

TYPES OF SOCIAL MEDIA TOOLS: GAPS IN LEGAL REGULATION

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Abstract

In the article, the types of social media tools and shortcomings in legal regulation are widely analyzed based on the diversity of opinions in the legal literature and international practice. Like the Internet, there is no generally accepted definition of social media. In general, positions commenting on social media can be classified into four groups: technical approach, social approach, legal approach and mixed approach. In the end, it is concluded that differentiating the types of social media tools is important in terms of impact on human rights and freedoms. Because depending on the purpose of these tools and means, shared content and scope of use, it is possible to determine both the role in the realization of specific rights and freedoms, as well as which rights and freedoms they pose a threat or risk to.

Key words: social media, rights and freedoms, social networks, media tools, legal approach, technical approach, social approach, mixed approach.

1.1. Concept of social media and legal approach to it

Social media, which is a combination of the word "social" and the word "media" of French origin, is considered a medium of social communication.

Social media means easy communication, continuous participation, free communication, being online, no time and space limitations, the ability to address many communities at the same time, and the ability to perform many activities (1).

Usenet, also known as the User Network, was the first foray into social media, founded in 1979 by Tom Truscott and Jim Ellis of Duke University as a discussion platform that allowed users to post social messages. Also in 1989, an open diary application called Open Diary was developed by Bruce and Susan Alberson (2) that brings together people who keep diaries.

The main objectives of social media are broadly listed in the Digital-2023-Global-Overview-Report - We Are Social (3):

keep in touch with friends and family	to spend leisure time	read the news
search for content (e.g. articles, videos).	to become familiar with what is written about oneself	to be interested in the type of occupation and the products of purchase and sale
product search	watch live broadcasts	share and discuss ideas with others
make new relationships	view content from your favorite brand	work-related networking or research
watch sports	Search for like-oriented communities and interest groups	share a post about your life
follow celebrities and events	fear of missing out - FOMO	supporting good actions and events

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Like the Internet, there is no generally accepted definition of social media. In general, we can classify the positions commenting on social media into four groups: technical approach, social approach, legal approach and mixed approach. All researchers who interpret social media in a technical direction offer almost the same interpretation, evaluating it as a group of Internet-based programs which is built on the ideological and technological institutions of Web 2.0 technology and allow user-centered creation and change (4). In other words, from technical aspect social media can be defined as all virtual media and tools that include web services where written, visual and audio content from users is shared as a product of Web 2.0 technology (5).

As a result of the development of new communication technologies, the traditional media consisting of communication tools such as newspapers, television, magazines, radio and telephone have begun to give way to social media. Because social media platforms make it easier for individuals to access information, a person who wants to buy a product can not only get information about that product, but also read comments shared by users of that product on social media. Most importantly, everyone has the opportunity to share, comment and discuss their thoughts and content they create on social media.

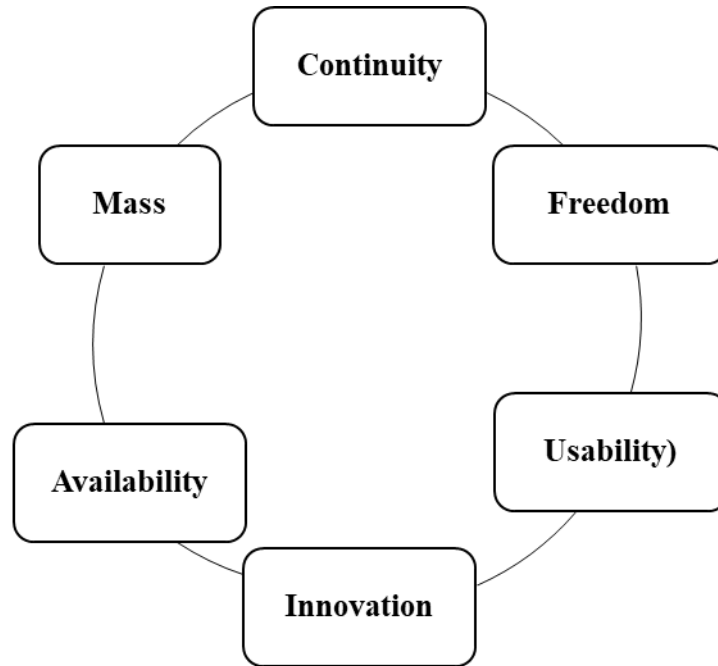
Interaction on social media platforms is faster and easier than traditional media, providing an interactive environment. Since its inception, the main purpose of social media has been to improve communication between people. As we know, traditional media has one-way communication. And in social media, since such communication is mutual, social media offers wider opportunities than traditional media. Here, communication means sharing any post, commenting on someone else's and one's own posts, transmitting information of various contents to others and such communication can be in forms of video conversation, voice conversation, direct message, private message, etc., depending on the used social media platform. Another feature of social media is that the element of reciprocity does not necessarily involve only two people. In addition to personal dialogue, users can also communicate collectively by creating groups with other users. It is these qualities that have determined the formation of social-oriented comments on social media. From this aspect, social media is a virtual environment in which written, audio and/or visual contents created, shared and accessible by users from all walks of life are transmitted to other users using internet tools. In short, social media is a social and virtual environment that is used to share, co-create, modify and discuss (6) and provides conditions for people to communicate (7).

