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Why Harmful Posts on Social Media should be regulated

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Abstract

Harmful content over the internet is going viral nowadays on most of the social media platforms, which has negative effects on both adults and children, especially, with the increasing usage of social media tools during the COVID-19 situation. Therefore, social media's harmful posts should be regulated. Through the recent legislative efforts, societies are still suffering from the influence of these posts. We observe that the people who share harmful posts often hide behind the First Amendment right and the Freedom of Expression of the American Constitution.

This paper focuses on suggesting possible regulations to strike down social media's harmful content regardless of the platforms it was posted on, to safeguard society from their negative effects. In addition, it highlights the attempts by Qatar's government to regulate social media crimes and aims to assess if these efforts are enough. Also, it will take a general look at the situation in the United States and how it is dealing with this issue.

Keywords: Law and social media; COVID-19 and social media; Regulating the harmful posts; Children Protection Act; Social media negative influences; Cybersecurity Law; Communication Decency Act of 1996; Social media

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لماذا يجب تقنين المنشورات السلبية في وسائل التواصل الاجتماعي؟

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ملخص

ينتشر المحتوى الضار على الإنترنت في الوقت الحاضر في معظم منصات التواصل الاجتماعي، مما كان له آثار سلبية سواء على البالغين أو الأطفال، تحديداً مع ارتفاع استخدام كافة أدوات التواصل الاجتماعي نظراً للظروف التي فرضها فيروس كوفيد-19 المستجد. لذلك، تعيّن تنظيمها بما يحدّ من أثرها خاصة على الأحداث وأقرانهم الأصغر سناً. ورغم الجهود التشريعية الأخيرة في دول عدة، لا تزال المجتمعات تعاني من الانتشار السريع لمقاطع الفيديو الضارة، في حين يتذرع الأشخاص الذين نقلوها أو شاركوها بحرية التعبير وحق التعديل الأول.

تركز هذه الورقة على اقتراح التنظيمات الممكنة لحذف المحتوى الضار من على وسائل التواصل الاجتماعي، وذلك للحفاظ على المجتمع ككل. وتسلط الضوء على جهود الحكومة القطرية في تنظيم جرائم وسائل التواصل الاجتماعي، وما إذا كانت هذه الجهود كافية أم لا. إضافة إلى ذلك. تلقي الورقة نظرة عامة على الوضع في الولايات المتحدة وكيفية تعاملها مع هذه القضية، كما تقدم بعض الاقتراحات لكل من دولة قطر والولايات المتحدة الأمريكية للحد من انتشار هذه المنشورات وحماية مصلحة المجتمع العامة.

الكلمات المفتاحية: وسائل التواصل الاجتماعي، كوفيد-19 المستجد ووسائل التواصل الاجتماعي، تقنين المنشورات الضارة، قانون حماية الطفل، قانون الجرائم الإلكترونية، قانون الأمن السيبراني، قانون آداب الاتصال لعام 1996، وسائل التواصل الاجتماعي

للاقتباس: أبو شريدة، مريم. "لماذا يجب تقنين المنشورات السلبية في وسائل التواصل الاجتماعي؟"، المجلة الدولية للقانون، المجلد العاشر، العدد المنتظم الثاني، 2021

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© 2021، أبو شريدة، الجهة المرخص لها: دار نشر جامعة قطر. تم نشر هذه المقالة البحثية وفقاً لشروط Creative Commons Attribution-NonCommercial 4.0 International (CC BY-NC 4.0). تسمح هذه الرخصة بالاستخدام غير التجاري، وينبغي نسبة العمل إلى صاحبه، مع بيان أي تعديلات عليه. كما تتيح حرية نسخ، وتوزيع، ونقل العمل بأي شكل من الأشكال، أو بأية وسيلة، ومزجه وتحويله والبناء عليه، طالما يُنسب العمل الأصلي إلى المؤلف.

Introduction

What do we see on social media lately? What are the most trending and most shared videos? A woman's video violently hitting and abusing her child¹, a man recorded and uploaded his crime on Facebook while he was killing Muslims at a religious centre. In that video, an elderly man approached him with a big smile and said "hello brother," when that criminal shot him down in cold blood. Even worse, during the most recent global pandemic, we saw people post videos of themselves licking some products in grocery stores and pharmacies or coughing at others trying to spread COVID-19 in what they call a "prank."² The danger of such acts is when some children watch these videos and try to do like what they saw thinking that this is fun while it ends up with some serious injuries or consequences. Also, majority of the users of TikTok, one of the most famous apps are teenagers and it is known for its "challenges and branks," for instance, the spilling of the iced water challenge. Once, two brothers saw a famous actor pour water on himself saying that this is boiling water but it was not and because they were still immature, they tried to take the challenge and ended up in the hospital with very serious second-degree burns³. A challenge on TikTok app also caused the death of a teenager when two of his friends were trying to carry and flip him over but he fell on his neck and died right away⁴. Such happenings did not only take place in the U.S., but also in Qatar.

