Balancing Freedom of Speech on the Internet under International Law

Kitsuron Sangsuvan

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Kitsuron Sangsuvan†

I. Introduction ................................................................. 702
II. Freedom of Speech Rules in International Law ............ 707
    A. The Universal Declaration of Human Rights............. 709
    B. The International Covenant on Civil and Political
       Rights ........................................................................ 710
    C. Other Conventions on Human Rights .................. 711
III. Different Applications and Protections of Freedom of
     Speech ........................................................................... 714
     A. International Human Rights Law ............................ 714
     B. Constitutions or Domestic Laws ......................... 715
        1. The First Amendment ...................................... 715
        2. The First Amendment & Other Constitutions or
           Domestic Laws ................................................. 717
        3. The First Amendment & International Human
           Rights Law ...................................................... 718
        4. Hate Speech under the First Amendment & Hate
           Speech in Other Countries .............................. 719
IV. The Protection of Freedom of Speech on the Internet ...... 721
    A. Communication on the Internet ........................... 721
    B. Freedom of Speech on the Internet ...................... 724
V. Intercultural or Cross-Cultural Conflict Through the
   Internet ............................................................................ 726
   A. Culture & the Internet ........................................... 726
   B. Communication Leading to Intercultural or Cross-
      Cultural Conflict ..................................................... 729
   C. Internet Interaction & Intercultural and Cross-
      Cultural Conflict ..................................................... 732

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I. Introduction

William Shakespeare said, "Conversation should be pleasant without scurrility, witty without affectation, free without indecency, learned without conceitedness, novel without falsehood."1 Is the world going to be a better place if all speech or communication conforms to this standard? Communication is defined as any exchange of information, ideas, beliefs, attitudes, or feelings.2 Each day, people all over the world communicate by arguing, gossiping, chatting, making movies, singing songs, teaching and learning, talking on the phone, writing letters, or sending faxes or email. Communication without interference from others is called "freedom of speech,"3 meaning the right to freely express one's opinions through public discourse, through the press

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2 LEENA SEN, COMMUNICATION SKILLS 5 (2d ed. 2007) ("Communication can be defined as a [1] transactional process that involves an exchange of ideas, information, feelings, attitudes, or beliefs and impression; [2] multi-level process in an organization because it involves the organizational hierarchy, from the top to the bottom, and across the horizontal levels; [3] cultural interaction with people in groups for conversing and sharing ideas in social gatherings and not talking shop; [4] disseminating process that involves passing on information to masses through the media; and [5] transformational process that motivates and fosters growth and mutual understandings.").

3 PHILLIP STEELE, FREEDOM OF SPEECH 9 (2005).
and through other means. This term includes all kinds of communication and expression, not just the spoken word. Moreover, freedom of speech plays a key role in people's exercise of other fundamental rights. As the United Nations General Assembly declared, "freedom of information [or speech] is a fundamental human right and is the touchstone of all of the freedoms to which the United Nations is consecrated." More importantly, freedom of speech is a human right that strongly relates to democracy because it allows ordinary people to participate freely in the spread of ideas and in the creation of meaning that helps constitute them as persons.

Through new technologies, modern societies have become more interconnected. The Internet has increased global communication, human interaction, and access to information. It has also been seen as a "great advance" in promoting freedom of speech through the world. However, there have been serious concerns about freedom of speech on the Internet. First, some countries have claimed that freedom of speech on the Internet would cause political instability. For instance, communication on social media, like Twitter and Facebook, played a major role in sparking the Arab Spring revolutions that swept across parts of the Middle East and Northern Africa in 2011. Second, freedom of

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4 See APHRODITE SMAGADI, SOURCEBOOK OF INTERNATIONAL HUMAN RIGHTS MATERIALS 238 (2008).
5 See STEELE, supra note 3, at 9.
7 See SMAGADI, supra note 4, at 238.
12 T.M.C. ASSER PRESS, YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW 2011 176 (2012) ("Even the most visionary expert commentators on the Middle East and
speech on the Internet allows potentially controversial speech about sensitive social interests and individuals. By permitting close contact between different cultures, freedom of speech increases the risk of others being harmed by expressions on the Internet. Due to the existence of different cultures, people can easily insult the convictions of others through expression on the Internet. Freely made speech can also constitute hate speech which has the potential to create intercultural or cross-cultural conflict. This has the potential to cause riots, violence, conflict, or unrest.

The “Innocence of Muslims” is an example of expression or communication justified by free speech concerns that caused intercultural or cross-cultural conflict and violence via the Internet. The “Innocence of Muslims” is a short movie made in the United States. The movie depicts Islam as a religion of violence and the Prophet Muhammad as a foolish and power-hungry man. The movie was first posted on YouTube on July 1, 2012, without attracting much attention. Various Arab TV stations later picked it up, with the religious Egyptian TV channel broadcasting scenes on September 8, 2012. Within days, it had

North Africa could not have predicted on 1 January 2011 that by year end, three autocratic heads of state in the region would have been toppled and that hundreds of thousands of Syrian citizens would have taken to the streets in those final days of 2011 to demand the removal of President Bashar al-Assad. The history books will record 2011 as a year in which parts of the Arab world witnessed fundamental political change with the deposing of Zine el Abidine Ben Ali in Tunisia, Hosni Mubarak in Egypt and Muammar Gaddafi in Libya. But the history books will also note that 2011 marked the beginning of a new age when mass protest, revolution and armed conflict was not only facilitated by, but made possible through, digital communication networks and social networking sites. *Facebook, Twitter, and YouTube* had transformed civil society’s engagement with, and in, warfare.


14 See id.


16 See id.

17 Id.

18 Id.
been viewed by hundreds of thousands of people online. Protests then erupted around the Muslim world and other countries over the movie. Protestors attacked the United States embassy in Cairo, Egypt, tore down the United States flag and replaced it with an Islamist banner. Other protesters attacked the United States consulate in Benghazi, Libya, killing the United States Ambassador Christopher Stevens and three other Americans. About three thousand Muslim Filipino protesters burned United States and Israeli flags in the southern city of Marawi. Overall, the reaction to the movie can be linked to at least seventy-five deaths and hundreds of injuries.

Leaders of several Muslim countries pointed out the “Innocence of Muslims” video insulted the Prophet Muhammad and sparked riots across the world. Further, Ban Ki-Moon, the UN Secretary General, rejected the movie as “full of hate” and because it “seems to have been deliberately designed to sow intolerance and bloodshed.” Former Secretary of State Hillary Clinton called the movie “disgusting and reprehensible” and confirmed “the United States government had nothing to do with [the] video” and “absolutely reject[ed] its content and message.”

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19 Id.
20 Id.
26 UN Calls for Calm and Condemns Film that Offends Islam, PRAVADA (Sept. 16, 2012), http://english.pravda.ru/hotspots/conflicts/16-09-2012/122178-calm_islam-0/.
The international community and many Muslim organizations have called for international law to ban insults of Muslim, thereby controlling freedom of speech across the world.  

Meanwhile, some countries have claimed that governments should be able to manage Internet governance and ensure the stability and security of the Internet.

This Article will address whether and how freedom of speech on the Internet is balanced in order to protect society and prevent intercultural or cross-cultural conflicts. Part I describes the aspects and general rules of freedom of speech in international human rights law, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights, the American Convention on Human Rights, and the African Charter on Human and Peoples’ Rights. Part II addresses how freedom of speech is applied and protected in various countries. It will focus on different protections under international human rights law and domestic constitutions. Part III examines the protection of freedom of speech on the Internet. It defines communication on the Internet and addresses how freedom of speech is protected on the Internet. Part IV discusses intercultural or cross-cultural conflict. Specifically, how freedom of speech on the Internet can result in intercultural and cross-cultural contact. It will address how the Internet relates to human culture, how communication results in intercultural or cross-cultural conflict, and how different protections can constitute intercultural or cross-cultural conflict. Part V examines the ways to control freedom of speech on the Internet. It addresses how social media platforms control online speech or communication. It also discusses exceptions to the exercise of free speech in international human rights law and how they are used to censor the Internet. Finally, this Article will discuss what Internet governance is and how it can control and balance freedom of speech on the Internet.


II. Freedom of Speech Rules in International Law

Freedom of speech is one of the oldest and most respected rights in the history of civilization, one that is often referred to as the “first freedom.” The concept of a right to freedom of speech has origins in Athens and the writings of Plato and Euripides. The concept of this right can also be found in seventeenth century documents such as the 1688 English Bill of Rights, which provided freedom of speech for legislators within the confines of Parliament. Accordingly, it was unlikely that legislators would be impeached for anything that was said during a Parliamentary debate. The general legal guarantee of freedom of speech appeared in Scandinavia in the eighteenth century. Freedom of speech was established in France in 1789 and in the United States Constitution in 1791. Today, the right to freedom of speech is recognized in almost every country.

The United Nations has had a vital role in promoting and protecting human rights worldwide. According to Article I(3) of the UN Charter, one of the principal purposes of the United Nations is “to achieve international co-operation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.” Freedom of speech also falls into the scope of

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31 See id. at 4-9; see also William Magnuson, The Responsibility to Protect and the Decline of Sovereignty: Free Speech Protection Under International Law, 43 VAND. J. TRANSNAT’L L. 255, 276 (2010).


33 See id.

34 Id.

35 Magnuson, supra note 31, at 277.


37 U.N. Charter art. 1 (“The Purposes of the United Nations are: [1] To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement...”)
international human rights protected by the United Nations.\textsuperscript{38} After World War II, the international community tried to adopt an International Bill of Human Rights at the UN Conference on International Organization in 1945.\textsuperscript{39} Later, countries agreed to adopt the International Bill of Human Rights which consists of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and two Optional Protocols annexed thereto, and the International Covenant on Economic, Social, and Cultural Rights.\textsuperscript{40} Freedom of speech was included in the list of basic human rights guaranteed by the International Bill of Human Rights.\textsuperscript{41}

Like general international law, international human rights law generates obligations with which states are bound to comply or respect.\textsuperscript{42} When states become parties to international human rights treaties, international law imposes an obligation “to respect, to protect and to fulfill human rights.”\textsuperscript{43} This obligation to respect requires states to “refrain from interfering with or curtailing the enjoyment of human rights.”\textsuperscript{44} The obligation to “protect requires states to protect individuals and groups against human rights abuses.”\textsuperscript{45} Further, “the obligation to fulfill means that states must

\begin{footnotesize}
\begin{enumerate}
\item See id. at 528.
\item See UDHR, \textit{supra} note 38 (incorporating the Universal Declaration of Human Rights into the International Bill of Human Rights, including its provision guaranteeing freedom of speech).
\item Id.
\item Id.
\item Id.
\end{enumerate}
\end{footnotesize}
take positive action to facilitate the enjoyment of basic human rights." States seek to put into place domestic measures and legislation compatible with their treaty obligations and duties. Thus, the domestic legal system provides the principal legal protection of freedom of speech guaranteed under international law. For example, many countries have written the right to freedom of speech, which originates in international human rights law, into their own constitutions.

