Fair Information Technologies.
The Corporate Responsibility of Online Social Networks as Public Regulators

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Abstract

From a business ethics perspective, this dissertation studies the role of companies in the information and communication technologies (ICT) sector as regulators with respect to access to knowledge, civic engagement online, and civil liberties on online platforms. To this end, it takes into account three cases: (1.) digital divides and the capabilities of corporate citizens to alleviate them; (2.) Twitter and the normative tension between its role as a platform for civic communication and as a commercial service; (3.) Facebook and its role as a privately owned networked virtual state. An analysis of these cases illustrates that private companies in the ICT sector today effectively have become regulators of public spaces online. This dissertation discusses the normative implications of this development with respect to current corporate citizenship and political CSR (corporate social responsibility) theories. These theories have been focusing on the emerging regulatory role of private enterprises in recent years. However, thus far they have not addressed corporate responsibility issues and corporate regulation in the digital environment. The contribution of this dissertation is that it closes that gap.

Keywords: business ethics, corporate responsibility, corporate citizenship, political CSR, digital divides, economic development, ICT for development, ICT4D, social networking sites, Web 2.0, Twitter, Facebook, user rights, civil liberties online

Zusammenfassung

Aus wirtschafts- und unternehmensethischer Perspektive untersucht die vorliegende Dissertation die regulative Rolle von Unternehmen aus dem Informations- und Kommunikationstechnologie-Sektor (IKT). Dabei werden insbesondere der Zugang zu Wissen, bürgerliches Engagement im Internet sowie digitale Bürgerrechte auf Online-Plattformen thematisiert. Zu diesem Zweck werden drei Fallstudien analysiert: (1.) Digital Divides und die Fähigkeiten von Corporate Citizens in der IKT-Branche, diese zu lindern; (2.) Twitter und das normative Spannungsverhältnis zwischen seiner Rolle als bürgerschaftliche Plattform und kommerzieller Service; (3.) Facebook und seine Rolle als privatwirtschaftlicher, vernetzter und virtueller Quasi-Staat. Die Analyse dieser drei Fälle zeigt, dass private Unternehmungen im IKT-Sektor heute de facto zu Regulierern digitaler öffentlicher Räume geworden sind. Die vorliegende Dissertation erörtert die normativen Implikationen, welche sich aus dieser Entwicklung ergeben, anhand aktueller Theorien aus der Unternehmensethik-Forschung (Corporate Citizenship und political Corporate Social Responsibility). Diese Theorien haben in jüngster Zeit die sich etablierende öffentliche Rolle privater Unternehmungen betont, ohne dabei jedoch unternehmensethische Fragen im digitalen Umfeld zu berücksichtigen. Die vorliegende Dissertation schliesst diese Forschungslücke.

Schlagworte: Wirtschaftsethik, Unternehmensethik, politische Unternehmensverantwortung, political CSR, Corporate Citizenship, digital divides, ökonomische Entwicklung, soziale Netzwerke, Web 2.0, Twitter, Facebook, digitale Bürgerrechte, Kontrolle digitaler Öffentlichkeit durch Privatunternehmen

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1 Introduction: In Search of Ethically Legitimate ICTs

1.1 Background & History of the Project

Pursuing a PhD is a humbling experience on many levels. Not only does one have to live up to the standards set by the PhD theses of one's advisors, one also needs to keep up with the sometimes rather incredible pace of one's research object. When I first started thinking about a concept for this dissertation back in early 2007, during the last months of my Master's degree, the information and communication technologies (ICT) world looked quite different from today's: Facebook was already relevant, but it was a far cry from being the behemoth it has become today. Twitter, on the other hand, had only just started its messaging service and was yet to become the tool of millions of users. At the time, Microsoft were perceived as the big corporate bad guys by tech geeks, whereas now Apple, Google, and Facebook share that role to a certain extent, at least in the eyes of the press. Moreover, back in the summer of 2007, Apple had only recently left the PowerPC camp in order to run its computers on Intel platforms, and the company had only just introduced its game-changing iPhone, going on to turn "information appliances" (Zittrain 2008) and its iTunes Store into a mainstream business in the following years. Furthermore, the net neutrality debate mostly was just a relatively academic affair back then. And of course, 2007 was supposed to finally be the year in which Linux was to conquer the desktop, just like every single year since the early 2000s had already been hailed as the year the open-source operating system would make its mainstream breakthrough on the PC platform.

Since then, however, desktop computers have become more and more irrelevant, giving way first to notebooks, then netbooks, and now smartphones and tablets—and quite ironically, Linux derivates enjoy a substantial market share on each of those devices, but are still by and large irrelevant in the PC market. The latest (and supposedly lasting) big ICT trend, though, is "the cloud:" Our data and applications will increasingly be stored and run on some remote server, and it does not really matter what kind of device or what kind of operating system we access that data with. Today, mainstream ICT users are online permanently using their mobile phones. Just five years ago, that would have been too costly, and the user experience on pre-touchscreen devices was not inviting uses such as extensive internet browsing. With the advent of powerful smart

phones, complex app ecosystems, and ubiquitous computing, the times certainly have been a-changing at a rapid pace.

Prior to all these changes, back in early 2007, Linux, or free/open-source software (FOSS) in general, was supposed to be the case I wanted to center the following research question around:

> From an ethical perspective, is there a case to be made for ICT companies to have a moral obligation to pursue "open", inclusive strategies in order to lessen digital divides? If so, why?

I had previously worked on digital divides in my Master's thesis, in which I found that further research needed to be done on the ethical implications of ICT companies' strategies and their influence on digital divides. In the naively overambitious fashion that PhD students often start off their projects with, I was in search of some grand ethical theory justifying universal openness of, and access to, modern information and communication technologies. At the very least, I wanted to establish some "objective" ethical principles, or perhaps a human rights approach, toward universal ICT access. Obviously, I was very naïve and optimistic back then.

Since I formulated that initial research interest, though, all the above-mentioned major game changers (and quite a few more) happened, turning my potential FOSS case into a relatively obscure and unimportant one. That is the risk you take when you are doing research in a very fast-paced field such as information technology: Your research object might move faster than you are, and more and more interesting research objects may come up, getting in the way of finishing the project in a timely manner.

There are at least two ways of looking at this: One can either become increasingly frustrated with the fast-paced nature of the subject matter, just as I did in the first three years of my project; or, one can actually start seeing interesting patterns evolve around issues that technically never were supposed to be part of the dissertation, but that do make sense in hindsight. Over the course of the last two years, I finally made the leap from what one could ironically call The Dark Side and embraced the many research opportunities arising from this situation.

This rather sudden, unexpected shift towards new-found optimism is the direct result of two remarkable academic events: the Oxford Internet Institute's Summer Doctoral Programme 2010 and my stay at Harvard's Berkman Center for Internet

and Society in 2010/11. These two places brimming with creative atmosphere and goodwill helped me find inspiration and the will to carry on with a project that I was often tempted to give up in frustration. I am therefore deeply grateful for the support and inspiration I could draw from both places. As a result of many talks, presentations, and discussions in Oxford and Cambridge, MA, I realized that the increasing scope and pace of my research object was in fact not a problem, but an opportunity.

Before I introduce the new and updated research interests that I developed in the past two years, I would like to (for transparency's sake) briefly describe the history of the individual parts that form this dissertation: Chapter 2 was developed using some ideas and core concepts laid out in my *Vorstudie*, and I submitted it as a scholarly article to *Ethics and Information Technology* in May 2010. After several rounds of double-blind reviews and revisions, it was published online on December 31, 2010. The print version followed a few months later and is cited in this dissertation as "Busch 2011." For this thesis, the paper has been updated and modified in order to strengthen its coherence with the other chapters. In doing so, I comply with article 42 (2) of the University of St. Gallen's current *Promotionsordnung (PromO 07)*, published on December 11, 2006, which states: "Die Publikation von Teilen der Dissertation vor der definitiven Einreichung ist gestattet." Chapter 3 was originally written in cooperation with my Canadian colleague Tamara Shepherd (who did 50 percent of the work on the original article), and I presented it in September 2011 at the Oxford Internet Institute's symposium, A Decade in Internet Time. It was submitted to *Convergence* in March 2012 and is currently under review. For the purpose of this thesis, I rewrote and updated a substantial part of the article, including all of Tamara's parts, in order to comply with the guidelines of the DOK's program committee. Sections of the original manuscript which I found to be essential, or which mainly represent Tamara's original ideas and opinions, have been cited as "Shepherd/Busch 2012" without explicitly stating page numbers because the paper, as an unpublished manuscript, does not actually feature proper pagination at this stage. Just like chapter 3, chapter 4 has also not yet been published. Therefore, after presenting it at the 2013 Society for Business Ethics annual meeting, I will submit different parts of it to several business ethics journals.

1.2 Research Questions & Brief Overview of the Research Issues

The above-mentioned decision to accept the changing nature of my research object led to major revisions of my research interest and design—most significantly, that is, to abandoning the focus on FOSS. Instead, I had to take into account the fact that in recent years, most of the ethically interesting and challenging questions in the ICT sector have been raised by the tremendous mainstream success of online social networks. Thus, while my original research interest in digital business ethics and a wide range of digital divides is still intact, the object of investigation has turned toward social networking sites.

The research questions this dissertation focuses on are threefold: Chapter 2 asks which kinds of normative frameworks one could consider the most adequate when it comes to evaluating corporate responsibility issues in the ICT industry today. It draws from Zittrain's (2008) concept of generativity, Ulrich's (2008) deliberative notion of corporate citizenship, and Sen's (1999) capability approach, and in line with Wettstein's (2009) argument on corporate responsibility and human rights, it argues that since ICT corporations are the potentially most capable actors when it comes to influencing digital divides, they should be considered to have a moral duty to alleviate said divides in order for citizens to be able to lead the self-determined digital lives they have reason to value.

Against this background, chapter 3 is a case study of the ICT company that perhaps most prominently focuses on framing its strategy as benevolent, empowering, and driven by the desire for social change: the online messaging service Twitter. The chapter raises the question whether Twitter's not-for-profit image is believable and concludes that there is an inherent normative tension between the microblogging site's benevolent Corporate Social Responsibility (CSR) rhetoric and its underlying business model. This conclusion draws from an analysis of Twitter's marketing statements and terms of service, which are contrasted with Ulrich's (2008) typology of corporate responsibility approaches.

While chapter 3 shows that Twitter has become a regulator of public discourse, this is even more drastically the case with the company analyzed in chapter 4: Facebook. A content analysis of a wide range of the social network's regulatory documents (such as its terms of service, privacy policy, advertising guidelines, and the like) shows that the company has assumed a role towards its users that is almost state-like. Thus, as several ICT scholars have argued recently, Facebook

has become similar to a “nation” (Baym 2011), a “state” (Nakamura 2011), or a “sovereign of cyberspace” (MacKinnon 2012). However, this empirical finding has not yet been connected to theories of corporate responsibility. Therefore, against the background of recent corporate citizenship and political CSR theories, this chapter argues that Facebook's state-like regulatory role brings with it a wide range of ethical challenges with respect to user privacy, user-generated content and intellectual property, civil liberties, and access to information. In doing so, chapter 4 bridges a gap between empirically driven interpretations of Facebook's state-like regulatory role, which in the academic literature have not yet been reflected upon from a business ethics perspective, and current business ethics theories, which in turn have not yet taken into account crucial changes currently taking place in the digital environment.