Who should be held responsible for the lives lost and liable for such videos? Moreover, how can we protect children from watching these posts? These are some of the questions that need to be answered.

Social media has become a very crucial part of the day-to-day life. Even so, some children cannot eat their meals without watching the content of their liking on any of the social media platforms. Some children watch YouTube for instance while having their lunch until this becomes a daily routine. "Children and young persons (minors) have been amongst the most enthusiastic adopters of social media applications and the new technologies by which they can routinely be accessed."⁵ Thus, controlling violent content and keeping it out of children's hands is vital.

Some people find it fun and thrilling to watch violent videos, which makes them share it with their friends who would share the same with other friends. Then, this becomes a nonstop circulation process until the children watch it and suffer from its psychological impact. Another indisputable fact is that societies are constantly evolving and the tools of

1 *Snapchat video watched on Feb. 18, 2020.*

2 *NBC News watched on Mar. 29, 2020.*

3 *TikTok video watched on Snapchat on Apr. 21st, 2020.*

4 *TikTok video watched in 2016.*

5 *Majid Yar, A Failure to Regulate? The Demands and Dilemmas of Tackling Illegal Content and Behavior on Social Media, 1 Int'l. Journal of Cybersecurity Intelligence & Cybercrime 8 (2018).*

protecting these societies should develop too. Thus, there is a tremendous need to have a strong tool to regulate violent posts on social media, in particular those this paper will suggest later. "Legislative bodies are responsive to social changes; moreover, they have a definite role to set off, monitor and regulate the social changes."⁶

This paper will focus on suggesting possible regulations to strike down violent content on social media regardless of the platforms it was posted on, to safeguard the society. This paper will also be discussing the impact of harmful posts on social media. These kinds of videos are spread rapidly through different social media platforms and so does their bad influence on the entire society all over the world. The main concern is that these videos would affect children and teenagers who imitate what they see on social media. This fact can be proved by looking at the widespread "challenges videos" which took so many children's lives and negatively affected the others. The number of children died because of TikTok's challenges only has reached 101 deaths up to date.⁷

This paper will also highlight the attempts by Qatar's government to regulate social media crimes and it will assess if these efforts are enough. Also, it will take a general look at the situation in the United States and how the government there is dealing with this issue. Finally, the paper will address the obstacles that governments may face in dealing with this issue, and what could be the best suggestions to overcome these obstacles and strike down these violent posts; in addition to developing new laws to prevent the increase in this problem.

Background

To understand the dimensions of this topic, first, we need to understand what the definition of social media is. Social media can be defined as "web sites for social networking and microblogging through which users create online communities to share information, ideas, personal messages and other contents (as videos)."⁸ In addition to that, the usage of social media all over the world is incredibly increasing. According to "blogger Jeff Bullas (2012), the figures for the usage of Facebook communication only are amazing:

- 1 - One in every nine people has a Facebook account.
- 2 - People spend 700 billion minutes per month on Facebook.
- 3 - Each Facebook user spends on average 15 hours and 33 minutes a month on the site.
- 4 - 250 million people access Facebook through their mobile devices.
- 5 - 2.5 million websites have integrated with Facebook.
- 6 - 30 billion pieces of content are shared on Facebook every month.

6 Lawrence M. Friedman, *Legal Culture and Social Development*, 4 *L. & Soc. Rev.* 29-44 (1969), available at: www.jstor.org/stable/3052760 (accessed on Mar. 31, 2020).

7 *Death Tracker*. <https://tiktokdeath.com/stats/> (accessed on Oct. 19, 2021).

8 Drucker and Gumpert, *Regulating Social Media*, p. 2 (2013).

7 - 300,000 users translated Facebook into 70 languages."⁹

The figures for Facebook usage only are tremendous and the numbers for communications through other social media platforms definitely must be higher, taking into consideration that among these users there are many juveniles.

On December 31st of 2019, the population of Qatar was 2,881,053. While internet users in Qatar according to the Internet World Stats website were 2,942,000¹⁰. In other words, more than 99.6% of the population in Qatar are using the internet and that reflects the importance of regulating the use of social media platforms.

In Qatar, the government enacted Qatar Cybercrime prevention law No.14 of 2014 to prevent the prevalence of cybercrimes and to maintain national security, which will be discussed in detail in the analytical section of this paper. This law was a good start; however, society needs more tools to prevent cybercrimes and abusive violent posts.

