
January 8, 2021: Twitter suspends @realDonaldTrump permanently

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ABSTRACT

Damages, traces, risks — Algorithm = logic + control — Territories of exception and emergence — Mapping digital sovereignty — Power and responsibility — Meantime, the EU Digital Services Act — @ReSet:

people like morbidity — Where rights are not ... and: eating the dogs.

KEYWORDS

Rhizome, @realDonaldTrump, Twitter, Social media, online intermediary liability, safe harbours, 230 CDA, Digital Services Act, Niklas Luhmann

Once upon a time, in a realm online known as Twitter, @realDonaldTrump made data whirlwinds. Huge, colourful, convoluted data flows spiralled through the realm for them. And their pronouns were they/them because the data whirlwind maker were not I, you, he, she, it, nor we. They achieved massive engagement regardless of their choice of characters, but usually deployed “MAGA” or “Make America Great Again.” America was an offline realm also known as US, or the USA. Apparently, the offline realm of America had been great once, and not-great later. And @realDonaldTrump wanted America’s past greatness back. In the online realm that was Twitter @realDonaldTrump were a data whirlwind maker, a data vortifex, and Donald Trump was a physical representation for data, a physicality. Offline realms were, still are, about physicalities. To achieve MAGA, @realDonaldTrump needed data tornadoes and physicalities, in the numbers of tens of millions, voting for Donald Trump’s physicality at the offline platform of the American Presidential Election 2020. @realDonaldTrump and Donald Trump may have a similar name, coincident to a point, but exclusive sourcing should not be assumed in either case. And they kept swirling and steering data until, after a number of iterations and cycles, the realm of Twitter switched off the formidable @realDonaldTrump permanently ... for the time being ... for whatever time means.

It was morning in DC, on *January 8, 2021*, when @realDonaldTrump tweeted:

“The 75,000,000 great American Patriots who voted for me, AMERICA FIRST, and MAKE AMERICA GREAT AGAIN, will have a GIANT VOICE long into the future. They will not be disrespected or treated unfairly in any way, shape or form!!!”¹

And:

“To all of those who have asked, I will not be going to the Inauguration on January 20th.”²

Afterward, Twitter suspended @realDonaldTrump. The decision came with an announcement on the corporate website that concluded:

“our (Twitter’s) determination is that the two Tweets above are likely to inspire others to replicate the violent acts that took place on January 6, 2021, and that there are multiple indicators that they are being received and understood as encouragement to do so.”³

Violent acts beyond Twitter on 01/06. Meantime, inside Twitter, @realDonaldTrump had, allegedly, violated Twitter’s rules repeatedly; and for that the account had been warned and suspended for 12 hours. Twitter’s announcement also brought to light an indeterminate past, going back years, in which @realDonaldTrump, a world leader’s account, had been above the rules, but “cannot” use Twitter to incite violence. Twitter also overviewed the context around @realDonaldTrump’s tweets after 01/06: ongoing tensions in the US; an uptick in the global conversation; a violent assault allegedly planned to happen on January 17th; and, the inauguration of the 46th President of the US on January 20th. The announcement on 01/08 also linked to rules. The first link, “public interest framework,” led to a company blog entry titled “World Leaders on Twitter: principles

¹ <https://www.presidency.ucsb.edu/documents/tweets-january-8-2021>

² See note 1.

³ https://blog.x.com/en_us/topics/company/2020/suspension

& approach.” The second link, “Glorification of violence policy,” led to Twitter’s rules and policies cover page, and included links to more than 60 different texts.⁴ However, Twitter’s announcement did not mention the 12-hour suspension of @realDonaldTrump on 01/06; and did not clarify how, how much, or how often @realDonaldTrump had been “above the rules.” Twitter’s announcement on 01/08 was mostly about how undisclosed others were likely to react to @realDonaldTrump’s tweets based on “indicators” that were not sustained by evidence. Twitter’s recital includes facts, allegations, and assumptions but omits, consciously, any judgment about the will of the one (or the many) behind the account, be it to incite violence or otherwise. Will and intent are abstract to physicality, and transcend data. Twitter acted as a self-regulating and enforcing body within the factual limits of its own platform, subject to its own rules, which were abundant but not entirely mandatory for world leaders’ accounts. From the election in November 2020 until 01/08, Twitter tagged, warned about, or removed many tweets from @realDonaldTrump.⁵ When this active monitoring started @realDonaldTrump begun tweeting on Section 230 as a gift to private companies such as Twitter.⁶ After 01/08, @POTUS tweeted:

“Twitter may be a private company, but without the government’s gift of Section 230 they would not exist for long.”⁷

To the media platform that was Twitter, @realDonaldTrump was a big account, and Donald Trump a loudspeaker who became a risk and a foreseeable liability. The certainty that if (when) future harms occur, Twitter will hold no liability means absence of risk and lack of contingency. Certainty on the uncertain. Twitter was immune by law under Section 230 of Title 47 of the US Code, “protection for private blocking and screening of offensive material,” that had been approved with the Communications Decency Act of 1996 (CDA) and, in particular, subsections §230(c)(1) and §230(c)(2)(a) whereby:

⁴ <https://web.archive.org/web/20210108023529/https://help.twitter.com/en/rules-and-policies>

⁵ <https://www.politico.com/news/magazine/2021/01/09/trump-twitter-ban-suspended-analysis-456817>

⁶ <https://x.com/realDonaldTrump/status/1333965375193624578>

⁷ <https://www.theverge.com/2021/1/8/22221683/trump-tried-to-evade-his-ban-with-potus-but-those-tweets-were-instantly-deleted>

“§230(c)(1): No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider (...)

