

# Facebook: Shaping More Autonomous and Self-fulfilled Individuals

*Pelagio V. Palma Jr.\**

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## I. INTRODUCTION

Facebook’s mission is to make the world more open and connected.<sup>1</sup> Openness and connectivity promote discussion; and Facebook is true to this. Its “wall”<sup>2</sup> allows users to put up their profile, upload any content, and narrate their stories<sup>3</sup> for other users to comment on.<sup>4</sup> The dialogue box for

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\* ’13 LL.M., University of New South Wales; ’03 LL.B., San Beda College of Law. The Author completed his Master of Laws in Media and Technology Law at the University of New South Wales, Sydney, Australia with a distinction average and with further specialization in Criminal Justice and Criminology. The Author is registered as a Solicitor and Barrister in the High Court of Australia. He is currently working in a Sydney-based law firm. He previously wrote *The Problem of Excessive Human Rights Safeguards in a Counter-Terror Measure: An Examination of the Human Security Act of the Philippines*, 58 ATENEO L.J. 476 (2013).

*Cite as* 60 ATENEO L.J. 445 (2015).

1. Facebook, About Facebook, *available at* [https://www.facebook.com/facebook/info?tab=page\\_info](https://www.facebook.com/facebook/info?tab=page_info) (last accessed Nov. 21, 2015).
2. The Facebook wall is the public portion of a user’s profile where the user can post status updates or receive messages or comments from friends. Techopedia, Facebook Wall, *available at* <https://www.techopedia.com/definition/5170/facebook-wall> (last accessed Nov. 21, 2015).
3. See JILL W. RETTBERG, BLOGGING 156 (2008).
4. Any activity on Facebook, such as posting or commenting, must comply with Facebook’s Terms and Policies, particularly the “Terms” a user agrees to when he or she uses Facebook. See Facebook, Statement of Rights and Policies,

status updates in fact asks the question — “What’s on your mind?” Facebook indeed engages everyone in conversation.<sup>5</sup> The photo-tagging feature induces instant response.<sup>6</sup> The news feed feature also provides convenient access to what friends post and what everyone talks about; and this can be sorted according to popularity or chronology.<sup>7</sup> Facebook further allows the user to control their privacy settings and provides information on how to take charge of one’s privacy.<sup>8</sup>

This Article will argue that these features are in line with free speech and privacy principles. Facebook is a platform that allows the rights to free speech and privacy to complement each other. It provides an avenue for the users to express their thoughts and, at the same time, permits them to control the information they divulge, and to whom that information is disclosed. The Article is divided into five parts. Part I is the introduction. Part II discusses how Facebook embodies the interest protected by free speech, while Part III discusses how it promotes that of privacy. Part IV focuses on a refutation of a number of the criticisms against Facebook. The Article concludes in Part V with a suggestion that continued conversation between Facebook’s developers and its users, as what the site in fact encapsulates, could be the correct approach in addressing the risks associated with Facebook use.

## II. FACEBOOK AND FREE SPEECH

Lester Lawrence “Larry” Lessig III argues that the architecture of the Internet is the “most important model of free speech”<sup>9</sup> — it is “distributed, non[-]centralized, fully free[,] and diverse.”<sup>10</sup> As Rik Lambers would otherwise phrase, this is the “embodiment of the rationales for free speech.”<sup>11</sup> With the affordability of computer hardware, and with the

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*available at* <https://www.facebook.com/legal/terms> (last accessed Nov. 21, 2015).

5. See DANIEL TROTTIER, *SOCIAL MEDIA AS SURVEILLANCE: RETHINKING VISIBILITY IN A CONVERGING WORLD* 160 (2012).
6. RICHARD D. COYNE, *THE TUNING OF PLACE: SOCIABLE SPACES AND PERVASIVE DIGITAL MEDIA* 119 (2010).
7. TROTTIER, *supra* note 5, at 39.
8. See Facebook, Facebook’s Data Policy: Privacy Basics *available at* <https://www.facebook.com/about/basics> (last accessed Nov. 21, 2015).
9. LAWRENCE LESSIG, *CODE VERSION 2.0* 237 (2006).
10. *Id.* at 275.
11. Rik Lambers, *Code and Speech: Speech Control Through Network Architecture*, in *CODING REGULATION: ESSAYS ON THE NORMATIVE ROLE OF INFORMATION*

worldwide availability of Internet access, more and more people are given the voice to enunciate their thoughts and participate in the deliberative process.<sup>12</sup> The Internet literally becomes the marketplace of ideas.<sup>13</sup> This posturing is encapsulated in the much smaller context of Facebook. As of March 2013, the social networking site has 1.11 billion monthly active users taking advantage of the platform's features.<sup>14</sup> In the same period, Facebook users have shared content items at a daily average of 4.75 billion.<sup>15</sup> However, as pointed out by Lambers, "more speech" does not necessarily entail diverse speech. In the same token, "cheap speech" does not equate to quality speech.<sup>16</sup> The seeming preference for "social speech" contributes to the uncertainty of the Internet being a vehicle for the furtherance of democratic objectives.<sup>17</sup>

True, most Facebook postings are "selfies" and updates about one's self. Facebook users are further limited to the postings of their own friends or their chosen groups. In a sense, one does a filtering or customization of what one sees in the site. This is further enhanced by the Facebook's feature that allows the user to hide postings from one group of friends while showing it to another,<sup>18</sup> and to choose posts that will appear in one's news feed.<sup>19</sup> This

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TECHNOLOGY 167-85 (Egbert J. Dommering & Ladewijk F. Asscher eds., 2006).

12. *Id.* at 105.

13. Robert Peters, Article, "Market Place of Ideas" or Anarchy: What Will Cyberspace Become, 51 MERCER L. REV. 909, 916 (2000).