These three chapters are centered around two common themes: On the one hand, they are based on the empirical observation that many ICT companies today act as privately owned regulators of the digital public sphere (MacKinnon 2012). This is especially relevant with respect to online social networks, which one could therefore consider to be an interesting extreme case. On the other hand, they strongly emphasize the “quasi-governmental” (Ulrich 1977) role of privately owned companies and raise a wide range of normative questions, which this dissertation addresses utilizing current business ethics theories that focus on the political role of business, such as corporate citizenship and political CSR. I will introduce these theories “on demand,” so to speak, i.e. whenever they are needed as analytical and theoretical background in various chapters of this dissertation. While this might look redundant at first glance, it is in fact a conscious decision. Each chapter of this dissertation is supposed to be an independent whole, and as such, they each need specific theoretical background. Therefore, even though there is a certain amount of unavoidable theoretical overlap (rooted in the same academic discipline, after all), each chapter uses customized theoretical references that are specific to its content.

This perspective highlights conflicting normative ideals, which form the basis for a wide range of current debates on the future of the digital environment: On the one hand, ICT companies' commercial and proprietary imperatives call for an ever-expanding commodification and privatization of online sociability (Lessig 1999, 2004; Scholz 2008; Zittrain 2008; Wu 2010a: 186), whereas on the other hand, digital activists insist on emphasizing the value of civil liberties,

information freedom, citizens' sovereignty and autonomy, and the promises of advancing liberty and democracy through Web 2.0 technologies (MacKinnon 2012). This dissertation is an attempt to clarify and critically discuss some of these hotly debated issues from a business ethics perspective—in a manner that, in contrast to most political debates on technology and the internet, is fully transparent about the normative assumptions and implications involved.

1.3 Ethics in Digital Contexts: Internet Exceptionalism?

One fundamental question that needs to be addressed in the context of this work is whether the digital environment differs ontologically from the physical, offline space in such a way that it may require a new kind of ethics in order to capture its specific challenges. My current (and perhaps dissatisfying) answer to this question is both "yes" and "no" at the same time. I would like to stress that this is my *current* answer because it is not only me who is still relatively unsure about it, as there is a considerable body of academic literature and public discourse on technology and digital culture that discusses this exact question, not just with regard to ethics, but also to economics, culture, or the law. Thus far, the results of these debates are ambiguous at best.

Thus, on the one hand, my answer is "yes" because I am convinced that there are in fact some relatively new empirical trends that present us with specific challenges that only exist in the digital environment. On the other hand, my answer is "no" because I believe that the fundamental issues, questions, and research interests of business ethicists have not changed, and they need not necessarily change in order for us to be able to productively deal with said new challenges. In that sense, this section (1.3) will therefore elaborate a bit on the issues which led me to answer "yes," whereas the following section (1.4), among other things, covers some of the reasons that led me to answer "no."

At least since the mid-1990s, the new developments, possibilities, and challenges brought to the fore by digital technologies have been discussed under the umbrella term of "internet exceptionalism." A classic utopian example is Barlow's (1996) famous "Declaration of the independence of cyberspace," wherein he proclaimed:

> "Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the

> past to leave us alone. You are not welcome among us. You have no sovereignty where we gather."

Fifteen years later, this idea of the internet as a sovereign realm beyond the reach of the state has been thoroughly discredited, which is largely due to the fact that countries such as China have proven that the internet can be regulated and censored strictly, and in fact even be shut off deliberately (Wu 2010a: 180-182; MacKinnon 2012).

Describing developments taking place around the same time as Barlow's manifesto, but in the slightly less utopian and more mundane realm of law-making, Goldman (2010) cites a US judge who in 1996 described the internet as "a unique and wholly new medium of worldwide human communication." Based on this perceived uniqueness, Goldman describes three historic waves of internet exceptionalism among legal scholars and practitioners: In the mid-1990s, he claims, "internet utopianism" was dominant. Back then, several newly introduced laws and statutes regulated internet actors such as Internet Service Providers (ISPs) more favorably than incumbent media. From the late 1990s onward, however, "internet paranoia" spread as political regulators tended to treat internet issues more harshly due to some widely reported cases in which the internet had been used in order to perform morally questionable acts. Lastly, Goldman calls the phase we are currently in "exceptionalism proliferation" because internet use is so wide-spread today that each new technological innovation on the internet draws specific regulatory attention, resulting in highly targeted exceptionalist regulation of individual technologies. For example, social networking sites such as Facebook today are being regulated differently from other media, and even from other websites.

Obviously, this focus on the law is not the only possible perspective on internet exceptionalism. That is why Wu (2010a: 180; emphasis in the original) claims that

> "the Internet is both obviously exceptional and unexceptional at the same time. It depends on *what* you might think it is an exception to. It is clear that the Internet was a dramatic revolution and an exception to the ordinary ways of designing communications systems."

As alluded to by Wu, it is unclear what the consequences of this "dramatic revolution" should be, which is why a wide range of definitions and justifications

for internet exceptionalism can be found in debates on the ontology of the internet. Weinberger (2010), for example, offers a fairly poignant one:

> "1. As a medium, we use [the internet] for information, communication, and sociality. It's hard to find another medium that combines those three uses and is becoming dominant in all three. This matters because it means we go to the Net to ask a question and end up making friends. 2. The Internet scales from one to billions, group to any size group. It is different at every scale. 3. Telephones were invented for speaking, and cars were invented for driving, but the Internet was not invented for any single use. That is the source of its value, and certainly of its economic value. It's why we need to preserve Net neutrality. It's also why the Net does not fit into any frame perfectly."

These points may seem rather descriptive and fairly uncontroversial at first glance, but the wide range of critical comments on Weinberger's blog illustrates that the debate on internet exceptionalism is still an ongoing one.

Another source for justifications of internet exceptionalism can be found in some specific economic changes introduced by modern digital ICTs (Downes 2010). For example, Varian (2010: 239) points out that the internet has spawned a period of "combinatorial innovation" because it has enabled a wide range of changes in how business is being done globally today. Part of what makes the internet exceptional from this perspective is the fact that it is both made of, and transports, digital building blocks. Digital code, Varian explains, does not get consumed when it is used, and it is not bothered by traditional business issues such as production times, shipping delays, manufacturing, or inventory management. The internet, Varian (2010: 240 f.) argues, has turned almost all business activities into globalized, computer-mediated transactions. According to Varian, the internet thus enables new forms of contract, new ways of data extraction and analysis, controlled experimentation such as user testing, and lastly, new modes of personalization and customization.

Moreover, digital technologies emphasize certain economic properties, such as network effects. That is, a software or website becomes more useful to each individual user the bigger or more widespread its user base is. This creates an incentive that promotes the development of monopolies. Therefore, digital environments often operate in a tension between open and proprietary technologies. This is one of the reasons why open technical standards for things such as file formats or data protocols are so important in the digital environment, as they are supposed to level the playing field and ensure interoperability between proprietary and non-proprietary technologies (Palfrey/Gasser 2012).

Network effects also play a large role when it comes to social networking sites, which arguably are unique to the digital environment in the sense that there is no real-world equivalent that functions the exact same way. Furthermore, as I will argue in chapter 4, the companies owning these networks play an almost state-like role today, which makes them a unique type of actor for which there also is no equivalent in the non-digital world. From this perspective, the phenomenon of online social networks seems to support a certain notion of internet exceptionalism, and I will return to this issue in the conclusions chapter.

With respect to content creation and economic value, Benkler (2006) has pointed out that the internet enables "commons-based peer production." He argues that the cost of creating and sharing digital goods has become so low today that virtually anyone can become a producer in this decentralized environment. This gives producers the opportunity to create a digital "commons"—that is, a pool of shared digital resources that groups or individuals can use for projects driven by "radically distributed collaborative production" (Benkler 2010: 260). Open licenses such as Creative Commons ensure that code and other content can be used, reused, and remixed in order to build more projects that share the same intent and spirit. The GNU/Linux computer operating system and the online encyclopedia Wikipedia are prime examples for this kind of cooperation.

In a similar manner, Zittrain (2008) has argued that the internet may be unique due to its "generative" nature—that is, the fact that its deliberately open end-to-end architecture welcomes third-party innovation, or "decentralized innovation" (Wu 2010a: 185). However, Zittrain also identifies certain threats to the internet's generativity, such as the success of proprietary "tethered appliances" and the risk of abandoning net neutrality. This is why Wu (2010a: 182) claims that the important question with respect to internet exceptionalism is whether "the Internet is different in a *lasting* way." Thus, Wu (2010a: 187) states:

> "[W]hile I do think the Internet is exceptional …, I also think it will come to resemble more 'normal' information networks—indeed, it has already begun to do so in many ways. Exceptionalism, in short, cannot be assumed, but must be defended."

This last point is highly significant, as Wu's last sentence highlights the impact of social norms, moral values, and political conflicts on the internet exceptionalism debate. This allows us to connect the debate on internet exceptionalism to the field of ethics, which will be discussed in the following section.

1.4 Terminology, Methodology & the Role of the Ethicist

As I stated in the previous section, my answer to the question whether internet exceptionalism requires us to come up with a new kind of ethics is in part "yes" and in part "no". The section above described several empirical and theoretical arguments which suggest that the notion of internet exceptionalism may have some merit. However, I believe Wu (2010a) makes the most important point in this debate by illustrating that the internet's potentially exceptional "nature" is in fact not natural at all, i.e. not simply an empirical fact. Instead of following a positivist perspective on what the internet may or may not be, Wu points out that the important question is what the internet *should* be. Indeed, from an ethical perspective, the central question with respect to internet exceptionalism is what the internet's many stakeholders want it to be exceptional at, and according to whose normative ideals and which regulative ideas this should be determined.

This, in fact, is the reason why part of my answer to the question of internet exceptionalism has to be "no": Despite the above-mentioned plausible arguments that the internet might be an exceptional space in which different rules apply, the fundamental normative issues in this new space largely remain the same as ever. The empirical context might be new and thus different from traditional offline contexts, yet the central ethical questions still essentially center around the same age-old tensions between individual liberty and collectively binding decision-making, between what is good and what is just, between teleological and deontological justifications for what should be done, etc. Instead of hiding these normative questions behind a positivist facade of internet exceptionalism as "fact," I believe it is more productive to recognize the normative issues raised by internet exceptionalism as such and address them properly in ethical terms.

In order to be able to do that, we should first of all be clear about the ethical terminology used in this dissertation. This is especially important because of some cultural and linguistic differences between both the German-speaking and the anglophone world, and between a layperson's and an ethicist's use of certain terms. For example, in everyday English we often claim that something is "ethical" when we mean to say that it is legitimate, justified, or morally right. In this dissertation, however, the adjective "ethical" is used solely in the sense of "with respect to the academic discipline of ethics," or "with respect to ethical theory." This is significant because ethics is the academic discipline that studies moral phenomena, and the term "ethical" should therefore be reserved for the

level of theory, i.e. the critical reflection of the empirical phenomenon, and not the level of the empirical phenomenon itself (i.e. morals).