In addition, there is a mixed approach to social media, in which the proponents of this approach present both technical and social elements in a unity and evaluate social media as web sites built on Web 2.0 technologies that ensure the creation of deeper and closer social interaction, the formation of collective opinion and the achievement of collaborative projects (8).

The interesting thing is that none of the mentioned approaches reflected the advantages of social media. For example, one of the most important features is that the services offered here, especially unlimited communication, are mostly free of charge. In fact, since many social media platforms like Facebook, Instagram, X and Tiktok are free to join, it is easy and affordable to take advantage of the sharing opportunities these platforms provide. That is why social media is characterized by the activity of users, which also affects the realization of rights and freedoms. For example, social media platforms, which are a comfortable space for freedom of information, opinion and

speech, also enable active participation of individuals in the life of society. There are many experiences that influence political decisions with such activity. Historical facts such as the Arab Spring (9), disinformation about the US elections (10), Chiapas-95 (11) can be cited as examples.

Thus, there are a number of characteristics that distinguish social media from traditional media, which can be considered as advantages of social media:



- **Availability.** Since publication in traditional media platforms is carried out by private companies or government agencies, certain funds are required for printing the paper form. However, social media is considered more affordable as such costs are not required for using social media platforms.

- **Ease of use.** Content production in traditional media requires specific skills and training. Anyone can create and share content in any form on social media platforms.

- **Mass.** Mass includes two aspects: mutual communication and the formation of a certain group (society). Users share their thoughts or experiences on social media by creating an agenda and creating a topic related to a particular topic or person. In other words, individuals easily create and share a community by communicating about topics and events they are interested in. By sharing the content produced by the person with other users, they allow them to comment, like, and at the same time, he can express his opinion about the content he wants, write a comment or reshare it. Interactions between individuals on social media can occur simultaneously or at different times.

- **Sustainability.** In traditional media platforms, content cannot be changed once it is created. For example, a newspaper or magazine cannot be changed after it is printed and published. And social media content can be re-edited.

- **Freedom.** Compared to traditional media, there is more freedom and liberty in social media. Some authors describe this feature as openness: Using social media and accessing content is very open and easy. Social media encourages individuals to give feedback, share ideas and information, comment and vote without barriers. It is possible to encounter obstacles only in cases permitted by law (12).

• Innovation (newness). The time lag in traditional media communication is longer than social media, and it has an immediate impact. The impact of social media on traditional media has begun to reduce this time gap. Time is fast on social media. Thus, the interaction is instantaneous. Also, the agenda on social media is fast. The flow is constantly changing and users are quick to keep up with the agenda and are open to change. Updates and current information are rapidly disseminated and shared with users (13).

The mentioned points have shaped the legal approach to social media. This approach can be analyzed in two directions:

- Legal understanding of social media;
- Interpreting social media in terms of human rights law.