14. Facebook, Facebook's Growth in the Past Year: Monthly Active Users, available at <http://www.facebook.com/photo.php?fbid=10151908376941729&set=a.10151908376636729.1073741825.20531316728&type=1&theatre> (last accessed Nov. 21, 2015).

15. Facebook's Growth in the Past Year: Content Items Shared Daily, available at <https://www.facebook.com/facebook/photos/a.10151908376636729.1073741825.20531316728/10151908376716729/?type=1&permPage=1> (last accessed Nov. 21, 2015).

16. Lambers, *supra* note 111, at 106-07.

17. *Id.* at 107-08.

18. Facebook, News Feed Privacy, available at <https://www.facebook.com/help/420576494648116> (last accessed Nov. 21, 2015).

19. Facebook, Controlling What You See in News Feed, available at <https://www.facebook.com/help/335291769884272> (last accessed Nov. 21, 2015).

is what Cass R. Sunstein calls “the process of [‘]personalization[’],”<sup>20</sup> that restricts exposure to variegated ideas and opinions, and leads to group polarization.<sup>21</sup> Filtering generates selective speech,<sup>22</sup> effectively negating the rationale behind the marketplace of ideas.<sup>23</sup> To follow Lambers’s logic, therefore, the accessibility of an avenue for expression and the proliferation of speech that Facebook seems to provide do not, at the end of the day, “enforce the democratic process.”<sup>24</sup> It may nevertheless be argued that in the offline context, people also choose what they want to see and hear. Sunstein posits, however, that those who obtain information from the traditional general interest intermediaries, such as newspapers and broadcasters, have more chances of encountering information that they did not deliberately choose, when compared to those who rely on the Internet and its filtering technology.<sup>25</sup>

In the Facebook context, however, the said proposition is highly unlikely to apply. Despite customization of feeds and the choosing of one’s audience, as aforementioned, the prospect of chance encounters with a range of information still abounds. Friends, it should be noted, do not necessarily have homogeneous interests. No matter how one personalizes one’s feed, he or she will still serendipitously find information that he or she has not chosen or does not like. Facebook further levels the media playing field in that the users themselves are now the editors and publishers of information.<sup>26</sup> Information is not pushed by large media entities that may have hidden

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20. See Cass R. Sunstein, *Democracy and the Internet*, in INFORMATION TECHNOLOGY AND MORAL PHILOSOPHY 93 (2008).

21. *Id.* at 99.

22. Lambers, *supra* note 111, at 105-06.

23. See *ProtectMarriage.com v. Bowen*, 599 F. Supp. 2d 1197, 1219 (E.D. Cal. 2009) (U.S.). See also *Abrams v. United States*, 250 U.S. 616, 630 (1919) (J. Holmes, dissenting opinion), which states —

But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas — that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out.

*Id.*

24. Lambers, *supra* note 111, at 105.

25. Sunstein, *supra* note 20, at 95.

26. DAVID D. KIRKPATRICK, *THE FACEBOOK EFFECT: THE INSIDE STORY OF THE COMPANY THAT IS CONNECTING THE WORLD* 296 (2010).

agendas. Nevertheless, Natalie Fenton argues that, even in social media, the “traditional and the mainstream,” the “celebrities and elites,” still dominate the network.<sup>27</sup> But, as David D. Kirkpatrick convincingly phrases, “[i]f a message is powerful enough it can spread to a vast sea of connected individuals, regardless of who originated it.”<sup>28</sup> The Haiti earthquake in 2010, for example, reached newscasters at CNN via a Facebook status update.<sup>29</sup> Facebook thus provides an avenue for users to avail themselves of information that they can use to reach an informed and intelligent choice.<sup>30</sup> Collocating John Stuart Mill’s argument from truth,<sup>31</sup> Facebook is a platform for the free flow of information, the free discussion of issues, and the hearing of clashing opinions for the validation of arguments<sup>32</sup> — a feat necessary “to form the truest opinions” in order to guide one’s conduct.<sup>33</sup>

Further, while quantity does not translate to quality, the myriad of “selfies” and status updates on Facebook lends itself to refinement by the site’s commenting and “Like” feature. Contrary to Fenton’s argument that information on social media is all about the self,<sup>34</sup> and that social media itself does not broaden “communicational horizons and deliberative understandings,” but only “reinforce[s] already existing social hierarchies and further strengthen[s] close(d) communities,”<sup>35</sup> it could be that when one is posting something on Facebook, one is not only engaging in an act of socialization but is foremost engaged in an act of communication. Even in the offline context, friends who get together are not merely socializing but are communicating their thoughts, beliefs, and aspirations to each other. A status update, a “selfie,” post of a travel photo, a food photo, or a family photo, a video of whatever sort, a meme, or anything else for that matter, not only means, “this is me” and “this is my thought;” it also means, “this is important to me right now.” In a sense, it is asking for affirmation from

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27. Natalie Fenton, *The Internet and Social Networking*, in MISUNDERSTANDING THE INTERNET 134 (Natalie Fenton, et al., eds., 2012).