For instance, some people will state that they consider same-sex marriage to be "unethical." Ethicists, however, would describe these people as stating that they feel same-sex marriage is "immoral." This term describes the level of the phenomenon, which we can study empirically. Thus, according to the empirically valid, de-facto norms of this specific group of people, same-sex marriage is "morally wrong" or "immoral." From an ethical perspective, however, judgement on the issue of same-sex marriage most certainly is not quite as clear because ethics as an academic discipline reflects upon the norms we can find empirically, and there are a vast amount of ethical theories that will evaluate the issue of same-sex marriage from a wide range of perspectives and with a wide range of possible results. Therefore, whenever I use the term "morally questionable," it means that some empirically observable person or group has expressed that some issue might be questionable according to their moral standards. If I criticize an issue on the basis of some ethical theory, on the other hand, I will use terms such as "from an ethical perspective" or "ethically questionable."

This raises the issue of having to define some fundamental ethical terms. For the sake of brevity, I will make use of Ulrich's (2008: 31) concise, yet comprehensive definitions throughout this section.

First of all, the term *morality* refers to the assumption that, as part of the *conditio humana*, every healthy human adult has the ability to experience moral feelings and ideas. Morality therefore describes a

> "Fundamental *disposition* of man in the sense of his personal claim to moral self-determination (autonomy); his moral sensitivity (vulnerability) and his moral capacity for judgement (conscience); [this disposition is] independent of the plurality of the specific historical and cultural forms under which this basic human state has been cultivated." (Ulrich 2008: 31; italics in the original.)

As stated above, *morals* then refers to the empirically valid "established conventions" of any given social group. The term thus describes the "socially valid moral rights, duties and behavioral norms deriving from a culture-specific tradition, which determine real-life practice independently of whether the members of this tradition are aware of it or not." For example, business consultants, open-source activists, or CEOs in the finance sector may share a certain set of morals, i.e. standards of mutually expected behavior. In everyday

English, however, we would use the terms “moral values” or “ethic” (as in “the hacker ethic”) for this phenomenon, but that would be imprecise because it leads to confusion with the next term: ethos.

The term *ethos* describes an individual's personal conviction, his or her “self-conception in regard to identity and legitimacy,” i.e. who a person aspires to be. Ulrich defines ethos as follows:

> “The subjective moral *consciousness* through which people define their personal self-understanding and the conduct of their lives, and justify the moral principles on which their lives are based, independently of whether they have ethically good reasons or are the victims of ideological self-deception.”

Lastly, Ulrich defines the term *ethics* as

> “*Philosophical reflection* which (as modern rational ethics) attempts to found a universally valid humanistic moral principle by means of practical reason in the light of which the normative validity of moral claims can be critically considered, as well as the further-reaching universal conditions and forms of the good life, just coexistence and responsible action, as independently as possible of moral traditions but in critical dialogue with them.”

Ethics as an academic discipline therefore tries to evaluate normative claims from a transparent and unbiased perspective, i.e. without making unreflected value judgements itself. It is important to point out that while modern ethics tries to illuminate and critically evaluate normative claims made in moral debates, it does not offer readymade solutions to such debates. The modern ethicist's role lies in helping people sharpen their own moral judgement, not in making moral judgements on their behalf. Ethics essentially gives us a set of lenses through which we can view moral debates in an attempt to better understand the arguments being made, but it cannot authoritatively prescribe the decisions that should be made by the actors affected by the outcomes of a debate.

This is significant because the role of ethicists still seems to be widely misunderstood, even by many academics. For example, at a 2011 workshop on business ethics at the University of St. Gallen, a colleague from the philosophy department bluntly stated, without even the slightest hint of irony: “I thought business ethicists were the guys who tell companies what to do.” This somewhat authoritarian misunderstanding may have a lot to do with the fact that ethicists are often requested to be expert witnesses on a wide variety of normative issues in today's highly complex world. Politicians, journalists, and companies constantly need to deal with a wide range complex normative issues, and they

expect “experts” to have answers on these issues. The point of modern ethics, however, is not to make normative decisions on what needs to be done; instead, the point lies in helping people make their own decisions. In German, this can easily be described by pointing out that modern ethicists are in the business of *Werterhellung* (i.e. the critical reflection of moral statements and values), not *Wertentscheidung* (i.e. making decisions based on moral values). Unfortunately, the English language lacks poignant terms that could easily transport this notion, which is why I feel the need to point out some cultural and linguistic differences at the beginning of this thesis. Summing up the role of the modern ethicist, a more adequate job description would be: Ethicists are *not* “the guys who tell companies what do to.” Instead, they are the guys telling companies *how to find out for themselves* what the right thing to do might be.

With respect to the sometimes rather technical terminology of online social networks as described in chapters 3 and 4, I would like to introduce the concept o f “social network sites” (SNSs) at this point. In their highly comprehensive definition, boyd and Ellison (2007) describe SNSs as

> “web-based services that allow individuals to (1) construct a public or semi-public profile within a bounded system, (2) articulate a list of other users with whom they share a connection, and (3) view and traverse their list of connections and those made by others within the system. The nature and nomenclature of these connections may vary from site to site. … What makes social network sites unique is not that they allow individuals to meet strangers, but rather that they enable users to articulate and make visible their social networks. … After joining a social network site, users are prompted to identify others in the system with whom they have a relationship. The label for these relationships differs depending on the site—popular terms include “Friends,” “Contacts,” and “Fans.” Most SNSs require bi-directional confirmation for Friendship, but some do not. … The term “Friends” can be misleading, because the connection does not necessarily mean friendship in the everyday vernacular sense, and the reasons people connect are varied … The public display of connections is a crucial component of SNSs.”

This dissertation follows the content of boyd and Ellison's definition, but most of the time it uses the term “online social network” instead of “social network site.” While both terms can be used interchangeably, the term “online social network” emphasizes the fact that, in contrast to the prevalent debates on offline issues in business ethics, this thesis discusses issues taking place in the *online* environment. (One should note, though, that dividing the world artificially into separate online and offline parts today has become increasingly harder as well as in some ways more inadequate in a certain sense. See chapter 3.8; Jurgenson 2012.) The term “network” in “online social network” should be understood just

like “network site” in the sense that it denotes the website as a whole, and not an individual user's network of friends on any given online platform. The term “Web 2.0 platform” is also used by and large synonymously with “online social network,” with “Web 2.0” emphasizing interactivity between users and the site (user-generated content), and the term “platform” broadly describing the underlying marketing pitch (Gillespie 2010), business model, technology, and user interface upon which online social networking takes place.

As for the terms “corporate regulation,” “private regulation,” or “private companies as public regulators,” it is worth pointing out that I do not use the term “regulation” in its everyday meaning, i.e. as public policy or regulation by political institutions within nation-states or at the international level. Instead, the use of the term in this dissertation focuses on the many ways in which a privately owned company, such as Twitter or Facebook, determines what its stakeholders are allowed to do on its digital territory, and what it considers to be unacceptable or morally questionable behavior. This kind of regulation takes place on two levels: On the one hand, corporate business models have a regulatory effect on stakeholders and society as a whole; on the other hand, companies also engage in collective self-regulation at the industry level and in political processes which result in shared standards of behavior. At the first level, an individual company in digital environments typically uses means of regulation which include terms of service agreements, licensing terms, privacy policies, and the like. At the collective level, ICT companies establish and negotiate shared practices which shape their industry as a whole, such as shared business mechanics, technologies, user interfaces, or common lobbying practices. This use of the term “regulation” with respect to private entities builds upon its use in current debates on political CSR and corporate citizenship, both of which will be explained in greater detail in chapters 3 and 4.

With respect to the use of quotations throughout this dissertation, it is important to point out that I use full references including page numbers in all cases where I quote someone directly, or where a reference refers to a specific idea, notion, or concept that can be pointed to directly using a concrete page number. However, in cases where a reference is made to an author's core concept, main idea, or central thesis as put forth by him or her in a book or article, I have found it inadequate, if not downright misleading at times, to include a page number. In these cases, references will only be attributed by “author (year)”.

In terms of methodology, business ethics research can be conducted using both normative and empirical approaches. However, in order to stay in line with the above-mentioned terminology, "empirical ethics research" should rather be called "moral sociology" because it studies the de-facto ethos and moral values of groups and individuals, and not normative validity claims in the realm of theory. Ethics as an academic discipline is centered around fundamentally normative research interests (Smith 2009), such as what constitutes an individual's "good life," and according to which normative standards individuals should live together as a society. The research objects of business ethics, then, are the normative presumptions and validity claims, regulative ideas, and moral values of all actors that are relevant to business conduct in any given empirical setting. Accordingly, as Green and Donovan (2010: 29) state,

> "the centrality of practical and normative concerns is evidenced by the fact that much empirical research in the field has been stimulated by the effort to defend normative positions or answer normative questions."

This focus on normative questions is not only the core business of business ethics, so to speak, as part of the broader division of labor among academic disciplines. On the level of practical research design, it also prevents business ethicists from blindly running into the "empiricist dilemma" (Gerring/Yesnowitz 2006: 124): If it were not for normative concerns and research questions, we would not know which empirical cases to study because empirical research itself does not provide us with criteria that allow us to evaluate what kind of questions might be interesting and relevant. However, as Trevino and Weaver (1994: 114) rightly point out, answering normative questions "involves not only prescription, but also description and analysis."

While I therefore do not necessarily agree with Swanson's (1999: 506) overly generalized criticism of the discipline—she diagnosed a "lack of integration of normative and descriptive approaches to business and society"—, one must admit that business ethicists tend to sometimes focus on only one side of the spectrum. Hence, I believe Weaver's and Trevino's (1994) approach to be very helpful. They describe three possible relationships between normative and empirical work in business ethics, namely the parallel, symbiotic, and integrative approaches. In my work, I follow the integrative approach. Thus, it is my conviction that business ethics research on the information and communication technologies (ICT) sector needs to give an empirically well-grounded account of the motives, values, and

normative validity claims of actors in the ICT industries. This is why I study empirical material such as Twitter's self-proclaimed ethos and the normative values of its business model (chapter 3), or the rules and regulations of the social networking site Facebook (chapter 4). However, these empirical accounts need to contribute to the broader goal of business ethics research, which is "not just to understand the ethics *[technically, ethos and morals]* of business people and business organizations but to improve them." (Green/Donovan 2010: 22.)

As Alvesson and Sandberg (2011) point out, this often requires "problematization" in the sense that one needs to question certain basic normative assumptions of both prevalent theories and actors in the field. For example, when we study the individually rational normative claims of business actors, such as online social networks, we need to check whether the results of their actions are consistent with their claims, or whether their actions result in unintended negative consequences for their stakeholders, the institutional eco-system they operate in, as well as the national and international political frameworks affected by their strategies. This has become a pressing issue today because corporations

> "are increasingly part of the authoritative allocation of values and resources. For example, if we look to one aspect of this – the design and enforcement of rules that enable societies to achieve certain preferred outcomes – corporations are political actors when they are involved in the design and enforcement of these rules, or when they impact in some way upon the values that determine what the preferred outcomes of the rules might be." (Crane/Matten/Moon 2008: 1 f.)

Because of this political role of modern business, I agree with Dubbink and van Liedekerke's (2009: 117) statement claiming that "[i]n terms of methodology, … any conceptual discussion must embed CSR in political theory." To that end, the business ethics theories that I use in this dissertation (such as Sen 1999; Matten/Crane 2005; Scherer/Palazzo 2007; Ulrich 2008; Wettstein 2009) all acknowledge the fact that, on the one hand, corporations today have become political actors that are embedded in society, whereas, on the other hand, they are shaping and transforming society according to their own needs and standards.

