

**Human Rights Protection For Online Activist Groups: A Legal Analysis of the
Issues, Frameworks and Ways Forward**

by

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Abstract

This thesis entitled *Human Rights Protection For Online Activist Groups: A Legal Analysis of the Issues, Frameworks and Ways Forward* assesses how improved protection can be provided to online activist groups that operate within England and Wales. In light of technological and legislative developments that have resulted in various challenges for online groups and their essential rights. The principle aim of this thesis is to illustrate and assess the extent to which improved protection can be provided for online activist groups, both individuals members as well as suggesting the merit in recognising the group as an entity concurrently. Focusing on the rights of freedom of association and assembly, the objective is to demonstrate that the currently suggested protections afforded to groups under jurisdictional human rights frameworks are inadequate in a nature. Due to such factors as the unprecedented impact that surveillance technologies and contextual developments continue to have on this right. This thesis finds with contemplation of (a) challenges presented by the online environment such as increased surveillance and the utilisation of 'Hidden Spaces', (b) the politicised, contentious, and difficult nature of the governance of digital rights (c) planned future legislative innovation within England and Wales that any progress in ensuring that the rights of online activist groups are upheld is likely to be a problematic endeavour. With issues such as the criminality of actors arising, yet the responsibility lies with the instruments and related bodies themselves, rather than with the groups. Indicating that the best approach forward within this context is to recognise groups as separate rights holding entities, within the presented scope, as reducing the impact of the above-mentioned trajectory is unlikely to occur in the near future.

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Chapter One - Introduction

The term ‘online activist’ or ‘online activist group’ can evoke images of hackers and online vigilantes focused on causing disruption to the masses utilising the capabilities of the Internet.¹ Once confined to those who possessed advanced technological skill, these groups have since expanded their membership demographic to encompass users of all skill levels.² Arguably prompting a reassessment of the rights granted to these groups as they develop and adapt to an evolving environment online.

This thesis is specifically exploring the rights of freedom of association and assembly in England and Wales, assessing where better protections could be afforded to online activist groups in light of recent developments and challenges such face. Contributing to the wider academic discourse around civil freedoms by specifically isolating the two rights and exploring how challenges brought about by the online environment. Assessing if these could be further upheld should groups be recognised as entities in the related instruments. As a communication network, the Internet has connected individuals for a variety of things, including activism, resulting in online activism and groups being a distinct phenomenon.³ Akin to their offline counterparts, these to advocate and lobby for change, however they do so in an environment with distinct challenges and operational considerations. Lesser present for their offline counterparts, these groups are impacted by surveillance practices and afforded operational advantages of spaces like the Dark Web and platforms utilising encryption. Each presenting a unique challenge in connection to freedoms.

These challenges in the digital space have introduced the possibility that legislation once drafted and developed to suit the offline space, do not adequately account for online operations. It is this possibility on which this thesis’ argument sits. Based on research conducted between 2019 and 2020, this thesis presents a contemporary socio-legal assessment of how these

¹ Mathias Klang and Nora Madison, ‘The Domestication of Online Activism’ (2016) 21 First Monday <<http://journals.uic.edu/ojs/index.php/fm/article/view/6790>> accessed 20 January 2020.

² Josh Halliday, ‘Game over for Anonymous Hackers Who Thought They Would Never Be Caught’ *The Guardian* (25 January 2013) <<https://www.theguardian.com/technology/2013/jan/25/game-over-anonymous-hackers>> accessed 24 June 2020. – the damage of these Anonymous member cyberattacks was estimated to be in the millions. Showing that whilst these groups might advocate for change, there is sometimes a cost for such actions.

³ Shahla Ghobadi, ‘Going Viral: What Social Media Activists Need to Know’ *The Conversation* (18 July 2018) <<https://theconversation.com/going-viral-what-social-media-activists-need-to-know-96043>> accessed 20 March 2020.

challenges can be responded to whilst maintaining protections for the freedoms of association and assembly within England and Wales. Guided by the overarching hypothesis that improved protection could potentially be awarded through current instruments by such being extended to recognise groups. This thesis, as a piece of scholarship, will start to contribute to the contemporary understanding of the ability of groups to maintain their freedoms of association and assembly in light of significant developments and challenges these present. Exploring if, and how, further protection could be provided when there are potential limitations of these rights.

Research Hypothesis and Questions

To guide the discussions and research further to the hypothesis, the following research questions have been adopted. Separating the overarching proposition into distinct threads that will be present, addressed and referred to throughout. These are as follows:

- 1) To what extent could an extended human rights framework benefit online activist groups?
- 2) Should there be extended protection for online activist groups in their entirety?
- 3) Can current legal human rights frameworks be extended to account for groups?

These questions, overarching and otherwise, have been identified due to the evidenced increased use of the Internet by activist groups.⁴ Accompanied by comments and reports that rights, such as those that protect the ability to freely associate and assemble, are applicable in the same manner online as they are offline.⁵ Therefore, each question seeks to address a part of the overall hypothesis. The first research question indicates the rationale behind including online activist groups into current frameworks, allowing for the exploration of any potential benefits that inclusion to bring to the operations of activist groups. The second focuses on whether or not protection should be extended to all activist groups, considering that not all activities they undertake are legal prompting the inclusion of underlying moral arguments and

⁴ Bani Sapra, 'The Last Decade Showed How Social Media Could Topple Governments and Make Social Change — and It's Only Getting crazier from Here' *Business Insider* (14 January 2020) <<https://www.businessinsider.com/social-media-activism-facebook-twitter-youtube-power-2019-12?r=US&IR=T>> accessed 7 February 2020; Athina Karatzogianni, 'Beyond Hashtags: How a Wave of Digital Activists Is Changing Society' *The Conversation* (11 April 2016) <<http://theconversation.com/beyond-hashtags-how-a-new-wave-of-digital-activists-is-changing-society-57502>> accessed 7 February 2020.

⁵ Clément Nyaletsossi Voule, 'Rights to Freedom of Peaceful Assembly and of Association. Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association' (United Nations General Assembly 2019) Human Rights Council A/HRC/41/41 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/141/02/PDF/G1914102.pdf?OpenElement>>.

considerations. Finally, the third research question examines the practical elements of the hypothesis, arguably addressing the legal core of the thesis, looking at how any expansion could take place. Introducing wider discussions around how, in theory, improved protection as suggested by the hypothesis could be granted.

To place parameters on research, this thesis focuses on the interpreted subtype of groups - those that are emergent in nature and can be seen to have uncertainty in connection to individual member rights. These groups have been seen to be increasingly present in the last decade, with the two groups Tsunami Democràtic and Anonymous being selected as examples that illustrate how there could be concurrent protection granted. The juxtaposition of these two groups is purposeful, as they arguably sit on both ends of a spectrum of online activism. Tsunami Democràtic are a group that has emerged concurrently to the pro-independence movement in Catalonia in late 2019. As a group, they have been subject to legal action, however there is yet to be a determination decreeing their actions illegal or legal. Whereas, Anonymous and its members have been long established, and their actions have been decreed to be illegal in nature by a number of sources.⁶ Utilising two differing examples of the potential types of online activist groups will allow for the further exploration of the underlying moral arguments as to whether particular group types should be granted specific protections.

To address both the overarching hypothesis and following research questions, the thesis is structured as follows. Firstly, the research methodology will be recounted, with explanation given as to the steps taken, and the rationale for its selection explored. A literature review will then offer a clear insight into the original contribution of the thesis to current knowledge. Here current academic discourse in the area will be reviewed, and the alluded gap for the contemporary examination of issues will be illustrated. Following this, a legal context of discussions will be provided. This will see the examination of relevant legal instruments related to discussions, detailing the legal landscape in which these issues sit. The main discussions will then commence. These will explore how the Internet and the subsequent platforms have created new distinct challenges or have exacerbated those already legislated for offline. These will mirror the research questions posed above, examining three main areas: challenges presented by the online environment, legislative developments both enshrined and proposed within England and Wales, and the significance of the multi-stakeholder environment. Finally, there

⁶ Halliday (n 2); Gabriella E Coleman, 'Anonymous In Context: The Politics And Power Behind The Mask' (The Centre for International Governance Innovation 2013) 3.

will be a presentation of potential ways forward, with three identified potential solutions that could provide improved protection for online activist groups being proposed. Exploring the likelihood of reform of proposed government instruments, the possibility of identifying groups as entities under human rights frameworks, and the effectiveness of actions taken by groups themselves to reduce the limitation of their rights. With final overall conclusions, concluding statements, and the highlighting of future research avenues occurring thereafter.

Chapter Two - Methodology

Introduction

Overall, this project adopts a qualitative methodology with a socio-legal perspective. Similar to other legal works and wider discipline practices, this thesis is investigating how the law works in action in connection to online activist groups rather than how the provisions prescribe requirements.⁷ Throughout, there will be a contemporary analysis of published works such as books and articles, this is done in order to gather evidence related to the overarching research question concerning the potentiality of granting improved protection to online activist groups. This methodology utilises two methods in total: the doctrinal method to analyse cases and the specific legal instruments, and the documentary method to analyse secondary records such as books and articles.

Epistemology Adopted

It can be interpreted that this project has adopted an interpretivist epistemology throughout, seeking to understand what the specific experience of online activist groups operating online is. The below methods have been chosen in line with this underlying perspective in attempt to consider as many interpretations and experiences of the challenges faced by online activist groups as possible.⁸

The doctrinal method will see relevant legal instruments analysed to present a near systematic account of related instruments impacting the operations and experiences of online activist groups. Moreover, the documentary method has been utilised to gather information and data in connection to the presented lived experiences of these groups in line with evaluations posited by an interpretivist approach. Furthermore, the use of both Tsunami Democràtic and Anonymous as examples throughout is reflective of this epistemology, with such illustrations seeking to contextualise the environment in which these issues and challenges arise.

Doctrinal Method

Regarded as a distinct legal method, the doctrinal method prompts a researcher to consider “what the law is in a particular area?”⁹ Within this thesis, it can be identified that the law under

⁷ Roscoe Pound, ‘Law in Books and Law in Action’ (1910) 44 American Law Review 12.

⁸ ‘Interpretivism’, in Sandra Mathison, *Encyclopedia of Evaluation* (Sage Publications, Inc 2005) <<http://methods.sagepub.com/reference/encyclopedia-of-evaluation/n289.xml>>.

⁹ Michael Salter and Julie Mason, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research* (Pearson/Longman 2007).

investigation are the statutory frameworks containing provisions relating to the rights granted to individuals to free associate and assemble, specifically those that are applicable in the jurisdiction of England and Wales. This method prescribes that there is an identification, analysis, and synthesis of the content of materials.¹⁰ Relevant regulations and instruments were sourced through using legal databases such as WestLaw and LexisLibrary, with keyword searches for “freedom of association” and “freedom of assembly” producing numerous instruments with varying jurisdictional coverage. These were then reviewed, with the instruments applicable to England and Wales being taken forward for further analysis, such findings are presented in Chapter Five of this thesis where the relevant legal context of issues are exhibited.

As previously suggested, the doctrinal method has been regarded as one which is not only qualitative in nature, but one that is exclusively used within Law as a research discipline. This consensus of opinion is arguably longstanding due to the widespread adoption by legal researchers in comparison to those operating in the wider social sciences.¹¹ Whilst the potential advantages of other disciplines utilising the doctrinal method as part of their research projects, it is one that can be recognised as still being tightly aligned with Law as a discipline. Primarily due to the prerequisite training and skill set that has been presented to be needed when handling the law in this way, with such being akin to the traditional training that a lawyer experiences.¹² This provides a rationale for its inclusion within this methodology. This method allows for the results of the above search, and the instruments containing freedom of association and assembly rights to be analysed in depth and detail. Rather than just identifying such within their relevant frameworks, this method allows for such to be placed in the wider context which is essential when recommendations and next steps are considered.

Documentary Method

Unlike the doctrinal method, the documentary method is one that is more widely recognised and utilised across the social sciences.¹³ This method specifies the systematic reviewing and evaluation of documents such as: books, policy documents/proposals, newspapers, press

¹⁰ *ibid.*

¹¹ Terry Hutchinson, ‘The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law’ (2015) 8 *Erasmus Law Review* 130, 130.

¹² Terry Hutchinson and Nigel Duncan, ‘Defining and Describing What We Do: Doctrinal Legal Research’ (2012) 17 *Deakin Law Review* 83.

¹³ Juliet M Corbin and Anselm L Strauss, *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory* (3rd ed, Sage Publications, Inc 2008).

releases, and public records. Within this thesis, primarily books and reports pertaining to the technological challenges faced by online activist groups have been examined. Such has been selected within this methodology due to its requirement that a researcher organises “excerpts, quotations, or entire passages”¹⁴ of various materials of differing origins, introducing a holistic overview. The collation and consolidation of such materials has been key to this project in order to make the empirical contribution to understanding is fulfilled as intended. The documentary method has been adopted due to its systematic requirements, this in turn allows for a “clearer picture”¹⁵ of how a situation or ideas have developed and changed over time. This is key in relation to such documents as the periodic works of the Special Rapporteur¹⁶ and others¹⁷ which - through the utilisation of this method - can be consolidated so there can be identification of reoccurring or continuous issues and discussions, such as the applicability of offline rights online. Allowing for the contribution of this thesis to be a contemporary assessment of the situation. The documentary method provides an avenue of analysis for legal documents not traditionally covered under the doctrinal approach. For example, secondary commentary concerning freedom of association and assembly rights online have been assessed, contributing to the understanding and analysis presented in this thesis.

Previously it has been suggested that the use of the documentary method can lead to the transference of bias from a researcher projecting their predispositions onto a subject. Meaning that the choice of documents could be done in manner that sees exclusive selection of only those that endorse a researcher’s perspective of a subject.¹⁸ This risk can be reduced by ensuring that the process suggested by Bowen¹⁹ is adhered to in practice. Resulting in no documents being disregarded at a superficial level with an establishment as to why a specific document has been chosen, how complete the information is and what the original purpose of the document was taking place. Admittedly, the onus is on the researcher themselves to ensure that

¹⁴ Glenn A Bowen, ‘Document Analysis as a Qualitative Research Method’ (2009) 9 *Qualitative Research Journal* 27.

¹⁵ *ibid.* p. 30

¹⁶ Voule, ‘Rights to Freedom of Peaceful Assembly and of Association. Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association’ (n 5); Clément Nyaletsossi Voule, ‘Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association’ (United Nations General Assembly 2018) General Assembly A/73/279 <<https://undocs.org/A/73/279>>; Clément Nyaletsossi Voule, ‘Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association’ (United Nations General Assembly 2018) Human Rights Council A/HRC/38/34 <<http://undocs.org/A/HRC/38/34>>.

¹⁷ S Couture and others, ‘Freedom of Association on the Internet’ (Internet Engineering Task Force 2020) Working Paper 04.

¹⁸ Robert K Yin, *Case Study Research: Design and Methods* (3rd ed, Sage Publications 2003). p. 86

¹⁹ Bowen (n 14).

these steps are adhered to, however this substantially reduces the potential for biased selection to take place as it would be clear at a planning stage as to the spilt of documents a researcher has consulted.

Suitability of Methodology

Overall, the methodology presented here has been selected for both practical and theoretical reasons. Practically, both the doctrinal and documentary methods fit the library-based nature of this project, with both being desk-based methods. Theoretically, the combination of these two methods aligns with both the socio-legal perspective and interpretivist epistemology adopted by this thesis, allowing for the exploration and analysis of a wide range of materials concerning the potential expansion of rights to afford protection to groups.

There can be the suggestion that this combination of methods and thus, the overall methodology will present no more than an extended literature review rather than exclusive findings. This is a proposition that can be viewed as both a positive affirmation of the methodology taken, and a potential undesirable consequence for this thesis a piece of scholarship. In regard to the former, as previously indicated this combination of methods and overall methodology has been selected in order for the desired contemporary understanding within this area. It is here that the socio-legal approach of the overall thesis becomes relevant, as both methods allow for separate inquiries concerned with the current consensuses of both the law affording protection to online activist groups and the wider challenges reported in literature and materials presented by technology to be explored.

Despite this suitability, the aforementioned combination could lead to a lack of originality as suggested. However, the way in which these methods are being used and overall rationale that they are complimenting each other as methods arguably rebuts this potential eventuality. The doctrinal method is being used exclusively in connection to primary legal sources such as legislation and regulations, whereas the documentary method is being utilised more widely. Being used in connection to secondary sources, both legal and non-legal in focus, such as sports, journal articles, and dictionaries relevant to each research question. Moreover, the underlying lines of inquiry being adopted in connection to each methods indicates that an additional literature review is being avoided. The doctrinal method is being used in connection to legal materials with the inquiry being concerned with the current consensus of protections offered to online activist groups. Whereas the documentary method is being used to investigate

and establish a wider context, introducing to themes and categories of information.²⁰ Presenting a level of detail that would not be evidenced within a literature review, making such a scholarly inquiry instead.

In addition, it can be recognised that this combination of methods and overall methodology is one that has been adopted in this academic field previously. Whilst it can be seen that lawyers as academics do not perhaps commonly detail and recount their methodologies within works compared to other social sciences, it is possible for methodologies to be inferred.²¹ However, without confirmation these interpretations cannot be endorsed as absolute. Overall, a qualitative method trend can be identified via interpretation in the key literature texts consulted within this thesis. Previously it has been suggested that studies concerned with the operations of online activist groups would not benefit from the use of quantitative methods or approaches due to the “increasing difficulty of merely keeping up with new [technological] developments”²² that accompanies such a topic. Reaffirming the relevance of a qualitative methodology opposed to one that is quantitative in nature.

²⁰ Adri Labuschagne, ‘Qualitative Research - Airy Fairy or Fundamental?’ (2003) 8 *The Qualitative Report* 100.

²¹ Hutchinson (n 11).

²² Bill D Herman, ‘The Future of Digital Rights - and Digital Fights’, *The Fight over Digital Rights The Politics of Copyright and Technology* (1st edn, Cambridge University Press 2013). p. 215

Chapter Three - Literature Review

Introduction

This review will present the current literature within this specific area, as well as exploring those which have been identified as being relevant and beneficial to be included.²³ By no means is this review exhaustive of the subject matter, as there is no means by which every potential text or academic contribution to an area could be analysed for a thesis of this length. Therefore, in line with the previously indicated research questions, there has been the presentation of three main strands to guide this review, mirroring that which will occur in the discussion chapter. The predominant area that this review deals with is academic literature concerning the current level of protection awarded to online activist groups and the circumstances, if any, under which there could be improved protection for the activist groups. Overall, it can be identified that direct contributions on this specific subject matter are limited in nature, however, as seen with the overarching hypothesis, there are derivative and related areas of literature that can be consulted, and thus wider conclusions drawn.

Challenges Presented by the Online Environment

As previously stated, the direct research contributions focusing on the area of extended human rights protections from a freedom of association and assembly perspective are limited in existence. With many scholars commenting the intersection of human rights law and technology choosing to focus on rights such as freedom of expression, in light of significant activist events such as the Arab Spring.²⁴ Despite this, the contributions that do consider the specific rights of freedom of association and assembly demonstrate the challenges presented by the online environment and the potentially polarising consequences such technological innovations have had or could have for these groups. In addition to this, in light of the previously stated research questions, this review also explored subsidiary areas, specifically looking at the impact of surveillance revelations in the post Snowden era, and the significance

²³ David Thomas and Ian Hodges, *Designing and Managing Your Research Project: Core Skills for Social and Health Research* (SAGE Publications Ltd 2010) <<http://methods.sagepub.com/book/designing-and-managing-your-research-project>> accessed 21 April 2020.

²⁴ Rima S Tanash and others, 'Known Unknowns: An Analysis of Twitter Censorship in Turkey', *Proceedings of the 14th ACM Workshop on Privacy in the Electronic Society - WPES '15* (ACM Press 2015) <<http://dl.acm.org/citation.cfm?doid=2808138.2808147>> accessed 8 May 2020; Abdelberi Chaabane and others, 'Censorship in the Wild: Analyzing Internet Filtering in Syria', *Proceedings of the 2014 Conference on Internet Measurement Conference - IMC '14* (ACM Press 2014) <<http://dl.acm.org/citation.cfm?doid=2663716.2663720>> accessed 8 May 2020; Andrea Di Florio and others, 'Bypassing Censorship: A Proven Tool against the Recent Internet Censorship in Turkey', *2014 IEEE International Symposium on Software Reliability Engineering Workshops* (IEEE 2014) <<http://ieeexplore.ieee.org/lpdocs/epic03/wrapper.htm?arnumber=6983872>> accessed 8 May 2020.

of the multi-stakeholder nature of the Internet. Both of which will be examined further in direct connection to online activist groups in the discussion chapter. In addition, this review does not disregard the significance of the architectural structure and foundations of the digital environment in connection to the operation of online activist groups, however, the reports issued on such²⁵ cannot be regarded as literature for this review, and will instead be highlighted within the Chapter Six discussions.

