
Privacy protection and its possibility on social media

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Abstract

Social media is an integral part of our daily life. The global digitalization policy, as well as the coronavirus pandemic, have particularly accelerated the process of social media penetration into our personal space. With the ever-increasing role of social media in our lives, privacy is becoming a tool for both social media representatives and third parties who are able to acquire information from various social media platforms. Privacy is new within social media and needs more detailed study and regulation. Given the important role of privacy for each social media user, this paper analyzes the concept of privacy, social media and privacy on social media, privacy policy on social media under international and European law, privacy protection and its possibility on social media.

Introduction

In recent years, with the entry into the era of digitalization, the role of the need to regulate privacy on social media has increased. This outcome is clearly influenced by the sudden increase in the role of online platforms, both aimed at social and commercial activities. This paper analyzes privacy

on social media from different legal aspects by considering the theoretical and practical approach, and influential court decisions, moreover, it discusses the possibility and effectiveness of privacy on social media, while considering its positive and negative challenges.

Concept of privacy, social media, and privacy on social media.

Before starting to analyze privacy on social media, privacy and social media should be discussed separately. Social media platforms are aimed at building the connection between people and help them to connect based on shared interests, political views, or activities.[1] Regardless of gender, race, nationality, language, origin, property and official status, place of residence, attitude to religion, beliefs, and other circumstances, people can freely use social media.

It should be noted that it is rather difficult to define the concept of privacy, as it can vary depending on different foundations of society and regulation methods in different countries. As the most generally accepted definition, it can be noted that privacy is the right to make certain fundamental decisions concerning deeply personal matters free from government coercion, intimidation, or regulation.[2] What is more, privacy was characterized by the Supreme Court of the United States as the individual's "right to be left alone".[3] Thus, privacy is individual in nature and depends on the specific perception of the individual, which may differ in connection with religion, generally accepted norms and customs in a particular society, etc.

Privacy on social media can be defined as the level of protection of any personal information that a social media user owns in that social media platform.[4]

[1] Abdullah Abdulabbas Nahi Al-Rabeeah, Faisal Saeed, 'Data Privacy Model for Social Media Platforms', Institute of Electrical and Electronics Engineers (2017): 1
[2] privacy. (n.d.) West's Encyclopedia of American Law, edition 2. (2008). Retrieved December 21, 2021 from <https://legal-dictionary.thefreedictionary.com/privacy>

[3] S. Warren, Brandeis L.D, 'The Right to Privacy', Harvard Law Review 4 (1890): 193

[4] Dae-Hee Kim, Hettche, M. and Clayton, M. J. 'The Privacy Paradox and Calculus Among Millennials: An Empirical Study of Privacy Attitude-Behavior Congruence', AMA Marketing & Public Policy Academic Conference Proceedings, (2015). Retrieved December 23, 2021 from <https://search.ebscohost.com/login.aspx?direct=true&db=bth&AN=119960827&site=eds-live&scope=site>

Privacy policy on social media under international and European law.

Such personal information may be covered by the laws of the country where the social media user is active or residing. This controversy is again related to the recent rise in the role of privacy on social media.

Statistics show that about 50% of those surveyed keep their social media accounts in private mode, whereas the remaining half choose to use them publicly.[5] This survey also showed that 71% of those surveyed had detailed the privacy policy of the social media platform and took steps to set specific privacy settings.[6] This statistical information shows how people are aware of the need to consider privacy policies and applying appropriate measures. According to the proposed theories, privacy on social media can be divided into two types. These are issues caused by the data holders and caused by others. An example of the issues caused by data holder may be posting a personal photo publicly on a social network without reading the privacy policy and harming one's own privacy by arranging media of oneself with insufficient safety or deliberation.[7] Expanding danger to privacy protection comes from other media sources posted by social media users. The amount of information that has been posted is massive and cannot be overseen or sorted physically. Users cannot even see and understand how far the scope of one's private information is spread.[8] This theory partially covers the subjects of privacy on social media, which makes it possible further to analyze the possibility of privacy on social media.

Having considered privacy from a theoretical and partly empirical point of view, it is important to briefly consider its regulation in various legal systems, especially in the framework of international and European law.

A right to privacy has been recognised by many countries and nowadays the number of such countries is rising. The right to privacy is protected under Article 12 of the Universal Declaration of Human Rights, which provides that "no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation".[9] This provision does not play a significant role from a practical point of view, that is, it is not covered by a strict enforcement and protection mechanism.