1.5 Summary: In Search of Fair ICT Strategies

Summing up the previous sections, this dissertation sets out to critically discuss the regulatory role of privately owned enterprises in the information and

communication technologies (ICT) sector. It does so by first of all establishing a principle- and integrity-based perspective on corporate responsibility, which rests largely on integrative business ethics, corporate citizenship, and a capability approach to ICT (chapter 2). This perspective sheds light on the influence that strategies of privately owned corporations in the ICT sector have on public issues such as digital divides and the regulation of intellectual property. Furthermore, it suggests a frame of reference that allows us to evaluate corporate ICT strategies with respect to access to knowledge. The following case study focuses on the online messaging service Twitter (chapter 3) because the company is very vocal about its benevolently framed mission of using communication in order to make the world a better place. An analysis of its corporate mission and ethos as well as its rules and regulations reveals an inherent tension between its benevolent mission and the commercial imperatives of its business model. This aspect also plays a large role in chapter 4, which frames the social networking site Facebook as a political actor and regulator of both its stakeholders and online territory to such an extent that it could be called a "privately owned, networked virtual state." Lastly, I will draw some conclusions (chapter 5) on what these developments in the online environment might mean for the political role of corporations in general, as currently discussed in business ethics, and I will offer some perspectives on further research that needs to be conducted in order to establish a sub-discipline I call *digital business ethics*—a term which aptly describes both my geeky little niche in the vast field of business ethics and the contribution of this dissertation.

2 Capabilities in, Capabilities out: Divides & Fair ICTs[1]

2.1 Abstract

This section discusses strategies of corporations in the information and communication technologies (ICT) sector and their role in the conflict over access to knowledge in the digital environment. Its main hypothesis is that ICT corporations are very capable actors when it comes to bridging digital divides in both developed and developing countries—in fact, they may even be the most influential and thus capable actors when it comes to alleviating digital divides. Therefore, it is argued that ICT corporations could use their capabilities to help citizens gain sustainable access to information in order to enable them to lead self-sufficient lives. In a nutshell, capabilities are presented as both the potential input as well as the output of corporate strategy-making focusing on fair ICT: It is the capabilities of ICT corporations that could provide the means for building capabilities that allow citizens to be empowered in order to live the digital lives they have reason to value.

Corporate citizenship is put forth as the theoretical concept bridging corporate strategies and access to knowledge: If ICT corporations act in accordance with their proclaimed self-understanding of being "good corporate citizens," they could be crucial partners in lessening digital divides and helping citizens gain access to knowledge. From the perspective of integrative economic ethics (Ulrich 2008), it is argued that ICT corporations have good reason to actively empower citizens in both developed and developing countries by pursuing "inclusive" strategies in many fields, such as open-source software development. That way, ICT corporations could enable, support, and provide citizens with capabilities enabling them to help themselves.

In order to make inclusive business models work, the rules and regulations ICT companies find themselves in today must enable them to act responsibly

[1] This chapter was developed using some ideas and core concepts originally laid out in my *Vorstudie*, and I submitted it as a scholarly article to *Ethics and Information Technology* in May 2010. After several rounds of double-blind reviews and revisions, it was published online on December 31, 2010. The print version followed a few months later and is cited in this dissertation as "Busch 2011." For this thesis, the paper has been updated and modified in order to both reflect recent developments and strengthen its coherence with the other chapters. In doing so, I comply with article 42 (2) of the University of St. Gallen's current *Promotionsordnung (PromO 07)*, published on December 11, 2006, which states: "Die Publikation von Teilen der Dissertation vor der definitiven Einreichung ist gestattet."

without getting penalized by competitors who ruthlessly pursue proprietary, non-generative strategies. This section explores several cases from the ICT field to illustrate the interplay between a responsible business model and the rules and regulations of the industry. From a capabilities perspective, the most desirable mix of corporate strategies and industry regulation is one that results in the highest level of generativity (Zittrain 2008) and sustainable access to information. Thus, ICTs ideally should not be closed systems driven only by the company behind them. Instead, they need to be open for the highest possible level of third-party innovation in order to build a sustainable digital commons (Benkler 2006, 2011).

2.2 Introduction: Ethically Legitimate ICT Strategies

2.2.1 Current Debates: Digital Sustainability & Corporate Citizenship

One caveat needs to be mentioned right at the beginning of this section: The term "ICT companies" represents an enormously diverse group of actors. This diversity makes it difficult to both analyze and criticize ICT companies in a generalized fashion. However, this is a dilemma that ethicists often find themselves in: Their analysis gets criticized for being either overly unspecific or too specific, respectively, depending on the context and perspective of the critic. While this criticism is a valid concern, it is also quite unavoidable. If ethicists wish to make a point that matters to more than one specific actor, they will need to generalize their findings to a certain extent—which in turn makes them vulnerable to criticism of the former variety. Therefore, I present an industry-specific case in this chapter, which—despite the fact that it is limited to the information and communication technologies (ICT) sector—probably still will not feel sufficiently specific or granular to satisfy any and all criticism of this approach. Unfortunately, however, I do not see any way around this problem. From my perspective, the most important factor in addressing this issue is not to pretend to be able to solve it, but to be fully transparent about the fact that it will continue to be a persistent challenge.

The hypothesis thus presented here in a rather generalized manner is that "open" modes of production of digital goods, such as open-source software or open access publishing, could be considered a more ethically legitimate way of producing digital goods and services than proprietary approaches because they

offer the potential to support the building of capabilities and open resources that can help bridge digital divides in both developed and developing countries. From an ethical perspective, the strategies of privately owned companies in the transnational ICT sector are not merely private. Instead, they have very strong public repercussions with regard to access, fairness, and freedom. As Benkler (2006: 7) points out: "How we make information, how we get it, how we speak to others, and how others speak to us are core components of the shape of freedom in any society."

Hence, I intend to focus on a very specific role of corporate ICT strategies, namely their relation to digital sustainability from an ethical point of view. The idea of digital sustainability follows concepts such as "informational sustainability" (Grassmuck 2004; Busch 2008), the idea of an "informational" or "knowledge ecology" (Kuhlen 2004), and "free culture" (Lessig 2004). The common argument of these approaches is that modern democratic societies need to institutionalize ways to sustainably grant each and every citizen access to knowledge, information, and communication. This perspective is essentially centered on inter- and intra-generational justice, thus making it an ethical one, for it involves many conflicting normative claims and concerns among ICT stakeholders—including, but not limited to, states, civil society, and corporations, which quite possibly are the most powerful actors in this field (De George 2003).

This is where the debate on corporate citizenship comes into play. Its key question is: What is business's role in society supposed to be? Under the labels of corporate social responsibility (CSR) and corporate citizenship (CC), this question has been widely addressed in recent years by academics, political institutions such as the United Nations and its Global Compact (UNGC), the European Union (EU), business leaders, and a wide range of non-governmental organizations (NGOs). Because of the public consequences that corporate ICT strategies have, I intend to follow this debate on the political role of business (Ulrich 1977, 2008; Crane/Matten 2003, 2004; Matten/Crane 2005; Scherer/Palazzo 2007, 2011; Wettstein 2009), and I will focus on the rights and responsibilities of ICT companies to foster digital sustainability.

2.2.2 False Dichotomies

ICTs have always sparked moral controversies. This can be easily illustrated by statements of two of the most influential ICT "evangelists" of the past 35 years: Bill Gates, the founder of Microsoft, and Richard Stallman, the founder of the GNU project and the Free Software Foundation. Their statements present a normative dichotomy (that is, justifications for proprietary and free software, respectively) that today may seem a little dated, but that is still relevant to the discussion on what kind of regulative idea the digital environment should be designed after. For the past few years, however, we have been witnessing a trend towards overcoming this ideological divide between proprietary and free software, namely in the form of open-source software, open access publishing, interoperability (Palfrey/Gasser 2012), etc. This ongoing trend may offer a huge chance to overcome not only the ideological divides of the past, but also many digital divides that still pose a threat to the normative ideal of the knowledge society today.

Back in 1976, when Bill Gates had just begun selling software and was yet to become a business magnate and the wealthiest man on the planet, he published an "Open letter to hobbyists" (Gates 1976), wherein he publicly complained about programmers ("hobbyists") "stealing" software and redistributing it for free, which in those days used to be a standard practice:

> "As the majority of hobbyists must be aware, most of you steal your software. Hardware must be paid for, but software is something to share. Who cares if the people who worked on it get paid? … One thing you do do *[sic!]* is prevent good software from being written. Who can afford to do professional work for nothing? What hobbyist can put 3-man years *[sic!]* into programming, finding all bugs, documenting his product and distribute for free?"

Quite obviously, Gates uses moral arguments here: He deems the behavior of these "hobbyists" unfair since it allegedly hurts the business of hard-working entrepreneurs such as himself while at the same time reducing the overall quality of software. Stallman (1999), on the other hand, presents a very different kind of normative approach when he claims the following:

> "The fundamental act of friendship among beings who can think is to teach each other, to share knowledge. Sharing software is a special case of that, for those of us who use computers. Each act of sharing a copy of a program is not only a useful act, but it helps to reinforce the bonds of good will that are the basis of society and distinguish society from a jungle. This good will, the willingness to help out your neighbor whenever it's not too hard, is what makes society function and what makes

> it a decent place to live in. Any kind of policy or any legal system that condemns or prohibits this kind of cooperation is polluting society's most important resource. It is not a material resource, but it is an extremely important resource."

Clearly, these two accomplished software evangelists differ greatly in their understanding of sharing, professionalism, and the social purpose of software in general. A similar (but not exactly the same) dividing line of argument can be found looking at what Patry (2009) rather drastically calls the "copyright wars," especially the debates on file sharing and intellectual property rights: On the one hand, there is the argument brought forth by the so-called "content industry," a term which mainly describes Hollywood and the U.S. recording industry. According to their logic, books, music, videos, art, software, etc. are commercial goods or products that need to be protected by strong property rights regimes in order to maximize the economic utility of society as a whole. Strong protection of intellectual property (IP), they argue, guarantees innovation and efficiency in the long run. Violations of IP rights therefore need to be criminalized. Benkler (2006: 25) critically describes this development as follows:

> "At the logical layer, we are seeing a concerted effort, again headed primarily by Hollywood and the recording industry, to shape the software and standards to make sure that digitally encoded cultural products can continue to be sold as packaged goods. The Digital Millennium Copyright Act and the assault on peer-to-peer technologies are the most obvious in this regard."

At the other end of the spectrum, there are file sharing websites like The Pirate Bay, which has been sued in Sweden in 2010 and has since been in the process of being sold and restarted as a legal commercial platform. The Pirate Bay represents the position that more or less every digital good should be available online for free. In court, the Pirate Bay founders claimed that closing down their site would effectively mean an "attack on the Internet" as a whole (Ars Technica 2009a). While the Pirate Bay operators actually seemed to be proud of the fact that traditional legislation had not yet found a way to define and cope with the problem of IP infringement by torrent networks, the music and film industry have been lobbying for harsh regulation, claiming to lose billions of dollars each year due to copyright infringement. As a result of massive lobbying by the content industry, national and international legislation has been enforcing copyright protection for the last decade or so, as illustrated by the Digital Millennium Copyright Act (DMCA) in the United States or, as a more recent example at the international level, by the Anti-Counterfeiting Trade Agreement (ACTA).