As indicated, there is a lack of direct contributions speculating the potential for human rights frameworks to extend to online activist groups. Instead, literature and authors extend their scope more widely, within this sub-area of the review contributions can be recognised to be spilt into two categories. Contributions that explore the impact the online environment on group actions, and contributions that explore the consequences of actions of groups that give rise to challenges.

Katherine Strandburg²⁶ and Peter Swire²⁷ focus on the direct challenges the online environment has had on the freedoms to associate and assemble. Both highlighting surveillance as a significant challenge presented online that has increased potential impacts than such would offline if groups were operating there.

Through Strandburg anchors her work in the supposed negative consequences technological innovation and the shift of groups online has brought about, particular emphasis is given to surveillance. As previously indicated, Strandburg suggests that by ‘going online’ with their actions, groups have placed themselves in positions where governments and interested actors can monitor and potentially discriminate against their actions. Drawing on the theory of relational surveillance – surveillance that makes “use of the endpoints of communications, so-called “traffic data,”²⁸ rather than their contents” allowing for “suspect groups”²⁹ and members to be investigated by authorities – Strandburg implies how such constant monitoring can impact emerging associations, thus activist groups, in the digital era. Concluding that there is justifiable cause for concern when assessing the presence of freedom of association and

²⁵ Couture and others (n 17); S Couture and others, ‘Freedom of Association on the Internet’ (Internet Engineering Task Force 2019) Working Paper 03.

²⁶ Katherine J Strandburg, ‘Freedom of Association in a Networked World: First Amendment Regulation of Relational Surveillance’ (2008) 49 Boston College Law Review 741.

²⁷ Peter Swire, ‘Social Networks, Privacy, and Freedom of Association: Data Empowerment vs. Data Protection’ (2012) 90 North Carolina Law Review 1371.

²⁸ Strandburg (n 26) 742.

²⁹ *ibid* 743.

assembly rights of groups operating online. However, here a limitation of Strandburg's commentary becomes apparent. She maintains an exclusive focus on operations in the US, citing US laws and relevant cases³⁰ to support her suggestions. Nevertheless, there are comparisons to be stressed between the US First Amendment right and the Eurocentric freedoms of association and assembly. With both offering mechanisms of protection against any efforts to disrupt or interfere with legal person ability to do associate or assemble. Therefore, when Strandburg comments that US law did not "adequately contend with relational surveillance, particularly in view of the increasing importance of emergent association."³¹ It can be proposed that similar would also be in present in connection to the Eurocentric provisions, meaning that such protection may struggle to be applied and upheld as technology and technological capabilities increase.

This is reaffirmed by Swire who concludes that the use of social networks by groups has seen them become "enablers of political mobilization"³² which he believes, when juxtaposed with privacy, introduces limitations on freedom of association and assembly. He suggests that the rhetoric of "sharing information is good"³³ that facilitating networks, such as Twitter and Facebook, promote and extend encourages both individuals and groups to expose themselves to risks to their rights of freedom of association and assembly. Through encouraging members of the groups to share information about themselves Swire notes that they are, often in real time, conveying data which potentially could be used against them in the future. He suggests that this promotes a conflicting narrative of "sharing information is bad"³⁴ highlighting that by groups utilising networks they are provided with online they are potentially exposing themselves to activities that could impact their freedoms.

Despite demonstrating notable ideas and contributions, it can be recognised that both Swire and Strandburg's works have a jurisdictional limitation. With both authors commenting on US instruments and rights, rather than the UK and European mandates. In addition, both authors published their works and examined the challenges in what can be termed the pre-Snowden era, the period of time before the 2013 leaks of NSA analyst Edward Snowden. These leaks

³⁰ *NAACP v Alabama*. 357 US 449 (1958)

³¹ Strandburg (n 26). p. 747

³² Swire (n 27).

³³ *ibid.*

³⁴ *ibid.*

revealed that both US and UK intelligence services³⁵ were actively monitoring digital spaces³⁶ and communications³⁷ through unknown methods of surveillance as a means of monitoring the lives of individuals. Affirming the suspicions and theories of academics, such as Strandburg - that mass operations aimed at collecting the maximum amount of information possible on individuals, and as consequence groups, in order to consolidate actionable profiles - existed. At the time of publication of both contributions there was speculation and arguable complacency that such existed in the corporate sphere. With companies such as Google somewhat advertising the contractual practical benefit of data exchange with them.³⁸ However, the Snowden leaks revealed that governmental level non-beneficial exchanges were taking place supposedly without the knowledge of users. For these reasons, this review will now turn to literature considering surveillance as a practice to conclude a current consensus and what such could mean for online activist groups.

At her time of writing, Strandburg suggested that groups who are of an “emergent”³⁹ nature are of particular vulnerability to the impact of surveillance practices. Demonstrating that in her opinion “telephone call records and ISP logs are only the tip of the iceberg of traffic data”⁴⁰ could be utilised as primary sources for surveillance. Pointing out that, theoretically, this use of data could lead to discrimination of online activist groups, interfering with their freedoms to associate and assemble. As this has now been confirmed via the Snowden leaks it can be evidenced as an ever-present challenge posed to groups online.

This ever-present possibility of surveillance and potential infringement of rights is something affirmed by Paul Bernal. Writing in 2016 – the post-Snowden era – he suggests that “surveillance techniques are not all new, their relationship to people’s lives and their potential impact is new”⁴¹. Indicating that there has been development of the interactions between those

³⁵ Nick Hopkins, ‘UK Gathering Secret Intelligence via Covert NSA Operation’ *The Guardian* (7 June 2013) <<https://www.theguardian.com/technology/2013/jun/07/uk-gathering-secret-intelligence-nsa-prism>> accessed 20 March 2020.

³⁶ Glenn Greenwald, ‘XKeyscore: NSA Tool Collects “Nearly Everything a User Does on the Internet”’ *The Guardian* (31 July 2013) <<https://www.theguardian.com/world/2013/jul/31/nsa-top-secret-program-online-data>> accessed 20 March 2020.

³⁷ Glenn Greenwald, ‘NSA Collecting Phone Records of Millions of Verizon Customers Daily’ *The Guardian* (6 June 2013) <<https://www.theguardian.com/world/2013/jun/06/nsa-phone-records-verizon-court-order>> accessed 20 March 2020.

³⁸ Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (2019). p. 63 - 98

³⁹ Strandburg (n 26). p. 747

⁴⁰ *ibid.* p. 755

⁴¹ Paul Bernal, ‘Data Gathering, Surveillance and Human Rights: Recasting the Debate’ (2016) 1 *Journal of Cyber Policy* 243, 247.

surveying and those being surveyed. Considering the upward trajectory of Internet use and the increasing prevalence of individuals living their lives online, this new relationship could be defined by a new sense of closeness and potential data gathering points. Demonstrating that since Strandburg's suggestions there is high likelihood that the use of individual and aggregated data in tandem is impacting the freedoms to associate and assemble.

In addition to providing a more contemporary assessment of the state of surveillance, Bernal recasts the debate around issues. His piece centres around a discussion as to whether surveillance practices are correctly framed post-Snowden. Suggesting that corporate and governmental surveillance are not siloed from each other as previously thought. When discussing such, he suggests that the effects of such practices are not "just upon individual privacy, but upon a wide range of human rights, from freedom of expression and freedom of association"⁴² He furthers this thread of discussion by observing that that surveillance and its impacts – as recognised in the post-Snowden era - are not exclusively felt by individuals alone. Commenting that the impact is "not just on individuals but on communities and other groups"⁴³ and looking at such issues of from the exclusive perspective of individuals is potentially "misleading, as it inappropriately downplays the significance of surveillance."⁴⁴ Affirming the position of this thesis that freedoms to assemble and associate are indeed impacted by innovation online. Therefore, suggesting that online activist groups as beneficiaries of these protections could also be impacted if further protection is not contemplated, due to these entities sharing a kinship with individuals when it comes to measuring the effect of surveillance practices online.

Returning to the jurisdictional coverage and focus of the pieces. Bernal uses the European Convention of Human Rights as a framework of reference, he suggests that such is done due to the high international regard that the Convention is held in. However, throughout his work there are examples picked from both the UK and US, indicating that the ideas presented could be applied to either jurisdiction. This is an approach that can similarly be inferred in Swire's work. Throughout he acknowledges that issues he raises are cross jurisdictional in nature by exploring the pull and encouragement of social networks and the impact that this has on the association of groups. This is a practice that is not jurisdictionally confined in any way, social

⁴² *ibid* 245.

⁴³ *ibid*.

⁴⁴ *ibid*.

networks as international, thus making their business models and the pull Swire indicates also global in nature. He discusses that groups operating online via these networks have gained “strong recognition of the importance of such [social platforms and networks online] networks to politics, both globally and in the United States.”⁴⁵ Reaffirming that operations, and by consequences, issues are not jurisdictionally confined to that of which he is focusing on. Additionally, by directly denoting “politics”⁴⁶ as the matter of issue, Swire is demonstrating that social media plays an important role in activism online. Exacerbating his suggestion that privacy is a kinship right to freedom of association and assembly must also be upheld to ensure the consistent protection and continued existence of online activist groups, echoing the previously analysed comments of Bernal.

Swire does recommend some solutions to the challenges presented to groups online, despite indicating throughout that his contribution to the area is just one in a chronology that tactfully leave questions open for further research. He endorses that there is potential merit in the adoption of “privacy by design”⁴⁷ and “do not track”⁴⁸ mechanisms. Due to the time elapsed since the publication of the work, it can be suggested that these models have been detracted from in practice, the “do not track”⁴⁹ recommendation in particular in England and Wales. This is suggested as since Swire’s time of writing in 2013, there has been the drafting and enshrinement of The General Data Protection Regulation⁵⁰ evidenced in the Data Protection Act 2018⁵¹, both of which arguably counter legislate for Swire’s proposals.

So far, this review has explored the ever-present challenges presented by the online environment that online activist groups that could impact their freedoms of association and assembly. With authors acknowledging that groups can be encouraged to form, and as consequential actors, carry out courses of action online. Strandburg comments that groups “can form around very specific issues and then die out quickly”⁵² online. Implying that these can be

⁴⁵ Swire (n 27). p.1379

⁴⁶ *ibid.*

⁴⁷ *ibid* 1397.

⁴⁸ *ibid* 1402.

⁴⁹ *ibid.*

⁵⁰ EU General Data Protection Regulation (GDPR): Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ 2016 L 119/1.

⁵¹ Data Protection Act 2018.

⁵² Strandburg (n 26). p. 750, Katherine J Strandburg, ‘Surveillance of Emergent Associations: Freedom of Association in a Network Society’ in Alessandro Acquisti (ed), *Digital privacy: theory, technologies, and practices* (Auerbach Publications 2008). p. 3

entities that could be potentially affected by any challenges presented as they can exist online. Swire additionally comments that “social networks are platforms to create associations”⁵³ affirming the encouragement that the online environment can provide individuals to form groups, assemble, and associate online. These comments provide evidence of the polarised potential the online environment has for groups more widely, illustrating that they are non-passive entities that can disturb the online environment just as much as they can be disturbed by it. In regard to this, this review will now turn to literature that highlights potential disruption caused by groups.

As previously alluded to, online activists’ groups are not wholly innocent actors. With the notable example of Anonymous being declared a group partaking in illegal activities on multiple occasions.⁵⁴ This is commonly observed when controversial groups carry out distributed denial of service attacks (hereafter referred to as DDoS attacks). This occurs when websites and networks online are temporarily made unavailable due to the underlying architecture being overwhelmed. This may be done both via bots where a user creates the illusion of multiple accounts flooding the servers acting as if they were a group under the name, or by multiple users of the same group all accessing the same site in parallel. The use of DDoS or DoS attacks are a phenomenon reflected on by Mathias Klang in his notable works.⁵⁵ Writing across two contributions in 2004, Klang comments on the opportunities the online environment has offered activist groups, as well as the consequences of terming actions in certain ways.

Contributing to a collection discussing human rights in the digital age, Klang indicates that in the then contemporary 2004 there was an increasing use of the term “cyberterrorism”⁵⁶ to describe the actions of online activists. This is a linguistic trend that can be recognised as one that has continued based off previous allusions of more recent comments by authors. Each have at some point in their contributions taken into consideration the legality of the actions of

⁵³ Swire (n 27).

⁵⁴ Halliday (n 2); Glenn Greenwald, ‘Prosecution of Anonymous Activists Highlights War for Internet Control’ *The Guardian* (23 December 2012) <<https://www.theguardian.com/commentisfree/2012/nov/23/anonymous-trial-wikileaks-internet-freedom>> accessed 20 March 2020; Sandra Laville, ‘Anonymous Cyber-Attacks Cost PayPal £3.5m, Court Told’ *The Guardian* (London, 22 November 2012) <<https://www.theguardian.com/technology/2012/nov/22/anonymous-cyber-attacks-paypal-court>> accessed 20 March 2020; ‘Anonymous Hackers “Cost PayPal £3.5m”’ *BBC News* (22 November 2012) <<https://www.bbc.co.uk/news/uk-20449474>> accessed 20 March 2020.

⁵⁵ It is recognised that there are notable differences between DDoS attacks and DoS attacks. However, for the purposes of this review the terms are being used interchangeably for coherence.

⁵⁶ Mathias Klang, ‘Virtual Sit-Ins, Civil Disobedience and Cyberterrorism’ in Andrew Murray and Mathias Klang, *Human rights in the digital age* (GlassHouse 2004) 135.

activists online.⁵⁷ Klang ultimately suggests that the terminology that is used to reference the acts of online activist groups influences the degree to which actions are accepted by society more widely, as the mislabelling or overzealous labelling of groups have consequences that are further than academic conversations. He explores the comparison to offline equivalents of DoS attacks through the self-utilised metaphor of virtual sit ins adopted by groups. He suggests that sit ins offline, whilst disruptive, are commonly accepted as being representations of individuals utilising their freedoms. Prompting the question as to whether it is the new, technological, manner in which the demonstrations are being carried out that gives rise to new conversations about the legality and perception of DoS attacks. He highlights that the goals of civil disobedience groups of the past were “easier to accept”⁵⁸ than those in the then contemporary 2004, and despite these attacks being illegal in specific contexts, there is still a debate around how these attacks are framed or termed and what this means for the groups carrying out the demonstrations. Klang’s work centres around the understanding of what civil disobedience is as a concept, with him suggesting that if this is misinterpreted or pinned down to a singular interpretation there is the potential for phenomena such as DoS attacks to be misunderstood. When comparing DoS attacks to the demonstrations of previous figures such as Dr Martin King Jr and Ghandi he suggests that these are still methods of “peaceful democratic protest”⁵⁹ when the disobedience being represented is in response to injustice. Ultimately demonstrating that, in his opinion, DoS attacks should be tolerated as a response to injustice, indicating that there is further work to be done in connection to determining when an intention is to respond to such injustices or to be criminal disturbances.⁶⁰

Klang’s additional article covering DDoS attacks as well as other digital means of disruption illustrates how the technology has given rise to, then new, forms of protest and therefore consequences for those involved. Exploring the extent to which these are akin to traditional civil disobedience actions and how they are illegal in certain circumstances.⁶¹ It is self-confessed within this piece that the focus on DDoS attacks does not contemplate the moral

⁵⁷ Vasileios Karagiannopoulos, ‘Contemporary Norms and Law and Hacktivism’ in Vasileios Karagiannopoulos, *Living With Hacktivism* (Springer International Publishing 2018) <http://link.springer.com/10.1007/978-3-319-71758-6_4>; Argyro P Karanasiou, ‘The Changing Face of Protests in the Digital Age: On Occupying Cyberspace and Distributed-Denial-of-Services (DDoS) Attacks’ (2014) 28 *International Review of Law, Computers & Technology* 98.

⁵⁸ Klang (n 56) 143.

⁵⁹ *ibid.*

⁶⁰ *ibid* 145.

⁶¹ Mathias Klang, ‘Civil Disobedience Online’ (2004) 2 *Information, Communication & Ethics in Society* 75.

impacts of these specific actions to the same extent as the chapter⁶², therefore Klang's wider comments are of note. He alludes to the complex relationship between the civil disobedience, arguably manifested through individuals and groups utilising their freedoms to associate and assemble, and what is seen to be illegal. He notes that there is a potential inequality present where multiple groups are considered, suggesting that "This type of argument [one that explores the motivations behind accepting one groups disobedience whilst denying another's] is often referred to as the slippery slope."⁶³ For the purposes of this review, this thesis can be seen to be acknowledging and taking heed to such a warning, choosing to engage in a lesser debate as to the legality of acts by groups. Instead, selecting a more holistic approach and instead examining the legal status of groups as entities. This is not to say that the legality of actions can be totally ignored, as this would be excluding an important aspect in its entirety. As Klang suggests there is "no reason why the use of digital technology as a form of protest should not be viewed as being functionally equivalent to other means of protest and be respected as such."⁶⁴ Thus giving rise to the protections of such forms of association and assembly to also be respected in this manner as this is noted to be part of an equitable society in which expression is upheld.⁶⁵ Endorsing the comments he made within his chapter contribution that have been discussed within this review.

When the various contributions to discourse concerning DDoS attacks are considered, it can be suggested that Klang's contributions, being sixteen years old, are dated. However, it can be suggested that the underlying motives, and primary objectives from a technical perspective remain unchanged. A decade on, Karanasiou's contribution⁶⁶ acknowledges that DDoS attacks can be representative of protests offline, however he illustrates that it is still unclear the extent to which DDoS attacks qualify as free speech. Suggesting that this is an area where debates are still ongoing. Karanasiou ultimately determines that whilst the comparisons to offline sit-ins are attractive, DDoS attacks cannot be considered in their entirety to be representations of free speech due to their obstructive and destructive nature. He instead proposes that the issue should be "contextualized and further discussed on an ad hoc basis"⁶⁷ reaffirming that this is an area that will develop academically alongside wider technological developments that are inevitable.

⁶² *ibid* 78.

⁶³ *ibid* 79.

⁶⁴ *ibid* 80.

⁶⁵ *ibid* 82.

⁶⁶ Karanasiou (n 57).

⁶⁷ *ibid* 109.

Similar to previous authors⁶⁸ Karanasiou's contribution can be recognised as one that takes an overwhelming US perspective, with him exploring the first amendment and connected cases throughout. However, he does offer comment on the UK position on the likelihood of DDoS attacks being afforded free speech protections. A comparable right to those being explored in this thesis. He conveys that cases such as *DDP v Lennon*⁶⁹ and legislative provisions⁷⁰ have determined the UK position that DDoS attacks are illegal. He suggests that these attacks are proscribed and amount to trespass, indicating that they will not qualify for free speech protections within the UK, nor is it likely that such would fall under article 10 of the European Convention on Human Rights due to lack of peace that occurs when these demonstrations are carried out.

For the purposes of this review, Karanasiou's evidence submitted in support of DDoS attacks being attractive as manifestations of free speech is significant. He suggests that "such acts may be granted free speech protection to ensure equality of expressive outlets."⁷¹ Indicating a recognition that DDoS attacks can be used to draw attention to injustices, echoing Klang⁷², however he raises doubt as to which groups could be recognised as marginalised groups for these purposes. He suggests that Anonymous are not marginalised due to their wide recognition and well attended global marches, whereas a group such as Tsunami Democràtic could be marginalised if compared to Anonymous on these merits. Reaffirming that whilst there can be no definitive answer as to the legality of actions in specific jurisdictions there will be a constant academic debate as to the suitability and consequences of such determinations.

Karagiannopoulos comments on such themes within his contribution. He suggests that there has been a normative trend that views hacktivist activities as cybercrime, which being "a knee-jerk reaction"⁷³ to such has created "concerns for the legitimacy"⁷⁴ of such prosecutions. He indicates that the present reality of regimes in which hacktivist groups and instances of protest online are potentially being dealt with inconsistently, yet being each regime is being driven internationally by "public safety and national security."⁷⁵ He observes that the actions of groups such as Anonymous are determined to impact safety and security due to the influence of the

⁶⁸ Swire (n 27); Strandburg (n 26); Strandburg (n 52).

⁶⁹ *DPP v Lennon*. [2005] EWHC 1201

⁷⁰ Computer Misuse Act 1990; Police and Justice Act 2006.