When we look at the information law literature regarding the legal concept of social media, we notice that the given concepts actually contain mixed elements. A few examples are presented in the table below:

Different concepts given to social media	Specific features
Social media are Internet-based platforms that allow interaction between individuals or content to be broadcast to a wider environment and are more interactive than traditional broadcast media (14).	It is closer to a social approach, but also contains technical elements.
A social media platform is a platform provided by a third party that enables sharing, communication, connection and collaboration between individuals and organizations (15).	In addition to containing social and partly technical elements, it also presents a legal approach (a governance issue).
Social media means interactive web technologies used to access, post, and interact with text, images, video, and audio for the purpose of informing, sharing, promoting, collaborating, or networking, including commenting on content posted by third parties (16).	As a broader interpretation, it includes technical and social elements as well as social media tools.
Social media, unlike traditional media that delivers content but does not allow readers, viewers, or listeners to participate in the creation or development of content, refers to a type of online media that facilitates communication (17).	Considers social media as a variety of online media.
Social media is any mobile phone or internet-based tools and applications used to share and disseminate information (18).	It prefers a purely technical approach.

As it can be seen, the concepts given to social media in modern literature do not allow to fully define its legal content. In general, there are two distinct problems with

the conceptualization of social media. First, the speed of technology development makes it difficult to define the exact boundaries of social media. Second, social media services facilitate different forms of communication as other technologies allow. The question of which of these forms of communication should be included in social media is one of the urgent problems of the agenda. So, if social media facilitates communication between people, should tools such as telephone and e-mail also be considered social media? - It is possible to answer these questions by giving legal understanding to social media. If we look at the legislation of Azerbaijan, the first article of the Law on Media, covering the concepts, gave a legal interpretation to the online media. The main characteristic features are:

First, the Law rightfully excludes radio and television broadcasting, print media from online media.

Second, online media includes content posted on a website. Unfortunately, the Law does not provide an understanding of the website. The concept of a website is not given in the current legislative norms in the field of information. But there is a contradictory point here. From the analysis of many articles of the Law on Media, it seems that the website means Internet information resources (Articles 29.6, 30.5, 30.7, 41.6 and others). According to the norms of the Internet information resource in the Law on information, informatization and information protection, we can note that these resources are designed for the dissemination of information and do not carry the task of ensuring mutual communication. If so, to what extent is it correct to equate the website with an internet information resource? - In fact, in any case, the form of manifestation of the Internet information resource is websites. However, not every website can be considered as an Internet information resource.

Furthermore, if we limit online media to media entities (as the Law on Media requires), can social media platforms be considered online media? - One of the important requirements established in the Law is that the online media subject has a domain name. In accordance with Article 13-1 of the Law on Information, informatization and information protection, it must have a top-level domain name with a low country code. Considering that social media platforms have international domain names, then considering these platforms as online media does not correspond to the goals mentioned in the Law.

Thirdly, the Law on Media does not mean the creation of mutual communication and connection when it comes to online media.

Considering the above, we can conclude that the concepts of online media and social media do not have the same content and meaning. Especially since the range of subjects is different, although social media platforms are related to the online environment, they do not fully fall under the scope of online media. Therefore, there is a need to determine the legal concept of social media platforms in the legislative order. For this purpose, US legislation can be used as a more successful regulation than the experience of foreign countries. So, in the US, the term social media platform means a website or internet environment that includes:

a) allows a person to become a registered user, create an account or create a profile in order to allow the creation, sharing and viewing of content;

b) allows one or more users to create content that can be viewed by other users of the media;

c) serves primarily as a means for users to interact with content created by other users of the media (19).

Apparently, one of the main characteristics of social media is participation as a registered user, which is not characteristic of online media.

1.2. Types of social media tools: current challenges

The channels through which social media must exist are called social media tools or means. Let's look at the more common types of social media tools.

Social networks are social media environments where billions of people create personal profiles and use them for many purposes. Users can communicate with friends, neighbors and users on the other side of the world, share their knowledge and experience, shortly, the content they create. Social networks are not only intended for mutual communication, but are considered as a source of spread of many news related to everyday life. In addition, such networks also create conditions for real friendships. Friendships established in the virtual environment move to real environments by meeting and getting to know each other in real life. The first social network was called SixDegrees.

Thus, social friendship networks are virtual platforms where users communicate with their friends, find old friends and make new friends. Social networks allow you to create a public or semi-public profile within a site with defined boundaries, connect to other users' lists, and view their contact lists. Social networks are used not only for socializing and having fun, but also for people to communicate with each other, learn new information, and find work.