A. The Universal Declaration of Human Rights

The Universal Declaration of Human Rights is based on the idea that there are a number of "common standards of decency that can and should be accepted by people of all nations and cultures." In 1948, the UN General Assembly adopted the Universal Declaration of Human Rights as a set of principles that all member states could pledge to implement. The document contains thirty articles which outline universal rights, including the right to life, security of one's person, fair trial, freedom of movement, and freedom of religion and expression. Specifically regarding freedom of speech, Article 19 of the Universal Declaration of Human Rights provides that "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

The Universal Declaration of Human Rights was not intended to be binding on states as part of positive international law. However, the Universal Declaration of Human Rights is agreed to

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46 Id.
48 See id.
49 See Magnuson, supra note 31, at 278.
51 Id.
52 See UDHR, supra note 38, at art.1.
53 Id. at art. 19.
54 See Humphrey, supra note 39, at 529.
be the foundation of international human rights law.\textsuperscript{55} It has "inspired a rich body of legally binding international human rights treaties," and represents universal recognition of certain values.\textsuperscript{56} "Over the years, the commitment has been translated into law" through "treaties, customary international law, general principles, regional agreements and domestic law, through which human rights are expressed and guaranteed."\textsuperscript{57} Moreover, the Universal Declaration creates the fundamentally important values and norms that are shared by all members of the international community.\textsuperscript{58}

B. The International Covenant on Civil and Political Rights

Even though the Universal Declaration of Human Rights is not an international legal instrument per se, it supplies the essential provisions and sentiments found in the International Covenant on Civil and Political Rights of 1966 ("ICCPR").\textsuperscript{59} The ICCPR is part of the International Bill of Human Rights, which "guarantees a broad spectrum of civil and political rights."\textsuperscript{60} The ICCPR obligates countries that have ratified the treaty to protect and preserve basic human rights such as the right to life and to human dignity, fair trial, equality before the law, religious freedom and privacy, and gender equality.\textsuperscript{61}

The rights cataloged and defined by the ICCPR are substantially the same as those set forth in the Universal Declaration of Human Rights.\textsuperscript{62} In the context of freedom of speech, the ICCPR states, "Everyone shall have the right to hold opinions without interference."\textsuperscript{63} The only restrictions on this

\textsuperscript{56} Foundation, supra note 42.
\textsuperscript{57} Id.
\textsuperscript{58} See Magnuson, supra note 31, at 278.
\textsuperscript{62} See Magnuson, supra note 31, at 279.
right are "[f]or respect of the rights or reputations of others," or "[f]or the protection of national security or of public order . . . or of public health or morals."\(^{64}\) In addition, Article 19(2) of the ICCPR provides that "[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."\(^{65}\) The individual right of freedom of expression also protected from governmental action and the actions of individuals.\(^{66}\)

C. Other Conventions on Human Rights

In addition to the Universal Declaration of Human Rights and the ICCPR, the African, European, and Inter-American human rights instruments guarantee freedom of speech on the regional level. In 1950, the Council of Europe drafted a Convention for the Protection of Human Rights and Fundamental Freedoms (the "European Convention") designed to ensure enforcement of the Universal Declaration of Human Rights.\(^{67}\) The European Convention entered into force on September 3, 1953.\(^{68}\) It was the first regional system for the protection of human rights.\(^{69}\) According to Article 10 of the European Convention, "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."\(^{70}\) The European Convention also established the

\(^{64}\) Id. art. 19.

\(^{65}\) Id. art. 19(2).

\(^{66}\) Magnuson, supra note 31, at 279-80.

\(^{67}\) European Convention for the Protection of Human Rights and Fundamental Freedoms pmbl., Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter European Convention] ("The Preamble to the Convention provides in pertinent part: 'Being resolved, as the governments of European countries which are likeminded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration.").


\(^{69}\) DONALD K. ANTON & DINAH L. SHELTON, ENVIRONMENTAL PROTECTION AND HUMAN RIGHTS 335 (2011).

\(^{70}\) European Convention, supra note 67, art. 10. The European Convention also
European Court of Human Rights. The Court has interpreted the right to freedom of speech as “one of the basic conditions for [the] progress of a democratic society and for the development of every man.”

In Latin America, the human rights system is based on three legal sources: the Organization of American States, the American Declaration of Human Rights, and the American Convention. The American Convention, negotiated at San Jose, Costa Rica, in 1969, is an international agreement creating legally binding obligations for ratifying countries. The Convention specifies the basic civil and political rights to be protected throughout western hemisphere. It protects many of the same basic liberties guaranteed by the Bill of Rights, including freedom of religion, assembly, the right to a fair trial, the right to property, freedom from slavery, and equal protection of the law. The American Convention also establishes an Inter-American Court and expands the authority of the Inter-American Commission to serve as the enforcement mechanism for the rights provided by the Convention. Within the context of freedom of speech, Article 13 of the American Convention states, “everyone has the right to freedom of thought and expression.” It also prohibits indirect

states: “The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

71 See id. art. 2.


74 Id. at 325-26.

75 Id. at 326.

76 Id.


78 American Convention on Human Rights art. 13, para. 1, Nov. 21, 1969, 1144
methods of restricting expression, such as unfair allocation of newsprint or broadcasting frequencies—a restriction that applies both to private entities as well as the government.\(^7\) According to the Inter-American Court, “freedom of expression constitutes the primary and basic element of the public order of a democratic society, which is not conceivable without free debate and the possibility that dissenting voices be fully heard.”\(^8\)

In Africa, the human rights system was adopted under the auspices of the Organization of African Unity (OAU), which in 2002 transformed itself into the African Union.\(^9\) On June 9, 1998, the Assembly of Heads of State and Government of the OAU adopted a Protocol to the African Charter on Human and Peoples’ Rights (Protocol).\(^10\) The Protocol is the main African human rights instrument relating to humanity’s rights in the African Union Member States.\(^11\) The Protocol, signed by thirty of the fifty-two Member States of the OAU, also establishes an African Court on Human and Peoples’ Rights to supplement the existing protections afforded by the African Commission on Human and Peoples’ Rights.\(^12\) In the context of freedom of speech, Article 9 of the African Charter guarantees every individual’s right “to receive information” and “to express and disseminate his opinions within the law.”\(^13\) The African Commission has also indicated, in respect to Article 9, that “freedom of expression is a basic human right, vital to an individual’s personal development and political consciousness, and to his participation in the conduct of public life in his country.”\(^14\)

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\(^{7}\) U.N.T.S. 143 [hereinafter American Convention].
\(^{8}\) See id. art.13, para. 5.
\(^{10}\) Frans Viljoen, International Human Rights Law in Africa 12 (2012).
\(^{12}\) See id. at 46.
\(^{13}\) See id. at 45-46.
\(^{15}\) Media Rights Agenda and Others v. Nigeria, Comm. 105/93, 130/94, 128/94
III. Different Applications and Protections of Freedom of Speech

A. International Human Rights Law

Under international human rights treaties, countries are obligated to "enforce the international principles and legal norms designated to protect universal human dignities." Countries have two basic obligations: "(1) to adopt statutes or other measures necessary to protect the rights guaranteed by the treaty and (2) to remedy any violations of the human rights." Nevertheless, state sovereignty plays an important role in defining the status and rights of nation states. A state’s sovereign power includes the authority to determine its human rights policy. State sovereignty also empowers a state to choose its degree of compliance with existing international agreements. This means that countries are allowed to exercise, limit, or control the rights to freedom of speech in their own ways within their own territory. Some countries may choose not to provide the full protection of rights to their citizens while other countries enforce the rights through legal actions against violations of those rights.

Moreover, there are different interpretations and applications of freedom of speech in each country. For instance, under Article

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87 Araujo, supra note 59, at 1479.
88 Magnuson, supra note 31, at 285.
89 See IAN BROWNLIE, PRINCIPLES OF INTERNATIONAL LAW 15 (5th ed. 1998). This basic doctrine includes three corollaries: (1) jurisdiction exercised by states over territories and permanent populations; (2) the duty not to intervene in the exclusive jurisdiction of other states; and (3) the dependence of obligations which emerge from the sources of international law. See id.; John H. Jackson, Sovereignty-Modern: A New Approach to an Outdated Concept, 97 AM. J. INT’L L. 782, 782 (2003).
91 See generally Kal Raustiala, Rethinking the Sovereignty Debate in International Economic Law, 6 J. INT’L ECON. L. 841 (2003) (defining sovereignty and arguing that global governance is altering the classic model of state influence over international matters).
92 See generally Magnuson, supra note 31, at 257-58 (arguing that the need for international free speech protections conflicts with the state’s control over internal matters).
93 See Araujo, supra note 59, at 1479.
19 of the ICCPR, the inclusion of a reference to "special duties and responsibilities" accompanying the exercise of the freedom of speech was controversial.44 "Countries supporting the inclusion of such a clause argued that freedom of speech was a precious heritage that held tremendous power in public opinion and international affairs, thus justifying reference to the responsibilities of speakers."95 On the other hand, other countries argued "all rights carry countervailing duties, and thus any specific reference to the duties inherent to free speech was unnecessary. In the end, consensus was reached on a clause that provided for special duties and responsibilities but narrowly limited the kinds of restrictions that could be imposed on the right."96 The definition of the right to freedom of speech in the ICCPR was broad, "given the difficulty of getting so many divergent countries to agree on one version."97

B. Constitutions or Domestic Laws

1. The First Amendment

Freedom of speech is usually established and protected by constitutions, but there is a difference between the protection of freedom of speech under the U.S. Constitution and the protection of freedom of speech under other constitutions. "The First Amendment to the U.S. Constitution, which states that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press,' functions as the principal guarantor of speech rights in the United States."98 As Professor Michael P. Seng stated, "the First Amendment acts as a limitation on all governmental action in the United States, whether it be federal, state or local and as a limitation on private action for, or supported by, the government."99 This means that the government has little

94 Magnuson, supra note 31, at 280.
95 Id.
96 Id.
97 Id.
authority to impose restrictions on the right to freedom of speech.\textsuperscript{100}

The First Amendment is also the bedrock upon which all of other liberties are built.\textsuperscript{101} The key values that underlie the First Amendment include: "(1) the protection of individual freedom to express ideas, form opinions, create art, and engage in research; (2) the ability of individuals and groups to share their views with others, and build on the ideas of others; and (3) the promotion and dissemination of knowledge and opinion."\textsuperscript{102}

The First Amendment of the U.S. Constitution is unique. Freedom of speech in the United States receives a very high degree of constitutional protection, which is unparalleled elsewhere in the world.\textsuperscript{103} This is because freedom of speech is a fundamental cornerstone of American democracy.\textsuperscript{104} It is highly valued under the view that free expression is necessary to preserve a free society.\textsuperscript{105} The strong constitutional protection of freedom of speech in the United States is an integral part of American culture, resulting from history and experience.\textsuperscript{106} The Supreme Court has also interpreted the First Amendment's guarantee of freedom of speech very expansively.\textsuperscript{107} This broad interpretation is based on the fact that the First Amendment does not have limiting language.\textsuperscript{108} Therefore, "[t]he constitutional protection


\textsuperscript{101} See Seng, supra note 99, at 91; see also Griswold v. Connecticut, 381 U.S. 479, 483 (1965) ("The First Amendment has a penumbra where privacy is protected from governmental intrusion.").