⁷¹ Karanasiou (n 57) 109.

⁷² Klang (n 56) 141.

⁷³ Karagiannopoulos, 'Contemporary Norms and Law and Hacktivism' (n 57) 124.

⁷⁴ *ibid*.

⁷⁵ *ibid* 93.

media and their portrayal of such acts as Operation Payback⁷⁶, a proposition which illustrates that these issues are contextualised in more than academic debate. Karagiannopoulos like others acknowledges that some of the actions of online activist groups are now illegal in the UK. However, it can be suggested that he is conveying that this is a reactionary set of instruments that lacks appreciation of the differing actions of activist groups. Within his scoping of the issue, he reflects on the contribution of Hampson⁷⁷ who suggests that groups who engage in actions such as DDoS attacks where they are being expressive rather than exploiting access to computers or networks should be granted “some protection”⁷⁸ for their actions as a manifestation of “legitimate protest.”⁷⁹ It is clear here that actions such as those of Anonymous would be determined to be exploiting or obtaining illegal access so could not be determined to be legitimate under this definition. However, the actions of a group such as Tsunami Democràtic are arguably undetermined under this criterion, suggesting that their actions could be considered “legitimate protest”⁸⁰ and therefore demand a degree of protection. The combination of these comments by the authors both indicates and affirms the potential spectral nature activist groups operating online exist within. Giving rise to the potential for different groups with alternate underlying motivations to actions to be considered differently to those with malicious intent driving their actions. Yet, as previously indicated this is a “slippery slope”⁸¹ argument and area of discussion that cannot be answered in full within this work but will be referred to in Chapter Six as discussions progress.

Joseph Bonneau provides a more recent review of the actions of online protestors. Revisiting Denning’s⁸² 2001 triad of social movements⁸³ he proposes a new framework that would allow users to show “commitment to a cause” but remain non-violent – echoing the comments and references of Klang in connection to the Electrohippies in his 2004 contribution.⁸⁴ Despite

⁷⁶ *ibid* 98; Adam G Klein, ‘Vigilante Media: Unveiling Anonymous and the Hacktivist Persona in the Global Press’ (2015) 82 *Communication Monographs* 379.

⁷⁷ Noah Hampson, ‘Hacktivism: A New Breed of Protest in a Networked World’ (2012) 35 *Boston College International and Comparative Law Review* 531.

⁷⁸ Karagiannopoulos, ‘Contemporary Norms and Law and Hacktivism’ (n 57) 92.

⁷⁹ *ibid*.

⁸⁰ *ibid*.

⁸¹ Klang (n 61) 79.

⁸² Dorothy Denning, ‘Activism, Hacktivism, and Cyberterrorism: The Internet as a Tool for Influencing Foreign Policy’, *Networks and Netwars: The Future of Terror, Crime, and Militancy* (2001).

⁸³ The shared characteristics between social movements and groups will be explored in more depth within the definitions chapter of this thesis where it will be highlighted why there is selective focus on the latter within this work.

⁸⁴ Klang (n 56) 141.

stemming from a more computational, cryptographic, perspective, Bonneau – through consequence of proposing a non-violent model – indicates how there are violent groups and activists operating online. His work suggests that violence in the online sphere amounts to “defacing or disabling web sites, blocking access through denial of service attacks, manipulating search engine results, or harassing individuals through email floods.”⁸⁵ Notable characteristics of Denning’s hacktivism that are suggested to be tantamount to “the online manifestations of violent protests”⁸⁶ These examples and comparisons demonstrate how groups, such as Anonymous, can be entities that create challenges for others as equally as they can be entities that are subjected to impacts. The legality of these specific actions is a question debated throughout the area and will be briefly reexplored within Chapter Six of this thesis.⁸⁷

These examples are echoed by Van Lear and Van Aelst in their less technical contribution. They observe that the Internet is “used to set up new forms of online protest activities and to create online modes of existing offline protest actions.”⁸⁸ Illustrating the opportunities that the Internet has provided groups wishing to raise awareness of their causes. In their work Van Lear and Van Aelst present a spectrum of actions that activist efforts can be mapped on⁸⁹, from low threshold activities such as donating money to a cause in the instance of Internet-enhanced activism⁹⁰ to high threshold Internet-based activities⁹¹ such as hacktivism via DDoS attacks amongst others. However, they note that the distinction between what is high or low threshold activities can be “blurred since action groups almost never use just one single tactic”⁹² entertaining the idea that groups as entities can pose multiple challenges at once to raise awareness, both online and off. This was arguably present in the case of Anonymous’ Million Mask March which saw offline actions that would be considered low threshold in accordance with this work, as a consequence and manifestation of their online work that would be

⁸⁵ Joseph Bonneau, ‘Digital Immolation: New Directions for Online Protest’ in Bruce Christianson and James Malcolm (eds), *Security Protocols XVIII*, vol 7061 (Springer Berlin Heidelberg 2014) 2
<http://link.springer.com/10.1007/978-3-662-45921-8_6>.

⁸⁶ *ibid.*

⁸⁷ Klang (n 56) 142.

⁸⁸ J Van Laer, ‘Activists “Online” and “Offline”’: Internet as an Information Channel for Protest Demonstrations’ (2010) 15 *Mobilization: An International Journal* 405, 1147.

⁸⁹ *ibid* 1149.

⁹⁰ Sandor Vegh, ‘Classifying Forms of Online Activism: The Case of Cyberprotests against the World Bank’ in Martha Mcaughey and Michael Ayers (eds), *Cyberactivism: Online Activism in Theory and Practice* (1st edn, Routledge 2003).

⁹¹ *ibid.*

⁹² Van Laer (n 88) 1149.

considered high threshold activities.⁹³ The alternative combination is also recognisable in the actions of Tsunami Democràtic as they use the Internet as a supportive technology for recruitment, akin to donating money, that is a low threshold action, yet offline sit-ins and demonstrations would be considered high threshold.⁹⁴

Overall, each author featured here highlights that there is an ongoing, year spanning, conversation as to the legality of actions of online activist groups. One that has no definitive nor correct answer, this reintroduces questions as to the extent to which groups should be afforded additional protections to their rights. Ultimately there is the suggestion that due to the potential polarised nature of groups actions this is an area in which further work needs to be carried out.

Potential Expansion of Human Rights Instruments

Up to this point, this review has focused on the literature that highlights why there is cause to revisit debates around issues related to freedoms of association and assembly operating online. However, the instruments in which these freedoms sit, specifically the potential for these being expanded to encompass groups as legal persons, are yet to be explored. The central premise this thesis is centred around. Overall, literature concerning the expansion of rights instruments for the specific purpose of encompassing groups is limited in nature. Therefore, this review will extract conclusions from literature focusing on broader rights that have been evidence to be operational online.

One author whose derivative comments are significant is that of Bill Herman. Writing in 2013, around the time of the aforementioned Snowden Leaks, Herman's worked predominantly focuses on the "future of copyright"⁹⁵. However, he also contributes to the evidence of challenges faced on platforms and the overall important of continuing political advocacy online. The two examples acknowledged throughout this thesis, Anonymous and Tsunami Democràtic are both political advocacy groups, either by description or operation, thus making Herman's comments of consideration within this review. Throughout, Herman refers as to the importance of digital advocates and advocacy groups, suggesting that there is a likelihood of

⁹³ Sophie Williams and Jacob Jarvis, 'Million Mask March 2018 as It Happened: Anonymous Protesters Descend on Streets of London and throughout the World' *Evening Standard* (London, 5 November 2018) <<https://www.standard.co.uk/news/world/million-mask-march-2018-in-london-live-anonymous-protest-updates-from-uk-and-throughout-the-world-a3980931.html>> accessed 20 March 2020.

⁹⁴ Van Laer (n 88).

⁹⁵ Herman (n 22). p. 205

their presence increasing in coming years. He comments that as "tools and strategies [namely the Internet] continue to evolve...people will continue to have more ways to express more opinions about more policy issues."⁹⁶ Suggesting that for as long as there is digital innovation and development, there will be groups and associations who will utilise the avenue of communication and opportunities it provides. As indicated, Herman's chapter does not reveal anything directly associated with the potential expansion of current human rights instruments. Nevertheless, his contribution does highlight the importance of recognising the likely continued presence of these groups, providing evidence for the line of inquiry seeking to ensure the freedoms of association and assembly for these groups.

These sentiments are comparable to those held by Sutton and Pollock⁹⁷, who in their work explore the specific digital abilities afforded to women activists. More closely aligned with the work of this thesis, they suggest that activists will continue to place reliance of Information Connection Technologies (ICT) to promote their relevant causes, as the Internet "gives a voice to anyone who can get online."⁹⁸ Indicating that there is a potential issue in terms of Internet access for groups who wish to utilise digital capabilities to enhance their advocacy in some way, reaffirming the challenges already discussed. Sutton and Pollock specifically denote that those from minority backgrounds and emerging activists will be those who continue to utilise digital aspects in this way.⁹⁹ One limitation of Sutton and Pollock's work can be identified, their contribution was published in 2000, a significant amount of time before this project's inquiries, however their predictions of a world where advocates of all backgrounds – from those whose actions are clearly illegal in nature¹⁰⁰ to the who are using such as a means to attract attention to their potentially suppressed or censored cause¹⁰¹ - will utilise the Internet in some way to enhance their cause can be seen to be correct as seen through the previously highlighted operations of Anonymous and Tsunami Democràtic. Thus, making their predictions and comments relevant.

Whilst these contributions provide evidence for this thesis, the texts reviewed so far fail to contemplate rights as doctrines that operate online, as direct contributions for the freedoms of

⁹⁶ *ibid.* p. 214

⁹⁷ Jo Sutton and Scarlet Pollock, 'Online Activism for Women's Rights' (2000) 3 *CyberPsychology & Behavior* 699.

⁹⁸ *ibid.* p. 702

⁹⁹ *ibid.* p. 700

¹⁰⁰ Halliday (n 2).

¹⁰¹ Howard Phillip and others, 'Opening Closed Regimes: What Was Role of Social Media During the Arab Spring?' (Project on Information Technology & Political Islam 2013) Working Paper.

association and assembly are limited in nature. In the post-Snowden era, it can be suggested that the most prolific right featured in literature is that of privacy. Whilst offering different protections to individuals, privacy has perhaps gained the most attention due to the impact the Snowden revelations had on such. However, as previously indicated in literature, this is akin to the freedoms of association and assembly. Making conclusions about the future of the rights operating online potentially transferable.

Within her work concerning the human rights futures of the Internet, M. I. Franklin refers to what she terms the “next generation of legal instruments”¹⁰² and the matters these should be inclusive of. She indicates that this new chapter should see existing rights be articulated more clearly in regard to the protections they offer to things like state surveillance, data collection, and monitoring. Suggesting that in connection to existing rights, such as those of freedoms of association and assembly, there is scope for development and potential expansion to include challenges brought about by the online environment in which individual users now operate. Additionally, Franklin observes that any developments in this area or to human rights instruments more specifically there will be a degree of looking at past developments and responses to then contemporary issues to look ahead and adequately respond to those currently arising and those which could arise in the future. Franklin states that “any talk of human rights has to take into account the trajectory of successive generations of international human rights law and norms.”¹⁰³ This suggests that even if there is to be developments of human rights instruments or frameworks to encompass the ever-expanding digital reliance of users, such will only be developments rather than a new set of measures in their entirety. This is significant as it can be shown that there are parallel discussions in literature concerning external issues, such as equal access to the Internet as a human right call for new legal obligations to be created.¹⁰⁴ However, as Franklin has presented, there is potential for current instruments or frameworks to be altered or expanded in some way to adequately reflect the rights of the day in a digital era.

¹⁰² ML Franklin, ‘Human Rights Futures for the Internet’ in Ben Wagner, Matthias C Kettermann and Kilian Vieth (eds), *Research Handbook on Human Rights and Digital Technology: Global Politics, Law and International Relations* (Edward Elgar Publishing Limited 2019) 8.

¹⁰³ *ibid* 9.

¹⁰⁴ Kari Karppinen, ‘Human Rights and the Digital’ in Howard Tumber and Silvio R Waisbord (eds), *The Routledge companion to media and human rights* (Routledge 2017).

Similar to Franklin, Daniel Joyce assesses whether human rights as instruments are currently “being used in a meaningful way in the face of complex technological developments”¹⁰⁵ indicating that there is a possibility that such in their current form are not as effective in the face of new challenges such as surveillance and data gathering. Whilst his commentary focuses on the United Nations General Assembly's Resolution 68/167 and privacy as a right, his wider observations can contribute to understanding here. As both privacy and the freedoms to associate and assemble are considered to be social rights and have previously recognised to be akin to each other in this area. Joyce’s reference to potential adaptations to privacy rights are likely to also be applicable to those of interest in this thesis. He indicates that adding a digital prefix to privacy should entail a process of “retranslation and interpretation of this underlying right, thereby bringing traditional principles and jurisprudence up to speed with technological change and development,”¹⁰⁶. Similar to Franklin and her comments, here Joyce is not disregarding the significance of pre-existing instruments that current protect users, instead, he is postulating doubt as to whether such can still be effective and adequately upheld in a digital era with new challenges and normative practices. Suggesting that the Internet will soon become “so ubiquitous that it will soon ‘disappear’ from our lives.”¹⁰⁷ This transcendent nature predicted is of note, as it can be suggested that just as the Internet will become omnipresent in our lives so will the challenges, thus giving rise to “appreciating new contexts on their own terms.”¹⁰⁸ Implying that there is a need to understand and plan how instruments can adequately respond, allowing for further research in this area to be undertaken.

Further in their works, Joyce et al¹⁰⁹ reflect on the impact that not only the digital era has brought about in connection to digital capabilities, but also the amount and variety of interested, and potentially impacted, parties that in the environment.

Significance of the Multi-Stakeholder Environment

It is apparent across all of the texts reviewed here that the discussions around rights and challenge – whilst focusing on individuals as the end user – exist in a wider environment and power dynamic online. As will be illustrated in Chapter Six, this multistakeholder model is highly significant when assessing the challenges brought about by the online environment, as

¹⁰⁵ Daniel Joyce, ‘Privacy in the Digital Era: Human Rights Online’ (2015) 16 Melbourne Journal of International Law 270, 271.

¹⁰⁶ *ibid* 273.

¹⁰⁷ *ibid*.

¹⁰⁸ *ibid* 274.

¹⁰⁹ Joyce (n 105); Franklin (n 102); Herman (n 22); Karppinen (n 104).

it has been suggested that “no power-holder, public or private, has been left untouched by Snowden’s whistle-blowing.”¹¹⁰ Indicating that when it comes to matters of regulation and upholding rights in an online space there are multiple voices and interests that need to be contemplated and balanced, something that acknowledged by Karagiannopoulos in connection to activist activities.¹¹¹ Each of these stakeholders can be observed as having various internal and external factors that have consequential impact on the ability of online activist groups abilities to exercise their freedom of association and assembly rights. For example, internal content regulation which is controlled by third parties in charge of the platforms being utilised, states who have the obligation to uphold and facilitate rights protection, and potential dissident actors who can be seen to be acting under state or non-state authorities placing arguable obstacles in the way of these groups.

Herman discusses the specific power dynamic between social media companies and the individual users. Suggesting that in the specific context of his research, there had not been instances of “Silicon Valley versus Hollywood” so much as it has been Hollywood versus a diffuse coalition of underfunded nonprofits, public intellectuals, and technology writers.”¹¹² Although of differing focus, what can be concluded here is the multi-stakeholder environment in which online groups operate, Herman explores that regardless of the issue accompanying groups, whether that be copyright or human rights abuses, they exist within an environment where the behaviour of various actors can affect interactions with these digital spaces and thus their abilities to uphold and thus protections for human rights.

Works around the importance of multi-stakeholder dynamic in a digital environment is further by Castells¹¹³ who reaffirms the statements of Herman et al.¹¹⁴ In brief, Castells’ theory presented in 2011¹¹⁵, thought to have been predominantly written in 2008¹¹⁶, presents a focused look at what has been termed the “political communication...and political media practices.”¹¹⁷ Suggesting that both have the ability to influence and coerce entities to react and act in certain

¹¹⁰ Franklin (n 102) 12–13.

¹¹¹ Vasileios Karagiannopoulos, ‘Enforcing Crime Control and Hacktivism’ in Vasileios Karagiannopoulos, *Living With Hacktivism* (Springer International Publishing 2018) 156 <http://link.springer.com/10.1007/978-3-319-71758-6_5>.

¹¹² Herman (n 22). p. 211

¹¹³ Manuel Castells, *Communication Power* (1. publ. paperback, Oxford Univ Press 2011).

¹¹⁴ Herman (n 22).

¹¹⁵ Castells (n 113).

¹¹⁶ Janet Grace Sayers, ‘Book Review: Manuel Castells, *Communication Power*’ (2014) 28 *Work, Employment and Society* 142.

¹¹⁷ *ibid.* p. 143

prescribed ways. This theory is connected to the presented hypothesis of this thesis as it recognises the influential power structures that are present behind the somewhat simple existence of online activist groups. In her review of the work, Sayers¹¹⁸ interprets the ideas of Castells drawing parallels between his presented ideas and the saga of Kim Dotcom¹¹⁹, who caused Internet blackouts as a form of protest, causing friction and a multi-stakeholder vein of communication between New Zealand the US. This parallel demonstrates that the work of Castells is applicable to those who concern themselves with utilising the Internet as a means of protest, or activism, thus applying to online activist groups. Castells suggests that there is a “horizontal networks”¹²⁰ in operation when looking at phenomena such as the Internet and social media platforms as derivatives. The “horizontal”¹²¹ nature of such illustrates that “businesses, media conglomerates and political institutions”¹²² are all operating on the same level of understanding and power. The significance lies in such being a network amongst these rather than a hierarchy, a “network”¹²³ conveys stakeholders all operating at the same level, with none being more powerful than the other. Evidentially, this can be suggested to be inaccurate as in the wider context a hierarchy can be seen with the small stakeholders such as groups of interest in being disadvantaged. However, the theory stands in contextual significance as it illustrates that there are political conflicts that can affect the operate and fulfilment of freedom of association and assembly rights.

Castells also observes the number of victories that have taken place for the grassroots activist campaigns, juxtaposing such with the stakeholder environment reaffirming the previous suggestion. He recounts how around 2009 “insurgent communities”¹²⁴ had seen great successes in connection to reshaping politics across of number of countries, which can be recognised in the then forthcoming uprisings within the Arab Spring in 2011. However, in doing so he can also be recognised to be issuing a warning, he notes that whilst there had been at the time significant victories and successes for these groups. The multi-stakeholder power dynamic he

¹¹⁸ *ibid.*

¹¹⁹ Department of Justice Office of Public Affairs, ‘Justice Department Charges Leaders of Megaupload with Widespread Online Copyright Infringement’ (*The United States Department of Justice*, 19 January 2012) <<https://www.justice.gov/opa/pr/justice-department-charges-leaders-megaupload-widespread-online-copyright-infringement>> accessed 20 March 2020.

¹²⁰ Sayers (n 116). p.143

¹²¹ Castells (n 113).

¹²² Sayers (n 116). p. 143

¹²³ *ibid* 143.

¹²⁴ Castells (n 113).

showcased is suggested to consist of “powerholders in network society”¹²⁵ that will take steps to “enclose free communication in commercialized and policed networks.”¹²⁶ Reaffirming the existence and significance of the external and internal limitations and factors previously indicated to have effects on the operation of online activist groups. This is reexplored by Rebecca MacKinnon¹²⁷, who suggests that this warning should be taken note of and adhered to where possible. Looking specifically at the operations of and challenges presented to online activist groups (predominately focusing on Middle Eastern jurisdictions) she also concludes that due to the rate of growth of the Internet and prefiltration of and use of such by activist groups there needs to be an understanding of how these power dynamics exist online. She suggests that “we understand how power works in the physical world, but we do not yet have a clear understanding of how power works in the digital realm.”¹²⁸ This is significant in connection to activist groups and the limitations placed on their rights, as will be illustrated in the legal context of this thesis. As it can be suggested that it is perhaps easier to identify limitations in the offline sphere with police and state intervention being clear¹²⁹, whilst the online is perhaps more difficult due to the operations in place that are not accessible to all whom stand to be affected.¹³⁰

Conclusions

Overall, in addition to the indications for further research, notable conclusions can be reached about the protections of online activist groups to associate and assemble online. It has been documented that online activist groups as actors online are equally affected by challenges online as they are creators of such challenges, with contributions representing the debate position of the day which has been shown to be developing alongside the technology that allows for an online space. Through exploring comparative freedom rights, it has been suggested that instruments that mandate for freedoms both online and off do have the potential to apply online where there cause for such. Lastly, there has been an exploration of the multistakeholder

¹²⁵ *ibid.*

¹²⁶ *ibid.*

¹²⁷ Rebecca MacKinnon, *Consent of the Networked: The World-Wide Struggle for Internet Freedom* (Basic Books 2012).