Despite their obvious antagonism, both the proprietary and the Pirate Bay lines of argument are, in essence, libertarian. This means that they understand freedom essentially only as arbitrary freedom—that is, being able to do what one chooses without any restrictions whatsoever. This contradicts the modern understanding of freedom in the sense of the liberal principle, as put forth by John Stuart Mill:

> "The moral equality of all human beings implies in its essence their equal freedom and 'inviolability'. Properly understood, freedom can thus only be justified as general freedom, i.e. as the greatest possible equal freedom of all persons [e.g., the liberal principle]—anything else would be arbitrary freedom which would mean by 'freedom' merely the right of the stronger to an undisturbed and unlimited assertion of their own private interests without consideration of the equally legitimate claims to freedom of others." (Ulrich 2008: 228.)

Following the line of argument that the liberal principle implies, one could argue that the conflicts over the future architecture of the digital environment cannot, and in fact should not, be "solved" in a libertarian fashion, for this would imply a "solution" based solely on power, and not on any kind of attempt to gain legitimacy. What therefore needs to be found is a fair compromise—a third way, so to speak—between the "proprietary" and "free" alternative courses of action. Thus, what modern liberal societies should be in search of is a fair and ethically legitimate balance between the many conflicting interests of all parties and stakeholders involved in shaping the future of the digital environment. This challenge is a global one, a fact which perhaps can be illustrated most drastically by the debate on digital divides.

2.2.3 Digital Divides

According to Heeks (2008), digital divides have been discussed for decades (see also Norris 2001; Murthy 2003; Okpaku 2003; Read/Soopramanien 2003; Chinn/Fairlie 2004; Cohen 2004; Kagami 2004; Dasgupta et al. 2005; Mariscal 2005; among others). In recent years, the digital divide and the so-called "right to communicate" (r2c) have been discussed mainly against the backdrop of the World Summit on the Information Society (WSIS) in Geneva 2003 and Tunis 2005 (cf., among many others, Compaine 2001; Kleinwächter 2004; Kuhlen 2004: 136-149, 211-262; Nuscheler 2005: 58-62; Pyati 2005; UN General Assembly 2006; Busch 2007: 25-31).

Most of the time, we come across digital divides in the form of statistics. For example, the International Telecommunication Union (ITU), a United Nations

body located in Geneva, publishes the so-called ICT Development Index (IDI) on a regular basis. Grouped as "ICT access, use, and skills," its indicators are relatively diverse, including items such as "proportion of households with a computer" (access dimension), "Internet users per 100 inhabitants" (use dimension), and "adult literacy rate" (skills dimension). Based on these indicators, the IDI provides a ranking of nations' ICT development status. Perhaps not surprisingly, Northern European and Northern American countries rank highest in the IDI, while countries such as Afghanistan and the poorest African nations are considered to be the least developed ones (cf. ITU 2009: 22; see also the other statistics provided by the ITU, UNCTAD 2003 and 2004, as well as Sciadas 2005).

Moreover, digital divides can not only be found between nations, but also within nations. Statistics indicate that wealthy people generally have better access to ICT than poor people; men on average have better access than women; younger people have better access than older ones; and finally, access is better in urban than in rural areas (Nuscheler 2005: 61). This applies to both developed and developing countries. With respect to comparative empirical data on one specific demographic, namely young people in the US, Hargittai and Walejko (2008) found a "participation divide," indicating that online creativity is related to a person's socioeconomic status.

While statistics are useful tools for understanding the quantitative aspects of digital divides, it is the qualitative aspects that vividly illustrate the consequences of digital exclusion for developing countries (Kuhlen 2004; 141-143). These consequences reach far beyond mere access to telephones, computers, or the Internet. For example, better access to information on up-to-date market prices helps Indian farmers sell their produce for better and more transparent prices while at the same time avoiding costly intermediary trade and even fraud (Steinberger 2006; on ICT and agricultural development, see also Kanungo 2004; Kumar 2004; Badshah et al. 2005; Lio/Liu 2006). Hence, from the perspective of sustainable development, bridging digital divides is not just about giving people access—it is more about what access to ICTs can actually accomplish with respect to improving people's lives by providing them with real choice to live the lives they have reason to value.

Hence, access is merely a means to an end, which is why it makes little sense to just "charitably" give away technology to developing countries (Ghosh 2006;

Schwartz 2008). Therefore, "charitable" approaches to bridging digital divides cannot be considered to be sustainable (Kuhlen 2004: 139). Instead, the "information poor" need to be able to develop capabilities (Sen 1999) enabling them to help themselves and choose their own path of socio-economic development (Ulrich 2004). And today, this is not just a matter of hardware, but increasingly a matter of the rules and regulations with regard to software, patents, and cultural content, which in turn are increasingly being made by multinational ICT corporations and the content industry (Lessig 1999, 2004, 2006; Rifkin 2000; Benkler 2001, 2002, 2003, 2004b, 2006; Zittrain 2008). This is one of the reasons why the so-called "100-Dollar laptop" features open-source software and learning tools (cf. One Laptop Per Child 2010).

This raises the question of corporate responsibility with respect to the ICT and content industries. Empirically, we can observe that many transnational ICT companies still often seem to be somewhat stuck in the classic "two worlds" theory of economic interests versus ethical claims: While all big ICT companies, just like their counterparts in the pharmaceutical industry, today claim to be "good corporate citizens," often having their own foundation aimed at bridging digital divides (for example, see Sun Foundation 2010; Microsoft 2010), they still often cling to classic, proprietary business models which rely on exclusive licensing, proprietary source code and standards, as well as prohibitive pricing, thus effectively excluding many people from access to knowledge and knowledge creation tools. And since especially transnational ICT corporations have the power to set standards of behavior for their consumers, their competitors, and their industry as a whole, they also effectively prevent entrepreneurial innovation—which today is driven to a very high degree by users (von Hippel 2001, 2005; Benkler 2004a; Hammond/Kramer 2005; Fisher 2010). From an ethical point of view, one problem is that only those users who can afford to purchase commodified, proprietary ICT products can take part in this innovation process. The citizens that are excluded from access to digital opportunities—and that therefore are in need of innovation the most—still largely have no choice but to depend on digital charity (Canellopoulou-Bottis 2004; Luyt 2004). As Stiglitz (2005) put it:

> "… the current rules of the international economic game reflect the interests of the advanced industrial countries—especially of their big corporations—more than the interests of the developing world."

It is against this backdrop that open modes of production, such as open-source software, open access publishing, and "commons-based peer production" (Benkler 2006) have been discussed for several years now. The premise is that citizens in both developed and developing countries could benefit from open access and open-source software and the reservoir of knowledge resources, or digital commons, these entail (Lessig 2001, 2008; Ahuja-Cogny 2004; Hammond/Kramer 2005; Otter 2006; Richter 2006; Hess/Ostrom 2007). For example, free software can reduce cost (which is an important factor since proprietary software is far too expensive for the average African or Asian consumer) and, by reducing the risk of vendor lock-in, it can make consumers, universities, governments, and companies less reliant on proprietary products. Moreover, open-source software can transfer knowledge about and access to technology into developing countries, thus strengthening the position of local entrepreneurs, as they can use many software tools that are already available for free and that can be built upon in order to create something new. Furthermore, the open reservoirs of source code offer opportunities for peer-learning and knowledge transfer that proprietary modes of production cannot achieve. For example, free and open textbooks as well as easy access to source code allow schools and universities to teach more effectively and at lower cost. Thus, open ways of software production can foster the capabilities of citizens with regard to technological knowledge while at the same time empowering them with entrepreneurial tools that could help citizens in developing countries help themselves. Because of that, spillover effects can raise efficiency and the overall economic welfare in both developed and developing countries (Busch 2007).

Since the benefits of open modes of production apply to both developed and developing countries, should modern societies apply these open modes to all areas of production? Looking at the aforementioned "copyright wars" (Patry 2009) being fought in recent years by transnational corporations mainly in the film, recording, and software industries, one could get the (wrong) impression that there are only two options available to policymakers: They would have to choose between either completely opening up or completely commercializing today's digital information environment. This raises questions such as: For how long exactly should a creative work be protected by copyright? Should governments of developing countries more strictly enforce the protection of U.S. or European patents? Should publicly funded institutions such as universities force academics to publish their findings only in open access journals?

These issues, and many more, have been discussed for over a decade using the "open versus proprietary" dichotomy described above. From an ethical point of view, however, I would suggest that there are limits to both lines of argumentation for these "extreme" modes of production (see section 2.3). Moreover, I will argue that the old "two worlds" dichotomy of corporate interests versus free ICT commons is neither empirically nor normatively compelling.

Empirically, there is no such thing as a homogeneous group that one could legitimately call "ICT companies." In fact, in the ICT industry big corporations with huge market power coexist with small and medium enterprises, innovative entrepreneurs and one-man start-ups (potentially involving the proverbial garage in which every ICT entrepreneur's career starts out, at least according to the tired old cliché), social networks, etc. It seems rather obvious that these different types of organizations do not necessarily share the same interests with regard to the degree of openness of their strategies. To some companies, openness is a threat; for others, it is an integral part of their business model. And quite often, companies make use of open strategies in one part of their business model while at the same time maintaining proprietary aspects in other parts of their business. This applies to Apple, IBM, and Google, among many others.

Normatively, on the other hand, many of these companies and projects claim to go beyond their immediate self-interest by referring to their "corporate social responsibility" (CSR), or their role as "good corporate citizen." This notion of corporate responsibility will be discussed in the following chapter, and it will provide the lens through which the role of ICT corporations in modern knowledge societies will be viewed in this section.

2.3 Corporate Citizenship & Integrative Economic Ethics

Corporate citizenship (CC) and corporate social responsibility (CSR) have been buzz words in the academic and business communities for several years now. In this section, I will mainly refer to the corporate citizenship debate since it strongly focuses on the political or public role of business in society—a role that global ICT companies have been playing to an increasing extent in the last few years: While governmental agencies increasingly act according to a business logic, as exemplified by keywords such as "new public management," corporate strategies in turn have become more and more regulatory in effect. To name just a

few examples of commercial enterprises acting as regulators: Whether we use Facebook, one of Google's or Microsoft's many services, or a device like Apple's iPad—in each case there is one company that determines what millions of consumers can or cannot do on their computer or the Internet (Zittrain 2008). Without Google and its few competitors, it would be hard to navigate the millions of Web pages out there, or to find any meaningful information on the internet. But whatever they may be looking for online, users have to trust the search company that its results represent the actual content on the Web.

Another example for an ICT company acting as a regulator is the social networking site Facebook (see chapter 4). Facebook today has to manage the staggering amount of between 900 million and one billion users (Zuckerberg 2012), and it is host to many third-party companies offering their products via the Facebook platform, such as Zynga's popular games. Moreover, the social network reaches far beyond the borders of its own website, as the following example shows: Facebook's servers were down for roughly two hours in September 2010. This error left gaping holes on a wide variety of media websites, blogs, etc. that usually feature a Facebook plug-in through which users can "like" news stories and other content. The plug-in on all of these sites was gone and had been automatically replaced by a "service unavailable" error message. Hence, one could say that Facebook is a ubiquitous public utility on the Web today (boyd 2010b). And this is just one of many examples of sites affecting and regulating each other. In this regard, transnational ICT companies have become powerful "quasi-public" (Ulrich 1977) regulators to both their users and their competitors. No wonder, then, that users, bloggers, activists, and citizens tend to critically monitor these companies today (see MacKinnon 2010a/b, 2012; Project VRM 2010). Their question is: Is this kind of corporate regulation of access to ICT a legitimate strategy?