The most popular of social networks is Facebook, a social networking service where users create their own profiles, add other users as friends and communicate. Founded in 2004 by Mark Zuckerberg at Harvard University to enable students to communicate with each other, get to know each other and share information, Facebook is one of the most used social networks today and has more than a billion users worldwide (20).

LinkedIn, a professional social networking platform that aims to enable people in the business world to communicate, also aims to empower its users to connect with each other and enable them to share professionally.

Blogs, which are considered to be the first examples of social media, are websites where individuals write continuous and regular daily posts and comments. More specifically, blogs are modern diaries where users share their feelings, thoughts and experiences without the need for professionalism. The name blog is a combination of the English words web and blog.

The main features of blogs include that they are constantly updated, that users can easily add comments, as well as share content such as photos, videos and text. Blogs are run by a single person who is a freelancer and is called a blogger. The posts they share are called posts. RSS (Really Simple Syndication) for blogs was first introduced in 1999 as a system for easy tracking of content added to blogs and podcasts. Thanks to the RSS system, users receive information about newly added or changed content by subscribing, saving time and providing easy access to the content they are interested in.

Examples of blogs include Tumblr, WordPress, and Blogger. The main reasons why blogs dominate among social media platforms are:

- Dynamic content with regularly updated ideas and conversations

- Free or cheap production
- Not requiring a special program for installation
- Not requiring special computer knowledge
- Ability to update and distribute content easily
- Providing easy interaction
- Use of RSS to ensure readers have immediate access to posts
- Ability to easily comment (opinion) for everyone
- The possibility of creating a dialogue between the reader and the blogger.

Initially, blogs, which were called personal diaries, later became more widely used, and corporate blogs were also opened. Companies and institutions prefer to create blogs where they share information about developments, products and services related to the sector. Therefore, blogs in the modern world are classified as personal, political, corporate (business) and media blogs.

Wikis. The word wiki is of Hawaiian origin and means fast. Wikis take their name from this word. Wikis are social networking sites where users can share photos, videos, create collaborative content, permanently delete some content, and update content. It is also an environment where data can be collected and presented to users. Users play an active role in the process of collecting and sharing information. Therefore, a reader can also be a writer.

With these rich features, wikis are used for a wide range of purposes, from various learning environments to documentation systems. Many companies operating in various industries provide online documentation and support services to their customers, engineers can publish the first description of any product on a Wiki, other users can make various changes to the content of this product and add supporting information (21). Wikipedia, the most popular wiki, has built a virtual encyclopedia system using social media collaboration.

Microblogs. It is the networks where users can share their status or events from anywhere in the world in the shortest and fastest way. In other words, microblogs respond to the function of instant messaging. Their content is shorter and more concise than blogs. So here people can easily learn by sharing their interests. In addition, posts made can be seen by anyone who views or follows the profile. Sharing is not just about expressing feelings and thoughts. Covering large areas such as agenda reporting, sharing of useful information, reporting on social or political events, sharing of research, these networks provide multiple information flows. There are two main differences between microblogs and blogs: One is that they are shorter, allowing for faster communication by reducing thinking time, and the other is the frequency of updates. While blogs are updated every few days, microblogs can be updated several times in a day. Although microblogs are faster, easier, and more accessible than blogs, the writing restrictions here prevent the sharing of long ideas.

The most popular microblogs are Twitter and Tumblr.

Twitter is used for many purposes such as news, communication, advertising, entertainment, both personally and corporately, and has become an effective mass communication tool in recent years. There are many historical facts that prove the influence of this microblog on social and legal events. For example, we can mention the Yellow Vest uprising in France in 2018. The Yellow Vest protests started with a petition posted online by a social media user named Priscilla Ludosky. Protests were organized by calls shared on social networks and covered the entire country (22).

In fact, although such socialization has positive effects in social and legal directions on the one hand, in many cases it causes negative consequences from the point of view of human rights. Thus, due to the fact that Twitter users talk about what is happening in their lives and the lives of other people and share a series of stories, information about people's personal lives gets into the hands of third parties. This may later become a subject of dispute in terms of the right to privacy. For example, in the incident that happened in Kırıkkale in Turkey in 2019, a mother was killed by her husband in front of her 10-year-old daughter. This mother's cry "I don't want to die" became a topic in the country in a very short time and became Trending Topics on social media platforms like Twitter (23). Although such coverage of the incident led to many campaigns and awareness raising against violence against women, since the video images taken during the incident were shared without censorship on social media platforms, it may have a negative impact on the psychology and future life of a 10-year-old little girl and constitute a violation of her right to privacy.