§230(c)(2)(a): No provider or user of an interactive computer service shall be held liable on account of (...) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.”

The foregoing portions of Section 230, Title 47, US Code, or just *Section 230* or §230, mean online services or platforms containing User Generated Content (UGC), as long as they act in good faith (a good Samaritan) on objectionable materials, are not liable for harm or damages caused by their content (UGC), or any content they may tag, restrict, remove, or suspend. The rationale for this immunity is the service/platform neither publishes nor speaks the UGC: but the user does. The service can remain not-liable while restricting constitutionally protected expressions, as long as they are objectionable. Later, in *Barnes*,⁸ the Ninth Circuit established a three-part test for immunity under §230: (1) is the defendant a provider or user of an interactive computer service?; (2) does the underlying cause of action seek to treat the defendant as a publisher or speaker of the allegedly violating content?; and (3) was the content provided by another information content provider? If the answer to each of these questions is “yes” then the defendant is legally immune under §230, a single “no” and §230 offers no protection. The test offers no help to set apart the unconstitutional from the objectionable, as constitutionality is beyond §230’s scope, so it is of no concern to online services. Additionally, the test was devised for claimants and defendants opposing each other before a court of justice. Its application towards companies, individuals, or automated agents who interact and integrate as providers of content, services, and intermediate services in the online market is not clean-cut.

Breathe in. Breathe out. By breathing, air becomes oxygen inside your body and carbon dioxide outside your body. Physiological processes can

⁸ *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096 (9th Cir. 2009).

be described in terms of input and output. Input and output work online as well. @realDonaldTrump *inspired data, expired more data*. To Shannon, data means information in a byte, values (such as “0” or “1”) that measurably reduce uncertainty and change the entropy of information.⁹ Law defines data in different ways. The US Code defines data as recorded information, regardless of form or the media on which the data is recorded;¹⁰ The EU Data Act defines “data” as any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audio-visual recording.¹¹ To US laws, data means record; and to the EU’s, data means representation. Also to Shannon, data aggregates to form messages, and reproducing messages selected at one point through a conduit at another point means communication. Source, channel, and destination. No *meaning*. While collaborating with Shannon, Weaver introduced a broader definition of communication: “all of the procedures by which one mind may affect another.”¹² To Weaver, communication requires the solution to three problems: technical, semantic, and effectiveness. That happens when symbols: (i) are accurately transmitted; (ii) properly convey meaning; and, (iii) achieve the desired change. To Weaver, communication is mind-changing meaning transmitted technically through symbols. Later, Luhmann said information means *difference in communication*. And communication requires the combination of three selections: information, utterance, (mis)understanding in order to make difference in society. In Luhmann’s words:

“communication just like life and consciousness (...) is an emergent reality, a state of affairs *sui generis*. It arises through a synthesis of three different selections, namely, selection of information, selection of the utterance of this information, and a selective understanding or misunderstanding of this utterance and its information.”¹³

⁹ Shannon & Weaver (1964) p. 48–53.

¹⁰ 44 U.S. Code Chapter 35: Subchapter I, Federal Information Policy: §3502 Definitions: (16) Data.

¹¹ Article 2.1 of the Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data.

¹² Shannon & Weaver (1964) p. 3.

¹³ Luhmann (1992) p. 252.

Online communication is sustained through data processes defined by algorithms, which are sets of instructions between two different states: the initial situation (input or problem), and the final situation (output or solution). In the 1970s, the early days of the online world, algorithms were “merely a series of mathematical calculations or mental steps” that do not constitute a patentable process to the *US Supreme Court (SCOTUS)*¹⁴ and, later in the same decade, meaning and purpose: “Algorithm = Logic + Control” as formulated by Kowalski.¹⁵ Could control mean property? World politics broadly believed, as stated into laws, that no one can claim property on what is (or should be) universal, and math is (mostly) universal, in the words of SCOTUS:

“It is admitted, that a principle is not patentable. A principle, in the abstract, is a fundamental truth; an original cause; a motive; these cannot be patented, as no one can claim in either of them an exclusive right. Nor can an exclusive right exist to a new power, should one be discovered in addition to those already known. Through the agency of machinery a new steam power may be said to have been generated. But no one can appropriate this power exclusively to himself, under the patent laws. The same may be said of electricity, and of any other power in nature, which is alike open to all, and may be applied to useful purpose by the use of machinery.”¹⁶

That was about steam power, when it was news to industry. Almost a century and a half later, when the power of algorithms was new, the Federal Circuit said an algorithm can be patentable if or when it produces useful, concrete, and tangible results.¹⁷ The mathematical-algorithm exception. But just a year later, the same Court said algorithms were undefined, non-statutory mathematical subject matter:

“Courts have used the terms ‘mathematical algorithm,’ ‘mathematical formula,’ and ‘mathematical equation,’ to describe types of nonstatutory

¹⁴ *Gottschalk v. Benson*, 409 U.S. 63, 93 S.Ct. 253 (1972).

¹⁵ Kowalski, Robert (1979) p. 1.

¹⁶ *Le Roy et al. v. Tatham et al.*, 55 U.S. (14 How.) 156 (1853).