While in the U.S., "The American Academy of Pediatrics had in an earlier policy statement said, "the vast majority of studies conclude that there is a cause-and-effect relationship between media violence and real-life violence." It called the link "undeniable and uncontestable." A representative of the same pediatrics group, in the year 2000, testified before the United States Senate Commerce Committee that there are now more than 3,500 studies examining the relationship between media and real-world violence and that "all but 18 have shown a positive correlation between media exposure and violent behavior" and, that epidemiological studies conclude "exposure to violent media was a factor in half of the 10,000 homicides committed in the United States (the year studied)." ² This study took place in 2003 and back then the usage of mobile phones by teenagers was not as nowadays. In addition, in 2003 there were no instant video apps like Snapchat and TikTok, which the children massively use today. Hence, the impact of violent videos must be higher.

Moreover, if we look at the Americas (North America, Central America, South America, and the Caribbean) based on the latest statistics, the total estimated population in 2020 was estimated to be 1,015,892,658, and internet users would likewise make up around 783,909,293 according to the Internet World Stats on July 31, 2020¹¹. Imagine these countries with this number of internet users compared to Qatar! What would be the influence of harmful posts? It would be severe for sure, which made the American Congress enter long negotiations to regulate these posts.

⁹ *Id.*

¹⁰ <https://www.internetworldstats.com/stats5.htm> (Accessed on Mar. 31, 2020).

¹¹ <https://internetworldstats.com/stats2.htm> (Accessed on Apr. 1, 2020).

I. The existing laws to regulate social media usage in Qatar

Before 2014, there were no laws to organize and minimize the misuse of technology in Qatar. Qatar's Penal Code under Articles 370 to 387 of Law No.11 of 2004, only regulates a limited number of cybercrimes or crimes committed through computers, such as hacking, credit card fraud, and disturbing others¹². Law No. 11 imposes several punishments of up to three years imprisonment, and 10,000 Qatari Riyal penalty, equivalent to around \$3000¹³.

In 2014, Qatar's legislative body enacted Law No. 14 of 2014, which is the Cybercrime prevention law.¹⁴ This law focuses on many crimes committed through tools of information and technology, such as computers or phones. Besides, the Cybercrime Prevention Law lists many unlawful acts, and for this paper only, the relevant articles will be mentioned, which are content crimes and some related crimes. The acts are:

- 1 - Anyone who, "unlawfully captures, intercepts, or intentionally spies on any traffic data or any data being transmitted through an information network or any information technology technique."¹⁵
- 2 - Anyone who is found, "setting up or runs a website for a terrorist group or organization, facilitates communication with leaders and members of such group or organization, promotes its thoughts, secures financing thereto or publishes information relating to manufacturing explosives or incendiary devices or any device that can be used in a terrorist act."¹⁶
- 3 - Anyone who is found, "producing child pornography or imports, sells, puts to sale, offers the use of, circulates, transfers, disseminates, publishes, makes available or transmits the same."¹⁷
- 4 - Any act which "violates social values or principles, publishes news, photos or videos or audio recordings related to the sanctity of people's private or family life, even if the same is true, or insults or slanders others."¹⁸
- 5 - The act of "using an information network or information technology technique to threaten or blackmail another person to have him/her do or refrain from doing a certain action."¹⁹
- 6 - Anyone who "forges an official or unofficial electronic document or knowingly uses

¹² See Qatar's Penal Law No. 11 of 2004, art. 370-387, available at <https://www.almeezan.qa/LawArticles.aspx?LawTree-SectionID=288&lawId=26&language=en> (accessed on Oct. 26, 2020).

¹³ See Qatar's Penalty Law No. 11 of 2004, art. 371-374, 377-380, 381.

¹⁴ See Qatar Law No. 14 of 2014, Prevention of Cybercrimes Law, available in unofficial English translation at Qatar Communications Regulatory Authority, <https://cra.gov.qa/en/document/cybercrime-prevention-law-no-14-of-2014> (accessed on Oct. 26, 2020).

¹⁵ Qatar Law No. 14 of 2014, art. 4.

¹⁶ Qatar Law No. 14 of 2014, art. 5.

¹⁷ Qatar Law No. 14 of 2014, art. 7.

¹⁸ Qatar Law No. 14 of 2014, art. 8.

¹⁹ Qatar Law No. 14 of 2014, art. 9.

the same."²⁰

- 7 - This law shall be imposed on "any person doing any of the following actions:
 - a. Uses an information network or information technology technique to impersonate a legal or natural person; or
 - b. Manages, through an information network or information technology technique, to seize, for himself or another person, any movable or document, or secures the signature of such document, by acting fraudulently, using a false name or impersonating someone."²¹

The maximum cap of the punishment under this law is ten years in prison and a fine not more than QR500,000 that is around \$140,000 or one of these two penalties.²²

This law works with a process. First, someone needs to report an abusive video and the account or the phone number of the person who published it to the Ministry of Interior, the Cybercrimes Department. Then the administration of Cybercrime Prevention is tracks the video. To get the sender information, they contact the National State Security to access his information and then provide it to the Public Prosecution to set in motion Law No. 14 or the related provisions of the penalty law.

