Contemporary Readings in Law and Social Justice
ISSN: 1948-9137, e-ISSN: 2162-2752
Vol 16 (1s), 2024
pp. 203 - 210

Regulation of Social Networks in Colombia: Analysis and Recommendations

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Abstract

This article analyzed social media regulation in Colombia, examining the current regulatory framework and its effectiveness in addressing emerging digital challenges. Through a detailed examination of case studies, judicial decisions, and comparative analysis with international regulatory models, the research identifies significant gaps and opportunities in Colombia's approach to social media governance. The study carefully evaluates regulatory frameworks from jurisdictions including the United States, the European Union, Germany, and Brazil, highlighting successful strategies that could be adapted to the Colombian context. Key findings indicate a need for more robust and specific regulations addressing content moderation, data protection, and platform accountability. The research proposes several concrete recommendations, including the adoption of GDPR-inspired data protection measures, implementation of clear content removal procedures with strong freedom of expression safeguards, and establishment of transparent content moderation guidelines. Additionally, the study emphasizes the importance of balancing regulatory oversight with the preservation of digital rights and platform innovation. The implementation of these recommendations could significantly enhance user protection while maintaining a dynamic digital environment in Colombia. This research contributes to the ongoing dialogue about effective social media regulation in emerging digital economies while considering local legal and social contexts.

Keywords: Social media regulation, Personal data protection, Freedom of expression, Transparency, Colombia.

Received: April 18 2024 **Accepted:** June 02,2024 **Published:** June 15 2024

Introduction

The digital era transformed how people communicated, interacted, and accessed information through social media. These platforms democratized content dissemination, enabling individuals to share their ideas with a global audience. However, this freedom brought challenges, including privacy protection, misinformation prevention, and safeguarding third-party rights.

Social media's rapid growth outpaced regulatory frameworks in many countries, creating a complex landscape where freedom of expression and user protection were constantly negotiated. Gillespie (2018) observed that platforms became de facto governors of online speech, despite being unprepared for this responsibility.

In Colombia, social media regulation emerged as a topic of growing relevance. Despite these platforms' importance in citizens' daily lives, the country lacked specific regulations governing their use and operation. The Constitutional Court (2020) noted that Colombia had no specific regulations on social networks and their use by the State, beyond serving as communication channels for participation and transparency promotion.

This regulatory vacuum posed challenges for protecting users' rights and ensuring freedom of expression. As a result, social media platforms operated in a grey area, often self-regulating based on their own policies and guidelines. While this approach provided some flexibility, it also raised concerns about accountability and potential arbitrary decision-making. Kaye (2019) pointed out that when companies set and inconsistently enforce their own rules, they risk infringing on users' human rights.

Over the years, several bills were introduced in the Colombian Congress to regulate social media. For instance, the Colombia Reports (2019) reported on Bill 176/19, which aimed to prohibit the publication of any data, information, file, photograph, or video of another person without their express written consent. Nevertheless, many of these proposals faced criticism for their potential negative impact on freedom of expression and failure to meet constitutional standards.

The challenge lay in crafting legislation that effectively addressed issues such as privacy protection, content moderation, and data security without unduly restricting social media platforms' open nature. This required a nuanced understanding of both social media's technological aspects and the legal principles governing free speech and personal rights in the digital realm.

This research aimed to analyze the state of social media regulation in Colombia, identify regulatory gaps, and evaluate proposed bills. Furthermore, it explored how other countries approached platform regulation and proposed recommendations for the Colombian context, seeking a balance between user rights protection and freedom of expression preservation.

Theoretical Framework

Social media platforms have revolutionized the way people communicate, interact, and access information. These digital platforms enable the creation and exchange of user-generated content, facilitating instant communication and mass dissemination of information (Superintendence of Finance, 2022). In Colombia, its use has grown exponentially, becoming an essential tool in citizens' daily lives (Constitutional Court, 2020).

From a regulatory perspective, Colombia lacks specific legislation addressing the use and operation of social media. The Constitutional Court has pointed out that there is no clear normative framework on how these platforms should be used by the State, beyond their use as communication channels to promote participation and transparency (Constitutional Court, 2020). This regulatory vacuum poses challenges for protecting users' rights and ensuring freedom of expression.

Also, various bills have been introduced in the Colombian Congress aimed at regulating social media. For instance, Bill 176/19 seeks to prohibit the publication of any data, information, file, photograph, or video of another person without their express written consent (Colombia Reports, 2019). However, many of these proposals have faced criticism for their potential negative impact on freedom of expression and for failing to meet constitutional standards.