\textsuperscript{104} See DONNA DEMAC, STATE OF THE FIRST AMENDMENT 1 (1997) ("The right to speak one's mind, whether privately or publicly, without fear of government restriction, is one of the cornerstones of the American democracy.").

\textsuperscript{105} See DANIEL A. FARBER, THE FIRST AMENDMENT 6 (1st ed. 1998).

\textsuperscript{106} See Sedler, supra note 103, at 379.

\textsuperscript{107} See id. at 380. The First Amendment has been drafted in broad and sweeping terms, so that its meaning depends on the Supreme Court's interpretation of it. See id.

\textsuperscript{108} See Michael W. McConnel, Free Exercise Revisionism and the Smith Decision,
afforded to freedom of speech is... the strongest protection afforded to any individual right under the American Constitution, and the value of freedom of speech generally prevails over other democratic values such as equality, human dignity, and privacy."\(^{109}\)

2. *The First Amendment & Other Constitutions or Domestic Laws*

Countries with different experiences from that of the United States could possibly provide less protection of freedom of speech.\(^{110}\) Freedom of speech might play a less important role in the culture of such a country other than the United States.\(^{111}\) Freedom of speech in other countries is generally not protected as much as freedom of speech in the United States.\(^{112}\) For example, French law regarding freedom of speech is "not as broad as in the United States, and expression is more easily restricted by the government."\(^{113}\) Article Eleven of the Declaration of the Rights of Man and of the Citizen of 1789 states, "the free communication of thoughts and opinions is one of the most precious rights of man... Every citizen may, accordingly speak, write and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law."\(^{114}\) "Although Article Eleven seems to provide French citizens with expansive freedom of speech, it is qualified by the last clause, which grants to the French government an active role in creating laws that restrict that freedom."\(^{115}\)

Moreover, French Penal Code R. 645-1 restricts free expression by making it a crime to display, exchange, or sell Nazi paraphernalia or Third Reich memorabilia.\(^{116}\) In *L’Union Des*
Etudiants Juifs De France Et La Ligue Contre Le Racisme Et L'Antisemitisme v. Yahoo! And Yahoo! France ("Yahoo! Case"), a French court found that Yahoo! violated R. 645-1 by selling to French Internet users "Nazi-related items" via its auction website. Yahoo! sought relief in the United States from strict French penalties, and "a U.S. district court ruled that the French order was unenforceable, basing its decision on the guarantee of freedom of speech in the First Amendment of the United States Constitution."

3. The First Amendment & International Human Rights Law

Freedom of speech in the United States is not always consistent with international human rights norms. In 1992, the United States ratified the ICCPR. Two main goals of the treaty were: (1) to "remove doubts about the seriousness of the U.S. commitment to human rights"; and (2) to "strengthen the impact of U.S. efforts in the human rights field." With its ratification, the United States attached "an unprecedented number" of reservations, understandings, and declarations, specifically five reservations, five understandings, four declarations, and one proviso. This would allow the United States to participate in the development and enforcement of human rights around the world.

The United States also attached reservations to the ICCPR's provisions relating to juveniles, capital punishment, and inhumane

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117 433 F.3d 1199 (9th Cir. 2006).
118 See Okoniewski, supra note 100, at 297.
119 Id.; see Yahoo!, Inc. v. La Ligue Contre le Racisme et L'Antisemitisme, 169 F. Supp. 2d 1181, 1194 (N.D. Cal. 2001).
119 See Sedler, supra note 103, at 381.
123 See id.
or degrading treatment of criminals.\textsuperscript{125}

It attached understandings concerning the provisions on equal protection, compensation for illegal arrests, separate treatment of the accused from the convicted, and right to counsel, and the extension of the provisions in the treaty to federal states. Finally, it attached declarations with regard to the treaty being non-self-executing, that the rights that may be taken away during emergencies, the Human Rights Committee, and the savings clause on natural wealth and resources.\textsuperscript{126}

Still, freedom of speech is one of the distinctive rights\textsuperscript{127} that countries intended to preserve. Even though the ICCPR calls upon state parties to adopt legislation to enforce the provisions,\textsuperscript{128} the United States made a reservation to Article 20 of the ICCPR, which prohibits propaganda for war as well as "national, racial or religious hatred that constitutes incitement to discrimination, hostility, or violence."\textsuperscript{129} Concerned that this provision would violate freedom of speech protected by the First Amendment, the U.S. Senate adopted a reservation ""that Article 20 does not . . . restrict the right of free speech and association protected by the Constitution and laws of the United States.""\textsuperscript{130} ""Where U.S. duties under a treaty conflict with rights protected in the U.S. Constitution, rights in the Constitution must prevail.""\textsuperscript{131} In other words, the United States was not required to restrict the right of freedom of speech. Freedom of speech is thus given more protection in the United States than other countries.\textsuperscript{132}

4. Hate Speech under the First Amendment & Hate Speech in Other Countries

The First Amendment protects not only political speech, but also offensive and disagreeable speech.\textsuperscript{133} This means that

\textsuperscript{125} See id. at v.
\textsuperscript{126} Id. (internal citations omitted).
\textsuperscript{127} See id. at vii-ix.
\textsuperscript{128} See ICCPR, supra note 63, at art. 2(2).
\textsuperscript{129} Ash, supra note 123, at v.
\textsuperscript{130} See id. at xlv (quoting 138 CONG REC. S4783 (1992)).
\textsuperscript{131} Id. at xlv.
\textsuperscript{132} See id.
\textsuperscript{133} See Adam Clayton Powell III, Children, the Internet, and Free Speech, 14
freedom of speech under the First Amendment goes so far as to protect the expression of racial hatred or hate speech. The United States is the only country in the world that expressly protects hate speech. The United States courts have interpreted the First Amendment in a way that protects hate speech. For instance, in Texas v. Johnson, the court stated that "the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." "The First Amendment does not protect hate speech only when it amounts to ‘fighting words’ or ‘incitement to imminent lawless action’ or when sexual speech meets the tortured constitutional definition of ‘obscenity.'"

On the other hand, almost all countries around the world regulate hate speech in a way that promotes human dignity and protects minorities from verbal persecution. Many countries impose restrictions on hate speech, according to Article 20 of the ICCPR. In Europe, all countries have adopted legislation aimed at repressing hate speech. For example, "France’s extensive legislation on combating racism includes criminalizing the following: (1) inciting hatred or discrimination on [the] basis of race; (2) wearing emblems reminiscent of crimes against humanity; and (3) defending or disputing crimes against


138 See Yulia A. Timofeeva, Hate Speech Online: Restricted or Protected? Comparison of Regulation in the United States and Germany, 12 J. TRANSNAT’L L. & POL’Y 253, 254 (2003).


humility." In Germany, hate speech cannot rise to the level of discourse that merits constitutional protection at all. Germany’s Constitutional Court held that free speech protection under the Constitution might be limited to ensure the protection of personality and human dignity. Section 130(1) of Germany’s criminal code also made it unlawful to “in a manner capable of disturbing the peace . . . incite hatred against segments of the population or call for violent or arbitrary measures against them; or . . . assault the human dignity of others by insulting, maliciously maligning or defaming segments of the population . . . .”

IV. The Protection of Freedom of Speech on the Internet

A. Communication on the Internet

The Internet has become a key instrument for the exercise of the right to freedom of speech today. The Internet helps people interact and communicate with each other freely and globally. As one court explained, “It is no exaggeration to conclude that the Internet has achieved, and continues to achieve, the most participatory marketplace of mass speech that this country—and indeed the world—has yet seen.” The Internet constitutes a unique and wholly new medium of worldwide human communication. Many people depend on it daily to

141 Id.
142 See Winfried Brugger, The Treatment of Hate Speech in German Constitutional Law (Part I), 4 GERMAN L.J. 1, 1 (2003).
143 See generally, Bundesverfassungsgericht [BVerfGE] [Federal Constitutional Court] Feb. 24, 1971, 9 ENTSCHEIDUNGEN DES BUNDESVERFASSUNSGGERICHTS [BVERFGE] 173 (Ger.) (holding that human dignity is an essential value to the system of fundamental rights).
144 STRAFGESETZBUCH [STGB] [PENAL CODE], Nov. 13, 1998, BUNDESGESETZBLATT [BGBl. I] 3322, as amended, § 130(1), (Ger.) (criminalizing Holocaust denial).
147 See id. at 877.
communicate with others and to receive information they need.\textsuperscript{148} “The Internet provides an unprecedented volume of resources for information and knowledge and opens up opportunities for new expression and participation.”\textsuperscript{149}

The key actors in the social media system include: (1) the sender or speaker; (2) the receiver or listener; and (3) the intermediary or service provider.\textsuperscript{150} The Internet is an intermediary that provides access to, hosts, transmits, and indexes content or communication between a speaker and a listener.\textsuperscript{151} “The relationship between the speaker and the intermediary allows the speaker to upload information to the host computer. The relationship between the listener and an intermediary allows the listener to view or download information posted by the speaker.”\textsuperscript{152} Once people have access to the Internet, they can send and receive information from one another. For example, people can transfer information through email, list services, newsgroups, chat rooms, bulletin boards, or blogs on the Internet.\textsuperscript{153} Further, the Internet plays a critical role in the business sector and online commercial activities through Internet service providers (ISPs), data processing and web hosting providers, Internet search engines and portals, e-commerce, Internet payment systems, and participative-networked platforms.\textsuperscript{154}

More specifically, social media includes popular forms of electronic communication that allow people to create online communities to share information, ideas, personal messages, and

\textsuperscript{148} WILLIAM M. PRIDE ET AL., BUSINESS 486-87 (10th ed. 2010).


\textsuperscript{151} Harper, supra note 150, at 266.

\textsuperscript{152} Id.

\textsuperscript{153} See DOLORES WELLS, COMPUTER CONCEPTS BASICS 41-42 (2010).

other content. Social media provides a way for people to connect or communicate with other people using the Internet and a host of services. Information can be exchanged, collected, aggregated, and disseminated in a split second, and people from different areas across the world can contact each other easily. Social media can take many forms, including blogs and microblogs (e.g., Twitter), content communities (e.g., YouTube), social networking sites (e.g., Facebook), collaborative projects (e.g., Wikipedia), and virtual worlds. For example, YouTube allows billions of people to discover, watch, and share originally-created videos. YouTube provides a forum for people to connect, inform, and inspire others across the globe and acts as a distribution platform for original content creators and advertisers large and small.

