only be understood by a small community of experts and scholars.

Censorship! Free Speech! Human Rights! All of these are claims to power and reference a specific framework of norms. There is nothing ‘inherent’ about concepts of ‘free speech’ in human nature, in human societies or in public institutions, whether democratic or otherwise. However, the concept of freedom of speech is one of the oldest and perhaps one of the most important elements of liberal political thought. It is also one of the few remaining ‘battle cries’ of liberal democracies across the world, still capable of mobilising the masses and of unifying both left- and right-wing political parties in support. While many other core values of democracy have eroded in recent decades and while citizens have often lost interest in a narrative of ‘output democracy’, speech and free speech norms still possess a unifying power, which is beyond most other liberal political values.

Yet, the global connectivity of the Internet has made this debate a global one. In response to the challenge to their own liberal and democratic values, liberal democracies have typically adopted two responses: shout Censorship! and Free Speech! even louder than they were already doing before, and/or attempt to compromise on democratic values to reach agreement with less democratic states. What is forgotten in the process is why free speech was actually considered valuable in societies in the first place or why it was at times considered one of the highest political achievements, even in times of war. There is an argument, both for and against free speech, which goes beyond just shouting loudly. Freedom of speech is useful within

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<sup>2</sup>This phrase describing the ‘the other side’ on ‘free expression’ was used in personal communication by a high police official working for a large law enforcement agency.

societies, but it also an extremely powerful tool to shape societies. Before liberal democracies start claiming that the rest of the world live in the moral equivalent of the ‘Middle Ages’, they should remember that they themselves were not prepared to trust their own citizens with mass-scale private broadcasting until the early 1950s – or even much later in many countries in the world.

Despite this, I strongly believe that freedom of speech does have considerable societal value and, precisely for this reason, its boundaries are so important. The Internet has contributed to de-bordering of the boundaries of speech on a global scale, to an extent that has challenged even the most liberal of democracies. When these boundaries become increasingly contested and new lines of appropriate communication are drawn, as many citizens as possible should be part of this debate. This is because what cannot be said is increasingly unlikely to be thought and what is said and broadcast widely comes to shape a commonly shared reality. What is allowed to be part of this reality is a question that all human beings have a stake – and an interest – in.

Frankfurt, Germany

Ben Wagner





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# List of Abbreviations and Acronyms

AOL	America Online, Internet Service Provider (ISP)
AUPs	Acceptable Use Policies (of commercial services)
CDA	Communications Decency Act (1996, USA)
CEOP	Child Exploitation and Online Protection Centre (UK)
COPPA	‘Children’s Online Privacy Protection’ Act (2000, U.S.)
CRAs	Content Regulatory Agents (definition: III.2 (b))
DPI	Deep Packet Inspection
DNS	Domain Name Service
eco	German Internet Industry Association
FCC	Federal Communications Commission (USA)
FSM	Voluntary self-regulation of German media providers (‘Freiwillige Selbstkontrolle Medienanbieter’)
ICANN	Internet Corporation for Assigned Names and Numbers
IDFP	Image Detection and Filtering Process, created by AOL
IGF	Internet Governance Forum
INHOPE	International Association of Internet Hotlines
ISP	Internet Service Provider, provide access to the Internet
ITU	International Telecommunications Union
IWF	Internet Watch Foundation (UK)
JS.Net	Jugendschutz.Net, German CRA created by the Länder
LMK	Landeszentrale für Medien und Kommunikation
NCMEC	National Center for Missing and Exploited Children (USA)
OFCOM	Office of Communications, regulatory authority (UK)
OSP	Online Service Providers like Facebook or Google
SIC	Safer Internet Centre, EU Safer Internet Programme
SNS	Social Networking Sites
ToS	Terms of Service (of commercial services)
WCIT	World Conference on International Telecommunications (2012, Dubai)
WEF	World Economic Forum
WSIS	World Summit on Information Society (2005, Tunis)



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