28. KIRKPATRICK, *supra* note 26, at 296.

29. *Id.*

30. FREDERICK F. SCHAUER, FREE SPEECH: A PHILOSOPHICAL ENQUIRY 16 (1982).

31. *Id.*

32. See THOMAS I. EMERSON, THE SYSTEM OF FREEDOM OF EXPRESSION 6-7 (1970).

33. JOHN STUART MILL, ON LIBERTY 33 (1909 ed.).

34. See Fenton, *supra* note 27, at 129 & 142-43.

35. *Id.* at 127.

everyone<sup>36</sup> — “is it also important to you?;” “am I shallow in giving importance to this?;” and “should I continue on giving much ado about this, or should I change my attitude towards this?” Our thoughts are fluid and, as Frederick F. Schauer aptly phrases, “[these thoughts] are refined when we communicate them.”<sup>37</sup> Thus, Facebook, like other social networking sites, offers a forum for the learning, unlearning, and re-learning of the self.<sup>38</sup>

Free speech, as Steven J. Heyman correctly posits, is an “element of social liberty” and a “relational right.”<sup>39</sup> Indeed, the search for truth requires social interaction. Facebook postings should then not only be analysed from the perspective of the user, but also from that of the seer. A user’s posting promotes discussion and debate among friends privy to the feed. Even the simple gesture of hitting the “Like” button signifies a lot of things, not least of which are, “I agree with what you are thinking,” or “I disagree, but I do not want to offend you by commenting.” Likewise, the seeming apathy of not posting a comment, or merely observing other people’s activities and posts — research shows that most of Facebook usage time has been devoted to passive browsing<sup>40</sup> — already puts in motion one’s thinking process. A mere observer thus already opens himself to, as aforesaid, a variety of information on his feed. A Facebook post, therefore, not only refines the speaker’s thoughts, but also the hearer’s. In this context, the site embodies free speech rationales. It provides a platform for individuals to achieve self-realization, self-development, and self-fulfilment. Through thought-expression and communication, a person realizes his nature as a human being and ascertains his identity as an individual.<sup>41</sup> By fully using his “power of reason,” man develops himself, “enjoy[s] a full life,”<sup>42</sup> attains self-

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36. See Danah M. Boyd & Alice Maverick (An Unpublished Paper Presented at Oxford Internet Institute’s “A Decade in Internet Time: Symposium on the Dynamics of the Internet and Society”) 13, available at <http://poseidon01.ssrn.com/delivery.php?ID=545088089111023064029120120124082120039012007068065003094083105117029107126102127093035043107025020012109113019007120110118000033055024073042105003083008116088083089003009036119082118123004091070082115103029000107072064008122119108091110023103029022094&EXT=pdf> (last accessed Nov. 21, 2015).

37. SCHAUER, *supra* note 30, at 53–55.

38. JULIA ANGWIN, STEALING MYSPACE: THE BATTLE TO CONTROL THE MOST POPULAR WEBSITE IN AMERICA 265 (2009).

39. STEVEN J. HEYMAN, FREE SPEECH AND HUMAN DIGNITY 64 (2008).

40. Beth Anderson, et al., *Facebook Psychology: Popular Questions Answered by Research*, 1 PSYCHOL. POPULAR MEDIA CULTURE 23, 26 (2012).

41. See HEYMAN, *supra* note 39, at 52.

42. SCHAUER, *supra* note 30, at 54.

fulfilment,<sup>43</sup> and becomes autonomous or, to quote Thomas J. Scanlon, “sovereign in deciding what to believe and in weighing competing reasons for action.”<sup>44</sup>

Let it be further mentioned that the development of the self not only benefits the individual, but the society as well. Communication demands mutual respect between participants, developing the capacity for tolerance,<sup>45</sup> and furthering social relations.<sup>46</sup> Facebook, being primarily designed as a social networking site, ensures through the “Facebook Community Standards” that the civilities of discourse are maintained.<sup>47</sup> Moreover, a developed and fulfilled individual is able to provide a “meaningful contribution to the governance of the society.”<sup>48</sup> As aforesaid, Facebook users are able to refine their thoughts and form their respective opinions, from the most mundane of matters to the most profound. Furthermore, Facebook provides a platform for individuals to assert their rights to be themselves.<sup>49</sup> Given that one’s views are a fragment of one’s identity,<sup>50</sup> it is not surprising that one who, for example, regularly posts family photos, will support and advocate causes that affect families and will engage in discourse on such matters. Similarly, a person who talks in the offline context, or posts in the online context a lot about cats — how adorable they are or how they have souls like humans — will likely argue for animal rights, or be a vegetarian, or oppose the use of animals in research, or vote for politicians espousing related advocacies. Indeed, Facebook has migrated the offline public venue into the Internet.<sup>51</sup> A Facebook status update, a “selfie,” a post, a “Like” gesture, or a comment, is thus, as viewed by Mark E. Zuckerberg

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43. See HEYMAN, *supra* note 39, at 52.

44. Thomas J. Scanlon, *A Theory of Freedom of Expression*, 1 PHIL. PUB. AFF. 204, 215 (1972).

45. DAVID FELDMAN, *CIVIL LIBERTIES AND HUMAN RIGHTS IN ENGLAND AND WALES*, 766 (2d ed. 2002).

46. HEYMAN, *supra* note 39, at 57.

47. See Facebook, Community Standards, available at <https://www.facebook.com/communitystandards> (last accessed Nov. 21, 2015).

48. MICHAEL CHESTERMAN, *FREEDOM OF SPEECH IN AUSTRALIAN LAW: A DELICATE PLANT* 303 (2000).

49. See KIRKPATRICK, *supra* note 26, at 281.

50. *Id.* at 6.