¹²⁸ *ibid.* p. 13

¹²⁹ *R (Laporte) v Chief Constable of Gloucestershire.*

¹³⁰ Julia Carrie Wong and Olivia Solon, ‘Facebook Releases Content Moderation Guidelines – Rules Long Kept Secret’ *The Guardian* (24 April 2018) <<https://www.theguardian.com/technology/2018/apr/24/facebook-releases-content-moderation-guidelines-secret-rules>> accessed 25 March 2020; ‘What Is the Difference between an Admin and a Moderator in a Facebook Group?’ (*Facebook Help Center*) <<https://www.facebook.com/help/901690736606156>> accessed 25 March 2020.

environment which is consequence of the digital aspect of the context in which these groups sit, with it being presented that any future mandates or developments in this area stand to impact a variety of entities. At no point across any of the texts reviewed here have the authors stated that their contributions are definitive conclusions to the questions they pose, as is the nature of research. Therefore, it can be recognised that even when each area of literature assessed independently there is more research to be done. Each area of literature consulted here indicated that as wider contextual developments occur, such as the Snowden Leaks and the recasting of debates where needed, there will need to be assessments of components of the debate to form a new understanding. Thus, indicating that this thesis can start to originally contribute in line with these above pieces of research.

Contribution to the research area

Based on the works reviewed above, this thesis will start to contribute to the academic landscape in the following ways:

1. Explore the specific rights of freedom of association and freedom of assembly within the English and Welsh jurisdiction following revelations and persistent challenges present as a consequence of innovation. Furthering the suggestions of authors that these are relevant rights to be considered further.
2. Establish if, and how, any instruments applicable containing the above rights could recognise groups as entities, considering works in connection to similar rights such as privacy.

Overall, this thesis will take forth previously discussed doctrines to explore the extent to which online activist groups are protected in their entirety for their actions, online and off, and determine where issues are presented. Investigating how the law responds to this, and what this means for freedoms of association and assembly. Both of which have been shown to be crucial to the various group's continual existence as part of a democratic society.

Chapter Four - Definitions

Introduction

The following terms have been selected due to their relevance to discussions, repetition in literature review texts, and prevalence in wider reading. When a purely legal context is reviewed, such terms as ‘group’ or ‘social movement’ could be taken from the human rights instruments being discussed. However, in direct connection to the context of the Internet, there has been no official definition presented by a court of legal authority denoting what a group could be. This thesis has therefore extended the scope for the source of definitions, exploring wider disciplines, and supplementing information gathered with the previously mentioned examples of Tsunami Democràtic and Anonymous. This broad disciplinary scope has allowed for definitions to be concluded that are beneficial when assessing the existence of online activist groups, and also arguing for any potential extension to any frameworks.

Online Activism

Online activism in its entirety can be recognised under various terms, with relations to such monikers as digital activism, e-activism, electronic advocacy being noted due to similarities. Online activism has been specifically defined as a “form of activism that uses the Internet and digital media as key platforms for mass mobilization and political action.”¹³¹ This definition has been selected for the purposes of this thesis for the following reasons. Firstly, by referring to “mass mobilization”¹³² there is allowance for the inclusion of groups to be collectives undertaking activism online. Secondly, this definition asserts that that online activism is still a “form of activism”¹³³ regardless of the platform or service on which such is occurring. Allowing for the exploration of platforms such as Facebook and Twitter, which have been previously indicated as being potential hubs of online activism. Whilst this definition provides a theoretical basis for further analysis to take place, it is limited in connection to how activism can be identified and recognised online. In addition to Denning's definition¹³⁴ mentioned in contributions featured in Chapter Three, Sandor Vegh¹³⁵ provides criteria for the identification

¹³¹ ‘Digital Activism’ (*Encyclopedia Britannica*, 2014) <<https://www.britannica.com/topic/digital-activism>> accessed 27 January 2020.

¹³² *ibid.*

¹³³ *ibid.*

¹³⁴ Denning (n 82).

¹³⁵ Sandor Vegh, ‘Classifying Forms of Online Activism: The Case of Cyberprotests against the World Bank’ in Martha Mccaughey and Michael Ayers (eds), *Cyberactivism: Online Activism in Theory and Practice* (1st edn, Routledge 2003).

of online activist groups which will now be consulted to take forth within the discussions of this thesis.

Vegh expands on the general premise displayed above by providing a triad framework for identification. He suggests that there are three general aspects of online activism that are present, these are: “advocacy/awareness; organization/mobilization; and action/reaction.”¹³⁶ Vegh explores these further by proposing that there are three types of activists that can be evidenced online: Internet-enhanced activists, Internet-based activists, and online activists. Whilst these categories are not representative of a tick-box definition that could be used to identify activists online, Vegh does provide a framework that can be taken forward in connection to the examples this thesis is utilising.

Internet-enhanced activists are those that use the Internet as a communication channel for their cause, utilising traditional offline advocacy techniques combined with online services and platforms. Enabling a level of reach that perhaps not have been possible before the use of the Internet. Tsunami Democràtic are arguably an enhanced activist group, as their operations have been evidenced both online and off. There have been reports of their offline protests being supported by online action for recruitment and advertisement, with the group utilising Twitter as a method of reaching new potential members of the cause. This reach is undoubtedly increased than it perhaps would be if just offline advocacy techniques were used, making the group a good example of enhanced activists.

Internet-based activists are seen by Vegh as those that purely exist online, utilising the technical aspects of the Internet to advocate for their causes, rather than using such as a platform for awareness. Activists that are Internet-based can be seen to be taking part in more systems-based acts. The second example that this thesis is utilising to explore issues, Anonymous, can be recognised as being an Internet-based. This group regularly undertakes DDoS attacks as a means of protesting against oppression and supporting causes such as WikiLeaks¹³⁷ to raise attention to causes and issues they are collectively unhappy with. There have been previous discussions as to the legality of the actions of Internet-based groups, with some jurisdictions, including England and Wales, regarding the actions as criminal acts.¹³⁸ Prompting further

¹³⁶ *ibid.* p. 72

¹³⁷ Tom Sorell, ‘Human Rights and Hacktivism: The Cases of Wikileaks and Anonymous’ (2015) 7 *Journal of Human Rights Practice* 391.

¹³⁸ Computer Misuse Act. s. 3

questions as to whether protection should be granted to such groups, however, this will be explored further in discussions.

Vegh's third recognisable form of activism is broader than the others discussed. He describes online activism as being activism that takes place online, rather than utilising the Internet in some way, either technically or using platform characteristics. He asserts that online activism will be present if a group takes proactive action online as a means of achieving certain goals or to react to actions by controlling authorities. Unlike the previous categorisations presented by Vegh, online activism sees the inclusion of controlling authorities which is key to note considering the potential effects such have on freedom of association and assembly. Aligning with his theoretical ideas about "action/reaction"¹³⁹ he comments that in these instances of online activism there is an active resistance to control systems. To conceptualise the definition, Vegh provides the example of the pro-Zapatista hacktivist movement that used the Internet to form a network of support for the Chiapas people against the Mexican government. Aligning with the previously mention ideal of "action/reaction"¹⁴⁰ within activism, illustrating that in these instances of online activism there is an active resistance to control systems. Both of the case studies that this thesis is concerned with could fit within this broader definition provided by Vegh. Tsunami Democràtic is similar to the example highlighted by Vegh in his works, with the group working to gather support for a pro-independence movement against the Spanish government. Anonymous, whilst predominantly occupied with technical acts, have been recognised as going against constructs of authority, acting against governments and large commercial entities as part of their activities.

It can be suggested that Vegh's framework is perhaps dated in comparison to this thesis, with such being first published in 2003. However, there have been subsequent examples of the definitions being used as a framework of recognition, such as that by Gaffney¹⁴¹ where online actors in connection to the Iranian election were identified through Vegh's triad. The continual use of the framework illustrates that despite the apparent age of the definition being used, it can still be seen as relevant and applicable to this thesis and its inquiries.

¹³⁹ Vegh (n 90). p.75 - 84

¹⁴⁰ *ibid.* p.75 - 84

¹⁴¹ Devin Gaffney, '#IranElection: Quantifying Online Activism' (2010) <devingaffney.com/files/websci10_submission_6.pdf> accessed 27 January 2020; Devin Gaffney, '#IranElection: Quantifying the Role of Social Media in 140 Characters or Less' (Bennington College 2010) <http://devingaffney.com/files/bennington_thesis.pdf>.

Groups

Due to the central position that groups take within this thesis, it is essential to define what is meant when such a term is used. It can be suggested that at first glance, groups, and social movements are akin to one another. However, this is not always the case, providing a rationale for focusing on groups for definition.

Groups are broadly defined as a “number of people or things which are together in one place at one time.”¹⁴² A definition that for the purposes of this thesis can be regarded as being limited in nature, not allowing for expansions and development of what constitutes a singular space. Something the Internet could be recognised as being. To return to Anonymous, for this group to be recognised under this definition they would have to occupy the same place, at the same time. However, it can be proposed that due to their non-hierarchical structure and dispersed nature, it would be near impossible for all the members of the group to be in the exact same place, at the same time. This is an overarching issue that can be identified in connection to Internet-based activist groups, as these are likely to be more fragmented than Internet-enhanced groups, or more broad online activists due to an offline element bringing these individuals together.

The characteristics and qualities that gives rise to the presence of a group is something that has been documented over a number of years. With collectives such as families, friendship circles, and clans being historically viewed as groups. However, it is only recently that groups themselves as a separate entity have been researched, investigated, and theorised.¹⁴³

For the purposes of this thesis, the definition of ‘group’ provided by Donelson Forsyth is one that is most adaptive, and able to recognise any changing dynamics brought about by the groups operating online. He defines a group as “two or more individuals who are connected to one another by and within social relationships.”¹⁴⁴ Whilst being similar to the definition provided above, what can be derived from this definition is three factors that can be used to identify groups: a number of individuals, a connection between the individuals, and the relationship between the aforementioned. These are all aspects that have been commented on independently of Forsyth’s contribution, therefore some information is supplemented from additional authors.

¹⁴² Justin Crozier and others (eds), ‘Group’ 379 <<https://www.collinsdictionary.com/dictionary/english/group>>.

¹⁴³ A Paul Hare, ‘THEODORE M. MILLS. The Sociology of Small Groups. Pp. Viii, 136. Englewood Cliffs, N.J.: Prentice-Hall, 1967. \$4.50’ (1968) 377 The ANNALS of the American Academy of Political and Social Science 203; Theodore M Mills, *The Sociology of Small Groups* (2nd ed, Prentice-Hall 1984).

¹⁴⁴ Donelson R Forsyth, *Group Dynamics* (6. ed., internat. ed, Wadsworth/Cengage Learning 2014).

Firstly, the number of individuals required for a group to be recognised which is denoted within Forsyth's definition. He states that in order for a group to be recognised at any point, presumably in any circumstance, online or offline, there must be two or more individuals brought together. This is common across all of the definitions provided. This is supported by others¹⁴⁵ who all affirm in their own contributions that one individual standing alone is not enough to form a group. Complimentary to Forsyth's contribution, Cartwright and Zander¹⁴⁶ recognise that individuals maintain their autonomy when joining a group. They denote "members" indicating that some form of subscription or election of commitment to a group could be needed in certain circumstances to fully be recognisable, such as what is present within current political parties. This 'signing up' mechanism of being part of a group is perhaps not applicable when looking at online groups, as it is suggested that in order for an individual to be regarded as part of a group, they must in some way 'sign up' to that group, group banner, ideals, and mission. Individuals of users cannot be determined as being members by virtue of being present. This seems to disallow any groups that form due to a common goal or shared values, something that is often a starting point for the formation of online activist groups in absence of formal subscription mechanisms.

Secondly, Forsyth indicates that there need to be a connection tying the members of the group together, amounting to "social relationships"¹⁴⁷. Within the original piece this is explored in the context of familial relationships, with it being determined that a family is also a group due to being tied by "social and emotional relationships"¹⁴⁸. This "social" nature of the relationships becomes relevant, as when looking at online groups this can be recognised as being such things as a shared ideal or goal. This can be seen within the Internet-enhanced example of Tsunami Democràtic. Vegh's criteria¹⁴⁹ indicates that each individual was undertaking a form of online activism, however, they were not part of a group by default, yet their offline equivalents have been recognised as group actions.¹⁵⁰ At first instances it can be

¹⁴⁵ Rupert Brown, *Group Processes: Dynamics within and between Groups* (B Blackwell 1988); Mills (n 143); Kurt Lewin, *Field Theory in Social Science; Selected Theoretical Papers* (D1 Cartwright ed, 1st edn, Harper & Row 1951); John C Turner, *Rediscovering the Social Group: A Self-Categorization Theory* (Basil Blackwell 1988); George Caspar Homans, *The Human Group* (Routledge & Kegan Paul 1951).

¹⁴⁶ Dorwin Cartwright and Alvin Zander, *Group Dynamics; Research and Theory* (2nd edn, Tavistock 1960).

¹⁴⁷ Donelson R Forsyth, *Group Dynamics* (4th ed, Thomson/Wadsworth 2006).

¹⁴⁸ Donelson R Forsyth, *Group Dynamics* (Seventh edition, Cengage 2017).

¹⁴⁹ Vegh (n 90).

¹⁵⁰ Laurie Clarke, 'Catalonia Has Created a New Kind of Online Activism. Everyone Should Pay Attention' *Wired.com* (19 October 2019) <<https://www.wired.co.uk/article/barcelona-riots-catalonia-protests-news>> accessed 27 January 2020.

suggested that Tsunami Democràtic would not be categorised as a group due to the evidenced independence between users. Yet, the kinship shared between the activists within these circumstances extends beyond physical characteristics¹⁵¹, indicating that for Forsyth's requirements online activists who share common goals, they can be considered as groups.

The final characteristic identified from Forsyth's definition is the existence of a relationship between individuals. Much like the connection, this can be suggested to need to be more than that which is present in virtue. Forsyth suggests that contextual information will give rise to the relationship present. That which is paramount is the need for a link between the members or participants that then gives rise to a group. This need not be between all individuals in the group at first instance, according to Forsyth such can be weighted more on the interpersonal and psychological rather than the physical. To return to both the previously mentioned examples, relationships between members can be evidenced, thus making each example a group by Forsyth's criteria. Tsunami Democràtic members can be seen to be having a relationship by collectively taking action in physical protests. Moreover, Anonymous members can be seen to have relationships due to such coordinated efforts as those that are seen in some of their DDoS attacks, in which there have been more than one member taking action, thus giving rise to relationships between individuals.

As suggested at the start of this chapter, there have been some previous suggestions in scholarship that groups and social movements as entities are similar to one another. The reference 'social movement' has been previously used in connection to online operations. Lewis et al¹⁵² specifically note that protest collectives such as that which operated within the Arab Spring in 2011 are social movements rather than groups. A social movement has been defined as a "loosely organized but sustained campaign in support of a social goal."¹⁵³ Suggesting that social movements need not require a formal mechanism or statement of membership nor an organised structure that can be evidenced within groups. A mere kinship in the interests or a shared "social goal"¹⁵⁴ would suffice. Indicating that situations that see a

¹⁵¹ Phillip and others (n 101).

¹⁵² Kevin Lewis, Kurt Gray and Jens Meierhenrich, 'The Structure of Online Activism' [2014] *Sociological Science* 1.

¹⁵³ Neil J Smelser, Ralph H Turner and Lewis Killian, 'Social Movement' (*Encyclopedia Britannica*, 2019) <<https://www.britannica.com/topic/social-movement>> accessed 13 February 2020.

¹⁵⁴ *ibid.*

spontaneous connection between individuals could potentially be enough for a movement to be recognised.

Coleman observed that Anonymous, when acting in the interests of others beyond their parameters of “Internet parlance”¹⁵⁵ such as trolling and DDoS attacks, they become part of the social movement, yet retain their group status. Commenting that “AnonOps was acting more like a human rights advocacy group than a mass of lulz-drunk trolls.”¹⁵⁶ Suggesting that whilst the interests of the group may have shifted during events such as the Arab Spring, the group remained as such when carrying out their actions, never losing their identity or status. Illustrating that it is possible for both to operate concurrently. A social movement is accepted to be a phenomenon that occurs when there is a kinship of individuals whom some together to bring about social change, whilst groups - in particular online activist groups - do share these characteristics, the latter can be witnessed to have a consistent structure and are less abstract in nature. Such can be evidenced in the pro-independence movement, Tsunami Democràtic, that emerged in Catalonia mid-2019.¹⁵⁷ At the time, this movement, was regarded to be a “homogeneous mass of angry citizens”¹⁵⁸ without further inquiry. However, the movement encompassed a number of factions and groups all inspired into action by a Spanish Supreme Court ruling, again illustrating that groups in their various forms can be part of a movement, but do not in isolation amount to one. The Catalan movement saw utilisation of both on and offline methods by re-emerging activists interested in the country’s independence from Spain.¹⁵⁹ Illustrating how social movements could exist in and interact the Internet as a platform, showing that despite the technological context, social movements are different to groups. However, by virtue of operation the latter can form into a group, and likewise a group can partake in a movement, indicating a synergy between the two.

¹⁵⁵ Gabriella E Coleman, *Hacker, Hoaxer, Whistleblower, Spy: The Many Faces of Anonymous* (2015). p. 19

¹⁵⁶ *ibid.* p. 201

¹⁵⁷ Clarke (n 150).

¹⁵⁸ *ibid.*

¹⁵⁹ Natasha Lomas, ‘Catalan Separatists Have Tooled up with a Decentralized App for Civil Disobedience’ *Tech Crunch* (18 October 2019) <https://techcrunch.com/2019/10/17/catalan-separatists-have-tooled-up-with-a-decentralized-app-for-civil-disobedience/?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LmNvbS8&guce_referrer_sig=AQAAANKpq7Sf_w56K-2rjnB8QX99QYdLdmJr_XA91oQGI_aLYH9wDEtv9vcyIeWiJDcaySJdxVudLt0X1EThWpTpjIFEdblkno6ikLph2dZs5T7CUUGsJsiKw3KCvHFHZq4fPX1Vqkp_D1DA4U6ZWVuF6YLBXQk2Ak64EdpcyEch2kyf> accessed 27 February 2020.

Surveillance Capitalism

Moving away from definitions that are needed to understand the subject of this thesis, there are some key concepts that are prominent in discussions that can be defined within this chapter. One of these is surveillance capitalism. Theorised by Shoshana Zuboff, this concept concerns the “the unilateral claiming of private human experience as free raw material for translation into behavioural data.”¹⁶⁰

As will be explored further in the Chapter Six, Zuboff’s ideas can be recognised as being representative of a challenge posed in connection to online activist groups. This concept theorises that within business models adopted by companies such as Twitter and Facebook, those known to be used by online activist groups, there is an order that confers “instrumentarian power that asserts dominance over society”¹⁶¹ by allowing such power to claim “human experience as free raw material for hidden commercial practices of extraction, prediction, and sales”¹⁶² amounting to “an expropriation of critical human rights that is best understood as a coup from above: an overthrow of the people's sovereignty.”¹⁶³ These are the most appropriate parts of an extensive definition provided in Zuboff’s work¹⁶⁴, selected to show the risks that such a concept in operation poses to the rights of online activist groups. The full extent of this risk will be explored considered in Chapter Six.

¹⁶⁰ John Laidler, ‘High Tech Is Watching You’ *The Harvard Gazette* (4 March 2019) <<https://news.harvard.edu/gazette/story/2019/03/harvard-professor-says-surveillance-capitalism-is-undermining-democracy/>> accessed 20 March 2020.

¹⁶¹ Zuboff (n 38).