¹⁷ *State St. Bank & Trust Co. v. Signature Fin. Group*, 149 F.3d 1368 (Fed. Cir. 1998).

mathematical subject matter without explaining whether the terms are interchangeable or different.”¹⁸

Be it around steam engines or algorithms: principles, fundamental truths, original causes, motives may be used “with such a want of precision (...) as to mislead.”¹⁹ This want of precision extends to patents on software and computer programs which, similar to patents on algorithms, have had an eventful story. Communication may be a universal, uncontrollable, inappropriate matter, but Twitter commoditized communication with the means under its control through 2.438 patents.²⁰ @realDonaldTrump’s physiology was Twitter’s. Twitter controlled the engagement on every account, including @realDonaldTrump, through metrics.²¹ Their massive engagement increased the relevance of both Twitter’s and MAGA’s enterprises.²²

Six days after 01/08, @jack²³ first tweeted about Twitter’s decision to suspend @realDonaldTrump permanently. In their opinion, Twitter handled an “extraordinary and untenable circumstance” in the right way because “offline harm as a result of online speech is demonstrably real.”²⁴ Individuals are both empowered and limited by the architecture, businesses, and services of online platforms.

Barnes started receiving phone calls, emails, and visits from people expecting to have sex with them back in 2004. Not in a nice way. *Barnes* felt a target. A former partner was publishing fake profiles on Yahoo with *Barnes*’ contact information, explicit pictures, and open invitations. Yahoo was informed of the situation and did nothing. Eventually, when *Barnes* was about to report the situation on local news, Yahoo’s Director of Communications contacted *Barnes* and assured them Yahoo would deal with the situation. But Yahoo did not. Later in court, Yahoo claimed immunity under §230.²⁵

¹⁸ AT&T Corp. v. Excel Communications, Inc., Excel Communications Marketing, Inc., and Excel Telecommunications, Inc., 172 F.3d 1352 (Fed. Cir. 1999).

¹⁹ See note 16.

²⁰ Twitter Inc. controlled 2.438 patents until 2023. Source: <https://insights.greyb.com/>

²¹ <https://developer.x.com/en/docs/x-api/metrics>

²² <https://www.mcclatchydc.com/news/politics-government/white-house/article153467119.html>

²³ Coincident (to a point) with Jack Dorsey (then) Twitter’s CEO. Again, exclusive sourcing should not be assumed.

²⁴ <https://x.com/jack/status/1349510770992640001>

²⁵ *Barnes*. See note 8.

Snapchat's speed filter was released in 2013. The filter allowed Snapchat users to upload images showing their speed in real-time to other users. Four years later, somewhere in Wisconsin, Davis (17) was driving a car with Brown (20), in the passenger seat, and Morby (17) in the back seat. Brown opened the filter. The car crashed into a tree when driving at 113 MPH (approximately 182 KMH). Morby's and Brown's families claimed against Snapchat. Davis' did not. The case is known as "*Lemmon*" after Morby's mother family name; it was argued on February 11, 2021.²⁶ Later, the Ninth Circuit's ruled²⁷ that the claim did not treat Snapchat as a publisher (or speaker) of other users' videos but as a manufacturer of the speed filter: a product. Answer to question (2) of the 2009 test was "no". §230 did not provide Snapchat with immunity against *Lemmon* because the manufacturer is liable for the risk its product creates or enhances, and has to exercise due care in supplying products that do not present an unreasonable risk of injury or harm. It was the filter itself that created the risk and not other users' videos. A similar case in Georgia, *Maynard v. Snapchat*,²⁸ led the Supreme Court of Georgia to rule against the motion to dismiss that lower courts had granted, because the speed filter is a product. Snapchat's speed filter had been criticized,²⁹ but Snapchat kept it online until a month after the *Lemmon* decision.

Vargas was looking for a home in New York and not getting good housing ads on Facebook in the late 2010s. They went to Court and the Ninth Circuit concluded that Facebook's Ad Platform was "a patently discriminatory tool" that does not "become 'neutral' simply because the tool is also offered to others."³⁰ In *Vargas*, using algorithms to identify certain users' characteristics (such as being Hispanic, female, and a single parent), including the said characteristics into its Ad Platform, and then promoting the effectiveness of such advertising tools to particular advertisers constituted material contribution to the (illegal) discrimination and excluded immunity under §230. Immunity was partially excluded in another case related to living

²⁶ <https://www.youtube.com/watch?v=o6plmveXOPo>

²⁷ *Lemmon v. Snap Inc*, 995 F.3d 1085 (2021).

²⁸ *Maynard v. Snapchat, Inc.*, Case No. S21G0555 (decided March 15, 2022).

²⁹ <https://www.npr.org/2021/06/17/1007385955/snapchat-ends-speed-filter-that-critics-say-encouraged-reckless-driving>

³⁰ *Vargas v. Facebook, Inc.*, No. 21-16499, 2023 WL 4145434 (9th Cir. June 23, 2023).

places, Roommates,³¹ but the defendant was eventually acquitted because discriminating about who you share a living place with is legitimate.