Discussing this political role of corporate strategies, I will mainly focus on the approaches put forth by Ulrich (2008). Drawing from Ulrich's "integrative economic ethics" approach, several misconceptions of corporate responsibility can be identified (Ulrich 2008: 376-408), neither of which will be presented here for the sake of brevity.[2] Contrary to these misconceptions, "[i]ntegrative

[2] Because the discussion of these approaches is a better thematic fit for the Twitter chapter of this dissertation, it can be found in chapter 3.3.

corporate ethics sees itself as a *permanent process of unconditional critical reflection and the shaping of sound normative foundations for entrepreneurial activity in the service of life*." (Ulrich 2008: 409; italics in the original.)

From the perspective of such a humanistic rational ethics, each and every person deserves to be treated in a way that unconditionally respects their dignity as a human being. The concept of dignity refers to

> "the intact subject status of a person, which rests upon the regularly made experience that one's distinctive personality is not treated with disrespect or instrumentalized as the mere object of another's will." (Ulrich 2008: 33.)

According to Kant's categorical imperative, citizens ought to recognize each other as beings endowed with equal dignity, thus treating each other as ends in themselves, not just as a means to an end (Ulrich 2008: 55). The fundamental importance of the concept of dignity is emphasized by the fact that, on a political level, modern liberal constitutions refer to the dignity of citizens as the ultimate end of all governmental action. The very first sentence of the first article of the German constitution, for example, defines the protection of citizens' dignity as government's primary responsibility—a lesson learned the hard way from the woes of Nazi dictatorship.

Moral claims, however, cannot be justified by the mere empirical fact that certain norms are legally enforced. Instead, modern ethics searches for ways to justify behavior without referring to metaphysical or conventionalist positions (such as a "catalog" of "firm values" or norms, like the Ten Commandments). In a modern understanding, the moral principle is equal to the "universalization principle," or the "principle of generalized moral reciprocity," meaning "the fundamental postulate of universal moral respect and reciprocity in dealing with interpersonal claims and rights" (Ulrich 2008: 36). By way of ideal role-taking, for example, individuals can "test" whether an action could be seen as legitimate from the point of view of an impartial spectator. Thus, what is morally right cannot be derived from "facts," conventions, or metaphysical assumptions. Instead, "all moral claims … have an intersubjective structure." (Ulrich 2008: 34.) From an ethical perspective, corporate behavior is no exception to this general intersubjective structure. Instead, it is just another sphere of life to which this standard applies. Therefore, what is considered to be morally right in any given corporate responsibility case should be the result of a process of fair deliberation, or discourse, among all individuals affected by a company's

decision, as the company should view these stakeholders as human beings endowed with equal reciprocal dignity. In the following two sections, I will illustrate the consequences this approach implies for responsible corporate action.

2.3.1 Integrative Corporate Ethics

Integrative economic ethics is an approach based on two equally important stages: On the level of the core business model of a corporation (section 2.3.1), it aims for integrity and legitimacy, whereas on the level of the rules and regulations of a company's industry (2.3.2), it calls for ethical standards that enable and encourage corporations to "do the right thing" without getting penalized by moral free-riders among their competitors. Any ethical approach aiming at just one of these stages, i.e. on individual or regulatory ethics alone, fails to acknowledge the difficult position corporations find themselves in today. Given the pressures of fierce competition in today's globalized markets, companies cannot be expected to act responsibly without the help of an institutional backing that actually enables them to do the right thing. In order to really help corporations identify legitimate strategies and gain orientation in coordinating their efforts, both stages always need to be taken into account at the same time.

From the perspective of integrative corporate ethics, "the moral content of the business model itself is now conceived as the ethical core of good business" (Ulrich 2008: 408). In practical terms, this means that the ways a corporation makes and spends its profits are not supposed to follow two separate rationales. In both dimensions, a corporation should prove its integrity, good will, and adherence to the moral principle by unconditionally taking heed of its stakeholders' claims. As Baier (1958: 185) points out: "A person is of good will if he adopts the moral point of view as supreme." For a corporate citizen's core strategy, this means:

> "The corporation should willingly commit itself to securing its existence and achieving its commercial success exclusively with competitive strategies of value creation which are socially legitimate and meaningful." (Ulrich 2008: 409.)

Stakeholders and their claims should therefore not be judged by their power to influence a company (as suggested in Freeman's original strategic stakeholder concept), but by their reciprocal and unconditional moral rights as human beings. (For an in-depth discussion of whom a firm has to consider to be a legitimate

stakeholder, see Ulrich 2008: 421-32 and Freeman's original 1984 article, as well as his 1994 and 2004 anniversary updates.) Thus, pursuing profits in a morally legitimate way means pursuing only those business opportunities that do not violate basic moral rights of stakeholders. These rights, like basic human rights, should apply unconditionally, and they cannot be traded off against other claims or strategic aspects. (This is a criticism of utilitarian approaches that merely trade off preferences in the form of pleasure and pain for any given group of stakeholders.) Therefore, the first and foremost formal responsibility of a good corporate citizen is to proactively engage in unconditional discourse with any stakeholder group that wishes to do so.

From this perspective, it becomes clear that there is a fundamental difference between legitimately pursuing profits and maximizing them: While pursuing profits should be considered legitimate as long as unconditional rights of stakeholders are respected, maximizing profits at all costs can a priori never be considered to be legitimate. For if strict profit maximization is taken literally and is declared a business "principle," the logical consequence is that all other aspects of reasonable business conduct are necessarily regarded as less important, which practically means ignoring all claims of stakeholders that do not add to the bottom line. A company that ruthlessly strives to maximize its profits can therefore not be considered a good corporate citizen.

Aiming at pursuing profits in a legitimate fashion has far-reaching consequences for corporate strategies. Most importantly, it reverses the instrumentalist logic of success: An instrumentalist company would argue that reacting on stakeholders' claims sometimes is useful and even necessary in order to maintain a successful business model. But if respecting some stakeholder's claim would not add to the bottom line, it should not be adhered to. A company of integrity, on the other hand, would always aspire to respect its stakeholders' claims unconditionally and proactively listen to them—and it is precisely for this reason that it has a chance of being successful. For if a company acts as an authentic and reliable partner of its stakeholders over an extended period of time, it earns a reputation as a fair player and good corporate citizen. This earned reputation can help a company gain a competitive edge, as it has earned a moral standing that less responsible competitors will find difficult to imitate (Ulrich 2008: 442). (The BP oil spill of 2010 and the Fukushima catastrophe of 2011 are just two in a long line of cases illustrating rather drastically that a company can

lose its reputation much faster than it can earn it.) This kind of success always depends on a company's good will to adhere to the moral principle. Thus, from an integrative understanding, striving for legitimate business success means taking heed of stakeholder concerns unconditionally and thus earning a chance of being successful precisely because of that integrity. Instrumentalists, on the other hand, would argue to strive for success and engage in stakeholder dialogue if (and only if) it is absolutely necessary for making a profit.

However, from an integrative business ethics perspective on stakeholder responsibility, a corporation is not required to do every single thing its stakeholders claim it should be doing. Stakeholder claims are necessarily diverse and thus often conflicting, as a modern company is an incredibly complex network of social ties that span multiple organizational levels, countries, legislations, cultures, as well as sets of moral norms and values. This is one of the reasons why most companies give themselves binding rules and standards of behavior, such as codes of conduct and formal business principles, which apply to all of their branches across the globe and are incentivized and sanctioned accordingly. Naturally, these general rules cannot anticipate every possible moral challenge a company might encounter. Thus, in a stakeholder dialogue aiming for legitimate corporate action, the key question is: "What can stakeholders and the corporation *reasonably* expect of each other in any given specific situation?" This question needs to be addressed in practical, public discourse between a company and its stakeholders on a case-by-case basis: When it comes to corporate responsibility, "the right thing to do" cannot be determined a priori by ivory-tower experts; instead, in each case it needs to be discussed in a process of fair deliberation between a company and its stakeholders. This process can be long and tedious in many cases, but it ensures legitimacy and thus helps companies earn a good reputation over time.

Hence, a rough working definition of corporate citizenship in relation to a company's core business model could be: A good corporate citizen is a company that is willing to proactively engage in unconditional discourse with all its stakeholders that wish to voice a concern—or, more simply put, a corporation that adheres to the moral principle. Good corporate governance, then, could be broadly defined as using deliberation in an attempt to balance and negotiate stakeholder claims and interests in fair and reasonable ways. However,

stakeholder relations are only one aspect of corporate citizenship. An equally important part is the way companies interact with each other on an industry level.

2.3.2 Republican Corporate Citizenship

While a good corporate citizen's responsibility lies, first and foremost, in its willingness to adhere to the moral principle, the idea of unconditional discourse with all stakeholders brings with it the problem of defining reasonable claims to corporate action. While a corporation might be willing to act in accordance to stakeholders' claims, those claims could penalize the corporation compared to its more ruthless competitors. For example, a company spending extra money on protecting the environment in accordance with stakeholders' claims might end up having a cost disadvantage compared to ruthlessly profit-maximizing competitors that only adhere to the minimum standard of legally required environmental protection measures. Or, in the digital environment, a company could be willing to pursue an "open" strategy but would eventually need to refrain from doing so because its competitors harshly enforce their patent or copyright claims.

The software patents debate provides a perfect example for this kind of problem. As economist Hal Varian (2006) put it: "The software industry as a whole would like to see software patents go away … there are a lot of junk patents out there, and everybody knows it." The software patent system, according to Varian, does not necessarily incentivize innovation, as it was intended to do. Yet, the patent system provides a strong incentive for each company within the industry to legally enforce its patent claims against competitors—for as long as a competitor's patent poses a threat to a company, it will have to defend itself against that threat by accumulating patents for itself. The rather unexpected results of this process have been legal battles as well as patent agreements like shared patent pools between companies (which basically translate to "We will not sue you if you promise not to sue us"). According to Varian, everyone within the industry would reasonably prefer "disarmament," but not enforcing patents unilaterally would be unreasonable for any single company. This "Cold War mechanic," as Varian calls it, prevents responsible companies from actually acting responsibly, and it provides a huge disincentive to innovation, cooperation, and the sharing of knowledge. This classic case of a prisoner's dilemma illustrates the fact that incentives matter. Because of bad

incentives, the responsible player could be the one ending up duped by the more ruthless ones in the industry.

In order not to let this happen, good corporate citizens should try to change the rules and regulations of their industry in a way that enables them to act responsibly without getting penalized by extra costs and liabilities. To achieve this end, higher industry standards could be established, thus raising the bar of responsibility for an entire industry. Such standards and codices already exist in almost every industry in modern economies, so on a formal level, there might be no need to establish new regulation per se. Rather, it is the quality and relevance of such standards that needs to be addressed by responsible corporations.

A relatively recent example illustrating this issue is Apple leaving the U.S. Chamber of Commerce (Ars Technica 2009b). Technically, the Chamber is supposed to politically represent the interests of its member corporations. In this particular case, the Chamber lobbied against stricter environmental standards that Congress had proposed. Apple, however, had recently begun making environmental responsibility one of its core strategic goals, and it did so very publicly by appointing Al Gore to its board of directors. Thus, while the Chamber was fighting environmentally responsible legislation, believing to represent the interests of its members, Apple's ambitions with regard to the environment were substantially beyond its own "self-interest" in the traditional sense of merely minimizing costs. Thus, as a consequence of the anti-environment policy of the Chamber, Apple saw a chance to raise its profile as an eco-friendly computer manufacturer and publicly renounced its membership. Since Apple was not the only member corporation that left the Chamber, serious pressure was put on fellow member companies to strengthen and foster their environmental ambitions. However, it should be noted that Apple at the same time had serious problems with the working conditions at some of its Chinese subcontractors' factories, which again illustrates the point made in section 2.3.1: companies are highly fragmented, complex networks that can act very responsibly in one case while at the same time acting irresponsibly in another. This is why they need to proactively engage in stakeholder dialogue and address moral issues on a case-by-case basis.