II. The efforts to regulate social media usage by minors in the United States

In the United States "Courts, in condemning Congress's efforts to regulate minors' access to harmful internet speech, have focused almost exclusively on protecting the First Amendment rights of adults at the expense of the interests of minors."²³ People always confuse these two aspects- the First Amendment right of the social media users and the interest in protecting children and teenagers from these violent posts, which made it very hard to draw the line to regulate a fundamental right in the United States as the freedom of speech. Thus, what are the efforts to regulate social media in the United States?

"Over the past decade, Congress has undertaken three major efforts to regulate minors' access to harmful internet speech. The Communications Decency Act of 1996 ("CDA"), the Child Online Protection Act of 1998 ("COPA")', and the Children's Internet Protection Act of 2000 ("CIPA")."²⁴ This paper will illustrate these three Acts respectively.

The first effort by Congress to regulate the content on the internet was the Communications Decency Act of 1996, which protects service providers from civil liability for third-party content. It also sought to prohibit "indecent" and "patently offensive" speech

²⁰ Qatar Law No. 14 of 2014, art. 10.

²¹ Qatar Law No. 14 of 2014, art. 11.

²² Qatar Law No. 14 of 2014, art. 2, 3, 5, and 6.

²³ Dawn C. Nunziato, *Toward a Constitutional Regulation of Minors' Access to Harmful Internet Speech*, 79 *Chi.-Kent L. Rev.* 121 (2004).

²⁴ *Id.*

from reaching minors anywhere in cyberspace²⁵. Further, it is a part of the tremendous Telecommunication Act of 1996 which was signed by President Clinton on February 9, 1996²⁶. This Act was discussed "On June 28, 1996, shortly after the decision in *ACLU v. Reno*, the Supreme Court struck down portions of a Federal statute regulating indecent programming on certain cable channels, leading internet activists to believe that the First Amendment wars over regulation of internet indecency have been won, leaving only a final Supreme Court decision to put the final nail in government efforts to regulate internet content."²⁷ According to Jeff Koseff, Section 230 of the communication Decency Act of 1996 was founded to limit the liability of the providers of the websites²⁸. Moreover, "the CDA provided "safe harbor" defenses to prosecution under these provisions. For example, it was not an offense "solely for providing access" to a network and not involving the "creation of content" (223(e) (1)).

Also, importantly, a "safe harbor" defense was provided to any person who: "ha[d] taken, in good faith, reasonable, effective, and appropriate actions under the circumstances to restrict or prevent access by minors to [an otherwise prohibited] communication ... including any method which [was] feasible under available technology" (Section 223(e) (5) (A)), or "ha[d] restricted access to such communication by requiring the use of a verified credit card, debit account, adult access code, or adult personal identification number" (Section 223(e) (5)(B))."²⁹

There is an ongoing debate regarding the efficiency of CDA and of the most important cases that addressed this issue is *Zeran v. Am. Online, Inc* case. In *Zeran*, an unidentified person posted an online comment on American Online Inc. ("AOL") after the Oklahoma City bombing to sell t-shirts containing tasteless slogans regarding the bombings and listed *Zeran's* phone number as the way to order the t-shirts. *Zeran* had nothing to do with the posting but began to receive harassing phone calls. He notified AOL of the messages and the harm it was causing him, but they did not take down the comment. AOL replied their policy did not have a retraction of posts³⁰ and they did not investigate the issue. *Zeran* sued AOL for defamation. The district court granted AOL summary judgment. *Zeran* appealed and "argued that AOL unreasonably delayed in removing defamatory messages posted by an unidentified third party, refused to post retractions of those messages, and failed to screen for similar postings, thereafter,"³¹ "The Court held that Section 230 of Communications

²⁵ Timothy Zick, *Congress, the Internet, and the Intractable Pornography Problem: The Child Online Protection Act of 1998*, 32 *Creighton L. Rev.* 1147 (1999).

²⁶ 47 U.S.C. § 223(e)(5) (1998).

²⁷ *Id.*

²⁸ Koseff J, *The twenty-six words that created the Internet*, p. 2 (1978).

²⁹ 47 U.S.C. § 223(e)(5) (1998)

³⁰ *Zeran v. Am. Online, Inc.* - 129 F.3d 327 (4th Cir. 1997).