A forum is a discussion about a topic of interest to society, in which listeners from different groups speak in turn under the instructions of each other and within the framework of the rules of speech. In forums, Internet users generally do not reveal their identity, but they can start discussion threads and comment on topics they want. Businesses and companies can monitor user comments and what is being said about them through forums. Social media forums are managed by an administrator, these administrators cannot participate in the discussion and cannot control the discussion, this feature is their main difference from blogs. While blogs have clear owners, forums have members.

Social bookmarks. These are platforms where users bookmark and save pages and content they like so they can use them again later. In addition, saved pages and contents can be shared with other users. Saved pages and contents can be rated and commented on by users.

Media sharing platforms. Media sharing sites, also referred to as photo, audio, and video sharing sites, are social media platforms that allow users to create, upload, share, and comment on multimedia content. The main difference between these platforms and social networking sites is that there is no friendship element in sharing content. Only certain types of content such as text, photos, videos and slides are uploaded and shared here. Users are not required to create a profile page, general information such as the date they joined and the date the shared data was shared, media content is enough. Formed in 2005 by Chad Hurley, Steve Chen and Jawed Karim because television recordings could not be re-watched, YouTube is the world's largest video sharing site. Founded in 2010 by Kevin Systrom and Mike Krieger as a photo and video sharing site, Instagram is also popular among media sharing platforms today.

Podcasting is the broadcasting of pre-recorded digital media products, sounds and images (radio programs, videos, etc.) that can be watched and downloaded on computers, tablets, MP3 players and smartphones via notification over the Internet. Files uploaded in this way are called podcasts (24). Users can access a range of podcasts as a paid or free subscriber, listen to audio files on their favorite blogs anytime, anywhere, and stream from any internet-connected device. In addition to using podcasts for entertainment purposes, they can also be accessed for educational and business purposes. Generally, there is no charge to subscribe to podcasts. If the podcast is not desired, the user can unsubscribe at any time. Since all their actions are

anonymous, users can act as they wish. Content can be watched and listened to anytime, anywhere. With these features, podcasting differs from traditional media platforms.

In addition to the positive aspects of social media tools, there are also negative aspects. We can include problems such as the violation of various rights and freedoms, ethical problems (for example, sharing or discussing unethical contents, writing unethical comments and reviews, the presence of dense advertising content, etc.), the use of fake identity profiles.

The right to privacy should be mentioned among the most violated rights. So, companies like Google can collect users' personal data and searches, and share user experiences and features with companies. Passwords of e-mail and social media accounts entered by users to use social media are decrypted by spy programs, and there are many cases of intrusion into people's privacy.

In the social media environment, people hide themselves and express themselves more easily. But this can lead to many problems. Relying on their anonymity, people can easily say things on social media that they would not be able to say to the other person in normal life. This situation has led to the formation of cyberbullying and hate speech. So, some users use the social media space to promote hate speech against a segment of the society, to direct the society against each other, to discriminate. Given the potential of social media to influence large masses, the necessary legal arrangements should be made to make such racism and hate speech committed on social media a critical form of crime (25).

Examples of cyberbullying include malicious behavior such as hacking a personal website, sending threatening or intimidating e-mail or text messages, and sharing other users' information, documents, and images without permission.

1.3. Summary

Differentiating the types of social media tools is important in terms of impact on human rights and freedoms. Because, depending on the purpose of these tools and means, shared content and scope of use, it is possible to determine both the role in the realization of specific rights and freedoms, as well as which rights and freedoms they pose a threat or risk to.

Social media has formed serious problems like reduction of the sense of confidentiality, moral erosion, increasing polarization, communication difficulties due to the reduction of face-to-face meetings, loneliness, inability to live in the moment, physical and psychological health problems, internet addiction, reduced work productivity, personal data and other information secrets falling into the hands of malicious persons and distribution of them, unethical academic, social and professional harms such as sharing content without indicating the source, sharing fake content, etc.. In general, content on social media is not subject to any controls or standards, making it vulnerable to attacks by malicious users. Therefore, it is important to specify the requirements for those contents precisely and concretely so that the number of violations does not increase.

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