¹⁶² *ibid.*

¹⁶³ *ibid.*

¹⁶⁴ *ibid.*

Chapter Five - Legal Context

Introduction

As previously stated, this thesis centres around the rights of freedom of association and assembly, however, due to the online context this thesis is analysing these are not the only instruments that have to be analysed. The purpose of this chapter is to articulate and explore the legal context this thesis is placed in. Similar to the literature review in connection to academic works, this chapter will document the relevant provisions related to the operation of online activist groups. Providing the legal landscape which will be referred back to within Chapter Six as part of discussions, and presenting the findings of the doctrinal method as explained in Chapter Two. Whilst this chapter will recount key manifestation of the freedoms in the interest of being systematic, the specific article that will be taken forward in connection to the Chapter Six for discussion is that presented in the Human Rights Act 1998. Furthermore, a full discussion around the cross-jurisdictional nature of the Internet and the applicability of a singular instrument to such issues in their entirety arguably opens up a new line of scholarship.¹⁶⁵ One that is not wholly relevant to these discussions, nor could be adequately explored in a thesis of this length, providing a rationale for the specific focus on one instrument.

In addition to human rights instruments containing provisions concerning the freedoms of association and assembly, the literature review and prior contributions within this area have indicated that wider provisions will be applicable and should be considered within the discussions. These are: The Computer Misuse Act 1990, Regulation of Investigatory Powers Act 2000, Investigatory Powers Act 2016, and The General Data Protection Regulation (enshrined in the Data Protection Act 2018 within the UK).

Universal Declaration of Human Rights 1948

It can be evidenced that all instruments containing the freedoms this thesis is concerned with are all teleologically derived from the Universal Declaration of Human Rights 1948 (hereafter referred to as the Declaration). That which has been regarded as the “strong moral force”¹⁶⁶

¹⁶⁵ Darrel C Menthe, ‘Jurisdiction in Cyberspace: A Theory of International Spaces’ (1998) 4 Michigan Telecommunications and Technology Law Review 69; Erin L Anzelmo, ‘Cyberspace in International Law: Does the Internet Negate the Relevance of Territoriality in International Law?’ (2005) 58 *Studia Diplomatica* 153; Uta Kohl, *The Net and the Nation State: Multidisciplinary Perspectives on Internet Governance* (2017).

¹⁶⁶ Rhona KM Smith, *International Human Rights Law* (Eighth edition, Oxford University Press 2018). p.39

behind further contemporary instruments. In connection the freedoms of association and assembly, Article 20 of the Declaration¹⁶⁷ states:

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

Suggesting that all legal persons under this article are entitled to freely assemble with whomever they please without consequences or penalties. Moreover, this also indicates that the burden of the person exercising this right to be the one who is initiating and partaking in the association or assembly. Indicating that they need to be the one who places themselves in the position to associate. In its entirety the United Nations Declaration is unable to legally bind states. Therefore, such can only be utilised in connection to understanding what the freedom of association and assembly is and how such operates in practice for members of online activist groups.

European Convention on Human Rights and Human Rights Act 1998

As previously detailed in the introductory chapters, the jurisdiction that is of focus here is that of England and Wales, Therefore, analysis will now turn to the domestic equivalent of Article 20 of the Declaration, Article 11 of the European Convention on Human Rights.

Article 11 of the Convention, as contained within the 1998 Act, states:

- (1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
- (2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Firstly, it can be evidenced that there are no linguistic differences between Article 11 as contained within the Convention, and that contained within the enshrined 1998 Act, indicating

¹⁶⁷ Article 20, Universal Declaration of Human Rights 1948 (217 A (III)).

that, in theory, any conclusions reached could apply to some of the 47 neighbouring jurisdictions that could house online activist group members. However, there are some contextual differences between the two provisions that should be contemplated. Firstly, the 1998 Act confers an obligation on public bodies, authorities, and alike organisations to have respect for and contemplation of the rights contained within. This arguably presents an inbuilt safeguard for individuals that ensures that there are no ultra vires actions taken by persons in positions of authority, which, in theory, should provide protections for fundamental freedoms. However, as will be illustrated in Chapter Six, the operations of some online activist groups present more complex circumstances than would be perhaps expected of their offline counterparts, raising potential issues.¹⁶⁸ Secondly, the 1998 Act states that all new assented laws must comply with the fundamental protections specified, affirming that these rights are fundamental in nature and should be protected. Finally, the 1998 Act legislates for a system of accountability that can be utilised by individuals who feel their rights have been breached, either through the domestic courts or the European Court of Human Rights. This is perhaps the most significant for the Chapter Six discussions, yet such challenges can be evidenced in the cases of *R (Laporte) v Chief Constable of Gloucestershire* [2006] UKHL 55¹⁶⁹ and *Redfearn v Serco Ltd* [2012] ECHR 1878¹⁷⁰ which will be revisited in turn.

Secondly, Article 11(1) conveys that any individual who resides in a state which has ratified the Convention will be entitled to associate with other individuals, without interference from state or non-state actors without legitimate means or reason. Unlike akin instruments, such as the United Nations Declaration, the Convention provisions as contained within the Act are legally binding. In accordance with the procedures of the European Union, all member states are expected to take the contents of the European Convention and introduce such within their own domestic legal systems, as evidenced within the 1998 Act. This is affirmed in the preamble to the articles which states that the Act serves to “give further effect to rights and freedoms guaranteed under the European Convention on Human Rights”¹⁷¹ Conveying that there is no need for any expansion or alterations to be made to the articles. However, it can be suggested that there are three operational mechanisms presented as consequences of the 1998 Act being a domestic instrument rather than a multi-national Convention.

¹⁶⁸ Coleman (n 155). p. 141

¹⁶⁹ *R (Laporte) v Chief Constable of Gloucestershire* (n 129). [2006] UKHL 55

¹⁷⁰ *Redfearn v Serco Ltd*. [2012] ECHR 1878

¹⁷¹ Human Rights Act 1998.

The denotation and recognition of “freedom” within Article 11(1) is significant when the online activist groups are considered. Freedom to join together in the interest of individuals and take collective action pursuing a common goal in those interests is suggested to be an essential part of freedom to associate. However, online this can be more difficult to determine than offline. As previously raised in relation to the definition of a group in Chapter Four, the act of occupying a singular space is more challenging to ascertain online than offline. As with spaces offline physical manifestations i.e., people all gathering in a singular space, can be clearly recognised. Whereas, online there can be the use of ‘Hidden Spaces’ created through encryption-based platforms such as Whatsapp¹⁷² or Telegram¹⁷³ or utilisation of less visible areas online such as the Dark Web where activists join together and associate. As introduced in Chapter Three, the use of DDoS attacks as a form of protest do not always require physical users to be carried out, causing issues when it comes to identifying an association online. Moreover, the denotation of “peaceful” within Article 11(1) is also potentially problematic when it comes to assessing protections of online activist groups. As illustrated in the contributions of Klang et al¹⁷⁴ in Chapter Three, the acts of online activist groups such as DDoS attacks are not always seen as being peaceful in nature. Returning to Anonymous, their actions are under near constant academic and non-academic discussion as to whether they are peaceful in nature due to their favoured use of methods such as DDoS attacks. Overall, the variety of techniques and methods available to online activists raises questions as to what is tantamount to a peaceful or non-peaceful representation of an association, this will be explored further in the Chapter Six discussions addressing the legality of group actions.

Thirdly, whilst there are similarities to be evidenced in connection the Convention and the 1998 Act, Article 11(2)¹⁷⁵ presents an arguable expansion on the concept of the freedoms presented in the Declaration. It confers a personal right to freedom of association and assembly that cannot be placed under restrictions “other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety.”¹⁷⁶ This arguably takes the ideas and concept of rights presented in the Declaration and makes such applicable in life and the concerned jurisdictions, as by including this caveat Article 11 becomes a right that

¹⁷² ‘WhatsApp Security’ <<https://www.whatsapp.com/security/>> accessed 25 March 2020.

¹⁷³ ‘What’s the Difference between Groups and Channels?’ (*Telegram FAQs*) <<https://telegram.org/faq#q-what-39s-the-difference-between-groups-and-channels>> accessed 25 March 2020.

¹⁷⁴ Klang (n 61); Klang (n 56); Karagiannopoulos, ‘Contemporary Norms and Law and Hacktivism’ (n 57); Karanasiou (n 57).

¹⁷⁵ Article 11(2) Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (TS 71).

¹⁷⁶ Article 11(2) *ibid.*

is able to operate and be effective in practice. Although, the 11(2) does not provide an extensive list of the circumstances in which there can be detraction from or alteration of freedoms, the wide categories provided such as “national security”¹⁷⁷ can still be explored in this thesis. As each jurisdiction in which the Convention has been enacted arguably has its own interpretation of such terms. A suggestion reaffirmed by the European Agency for Fundamental Rights.¹⁷⁸

Detractions from freedoms under 11(2) are arguably easier to recognise offline than online, similar to the manifestations of association explored above. Laporte¹⁷⁹ illustrates this. In this case there was the physical stopping of a vehicle carrying protestors on their way to a demonstration, here it was concluded that the police, by stopping the vehicle, actively suppressed the protestors rights to assemble and associate freely. These physical manifestations are perhaps easy to identify offline due to the physical nature of elements i.e., a bus can be stopped by actual people with more permanent consequences following i.e., without a means of transport the protestors could no longer demonstrate or assemble. However, online it can be proposed that both the identification of such intervention, as well as the permanency of intervention is perhaps more transient. Where intervention does occur, there are circumstances where users online utilise “liberation”¹⁸⁰ technologies to circumvent such actions and protect their freedoms. These tactics are akin to the utilisation of such things as the Dark Web or encryption-based platforms by online activist groups. Both of which prompt discussions as to the operations of the groups and the legality of such alliances.

Moving away from the specific contents of the provisions, it can be evidenced that due to the time between the instruments being drafted and the common place used of the Internet, the former was not designed to cover the latter. However, it has been noted by the Special Rapporteur that the freedoms to associate and assemble should be upheld “whether exercised in person, through technologies of today, or through technologies of that will be invented in the future.”¹⁸¹ Suggesting that the “digital age” has since been contemplated and determined to be similar to the offline spaces the provisions were drafted in connection to. The direct

¹⁷⁷ Article 11(2) *ibid.*

¹⁷⁸ European Union and Agency for Fundamental Rights, ‘Surveillance by Intelligence Services: Fundamental Rights Safeguards and Remedies in the EU.’ (2017) 1 <<http://dx.publications.europa.eu/10.2811/093380>> accessed 9 April 2020.

¹⁷⁹ *R (Laporte) v Chief Constable of Gloucestershire* (n 129).

¹⁸⁰ Walid Al-Saqaf, ‘Internet Censorship Circumvention Tools: Escaping the Control of the Syrian Regime’ (2016) 4 *Media and Communication* 39.

¹⁸¹ Voule, ‘Rights to Freedom of Peaceful Assembly and of Association. Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association’ (n 5). p. 1

translation without adaption can cause difficulties and give rise to unique challenges, as the international focus adopted by the Special Rapporteur has resulted in brief conclusions being reached about the jurisdiction of England and Wales.

The literature review and contemporary accounts have highlighted various legal instruments that will be referenced within the Chapter Six discussions. Therefore, analysis will now turn to any specific provisions related to the operations of online activist groups, and how they have impacted the operation of such since being enacted.

The Computer Misuse Act 1990

So far there have been suggestions and preliminary discussions as to the legality of some of the actions taken by online activist groups, with the contributions of others giving particular attention to DDoS attacks as frequently used by Anonymous. Under section 3 of the Computer Misuse Act 1990, such attacks are illegal in England and Wales. As amended by the Police and Justice Act 2003¹⁸², s. 3 concerns “Unauthorised acts with intent to impair, or with recklessness as to impairing, operation of computer, etc.”¹⁸³

Section 3 of the Act states:

- (1) A person is guilty of an offence if —
 - (a) he does any unauthorised act in relation to a computer;
 - (b) at the time when he does the act he knows that it is unauthorised; and
 - (c) either subsection (2) or subsection (3) below applies.

Here subsections (2) and (3) address the intention of the individual obtaining unauthorised access or whether they were being reckless in connection to impairing the operations or access to a computer or data.¹⁸⁴ As previously detailed, Anonymous often engages in such tactics, utilising DDoS attacks as a form of protest. As previously highlighted by Klang et al, the use of DDoS attacks has, in some circumstances, become representations of online protests.¹⁸⁵ However, when s. 3 is contemplated even if it was determined that the use of DDoS attacks was akin to online protests, any individual carrying out such an attack would still be prosecuted. Therefore, when the operations of groups who engage in illegal activities under s. 3 are assessed

¹⁸² Police and Justice Act.

¹⁸³ Computer Misuse Act s 3.

¹⁸⁴ *ibid* 3(3).

¹⁸⁵ Klang (n 61); Klang (n 56); Karanasiou (n 57).

in line with Article 11 detractions, it can be suggested that to separate users who are assembling in protest via a DDoS attack would be done for the means of preventing “disorder or crime”.¹⁸⁶ This determination whilst final in connection the black letter law, can be subject to debate as illustrated in Klang’s contributions discussing the extent to which such actions are accepted in society. Whilst there have been recent suggestions¹⁸⁷ that changing and developing holistic societal perceptions could influence the extent to which DDoS attacks are perceived, indicating that they might eventually be seen as being akin to offline protests that are “expressive”¹⁸⁸ in nature, which are not illegal. It is unlikely following the prolonged enactment of s. 3 and high-profile cases¹⁸⁹ that DDoS attacks will be decriminalised. Meaning that for the purposes of association and assembly when the ‘law in books’ is considered such will always be justified, even if the ‘law in action’ and consequences are undetermined.¹⁹⁰ Such debates and conclusions are beyond the scope of this thesis; however, they are key to note due such being raised previously.

Regulation of the Investigatory Powers Act 2000

Moving away from specific provisions that determine illegality of actions, the Regulation of the Investigatory Powers Act 2000 (hereafter referred to as the 2000 Act) governs the use of covert surveillance by public bodies. A practice that could impact the operations, associations and assemblies of activist groups as will be illustrated in Chapter Six.

Whilst the Investigatory Powers Act 2016 has repealed and amended the 2000 Act in parts, Part 2 concerning directed surveillance remains in operation as enacted. Under s. 26(1) directed surveillance is: surveillance that is undertaken for the purposes of a specific investigation¹⁹¹, done in such a manner that is likely to result in private information about a person being obtained¹⁹², or in conducted in a manner responding to events that would not be reasonably practical for authorisation.¹⁹³

¹⁸⁶ Article 11(2) European Convention on Human Rights.

¹⁸⁷ Vasileios Karagiannopoulos, ‘Moving from Conflict to Symbiosis’ in Vasileios Karagiannopoulos, *Living With Hactivism* (Springer International Publishing 2018) 181 <http://link.springer.com/10.1007/978-3-319-71758-6_6>.

¹⁸⁸ Hampson (n 77) 536.

¹⁸⁹ ‘Anonymous Hackers “Cost PayPal £3.5m”’ (n 54); Laville (n 54).

¹⁹⁰ Pound (n 7).

¹⁹¹ Regulation of Investigatory Powers Act 2000 26(2)(a).

¹⁹² *ibid* 26(2)(b).

¹⁹³ *ibid* 26(2)(c).

When examining a conceptual legal framework for surveillance in connection to the European Convention and the Human Rights Act, Taylor determines that such activity “may affect a number of different rights”¹⁹⁴ including the right to assemble with others. This is significant when the s. 26(1) definition of directed surveillance is considered. As previously suggested the groups under investigation within this thesis are likely to be surveyed due to potential criminal activities due to specific actions such as the utilisation of DDoS attacks. Therefore, it could be argued that when being directly surveyed as part of such investigation’s conclusions could be made about the group’s wider associations. Whilst the intervention could be justified in connection to wider civil liberties under freedom detractions present in all of the articles, the attached surveillance – when assessed in a wider context – could impact or influence any future associations of groups online, thus impacting the Article 11 freedoms. The discussions in Chapter Six, unlike the other provisions recounted here, will not explore specific articles or sections of the Act. Instead, a holistic discussion around surveillance practices will take place. Building on the suggestion that the provisions that the 2000 Act introduced, and arguably laid the foundations for the legislative framework that has since been built on and extended as is present today.

Investigatory Powers Act 2016

The Investigatory Powers Act 2016 has been regarded as a ‘snooper’s charter’ when it comes to the powers granted to law enforcement and intelligence services, permitting “a wide range of powers that are intrusive.”¹⁹⁵ It has been suggested by Karagiannopoulos that there has been a “gradual shift of democratic regimes towards public safety and national security.”¹⁹⁶ When it comes to policy making, and the Internet acts as a catalyst for such perceptions. Writing in connection to hacktivist groups and online activist groups as akin movements, it can be concluded that such a shift in policy making has had significant impacts. Moreover, it can be recognised that this shift has not only occurred due to the operations of activist groups. As a piece of legislation, the 2016 Act has been subject to wide criticism due to the ‘bulk powers’ it grants to authorities.

¹⁹⁴ Nick Taylor, ‘A Conceptual Legal Framework for Privacy, Accountability and Transparency in Visual Surveillance Systems’ (2011) 8 *Surveillance & Society* 455, 456.

¹⁹⁵ L Woods, ‘The Investigatory Powers Act 2016’ (2017) 3 *European Data Protection Law Review* 103, 103.

¹⁹⁶ Karagiannopoulos, ‘Contemporary Norms and Law and Hacktivism’ (n 57) 93.

Part 6 of the Act consolidates three powers previously legislated for under RIPA¹⁹⁷, the Telecommunications Act 1984¹⁹⁸ and the Intelligence Services Act 1994.¹⁹⁹ Granting authorities the powers of bulk interception, bulk acquisition of communications, and bulk equipment interference. This can be cross jurisdictional, however can also operate in the UK, with the Act legislating for targeted examination warrants that can be requested in relation to specific UK citizens under s. 15(3).²⁰⁰ These provisions arguably legitimise mass monitoring and surveillance, something that was illustrated by the Snowden revelations. There are in built checks and balances, as for warrants to be issued in connection to the above interceptions the Secretary of State must consider such to be in the interests of national security under s. 20.²⁰¹

Hirst assesses the impact such provisions have had on terrorist groups operating online. It is key to note that this thesis is not assessing terrorist groups in isolation, and whilst there are debates around whether the operations of groups such as Anonymous are terrorists to explore this in more depth would move discussions too far from the central focus. However, Hirst's comments can provide evidence of how the Act has impacted groups as they operate. Similar to the detractions evidenced in Article 11(2) above, she suggests that within the Act's context "term 'national security' is infamously unclear."²⁰² Indicating that if the actions of such groups as Anonymous or Tsunami Democratic were to be determined to pose a risk to such, as may occur with some of their operations posing similar risks to public safety and so-forth, they would be subject to increased surveillance that could impact their freedoms of association and assembly, much like the potential impact of the 2000 Act such monitoring has the potential to alter a user's behaviour. Chapter Six will see a more detailed discussion around the specific provisions of these instruments in connection to the operation of activist groups, the purpose of covering such provisions more holistically here is to provide a wider context in connection to the legislative trends and rationale behind such provisions.

The General Data Protection Regulation and Data Protection Act 2018

As the General Data Protection Regulation has now been domestically incorporated within the Data Protection Act 2018, the two and their provisions will be used interchangeably with

¹⁹⁷ Regulation of Investigatory Powers Act s 20.

¹⁹⁸ Telecommunications Act 1984 s 94.

¹⁹⁹ Intelligence Services Act 1994 s 5; *ibid* 7.

²⁰⁰ The Investigatory Powers Act 2016 s 15(3).

²⁰¹ *ibid* 20.

²⁰² Phoebe Hirst, 'Mass Surveillance in the Age of Terror: Bulk Powers in the Investigatory Powers Act 2016' [2019] *European Human Rights Law Review* 403, 408.

differences being highlighted where needed. Considering the discussions that will take place in Chapter Six, the most important provisions that are relevant to online activist groups and their protections online are the data protection principles bodies have to be aware of when it comes to data processing.

Mandated for under these instruments²⁰³, there are seven principles that have to be adhered to when personal data is processed. These state that such processing must be: 1) lawful, 2) fair and transparent, 3) have a purpose limitation attached only being collected for specific, explicit, and legitimate purposes, 4) accurate in nature, 5) have a storage limitation attached, 6) stored securely and confidentially, and 7) have provisions of accountability for those who process and control the data in place.

These principles have been suggested to be the “fundamental building block for good data protection practice”²⁰⁴ and thus good data protection for individual users. These apply to both commercial entities²⁰⁵ and law enforcement and intelligence bodies.²⁰⁶ As will be explained further in Chapter Six, these principles provide a degree of protection for individual users in relation to how their data is used, and they are therefore monitored granting groups the ability to limit the surveillance they are placed under. Theoretically protecting their ability to associate and assemble as a group to a degree.