³¹ *Id.*

Decency Act of 1996 immunizes computer service providers like AOL from liability for information that originates with third parties. Furthermore, the Court opined that Congress clearly expressed its intent that § 230 applies to lawsuits, like Zeran's, instituted after the CDA's enactment."³² There are some elements to waive the liability of the service providers "to qualify for immunity under § 230; three elements must be met: (1) the defendant must be a provider or user of an "interactive computer service," (2) "the asserted claims must treat the defendant as a publisher or speaker of information," and (3) "the challenged communication must be information provided by another information content provider."³³

The internet service providers are not liable for the comments, pictures, and videos that their subscribers post, no matter how vile or damaging, with few exceptions."³⁴ "This section was established as a response to the New York, State Court judges' ruling against prodigy and the largest online service in 1995."³⁵ The founders of the Act were hoping to encourage online providers such as America Online to control pornography, violent posts, and other words or images that could harm children³⁶. In Miller, the prong requires:

"(A) the average person, applying contemporary community standards, would find, taking the material as a whole, is designed to appeal to, or is designed to pander to, the prurient interest; (B) depicts, describes, or represents, in a manner patently offensive concerning minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post-pubescent female breast; and (C) taken as a whole, lacks serious literary, artistic, political, or scientific value for minors."³⁷ The court also added in Miller that the definition of obscenity may differ depending on the geographical area where this definition is looked at.

However, "Congress's definitions of proscribed expression such as "obscene" were impermissibly vague and not as narrowly tailored as described in Miller and Ginsberg cases, (2) because these proscriptions burdened adults' right to access protected (for adults) expression, (3) because these proscriptions usurped parental authority to determine what expression their children could access, and (4) because less restrictive methods-such as the use of filtering software by parents of restricting minors' access to harmful internet speech existed, these provisions of the CDA were held unconstitutional,"³⁸ because it regulates the First Amendment right of adults as well as it did not adequately protect the rights of minors

³² *Id.*

³³ *Obado v. Magedson*. No. 14-3584. (2015) *Obado v. Magedson*, 2014 U.S. Dist. LEXIS 104575, 43 Media L. Rep. 1737, WL 3778261.

³⁴ *Kosseff J, the twenty-six words that created the Internet*, p. 2 (1978).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Dawn C. Nunziato, Toward a Constitutional Regulation of Minors' Access to Harmful Internet Speech*, 79 *Chi.-Kent L. Rev.* 121 (2004).

³⁸ *Id.*

to not have an access to harmful contents³⁹.

Second, in The Child Online Protection Act ("COPA") of 1998, this act was found to "restrict the access by minors to materials commercially distributed using World Wide Web that are harmful."⁴⁰ The Congress this time tried to pay more attention to the First Amendment and "carefully imported the three prongs of the Miller test into its regulation, while also incorporating an age-dependent standard for determining harmful material as sanctioned by the Supreme Court in Ginsberg."⁴¹ "Like the CDA, COPA was immediately dismissed by many as little more than election-year pandering to conservative voters."⁴² COPA also was held unconstitutional, "The district court, in reviewing COPA, emphasized the burdens that the statute imposed on speakers and publishers of sexually themed, protected-for-adults expression and found that these burdens were significant enough to create a substantial likelihood that the statute is unconstitutional."⁴³

Third, The Children's Internet Protection Act ("CIPA") "embodies Congress's latest effort to overcome the constitutional hurdles identified in earlier legislative attempts to regulate minors' access to harmful internet speech. Instead of outright criminalizing harmful internet expression as previously attempted in the CDA and COPA, CIPA operates by conditioning public schools' and libraries' eligibility to receive certain federal funds upon their commitment to using filtering software to block access to certain "harmful" internet materials."⁴⁴ CIPA encouraged different institutions such as elementary schools, secondary schools, and public libraries who are used to supervise younger people to filter the internet to protect them from getting access to any harmful posts.

It is very important to mention that all these efforts were challenged as unconstitutional efforts in a violation of the First Amendment. Courts grant more protection to adults' first amendment right over the right to keep minors away from harmful content and reasoned that it should be a parental role to control their children's access to the internet. It is very vital to discuss that, as child pornography is not a protected speech also the violent posts should not be protected because it influences the life of children negatively.

III. The challenges to regulate social media in Qatar and the United States

There are many challenges to regulating social media all over the world and many difficulties that can hinder the effectiveness of legislation. In the United States, as mentioned

³⁹ Nunziato, *supra* n. 38, at 125.

⁴⁰ Child Online Protection Act, 47 U.S.C.A. § 231 (West).

⁴¹ *Id.*

⁴² Timothy Zick, *Congress, the Internet, and the Intractable Pornography Problem: The Child Online Protection Act of 1998*, 32 Creighton L. Rev. 1147 (1999).

⁴³ Dawn C. Nunziato, *Toward a Constitutional Regulation of Minors' Access to Harmful Internet Speech*, 79 Chi.-Kent L. Rev. p. 134 (2004).