Gonzalez and *Alassaf* died in terrorist attacks by the Islamic State (ISIS) in Paris (2015) and Istanbul (2017), respectively. Their families claimed in court against Twitter, Google (and others) for making ISIS-related content accessible to the masses. In 2023, the hearings of the SCOTUS in *Gonzalez v. Google*³² included a variety of observations in connection with algorithms, data, and neutrality.³³ According to Google's counsel, YouTube recommendation algorithm helps users find a "proverbial needle in a haystack" and is essential to navigate the vastness of content on the platform. Using the same algorithms to direct users to cooking videos and ISIS propaganda means neutrality to Justice Thomas. If the algorithm is the same, yet the results are different, the difference seems to rely on the user only. However, does neutrality mean applying the same set of procedural rules to different situations? Do rules have the same meaning in different contexts? Justice Gorsuch suggested algorithms may not be inherently neutral. But as reported by Howe, he attended the hearing by telephone and was feeling "*a bit under the weather*."³⁴ Justice Jackson said §230 was intended to shield platforms from liability for blocking offensive content, not for promoting it. Justice Kagan concluded SCOTUS' attending justices were "not, like, the nine greatest experts on the internet."³⁵ Both cases were finally decided on May 18, 2023. *Gonzalez* was sent to the lower court;³⁶ *Twitter* fell out of the scope of terrorism.³⁷ No material pronouncements were made on §230. Did Twitter, Facebook and Google abetted terrorism by letting ISIS use their platforms? Justice Thomas answered:

"As presented here, the algorithms appear agnostic as to the nature of the content, matching any content (including ISIS' content) with any user who is more likely to view that content."³⁸

³¹ Fair Housing Council of San Fernando Valley v. Roommates.com, LLC, 521 F.3d 1157 (9th Cir. 2008).

³² *Gonzalez v. Google LLC*, 598 U.S. 617 (2023).

³³ https://www.supremecourt.gov/oral_arguments/audio/2022/21-1333

³⁴ <https://www.scotusblog.com/2023/02/not-like-the-nine-greatest-experts-on-the-internet-justices-seem-leery-of-broad-ruling-on-section-230/>

³⁵ See note 34.

³⁶ See note 32.

³⁷ *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023).

³⁸ See note 37.

Anderson (10) died accidentally in December, 2021, while attempting the “Blackout Challenge” known to them through their “For You Page” at TikTok. The majority opinion of the Court – the Third Circuit – stated that the selection and presentation of content (as in the For You Page) “qualifies as ‘speech activity’ ... [whether] the content comes from third parties [or] it does not.”³⁹

As Banksy put it “there are no exceptions to the rule that everyone thinks they’re an exception to the rules.”⁴⁰ The business model of UGC platforms based on advertising consists of obtaining revenues from announcers based on the value (relevance) of the users’ engagement that is measured, and sustained, through algorithms. Social media platforms make communication on “real” time, instantaneous, global, and data-driven. Meantime, data runs on logic, pattern, probability, and algorithms. Online realms such as Twitter monetize the physicality’s drive for the exceptional through very unexceptional means. Algorithms are not alien to meaning. The metrics for engagement online result in nothing but useful, concrete, tangible pricing for the allocation of third-party advertisements.⁴¹ Also, algorithms have noticeable impact at Luhmann’s three selections of communication.⁴² Because every user posting content wants engagement, their selection of information will regard trends in the platform that are relevant to their content. At utterance, the algorithms will determine the information’s presentation, format, and archive (e.g. in Twitter users would microblog, in YouTube videoblog). Algorithms will measure engagement to allocate promotional value to the content. In another way to put it, the algorithm will decide how the potential customers of the announcer will mis(understand) the content for the limited purpose of buying the announcers’ goods or services. UGC platforms whose business model is based on advertising (e.g. Twitter, YouTube, Facebook) may favour free speech, but their business is selling their users’ engagement to advertisers. By definition, their business model makes communication context to engagement.

³⁹ *Anderson v. TikTok Inc.*, No. 22-3061 (3d Cir. 2024) quoting *NetChoice*, 144 S. Ct. at 2402 quoting *Ark. Educ. Television Comm. v. Forbes*, 523 U.S. 666, 674 (1998).

⁴⁰ Banksy (2005) p. 30.

⁴¹ See note 21.

⁴² See note 13.

To Luhmann, “society exists through its communications.”⁴³ Society is an autopoietic system of communication where autopoiesis is *differentiation* (through function, operation, program, and code) that creates different subsystems such as legal, media, politics, economics, etc. To each system, every other system is environment. “Physical environment” means people, individuals, and everything differentiated as physicality. Evolution results from operations within systems and friction amongst system(s) and environment. To Luhmann, social systems “*irritate*” one another. Moeller explains the use of the term irritation by Luhmann:

“In German, however, to irritate (*irritieren*) does not mean ‘to bother’ or ‘to perturb’, but, more precisely, ‘to distract’ or ‘to perturb’. ‘Perturbation’ might therefore be a less misleading translation. Luhmann uses this somewhat odd term to avoid the implication of any ‘simplistic’ cause-effect or input-output pattern”⁴⁴

To Luhmann, systems are operationally closed but react to one another, which interaction is more complex than input-output and can be translated as “irritation” as expressed by Moeller. Also according to Luhmann, if “irritation” is constant and intense enough, then the irritation becomes “coupling.” And, “if a system presupposes certain features of its environment on an ongoing basis and relies on them structurally”⁴⁵ it is called “*structural coupling*.” In the rhizosphere, where media and economy coexist in a physical environment, these elements are bound in a *systemic structural throuple* where: (i) physicality irritates media by people being morbid, and economy by people being greedy; (ii) media irritates economy by conditioning consumers’ choices, and the physicality by incentivizing people’s morbidity; and (iii) economy irritates media by holding the negotiated value of money, and the physicality by holding the perceived value of money. In balance: people get speech, but free-speech is commoditized; media gets relevance, if advertised-oriented; economy gets sales and revenues, but becomes dependent on media. These mutual irritations are structural to human societies because individuals are morbid and greedy in their own way; and

⁴³ Luhmann (2004) p. 25.

⁴⁴ Moeller (2006) p. 221.