51. Andrew Moore, *Facebook and the Liberal Arts*, 61 J. GEN. EDUC. 264, 272 (2012).

himself, “a gift of opinion into the polity, a gift of ideas that may ultimately strengthen the polity.”<sup>52</sup>

The manner in which Facebook is designed — information is able to reach a huge number anywhere in the globe in a short time — further makes it a convenient implement for political activism.<sup>53</sup> The 2008 protest march against the Fuerzas Armadas Revolucionarias de Colombia (FARC), attracting around ten million participants in Colombia and two million around the world, started through a Facebook group.<sup>54</sup> Kirkpatrick cites several other examples of activism and protest all over the globe fuelled by users venting their anger and frustration on a Facebook group page, among which are opposition against a Florida bill redirecting state scholarship;<sup>55</sup> demonstration in Egypt against a law limiting Internet use;<sup>56</sup> gay marches in Turkey;<sup>57</sup> protest against jail expansion near San Diego;<sup>58</sup> and objection against the amendment of the Philippine Constitution.<sup>59</sup> According to Kirkpatrick, Facebook has now become the first avenue for people all over the world to verbalize their dissatisfaction and discuss their issues, political or otherwise.<sup>60</sup> This is referred to as “digital democracy.”<sup>61</sup> Even Fenton, who criticizes the democratizing effect of social media, acknowledges its capacity to give voice to the repressed.<sup>62</sup> Interestingly, because of transparency in Facebook — real names and legitimate contact details are used — membership in protest group is “unlike standing in a crowd and holding up a sign at a protest” but is now “more of a public commitment.”<sup>63</sup>

In sum, the Facebook platform encapsulates the justifications for free speech. Through the free flow of information in the site, Facebook, lending

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52. KIRKPATRICK, *supra* note 26, at 288.

53. *Id.* at 290.

54. *Id.* at 4.

55. *Id.* at 289.

56. *Id.*

57. *Id.* at 290-91.

58. KIRKPATRICK, *supra* note 26, at 290.

59. *Id.* at 289-91.

60. *Id.* at 290.

61. *Id.*

62. See Fenton, *supra* note 27, at 132-33 & 142.

63. KIRKPATRICK, *supra* note 26, at 288. Compare with REBECCA MACKINNON, CONSENT OF THE NETWORKED: THE WORLDWIDE STRUGGLE FOR INTERNET FREEDOM 156-57 & 162-63 (2012). The use of real names has been questioned, for it is exclusionary and not dissident-friendly. *Id.*



itself to be a marketplace of ideas, provides an avenue for the discovery of truth. Given that users are enabled to be speakers and hearers at the same time, they develop into more autonomous and self-fulfilled individuals. As such, they are further empowered to be critical and eloquent participants in democracy's deliberative processes.

### III. FACEBOOK PROMOTES INTERESTS OF PRIVACY

Interestingly, the right to privacy, which features in social media literature and is depicted as having been diminished by social media itself, shares a common theme with free speech. Withdrawing from the outside and cocooning to one's innermost self capacitates a person to reflect and form his own opinion concerning anything in the world, without external pressure.<sup>64</sup> David Feldman, asserting that the development of autonomous individuals is the most important reason for recognizing the right to privacy,<sup>65</sup> considers a person's retreat from the public as necessary for one to be able to "form plans and understand their impact on everyone in the immediate social group."<sup>66</sup> A person's right to "to be let alone" should thus be respected.<sup>67</sup> Ronald E. Leenes and Bert-Jaap Koops, citing Lee A. Bygrave, further enumerate individuality, autonomy, dignity, integrity, emotional release, self-evaluation, and protected communication as the core values of the right to privacy.<sup>68</sup>

Moreover, Feldman is correct in asserting that the right to privacy, while appearing to be individualistic, is beneficial to the society.<sup>69</sup> It builds and maintains communities.<sup>70</sup> Friendships and families are formed from intimacy; and social groups are established from the like-mindedness of individuals pursuing their own vocations.<sup>71</sup> Given that it contributes to the formation of autonomous individuals, privacy further "plays a pivotal role in facilitating

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64. DAVID FELDMAN, *CIVIL LIBERTIES AND HUMAN RIGHTS IN ENGLAND AND WALES* 4 (2002).

65. *Id.* at 511 & 518.

66. *Id.* at 4; 511; & 518.

67. *Union Pacific Railway Co. v. Botsford*, 141 U.S. 250, 251 (1891).

68. Ronald E. Leenes & Bert-Jaap Koops, 'Code' and the Slow Erosion of Privacy, 12 MICH. TELECOMM & TECH. L. REV. 117, 135 (2005) (citing LEE A. BYGRAVE, *DATA PROTECTION LAW: APPROACHING ITS RATIONALE, LOGIC AND LIMITS* (2002)).

69. FELDMAN, *supra* note 644, at 7.

70. *Id.* at 513.

71. *Id.*

free participation in public affairs and the free exercise of other recognized rights, such as freedom of speech and freedom of association.”<sup>72</sup>

While they have common values, free speech and privacy almost always find themselves at opposing ends. An exposure of a person’s detail, for example, is claimed by another as a form of expression.<sup>73</sup> Despite both being responsible for the development of autonomous individuals who prove beneficial to the society at large, the two rights have invariably been weighed against each other.<sup>74</sup> Significantly, Facebook, in the manner in which it is designed, promotes both rights without necessarily putting them at loggerheads. Facebook does this by providing a platform for self-expression, and at the same time by giving leeway for the user to maintain his or her privacy through, among others, his or her ability to control the posts, and know and limit the size of his or her audience.<sup>75</sup> Also, the site’s commitment to the use of real names is a guarantee that the user’s privacy is protected.<sup>76</sup> One knows who he is communicating and sharing his information with.<sup>77</sup> Let it be noted at this point that Facebook was originally designed to cater to the small network of Harvard University students.<sup>78</sup> Restrictions as to membership and privacy controls were thus incorporated in its original design.<sup>79</sup> In the more recent past, Facebook improved its privacy controls to allow the user to control his post directly from his wall, and to approve or reject tags before posting.<sup>80</sup>

It could be the case that Facebook, in designing its software, is considering at the forefront the enhancement of individual freedom.<sup>81</sup> Laurence Lustgarten and Ian Leigh aptly state that “[o]ne of the defining

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72. MOIRA PATERSON, *FREEDOM OF INFORMATION AND PRIVACY IN AUSTRALIA* 15 (2005).