⁴⁴ *Id.* at 121.

earlier the biggest challenge for the legislators is the First Amendment or the freedom of speech. The First Amendment states, that "Congress shall make no law ... that limits the freedom of speech."⁴⁵ Hence, Congress is unable to regulate social media platforms for the users' content but this right is not absolute. In other words, "Certain categories of speech receive even less protection than commercial speech. For example, the Supreme Court has said that states may prohibit speech advocating violence if that "advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." Thus, certain types of threatening or violent speech posted on social media may not be entitled to First Amendment protection. However, perhaps because it can be difficult to determine whether speech is protected, the Court has sometimes held that criminal statutes targeting disfavored speech must include a mental state requirement. For example, in the *United States v. X-Citement Video*, the Court noted that, concerning a federal law prohibiting the distribution of child pornography, criminal liability turned on "the age of the performers"—as did First Amendment protection for the materials, given that "nonobscene, sexually explicit materials involving persons over the age of 17 are protected by the First Amendment." Accordingly, although the statute was unclear on this point, the Court held that the law applied only if a person distributing such materials knew that the performers were underage."⁴⁶ Some may not agree with the idea of protecting the sexual content of people above 17 and the reason is that the goal of regulating such posts is to protect the minors from getting access to it and being influenced negatively by what they saw. To get social media regulated the government must prove that it has a compelling interest and this law should be narrowly tailored to protect this interest without and interference with other peoples' rights.

"The Supreme Court said in *Reno v. ACLU* that when considering government regulation of "the internet" in general, factors that had previously justified greater regulation of other media did not apply. In that case, the Court held unconstitutionality of two provisions of the CDA that criminalized the transmission of certain "indecent" or "patently offensive" material to minors over the internet. The Court rejected the government's argument that the regulation was permissible because the internet is analogous to broadcast media, where the Court has permitted greater regulation of speech. The Court noted that unlike the broadcast industry, "the vast democratic fora of the internet" had not traditionally "been subject to the type of government supervision and regulation that has attended the broadcast industry," and said that "the internet is not as 'invasive' as radio or television." Accordingly, the Court stated that there was "no basis for qualifying the level of First Amendment scrutiny that should be applied to this medium"⁴⁷. Moreover, scholars argued that

⁴⁵ Brannon, Valeri C, *Free speech and the regulation of social media content*, p. 16, Mar. 27 (2019).

⁴⁶ *Id* at page 18.

⁴⁷ *Id* at page 20.

this opinion was held in 1997 and the social media sites were different from what we have today. Thus, the government will not be able to regulate modern social media⁴⁸. Also, "One scholar argued that search engines' publication activities meet at least one of the criteria necessary to qualify for First Amendment protection: these sites are publishing "sendable and receivable substantive message[s]"—or, in other words, they are communicating content."⁴⁹ "Another scholar countered the argument by saying that indexing search results are not equivalent to communicating protected ideas, arguing that to be entitled to First Amendment protections, content must be "adopted or selected by the speaker as its own."⁵⁰

In Qatar, the freedom of speech and freedom of publications are protected by the constitution. "Article 47 of the constitution, Freedom of expression of opinion and scientific research is guaranteed by the conditions and circumstances outlined in the law."⁵¹ Also, "Article 48 Freedom of Press, Printing, and Publication shall be guaranteed by law."⁵² In addition, Qatar is a signatory state to the International Covenant on Civil and Political Rights ("ICCPR") and in Article 19 the covenant illustrates, that "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any other media of his choice."⁵³ As a result, people may rely on this right to avoid being liable for expressing themselves on social media platforms.

This creates a big challenge to the legislator in Qatar who is seeking the protection of the society's interests as well as the mental and physical safety of its children. However, the legislature may create a balance between the freedom of expression and social media regulation to not interfere with any human rights. Also, there should be extensive research on how sufficient the proposed social media law will be and how to implement it in Qatar⁵⁴.

Moving to the second challenge, which is the right to privacy. In the United States, this right is protected under the due process, clauses of the Fifth Amendment as well as the Fourteenth Amendment. The 4th amendment confirmed "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."⁵⁵ When thinking to track the people who posted these

48 *Id.*

49 *Id at 2.*

50 *Id.*

51 <https://www.wipo.int/edocs/lexdocs/laws/en/qa/qa009en.pdf> (Accessed on Apr. 3, 2020).

52 *Id.*

53 <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (Accessed on Apr. 20, 2020).

54 Mairead Foody and others, *A review of cyberbullying legislation in Qatar: Consideration for policymakers and educators*, *International Journal of Law and Psychiatry*, issue 50, p. 47 (2017).

55 https://www.law.cornell.edu/constitution/fourth_amendment (Accessed on Apr. 3, 2020).

videos to apply the law upon them a search must be conducted which violates their right to privacy. Yet the government should protect the higher interest, which is the public interest of the society over the private interest of the individuals in a legitimate way. Meaning, the government should only search for the individual's private information when approved red-handed. According to "Scott McNealy of Sun Microsystems, who once famously declared: "You already have zero privacy. Get over it. Also, many countless books and articles have heralded the "end," "death" and "destruction" of privacy."⁵⁶

In Qatar, the right to privacy is also protected under Article 37 of the constitution which states, that "the sanctity of human privacy shall be inviolable, and therefore interference into the privacy of a person, family affairs, home of residence, correspondence, or any other act of interference that may demean or defame a person may not be allowed save as limited by the provisions of the law stipulated therein."⁵⁷ This right is also not absolute, and the State can search the individual's information when there is a legitimate reason to do so if the individual undertook suspicious activities.