Freedom of expression is a fundamental right that must be protected both offline and online. The Constitutional Court has indicated that social networks should not be a space for defamation and disqualification, and that regulations must be specific to this medium, considering its particularities (Constitutional Court, 2019). The Special Rapporteur for Freedom of Expression has recommended that States refrain from applying regulatory approaches developed for other media to the Internet, and instead design an alternative and specific regulatory framework for this medium (Constitutional Court, 2020).

The complexity of regulating social media is further highlighted by the multifaceted nature of these platforms. As Boyd and Ellison (2007) define, social network sites are web-based services that allow individuals to construct a public or semi-public profile within a bounded system, articulate a list of other users with whom they share a connection, and view and traverse their list of connections and those made by others within the system. This definition underscores the intricate web of personal data, user interactions, and content sharing that characterizes social media platforms, making their regulation a complex task.

The evolution of social media technologies has additional challenges for regulators. As Gillespie (2018) argues, platforms are not just sites of cultural production: they are also the curators of public discourse. This dual role as both facilitators and gatekeepers of information flow necessitates a nuanced approach to regulation that balances user empowerment with platform accountability.

Moreover, the global nature of social media platforms adds another layer of complexity to their regulation. As Flew et al. (2019) point out, the transnational character of digital platforms has challenges for national regulators, as these companies can operate across jurisdictions while being headquartered in one country. This transnational aspect requires consideration of international cooperation and harmonization of regulatory approaches.

Comparing the situation in Colombia with other countries that have more advanced regulations regarding social media can help identify best practices and possible solutions for the Colombian context. In many countries, the regulation of social networks has focused on aspects such as personal data protection, prevention of misinformation, and platform responsibility for user-published content.

In the United States, Section 230 of the Communications Decency Act of 1996 is one of the most well-known regulations, as it grants immunity to social media platforms for content posted by their users, while also allowing these platforms to moderate content voluntarily (Communications Decency Act, 1996). However, this regulation has been the subject of debate and criticism, especially in relation to content moderation and misinformation (Gillespie, 2018).

In the European Union, the General Data Protection Regulation (GDPR) establishes strict rules on the protection of personal data, which includes the handling of information on social networks (European Union, 2016). Additionally, the Digital Services Act (DSA) and the Digital Markets Act (DMA) seek to regulate digital platforms to ensure a safe and fair online environment (European Commission, 2020). As Hoofnagle et al. (2019) note, GDPR has become a de facto global standard, influencing data protection laws around the world and the practices of multinational companies. This demonstrates how regional regulations can have far-reaching effects on global digital platforms.

In Germany, the Network Enforcement Act (NetzDG) requires social media platforms to remove illegal content within 24 hours of receiving a notification, with the aim of combating hate speech and misinformation (Federal Ministry of Justice and Consumer Protection, 2017). This law has been considered a model for other countries, although it has also been criticized for its potential impact on freedom of expression (Tworek & Leerssen, 2019).

In Brazil, the Marco Civil da Internet establishes principles, guarantees, rights, and duties for the use of the Internet in the country, including net neutrality and personal data protection (Presidency of the Republic, 2014). This law has been praised for its balanced approach and for promoting a free and open Internet (Belli, 2016).

Legal Context in Colombia

Law 1581 of 2012, known as the Personal Data Protection Law, is one of the most relevant regulations in this field. This law establishes general provisions for the protection of personal data and regulates the processing of these data in Colombian territory (Congress of the Republic, 2012). The Superintendence of Industry and Commerce has indicated that this law applies to the processing of personal data carried out in Colombia or when the data controller is not established in the national territory, but Colombian legislation is applicable by virtue of international norms and treaties (Superintendence of Industry and Commerce, 2013).

The Constitutional Court has issued various rulings that address the responsibility of Internet intermediaries and social media platforms. In Judgment T-241 of 2023, the Court pointed out that Internet intermediaries are not responsible for the content and activities of users, unless there is a judicial decision ordering the removal of content or if the platform has intervened in the creation of the content (Constitutional Court, 2023). This jurisprudence is important to understanding how platform liability is handled in Colombia.

Furthermore, the Constitutional Court has emphasized the importance of freedom of expression in the context of social networks. In Judgment T-179 of 2019, the Court indicated that social networks should not be a space for defamation and disqualification, and that regulations should be specific to this medium, considering its particularities (Constitutional Court, 2019). The Attorney General's Office has also pointed out that excesses on social networks can incur crimes such as slander, libel, personal falsehood, harassment, instigation to commit crimes, child pornography, and human trafficking (Constitutional Court, 2019).