⁴⁵ Luhmann (2004) p. 382.

corporations and institutions are morbid and greedy in a collective, mostly immune, way. In *Barnes*, Yahoo did nothing to stop a former partner's vicious revenge. In *Gonzalez* and *Twitter*, media platforms facilitated terrorist content to those who are most likely to view it, while terrorists' attacks kill people. In *Vargas*, Facebook placed a lower value on housing advertisements to Hispanic single mothers. In *Lemmon*, Snapchat commoditized people's attraction to careless driving and appetite for show. In *Anderson*, TikTok commoditized people, mostly minors, blackout for show. In all these cases, the legal system mediated the outcomes of the physicalities' morbidity and greediness and the systems of media and economy. In *Barnes*, *Gonzalez*, and *Twitter*, disappointment was confined to the physical environment. In *Vargas*, *Lemmon*, and *Anderson*, the legal system disappointed the media.

The function of the legal system within society, according to Luhmann, is "to maintain normative expectations in the face of disappointment"⁴⁶ and:

"(...) law fails to carry out its function only when its expectations cease to be normative. The normativity of expectations lies in the distinction between normative and cognitive. Cognitive expectations are ones where one learns from disappointment: it will never rain in July. Normative expectations are where one does not: it is illegal to park on double yellow lines."⁴⁷

In each and every case of offline harm created by online speech with no legal consequences to the media, or (indirectly) to the announcers, Section 230 serves its function. When the physicality is substantially disappointed, if resources are available, the physicality expects to make media liable through the legal system. And this expectation is normative, as it is governed by damage and resources, not by knowledge. Theoretically: if the legal system consistently disappointed the media (UGC online platforms), to the point where no other expectation would exist, Section 230 would no longer have a function. The assumption that 230 is the one, only, option for the free internet (whatever that might be) will continue to be challenged over time. Businesses normally minimize, manage, risk through a variety of means including insurances.

⁴⁶ Luhmann (2004) p. 9.

⁴⁷ Luhmann (2004) p. 16.

In the data realm that was Twitter, no algorithm made the decision to suspend @realDonaldTrump but several individuals did, as reported by The New York Times⁴⁸ and The Free Press.⁴⁹ @realDonaldTrump was a data vortifex, a MAGA speaker, a giant voice online for Donald Trump being elected at the US presidential election 2020. Their exclusion from Twitter transcended boundaries, territorial and otherwise, for it was a political act. As Justice Thomas decided on April 5, 2021:

“(...) in terms of power the disparity between Twitter’s control and Mr. Trump’s control is stark (...) Twitter barred Mr. Trump not only from interacting with a few users, but removed him from the entire platform, thus barring all Twitter users from interacting with his messages.”⁵⁰

The unrestricted faculty to control who/what is included or excluded within a scope, or a realm, is a sovereign faculty. Sovereignty has been the states’ since the 16th century. As pictured in Hobbes’ Leviathan’s frontispice: the sovereign, made of people, holds the sword in one hand and the crosier in the other. The power of the sovereign is made of his people, and army (force) and clergy (faith) are institutions by his hands. Formulas still in use: in God we trust, so help me God, (vox populi) vox Dei. In an increasingly interconnected world, sovereignty includes realms online and a variety of supra-national agents (such as international organizations or corporations). In this landscape, agents and subjects of power, private and public spheres, real and @real, are being redefined. Sovereignty in the digital age may still be the attribution of the State by law, yet such exercise is full of caveats and compromises including the massive power over data that online businesses hold. The suspension of @realDonaldTrump was the outcome of a complex interplay of factors including public outcry, legal considerations, and corporate strategy.

In the early 20th century, when America was a new power, Hohfeld developed a judicial reasoning artifact upon the fundamental legal conceptions of power, immunity, right, and privilege based on the idea that these legal conceptions couple with correlatives and exclude opposites.

⁴⁸ <https://www.nytimes.com/2021/01/16/technology/twitter-donald-trump-jack-dorsey.html>

⁴⁹ <https://www.thefp.com/p/why-twitter-really-banned-trump>

⁵⁰ Biden (replacing Trump) v. Knight First Amendment Institute No. 20–197. Decided April 5, 2021.

Ideally, it would help legal reasoning for consistency and foreseeability. In particular: power coexists with liability, and excludes disability. In addition:

“a (legal) power is one’s affirmative ‘control’ over a given legal relation as against another; whereas an immunity is one’s freedom from the legal power or ‘control’ of another as regards some legal relation.”⁵¹

Power as control, immunity as freedom. Hohfeld’s artifact brings light to the difference between the absence of liability and immunity. The first one belongs with rules under which a subject (be it a claimant or a defendant) should not be held responsible for a damage because they did have no control in the causation of the said damage. Courts can declare Samaritans non-liable for the damages they may cause because they do the right thing or, at the very least, they intend to. Same for the messenger of bad news. As Spiderman’s uncle famously pondered in 1962: “with great power comes great responsibility.” Some powers exceed courts of justice. The most-abled, the ones most in control. Immunity means there is no jurisdiction to impose liability on superheroes, gods, or sovereigns. Immunity and non-liability are substantially different. Under the rule of God, he creates evil but is immune for evil deeds by mortals, whom he also created. Under the rule of the kings of the Middle Ages *rex non-potest peccare*: the king can do no wrong. This kind of immunity of the sovereign (the Sovereign Immunity) is an early seed of the current immunity of the Government and its officials. Exclusion is power: a classic sovereign prerogative. Internet access providers cannot discriminate on access by users to the net. They are paid by users (not announcers), and their business model is alien to how users engage with content. Net neutrality is key to the Internet, and it is based on powerlessness and lack of control by access providers. Net neutrality to internet access providers is different from algorithmic neutrality to UGC platforms.