The Chamber of Commerce example very well illustrates the options a good corporate citizen has when it tries to help make responsible strategies possible within its industry. This second stage of corporate responsibility is called

"republican corporate citizenship" (Ulrich 2008: 414-418) because it aims at the impact that a corporation has on society, or the *res publica*. Privately owned companies, especially powerful multinational corporations, are effectively quasi-governmental institutions in the sense that the consequences of their actions affect people beyond their own industry, or even beyond their country's borders (Ulrich 1977; Wettstein 2009). Good corporate citizens therefore lobby for fairness, not for their own short-term advantage. A good example for this approach is the United Nations Global Compact (2010) in which member companies commit themselves to globally enforcing a set of ten principles of good corporate behavior. In addition to these principles, they support initiatives like the U.N.'s Millennium Development Goals.

The rather lengthy discussion of integrative corporate citizenship above introduces a perspective on corporate ICT strategies that focuses on the moral rights of all stakeholders affected by a company. ICT companies may be privately owned, but their strategies have very public repercussions for the information society: Through their business models and the regulatory effects of their products and everyday business practices, they determine who gains access to ICT, and who does not. They decide what can or cannot be done with ICT. Hence, Lessig (1999) points out: "Code is law." The question, then, is if and when code can be considered fair.

2.4 Corporate Citizenship & Fair ICTs

2.4.1 Current ICT Business Models & Corporate Citizenship

Critically assessing corporate responsibility issues from an integrative-ethical point of view essentially translates to asking whether a company respects the moral rights of all stakeholders affected by its strategy. Therefore, the mere fact that any given ICT company may have had a certain business model for a long period of time cannot be the standard by which to judge the legitimacy of its stakeholders' claims. Instead, from an integrative perspective, the core business model of a company should be the object of constant ethical reflection, and as such, it continuously needs to be revalidated and legitimized through fair stakeholder deliberation. While any given company may naturally assume its own business model to be undoubtedly legitimate, it is unconditional discourse with all stakeholders affected by the company that determines whether this

perceived legitimacy holds true or not. Thus, depending on the outcomes of this continuous process, there is always the option of changing any given business model—both at the level of the core strategy and at the level of republican corporate citizenship. This might result in drastic changes for a company's established strategy; however, as long as the change towards a more legitimate model can be achieved in a reasonable fashion and without putting an intolerable burden on a company, it should be given a try. As Mintzberg, Simons, and Badu (2002: 67) put it:

> "The point is not that concern for others is suddenly going to replace self-interest, but that there has to be a balance between the two. … The role of management—responsible management—is to work toward restoration of that balance."

In the following sections, I would like to give a few examples of the interplay between the two levels of corporate citizenship in the ICT sector. Much like the software patent case discussed in section 2.3.2, there are a wide range of cases in which individual companies would like to pursue open, inclusive strategies on the level of their core business model but are pressured to refrain from doing so by the factual rules of their industry, competitive pressure, and political or legal regulation. These sets of rules and mechanisms, or institutions, often take on a life of their own, so to speak, forcing companies to act less openly and cooperatively than they would like to—for the mere fact the their competitors do it, too. While this might be a fully rational defense mechanism for each individual company, it yields an inferior result for the industry and society as a whole, perpetuating digital divides.

This kind of prisoner's dilemma applies to a diverse and wide range of cases, including the following: software standards, protocols, and file formats, which can be either open or proprietary; licensing models in the software, music, or videogame industry, where it used to be the case that consumers actually bought and owned a product, whereas nowadays, the content providers prefer to merely license a product to their consumers for a limited amount of time; intellectual property and copyright issues, where in the last decades both the reach and the time frame of copyright protection have been extended significantly to protect existing rights holders, but without necessarily providing an ex-ante incentive to foster innovation; patents, which are especially important in, and driven by, the agricultural and bio-tech industries; and, at the level of the infrastructure of the internet itself, net neutrality has been a hotly debated issue. In the following

sections, two of these cases will be discussed in more detail: (a) open-source software and (b) the content industry.

(a) There is a wide range of successful business models co-existing in the software industry today (Benkler 2006: 41 ff.). In order to illustrate the historical contingency of said business models, one should remember the fact that forty years ago, when computing was done by machines as big as entire rooms, there was no software industry. Instead, hardware vendors gave the software for their machines away for free, since software was viewed as little more than a manual, catalog, or showcase of the machine's capabilities (Greve 2004: 13; Grassmuck 2004: 202-229). Thus, software engineers and academics shared and discussed source code freely. From the 1970s onward, however, this changed drastically: With Apple, Microsoft and other early software business start-ups, software that had formerly been open-source and was thus shared freely became a boxed item like a book or record, protected by end-user license agreements (EULAs) and proprietary file formats. Thus, closed-source or proprietary software was born, which still is the standard in the industry today.

Since the mid-1980s and early 90s, however, the open GNU/Linux software eco-system has made its way from niche-hobby to billion-dollar market. Cooperating with hundreds of volunteers over the Internet, Linus Torvalds has been creating a fully-featured operating system kernel which today is managed professionally and consists of several million lines of code. The amount of work put into the Linux kernel alone is estimated to be worth approximately one billion euros (H Online 2010). Google, IBM, Sun Microsystems, and many other top-tier ICT companies use and support Linux today.

The key to success was not just the free software itself, but the GNU General Public License (GPL). As opposed to proprietary licenses, the GPL grants users the right to examine, change, and redistribute a software's source code. What makes the GPL special and rather intriguing from an ethical point of view, however, is the idea Richard Stallman called *copyleft:* If a program is licensed under the GPL and someone derives another program from it, the GPL demands the derivative work to be licensed under the GPL, as well. While *copyright* tends to increasingly privatize access to source code, *copyleft* is a way to ensure that free software will stay free. And since the license is automatically added to all derivative works, it ensures that more and more programs will be added to the potentially unlimited worldwide repository, stock, or commons of free software.

This commons, accessible to everyone, is one of the key utopian attractions of free software, and it could be one core component in designing fair ICT. This is the exact opposite of the closed environment that software patents seem to have created (see section 2.3.2).

While free software is often indeed given away for free, the GPL does not demand this from software developers. It merely demands that the source code of GPL-licensed software be published, along with a copy of the license. A company could, however, give the source code of its product away for free and still charge its customers for services related to the product. One classic example would be a software product package sold to a university or company, containing the software itself plus several years of service and maintenance. This is a very common business model of database providers, for example. Thus, a software company could provide products licensed under an open license like the GPL and still make a healthy profit from it. This argument makes it reasonable for ICT companies to discuss switching to an open-source strategy, thus making access to information and knowledge much easier for everyone. Supporting open-source software could therefore lessen digital divides.

Proprietary software companies, however, are often not willing to discuss their core strategies, since these have been proven to be very successful. Microsoft, for example, earned 4.01 billion dollars from a revenue of 14.5 billion dollars in the first quarter of 2010 (The New York Times 2010). Such a return is practically unheard of in most other industries, and that may very well explain the fact that proprietary business models still are a highly attractive option for both ICT companies and investors. Nevertheless, given the fact that such business models prevent a majority of people from getting access to the tools needed to participate in the digital economy, as well as the fact that they essentially limit citizens' and consumers' freedom of choice (which is the explicit goal of proprietary strategies, as exemplified by Apple's iTunes, iPhone, and iPad), such business models could hardly be considered fair. If society has to choose between a proprietary software business environment that favors only a few large, monopolistic companies at the expense of a majority of citizens, or an environment in which access to source code and information is made possible by open code and licenses, and in which companies can still turn a heathy profit (just not an excessive one), the choice seems fairly obvious from an ethical perspective. (For a case study on the implications monopolies have had on the

U.S. Broadband market in the past ten years, see Crawford 2013.) However, turning such decisions into practical solutions might require a lot more thought.

(b) A similar problem has been discussed in the content industries in recent years. Be it in the music, film, or software industry, all major companies suffer from a bad reputation because their business practices seem unfair to younger consumers—who, since they are also tomorrow's consumers, might change the content industry's business models significantly in the next decades. For better or worse, however, the industry today still often clings to its tried and tested business models:

> "Corporate copyright owners live in fear, especially fear of their own consumers. Those consumers are young, tech savvy, and have wrested control over corporations' physical product from them, an unthinkable act 10 years ago. The result is a classical moral panic against youth … The Copyright Wars are a fight against our own children and it is a fight that says everything about the adults and very little about the children." (Patry 2009: 28.)

Indeed, it is the so-called "digital natives" (Palfrey/Gasser 2008)—tech-literate, multi-tasking remixers of digital content, born by and large after 1980—that seem to pose a threat to the content industry in this day and age. Therefore, it is the future that is at the heart of each debate on the way we interact with technology. Hence, we might witness the "normative power of the actual" (Jellinek) in a few years' time, when the ways of the digital natives have become normal and accepted. Whether the behavior of, for example, file-sharing teenagers should be considered ethically legitimate, however, is of course a difficult question that requires more than merely stating, or waiting for, changing empirical facts.

The elephant in the room is the question whether regulations that a majority of people do not adhere to are actually valid norms, both from the perspectives of jurisprudence and ethics. For example, is there any justification for forcing upon future generations the same rules that have applied to the pre-internet world of the last decades? Can we consider the current state of IP regulation to be fair with respect to both intra- and intergenerational justice? After all, Gillmor (2012) rather drastically describes the current copyright system as "a grotesque abuse of corporate and government power designed to enrich a few big entertainment companies at just about everyone else's expense." Moreover, from a development policy perspective, the focus should shift from already tech-savvy digital natives in Western democracies to empowering citizens in developing countries by way

of building capabilities through open ways of information production. Instead of fighting legal battles against consumers, the content industry could focus its resources on coming up with new participatory business models that could help bridge digital divides. This argument has been at the core of the *information and communication technologies for development* (ICT4D) debate for years now, and it questions how intellectual property regulation is justified. From an ethical perspective, copyright is not an issue that one should be either completely in favor of or totally opposed against. Instead, copyright needs to strike a fair and internationally recognized balance between the claims and interests of content producers, users and social groups disadvantaged by digital divides, and the mediators in between.

2.4.2 Intellectual Property: Efficiency vs. Emancipation?

The rules and regulations of intellectual property (IP) in the information society have been discussed extensively over the last decade, both in academia (for example, Lessig 1999, 2001, 2004, 2008; Armstrong 2006; Benkler 2006; Gasser 2004, 2006, 2007; Gasser et al. 2005) as well as at the political level in forums like the World Summit on the Information Society (WSIS), the World Intellectual Property Organization (WIPO), the ISO, U.S. Congress, the European Parliament, etc. Some of the normative questions discussed in these fora include: Do we need stricter or less strict copyright protection today, and in which cases exactly? Is existing copyright law still adequate when it comes to dealing with issues such as file-sharing via the internet? In cases such as amateur remix videos using copyrighted music on YouTube, does copyright incentivize creativity, or does it prevent access and innovation (Lessig 2008)?