²⁰³ EU General Data Protection Regulation (GDPR): Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ 2016 L 119/1. Art. 5

²⁰⁴ Information Commissioners Office, ‘Guide to the General Data Protection Regulation | The Principles’ (*The Information Commissioners Office*) <<https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/principles/>> accessed 20 March 2020.

²⁰⁵ Data Protection Act pt 2.

²⁰⁶ *ibid* 3; *ibid* 4.

Chapter Six – Discussions

Introduction

As introduced in Chapter One, the hypothesis on which this thesis has been developed is that there is scope for better protections to be provided to activist groups as they assemble and associate online. To obtain a detailed response to this suggestion, there must be discussions that addresses both the overall proposition and the derivative research questions. Therefore, this chapter will proceed as follows. Firstly, developments in the online space will be explored to illustrate the potential need for additional protection as well as highlighting potential issues when granting additional protections. Namely the increased awareness and prevalence of surveillance, the use of hidden spaces such as the Dark Web and encryption by activist groups. Secondly, specific legislative developments in England and Wales will be considered. Addressing the geographical and time lapse gap identified in Chapter Three in connection to online activist groups. Thirdly, as a precursor to recommendations, discussions as how the multi-stakeholder environment could impact and influence the likelihood of additional protections will occur.

Throughout discussions, each area will be examined within the context of the research questions articulated in Chapter One. Firstly, it will be illustrated across all areas why such challenges give rise to a need for better protection, addressing any potential benefits that could be awarded to groups via increased protection. Secondly, the debate as to whether certain groups should be awarded additional protections will be reflected on across all areas. As previously explored in Chapters Three and Five, groups such as Anonymous can be evidenced to be engaging in illegal activities, casting doubt as to the rationale for protecting such actors. Finally, to address the practicalities of providing additional protections, where appropriate it will be illustrated where better protection to be afforded to activist groups operating online.

The constant examples of Tsunami Democràtic and Anonymous will be utilised to frame discussions. Illustrating the potential differential impacts that issues can have on groups and demonstrating how granting protecting to one representative sub-group may not be appropriate for all groups operating online. As articulated in Chapter Four, Tsunami Democràtic can be seen to be an Internet-enhanced activist group, utilising Internet-based methods of communication and association in addition to their offline activities.²⁰⁷ Furthermore, they can

²⁰⁷ Clarke (n 150). – within this article Tsunami Democràtic is referred to as a group and a collective interchangeably, illustrating that for Clarke there are enough shared commonalities between the two. For this

be recognised as being an emerging group - created as part of the Catalonian pro-independence movement in 2019 - possessing a specific purpose. Anonymous on the other hand are a long-established activist movement that can be considered to be Internet-based, primarily utilising the technical capabilities of the Internet²⁰⁸ – specifically hacktivism²⁰⁹, and DDoS attacks²¹⁰ - to demonstrate against causes or situations they take issues with. Unlike Tsunami Democràtic their physical offline presence is sporadic.²¹¹ Making them an Internet-based group rather than one that is enhanced by the use of the Internet. There is some debate as to whether Anonymous can be qualified as a group due to their decentralised, fragmented nature of operation without a definitive leader²¹², however for the purposes of this thesis, they are considered as one under the definitions of Forsyth et al.²¹³

Challenges Presented by the Online Environment

Introduction

One of the main reasons for activism, whether Internet-based or Internet-enhanced, is to raise awareness of issues and to promote change, therefore, the existence and operation of surveillance regimes can curtail and affect the freedom of association and assembly rights of online activist groups. As previously highlighted in Chapter Three, the revelations of Edward Snowden significantly increased the public and academic understanding of how surveillance operates in the UK.²¹⁴ These revelations and wider practices pose two main challenges for online activist groups seeking to utilising their Article 11 freedoms. Firstly, models of

thesis Tsunami Democràtic is accepted to be a group, thus fitting the criteria of being an online activist group of interest and inquiry.

²⁰⁸ Laville (n 54); ‘Anonymous Hackers “Cost PayPal £3.5m”’ (n 54); Coleman (n 155). p. 99 – the online based “Operation Payback” that saw the PayPal servers targeted by Anonymous in a DDoS attack as a means of protest against PayPal’s, amongst others, blocking of WikiLeaks donations.

²⁰⁹ Coleman (n 155). p. 135, 282, 288

²¹⁰ *ibid.* p. 136 – 142

²¹¹ Williams and Jarvis (n 93); ‘Million Mask March: What Are Anonymous’ Demands?’ *BBC News* (Washington DC, 6 November 2016) <<https://www.bbc.co.uk/news/world-34744710>> accessed 20 March 2020; Coleman (n 155). p. 64 – the annual worldwide offline Million Mask March or “Operation Vendetta” organised by Anonymous with various motives behind each occurrence yet serving as a physical representation of their presence and stance against such things as corruption in politics, police violence and self-governance.

²¹² Coleman (n 155); Coleman (n 6).

²¹³ Forsyth, *Group Dynamics* (n 148); Cartwright and Zander (n 146); Brown (n 145); Kurt Lewin, *Resolving Social Conflicts: Selected Papers on Group Dynamics* (Gertrude Weiss Lewin ed, 1st edn, Harper and Brothers 1948); Mark K Smith, ‘What Is a Group?’, *Encyclopaedia of Informal Education* (2018)

<<http://infed.org/mobi/what-is-a-group/>> accessed 13 February 2020; Crozier and others (n 142); Charles

Horton Cooley, *Social Organization: A Study of the Larger Mind*. (Charles Scribner’s Sons 1909)

<<http://content.apa.org/books/14788-000>> accessed 13 February 2020; Frederic Milton Thrasher, *The Gang: A Study of 1,313 Gangs in Chicago* (Chicago University Press 1927).

²¹⁴ Glenn Greenwald, J Borger and J Ball, ‘Revealed: How US And UK Spy Agencies Defeat Internet Privacy And Security’ *The Guardian* (2013) <<https://www.theguardian.com/world/2013/sep/05/nsa-gchq-encryption-codes-security>> accessed 20 March 2020.

surveillance, such as relational surveillance and surveillance capitalism, can influence the associations that users make online. Secondly, government proposals that could reduce the ability of users to utilise ‘Hidden Spaces’ online and remain anonymous.²¹⁵ Both of these phenomena present opportunities to illustrate why additional protection could be needed in circumstances as well as providing opportunities for the legality of actors to be explored.

Surveillance Practices

As contemplated by Strandburg²¹⁶ and Swire²¹⁷, relational surveillance is the act of using “data mining techniques”²¹⁸ to build “digital dossiers”²¹⁹ about individual users and their associations, revealing information about the “relationship networks”²²⁰ a user may be part of or involved in. By operation, this model of surveillance arguably presents challenges for the operations of activist groups, as the constructs and activities of many groups rely on users being together and related in some way, with relationships being present to sustain protests. Furthermore, it has been suggested that such methods of surveillance can make it possible to predict and curtail the actions of such groups.²²¹ In accordance with the definitions in Chapter Four, for the purposes of this thesis groups have to have social relationships to be considered a group, therefore this model of surveillance poses challenges to the freedoms of association and assembly.²²² As the connection that first brings the individual users together to form a group is also that which sustains the surveillance model and agenda that can discriminate the existence of such groups. Both Tsunami Democràtic and Anonymous exist and operate on the basis that all the individual users share a common goal and ideals, therefore users can be evidenced to be actively utilising their freedoms of association and assembly when they are partaking in group activities as they are associating and joining with whomever they please, as they are entitled to do so under Article 11.

As analysed in Chapter Five, this entitlement can only be detracted from and intervention take place where there is a matter of “national security or public safety”²²³ in contemplation, where

²¹⁵ The Department for Digital, Culture, Media and Sport, *The Online Harms White Paper* (2019).

²¹⁶ Strandburg (n 52).

²¹⁷ Swire (n 27).

²¹⁸ Strandburg (n 52). p. 747

²¹⁹ *ibid.*

²²⁰ *ibid.*

²²¹ Nóra Ní Loideáin, ‘A Bridge Too Far? The Investigatory Powers Act 2016 and Human Rights Law’ in Lilian Edwards (ed), *Law, Policy, and the Internet* (Hart Publishing 2019) 167.

²²² Forsyth, *Group Dynamics* (n 148).

²²³ Human Rights Act. 1998 Art. 11(2)

there is need to prevent “disorder or crime”²²⁴ or where there is a need to uphold the “protection of health or morals”²²⁵ and “the rights and freedoms of others.”²²⁶ Here the disparity between Tsunami Democràtic and Anonymous is recognisable. Tsunami Democràtic is arguably a non-violent, non-criminal activist group, whereas Anonymous have been evidenced to be partaking in activities that are creating “disorder or crime”²²⁷ via the use of DDoS attacks and virtual sit-ins.²²⁸ Raising the question as to whether intervention on the basis of information gathered through relation surveillance practices would be justified as Anonymous could be disrupting everyday life whilst also utilising their freedoms. This is a question that thus far, has no definitive answer and one that is likely to be raised in connection to all areas of discussion. As to grant additional protections to non-violent groups like Tsunami Democràtic would also see protections granted to potentially problematic groups like Anonymous. If a group like Tsunami Democràtic who are non-violent in nature were to be interfered with on the basis of evidence collected via relational surveillance then it could be argued that this would be a breach of their Article 11 rights as such would not be justified under the 11(2) exemptions. As it is indicated that data gathered via this surveillance practice can be used to discriminate or influence the actions of users and thus groups they are a part of, impacting their ability to associate and assemble freely. It will be shown that instruments such as the Investigatory Powers Act 2016²²⁹ have potentially exacerbated and solidified the future of such surveillance agendas, with such potentially making such interventions wholly justifiable regardless of the specific circumstances.

It is not only governmental surveillance agendas that pose risk and threat to the rights of online activist groups. Shoshana Zuboff’s - previously defined - surveillance capitalism concept is also relevant to discussions. Within her works, Zuboff highlights the companies of Facebook²³⁰ and Google²³¹ to track and illustrate this model. Reflecting the processes of relational surveillance, Zuboff suggests that surveillance capitalism is underpinned by the collection and trading of “behavioural surplus”²³² and data. This “surplus”²³³ enables companies to present a

²²⁴ *ibid.* Art. 11(2)

²²⁵ *ibid.* Art. 11(2)

²²⁶ *ibid.* Art. 11(2)

²²⁷ *ibid.* Art. 11(2)

²²⁸ ‘Anonymous Hackers “Cost PayPal £3.5m”’ (n 54); Laville (n 54).

²²⁹ The Investigatory Powers Act.

²³⁰ Zuboff (n 38). p. 128

²³¹ *ibid.*

²³² *ibid.* p. 148

²³³ *ibid.*

more personalised experience online. However, such also has the potential to have negative effects and impacts on the operation of online activist groups. This surplus allows profiles to be built, much like relational surveillance, which then can be used for multiple means such as the events connected to Cambridge Analytica.²³⁴ In 2018 it was exposed that the “behavioural surplus”²³⁵ and information about demographics allowed for personalised political advertisements to be delivered to individuals through Facebook. Arguably altering the outcomes of major political events such as the 2016 American Election²³⁶ and the Brexit referendum.²³⁷ Illustrating that whilst the consulting firm predominantly engaged in commercial activities, there was the potential demonstrated for such actors to influence political courses of action.

By surveillance capitalism sustaining, and to an extent encouraging this practice, it poses a threat to the existence of activist groups. The model encourages the use of sources, such as location data²³⁸ and browsing habits/history²³⁹, to monitor the location and behaviours of people. Therefore, it is possible that the model could also be used to track and monitor activities of individual users in relation to the groups they associate with. Both Tsunami Democratic and Anonymous are similar when it comes to the use of platforms for the organisation of demonstrations. Therefore, for example, if it was inferred by Facebook that there was to be a demonstration by either group highlighting unethical practices then as the controller they would be aware and therefore could stop such from occurring by altering what is available to group members online. Although theoretical, this example starts to illustrate how surveillance, even in corporate sphere, can influence the operations of users when they are associating and assembling, giving rise to potential interventions with their Article 11 freedoms. Zuboff’s work specifically explores the corporate sphere and therefore in connection the exemptions provided under 11(2) it can be identified that such actions would not be taking place due to a concern for “national security or public safety”²⁴⁰ or be done to prevent “disorder or crime”²⁴¹.

²³⁴ Greenwald, Borger and Ball (n 214).

²³⁵ Zuboff (n 38). p. 148

²³⁶ Karim Amer and Jehane Noujaim, *The Great Hack* (Netflix 2019).

²³⁷ Carole Cadwalladr, *Facebook’s Role In Brexit - and the Threat to Democracy* (2019)

<https://www.ted.com/talks/carole_cadwalladr_facebook_s_role_in_brexit_and_the_threat_to_democracy?language=en>.

²³⁸ Zuboff (n 38). p. 148-157

²³⁹ *ibid.* p. 81

²⁴⁰ Human Rights Act. 1998 Art. 11(2)

²⁴¹ *ibid.* Art. 11(2)

However, Zuboff's suggestions and evidence whilst publicly available are niche in nature, therefore it can be determined unlike that a challenge will arise on these grounds.²⁴²

By using the descriptor of "capitalism"²⁴³ Zuboff illustrates that this is a model that is deeply engrained in societal order, indicating that this practice is unlikely to diminish or disappear anytime soon. Therefore, it can be suggested that one potential avenue to ensure that Article 11 freedoms are maintained would be to alter, update, or amend such to specifically cover such circumstances to ensure the continued presence of online activist groups. This conclusion is reached for two reasons. Firstly, it can and will be shown that in comparison to one another it is more likely that a change to legal instruments will occur rather than mass alteration to the socioeconomic order. Secondly, the historic nature of these instruments suggests that they are more likely to provide protection, as the multi-stakeholder environment that sits behind Zuboff's ideas is less receptive to ideas which, if applied, would not benefit them.²⁴⁴ Regardless, the presence of surveillance capitalism is representative of the mass nature of these surveillance challenges, and therefore to an extent must be addressed through some formal mechanism. As to leave such in the current state is to reaffirm the risk to groups.

'Hidden Spaces' and Anonymity Online (Encryption and The Dark Web)

Despite the presented prevalence of surveillance online, there are spaces that are less monitored online which groups could opt to use these in addition to individual users remaining anonymous on public platforms. These 'Hidden Spaces' such as those created through the use of encryption and encrypted channels or those that exist on the Dark Web. Here spaces for groups to associate and assemble relatively undisturbed are provided. However, the use of such anonymity tactics and these spaces is controversial and raises questions as to the intentions behind groups who choose to operate in such a manner.

The Online Harms White Paper 2019 is the most recent proposal that explores the consequences of users remaining anonymous online. Framed within a context of assessing ways in which harm online can be reduced, the Paper suggests that those who remain anonymous online do so to protect themselves whilst causing harm to others.²⁴⁵ Anonymous

²⁴² Zuboff (n 38). p. 55–62 – Zuboff highlights legal cases in which there have been human rights-based challenges brought against elements of surveillance capitalism, recounting that each, whilst successful, did not challenge the model at its core therefore it is likely to continue regardless.

²⁴³ *ibid.*

²⁴⁴ *ibid.*

²⁴⁵ The Department for Digital, Culture, Media and Sport (n 215).

members and the group as a whole operate in the manner in which their name suggests. Each user is anonymous in nature, with no “real names”²⁴⁶ requirement existing for the group to successfully operate. Tsunami Democràtic’s members also remain anonymous, however this is suggested to be for their protection of suppressive actions, rather than protection from prosecution for criminal acts.

The 2019 paper has been promoted as being a “first attempt globally to address a comprehensive spectrum of online harms in a single and coherent way”²⁴⁷ when it comes to policing content and conduct online. However, the German Network Enforcement Act (Hereafter referred to as NetzDG) has been in operation since 2017 and has attracted much controversy due to the requirements such imposes on social networks and notable instances of content deletion. Commenting on the similarities between the NetzDG and the White Paper, Stephen Theil believes that any future interventions should place human rights at the “the forefront of considerations”²⁴⁸ to successfully balance the potential competing interests in online spaces and variety of actors present. He indicates that the NetzDG is “more modest”²⁴⁹ than the White Paper when it comes to content moderation and monitoring, with the NetzDG focusing on content that is criminal under existing codes. This conclusion becomes significant when it comes to the content that Anonymous and Tsunami Democràtic post online. The White Paper is yet to holistically define or determine what will be considered harmful under the provisions, however a list of twenty-three potential harms that could be covered was provided with the proposals. Here the presentation of “incitement of violence”²⁵⁰ and “violent content”²⁵¹ as potential harms are relevant. As it can be suggested that due to the wide scope and undefined nature of the content under regulation either Anonymous or Tsunami Democràtic (or a likewise group operating in the UK) could be determined to be harmful in some way. Theil comments on the potential for smaller companies and platforms to be driven out of the environment online due to the regulatory burden being placed on them via the White Paper. This will arguably also occur for grassroots activist groups seeking to use the Internet in some way due to the way that their content could be determined.

²⁴⁶ Paul Bernal, *What Do We Know and What Should We Do about Internet Privacy?* (First, SAGE 2020). p. 65

²⁴⁷ The Department for Digital, Culture, Media and Sport (n 215) 3.

²⁴⁸ Stefan Theil, ‘The Online Harms White Paper: Comparing the UK and German Approaches to Regulation’ (2019) 11 *Journal of Media Law* 41, 42.

²⁴⁹ *ibid* 44.

²⁵⁰ The Department for Digital, Culture, Media and Sport (n 215) 31.

²⁵¹ *ibid*.

Gabriella Coleman highlights a specific example where two Anonymous users have been protected through their use of anonymity. Whilst not focused within the UK she recounts a situation that can be transferred for analysis. She suggests that both members maintain anonymity online to counter the potential of “government repression”²⁵², to translate this a UK jurisdiction where such fears are lesser present, there should be protection for all users regardless of their identities online or off. It has been suggested by the Electronic Frontier Foundation that activists are highly likely to be impacted should any de-anonymisation or real name requirements become mandatory.²⁵³ Bernal proposes that a legal requirement to use real names online has the potential to suppress activism at its core, as people can be targeted and oppressed due to their associations.²⁵⁴ If a discriminatory authority was able to clearly identify who was a member of an activist group because they were using their real names, it would be easy to discriminate offline in connection to jobs and opportunities due to their alignment with particular belief systems and human associates. Such circumstances were present in the offline case of *Redfearn*²⁵⁵, here the court held that such discriminatory action contravened Article 11 freedoms.

In an attempt to further preserve their operations and associations, both Anonymous and Tsunami Democràtic utilise either encryption or the Dark Web as a space to associate and assemble. The use of such protective measures is a contentious practice across the population of Internet users, not just online activist groups. Explored in connection the proposed two eras of activism, Karagiannopoulos notes the significance of the use of encryption by activist groups. He suggests that as hacktivists as a subsidiary of online activist groups have developed so have their tactics including the use of encryption.²⁵⁶ This is affirmed by Coleman who recounts a message placed on an Anonymous channel which would lead users to set up SSL encryption, indicating that encryption is something that is essential to the operation of the group.²⁵⁷

²⁵² Coleman (n 155).

²⁵³ Dave Maass, ‘Online Anonymity Is Not Only for Trolls and Political Dissidents’ (*Electronic Frontier Foundation*, 29 October 2013) <<https://www.eff.org/deeplinks/2013/10/online-anonymity-not-only-trolls-and-political-dissidents>> accessed 20 March 2020.

²⁵⁴ Paul Bernal, ‘How Not to Regulate the Internet’ (23 April 2020).

²⁵⁵ *Redfearn v Serco Ltd* (n 170).

²⁵⁶ Vasileios Karagiannopoulos, ‘The Two Eras of Hacktivism’ in Vasileios Karagiannopoulos, *Living With Hacktivism* (Springer International Publishing 2018) <http://link.springer.com/10.1007/978-3-319-71758-6_2>.

²⁵⁷ Coleman (n 155) 73.

Bernal highlights in his works that provisions contained within the 2016 Act set out a concept for an exhaustive list of a user's Internet history being recorded, however acknowledges that this is "not really possible in most circumstances"²⁵⁸ indicating that the use of these hidden spaces amongst other phenomena may be preventing a full account of a group's activities to be obtained. Whilst his works predominate focus is privacy and the Article 8 right to such, there is a notable connection between the fundamental freedoms here that should be introduced. For a user or group to have respect for their privacy online would allow observations and surveillance previously detailed as a challenge to be limited online. This limitation would therefore allow them to freely associate and assemble because their privacy would be theoretically upheld. This connection between the civil liberties is one that is significant here and prompts a new line of scholarship, one that cannot be explored fully within this thesis. Bernal indicates that the use of encryption is vital for both privacy and security, he suggests that both governments and hacker movements such as Anonymous utilise these with different motivations "good and bad"²⁵⁹ driving their actions. Whilst his contribution concerns privacy, it can be suggested that the security he alludes to is not only that of information but that of freedoms, as indicated the privacy granted through the use of these techniques allows for assembly and associations to take place. To contextualise this, Tsunami Democràtic have been evidenced to be using encrypted platforms, notably Telegram, to organise protests and facilitate associations between users.²⁶⁰ Here the use of encryption and encryption-based platforms are assisting the online activist group in their operations by providing protection for their freedoms, however, such hidden spaces are not always seen in such favourable light.