Add to that, the challenge of anonymity. Most of the social media users are using different social media platforms for hiding behind nicknames. This would make it very hard to punish the people who violate social media regulation in both Qatar and the United States if there was any.

"Some regulators have begun to take more proactive steps such as imposing "real name" requirements. Among nations, the most visible efforts have come from South Korea, "stating that the South Korean National Assembly passed "An amendment to the Law on Internet Address Management requiring Korean websites with over 100,000 daily visitors to have their users register with their real names and social security numbers"⁵⁸ such as Google and Facebook. Also, "France opted for legislative control, while Germany developed a system of "regulated self-regulation," in which private actors self-regulate with limited state supervision. Both cases provide insights into the possibilities and limits of state intervention on the internet."⁵⁹ Thus far, those policies have been poorly implemented and inconsistently applied."⁶⁰ "They have also drawn heavy criticism, for reasons ranging from wrongful enforcement and loss of privacy to physical endangerment of activists and dissidents. South Korea's internet law was criticized because it did not provide security for the users' identity when a hacker stole their identities thus registering by the real name jeopardizing the real identification of the users. "The court said the requirement amounts

56 Saul Levmore and Martha C. Nussbaum, *The offensive Internet: speech, privacy, and reputation*, Harvard University Press, pp. 15-30 (2010).

57 <https://www.wipo.int/edocs/lexdocs/laws/en/qa/qa009en.pdf> (Accessed on Apr. 3, 2020).

58 Bryan H. Choi, *the Anonymous Internet*, 72 Md. L. Rev. p. 501 (2013).

59 Breindl Y and Kuellmer B, *Internet Content Regulation in France and Germany: Regulatory Paths, Actor Constellations, and Policies*, pp. 369-388 (2013).

60 Bryan H. Choi, *the Anonymous Internet*, 72 Md. L. Rev. p. 534 (2013).

to prior censorship. It also said the law violated citizens' privacy, was technically difficult to enforce and was ineffective at stopping online criticism."⁶¹ As a result, several entities have subsequently rescinded their policies while the remaining ones have not yet been very vigilant in their enforcement."⁶² On the other hand, some may argue, "anonymity helps support the fundamental rights of privacy and freedom of expression. These rights are enshrined in constitutions, recognized in the Universal Declaration of Human Rights (UDHR, 1948) and the International Covenant on Civil and Political Rights (ICCPR, 1967, 1976)."⁶³ It is very important to know that this right should be used decently which means that people should not hide behind nicknames to abuse others because anonymity was found to help people to express their political opinions to enhance the political life in society and for other legitimate usage. However, the problem is that "anonymizing technologies allow dissenting voices to challenge existing norms and hierarchies"⁶⁴ which will create unstable grounds for these regulations because they want to protect this right dramatically far.

The last challenge that social media laws would face is the hardship in tracking all the violent posts and remove it before children can get access to it. This is because of the massive use of social media platforms and the huge number of its users. "Facebook alone has 2.234 billion users globally, followed by YouTube at 1.9 billion. Twitter has 335 million users. By way of comparison, the world's most populous country, China, has 1.4 billion people, and the United States is home to around 327 million. Thus, the two most visited and most used social media sites, Facebook and YouTube, are individually home to more people than the largest nation in the world."⁶⁵ Posting videos can be different between all social media platforms but all of these platforms made videos available in seconds only, which will make it unpractical to take down these videos before children had access to it. Hence, it will be very hard but not impossible to track these videos once posted and strike them down.

IV. Conclusion

Through the recent legislative efforts, societies are still suffering from the rapid spread of harmful videos, while the people who take them, and those who share them are hiding behind the First Amendment right and the freedom of expression.

"The rapid development and popular adoption of social networking platforms has, with other internet-related practices, brought to the foreground a range of crime problems that

⁶¹ Ramstad E. *South Korea Court Knocks down Online Real-Name Rule*, *The Wall Street Journal* (2012). <https://www.wsj.com/articles/SB10000872396390444082904577606794167615620>

⁶² *Id.*

⁶³ Bodle R, *The ethics of online anonymity or Zuckerberg VS. "Moot"*, pp. 22-35 (2013). <https://www.ohchr.org/Documents/Issues/Opinion/Communications/BodleRobert.pdf>

⁶⁴ *Id.*

⁶⁵ Paul Domer, *De Facto State Action: Social Media Networks and the First Amendment*, 95 *Notre Dame L. Rev.* 893 (2019).

have an increasingly negative impact."⁶⁶ This impact would create bigger problems for the society if this is ignored, and to avoid this dilemma, governments should take serious steps to minimize the escalation.