Since YouTube encourages sharing and interacting, "[e]ach and every user of YouTube makes the site what it is." Users can let others know what they think. "Feedback [is] part of the experience, and when done with respect, can be a great way to make friends, share stories, and make [one's] time on YouTube richer." Additionally, many forms of social media are also free, assuming Internet access is gained. "Social media provide opportunities for users to engage in self-presentation of identity"

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155 See CONNIE M. WHITE, SOCIAL MEDIA, CRISIS COMMUNICATION, AND EMERGENCY MANAGEMENT: LEVERAGING WEB 2.0 TECHNOLOGIES 9 (2012).
156 See id.
157 See id.
162 See MASS COMMUNICATION 335 (Flavio S. Fogliatto & Giovani J.C. da Siveira, eds., 2011).
165 See id.
166 Id.
167 See GEORGE BROWN, SOCIAL MEDIA 100 SUCCESS SECRETS 11 (2008).
since no requirement exists for revelation of the user’s identity.\textsuperscript{168}

\textbf{B. Freedom of Speech on the Internet}

Since the Internet is a device or stage which allows people to express, communicate, or provide information, the right to freedom of speech on the Internet must be protected from interference. Human rights instruments recognize that the protection of the freedom of speech under international human rights law extends to the Internet.\textsuperscript{169} Article 19 of the ICCPR, which protects freedom of speech, should apply to the Internet.\textsuperscript{170} This means that the right to freedom of speech on the Internet should be protected the same as the general right to freedom of speech. Although the ICCPR does not guarantee a “right to the Internet,” Article 19(2) explicitly protects expression and information regardless of its platform channel.\textsuperscript{171} “The text and drafting history of the ICCPR also demonstrate that the negotiating states intended the term ‘media’ to encompass not just the particular channels of communication available at the time (e.g., newspapers and increasingly radio and television) but also technology that had yet to be invented.”\textsuperscript{172} “It matters that Article 19(2) protects the means of expression because these means matter, separate and apart from the protection afforded to the content of the communication. Protecting the technologies of connection in this way also fills a critical gap in human rights law.”\textsuperscript{173}

Recently, the UN Human Rights Council has passed a landmark resolution supporting freedom of speech on the Internet.\textsuperscript{174} The Human Rights Council acknowledges that the Internet can be an important tool for developing and for exercising

\begin{itemize}
  \item \textsuperscript{168} HANA S. NOOR AL-DEEN & JOHN ALLEN HENDRICKS, SOCIAL MEDIA: USAGE AND IMPACT 4 (2012).
  \item \textsuperscript{169} See SMAGADI, supra note 4, at 240.
  \item \textsuperscript{170} See Molly Land, Toward an International Law of the Internet, 54 HARV. INT’L L.J. 393, 399-401 (2013).
  \item \textsuperscript{171} Id. at 401-02.
  \item \textsuperscript{172} Id. at 407.
  \item \textsuperscript{173} Id. at 457.
\end{itemize}
human rights.\textsuperscript{175} The principle of freedom of speech under the UN conventions must apply to the Internet, so the right to freedom of speech on the Internet can be protected as traditional media.\textsuperscript{176} The Human Rights Council affirmed that:

> the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice, in accordance with Article 19 of the Declaration of Human Rights and the International Covenant on Civil and Political Rights.\textsuperscript{177}

The Human Rights Council calls upon “all states to promote and facilitate access to the Internet and international cooperation aimed at the development of media and information and communications facilities in all countries.”\textsuperscript{178} This General Assembly resolution is an important recognition and guideline for the promotion, protection, and enjoyment of human rights, especially the right to freedom of speech on the Internet.\textsuperscript{179} Even though this resolution is non-binding, it may still carry significant moral or political weight and establish political commitments.\textsuperscript{180}

In the United States, freedom of speech on the Internet receives the same protections as any other form of speech under the First Amendment.\textsuperscript{181} President Obama has recognized that the more freely information is able to flow, the stronger societies become.\textsuperscript{182} Free access to information helps citizens hold their own government accountable, generate new ideas, and encourage creativity and entrepreneurship.\textsuperscript{183} In addition, the Supreme Court

\begin{itemize}
\item \textsuperscript{175} See id.
\item \textsuperscript{176} See id.
\item \textsuperscript{177} Id.
\item \textsuperscript{178} Id.
\item \textsuperscript{179} See id.
\item \textsuperscript{181} See Reno v. ACLU, 521 U.S. 844 (1997) (holding that speech on the Internet receives the highest level of First Amendment protection).
\item \textsuperscript{182} See Hillary Clinton, U.S. Sec’y of State, Remarks on Internet Freedom (Jan. 21, 2010), http://www.state.gov/secretary/rm/2010/01/135519.htm (“During his visit to China in 2009, President Obama held a town hall meeting with an online component to highlight the importance of the Internet.”).
\item \textsuperscript{183} See id.
\end{itemize}
of the United States has ruled that the First Amendment applies in full measure to speech on the Internet. In *Reno v. ACLU*, the majority opinion by Justice Stevens emphasized that speech through the Internet is entitled to the highest protection from governmental restriction. The Court has also ruled that statutory provisions enacted to protect minors from "indecent" and "patently offensive" communications on the Internet abridged the freedom of speech protected by the First Amendment.

V. Intercultural or Cross-Cultural Conflict Through the Internet

A. Culture & the Internet

Culture is "everything that people have, think, and do as members of society." Culture is the way of life for the individual members or groups within a society, including dress, beliefs, marriage customs and family life, work patterns, language, religious ceremonies, and leisure pursuits. Culture is a tool kit of practices, knowledge, and symbols in society acquired through learning rather than instinct. There are many different cultures around the world. The UN recognizes a right to culture as one of the fundamental human rights. According to Article 5 of the

184 *Reno*, 521 U.S. at 849.
185 See *id.* at 863.
186 *Id.* at 849.
187 GARY FERRARO & SUSAN ANDREATTA, CULTURAL ANTHROPOLOGY 29 (2011) ("Everything that people have refers to material possessions; everything that people think refers to the things they carry around in their heads; and everything people do refer to behavior patterns.").
189 See CLIVE DIMMOCK & ALLAN WALKER, EDUCATIONAL LEADERSHIP: CULTURE AND DIVERSITY 8 (2005) ("[Culture] is displayed and expressed through language, thought and action. Culture is also expressed through physical objects, such as works of art, books, icons, monuments, and museums, and through social interaction such as how people relate to one another, make decisions and share experiences.").
192 See *id.*
Universal Declaration on Cultural Diversity, cultural rights are universal, indivisible, and interdependent.\textsuperscript{193} Article 15(1)(a) of the International Covenant on Economic Social and Cultural Rights also recognizes “the right of everyone to take part in cultural life.”\textsuperscript{194} The term “cultural life” may be understood as “the distinctive set of ideas, social behavior, way of life, and pattern of communication of a particular society or people.”\textsuperscript{195} This may then simply mean that everyone has a right to rely on or live in their culture, including the right to enjoy and develop culture and identity.\textsuperscript{196}

The Internet is a global network that connects billions of

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Cultural rights are an integral part of human rights, which are universal, indivisible, and interdependent. The flourishing of creative diversity requires the full implementation of cultural rights as defined in Article 27 of the Universal Declaration of Human Rights and in Article 13 and 15 of the International Covenant on Economic, Social and Cultural Rights. All persons have therefore the right to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue; all persons are entitled to quality education and training that fully respect their cultural identity; and all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms.

\textit{Id.}


1. The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life; (b) To enjoy the benefits of scientific progress and its applications; (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

\textit{Id.}


\textsuperscript{196} See Shaver & Sganga, supra note 195, at 642-43.
\end{flushleft}
people around the world.\textsuperscript{197} The Internet facilitates cross-cultural integration through which culture (things, ideas, beliefs, and behavior patterns) is exchanged or interconnected to some degree. For instance, people use the Internet as a means of creating supportive environments to bring people together and share in ways that allow for new information to emerge.\textsuperscript{198} The Internet promotes a global culture\textsuperscript{199} and results in cultural diffusion that spreads the cultural aspects of one country to other countries. The Internet also increases intercultural communication\textsuperscript{200} and transforms societies by bridging the divide between people of different faiths and beliefs. However, the Internet has not converged all different cultures in the world into one single culture. While they may operate in a global culture, people remain members of their subcultures\textsuperscript{201} or cultural groups. They may have "the distinctive lifestyles, values, norms, and beliefs of certain segments of the population with a society."\textsuperscript{202} Their own culture, manages their way of behaving or living. For instance, some Internet users in one country may still value traditional religious

\textsuperscript{197} See infra, Part III(A).

\textsuperscript{198} See I-SAFE, INTERNET SAFETY ACTIVITIES: REPRODUCIBLE PROJECTS FOR TEACHERS AND PARENTS 70 (2010).

\textsuperscript{199} See ANTHONY GIDDENS, ET AL., INTRODUCTION TO SOCIOLOGY 80 (2005) ("Many believe that the rapid growth of the Internet around the world will hasten the spread of a global culture—one resembling the cultures of Europe and North America, currently home to nearly three-quarters of all Internet users. Belief in such values as equality between men and women, the right to speak freely, democratic participation in government, and the pursuit of pleasure through consumption are readily diffused throughout the world over the Internet. Moreover, Internet technology itself would seem to foster such values: global communication, seemingly unlimited (and uncensored) information, and instant gratification are all characteristics of the new technology.").

\textsuperscript{200} See HOUMAN A. SADRI & MADELYN FLAMMIA, INTERCULTURAL COMMUNICATION: A NEW APPROACH TO INTERNATIONAL RELATIONS AND GLOBAL CHALLENGES 10 (2011) ("Intercultural communication occurs when people creating shared meanings have different cultural perspectives and values. Typically, it is the differing world views of members of different cultures that make intercultural communication challenging.").

\textsuperscript{201} See MARGARET L. ANDERSEN & HOWARD FRANCIS TAYLOR, SOCIOLOGY: THE ESSENTIALS 39 (2010) ("Subcultures are the cultures of groups whose values and norms of behavior differ to some degree from those of the dominant culture. Members of subcultures tend to interact frequently with one another and share a common world view. They may be identifiable by their appearance (style of clothing or adornments) or perhaps by language, dialect, or other culture markers.").

\textsuperscript{202} HENRY L. TISCHLER, INTRODUCTION TO SOCIOLOGY 64 (2010).
beliefs whereas other users in another country may prefer high technologies. Some users may prefer material comfort and success whereas others might favor simplicity and a quiet life.

