

**BOOK REVIEW****FREEDOM OF EXPRESSION AND THE INTERNET**

*By Wolfgang Benedek and Matthias C Kettmann*

Strasbourg: Council of Europe, 2013, 190pp. ISBN 978-92-871-7702-5 (pbk).  
€29.00.

European discussions of internet regulation tend to be dominated by the European Union dimension. This is unsurprising, reflecting as it does the central role of the Electronic Commerce Directive, the extensive case law of the Court of Justice and the large sums which have been spent by the Commission in successive Safer Internet programmes. It does mean, however, that not enough attention has been paid to either the extensive work that has been done through the Council of Europe on protecting fundamental rights online nor to significant judgments of the European Court of Human Rights such as *Ahmet Yildirim v. Turkey*.<sup>1</sup>

This book partially remedies that gap in the literature. Although short by the standards of most legal texts (at 190 pages) it provides a solid overview of the issues surrounding freedom of expression online, with a particular focus on the Council of Europe and European Convention on Human Rights aspects. In addition, the book outlines the work of other international actors such as the EU, UNESCO, the OSCE and the UN Special Rapporteur on Freedom of Opinion and Expression, as well as the growing human rights work of civil society and private entities such as the Global Network Initiative.

The book opens with an introduction, setting out the general aims and structure of the work and illustrating the general issues presented through the example of the Twitter Joke Trial.<sup>2</sup>

Chapter two then seeks to identify the content of the right to freedom of expression online. Here the authors provide an assessment of the various aspects of the right (such as journalistic, media and artistic freedom) and its relation to corollary rights (such as freedom of association and access to knowledge). For example, the chapter considers whether bloggers or other “citizen journalists” should benefit from the special protections that are afforded the traditional media.<sup>3</sup> This chapter also considers the emerging right to access to the internet and the extent to which it can be regarded as a constituent part of the right to freedom of expression.

Chapters three and four are both short in length and primarily outline their respective areas rather than provide a detailed analysis. Chapter three gives a useful account of restrictions of freedom of expression online, providing a summary of the practice of the European Court of Human Rights in internet cases, while in chapter four the

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<sup>1</sup> No. 3111/10.

<sup>2</sup> *Chambers v. DPP* [2012] EWHC 2157.

<sup>3</sup> Compare the judgment of the Irish High Court in *Cornec v. Morrice* [2012] IEHC 376 holding that a blogger who chronicled religious cults should be treated in the same way as journalists in relation to protecting his sources.

authors then address “standard setting by the Council of Europe and non-state actors”. Here they give a brief history of the Council of Europe’s recommendations and declarations in this area along with an introduction to the initiatives emerging from the Internet Governance Forum, the work of the Global Network Initiative project and the growing role of transparency reports.

Chapters five and six between them form the core of the book, accounting for approximately 30% of the text, and apply the principles already described to a range of specific situations and jurisdictions ranging from internet filtering to hate speech online. These chapters also analyse national practice in areas ranging from copyright enforcement to the export of technology which can be used for mass surveillance. The discussions, though concise, are of uniformly high quality.

A notable feature of these chapters is the way in which they examine the issue of the protection of freedom of expression against private intermediaries such as search engines and social networks. This draws on the extensive Council of Europe work in the area, though unfortunately it does not examine the way in which the Council of Europe has moved from an initial enthusiasm for self-regulation towards a more sceptical view of its impact on individual rights and accountability. The sections examining censorship by Facebook, the nature of quasi-public spaces online and the possible application of ECHR norms to private actors are of particular value. These chapters are also notable for their treatment of privacy and anonymous speech as central elements of freedom of expression online and – despite predating the Snowden revelations – the text shows an awareness of surveillance technology as itself a free speech issue.

Chapters 7 and 8 are again relatively short and descriptive, outlining the institutional framework for monitoring and promoting freedom of expression in a European context – describing, for example, the way in which the Council of Europe, the OSCE and the European Union institutions interact with freedom of expression online and the ways in which state actions can be reviewed.

Finally, chapter 9 concludes by summarising the work and sketching the argument that freedom of expression should be understood as the key right online – both in its own right and as an enabler when it comes to defending other rights.

This is a difficult book to categorise. At €30 it is expensive for a slender volume. Its chapters vary – introductory at some points, providing high level analysis at others – and, despite the range of situations which it examines, it is far from comprehensive. That said, it has real value in the way in which it illuminates the less well known Council of Europe material and outlines a wider international framework which might be unfamiliar to those working mostly at a national or EU level. It does not set out to be a textbook on Article 10 ECHR or on internet law generally, but it would make an excellent supplement for such textbooks and can be recommended to anyone interested in freedom of expression online.

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DOI: 10.2966/scrip.110314.329



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