73. See HEYMAN, *supra* note 39, at 57.

74. See *Campbell v. Mirror Group Newspapers Ltd.* [2004] UKHL 22 (Eng.); *Von Hannover v. Germany* 294 Eur. Ct. Hr. (2004); *Douglas & Ors v. Hello! Ltd.* [2005] EWCA Civ 595 (Eng.); & *Murray v. Big Pictures (U.K.) Ltd.* [2008] EWCA Civ 446 (Eng.).

75. MARGARET JACKSON & MARITA SHELLY, *ELECTRONIC INFORMATION AND THE LAW* 237 (2012).

76. See KIRKPATRICK, *supra* note 26, at 13.

77. *Id.*

78. *Id.* at 31.

79. *Id.*

80. JACKSON & SHELLY, *supra* note 75, at 240.

81. See PATERSON, *supra* note 72, at 15-16.

characteristics of a free person is the ability to control information about oneself.”<sup>82</sup> Facebook precisely gives this sense of freedom to the user. By giving him or her the ability to control his or her own information, Facebook moreover brings the two rights in full circle, complementing each other — the user is able to engage in self-expression, and at the same time, is capacitated to protect one’s self from intrusion and undesirable public scrutiny.<sup>83</sup> At the end of the day, the common values of both free speech and privacy are promoted. Facebook, in this sense, shapes more autonomous and self-fulfilled individuals.

#### IV. A REFUTATION OF CRITICISMS AGAINST FACEBOOK

Be that as it may, Facebook has been consistently attacked on privacy concerns — the foremost of which is that the site changes its architecture often and without warning, and that the changes compromise earlier expectations of privacy.<sup>84</sup> Furthermore, it is said that managing the settings is too complex and technical a task for the user,<sup>85</sup> who will most likely rely on the default and more public settings.<sup>86</sup> These criticisms, however, fail to consider that Facebook is essentially a software program, a product. Just like any Web 2.0 construct, it is continuously updated and enhanced. It is a “perpetual beta.”<sup>87</sup> One has the responsibility to learn how to use it, and to apprise oneself of any changes in its architecture. It could not be the site’s obligation to screen its users and allow access only to the technically adept. In other words, one does not blame the software for his inability to understand it. Like any other computer program, familiarization with its functions by repeated use is essential.<sup>88</sup>

Another concern is that young users, who are generalized as being risk takers, are too lax about their privacy and do not conduct proper risk

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82. LAURENCE LUSTGARTEN & IAN LEIGH, IN FROM THE COLD, NATIONAL SECURITY AND PARLIAMENTARY DEMOCRACY 39 (1994).

83. See PATERSON, *supra* note 72, at 15-16.

84. See James Grimmelmann, *Saving Facebook*, 94 IOWA L. REV. 1137, 1179 (2009).

85. *Id.* at 1186.

86. *Id.*

87. Danah M. Boyd, *Social Media is Here to Stay... Now What?*, available at <http://www.danah.org/papers/talks/MSRTechFest2009.html> (last accessed Nov. 21, 2015) [hereinafter Boyd, Social Media].

88. See Danah M. Boyd and Eszter Hargittai, *First Monday Peer-Reviewed Journal on the Internet, Facebook Privacy Settings: Who Cares?*, available at <http://firstmonday.org/ojs/index.php/fm/article/view/3086/2589> (last accessed Nov. 21, 2015).

evaluation when posting.<sup>89</sup> There is even a foreboding that the youth are facing a future in which privacy is no longer as prized as it is now.<sup>90</sup> These propositions are, however, debunked by empirical research.

Daniel Trottier, after interviewing a sampling of undergraduate students in Canada who are active Facebook users,<sup>91</sup> found that the group was in fact concerned about privacy.<sup>92</sup> The youngsters familiarized themselves with Facebook's privacy settings, and use a number of measures — logging in through a friend's account, and viewing their profile from that account — to ensure that disclosure of information is limited to their targeted audience.<sup>93</sup> New users are also aware of the “extensive privacy controls” that Facebook provides.<sup>94</sup> They have further formed the habit of regularly minding their settings, in case any software updates have been made that may have affected any of their previous settings.<sup>95</sup> These users also employ a “dynamic and contextual” privacy setting — increasing the degree of privacy during job interviews to prevent potential employers from gathering information, and decreasing the same on special occasions so that well-wishers may find them.<sup>96</sup>

In another study, conducted by Danah M. Boyd and Eszter Hargittai, on the Facebook attitudes and practices of college freshmen in Chicago, it was found that, far from being passive and reliant on default settings, young adult users are in fact actively managing their privacy settings.<sup>97</sup> Also, the more frequent the user logs onto the site, the more he or she habitually modifies and readjusts his or her privacy settings.<sup>98</sup> The study also revealed that users who post more content, when compared to others, are the ones who are really concerned about restricting the reach of their posts.<sup>99</sup> Not surprisingly, those who use Facebook more often, as opposed to those who use it

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89. See Grimmelmann, *supra* note 84, at 1179.

90. Lilian Edwards & Ian Brown, *Data Control and Social Networking: Irreconcilable Ideas?*, in *HARBOURING DATA: INFORMATION SECURITY, LAW AND THE CORPORATION* 227 (Andrea M. Matwyshyn, ed., 2009).

91. TROTTIER, *supra* note 5, at 28-29.

92. *Id.* at 74.

93. *Id.*

94. *Id.* at 81.

95. *Id.* at 74.

96. *Id.* at 75.

