

Chapter 7

Private Power and New Media: The Case of the Corporate Suppression of WikiLeaks and its Implications for the Exercise of Fundamental Rights on the Internet

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ABSTRACT

The focus of this chapter will be the recent conduct of various corporations in withdrawing Internet services provided to information portal WikiLeaks in light of the controversy surrounding WikiLeaks' publishing classified documents of correspondence between the US State Department and its diplomatic missions around the world in late 2010. The implications for freedom of expression (especially the right to access information) on the Internet will be examined in the wake of WikiLeaks, particularly in the context of the infringer being a private actor, and one comprising a mono- or oligopoly. The motivation of these private actors in contributing to the suppression of WikiLeaks will be assessed to examine whether it constitutes an example of Birnhack and Elkin-Koren's "invisible handshake," i.e. the "emerging collaboration" between the state and multinational corporations on the Internet that they posit is producing "the ultimate threat." The legal recourse open to WikiLeaks and its users for the infringement of fundamental rights will be examined, especially the First Amendment to the US Constitution since the geographic location for these events has mostly been the USA. Finally, the postscript to the WikiLeaks controversy will be considered: the "information warfare" conducted by hackers will be examined to determine whether the exercise of power of these Internet corporations in a way which infringes fundamental rights can be checked by technological means, and whether hackers are indeed the true electronic defenders of freedom of expression.

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BACKGROUND

In November 2010, the online non-profit media organisation WikiLeaks published classified documents detailing correspondence between the US State department and its diplomatic missions around the world, numbering around 250,000 cables. In order to maximise media exposure, five 'old media' publications (namely the newspapers *Der Spiegel*, *El País*, *Le Monde*, *The Guardian* and *The New York Times*) were given prior access to the material on the condition that they complied with common deadlines over when the material was released, with the result of this being that the correspondence was released in parts over the course of many days, dominating newspaper headlines worldwide. These diplomatic cables contained classified information comprising comments on world leaders, foreign states, and various international and domestic issues.

The reaction to WikiLeaks' release of these classified documents from the American political class was generally condemnatory of the decision to publish the information publicly, invoking national security concerns and jeopardizing US interests abroad. There were also reports of the US Justice Department considering charging Julian Assange, the founder of WikiLeaks, with espionage offences based on the release of the cables.

In the wake of the political reaction, there was also a response from the corporate world, with various companies, such as Amazon, PayPal, Visa, and Mastercard, ceasing to continue the provision of services to WikiLeaks.

In light of the above, this chapter will firstly provide a detailed description of this corporate response to the Wikileaks controversy, prior to an assessment of the motivation for these actors to contribute to the suppression of WikiLeaks, to determine whether it is an example of Birnhack and Elkin-Koren's 'invisible hand.' The implications for freedom of expression on the Internet will then be analysed, especially in the situation of the infringer being a private actor constituting

a mono- or oligopoly, before an examination of the legal resource open to WikiLeaks and its users for any infringement of fundamental rights. Lastly, the response to this corporate behaviour from the hacking community will be considered, particularly the Anonymous collective, to determine whether such exercises of corporate power on the Internet can be checked by employing technological means and whether hackers really are the defenders of online free expression.

THE CORPORATE RESPONSE TO WIKILEAKS

Various corporate entities with different links to WikiLeaks stopped providing services to the organisation subsequent to the release of the US Embassy cables. More precise details of these instances are provided below.

Amazon.com

Amazon.com, the online company which started life selling books, has diversified into various other markets, including Amazon Web Services (AWS) which offers remote computing services over the Internet for other websites or client-based applications. WikiLeaks' website was being hosted by Amazon.com via these services prior to the US embassy cables controversy, yet on 1 December 2010, Amazon.com ceased to host the site. At first, Amazon.com did not comment on this cessation of service, but it subsequently issued a statement denying that either the government prompted them to stop hosting the site, or that mass-scale DDOS attacks prompted the website being taken off their servers. The company gave the reason for its actions as being that WikiLeaks violated AWS's terms of service, in particular the term stipulating that WikiLeaks must have all of the rights over the content posted online and that the use of this content must not cause injury to any person or entity. Amazon.com stated that it was

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