V. Recommendations

According to Professor Yar, "Growing evidence shows that providers' unwillingness and/or inability to effectively stem the flow of illegal and harmful content has created a crisis for the existing self-regulatory model."⁶⁷ Along these lines, what suggestions could be made in this case?

First, Congress in the United States should consider amending the § 230 of the CDA to make the service providers liable for what their users are posting. In addition, the legislator can expand the circle of social media providers' liability to stop them from making benefits from something that has a huge negative impact on society. Social media providers such as YouTube maximize their profits by the increasing number of viewers. "Those two billion views, a 50 percent increase over last year, according to the company, are just 14 percent of the videos viewed each week on the Google-owned site."⁶⁸

Moreover, some people may argue that social media providers already have their own controlling content policies such as Instagram and YouTube. These policies prevent users from downloading harmful content such as child pornography and terrorist incitement videos. For instance: Snapchat in their official website has under the terms of services a term called "the content of others" to limit their liability of the users content and this policy states, that "Much of the content on our Services is produced by users, publishers, and other third parties. Whether that content is posted publicly or sent privately, the content is the sole responsibility of the person or organization that submitted it. Although Snap Inc. reserves the right to review or remove all content that appears on the Services, we do not necessarily review all of it. So, we cannot—and do not—take responsibility for any content that others provide through the Services. Through these Terms and our Community Guidelines, we make clear that we do not want the Services put to bad uses. But because we do not review all content, we cannot guarantee that content on the Services, or that our users' use of our Services, will always conform to our Terms or Guidelines."⁶⁹ However, under the privacy policy, Snapchat Inc. admitted that they collect information of the users when they are using their services, for example, Snapchat can know that the user watched a particular story or sent snaps which indicates that they have access to the users'

⁶⁶ *Id.*

⁶⁷ Majid Yar, *A Failure to Regulate? The Demands and Dilemmas of Tackling Illegal Content and Behavior on Social Media*, 1 Int'l. Journal of Cybersecurity Intelligence & Cybercrime 8 (2018).

⁶⁸ Miller C, *YouTube Ads turn videos into revenue*, <http://www.nytimes.com/2010/09/03/technology/03youtube.html> (2010).

⁶⁹ <https://www.snap.com/en-US/terms/> (accessed on Apr. 23, 2020).

information and how they are using this social media platforms because they also admitted that they can delete users' accounts if they did not comply with these policies.⁷⁰

Second, Qatar should consider amending the present Cybersecurity Law to make social media users responsible for posting harmful posts that children may imitate. Also, Qatar can enact a self-standing law to regulate social media misuse because for some these posts are not crimes in itself but it may result in crimes. Finally, Qatar should at least consider enacting a law for children protection who are the most influenced by harmful content on social media. This is because the efforts to regulate some kind of social media usage are good but not sufficient. Moreover, these violent videos have short and long-term harmful influence and disturb children's mentality and the whole society. As discussed above the existent laws are not enough because in Qatar there are some videos that still spread and children have some access to them, which means that these regulations did not help in protecting the minors in the society. It is important to make sure that the legislator creates a balance between the freedom of expression and public order and safety. Also, it can be suggested that the telecommunication service providers such as Ooredoo in Qatar and T-Mobile in the United States can be involved in protecting society. These service providers already have access to the individual's information and data and they can limit access to some videos especially for children and teenagers. For example: in Qatar Ooredoo which is a telecommunication service provider company limits the access to some websites by sending you a link saying (oops you are not allowed to have access to this website) for reasons as pornography, which means they already know what people are viewing and watching on their phones. In Qatar, more than half of the children have sim cards and cell phones and it would be easier for the legislator to enact laws or decrees regulating some duties towards the society for these service providers, which they can do and by this way there will not be any due burden in tracking these posts.

Also, the Telecommunication and Transportation Ministry is responsible for cybersecurity in Qatar. Thus, they can create a filter to stop these kinds of videos and posts from being shared. Some groups of researchers had already created an approach to filter Twitter and Facebook posts by tracking some hashtags and automatically delete them.

Qatar can also adjust the existing cybercrime prevention law and the penalty law's articles that are related to cybercrimes by making it stricter and expand the liability circle to make sure it is comprehensive and well regulated. As a professor of criminal law at Qatar University advised, that these available regulations can be amended by adding more articles to hold the distributor of the harmful videos liable but the punishment should be suitable to the act itself not too strict and not too lenient. Add to that, these two laws did not prove its efficiency in preventing the distribution of harmful videos in the whole society

⁷⁰ *Id.*

so there is something that should be changed. In addition, the lack of social media-related cases in Qatar will make it a challenge to spot the weaknesses of these laws and how would the court interpret it. For the reasons stated above, the legislator should create stricter articles to preserve the public order in society.

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