97. Boyd & Hargittai, *supra* note 88.

98. *Id.*

99. *Id.*

occasionally, are more familiar, better skilled, and more confident in tweaking its privacy features.<sup>100</sup>

In her other works, Boyd points out her observation that some teenagers employ unconventional means in managing their privacy,<sup>101</sup> reinforcing her assertion that “people are more conscious of privacy now than ever.”<sup>102</sup> Instead of restricting access to their information, teens limit access to what the information means.<sup>103</sup> Boyd refers to this as “social steganography”<sup>104</sup> that employs “pronouns and in-jokes, cultural references and implicit links to unmediated events to share encoded messages.”<sup>105</sup> Other tactics involve the deactivation of an account at the end of the day, or the regular deletion of day-old comments.<sup>106</sup>

In a report of the survey of Americans commissioned by the Berkeley Center for Law and Technology at the University of California, Berkeley School of Law, it is revealed that young adults, within the 18 to 24 age range, are just as concerned and aware of information privacy issues as the older users.<sup>107</sup> A large proportion of young adults, about 84 percent, agree or strongly agree that, before a photo in which one is clearly recognizable is uploaded to the Internet, the permission of the person in the photo should first be sought.<sup>108</sup> Further, a great majority of the young people surveyed refuse to provide information to businesses for reasons of privacy.<sup>109</sup>

The aforementioned studies support the argument that young people are indeed aware of privacy issues. Contrary to common misconception, they

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100. *Id.*

101. See Danah M. Boyd, *Networked Privacy*, 10 SURVEILLANCE & SOC'Y 348, 349 (2012) [hereinafter Boyd, *Networked Privacy*].

102. Danah M. Boyd, Facebook's Move Ain't About Changes in Privacy Norms, available at [http://www.zephorio.org/thoughts/archives/2010/01/16/facebooks\\_move.html](http://www.zephorio.org/thoughts/archives/2010/01/16/facebooks_move.html) (last accessed Nov. 21, 2015).

103. See Boyd, *Networked Privacy*, *supra* note 101.

104. *Id.*

105. *Id.*

106. Boyd & Maverick, *supra* note 36, at 20-21.

107. Chris J. Hoofnagle, et al., How Different Are Young Adults from Older Adults When It Comes to Information Privacy Attitudes & Policies? (An Unpublished Research Paper by the Berkeley Center for Law and Technology) 10 available at [http://www.ntia.doc.gov/files/ntia/comments/100402174-01701/attachments/young\\_americans\\_privacy.pdf](http://www.ntia.doc.gov/files/ntia/comments/100402174-01701/attachments/young_americans_privacy.pdf) (last accessed Feb. 25, 2016).

108. *Id.* at 10-11.

109. *Id.* at 11.

are in fact concerned about their own privacy and feel the need to control the information about them that is available online.<sup>110</sup> It is not amiss to state at this point that Facebook itself has implemented measures to protect minors. For example, one must at least be 13 years old to join Facebook.<sup>111</sup> Whether or not there are children who feign their age to be able to create an account is no longer the responsibility of the site. In the first place, this is an issue that the parents and carers of these minors should address. Is it not the case that the parents have the obligation to supervise their children and control their access to the Internet? For parents to blame social networking sites when their children have been harmed by interactions generated from these sites is in itself an abdication of parental responsibilities. Let it be noted at this point that, as posited by Boyd, exaggerated concerns on sexual predators led to the downfall of MySpace.<sup>112</sup> In any event, Facebook acknowledges that online safety of minors is a shared responsibility between everyone.<sup>113</sup> Educating the youth of the risks involved proves fundamental.<sup>114</sup> Thus, Facebook has a page, which it calls the “Family Safety Center,” that is devoted to providing families useful information on keeping children safe.<sup>115</sup> Importantly, as Julia Angwin rightly observes, Facebook, users “authenticate their offline identity” — providing their real names, real contact details, and connecting with real friends — making Facebook a lot “harder for sexual predators and others with bad intentions to penetrate.”<sup>116</sup>

Another criticism thrown at Facebook is its inability to mediate and tendency to exacerbate disagreements among its users.<sup>117</sup> The photo-tagging feature, for example, leaves users helpless when embarrassing photos

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110. Ken Denmead, *Is Online Privacy a Generational Issue?*, available at <http://archive.wired.com/geekdad/2009/10/is-online-privacy-a-generational-issue> (last accessed Nov. 21, 2015).

111. Facebook, *How Old do I Have to be to Sign up for Facebook?*, available at <http://www.facebook.com/help/34512135559712> (last accessed Nov. 21, 2015).

112. Danah M. Boyd & Nicole B. Ellison, *Social Network Sites: Definition, History, and Scholarship*, 13 J. COMPUTER-MEDIATED COMM. 210, 217. (2008).

113. See Facebook, *Minors and Privacy*, available at <https://www.facebook.com/help/473865172623776> (last accessed Nov. 21, 2015).

114. See Michael Henderson, et al., *Legal Risks for Students Using Social Networking Sites*, AUSTL. EDUC. COMPUTING, Jul. 2010, at 6.

115. See Facebook, *Facebook Family Safety Center*, available at <https://www.facebook.com/safety> (last accessed Nov. 21, 2015).

116. ANGWIN, *supra* note 38, at 263.

117. See Grimmelmann, *supra* note 84, at 1172-73.

appear.<sup>118</sup> It may be the case, however, that this attack is not only outdated but also misdirected. Facebook now allows the user to review tagged photos before they are posted on the user's wall.<sup>119</sup> However, even with the introduction of this user control, a person who does not want a photo of himself uploaded should have objected in the first instance when the same photo was about to be taken. Moreover, if one disapproves of the posting of embarrassing photos, then it is common sense that he should restrain oneself from engaging in inappropriate behavior or exhibiting unwholesome demeanor that may be photographed.<sup>120</sup> In any case, as Trottier's interviewees suggest, the user always has the option to remove the tag, to complain directly to the friend who did the posting, to ask for the deletion of the post, to "unfriend" friends who post undesirable content,<sup>121</sup> and to add as friends only those who exercise discretion in their posting, commenting, etc.<sup>122</sup>