The right to privacy is also established in Article 8 of the European Convention on Human Rights, which states, "Everyone has the right to respect for his private and family life, his home and his correspondence".[10] The European Court of Human Rights (ECHR) said that "the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is certainly higher than that posed by the press." [11] The ECHR also states that "notwithstanding therefore the significant development of the Internet and social media in recent years, there is no evidence of a sufficiently serious shift in the respective influences of the new and of the broadcast media (...) to undermine the need for special measures for the latter." [12]

[5] Peter Suci, 'There Isn't Enough Privacy On Social Media And That Is A Real Problem', Forbes. (2020). Retrieved December 23, 2021 from <https://www.forbes.com/sites/petersuci/2020/06/26/there-isnt-enough-privacy-on-social-media-and-that-is-a-real-problem/?sh=37eed1b344f1>

[6] Ibid

[7] Rainie, L., Smith, A., Schlozman, K. L., Brady, H., & Verba, S., 'Social media and political engagement', Pew Internet & American Life Project, (2012): 19

[8] Ibid, 19

[9] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 12

[10] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 8

[11] Editorial Board of Pravoye Delo and Shtekel v. Ukraine, no. 33014/05, 5 May 2011, para 63

[12] Animal Defenders International v. the United Kingdom [GC], no. 48876/08, ECHR 2013, para 119

This differing position of the ECHR leads to the conclusion that, within the framework of the protection of human rights, privacy on social media cannot be clearly established as it relies on the interpretation of the ECHR depending on the legal framework of the Member States.

The General Data Protection Regulation (GDPR) is considered as the most effective and clearly compiled legal act which regulates privacy and security law in the European Union (EU).[13] However, the practice of the European Court of Justice (ECJ) has significantly influenced the regulation of the right to privacy within the EU, providing for non-EU countries the need to regulate the law in accordance with the provisions of the GDPR even outside the EU.

In Schrems I case, the complaint was pointed at restricting Facebook from further exchanging information from Ireland to the United States, given the alleged involvement of Facebook USA in the PRISM mass surveillance program.[14] The ECJ ruled that companies moving personal user data from the EU to other jurisdictions will have to provide the same protections given inside the Union.[15] In Schrems II's judgment, the CJEU declared the Privacy Shield Decision of the European Commission invalid on account of invasive US surveillance programmes, thereby making transfers of personal data on the basis of the Privacy Shield Decision illegal.[16] These decisions of the ECJ play an essential role in strengthening the protection of the right to privacy and have shown the importance of EU policy in the field of regulation and protection of this right.

Thus, the EU was able to create a strict and serious format for protecting the right to privacy, as well as its mechanism, which, over time, began to spread throughout the world.

Privacy protection and its possibility on social media.

Privacy protection can be ensured by various types of actions, such as identity theft, surveillance, unintentional fame, stalking, etc. With the development of online platforms and their increasing role in everyday life, it becomes difficult to identify new causes of privacy violations on social media.

To protect privacy on social media, rights within that platform and analyzing the privacy policy of the social media platform should be taken into account. In addition, it is important to determine whether the actions on social media are public or have access to persons restricted by the subject. However, many examples can be cited when it is quite difficult to preserve personal data, which casts doubt on even the effectiveness of the current legal regulation in this area. One such example is the possibility of acquiring personal data online by any third party about any person residing in Sweden and having a social security number. This website, called "hitta/se", is operated by the state and provides an opportunity for anyone to get information about one's residence, mobile number, and other personal information by writing the name and surname of that person.

Therefore, it is necessary to take into account both the practical and legal consequences of actions of data privacy holders in the framework of social media. In addition, it is important to adopt the practice of different countries, especially the EU Member States, in the field of privacy regulation and establish its common boundaries.

[13] GDPR, 'What is GDPR, the EU's new data protection law?', Retrieved December 24, 2021 from <https://gdpr.eu/what-is-gdpr/>

[14] Columbia University Global Freedom of Expression, 'Schrems v. Data Protection Commissioner'. (2021) Retrieved December 24, 2021 from <https://globalfreedomofexpression.columbia.edu/cases/schrems-v-data-protection-commissioner/>

[15] Case C-362/14 Maximilian Schrems v Data Protection Commissioner [2015] C:2015:650

[16] Case C-311/18 Data Protection Commissioner v Facebook Ireland Limited and Maximilian Schrems [2020] C:2020:559

Conclusion.

Privacy is still new in social media platforms since the growth happening of that sector which needs more attention and guidelines.[17]

The analyzed legal acts and practical issues give a basis to believe that privacy is still possible on social media, however, given certain mistakes in the regulatory area, it is important to strengthen control and establish the limits of the application of privacy on social media.

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3. Privacy. (n.d.) West's Encyclopedia of American Law, edition 2. (2008). Retrieved December 21, 2021 from <https://legal-dictionary.thefreedictionary.com/privacy>

[17] Al-Rabeeah, Saeed (n 1) p. 5