Donald Trump created @realDonaldTrump to promote his appearance on a TV show,⁵² then he mastered Twitter:

⁵¹ Hohfeld (1919) p. 60.

⁵² <https://time.com/5412016/donald-trump-realdonaldtrump-twitter-first-tweet/>

“My use of social media is not Presidential – it’s MODERN DAY PRESIDENTIAL. Make America Great Again!”⁵³

Twitter happened to Donald Trump, but @realDonaldTrump happened to Twitter, in just as much. Twitter, as a company, could not be neutral towards one of its most engaging accounts.⁵⁴ Caveat emptor. Twitter, the Samaritan, had a high interest in the traveler, be it Donald Trump or @realDonaldTrump. If Twitter had indeed been neutral to any of them, it would not have behaved like a business.

The US *gifted* \$230 to online platforms, such as Twitter. The EU’s bestowed Article 14 of the E-Commerce Directive (ECD).⁵⁵ Sanctioned in 2000, the ECD had the main purpose of removing the internal barriers to online commerce. It also intended to promote healthy competition while defending consumers’ rights. One of its core principles is online platforms that host UGC should not be held liable for content created by users as long as they behave diligently and collaborate with authorities. The intent to ensure the provision of cross-border online services without undue regulatory burdens is clear. But the ECD’s reliance on Member States to enforce the framework led to varying standards. Also, the increased relevance and accessibility of online platforms magnified both the scale and nature of illegal activities online. On December 15, 2020, the European Commission proposed two regulations: the Digital Services Act and the Digital Markets Act. The Digital Package. Executive Vice-President Vestager introduced the following slogan with the proposal: “and of course, what is illegal offline is equally illegal online.”⁵⁶ On November 25, 2021, when the Council of the EU agreed to the Commission’s proposal, they published “what is illegal offline should be illegal online.”⁵⁷ In accordance with @EU_Commission, the slogan became a reality in April 2022.⁵⁸ Two years later, @vestager

⁵³ <https://x.com/realDonaldTrump/status/881281755017355264>

⁵⁴ <https://www.dw.com/en/donald-trump-loses-social-media-megaphone/a-56158414>

⁵⁵ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, OJ 2000 L 178/1 (e-Commerce Directive or ECD).

⁵⁶ https://ec.europa.eu/commission/presscorner/detail/de/statement_20_2450

⁵⁷ <https://www.consilium.europa.eu/en/press/press-releases/2021/11/25/what-is-illegal-offline-should-be-illegal-online-council-agrees-on-position-on-the-digital-services-act/>

⁵⁸ https://x.com/EU_Commission/status/1517762638037540865

formulated: illegal offline = illegal online.⁵⁹ While the Digital Package is mandatory throughout the EU without national transposition, until 2024 the EU's interventions in the Digital Sector total 110 normative initiatives, and approximately 80 recognized entities (e.g. EU institutions, agencies, independent bodies, networks, boards, advisors and organisations), through 12 differentiated areas.⁶⁰ The Digital Package imposes duty of care obligations on the platforms in order to balance the immunity privilege. Where engagement means relevance, regulatory compliance is thought to balance corporate strategy.

In another online realm, called YouTube, users' short videos are rated through views, comments, likes, shares, and other criteria.⁶¹ YouTube's metrics looked good to @ReSet who accumulated 124.410.846 views, 1.161.989 subscribers, and 82 videos of (so-called) challenges from 2014 to 2017. This engagement paid to @ReSet's administrator and content creator, a physicality known as Kanghua Ren, the amount of 2.181,51 € in the first quarter of 2017.⁶² The amounts paid to Kanghua Ren through other periods or gained by YouTube via @ReSet are unknown. In January of that year, @ReSet published a video of Kanghua Ren offering cookies filled with toothpaste to a homeless person. This video is unsurprising to @ReSet as the account usually uploaded challenges such as torturing cats or offering feces for food. But the toothpaste cookies video received substantial backlash online. Kanghua Ren was quick to remove it, but still worried this may have further negative effects to @ReSet. So Kanghua Ren went back to the homeless person and, in compensation for their trouble, offered them 300 € and doing another video. Barcelona's local law enforcement agency intercepted Kanghua Ren when he was making the offer, and the Barcelona City Council pressed criminal charges against him. Eventually, he was on trial and said: "... *hago cosas para dar show, a la gente le gusta el morbo.*"⁶³ A quick translation into English could read: "I do things for show. People like morbidity." But Spanish *morbo* includes things visceral, bizarre, revolting, or attractive (e.g. a car accident, a crime scene, or something/someone attractive). If you say in Spanish that something *te da morbo* you mean you

⁵⁹ <https://x.com/vestager/status/1758826741286543428>

⁶⁰ The National Board of Trade Sweden (2024) p. 19–20, 38–39.

⁶¹ <https://developers.google.com/youtube/analytics/metrics>

⁶² Decision 243/2019 of Barcelona's Criminal Court number 9 as of May 29, 2019.