B. Communication Leading to Intercultural or Cross-Cultural Conflict

"Conflict is an emotionally frustrated experience in conjunction with perceived incompatibility of values, expectations, face concerns, conflict styles, goals, scarce resources, and/or outcomes between a minimum of two interdependent parties." Intercultural conflict can be defined "as the real or perceived incompatibility of values, norms, expectations, goals, processes, or outcomes between two or more interdependent individuals or groups from different cultures." Like intercultural conflict, cross-cultural conflict has the potential to occur when the beliefs or ideas of one cultural group oppose or challenge those of another in social interaction. Most importantly, speech or communication in cultural diversity can easily result in intercultural or cross-cultural conflict. This is because there are the "variations in communication styles and values from one culture to another." Miscommunication or misunderstandings can then take place among people from different cultures. In particular, they will occur "within a nested, interwoven system of different cultures (global, racial/ethnic, economic, sexual, gendered, (dis)abled, political, religious, and so forth)."


205 See James W. Neuliep, Intercultural Communication: A Contextual Approach 370 (2012) ("Communication plays a paradoxical role in most conflicts because communication is required both to instigate conflict and to resolve it.").

206 Sadri & Flammia, supra note 200, at 149.


208 See Sadri & Flammia, supra note 200, at 149.

209 Warren & Fasset, supra note 207, at 7.
gestures that are "appropriate in one cultural context . . . might be insulting, provocative or embarrassing in another." If miscommunication or misunderstandings are not addressed, they may lead to conflict.

Furthermore:

many conflicts among states[,] between nations or ethnic groups[,] or even within states have a long and complex history behind them. Conflicts between nations or ethnic groups are often rooted in historical disputes over territories or national resources. Many ethnic (or nationality) conflicts center on the desire to gain territory or redraw borders, often with the goals of establishing one group as a separate state.211

Among other things, "[r]eligious differences are . . . a source of conflict between individuals, groups, nations, and states."212 Religion is one of the most important factors in causing intercultural or cross-cultural conflict.213 "Religion . . . is a powerful constituent of cultural norms and values" possessed by people.214 "[I]t addresses the most profound existential issues of human life (e.g., freedom and inevitability, fear and faith, security and insecurity, right and wrong, sacred and profane) . . . ."215 Conflict based on religion occurs when religious differences are perceived to be irreconcilable. Such differences may be founded in incompatible convictions and ideologies, and are likely to relate to ways in which religion is practiced and to the political, ethical, and customary ordering of society. In such situations, either or both parties conclude that the general ascendancy of their own religion is imperative and that the other tradition(s) must be robustly challenged.216 If communication is specifically meant to insult religion, it will have a greater social impact than

210 Id.

211 SADRI & FLAMMIA, supra note 200, at 19

212 Id.


214 Id.

215 Id.

216 JOHN WOLFFE, RELIGION IN HISTORY: CONFLICT, CONVERSION, AND COEXISTENCE 6 (2d ed. 2005).
communication that attempts to draw out individuals into arguments.\textsuperscript{217} This would accelerate intercultural or cross-cultural conflict.

An example of intercultural or cross-cultural conflict based on religion and communication is the cartoons of the Prophet Muhammad published in Denmark and several European newspapers.\textsuperscript{218} On September 30, 2005, the twelve cartoons published by the Danish newspaper \textit{Jyllands-Posten} depicted the Muslim Prophet Muhammad in a variety of humorous or satirical situations.\textsuperscript{219} Islamic tradition explicitly prohibits images of Allah and Muhammad.\textsuperscript{220} Many Muslims contended that the cartoons were extremely and deliberately offensive, and that they expressed growing European hostility towards Muslims.\textsuperscript{221} The portrayal of the Prophet Muhammad and Muslims generally as terrorists was seen as particularly offensive.\textsuperscript{222} Some Muslims saw the cartoons as an attack on their faith and culture designed to sow hatred.\textsuperscript{223} This raised concern about the sensitivity of host cultures to religious sensibilities, religious tolerance, and freedom of speech.\textsuperscript{224} The cartoons caused outrage among Muslims, and protests spread across the Muslim world.\textsuperscript{225} The cartoons also resulted in the bombing of the Danish Embassy in Pakistan, setting fire to the Danish Embassies in Syria, Lebanon, and Iran, and the

\textsuperscript{217} See id.


\textsuperscript{219} See id. ("Some of the images appeared to be quite gentle in their message—the Prophet wandering through the desert with the sun setting behind him, or his face merging with an Islamic star and crescent. Others, however, seemed to be more deliberately provocative towards Muslims, most notably showing Muhammad carrying a lit bomb on his head decorated with the Muslim declaration of faith instead of a turban. One shows Muhammad brandishing a sword ready for a fight. His eyes are blacked out while two women stand behind him with their Islamic dress leaving only their eyes uncovered. Another image shows Muhammad standing on a cloud holding back a line of smouldering suicide bombers, saying: ‘Stop, we have run out of virgins’—a reference to the supposed reward for Islamic martyrs.").

\textsuperscript{220} See id.

\textsuperscript{221} See id.

\textsuperscript{222} See id.

\textsuperscript{223} See id.

\textsuperscript{224} See \textit{Muhammad Cartoons Row}, supra note 218.

\textsuperscript{225} See id.
storming of European buildings and burnings of European flags.226

C. Internet Interaction & Intercultural and Cross-Cultural Conflict

Electronic communication has emerged as a factor influencing conflict, “particularly in the generation of heated and unproductive electronic exchanges in Internet forums, in emails, and through social networking sites.”227 The Internet “provide[s] a vast arena for flaming the posting of online communication that are deliberately hostile or insulting toward people.”228 Such communication may provoke anger and ignite wars between people.229 Interactions or communication between different people from different countries on the Internet can constitute intercultural or cross-cultural conflict.230 Statements, clips, or videos posted or shared through social media in one country may affect religion or the way of life, values, and beliefs in other countries.231

The movie “the Innocence of Muslims” exemplifies intercultural or cross-cultural conflict through the Internet. The movie has affected and degraded religious beliefs held by billions of Islamic people in many countries.232 It has inflamed tensions across the Islamic world and inspired a series of violent outbreaks.233 The movie has also sparked anti-American protests across the Arab world.234 Many Islamic people thought that the movie was “an official American film production rather than an embarrassing and amateur production financed by a small group of extremists.”235 It is reasonable to conclude that intercultural or

226 See id.
227 DAN O’HAIR & MARY WIEMANN, REAL COMMUNICATION: AN INTRODUCTION 233 (2d ed. 2011).
228 Id. at 233-34.
229 See id. at 234.
230 See id.
231 See id.
233 See id.
234 See id.
235 Google, YouTube Refuse To Remove Innocence of Muslims Despite White
cross-cultural conflict based on communication may take place for two reasons. First, people who are experiencing a new culture may not be well informed and mistakenly post offensive content. This is forgivable and people will understand it. Second, people who are experiencing a new culture, especially on the Internet, may not be motivated to follow and respect the cultural rules and beliefs of others. They can choose to adopt new cultural rules, but some prefer not to do so. In many cases, they deliberately post or share insensitive content which degrades or attacks the behavior or beliefs of people who live in other countries or cultures.

D. Different Protection of Freedom of Speech

Different protections of freedom of speech may create intercultural or cross-cultural conflict on the Internet. Strong protection would cause cross-cultural conflict while low protection would provide little chance of conflict. As discussed earlier, the protection of speech in the United States is much more robust than in other countries. There is also no rule that forces governments to treat speech or expression similarly even though the speech of one person can threaten the right or safety or another. “With the expansion of the Internet, new regulatory challenges more frequently arise because of the global reach of hate propaganda transmitted from the United States, where it is legal, and streamed

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236 See Anastacia Kurylo, Inter/Cultural Communication: Representation and Construction of Culture 42 (2012).
237 See id.
238 See id.
239 See id.
240 See id.
241 See id.
into countries, like France, where such communications are criminal offenses.\textsuperscript{244} As a consequence of high protection, speech or expression on the Internet made in one country can become hate speech that negatively affects religion or hurts people in other countries or cultures.

By contrast, freedom of speech is viewed as “an aggressive political and diplomatic strategy, rather than a desire for moral values.”\textsuperscript{245} Because many countries cannot match the “informational control and dissemination” of Western countries, an unrestricted Internet would be tantamount to further disadvantaging non-Western nations.\textsuperscript{246} Thus, some countries, especially China, perceive a strong domestic interest in preventing freedom of speech on the Internet.\textsuperscript{247} The government believes that “Internet freedom creates dangerous unrest in society, encourages separatist movements, and threatens its system of governance.”\textsuperscript{248} China has tried to control or censor websites and communications that “encourage violence or terrorism” or “disseminate illicit material.”\textsuperscript{249} More restriction and control of Internet speech would result in less cross-cultural conflict.

VI. Controlling Freedom of Speech on the Internet

All Internet activities around the world occur without central coordination or control.\textsuperscript{250} “Companies and individuals who make their computers accessible to Internet users do so voluntarily.”\textsuperscript{251} There is no particular rule dealing with freedom of speech on the Internet or controlling communication between speakers and listeners around the world. However, there are groups or organizations establishing standards and norms for the Internet.\textsuperscript{252}

\textsuperscript{244} Id. (internal citation omitted).
\textsuperscript{246} Tsai, supra note 245, at 405.
\textsuperscript{247} See id. at 403-06.
\textsuperscript{248} Id. at 424.
\textsuperscript{249} Id. at 406.
\textsuperscript{251} Id.
\textsuperscript{252} See id.
Those groups or organizations include: (1) Internet Engineering Task Force (IETF); (2) World Wide Web Consortium (W3C); (3) Internet Society (ISOC); and (4) Internet Corporation for Assigned Names and Numbers (ICANN); and the Internet Assigned Numbers Authority (IANA). These private organizations have great power and control over Internet governance, including freedom of speech on the Internet.

For example, ICANN, a private entity essentially unaffiliated with any pre-existing territorial government or international governance entity, is responsible for Internet Protocol (IP) address space allocation, protocol identifier assignment, generic (gTLD) and country code (ccTLD), Top-Level Domain name system management, and root serve system management functions. The United States ceded responsibility for regulating key elements of the Internet’s infrastructure to ICANN. “Over the course of ten years, ICANN has evolved into a truly unique international organization, [which]... functions as a regulator of a global public resource.” In particular, ICANN’s governance structure has been designed to reflect and account for the preferences of Internet users throughout the world in developing policies that would affect the interests of Internet users worldwide. More importantly, ICANN’s control over the Internet’s infrastructure

253 See id.

254 See Milton Mueller et al., Making Sense of “Internet Governance,” in INTERNET GOVERNANCE: A GRAND COLLABORATION 100, 110 (Don MacLean ed. 2004). “The organizations with control of key Internet resources are highly distributed and multifarious and cannot be regulated in a top-down manner via agreements among states alone.” Id.