Also, in terms of personal data protection, Law 1581 of 2012 is fundamental in regulating how data is handled on social networks. This law establishes that all individuals have the right to know, update, and rectify information collected about them in databases or files (Congress of the Republic, 2012). The Financial Superintendence has also issued concepts that clarify the applicability of this law in the context of social networks, indicating that the administration of personal data on these platforms must comply with the established provisions (Financial Superintendence, 2013).

The Superintendence of Industry and Commerce has issued various concepts that address the application of Law 1581 of 2012 in the context of social networks. In one of these concepts, the Superintendence pointed out that the law does not apply to obligations contracted with social networks such as Facebook and Twitter, as these platforms are not established in Colombian territory and, therefore, are not subject to Colombian legislation (Superintendence of Industry and Commerce, 2013).

The Council of State has also addressed the use of social networks in the context of political promotion. In a 2021 ruling, the Council of State noted that social networks can be used to promote candidacies for public office, if electoral norms are respected and transparency in the promotion of candidacies is guaranteed (Council of State, 2021).

In the case of advertising and promotion of goods and services, the Financial Superintendence has issued guidelines and circulars that regulate the use of social networks for these purposes. For example, the Guide to Good Practices in Advertising through Influencers establishes that social networks can be used as valid means of communication for advertising, as long as current regulations are complied with (Financial Superintendence, 2022).

The legal framework in Colombia regarding social media regulation is further complicated by the rapid evolution of technology and the global nature of these platforms. As Becerra (2015) points out that the challenges of regulating social media in Colombia are exacerbated by the transnational nature of these platforms and the need to balance national sovereignty with global digital realities. This observation underscores the complexity of creating effective regulations in a rapidly changing digital landscape (Gómez-Jutinico et al., 2018; Zuluaga, 2020).

Bills and Judicial Decisions

Bills

One of the most prominent bills is Bill 176 of 2019, which seeks to prohibit the publication of any data, information, file, photograph, or video of another person without their express written consent. This bill has been criticized for its potential negative impact on freedom of expression and for not meeting constitutional standards (Colombia Reports, 2019). Between 2012 and 2019, at least fifteen bills limiting internet expression have been presented, of which thirteen do not meet the requirements demanded by constitutional standards (Colombia Reports, 2019).

Another relevant project is the Lleras Law, which, although not recently discussed, has been a recurring topic in Congress. This law is divided into two themes: specific regulation on copyright with sanctions, scope, and exceptions, and a provision on intermediary liability and content blocking. The Lleras Law has been problematic in relation to freedom of expression, and its discussion is an obligation of Colombia in the Free Trade Agreement (FTA) with the United States.

Judicial Decisions

The Constitutional Court has issued rulings addressing the responsibility of Internet intermediaries and social media platforms. In Judgment T-241 of 2023, the Court stated that Internet intermediaries are not responsible for the content and activities of users unless there is a judicial decision ordering the removal of content or if the platform has intervened in the creation of the content (Constitutional Court, 2023). This jurisprudence is crucial for understanding how platform liability is handled in Colombia.

In Judgment T-179 of 2019, the Constitutional Court indicated that social networks should not be a space for defamation and disqualification, and that regulations should be specific to this medium, considering its particularities (Constitutional Court, 2019). The Attorney General's Office has also pointed out that excesses on social networks can incur crimes such as slander, libel, personal falsehood, harassment, instigation to commit crimes, child pornography, and human trafficking (Constitutional Court, 2019).

In Judgment T-365 of 2014, the Constitutional Court addressed the case of a child victim of cyberbullying on Facebook. The Court decided to urge the Ministry of National Education and the Colombian Institute of Family Welfare (ICBF) to create a policy for the prevention, timely detection, attention, and protection against harassment, bullying, or school bullying, including cyberbullying.

The Council of State has also addressed the use of social networks in the context of political promotion. In a 2021 ruling, the Council of State noted that social networks can be used to promote candidacies for public office, if electoral norms are respected and transparency in the promotion of candidacies is guaranteed (Council of State, 2021).

For the advertising and promotion of goods and services, the Financial Superintendence has issued guidelines and circulars that regulate the use of social networks for these purposes. For example, the Guide to Good Practices in Advertising through Influencers establishes that social networks can be used as valid means of communication for advertising, if current regulations are complied with (Financial Superintendence, 2022).