⁶³ Quote in Spanish (see note 62).

are attracted to the thing in a darkly way. English sound-alikes “morbidity/morbid” are more eschatological in meaning. Most probably, almost certainly, Kanghua Ren was not mentally translating from English when giving his final statement in a criminal court in Barcelona. He was accused because he offered toothpaste for food to a homeless person for the notoriety of @ReSet on YouTube. If “like” were a preposition, people resemble morbidity. People like morbidity may be an accurate translation. The @ReSet case came to a final decision in 2022.⁶⁴ Thereby, the accused was condemned not to *go to* YouTube for 5 years. Some of the Judges said the realm was a place, others the realm was more of an activity. It was a disputed decision but no judge questioned YouTube’s agency in the performances by @ReSet. If any of the judges had the slightest doubt about whether Kanghua Ren was indeed the only one to answer for @ReSet’s actions, they did not make that note anywhere during the 5-year process, through three different instances. Without YouTube, @ReSet would have never existed, and Kanghua Ren would have never captured such monetized attention and influence. Through the @ReSet case, YouTube was a business, a place, a venue for economic activity, never a product or a risk agent. Spanish §230⁶⁵ was not debated through these trials.

When UGC are harmful or illegal and the matter gets to court, UGC platforms are immune to restrict free speech because they favour free speech. Good-for-all outweighs good-for-the-few. §230 has consistently been interpreted in connection with the users’ freedom of speech after Zeran:

“Congress recognized the threat that tort-based lawsuits pose to freedom of speech in the new and burgeoning Internet medium. The imposition of tort liability on service providers for the communications of others represented, for Congress, simply another form of intrusive government regulation of speech.”⁶⁶

Platform immunity as a cornerstone for the users’ freedom of speech is a common stallion, a standard. But no one with broadly accepted opinions,

⁶⁴ Decision 547/2022 as of June 2, 2022 by the Spanish Supreme Court, criminal section.

⁶⁵ Article 16 of the Spanish transposition of the ECD: Ley 34/2002, de 11 de julio, de servicios de la sociedad de la información y de comercio electrónico.

⁶⁶ Zeran v. America Online 129 F.3d 327 (4th Cir. 1997).

a popular discourse, needs to fight for their freedom of speech. Freedom of expression is precisely for “the few”: minorities, unpopular, isolated, or grotesque. The courts examine the merits of each case where every allegation has a name and a story. This is high definition and full colour narrative in the courts. Quite differently, legislators decide on laws with ideas in their minds only: political consent, the media, next election, and (maybe) names and stories in their past or speculations for the future. Deleuze thought the concept of human rights is abstract and empty, for he thought concrete problems deserved jurisprudential⁶⁷ solutions:

“a case being given, we shall invent its principle. It is a transformation from Law to universal Jurisprudence.”⁶⁸

According to Luhmann, human rights, are a “form of the normative expectation of normative expectations.”⁶⁹ Value collisions can only be decided ad hoc, because evidence is required in order to justify the consideration of values, which applies a fortiori if more than two values are in play.⁷⁰ To every legislator, freedom of speech, integrity, most generally “human rights” are empty because they operate on values. Black and white. And it is impossible to put one value on top without the definition, the details of the case. Additionally, human rights are a kind of devotion to some. Deleuze was not a fan of this approach: “reverence for human rights makes me want to utter statements that would be no doubt be considered odious.”⁷¹ This having in mind how others will perceive the discourse is “second order observation” and according to Luhmann, “human rights have, as a kind of programme for catching up, a market as never before.”⁷² Devoted or critical, immanent or transcendent, necessary or contingent: “human rights” is a loaded term. Believers want to extend their belief to others, opportunists want to seize the moment. One way or the other, their reference will weigh in the audience. On their part, media platforms will

⁶⁷ See note 81 (15:54).

⁶⁸ Deleuze (1993) p. 67 quoting Gaston Grua, *Jurisprudence universelle et théodicée selon Leibniz* (Paris: PUF, 1953).

⁶⁹ Luhmann (2004) p. 469.

⁷⁰ Luhmann (2008) p. 29.

⁷¹ <https://www.youtube.com/watch?v=v9TODSvDM74> (08:29)

⁷² Luhmann (2004) p. 468.

value the expressions that contribute to the relevance of their business. In *Lemmon* and *Vargas* the media platforms (Snapchat and Facebook) were taken out of §230's immunity by the court because Snapchat's speed filter and Facebook's Ad Platform were illegally risky or discriminatory by themselves, regardless of such users' uploads. In *Anderson*, TikTok was also out of §230's protection because such "For You Page" was an expression by the company regardless of such users' uploads. *Vargas*, *Lemmon* and *Anderson* were not based on freedom of speech, but on control and offering. But, when did media platforms become something other than *product*? UGC platforms are commonly referred to as *product* by the ones who control them. For example, the "*product* page" on Twitter (later X).⁷³ Or @elonmusk, who wanted to "make Twitter better than ever by enhancing the *product* with new features."⁷⁴ Or Elon Musk at Business Insider, who was conscious that "*product* 'X' would launch in 2023."⁷⁵

On October 2022, Elon Musk completed the acquisition of Twitter. In the following month @elonmusk conducted a poll on reinstating @realDonaldTrump. Out of 15.085.458 votes in total 'Yes' won by 51.8%.⁷⁶ On July 2023, Twitter's name changed to "X". The following month @realDonaldTrump tweeted for the first time since their permanent suspension. It was Donald Trump's mugshot for election interference.⁷⁷ Twitter was no longer, but from January 8, 2021, to August 25, 2023, permanent meant 959 days. A day for each cell of an adult *Caenorhabditis elegans*. Datum for data. Code for being. Days for permanence.