255 See Glossary, INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, http://www.icann.org/en/about/learning/glossary (last visited Oct. 21, 2013). As a private-public partnership, ICANN is dedicated to preserving the operational stability of the Internet; to promoting competition; to achieving broad representation of global Internet communities; and to developing policy appropriate to its mission through bottom-up, consensus-based processes. See Welcome to ICANN!, INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS, http://www.icann.org/en/about/welcome (last visited Oct. 21, 2013).


258 See Nunziato, supra note 256, at 193.
also extends to controlling speech on the Internet.\textsuperscript{259}

"The role of government is to govern and, generally, to pass laws and adopt regulations designed to control certain forms of activity. It is broadly recognized, however, that governance and regulation extends beyond governments to encompass a broad range of institutions and mechanisms of control," especially in information and communication technologies.\textsuperscript{260} In other words, governments have had a very small role in directing or controlling the Internet.\textsuperscript{261} Because the Internet often works around and beyond political boundaries, it is difficult for governments to censor the Internet, as the global tumult regarding repressive government regimes bears witness.\textsuperscript{262} Governments also have difficulty pursuing legitimate social goals, such as combating child exploitation on the Internet, reducing the use of the Internet to promote piracy and counterfeiting, or ensuring the security of networks.\textsuperscript{263} For many years, governments have been blocking, censoring, or otherwise seeking to control the flow of information on the Internet in their territory.\textsuperscript{264} This could be the only way that governments have tried to protect their society and prevent intercultural or cross-cultural conflict. Accordingly, the question arises how speech or expression on the Internet is globally controlled and what grounds governments should rely on to control society and intercultural or cross-cultural conflict.

\textsuperscript{259} See id.


\textsuperscript{261} See, e.g., SHIRLEY BIAGI, MEDIA IMPACT: AN INTRODUCTION TO MASS MEDIA 200 (10th ed. 2012) ("The federal government has attempted to coordinate and regulate the Internet in the same way government traditionally coordinated and regulated the broadcast media in its early days. However, the U.S. government has learned the hard way that it can exercise only limited control over the Internet, especially its content.").

\textsuperscript{262} See Joe Waz & Phil Weiser, Internet Governance: The Role of Multistakeholder Organization, 10 J. TELECOMM. & HIGH TECH. L. 331, 331 (2013).

\textsuperscript{263} See id.

A. Controlling Freedom of Speech by Social Media

1. The Influence of Social Media

Social media has an important role in people’s lives and communication.265 Social media allows new connections to be made and for networks to become larger. Many business entities use social media to generate business and connect with customers.266 Many public entities also use social media to create city blogs or social networks to keep workers, citizens, or friends informed of events and news.267 Nevertheless, difficulties can occur when social media users disseminate voluminous amounts of information unfettered.268 Such information or communication on social media can then affect political and social institutions, leading to intercultural or cross-cultural conflict. Further, some social media or social networks like Facebook, Google, YouTube, and Twitter, represent the fastest growing segment of Internet usage269 and are more powerful than governments.270 Around the world, more than 1.2 billion people use social media or social network sites, accounting for 82% of the world’s online population.271 They have transformed the way people work, govern, communicate, and live.272

More importantly, social media have become global arbiters of free speech today.273 They have a more important role than governments in protecting and controlling freedom of speech.


266 See generally CHRIS BROGAN, SOCIAL MEDIA 101: TACTICS AND TIPS TO DEVELOP YOUR BUSINESS ONLINE 288-912 (2010) (suggesting different tools a business owner can use to reach different types of customers through social media).


268 See id. at 50.

269 See id. at 46.

270 See Network, supra note 265.

271 See id.

272 See id.

Although governments have tried to control online freedom of speech, “the free and open nature of the major part of the Internet makes it difficult to keep secrets.”

For example, Twitter “has gained a reputation for exercising freedom of speech outside the law. It has become a primary channel for information during wars, where local Internet connections have been restricted . . . .”

“Most free speech today has nothing to do with governments and everything to do with companies.”

If social media invokes freedom of speech principles on the Internet, many countries and societies around the world would be affected.

Some governments are forced to rely on social media in order to control freedom of speech. For instance:

Google acts everyday to promote and expand free expression online and increase global access to information. As new technology dissolves borders and empowers individuals with more robust free expression tools and greater access to information, Google believes that governments, companies, and individuals must work together to protect the right to online free expression.

“The Innocence of Muslims” is a particular case showing that social media has more power and control over the freedom of speech than governments. After the movie caused protests in Egypt and Libya, White House officials asked Google (YouTube’s parent company) to remove and block access to the movie.

Google denied the request to remove the movie from searches and video sharing sites. Although many viewers clearly found the

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274 SUE WATLING & JIM ROGERS, SOCIAL WORK IN A DIGITAL SOCIETY 26 (2012).

275 Id.


278 See Liz Gannes, White House Asks YouTube to Review Anti-Muslim Video; YouTube Says It Already Did, ALL THINGS SD (Sept. 14, 2012), http://allthingsd.com/20120914/white-house-asks-youtube-to-review-anti-muslim-video-youtube-says-it-already-did/. The Obama administration said that it had asked YouTube to consider removing the anti-Muslim video that has recently sparked global controversy and violence. See id.

279 See Google, YouTube Refuse, supra note 235.
Innocence of Muslims’ message offensive and hateful, Google declared that the movie neither violated its terms of service nor constituted hate speech because it did not directly incite violence. Google’s rejection of the White House’s request for censorship emphasizes how different America’s values are from those of other countries, especially when it comes to freedom of expression. A judge also denied a request to order YouTube to remove the movie. However, Google has temporarily restricted access to the film in Libya, Egypt, and other countries due to the “sensitive situation” caused by the movie. Today, the movie is still available on the website. Other governments cannot block the movie, shut down Google, or do anything to force Google to remove the video. Some governments merely responded by blocking YouTube entirely.

280 See id.


282 See Alexandra Cheney, Judge Denies Request to Remove Anti-Muslim Film Trailer from YouTube, WALL ST. J. (Sept. 20, 2012), http://blogs.wsj.com/law/2012/09/20/judge-denies-request-to-remove-innocence-of-muslims-trailer-from-youtube/?mod=WSJBlog. Los Angeles Country Superior Court Judge Luis Lavin rejected the emergency injunction from Cindy Lee Garcia, an actress who appeared in the movie. The denial was in part due to the fact that Garcia was unable to serve a copy of the lawsuit to Nakoula Basseley Nakoula, the man who reported organized the production of the film. The judge also denied supporting Garcia’s application because of its likelihood of success, according to court filings. That does not preclude Garcia from re-filing, but means that her current application has been thrown out. The judge’s actions mean that the movie, which depicts Muhammad as a philanderer who approves of child abuse, can remain online. See id.


285 See Mathew Ingram, Should Google Be Censoring Videos Just Because They Are Linked to Violence?, GIGAOM (Sept. 12, 2012), http://gigaom.com/2012/09/12/should-google-be-censoring-videos-just-because-they-are-linked-to-violence/.
2. Freedom of Speech in Social Media

Social media usually has its own measures and policies for managing or controlling freedom of speech on the Internet. For instance, Google excludes sexually explicit images and videos from search results by using its “SafeSearch” technology.\(^{286}\) Similarly, Bing, Microsoft’s search engine, sets a default search setting that also uses SafeSearch.\(^{287}\) YouTube established the Community Guidelines dealing with speech or expression posted by users.\(^{288}\) YouTube does not allow users to post pornography or sexually explicit content.\(^{289}\) Users are not allowed to post any content showing offensive or harmful content such as animal abuse, drug abuse, under-age drinking and smoking, or bomb making.\(^{290}\) Graphic or gratuitous violence showing someone being physically hurt, attacked, or humiliated cannot be posted on YouTube.\(^{291}\) Users are not allowed to post shock sites, gross-out videos of accidents, dead bodies, or similar things intended to shock or disgust.\(^{292}\) Things like predatory behavior, stalking, threats, harassment, intimidation, privacy invasion, disclosure of personal information, and content encouraging others to commit violent acts are not allowed on YouTube.\(^{293}\)

Like other prohibitions, YouTube does not permit hate speech, defined as speech which attacks or demeans a group based on race, ethnic origin, religion, disability, gender, age, veteran status, sexual orientation, or gender identity.\(^{294}\) This is because hate speech relies on stereotypes about insular groups in order to incite hostile behavior toward them.\(^{295}\) Hate speech also creates


\(^{288}\) See About YouTube, supra note 163.

\(^{289}\) See id.

\(^{290}\) See id.

\(^{291}\) See id.

\(^{292}\) See id.

\(^{293}\) See id.

\(^{294}\) See About YouTube, supra note 163.

injustice, devalues human worth, and glamorizes crimes. More importantly, the spread of hate speech provides a rationale for attacking particular disfavored groups even though it does not always lead to the strong commission of discriminatory violence. Accordingly, not only do the YouTube prohibitions help to protect society, but they also prevent negative effects on the values, beliefs, or way of life in other countries. If a video is flagged, YouTube will decide whether the Community Guidelines have been violated. When a video violates the Guidelines, YouTube removes it. Sometimes, videos do not violate the Guidelines, but may not be appropriate for everyone. Those videos will be age-restricted.

However, the Guidelines or prohibitions have not successfully controlled online speech or expression. There are still clips that show violence or contain inappropriate content. There is no international or domestic law controlling freedom of speech in social media. More particularly, "[h]ate speech is a vague concept with varying definitions." International law does not define "hate speech;" the definition is based on domestic law. YouTube broadly defines "hate speech" as "speech which attacks or demeans a group based on race or ethnic origin, religion, disability, gender, age, veteran status, and sexual orientation/gender identity." At the same time, YouTube

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296 See Tsesis, supra note 243, at 504.
297 See id. at 505.
298 See About YouTube, supra note 163.
299 See id. The removal of hateful content is the most powerful tool for social media. Many social media sites enforce their hate speech policies by removing offending language, blocking access to sites, or terminating user accounts. See id.
300 See id.
301 See id.
304 Webb, supra note 139, at 447.
305 See ANNE WEBER, MANUAL ON HATE SPEECH 3 (2009).
306 Community Guidelines, supra note 164. YouTube internally determines whether clips or movies are hate speech and, therefore, violate the Community Guidelines. See id.
"encourage[s] free speech and defend[s] everyone’s right to express unpopular points of view."307 Movies or clips which are appropriate, acceptable, or legal in one country may be hurtful, illegal, or provocative in another. Those movies may not constitute "hate speech" under YouTube’s community guidelines and will still be available online. This could easily lead to intercultural or cross-cultural conflict between two different groups of people.