Often regarded as a space for criminality and deviance, the Dark Web is another 'hidden space' used by online activist groups as part of their operations. Anonymous have been observed to use the Dark Web and Tor Browsers as part of their operations, much like encryption, to maintain their privacy. Coleman notes that such tactics were shared amongst members with "guides on how to better anonymize one's connections"²⁶¹ being circulated. Similar to the above, it can be suggested that such tactics and spaces online have used in an attempt to protect privacy of users, thus impacting their freedoms of association and assembly. The Dark Web however is a space that attracts more criticisms when it comes to online activist groups than

²⁵⁸ Bernal, *What Do We Know and What Should We Do about Internet Privacy?* (n 246) 55.

²⁵⁹ *ibid* 62.

²⁶⁰ Oliver Little, 'What Is Tsunami Democràtic?' *CatalanNews* (16 October 2019) <<https://www.catalannews.com/society-science/item/what-is-tsunami-democratic>>.

²⁶¹ Coleman (n 155) 348.

encryption, with the former facing more widespread criticism in connection to child safety. As previously noted, a lot of the literature concerning the use of the Dark Web sees the platform assessed in connection to terrorism and terrorist groups activities. Whilst these are groups and there could be some conclusions lent, and there has been discussion as whether Anonymous are illegal and dangerous, it is not for this thesis to make an ultimate determination on this point, hence the discussion of The Dark Web to a lesser extent. It is key to note that encryption as a practice is one that is presently under scrutiny. There is speculation that the 2019 White Paper will include messaging platforms such as Telegram and WhatsApp in its regulatory remit, with companies being under the obligation to monitor such for harmful content. It has been indicated that to have such being covered would “violate people’s security, data protection and human rights”²⁶², again these comments primarily concerned privacy as the right and freedom of focus. However, the imposition of an obligation to monitor communications could have dramatic implications for groups such as those highlighted here. For a group like Anonymous these provisions could drive them further into the Dark Web where policing is already difficult, and for groups like Tsunami Democràtic there could be a deterrent for their associations and assembly in the first place. What can be concluded about these ‘Hidden Spaces’ is that they are commonly used as a means to protect one’s privacy and freedom of such, indicating that to maintain one’s privacy is also to maintain one’s freedom to associate and assemble without observation. Throughout these discussions it has been suggested that surveillance is a main challenge faced by online activist groups, therefore it is possible that these spaces are utilised as a form of self-regulation and protection by the groups. Indicating that they have turned to such due to deficits in the protections provided by Article 11 when such is applied online.

Legislative Developments

Introduction

As alluded to in intended contribution of this thesis, there have been various legislative developments within the UK in the last decade that are yet to be examined in direct relation to Article 11 freedoms and the operations of online activist groups.

As presented in Chapter Five, the specific instruments that are significant here are the GDPR and the Investigatory Powers Act 2016, as both contain provisions that have consequential

²⁶² Privacy International, ‘Privacy International’s Response to the Open Consultation on the Online Harms White Paper’ (Privacy International 2019) 4.

impacts for the operation of online activist groups. The former arguably provides, theoretical, complementary protections to groups, whereas the latter potentially supports the practices detailed above.

Data Protection Act 2018

Now domestically transcribed into the Data Protection Act 2018²⁶³ the GDPR has the potential to assist groups in upholding their rights to freely assemble and associate. As presented previously, there are various principles that must be adhered to when personal data is collected and processed in both commercial and governmental/law enforcement settings. These principles, when adhered to correctly, should theoretically reduce the amount of tracking of groups and individuals, reducing the impact on their Article 11 freedoms. For example, if Tsunami Democràtic was to operate in the UK, platforms would observe data minimisation practices in accordance with Part 2 of the 2018 Act. Meaning that the data provided by individual users – whether that be in relation to their activities as part of the activist group or not – would only be used to improve user experience²⁶⁴, negating the potential for such to be used for discriminatory purposes. Therefore, such provisions arguably present a possible layer of protection. As the tracking or monitoring of any group in its entirety or its individual users for the purposes of intelligence gathering is theoretically prohibited in these circumstances. Therefore, in theory, any group should have their rights to associate, and assembly upheld. Individual users are granted the ability to stipulate restrictions on the data collected about them and their individual activities, meaning that their association with others – potentially other members of an activist group – are protected in accordance with the Article 11 freedoms. As elements such as “follow suggestions”²⁶⁵ are collated on the browsing behaviours of that user, who they have the ability to opt out of should they wish to do so as provided by the data protection principles.

The same principles operate in connection to law enforcement activities, and thus there is also a level of protection that can be identified here, however, as will be explored in turn, the Investigatory Powers Act 2016 may detract from such protections. Additionally, the whilst the principles also apply to law enforcement and intelligence services – prescribed under Part 3 and 4 of the 2018 Act – should such be occurring in connection to the operation of online

²⁶³ Data Protection Act. 2018

²⁶⁴ ‘Twitter Privacy Policy’ (*Twitter*, 20 March 2020) <<https://twitter.com/en/privacy>> accessed 20 March 2020.

²⁶⁵ *ibid.*

activist groups it is likely that such data processing is being done in as a means of preventing “disorder or crime”²⁶⁶, therefore the detraction would be justified under Article 11(2), highlighting a potential conflict. Should processing in alternative circumstances such as a member of an online activist group reporting a crime, then the above principles detailed in connection to commercial settings should also apply, meaning that the additional layer of protection is present.

Investigatory Powers Act 2016

The main legislative development which stands to affect the operation of online activist groups is the 2016 Act, suggested to be a mere formal legalisation of the Snowden leaks²⁶⁷ this act has the indicated power to “compel people and indeed communications providers to breach their own privacy protections.”²⁶⁸ Therefore, having the potential to jeopardise rights to freedom of association and assembly of online activist groups. Within Chapter Five, it was noted that when it comes to looking for assessing the presence of prescribed and non-prescribed intervention with freedom of association and assembly rights online, there are margins for increased difficulty. With the contents of the 2016 Act exacerbating this difficulty, legislating for the intervention, and arguable non-prescribed intervention effecting freedom of association and assembly, as well as promoting relational surveillance practices.

Returning to the case of Laporte²⁶⁹, the intervention of boarding the bus and removing the tools of protest of this group was considered to be non-prescribed, and therefore in breach and opposition of the rights of free assembly and association under the 1998 Act and the European Convention. Online the equivalent of the non-prescribed intervention akin to the facts could be the intervention in private correspondence and limitations being placed on the ability of members to associate and assemble. The 2016 Act prescribes for the interception of such communications under sections 15²⁷⁰ to 60²⁷¹, acquisition and retention of the data related to these communications under sections 61²⁷² to 86²⁷³, and direct equipment interference under sections 99²⁷⁴ to 135.²⁷⁵ Each category can be seen to be affecting the rights and thus successful

²⁶⁶ Human Rights Act. Art. 11(2)

²⁶⁷ Greenwald, Borger and Ball (n 214).

²⁶⁸ Bernal (n 257). p. 55

²⁶⁹ *R (Laporte) v Chief Constable of Gloucestershire* (n 129).

²⁷⁰ The Investigatory Powers Act. s. 15

²⁷¹ *ibid.* s. 60

²⁷² *ibid.* s. 61

²⁷³ *ibid.* s. 86

²⁷⁴ *ibid.* s. 99

²⁷⁵ *ibid.* s. 135

operations of online activist group by posing a risk to their freedom of association and assembly rights. As previously illustrated in Chapter Five, the interception of communications is the main provision that arguably legalises the Snowden revelations.²⁷⁶

If compared to the activities of Anonymous, then such intervention can be seen as justified under these main bases. However, by intervening in what is supposedly regarded as private, personal data and communications, there is the potential for discrimination to be made. A phenomenon that is potentially going to be exacerbated by the 2019 White Paper provisions. For example, if a member of Anonymous was to be specifically targeted for their personal actions against the UK economy, as was the case in *Weatherhead*²⁷⁷, the other members and by majority the whole group could potentially be profiled and discriminated against for being a member of such a group. As it is evidenced that groups, specifically Anonymous, are brought together due to their shared values and beliefs. However, not all online activist groups are as criminal in nature as Anonymous, so the normalisation and legalisation of these generalising practices could have concerning ramifications for wider online activist groups operating generally.

Looking at Internet-enhanced activism in line with these types of intervention, this wider spectrum stands to be affected by the above interventions. Although, the actions of Anonymous in circumstances could be seen as criminal, there are groups that are not criminal who could be affected. Such as that which arose from the #MeToo hashtag²⁷⁸ that are not, on the surface, engaging with directly illegal or criminal activity. The latter campaigns for accountability of powerful figures, which under the normalisation Anonymous provides by indicating that all online activist groups are illegal²⁷⁹, could in theory, be justified as disrupting the economy or inciting crime. As it could be argued that the spreading of the message of accountability could lead to individuals to take to violent means against those being held accountable, which if done could lead to the group to be disbanded and removed due to interceptions, thus impacting the freedom to associate. This is suggested as if a group was to become aware of interception within their communications, it is logical they would disband and regroup elsewhere, much like the

²⁷⁶ Greenwald, Borger and Ball (n 214).

²⁷⁷ *R v Weatherhead, Rhodes, Gibson, and Burchall* (Southwark Crown Court). [2013]

²⁷⁸ Voule, 'Rights to Freedom of Peaceful Assembly and of Association. Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association' (n 5); 'About' (*MeToo Movement*, 2018) <<https://metoomvmt.org/about/>> accessed 18 February 2020.

²⁷⁹ Computer Misuse Act. 1990 s. 3

turning around of the bus in Laporte²⁸⁰, meaning that they lack the freedom to associate and assemble as they please, meaning an intervention and possible undermining of general freedoms has taken place.

Conclusions

Overall, these developments illustrate not only the challenges that are faced by online activist groups, but also show that determining a level of protection that could be granted to online activist groups is an increasingly difficult task. This is mainly due to the different types of groups that operate online ranging from grassroots, emerging groups to prominent, disruptive groups that can engage in illegal activities as part of their wider operations. This spectrum is a phenomenon that has to be acknowledged regardless of the next steps, however due to the length of this thesis it is unlikely that a definitive conclusion will be reached. In addition to the differing types of groups that operate online, there are also a variety of stakeholders that have to be acknowledged and explored due to the various perspectives that have to be considered, as highlighted in the Chapter Three.²⁸¹

Multi-stakeholder Environments

Introduction

The operations of the groups online have been evidenced to be spanning various platforms and jurisdictions, therefore discussions will now turn to the multi-stakeholder environment and how this relates to the upholding of Article 11 freedoms. As raised in the Chapter Three literature review, the freedoms of association and assembly can be impacted and effected by a variety of stakeholders, with multiple voices and opinions being needed to be balanced.

Significance of Multiple Stakeholder Interests

As previously introduced, one relevant theory that has been linked to Internet law scholarship is that of Castells.²⁸² His multi-stakeholder theory has been considered as both a model of operation²⁸³ and a theory of online governance.²⁸⁴ Governance and regulation theories in their

²⁸⁰ *R (Laporte) v Chief Constable of Gloucestershire* (n 129).

²⁸¹ Castells (n 113).

²⁸² *ibid.*

²⁸³ The Internet Society, 'Internet Governance – Why the Multistakeholder Approach Works' (*The Internet Society*, 26 April 2016) <<https://www.Internetsociety.org/resources/doc/2016/Internet-governance-why-the-multistakeholder-approach-works/>> accessed 20 March 2020.

²⁸⁴ Jeanette Hofmann, 'Multi-Stakeholderism in Internet Governance: Putting a Fiction into Practice' (2016) 1 *Journal of Cyber Policy* 29.

multiple forms²⁸⁵ have been theorised for as long as the World Wide Web itself has, yet the real-world application of these theories alongside political developments²⁸⁶ have seen a perceived fight for dominance over the regulations and applicability of offline legislative instruments online.²⁸⁷ Making such relevant to the protections granted to online activist groups.

The multi-stakeholder environment is considered to be one that is debated at length, with entities such as platform executives, governments, domestic and international legislative bodies, all having an opinion, potential drawbacks and benefits to experience when changes are made to the current order. A structure that becomes relevant in connection to any proposed changes going forth, as well as being relevant when assessing how such affects the ability for online activist groups to assemble and associate. Platforms themselves such as Twitter and Facebook can be seen to be stakeholders alongside governments, indicating that each vary in their approaches to governance and therefore implementing legislative provisions online.

Although subject its own criticisms²⁸⁸, the multi-stakeholder environment the controllers of the platforms used by online activist groups universally agree on norms, such as technical underpinnings of end-to-end encryption and effectiveness of impact.²⁸⁹ However, these are non-enforceable norms, indicating that each norm can differ from platform to platform, which causes disparities and challenges for online activist groups. There have been suggestions that the 2019 White Paper²⁹⁰ is the start of the UK's attempts to regulate and govern the Internet from a centralised jurisdictional perspective. However, at present there are no formal provisions that apply to the manner in which platforms treat their users, just their data²⁹¹

²⁸⁵ Lawrence Lessig, *Code and Other Laws of Cyberspace* (Basic Books 1999); John Perry Barlow, 'A Declaration of the Independence of Cyberspace' (*Electronic Frontier Foundation*, 8 February 1996) <<https://www.eff.org/cyberspace-independence>>; David Post, 'Governing Cyberspace' (1996) 41 *Wayne Law Review* 155; Joel R Reidenberg, 'Lex Informatica: The Formulation of Information Policy Rules through Technology' (1997) 76 *Texas Law Review* 553; I Trotter Hardy, 'The Proper Legal Regime for "Cyberspace"' (1994) 55 *Pittsburgh Law Review* 993.

²⁸⁶ Anne-Marie Slaughter, 'A New Kind of Multilateralism Is on the Horizon' *The Financial Times* (18 September 2019) <<https://www.ft.com/content/dae8bbd6-d930-11e9-9c26-419d783e10e8>>.

²⁸⁷ 'More Powers for Ofcom to Police Social Media Firms' *BBC News* (12 February 2020) <<https://www.bbc.com/news/technology-51446665>> accessed 24 June 2020; Amy Gunia, 'U.K. Proposes Tough New Regulations for Social Media' *Time* (8 April 2019) <<https://time.com/5565843/united-kingdom-social-media-regulations/>>; Billy Perrigo, 'The U.K. May Change the Rules That Turned Facebook Into an Empire' *Time* (9 April 2019) <<https://time.com/5566501/facebook-regulation-zuckerberg/>>.

²⁸⁸ Hofmann (n 284).

²⁸⁹ The Internet Society (n 283).

²⁹⁰ The Department for Digital, Culture, Media and Sport (n 215).

²⁹¹ Jim Waterson, 'UK Fines Facebook £500,000 for Failing to Protect User Data' *The Guardian* (25 October 2018) <<https://www.theguardian.com/technology/2018/oct/25/facebook-fined-uk-privacy-access-user-data-cambridge-analytica>>.

provided users are based within the European jurisdiction due to the GDPR.²⁹² This lack of universal standard is problematic for online activist groups, as platforms can differ in their offered protections for assembly and association, creating the aforementioned disparities.

Returning to Tsunami Democràtic, their use of various platforms sees them subjected to various differing levels of protection, resulting in an overall reduction in the groups protection due to a lack of a universal standard. Their use of Twitter to broadcast to their approximate 188,000 followers²⁹³ illustrates that they are subject to the platforms privacy policies, however if they were to do on another platform such a Reddit, they would be subject to their privacy policies.²⁹⁴ Resulting in a differential level of protection being granted across the platforms due to the multi-stakeholder concept. This is affirmed in the comparison of Telegram and WhatsApp. Both are popular communication platforms used by activist groups, yet the former²⁹⁵ is regarded as having better privacy protections than the latter, indicating a lack of universal standard again. Whilst WhatsApp does have some level of protection, the economic market the lack of formal regulations on the technology sector encourages – and multi-stakeholder environment allows – means that Facebook remains the parent company²⁹⁶, and thus has a degree of access to communications and can discriminate on this basis affecting association rights.

Whilst the implementation of jurisdictionally centralised provisions online might ensure that there is some degree of universal standards, the determination as to where the jurisdictional boundaries would exist online is a difficult task.²⁹⁷ Indicating that such a transference in the near future is unlikely. Moreover, any transplanting of laws from offline to online using methods present in a traditional jurisdiction to jurisdiction transplant, would result in a “malicious transplant”²⁹⁸ as termed by Siems.²⁹⁹ As not only would the current protections be transplanted into an online context, the previously highlighted potentially problematic

²⁹² EU General Data Protection Regulation (GDPR): Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ 2016 L 119/1.

²⁹³ Lomas (n 159).

²⁹⁴ ‘Privacy Policy - January 10, 2020 - Reddit’ <<https://www.redditinc.com/policies/privacy-policy>>.

²⁹⁵ ‘What’s the Difference between Groups and Channels?’ (n 173).

²⁹⁶ Sam Shead, ‘Facebook Dominates Most Downloaded Apps of Decade’ *BBC News* (18 December 2019) <<https://www.bbc.com/news/technology-50838013>>

²⁹⁷ Menthe (n 165); Anzelmo (n 165); Kohl (n 165).

²⁹⁸ Mathias Siems, ‘Malicious Legal Transplants’ (2018) 38 *Legal Studies* 103.

²⁹⁹ *ibid.*

instruments³⁰⁰ would also be transferred. Reaffirming the principles and practices contained within, suggesting that such might not be desirable when looking at upholding the protections for online activists in particular. Therefore, indicating that, at present, it is for current human rights instruments to provide and affirm a universal standard of rights the groups should expect when operating.

³⁰⁰ The Investigatory Powers Act. 2016

Chapter Seven – Recommendations

The discussions so far have alluded to the issues that currently and potentially experienced by online activist groups, with Tsunami Democràtic and Anonymous serving as examples to illustrate these challenges. Suggesting that there needs to be exploration as to how there could be an expansion and renewed understanding of the human rights frameworks currently operating in the UK. Confirming the general hypothesis that there can be better protection provided to online activist groups. However, there has to be examination of solutions that are outside of these instruments that could benefit these groups. As whilst the hypothesis and discussions so far indicate that improved protection is the most beneficial option, there is merit in alternative methods.

Self-Regulation

So far, the discussions have demonstrated how technological innovation has presented challenges to their freedom of association and assembly rights through the exploration of two potentially contrasting groups. However, for Tsunami Democràtic, it was their utilisation of technology that upheld and to an extent the protected their association and assembly rights. Much like Anonymous and their embracement of anonymising technologies and ‘Hidden Spaces’, Tsunami Democràtic utilised their technological capabilities to develop an app that allowed the members to “share files or communicate without relying on any central server.”³⁰¹ In theory, providing protection their operations from non-prescribed intervention by state actors.

This suggests that self-regulation is a potential solution to the problem posed by authoritarian surveillance. However, this is not a full solution by any means, as it can be argued that this is not representative of the whole spectrum of online activist groups. What is present here is a group that is well educated and informed when it comes to the capabilities of the Internet, and the technological educational privilege that is conferred onto activists. However, not all groups can ‘outsmart’ opposing authorities or forces to avoid intervention with their Article 11 freedoms and related civil liberties. This is affirmed by Büchi et al³⁰², who state that “only the well-to-do will know how to protect”³⁰³ their rights, suggesting that there is the potential for

³⁰¹ Clarke (n 150).

³⁰² Moritz Büchi, Natascha Just and Michael Latzer, ‘Caring Is Not Enough: The Importance of Internet Skills for Online Privacy Protection’ (2017) 20 Information, Communication & Society 1261.

³⁰³ *ibid.* p. 1262

educational disparities to affect the level of protection an online activist group has for their rights.