Parenthetically, drowned out by the discussion on tags in undesirable posts, is the contribution of the tagging feature to the enhancement of free speech principles. When one is tagged in a post, one is instantly drawn to the post to provide feedback and participate somehow in the conversation.<sup>123</sup> A disagreement to the post could then be viewed as a positive contribution to the marketplace of ideas. A form of expression, or an idea that many find to be undesirable, has to be tolerated — it must not be repressed, and it must be countered or tested by more speech.<sup>124</sup>

Another issue associated with Facebook use is the leaking of information despite restrictive privacy settings.<sup>125</sup> With convergence, this has become a reality that everyone in the online world has come to accept.<sup>126</sup> Nevertheless, what can be done is for the user to self-evaluate the information he uploads. The routine should be to pause and ponder before

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118. *Id.* at 1171-72. See Anne Susskind, *Privacy on the Internet an Illusion*, *Experts Warn*, 46 L. & SOC'Y J. 24, 24 (2008).

119. JACKSON & SHELLY, *supra* note 75, at 240.

120. TROTTIER, *supra* note 5, at 75-76.

121. *Id.* at 76.

122. *Id.*

123. See COYNE, *supra* note 6.

124. DOUGLAS M. FRALEIGH & JOSEPH S. TUMAN, FREEDOM OF SPEECH IN THE MARKETPLACE OF IDEAS 15-16 (1997).

125. TROTTIER, *supra* note 5, at 78.

126. *Id.* at 82.

posting.<sup>127</sup> If one does not want particular information about himself to spread on the net, then he should not, in the first place, upload that information.<sup>128</sup> It is true that when one posts something, he is “inviting” others to check out that part of his life. He then has no one else but himself to blame for any “unwanted exposure.”<sup>129</sup> Facebook should not be unduly burdened with the responsibility to guard users against their own injudiciousness.

The issue of surveillance, as harm exacerbated by Facebook,<sup>130</sup> figures prominently in current literature. Accordingly, police work now incorporates investigation of profiles and postings on social networking sites.<sup>131</sup> With the threat of terrorism, intelligence work is further pushing the boundaries of what is traditionally regarded as private.<sup>132</sup> Fenton asserts, “it is often hard to speak in a whisper and not be overheard.”<sup>133</sup> Lustgarten and Leigh ominously foretell an eventuality where “no one dares to speak his or her true thoughts, even in private, for fear that the state officials will learn of them.”<sup>134</sup> It could be, however, that these concerns are exaggerated. Surveillance is not a new phenomenon. Even in the offline context, spying and stalking abound. Whether in the real or in the virtual world, one cannot control or restrict the amount of surveillance directed at him.

While technology facilitates acts that intrude on privacy,<sup>135</sup> such as surveillance and policing, these can at times prove beneficial rather than detrimental. Trottier points out that the postings of photos and videos of suspected rioters on Facebook by outraged citizens themselves proved important in the investigation conducted by the Vancouver police of the riot in the Stanley Cup Playoffs in 2011.<sup>136</sup> Postings on social media were also

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127. See MARK PEARSON, *BLOGGING & TWEETING WITHOUT GETTING SUED: A GLOBAL GUIDE TO THE LAW FOR ANYONE WRITING ONLINE* 142 (2012).

128. TROTTIER, *supra* note 5, at 77.

129. *Id.* See also Leenes & Koops, *supra* note 68, at 153-54.

130. Grimmelmann, *supra* note 84, at 1166-67.

131. See Fenton, *supra* note 27, at 138.

132. See LUSTGARTEN & LEIGH, *supra* note 82, at 41. See also Leenes & Koops, *supra* note 68, at 155.

133. Fenton, *supra* note 27, at 138.

134. LUSTGARTEN & LEIGH, *supra* note 82, at 40-41.

135. See Leenes & Koops, *supra* note 68, at 186.

136. TROTTIER, *supra* note 5, at 137-38.



instrumental in the identification and prosecution of suspects in the London riots in that same year.<sup>137</sup>

Though investigations based on social media postings could be viewed as invasive, these provide us protection.<sup>138</sup> Recently, Indonesian police foiled a terror plan and arrested terrorists through the help of Facebook.<sup>139</sup> The threat of terrorism is real.<sup>140</sup> It is rather naive to make outbursts of invasion of privacy every time tracking by intelligence agencies comes up in the news. Of course, there should be limits to surveillance. But then, as David H. Holtzman convincingly asserts, “our safety depends on effective counterintelligence ... [w]e should [thus] be willing to give up some of our information.”<sup>141</sup> Privacy is, in any case, not an absolute construct; and one’s privacy may be traded off for the greater good.<sup>142</sup> The safety and security of the society should be the foremost policy consideration, rather than the privacy concerns of individual members.<sup>143</sup>

Nevertheless, as abovementioned, a Facebook user, by evaluating the information that he uploads, can always limit the amount of data that could be subjected to surveillance collection. One may also familiarize oneself with Facebook’s Data Use Policy,<sup>144</sup> so that he is apprised of how the site uses the information given. This will aid the user in deciding what sort of information he should upload. Interestingly, the site allows the user to delete its account, which will ultimately lead to the deletion of its data within 90

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137. *Id.* at 138.

138. JEFF JARVIS, PUBLIC PARTS, HOW SHARING IN THE DIGITAL AGE IMPROVES THE WAY WE WORK AND LIVE 60 (2011).

139. Niniek Karmini, Facebook broke Indonesian terror case, THE DAILY TELGRAPH, June 20, 2013, available at <http://www.dailytelegraph.com.au/news/breaking-news/facebook-broke-indonesian-terror-case/story-fni0xqlk-1226667137927> (last accessed Nov. 21, 2015).