B. Controlling Freedom of Speech by Censorship Under International Law

1. Internet Censorship

Censorship is the means through which a government either exerts control directly over Internet infrastructure or forces intermediaries to do so.308 Censorship usually occurs when a government prevents communication between a speaker and listener through interdiction rather than post-communication sanctions.309 Censorship can be used as a tool to control society and prevent intercultural or cross-cultural conflict resulting from online communication or expression. Many forms of restriction exist in many countries.310 Some countries, such as the United States and Australia, employ their censorship or restrictions through a "reactive approach."311 This approach highlights the direct ways in which countries aim to clamp down on what may be published through websites.312 This approach can essentially control Internet activities, result in the arrest of web designers, and enact restrictions over the Internet.313 It also monitors what is produced online and prevents the flow of information by

307 Id.
309 See id. at 871.
311 See id. at 534-35.
312 See Babak Rahimi, The Politics of the Internet in Iran, in Media, Culture and Society in Iran 37, 47 (Mehdi Semati ed., 2008).
313 See id.
establishing state-run Internet sites and limiting private sector access to the Internet.  

In addition to a reactive approach, many countries rely on a "proactive approach" in order to impose censorship or restrictions. The proactive approach works indirectly through devices that promote state authority (e.g., regime-sponsored web programs, e-government services, state-controlled Internet Service Providers (ISPs), and self-censorship to curb the democratic drive of the Internet). It "limits the abilities of [people] to do certain things." These restrictions can involve completely eliminating all Internet use (games, email, web browsing, peer to peer file sharing, etc.) or can be designed to limit the abilities of each technology.

Many countries have developed their own Internet filtering systems because of political, moral, religious, or security concerns. China is the most sophisticated country that uses the proactive approach to control the Internet. The Chinese strategy is known as the Great Firewall. The country has regulated access to Internet content at the national level through technological means. The Chinese government has used network technologies to control online information and has grafted its own ideology to the Internet. Digital technologies are the

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314 See id.
315 See Stevenson, supra note 310, at 536.
316 See Rahimi, supra note 312, at 47.
317 TRAVIS MORGAN, CATCH ME IF YOU KNOW HOW 134 (2011).
318 Id.
320 See Stevenson, supra note 310, at 537.
321 The metaphor most frequently used in describing the Internet filtering in China is "The Great Firewall," an obvious play on the words "the Great Wall" and "firewall." The Great Wall of China was built by the ancient Chinese to keep foreign invaders at bay; in an analogous way, the Great Firewall denotes China's attempt to block undesirable content from its "netizens." See Anne Hobson, China's War on Netizens, THE AMERICAN SPECTATOR (Aug. 11, 2013), http://spectator.org/blog/2013/09/11/chinas-war-on-netizens.
323 See id.
government’s tool to track down political threats. In essence, China has built a complicated technological system and has integrated it into the Internet to filter online information. The country has controlled online content via several different targets, including Internet content providers, individual consumers, and content on foreign websites. The government also blocks online information from citizens it deems too sensitive or inappropriate.

2. Rights to Censor Online Speech

"Internet censorship has become a major social issue in various countries as Internet access becomes more available to large numbers of users globally." Since the movie "Innocence of Muslims" caused violence in Libya and other countries, the issue of censorship and restrictions has become increasingly discussed. Many countries have sought to adopt Internet governance or set up rules on Internet censorship through international law. Even though countries can rely on state sovereignty or states’ rights to censor online speech within their borders through domestic law, state sovereignty or states’ rights may not be sufficient to protect political stability and prevent intercultural or cross-cultural conflict. The right to censor or govern online speech should flow from international law because

324 See id.
325 See id. at 131-32.
326 See id. at 128.
327 See id. at 130.
328 Hossein Bidgoli, The Internet Encyclopedia, in INTERNET CENSORSHIP 264 (Julie Hersberger et al. eds., 2004).
the Internet creates global connections around the world.\textsuperscript{332} International law establishes a set of globally agreed upon norms, standards, interests, and rights for states.\textsuperscript{333} The most effective mechanism for enforcing international law is for each ratifying government to incorporate its treaties and customary obligations into national laws.\textsuperscript{334} If international law provides a common set of values that are recognized by states, Internet censorship based on those common principles may be more recognized and accepted than Internet censorship based on general state sovereignty. More importantly, this interest or right will give states authority to censor the Internet and control freedom of speech on the basis that it undermines the right of others to equality, and not because they want to trumpet their sovereign rights.

\textit{a. Exceptions to Freedom of Speech on the Internet Under International Law}

"The freedom of speech is not absolute.... [I]t is widely acknowledged that in certain circumstances the government may constitutionally restrict speech."\textsuperscript{335} However, the Internet sometimes establishes social networks outside official government channels.\textsuperscript{336} A decision to censor or restrict online speech or content may not merely rely on a constitution or domestic law because constitutions may not clearly state whether online speech or content should be restricted and domestic laws may not cover content which is supposed to be controlled within a country.\textsuperscript{337}

\begin{itemize}
  \item \textsuperscript{332} See GEORGE RITZER, HANDBOOK OF SOCIAL PROBLEMS: A COMPARATIVE INTERNATIONAL PERCEPTIVE 438-39 (Gili S. Drori et al. eds., 2004).
  \item \textsuperscript{333} See DAVID WEISSBRODT & CONNIE DE LA VEGA, INTERNATIONAL HUMAN RIGHTS LAW: AN INTRODUCTION 5-6 (2007); KEITH L. SHIMKO, INTERNATIONAL RELATIONS: PERSPECTIVES AND CONTROVERSIES 228 (3d ed. 2010) (explaining that "international law recognizes ... the right of states to take actions that would otherwise be impermissible in response to another state's violation of international law").
  \item \textsuperscript{334} See WEISSBRODT & DE LA VEGA, supra note 333, at 4.
  \item \textsuperscript{335} See Ariel L. Bendor, Prior Restraint, Incommensurability, and the Constitution of Means, 68 FORDHAM L. REV. 289, 290 (1999).
  \item \textsuperscript{336} See LEAH A LIEVROUW & SONIA LIVINGSTONE, HANDBOOK OF NEW MEDIA SOCIAL SHAPING AND CONSEQUENCES OF ICTS IN NEW GLOBAL MEDIA AND COMMUNICATION POLICY: THE ROLE OF THE STATE IN THE TWENTY-FIRST CENTURY 416 (Laura Stein & Nikhil Sinha et al. eds., 2002).
  \item \textsuperscript{337} See Yulia A. Timofeeva, Hate Speech Online: Restricted or Protected?
Additionally, content regulation usually relies on social and cultural norms and standards in each country. Each country has a different definition of what constitutes restricted content. Those definitions are grounded in the cultural values, political beliefs, and historical circumstances of each, so the norms or definitions regarding restricted content vary widely.

Accordingly, governmental control of Internet content may raise questions of how the right to freedom of speech will be arranged and what content can legitimately be regulated or censored.

International human rights law does not establish a particular list or guideline for controlling or censoring online speech. Human rights instruments only recognize general limitations on the exercise of freedom of speech, which may be used as the ground to censor or restrict online speech or content on the Internet. Since freedom of speech on the Internet is accepted and protected as traditional media under international human rights law, it is also reasonable to assume that limitations under

Comparison of Regulations In the United States and Germany, 12 J. TRANSNAT’L L. & POL’Y 253, 262 (2003). In 1997, Germany passed the Multimedia Law which was meant to keep illegal material out of cyberspace. Inter alia, the law prohibited content criminalized by the Penal Code, no doubt having hate speech in mind in the first place. The law also established criteria for the liability of an Internet service provider (“ISP”). Generally, ISPs are not liable for transmission or short storage of a third-party’s illegal content unless they initiate, select, or modify the information. In cases of longer storage of information (hosting), ISPs are not liable if they do not have actual knowledge of illegal information, and upon obtaining such knowledge, act expeditiously to remove or to disable access to such information. Almost identical provisions are contained in the Teleservice Law. “Many German providers and users have greeted the law with a sigh of relief,” as the issue of ISPs’ liability has been a tense one. However, critics say that the law still left open the “extent to which online services are responsible for content they do not control,” and indeed, this issue produced much controversy in the Felix Somm Case. See id.

338 See generally, Peng Hwa Ang, How Countries Are Regulating Internet Content, NANYANG TECHNOLOGICAL UNIVERSITY, available at http://www.isoc.org/inet97/proceedings/B1/B1_3.HTM (stating that “there is no one universal model for Internet content regulation” but listing “social norms” as one type of rule used, specifically in Western countries).
339 See LIEVROUW & LIVINGSTONE, supra note 336, at 416.
340 See id.
341 See SMITH, supra note 32, at 268.
342 See id. at 271.
343 See id. at 268.
international human rights treaties can apply to freedom of speech on the Internet. According to the Universal Declaration of Human Rights, countries may place restrictions “solely for the purpose of securing ... respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”\footnote{UDHR, supra note 38, art. 29.} Article 29(2) of the Universal Declaration of Human Rights also provides that:

\begin{quote}
[i]n the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.\footnote{Id. art. 29(2).}
\end{quote}

In the ICCPR, Article 19(3) permits limited restrictions on freedom of expression where these are: (a) provided by law; (b) for the protection of one of the legitimate interests listed; and (c) necessary to protect that interest.\footnote{See ICCPR, supra note 63, art. 19(3).} Article 20(2) of the ICCPR also places an obligation on states to prohibit hate speech.\footnote{See id. art. 20(2).}

In the European Convention on Human Rights, Article 10(2) sets out the conditions under which the right to freedom of speech may be restricted.\footnote{See European Convention, supra note 67, at art. 10(2). “The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of disorder or crime, for the protection of health or morals, for the protection of reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.” Id.} In the American Convention on Human Rights, Article 13(5) requires member states to prohibit war propaganda and advocacy of national, racial, or religious hatred.\footnote{See American Convention, supra note 78, art. 13, para. 5.} Finally, the African Charter on Human and Peoples’ Rights provides restrictions in Article 27 clarifying that “individuals must exercise their freedoms with due regard to the rights of others, collective
security, morality and common interest.\footnote{350}

Based on those international human rights treaties, states are allowed to restrict speech or expression that constitutes war propaganda or national, racial, or religious hatred.\footnote{351} States can restrict access to information and dissemination of some information on the grounds of national security and public emergency.\footnote{352} States are allowed to protect public health and morals.\footnote{353} States can censor or restrict certain areas such as libel (defamation), incitement (includes hate speech which overreaches and advocates violent or illegal acts), obscene materials, and child pornography.\footnote{354} In most states, programs containing excessive violence, swearing, sexual references, or other potentially disturbing material are prohibited.\footnote{355}

However, limitations on freedom of speech under international human rights law must be strictly and narrowly applied. Limitations on freedom of speech are only applied to protect state interests or to prevent intercultural or cross-cultural conflict.\footnote{356} They do not permit a state to restrict freedom of speech outside of its jurisdiction. For example, limitations cannot apply to social media in order to control online speech or content.\footnote{357} Moreover, the Human Rights Committee has stated that “when a state party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself.”\footnote{358} This could mean that limitations could not be used in a way which jeopardizes or distorts freedom of speech.