This disparity is most prevalent when Tsunami Democràtic and Anonymous are examined side by side. By operation, Anonymous is an Internet-based activist group can be seen to be more educationally privileged, using the Internet as their medium of operation and communication. Indicating that they are more likely to engage in protective practices such as utilising virtual private networks when engaging in DDoS attacks and communing as a group on channels³⁰⁴, meaning that their rights are less likely to be infringed upon. As the challenges highlighted above, such as relational surveillance, will not be as damaging as the group would be providing an additional level of protection themselves. Whereas, the remaining non-technologically advanced members of Tsunami Democràtic, the effects of this disparity become clear. Individual users who did not use the specific App³⁰⁵ as part of their operations could be suggested to be less educationally privileged in connection to technology. These individuals are representative of the most common form of Internet-enhanced activist groups, lacking extensive knowledge regarding how technologies can be best used to uphold their fundamental freedoms, instead having a primary interest in change and bringing about such. This inequality, as affirmed by Schradie³⁰⁶, suggests that the aforementioned challenges would affect their rights and their utilisation of their freedoms more than the former as they would not necessarily engage in protective measures such as utilising virtual private networks'. This is the situation for many Internet-enhanced groups³⁰⁷, indicating that self-regulation is not an option for all groups that operate online.

The promotion and suggestion of self-regulation as a mechanism arguably undermines the teleological ideas of human rights and human rights protections, as a move towards and reliance on self-regulatory mechanisms would move the obligation to protect fundamental rights from states and formal authorities. This potentially makes the transactional exchange of protection between rights holders and authorities of lesser importance than that which exists currently. Consequentially reducing the requirement to understand such instruments, as these would not be at the forefront in a widespread self-regulatory environment. This recommendation would

³⁰⁴ Coleman (n 155).

³⁰⁵ Lomas (n 159).

³⁰⁶ Jen Schradie, *The Revolution That Wasn't: How Digital Activism Favors Conservatives* (Harvard University Press 2019). p. 15

³⁰⁷ Anna Rees, 'Digital and Online Activism' (March 2015) <<https://en.reset.org/knowledge/digital-and-online-activism>> accessed 27 January 2020.

also remove the formal mechanisms of accountability that are conferred onto individuals, therefore removing the tangible means of holding authorities to account as utilised in the cases of *Laporte*³⁰⁸ and *Redfearn*.³⁰⁹ Potentially allowing for unregulated, undetected, contravening practices to occur as shown in Chapter Six. For this reason, this recommendation, whilst having merits, only supports the main hypothesis that the current human rights frameworks have the potential to be extended through alternative means. As it has been illustrated that these provide the mechanisms and structure that online activist groups will benefit from.

Planned Government Response Reforms

An alternative avenue to provide further protections for activist groups is through legislative reform rather than legislative expansion. Moving the focus from specific human rights instruments, this avenue instead acknowledges the potential of improving the protections of online activist groups by reforming proposed legislative measures. As previously illustrated, one of the main challenges presented to online activist groups seeking to uphold their rights online are the proposed de-anonymisation orders planned within The Online Harms White Paper.³¹⁰ As a White Paper proposal, there is scope for these plans to be reformed and altered in the favour of online activist groups, thus improving the level of rights protection they are granted as the previously discussed challenge would be substantially reduced.³¹¹

Being widely criticised³¹², the White Paper³¹³ seeks to tackle online harm in its entirety, presenting a less than nuanced approach, which has led to some suggesting the provisions are based on normalisations and thus such legislates accordingly. As shown, not all online activist groups operate in the same manner and are motivated by the same causes, some can be seen to be operating illegally, whilst others use digitally peaceful means to draw attention to causes. For this reason, the generalisation that all Internet users are the same is potentially damaging

³⁰⁸ *R (Laporte) v Chief Constable of Gloucestershire* (n 129).

³⁰⁹ *Redfearn v Serco Ltd* (n 170).

³¹⁰ The Department for Digital, Culture, Media and Sport (n 215). p. 17

³¹¹ At this stage in development, it is likely that the Online Harms White Paper will be developed into a Bill to go through pre-legislative scrutiny, however it cannot be determined the extent to which the planned provisions will remain the same.

³¹² Blayne Haggart and Natasha Tusikov, 'What the U.K.'s Online Harms White Paper Teaches Us about Internet Regulation' *The Conversation* (18 April 2019) <<https://theconversation.com/what-the-u-k-s-online-harms-white-paper-teaches-us-about-internet-regulation-115337>> accessed 20 March 2020; Alex Hern, 'Online Harms White Paper: Could Regulation Kill Innovation?' *The Guardian* (4 April 2019) <<https://www.theguardian.com/technology/2019/apr/04/online-harms-white-paper-regulation-without-killing-innovation>> accessed 20 March 2020. – due to its relative newness there is a lack of pure academic literature concerning The Online Harms White Paper beyond its primary provision on a Digital Duty of Care.

³¹³ The Department for Digital, Culture, Media and Sport (n 215).

and affirms reform as a justifiable recommendation going forth. Such reform would need to make allowances for those who are using anonymisation online as a means of protecting themselves, this does not just apply to online activists but other vulnerable groups also.³¹⁴ Such allowances can be evidenced in currently enacted laws and therefore can be done. Section 3 of The Counter-Terrorism Border Security Act 2019³¹⁵ makes allowances for both academics and journalists³¹⁶, affording them a defence to justify their viewing of terrorist related material online. An akin measure would need to be applied to the deanonymisation orders under the White Paper, such could allow for individuals to remain anonymous if they could provide justifications for their anonymity. However, this idea in isolation would need further research to determine the likelihood of such alterations. Affirming the hypothesis presented, suggesting that within the context of online activist groups it is for present human rights to provide improved protection, as reform of these ideas in the future for such benefit is unlikely.

Expansion of Current Instruments

Guided by the research questions and the main hypothesis the next recommendation is that the aforementioned formal human rights instruments have the potential to be altered and amended to include and acknowledge groups as an entity. As previously illustrated, the term ‘group’ can evoke differing definitions depending on the perspective or context from which such is assessed.³¹⁷ This is the same for the terminology ‘group rights’, with such being broadly defined as rights that are held “by a group rather than its members individually.”³¹⁸ Suggesting that in order for rights to be held by a group such must be conferred onto the group as an entity rather than it’s individual members separately. Human rights by development and human rights instruments by design are developed to apply specifically to individual persons, rather than collections of people operating under one cause, or a group. Indicating such are in direct contrary to such instruments. There have been suggestions made that due to their constructs and characteristics, groups cannot hold human rights, mainly due to the obligations and rights exchange that occurs, however as it will be illustrated at a theoretical level, this is not always the case.

³¹⁴ Bernal, ‘How Not to Regulate the Internet’ (n 254).

³¹⁵ Counter-Terrorism and Border Security Act 2019. s.3.

³¹⁶ *ibid.* s.4(b)

³¹⁷ Forsyth, *Group Dynamics* (n 148); Cartwright and Zander (n 146); Brown (n 145); Hare (n 143); Mills (n 143); Homans (n 145).

³¹⁸ Peter Jones, ‘Group Rights’ in Edward N Zalta (ed), *Stanford Encyclopedia of Philosophy* (Summer 2016, Metaphysics Research Lab, Stanford University 2016)

<<https://plato.stanford.edu/archives/sum2016/entries/rights-group/>> accessed 12 October 2019.

Natural persons are the predominate and primary type of legal person subject to the 1998 Act and European Convention, indicating that groups would perhaps face challenges when confronted with adopting such rights. This is suggested as each of the abovementioned instruments clearly state or indicate natural legal persons to be the concerned party of the outlined provisions. The teleologically founding United Nations Declaration states within its preamble that such was brought about and written on the basis of forming “a world in which human beings”³¹⁹ are free and protected. Clearly indicating that natural persons were their primary concern and subject of the protections, rather than groups.

Despite this, the European Convention can be evidenced to be linguistically detracting from such determinations allowing for groups to be considered in theory. Article 1³²⁰ states that “everyone”³²¹ is entitled to a right to life, and such is affirmed in the 1998 Act. As “everyone”³²² is not defined within the instrument itself, it could be suggested that there is scope for this to mean both natural and legal persons. In the absence of further theoretical discussion as to the Union’s meaning of the terminology “everyone”³²³, it can be suggested that for the purposes of this thesis there is potential scope for some rights to be extended to groups under the provided definition and understanding of group rights. In order to do so, it is recommended that groups are afforded and granted legal personality, making them the “subject of rights and duties”³²⁴ as non-natural entities, but akin to those that are.

Within human rights literature, Peter Jones³²⁵ has suggested that there are two theoretical conceptions of group rights that would make groups non-natural legal persons: the collective conception, and the corporate conception. It is the latter that is value to this thesis and any proposals to extend human rights frameworks, the corporate conception dictates that there is a to be an ascribing of “moral standing only to the individuals who jointly hold the group right.”³²⁶ This renounces the value of individual rights, such as freedom of association and assembly, in their known form and suggests a mechanism akin to legal personality as presented within the precedential case of *Salomon v Salomon* [1896] UKHL 1.³²⁷

³¹⁹ Preamble, Universal Declaration of Human Rights

³²⁰ Article 1, European Convention on Human Rights

³²¹ *ibid.*

³²² *ibid.*

³²³ *ibid.*

³²⁴ Bryant Smith, ‘Legal Personality’ (1928) 37 *The Yale Law Journal* 283. p.283

³²⁵ Peter Jones, ‘Human Rights, Group Rights, and Peoples’ Rights’ (1999) 21 *Human Rights Quarterly* 80.

³²⁶ *ibid.*

³²⁷ *Salomon v A Salomon & Co Ltd.* [1896] UKHL 1

This concept, if applied, would see a group assume a distinct legal personality separate to that of its individual members. Allowing such to enter into contracts, sue others and be sued itself, making such the subject of duties and rights. Companies have long been determined to be legal entities, and therefore persons under law, indicating a precedent that could be applied to groups resulting in their recognition. In *Salomon*³²⁸ the courts declared that a company could be a legal person, and that legal person in general has to be able engage in rights transactions. Being afforded the anticipated benefit of protection from instruments such as Article 11, whilst also being subjected to the obligations that accompany such as a consequence of being recognised as a legal person.

To return to the selected provisions of freedom of association and assembly, if the online activist groups were conferred the level of protection akin to individuals, they would, in theory, be able to freely associate and assemble without barriers or interventions. Thus, providing them with better protection than they are afforded at present. They would be able to operate as a conglomerate rather than individuals, suggesting that the group could associate without interventions such as surveillance, as the group would be protected in its entirety. However, such recognition and providing of a legal personality is not without issue. In comparison to other methods of conferment, and recognition of groups under human rights instruments. To assign a group a legal personality under the *Salomon* principles³²⁹ is to do so without restriction. Indicating that the group could potentially operate independently from the group members; entering into contracts, sue others and be sued in return. Whilst the former is perhaps not as relevant, the latter reality of being able to be sued and be sued is significant when the potentially illegal operations of some online activist groups are considered. *Jones*³³⁰ fails to indicate the parameters of his theory in application, suggesting that to confer group rights is to also confer a personality, this could cause some issues for the niche of online activist groups, such as *Anonymous*.

As a group they can be evidenced as refusing the archetype presented within *Jones*' doctrine, by lacking a traditional hierarchical structure.³³¹ If granted a group personality, they – the group acting akin to a natural person – could potentially act in a manner that is not representative of the majority members, due to their lack of structure. Similar to the organisational structure of

³²⁸ *ibid.*

³²⁹ *ibid.*

³³⁰ *Jones*, 'Human Rights, Group Rights, and Peoples' Rights' (n 325).

³³¹ *Coleman* (n 155).

Anonymous, previously highlighted to be potentially problematic in Chapter Six. Moreover, any legal action taken against the whole entity could present problems. Should another instance akin to Operation Payback³³² commence with reparations and criminal prosecutions being sought, a group personality would not allow for the determination of individual users who instigated events, as was possible in *Weatherhead*.³³³ Meaning that the group as a whole would be subjected to the consequences, illustrating that at a practical level accountability would be difficult and potentially futile as a whole group cannot be incarcerated or be issued cost orders. Therefore, accountability could be reduced in these circumstances due to the challenges and lengthy process that is likely to occur. This suggests that group personality and making groups akin to individuals is an ‘all or nothing’ affair, as to grant protection through the Salomon³³⁴ mechanisms and principles is to grant a personality to a group in its entirety across a whole spectrum of law, not just human rights.

To place this within context should Anonymous – who undertake illegal actions³³⁵ – be granted protection from prosecution in circumstances in which they are denying others their rights, they would be in the same circumstances as those who seek to disrupt their rights as a group.³³⁶ Illustrating the complex nature of making allowances for groups under existing legislative instruments. This complexity is furthered by scholars who suggest that by making groups akin to individuals in the context of human rights, there is potential for the rights of the latter to be detracted from or eroded in some way.³³⁷ They indicate that human rights should not have scope for expansion for groups or non-natural legal entities due the teleology behind the instruments. Highlighting that even if groups were granted rights that are akin to human rights, such as the right to freely associate and assemble, these would not be human rights as they are known and have developed. This arguably links to the “moral force”³³⁸ promoted by the United Nations Declaration discussed in Chapter Four, as the rights contained within this foundational

³³² ‘Anonymous Hackers “Cost PayPal £3.5m”’ (n 54); Laville (n 54).

³³³ *R v Weatherhead, Rhodes, Gibson, and Burchall* (n 277).

³³⁴ *Salomon v A Salomon & Co Ltd* (n 327).

³³⁵ National Crime Agency, ‘DDoS Attacks Are Illegal’ (2020)

<[³³⁶ *R \(Laporte\) v Chief Constable of Gloucestershire* \(n 129\); *Redfearn v Serco Ltd* \(n 170\).](https://www.nationalcrimeagency.gov.uk/?view=article&id=243:ddos-attacks-are-illegal&catid=2#:~:text=The%20Computer%20Misuse%20Act%201990,are%20criminal%20under%20UK%20law.> accessed 20 March 2020.</p></div><div data-bbox=)

³³⁷ Jack Donnelly, *Universal Human Rights in Theory and Practice* (2nd ed, Cornell University Press 2003);

Miodrag A Jovanović, *Collective Rights a Legal Theory* (Cambridge University Press 2012)

<<http://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&AN=416721>> accessed 23 June 2020; James Griffin, *On Human Rights* (Oxford Univ Press 2009).

³³⁸ Smith, *International Human Rights Law* (n 166). p. 39

instrument were conferred onto individuals as a means of ensuring that they as entities acted in ways that respected and protected other individuals, not groups. Laura Reidel³³⁹ presents that groups could, in theory, be afforded rights to protect that which is fundamental to them and their continued existence. However, within the context in which she writes, cultural rights, group rights, and group recognition are not credible ways forward. Meaning that her practical contributions focus on the ways in which individuals' rights can uphold the existence of groups and their theoretical collective rights, rather than contemplating how such could be used to protect against challenges. Yet, her recognition of groups being theoretical rights holders is significant as it suggests that for online activist groups, where the right to freedom of association and assembly is fundamental, there is a rationale for the group to have the right to uphold these.

In opposition to this, there are others who counter and suggest that human rights should be adaptable and should be able to accommodate any developments in modern life.³⁴⁰ Overall, they convey that experiences that are fundamental to human life, such as the ability to express oneself through collective or individual expression that assembly and association promotes, they indicate that this can only be enjoyed collectively and thus the perception and scope of rights should alter to reflect this. When placed within the contemporary context of a world that is facing near daily developments of technology and thus societal order³⁴¹, it can be suggested that to allow these groups their own identity under human rights law could be a promising way forward to ensure their fundamental protections. At a practical level, such expansion to instruments can be observed, indicating that there can be alterations to well-founded instruments and understanding It can be evidenced that The International Covenant of Civil and Political Rights³⁴² was implemented as a supplementary set of provisions to the United Nations Declaration in 1966 drafted to provide a “more detailed tabulation of rights and freedoms”³⁴³ to that which was provided by the former. Illustrating that there is scope for instruments to extend in certain circumstances. Returning to the constant development of

³³⁹ Laura Reidel, 'What Are Cultural Rights? Protecting Groups With Individual Rights' (2010) 9 *Journal of Human Rights* 65.

³⁴⁰ James Crawford, 'The Rights of People: Some Conclusions' in James Crawford (ed), *The Rights of Peoples* (1st edn, Clarendon Press 1988); Peter Jones, 'Groups and Human Rights' in Cindy Holder and David Reidy (eds), *Human Rights The Hard Questions* (Cambridge University Press 2013); Janna Thompson, 'Can Groups Have Human Rights?' [2015] *Ethical Perspectives* 291.

³⁴¹ Sherry Turkle, *Alone Together: Why We Expect More from Technology and Less from Each Other* (Paperback first published, Basic Books 2011).

³⁴² International Covenant on Civil and Political Rights 1966 (United Nations, Treaty Series, vol 999, p 171).

³⁴³ Smith, *International Human Rights Law* (n 166). p. 44

technological society³⁴⁴, it can be suggested that for online activist groups, the current climate is giving rise to these aforementioned circumstances.

This is reaffirmed by the Internet Engineering Task Force who in their most recent periodic draft report³⁴⁵ assessed matters from a pure technological, computer science, perspective. They suggested that in order for freedom of association and assembly to be upheld for all users online human rights alterations needed to be considered, noting that such should be done from a “legal lens”³⁴⁶ as means of protecting “collective expression”³⁴⁷. Indicating that due to their assessment of the technological architecture of the Internet and the consequential use of such by stakeholders, the solution to ensuring that the aforementioned right is enforced online correctly, it is for the law to develop as well. For online activist groups, this suggests that there is scope for them to be protected, perhaps on a spectrum to account for those groups who operate in jurisdictionally illegal ways, online in their entirety. Thus, securing an increased level of protection than what is offered currently to the individual members due to occurrences of detraction³⁴⁸, and arguable differing practical levels, as a result of differential applications by stakeholders.

³⁴⁴ Karatzogianni (n 4).

³⁴⁵ Couture and others (n 25).

³⁴⁶ *ibid.* p. 15

³⁴⁷ *ibid.* p. 16

³⁴⁸ European Union and Agency for Fundamental Rights (n 178).

Chapter Eight – Final Conclusions

Following the above discussions, reviews, and investigations of the thesis it is necessary to highlight the most important points that have been extracted. Within Chapter One of this thesis three main questions were posed. The first questioned whether there was an evidential basis for the expansion of human rights instruments. The next addressed if there should be increased protections granted to groups who engage in sometimes illegal activities. The third question assessed whether there could be any expansion to instruments currently in operation.

In relation to those questions there are three main conclusions reached. Firstly, it has been illustrated that online activism is no longer a practice reserved for the technologically advanced and capable, instead there is now a spectrum on which groups and users operate, each using differing levels of sophisticated means to bring about change in their areas. Two groups were selected as representations of two ends of this spectrum, and through the contextualisation of issues it has been shown that each have been impacted in some way, either altering their operations diminishing their associations or responding through increased activism. Secondly, there was discussion of the legality of the groups under investigation, with it being concluded that there are instances where the use of certain spaces online and tactics such as DDoS attacks mean that there will be a detraction from freedoms provided in accordance with Article 11(2). Thirdly, the final and most relevant conclusion to the hypothesis and research questions posed in Chapter One, is that there is an opportunity for human rights protections for association and assembly to be advanced to account for the digital space groups now operate in. With the utilisation of existing provisions in the jurisdiction presenting a potential tangible way forward in these circumstances.

Areas for further research

Based on research conducted over a one-year period it is acknowledged that this thesis presents a first foray into the area of freedom of association and assembly rights online. Starting to contribute to the wider discourse rather than revolutionising understanding, so there are some areas for future research that can be contemplated. These are as follows:

1. Specific analysis of how Article 11 of the European Convention could be altered to have respect for the digital spaces' groups operate within.
2. Comparative works in connection to the highlighted digital challenges presented and what these mean for wider freedoms such as freedom of expression.

3. Assessment of the impact of the upcoming legislative developments such as The Online Harms White Paper and non-legislative developments on the freedoms.
4. Empirical work that investigates the relationship between Article 11(2) detractions and the criminalisation of such tactics as DDoS attacks under s. 3 of the Computer Misuse Act 1990

Overall, this thesis set out to showcase that due to newly introduced and reintroduced challenges in the digital space there was scope for a reassessment of the freedoms of association and assembly within the specific context of online activist groups. It has shown that there is merit for such claims, and potential scope for better protections to be provided. Contributing to discourse by assessing such specifically within England and Wales and in light of significant revelations and literature in the area. Suggesting some ways forward and highlighting where further research could take place. Ultimately recognising that whilst these instruments are longstanding and have the best teleological intentions behind them, there is scope for improvement when such is faced with a fast-paced environment such as the Internet.

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