140. JARVIS, *supra* note 138.

141. DAVID H. HOLTZMAN, PRIVACY LOST, HOW TECHNOLOGY IS ENDANGERING YOUR PRIVACY 268-69 (2006).

142. See NATIONAL RESEARCH COUNCIL OF THE NATIONAL ACADEMIES, ENGAGING PRIVACY AND INFORMATION TECHNOLOGY IN A DIGITAL AGE 308 (James Waldo et. al., eds., 2007).

143. *Id.* at 318-19.

144. See Facebook, What kinds of information do we collect?, available at <http://www.facebook.com/about/privacy/your-info> (last accessed Nov. 21, 2015).

days.<sup>145</sup> Indeed, the site puts a premium on the control by the user of its own information.

#### V. THE CONTINUING CONVERSATION BETWEEN DEVELOPERS AND USERS

Facebook is, after all, a social networking site and a virtual representation of the real. We express ourselves, converge, converse, and exchange thoughts with friends on the site. We should indeed remain in control, able to decide not only the information we divulge, but also choose the people to whom we provide that information. We should be able to freely express ourselves to the world, but at the same time we should not be forced to expose ourselves in public. Otherwise, we lose something “mental.”<sup>146</sup> Lustgarten and Leigh depict it rightly when they say, “[t]he knowledge, or even widespread belief, that one’s words will be heard by someone other than those to whom one wishes to speak creates a society of timid, furtive creatures.”<sup>147</sup> Indeed, we fail to become autonomous and dignified individuals, able to freely speak our minds and contribute significantly and relevantly to the society, when we are deprived of our privacy.<sup>148</sup> And as hinted in the discussion above, this will ruin the symbiosis of privacy and free speech.<sup>149</sup>

Facebook provides a platform that congenially melds the said liberties. It provides an avenue for free speech to thrive, and at the same time allows the user to maintain his privacy through, among others, his ability to control the posts and limit the size of the audience. Kirkpatrick nevertheless asks the right question when he says —

It is comforting that Zuckerberg is so personally passionate about the importance of protecting people from information predators. But what guarantee could Facebook’s users possibly get that his good intentions will last indefinitely? In a worst-case scenario, possibly in some future when Zuckerberg has lost control of his creation, Facebook itself could become a giant surveillance system.<sup>150</sup>

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145. See Facebook, How can I manage or delete information about me?, available at <http://www.facebook.com/about/privacy/your-info> (last accessed Nov. 21, 2015).

146. William L. Prosser, *Privacy*, 48 CAL. L. REV. 383, 392 (1960).

147. LUSTGARTEN & LEIGH, *supra* note 82, at 40.

148. Leenes & Koops, *supra* note 68, at 185.

149. See PATERSON, *supra* note 72, at 15.

150. KIRKPATRICK, *supra* note 26, at 325

Lessig, who is concerned about the harms of data collection and profiling,<sup>151</sup> proposes a regulatory mechanism built from the framework of code and property right.<sup>152</sup> As one's private data is one's property, anyone who wants to take advantage of such information must negotiate with the owner before the taking.<sup>153</sup> The owner is thus given the power to dictate how the private data is to be used.<sup>154</sup> Software should, nevertheless, be used as an electronic butler that takes charge in the negotiation of the user's privacy preferences.<sup>155</sup> Lessig's approach has however received a lot of criticisms, not least of which is its being ineffective and difficult to administer.<sup>156</sup> Lessig, nevertheless, accepts a "weaker" alternative, i.e., one based on contract — a website representation is deemed an offer, and if accepted by the user, it translates into a binding and enforceable agreement between the parties.<sup>157</sup> Lessig's property right regime, however, proves compelling. It is not restricted by privity,<sup>158</sup> and hence allays the fear of the "worst-case scenario" anticipated by Kirkpatrick.<sup>159</sup>

It is not, however, the aim of this Article to provide an answer. What the Article tries to achieve is to point out, amidst the negative portrayal of Facebook as dominating our consciousness and threatening our privacy, its positive contribution to self-development and self-fulfilment that ultimately leads to the formation of more autonomous individuals. The Article also suggests that addressing the risks of Facebook use should be left to the platform developers and the users themselves. Facebook, after all, is a

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151. Lessig posits that data collection and profiling leads to a manipulation of the individual. Concretely he states, "[t]he system watches what you do; it fits you into a pattern; the pattern is then fed back to you in the form of options set by the pattern; the options reinforce the pattern; the cycle begins again." Using the frequent flyer program as an example, Lessig further advances that profiling deprives individuals of the benefit of anonymity, i.e., equality. Collected personal information can be used, for example, to discriminate one from another in terms of rank and status in the provision of services. See LESSIG, *supra* note 9, at 154-56.

152. *Id.* at 159-62.

153. *Id.* at 160.

154. *Id.*

155. *Id.*

156. See Leenes & Koops, *supra* note 68, at 198.

157. LESSIG, *supra* note 9, at 230.

158. *Id.*

159. KIRKPATRICK, *supra* note 27, at 325.

“perpetual beta”<sup>160</sup> that should be tested and consequently improved after conferring with the users. Law may somehow intervene, but only to the extent that it recognizes the property right to information that Lessig proposes.<sup>161</sup> As Jarvis asserts, arguing against a regulatory regime, we do not want to be ruled by “stringent [governmental] controls,”<sup>162</sup> “[w]e need principles to defend our internet and our publicness,”<sup>163</sup> but “[w]hat we need first ... is discussion.”<sup>164</sup>

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160. Boyd, *Social Media*, *supra* note 87.

161. *See* LESSIG, *supra* note 9, at 159–62.

162. JARVIS, *supra* note 138, at 210.

163. *Id.* at 212.

164. *Id.* at 214.