\footnote{350}African Charter, supra note 85, art. 27.
\footnote{351}See \textit{SMITH}, supra note 32, at 272; see also ICCPR, supra note 63, art. 20 (decreeing that “[a]ny propaganda for war shall be prohibited by law” and that “[a]ny advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence shall be prohibited by law”).
\footnote{352}See \textit{SMITH}, supra note 32, at 273.
\footnote{353}See \textit{id.} at 275.
\footnote{354}See Bidgoli, supra note 328, at 264.
\footnote{355}See \textit{id}.
\footnote{356}See \textit{id.} at 217.
\footnote{357}See \textit{id}.
Article 19(3) of the ICCPR also:
lays down conditions and it is only subject to these conditions
that restrictions may be imposed: the restrictions must be
"provided by law;" they may only be imposed for one of the
purposes set out in subparagraph (a) and (b) of paragraph 3; and
they must be justified as being "necessary" for that state party
for one of those purposes. 359

Limitations on freedom of speech should therefore be based on
the particular purposes established in the treaty and must be
necessary to those purposes. Application outside of those
purposes would allow states to restrict freedom of speech freely,
which would jeopardize and distort freedom of speech.

As a result of cultural diversity, there is no universal standard
of public morality. 360 The grounds that countries use to justify
censoring or restricting online speech or content will vary
depending on cultural norms, state policies, and particular
situations. If a state finds online speech or content which would
likely cause violence or intercultural conflict, a state can restrict or
censor online speech only within its borders. 361 For example,
Russia banned the "Innocence of Muslims" movie nationwide. 362
A Moscow court ruled that the movie contained extremist
material. 363 The court convened after a case was filed by the
Prosecutor-General's office, calling for the movie to be banned
across Russia. 364 According to Russian laws, any content can be
legally classified as "extremist" if prosecutors present sufficient
evidence to make their case. 365 Upon presenting their case to the
court, prosecutors believed that the movie incited religious hatred,

359 Id.
360 See John Mary Waliggo, Law and Public Morality in Africa: Legal,
Philosophical and Cultural Issues 1, paper presented at The ALRAESA Annual
2005uganda/ents3_waliggo.pdf (arguing that "[m]oral values vary from community to
community and from time to time").
361 See generally Russian Court Bans 'Extremist' Video 'Innocence of Muslims,'
(banning a Russian film for "extremist material") [hereinafter Russian Court Ban].
362 See id.
363 See id.
364 See id.
365 See id.
thus “propagating religious intolerance in Russia.” Before delivering a verdict, the judge watched the movie and called experts on culture, history, and religion to testify. All of the experts agreed the movie should be banned. The movie has also been banned by Pakistan, Afghanistan, Bangladesh, and Sudan. Such measures were deemed necessary after the movie sparked international outrage and led to mass violence around the world. Although it is not certain that the ban on the movie was based on Article 19(3) of the ICCPR or other international human rights treaties, the ban could have been made to protect morality, religious belief, welfare, and public interests in Russia. This decision could be a sufficient measure protecting society and preventing violence or conflict in Russia. However, many countries have not taken any measures to prevent violence or conflict resulting from the movie.

b. Internet Governance

The Working Group on Internet Governance (WGIG), established by the Secretary-General of the United Nations, initially offered the following definition of “Internet governance”—“the development and application by Governments, the private sector, and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programs that shape the evolution and use of the Internet.” This definition is broad enough to deal with all aspects of governance such as rule making, the market forces of e-commerce, and Internet censorship. Therefore, Internet governance includes several distinct areas: (1) technical standardization, (2) resource allocation and assignment, (3) interconnection of Internet service providers, (4) policy formulation, (5) critical Internet resources, (6) intellectual property rights, (7) security, and (8) freedom of

366 See id.
367 See Russian Court Ban, supra note 361.
368 See id.
369 See id.
370 See id.
371 WORKING GROUP ON INTERNET GOVERNANCE (WGIG), REPORT OF THE WORKING GROUP OF INTERNET GOVERNANCE 4 (2005), available at http://www.wgig.org/docs/WGIGREPORT.pdf. The WGIG was established by the Secretary-General of the UN in 2003. See id. at 3.
However, as mentioned above, Internet governance is carried out by multi-stakeholder organizations such as the Internet Society and the World Wide Web Consortium. These entities have largely established the norms and standards for the Internet. Thus, governments are not primarily Internet governance actors and have difficulty in prohibiting or controlling freedom of speech.

Recently, an international consensus on Internet governance was established by the international community through a UN Conference on International Telecommunications in Dubai, Arab Emirates. From December 3 to December 14, 2012, more than two thousand delegates registered for the conference, which was held by the International Telecommunications Union (ITU). The purpose of the meeting was to renegotiate the International Telecommunication Regulations (ITRs), the binding global treaty facilitating global interconnection and interoperability of information and communication services, and the efficient operation and widespread public availability of said services. One of the most critical debates at the conference was whether countries should have equal rights to the development of the Internet's technical foundations. Russia, China, and a group of countries from Africa and the Middle East submitted a proposal to the conference that called for governments to have equal rights over controlling the Internet. On the other hand, Australia,
Canada, the Czech Republic, Germany, Sweden, the United States, the UK, and some other countries disagreed with the proposal. The threat is that if every country was allowed to manage its own Internet address books, sites seen as troublesome by the government could be easily and silently eliminated by removing them from the index and making them permanently inaccessible to the outside world. By the end of the conference, eighty-nine countries signed the revised treaty. This means that those countries have given the ITU jurisdiction over the Internet’s operations and content. Noticeably, the United States totally disagreed and refused to sign the treaty because it would open the door to government regulation of the Internet.

However, as the ITU Chief Hamadoun Toure stated at the signing ceremony, the conference at Dubai “was not about the Internet control or Internet governance, and indeed there are no provisions on the Internet.” The treaty has nothing to do with the Internet, despite a non-binding resolution calling for action to promote Internet growth. Ambassador Terry Kramer also stated “what is very fundamental about the discussion is [that states have] had a very explicit discussion about views on the [I]nternet and how it should be managed.” The context of Internet governance was thus included in the resolution under the ITRs. According to the text, the resolution recognizes that “all governments should have an equal role and responsibility for

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380 See id.
383 See id.
386 See id.
387 Kramer Speech, supra note 331.
international Internet governance and for ensuring the stability, security, continuity, and development of the Internet, and that the need for the development of public policy by governments in consultation with all stakeholders is also recognized. The actual ITRs are not legally binding, but will take effect on January 1, 2015. States are not legally obligated to follow the resolution under the ITRs, but this resolution may act as a guide reflecting idealized international legal principles on the Internet. After the conference in Dubai, the ITU will coordinate and develop new Internet governance frameworks or plans in the next meeting. The main policy outcomes of the next meeting will be the “opinion” documents, which are non-binding on ITU’s membership. The opinions and final meeting report should be a good indicator of the Internet issues that may become the focus of ITU discussion, and in turn, more formal resolutions and recommendations.

3. Internet Governance on Freedom of Speech

Internet governance always involves concerns about freedom of speech. Although governments should be able to use Internet governance to control or censor online speech or content, Internet governance cannot be inconsistent with fundamental principles of freedom of speech, as detailed in Article 19 of the Universal Declaration of Human Rights and other international human rights treaties. In the Preamble to the ITRs, member states agree to

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389 See id.
390 See INTERNATIONAL TELECOMMUNICATIONS REGULATIONS (GENEVA, 1989), art. 10.1 (International Telecommunications Union, 1989) [hereinafter ITRs].
392 See id. The ITU’s Fifth World Telecommunication/ICT Policy Forum (WTPF-13), May 14-16, 2013, Geneva, Switzerland, was the first WTPF to focus exclusively on Internet issues. See id.
393 See id.
394 See id.
395 See UDHR, supra note 38, art. 19.
implement these regulations in a manner that respects and upholds their human rights obligations. Since freedom of speech is a basic human right, states cannot freely use Internet governance to restrict freedom of speech or censor the Internet. Based on general exceptions to freedom of speech under international human rights treaties, Internet governance should be used to prohibit online child pornography, abuse of children, cybercrime, cyber terrorism, and use of Internet resources for purposes that are inconsistent with international peace, stability, and security. Moreover, the Internet creates new forms of collaboration, discourse, and organizations by converging different media forms and facilitating fully interactive communication. Some online social media is more powerful than governments and primarily establishes the rules regarding freedom of speech. Internet governance should then be used as a critical source to balance the power of social media and control speech or communication on the Internet. Internet governance should revise social media's speech policies to engage critical speech and to prohibit speech likely causing intercultural or cross-cultural conflict.

VII. Conclusion

Freedom of speech is a fundamental human right that is enshrined in international human rights law. All countries recognize and guarantee freedom of speech through their constitutions or domestic laws. However, freedom of speech can lead to intercultural or cross-cultural conflict. Since the Internet plays an important role in connecting people around the

396 See ITRs, supra note 390, pmbl. Member states affirm their commitment to implement these regulations in a manner that respects and upholds their human rights obligations. See id.
399 See generally European Convention, supra note 67 (asserting that certain human rights are fundamental to all people).
400 See Magnuson, supra note 31, at 278.
world, communication on the Internet can increase intercultural or cross-cultural conflict where there are differing levels of free speech protection.\textsuperscript{402} The "Innocence of Muslims" is an example of free speech on the Internet that resulted in conflict and violence in many countries around the world.\textsuperscript{403} The U.S. Ambassador and three other Americans were killed in Benghazi, Libya, and violence spread in Muslim countries.\textsuperscript{404} The international community thus raised the question of how international law controls or deal with freedom of speech on the Internet.\textsuperscript{405} 

Although freedom of speech on the Internet is mainly regulated and controlled by social media, governments can still use international human rights law to balance and control freedom of speech on the Internet. More particularly, international human rights law provides exceptions to freedom of speech, which may be used to censor online speech or control freedom of speech on the Internet.\textsuperscript{406} Unfortunately, international human rights law cannot be used to control social media or enforce other countries to censor online speech or content.\textsuperscript{407} Those international rules merely protect a country’s citizens and prevent conflict within its borders.\textsuperscript{408} Recently, there has been an attempt to establish Internet governance rules that may control freedom of speech on the Internet.\textsuperscript{409} This should be an important step to change the way the Internet is governed.

\textsuperscript{402} See id.

\textsuperscript{403} See Russian Court Ban, supra note 361.


\textsuperscript{405} See id.

\textsuperscript{406} See Penny, supra note 264, at 11-12.

\textsuperscript{407} See id.

\textsuperscript{408} See id.