The meaning of time has been discussed since the dawning of thought. In ancient Greece, the origin of time *Khrónos* (Χρόνος), as later did *Aion*, represented time as a cycle. In contrast, *Krónos* (Κρόνος or Cronus), as later did Saturn, meant past, present, and future; a line for the passing of generations and parricide. Both representations, circle and line, intertwined and confused by the most reputed thinkers. After Plutarch: did Saturn mean Time (Chronos)? Did the fabled Age of Saturn participate in truth? Do these want precision? Fabled ages, superheroes, gods and, sovereigns

⁷³ <https://business.x.com/en/products>

⁷⁴ <https://x.com/elonmusk/status/1518677066325053441/>

⁷⁵ <https://www.businessinsider.com/elon-musk-new-twitter-product-x-launch-plan-pitch-deck-2022-5>

⁷⁶ <https://x.com/elonmusk/status/1594131768298315777>

⁷⁷ <https://x.com/realDonaldTrump/status/1694886846050771321>

(to a point) are unaffected by factuality. Power may be counterfactual freely. Greatest powers especially so, for they are immune. Zeus' youngest divine son Kairos (Καιρός) was to some the god of opportunity. His name meant good, precise, moments in time. Kairos is time that is "right" for the event that disrupts normalcy: the exception. The opposed to kairos is not bad kairos but the unqualified, ordinary, iterative passing of time. In modern Greek "καιρός" translates as "weather". Weather may forecast storms or revolutions. By reading kairos masterfully, Donald Trump put in place and orchestrated a formidable Dionysiac machine that made him US president. And during its time on Twitter, @realDonaldTrump was a well-tuned engine in the machine, data tornadoes sweeping Twitter. Such abstraction, the highest power of the false, recalls a pseudos in Nietzsche, a simulacrum in Baudrillard, and a Dionysiac machine in Deleuze:

"Simulation is the phantasm itself, that is, the effect of the operations of the simulacrum as machinery, Dionysiac machine. It is a matter of the false as power, Pseudos, in Nietzsche's sense when he speaks of the highest power of the false. The simulacrum, in rising to the surface, causes the Same and the Like, the model and the copy, to fall under the power of the false (phantasm)."⁷⁸

In 2024, "MAGA" became "save America." The SCOTUS heard the cases on Florida's State Bill 7072 and Texas' House Bill 20. Both initiatives, passed on 2021, sought to de-incentivize biased content moderation by UGC platforms. While hearing the cases, Justice Sotomayor pondered:

"But the one thing I know about the internet is that its variety is infinite (...) When does a burden shift to the state when it writes a law so broad that it's indeterminate?"⁷⁹

On July 1, 2024, SCOTUS sent both cases back to the lower Courts. According to Justice Kagan the platforms deserve protection from governments' intrusion in determining what to include or exclude from

⁷⁸ Deleuze (1983) p. 53.

⁷⁹ <https://www.techpolicy.press/transcripts-moody-netchoice-paxton-oral-arguments/>

their space, *like newspapers*.⁸⁰ On that same day, the SCOTUS also decided *Donald Trump v. USA*, on Donald Trump's immunity after the violent assault on the US Capitol building on January 6, 2021. Justice Roberts delivered the SCOTUS' majority opinion whereby:

"The President enjoys no immunity for his unofficial acts, and not everything the President does is official (...) But under our system of separated powers, the President (...) is entitled to at least presumptive immunity from prosecution for his official acts."⁸¹

Later in 2024, Donald Trump run for the US presidency against Kamala Harris. In the ABC News Presidential Debate, Donald Trump said:

"In Springfield, they are eating the dogs, the people that came in; they are eating the cats, they are eating the pets of the people that live there."⁸²

And realms online including TikTok,⁸³ Youtube, Spotify, and X exploded. After all, it is great power to exclude factuality. People eating pets in Springfield are high-energy fuel to the Dionysiac machine, same as @ReSet feeding toothpaste to the homeless, or Saturn eating children. Phantasms and fabled ages are always greater, whether Saturn's or America's. In November 2024, Donald Trump was elected the 47th president of America and charges against him in *USA v. Donald Trump* were dismissed by the US District Court for the District of Columbia.

In a digital society, systems interoperate with common languages and open standards: just like software does. Every power is limited and enhanced through media. @realDonaldTrump voiced MAGA for the benefit of Donald Trump who performed the first Twitter presidency. A public-private hybrid. Companies like Twitter are realms, not just businesses. When economy, media, and physicality collide, the general rule by the legal system is: media is immune for the benefit of the economy, and physicalities are left to deal with disappointment privately or through uncertain, lengthy, and costly

⁸⁰ 22-277 *Moody v. NetChoice, LLC* (07/01/2024).

⁸¹ 23-939 *Trump v. United States* (07/01/2024).

⁸² <https://www.youtube.com/watch?v=V5CR7HkByC4>

⁸³ <https://www.forbes.com/sites/lesliekatz/2024/09/16/trumps-viral-theyre-eating-the-pets-line-spawns-tiktok-dance-craze/>

legal processes in the hope of exceptional jurisprudential solutions. Rules mediate risk and disappointment in a way that tolerates, or may promote, harm in some cases. Disappointment. If (or when) decisions making media liable for the product they are offering, such as *Anderson*, *Lemmon*, or *Vargas* become rule, then §230 will cease serving its normative purpose. Are good Samaritans immune because they are neutral? Are they neutral because they are immune? Is algorithmic neutrality a veil to pierce? Is there a Samaritan to be seen through the veil?

“Irony and humour are the essential forms through which we apprehend the law”⁸⁴

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⁸⁴ Deleuze (1967) p 75; and (1989) p 82.