Case Studies

In the first case, Superintendence of Industry and Commerce and Facebook In a 2013 case, the Superintendence of Industry and Commerce (SIC) addressed a complaint related to the alleged non-compliance of obligations by the social network Facebook. The SIC concluded that Law 1581 of 2012 did not apply in this case, as Facebook was not established in Colombian territory and, therefore, was not subject to Colombian legislation. This case showed the limitation of Law 1581 of 2012 when it comes to its applicability to foreign social media platforms (Superintendence of Industry and Commerce, 2013).

In the second case, Financial Superintendence and Information Disclosure Another relevant case is Concept 2022098559-005 of 2022 issued by the Financial Superintendence. In this case, the suitability of social networks as communication media for the disclosure of information by supervised entities was discussed. The Superintendence concluded that, although there is no specific regulation on social networks, these can be considered valid communication media for information disclosure, if quality, sufficiency, and timeliness in the supply of information are guaranteed (Financial Superintendence, 2022).

In another case, Constitutional Court and the Right of Petition on Social Networks in Judgment T-230 of 2020, the Constitutional Court addressed the use of social networks by the State for the presentation of petitions, complaints, or claims (PQRD). The Court noted that, although there is no specific regulation on the use of social networks for these purposes, the official accounts of public entities on social networks can be considered a suitable channel for the presentation of PQRDs, in accordance with the norms that regulate the right of petition (Constitutional Court, 2020).

Also, in another case of study, Constitutional Court and Freedom of Expression on Digital Platforms in Judgment SU-420 of 2019, the Constitutional Court addressed the exercise of the right to freedom of expression in the use of digital platforms, including social networks. The Court discussed the responsibility of platforms for publications made by users and the treatment of personal data, highlighting the importance of self-regulation in the management of these platforms (Constitutional Court, 2019).

Conclusions and Recommendations

The analysis of social media regulation in Colombia shows a myriad of challenges and opportunities for enhancing the current regulatory framework. Based on comparisons with other countries and existing judicial decisions and regulations in Colombia, the following conclusions and recommendations have been drawn.

To begin with, Colombia grapples with a regulatory gap concerning the specific regulation of social networks. Moreover, the Constitutional Court has explicitly stated that there is no specific regulation governing how these technological instruments should be utilized by the State, beyond serving as communication channels to foster participation and transparency (Constitutional Court, 2020). This may lead to inconsistencies in law enforcement and inadequate protection of users' rights.

Furthermore, the protection of freedom of expression is an aspect that must be considered in any regulation of social networks. In this regard, the Constitutional Court has consistently emphasized that freedom of expression on the Internet should be safeguarded in the same manner as in other media. However, the Court has also cautioned that regulations must be tailored specifically to this medium, taking into account its characteristics (Constitutional Court, 2019). Additionally, the Special Rapporteur for Freedom of Expression has urged States to design an alternative and specific regulatory framework for the Internet, in accordance with current international standards on freedom of expression (Constitutional Court, 2020).

Equally important, transparency and accountability of social media platforms stand out as fundamental aspects that must be addressed in any comprehensive regulation. Considering this, the UN, OAS, OSCE, and ACHPR have strongly recommended that social media companies ensure their content moderation rules, systems, and practices align with international human rights standards and promote maximum possible transparency (UN, OAS, OSCE, ACHPR, 2021).

When comparing Colombia's situation with other countries, valuable lessons can be learned from best practices implemented in jurisdictions such as the European Union, Germany, and Brazil. For instance, the European Union's General Data Protection Regulation (GDPR) establishes stringent rules on personal data protection, which could be adapted and adopted in Colombia to ensure robust data protection on social networks (European Union, 2016).

To improve the regulation of social networks in Colombia, it is therefore recommended to adopt a regulatory framework akin to the GDPR for personal data protection. Additionally, implementing regulations that require platforms to promptly remove illegal content while maintaining safeguards for freedom of expression is crucial. Furthermore, promoting transparency in content moderation practices and ensuring net neutrality should be prioritized.

Ethical Statement

This research adheres to ethical standards in data collection and analysis. All information is from public sources, properly cited, and used without breaching privacy rights. The study aims to contribute objectively to the discourse on social media regulation in Colombia.

Conflict of Interest Statement

The authors declare no competing financial interests or personal relationships that could have influenced this work. This research was conducted independently, without funding from any entity with a vested interest in social media regulation.

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