The above-mentioned fora addressing such questions usually include politicians, academic and industry experts, representatives of corporate associations, and oftentimes even NGOs (Dany 2006). Actual citizens, however, remain excluded most of the time. This fact might explain why, in recent elections all over Europe, so-called “pirate” parties have garnered so much attention and won over quite an impressive amount of the electorate. Many citizens quite obviously want to have their say on issues like IP in the digital age, and it will be interesting to see how the established parties react to this development in the coming years. Today, the digital natives affected by IP law understand themselves not just as consumers but also as users, producers, and,

most importantly, as citizens. In many cases, such as user-generated content on social networking sites, these citizens are the ones actually creating and paying for "intellectual property"—sometimes even twice, as in the case of publicly funded academic researchers publishing and reviewing articles in private academic journals which public libraries need to buy (an argument very common in the open access debate). Thus, ICT architecture and content are not just private, commercial issues. They are inherently political in the sense that they affect what citizens can and cannot do in the digital environment. ICTs can provide a forum in which citizens find the opportunity to interact with one aother on a peer-to-peer basis. It is this "forum" argument that makes the internet so attractive as a channel for future civic engagement as well as globally networked peer-production (Benkler 2006).

The internet may still be interpreted by many as just a marketing channel for traditional companies or as a business resource for the trendy companies driving the Web 2.0, but it has the potential to be much more: Due to its open nature—which Zittrain (2008) calls "generativity"—and the accessibility of its sources (such as HTML), it can be a powerful tool of education and emancipation (Benkler 2006; Busch 2007, 2009). Following Richard Stallman's above-mentioned stance on the act of sharing knowledge and the ideal of a basic human right to a self-sufficient life of dignity for everyone, one could argue that the most important potential of ICT is to provide citizens with a channel for emancipation and digital empowerment. Within this bigger picture, companies could follow whatever business model they choose—as long as the business model stays within the democratically established limits of a framework of emancipation:

> "The decisive criterion of all economic activity should not be the creation of market value but—in spite of all the practical constraints involved—*the service of life*." (Ulrich 2008: 186.)

This idea of an economy in the service of life could practically be translated to policies providing an open infrastructure to citizens, giving them the opportunity to learn capabilities that enable them to lead self-sufficient lives (cf. Sen 1999; Fisher 2010: 1466 f.). Thus, it suggests a two-stage model of the market economy itself: At the first stage, guaranteeing sustainable access to knowledge as an unconditional basic right for everyone should be the first aim of ICT regulation. Within this deliberatively determined framework, then, the second stage of

innovative market solutions can be applied. Recent trends such as the "bottom of the pyramid" (Prahalad 2006) or "social entrepreneurship" approaches suggest that market solutions can indeed be an efficient and effective means to alleviate social problems like poverty. However, in the case of ICTs this requires strictly maintaining the priority of unconditional and sustainable access to information over corporate strategies of IP enclosure (i.e. privatizing the digital commons) driven by private interests of mere profit maximization, for this would just perpetuate prisoner's dilemmas as seen in the closed, hostile environments of the software patents case in section 2.3.2. Hence, Benkler (2001: 90) concludes:

> "As economic policy, letting yesterday's winners dictate the terms of tomorrow's economic competition is disastrous. As social policy, missing an opportunity to enrich our freedom and enhance our justice while maintaining or even enhancing our productivity is unforgivable."

For example, with respect to user innovation, Fisher (2010: 1473-1477) argues that lawmakers should take into account not only economic efficiency, but a "substantive theory of human flourishing." Indeed, from an ethical perspective, we need to keep in mind the difference between the means and ends of ICTs: The end is digital emancipation and sustainable access to knowledge for everyone, and market solutions can be an effective means to achieve that end. In many cases, however, this gets reversed by the traditional business perspective: The big players of the content and proprietary software industries, for example, take for granted their "traditional" business models (which, as a matter of fact, are less than 30 years old), suggesting that only these could guarantee social welfare. Benkler (2006: 37) challenges this standard defense of strong IP protection:

> "This defense of exclusive rights is limited by the extent to which it correctly describes the motivations of information producers and the business models open to them to appropriate the benefits of their investments. If some information producers do not need to capture the economic benefits of their particular information outputs, or if some businesses can capture the economic value of their information production by means other than exclusive control over their products, then the justification for regulating access by granting copyrights or patents is weakened. As I will discuss in detail, *both of these limits on the standard defense are in fact the case*."

Patry's (2009: xxiv) critique of the current state of the copyright system goes even one step further:

> "The Copyright Wars and the recent grotesque expansion of rights and remedies should be regarded as a legal equivalent of the subprime mortgage crisis: cancers on our system that were foreseeable and preventable but for greed, a failed ideology that the unregulated private pursuit of profit is also in the best interest of the public, and

> worldwide lack of political courage to admit to and take responsibility for the damage caused by copyright laws that harm rather than serve the public."

It is this "failed ideology" that probably is most interesting in Patry's argument. It would seem that our modern, self-proclaimed "information societies" might need to start a discussion on the limits to privatization, especially in the digital environment. While the "failed ideology" of libertarianism suggests that private property, strong IP rights, and strict legislation are key to innovation, growth, and development, it would seem that both ethical reasoning as well as empirical evidence suggest otherwise. But it seems that libertarian arguments and fierce lobbying by the respective industries have made such an impact over the last decades that, in many cases, policymakers tend to rather uncritically follow libertarian thinking patterns:

> "Regrettably, policymakers (and even many copyright owners) have been taken in by the slogan that stronger rights are somehow not only inherently better but inherently necessary. There is no empirical support for this view, and much evidence to the contrary. If stronger protection is always better, why not make the term of patent protection life of the inventor plus 70 years too? If stronger criminal laws are necessary to deter infringers, why not impose the death penalty, as China has done? The only type of laws we need are effective laws, laws that are effective for their purpose, in the case of copyright, to promote the progress of science, in the words of the US Constitution. Copyright owners' problems are market problems, and they can only be solved by responding to market demands: strong copyright protection cannot make consumers buy things they do not want to buy and, as RIAA's ill-conceived, ill-executed, and ill-fated campaign of suing individuals demonstrates, laws cannot stop individuals from filesharing. Laws can, though, stifle innovation, and in this respect the copyright industries have been successful, and tragically so, for the public and for authors. Innovation leads to greater consumer demand and therefore greater profits for copyright owners." (Patry 2009: 37 f.)

While I generally share Patry's concern that copyright regulation in recent years may have gone too far in favor of incumbent rights owners, I feel uncomfortable in light of the fact that he seems to suggest that experts should be the ones evaluating the normative questions at hand. From a deliberative democracy perspective, the exact changes needed with regard to IP policy and jurisdiction cannot, and should not, be determined by scholars, for these are ultimately political issues. Instead, a process of fair deliberation is essential, influenced not by "ivory-tower experts" or corporate lobbyists—as has often been the case up until now, according to Lessig—, but by all stakeholders affected by those regulations that have lead to persistent digital divides.

The above-mentioned criticism does not necessarily mean that, for example, commercial software development should be restricted categorically in order to alleviate digital divides. As pointed out earlier, it is possible to publish open-source software while giving the source code away for free, making money off services at the same time. Therefore, I think we should distinguish commercial (which could also be open-source) from proprietary software (which, for reasons of access and development, should rather be avoided). As long as the ICT environment stays open and generative, and as long as ICT corporations are willing to unconditionally discuss their strategies with all stakeholders affected, any business model within that framework could be considered ethically legitimate. But it is precisely within this open framework that business models should be located. Not every website needs to work like Wikipedia, and not every software product needs to be open-source. However, the institutional environment needs to leave room for the nonprofit sector (Palfrey 2011: 109-124), and interoperability is vital (Palfrey/Gasser 2012). Therefore, it is important to make sure that IP regulation will always allow for establishing free and open-source projects in a reasonable manner instead of criminalizing or sidelining them.

2.4.3 Perspectives: Alternative Intellectual Property Models

Alternative intellectual property models can be a very pragmatic way to help resolve the prisoner's dilemmas discussed above. They aim at licensing content in a way that switches from "*all* rights reserved" (as in copyright) to "*some* rights reserved" (as in copyleft). Thus, the creator of an IP is supposed to be in control of the licensing conditions under which he or she would like to publish a work of art, a photo, music, software, and the like. The practical way to do this is to introduce new licenses that are easier to both understand and apply than those provided by the traditional body of IP law. Over the course of the last decade, many alternative licenses have been established, some of them by non-profit organizations such as the Free Software Foundation, some by software development projects (like the Apache license), and rather often even by corporations. Mozilla and Microsoft, for example, have their own licensing models for "open" projects.

Among the most popular alternative licenses are the Free Software Foundation's GNU General Public License (GPL), the GNU Free Documentation

License (FDL), and the licenses established by Lawrence Lessig and the Creative Commons movement (Creative Commons 2010). The content presented on Wikipedia, for example, is licensed under the terms of the Creative Commons Attribution/Share Alike license (CC-BY-SA), which states that the author or creator of, for example, a picture allows anyone to share his work with anyone, under the condition that the creator is attributed and the picture is shared under the same conditions as originally intended.

These licenses simplify the complex regulations of traditional copyright law to a degree that creators and users (who today are often one and the same) can easily exchange resources and create new IP on a peer-to-peer basis. Moreover, the idea behind Creative Commons, as the name suggests, is to create a collection of freely accessible resources that can be remixed, reused, and reassembled in order to produce something new. And due to the copyleft terms of open licenses, this commons is supposed to always remain free and open. As Lessig (2006, 2008) points out, human culture has always been "read-write culture" in the sense that songs and other forms of art have not just been consumed passively; instead, they also constantly have been changed, reinterpreted, and remixed. It was only in the 20th century that the notion of a "read-only culture" became the social norm, in the sense that movies, pictures, and music were considered to be commodified products that should only be consumed the way their authors had intended them to be consumed. And today, this 20th century read-only culture has come under pressure by technologies like the internet and the usage patterns of digital natives (Palfrey/Gasser 2008).

With the above-mentioned open licenses available, fair deliberation on the social use of intellectual property in the digital age becomes much less a utopian but a practical matter. Authors and creators now do have options available to them that they simply did not have in the 20th century, and alternative modes of production are commonplace. Empirically, we can already find an alternative economy based on licenses like Creative Commons spreading virally all over the Internet. We shall see whether this alternative economy will be maintained as an outside addition or complement to the traditional content industry, or whether it will be incorporated into the content industry's existing business models and legal practices over time, turning alternative licensing into a mainstream business practice.

From a deliberative democracy point of view, ethicists and other "experts" should not simply prescribe one system or the other as the de-facto morally superior standard. What we *can* reasonably claim from a deliberative business ethics perspective, however, is that the responsibility of a good corporate citizen in the ICT business is to find legitimate business models that do not prevent other citizens from gaining fair and sustainable access to knowledge—which is one of many steps necessary to overcome digital divides in developed and developing nations alike.

2.5 Conclusions: Commons, Capabilities, Corporate Citizenship

The issues outlined above have shown that business strategies in the ICT sector are not merely "private" corporate decisions. Instead, they have far-reaching public repercussions with respect to digital divides, consumer choice, and political freedom. Hence, one could argue that modern, liberal societies need to increasingly engage in open discourse on the public implications of corporate ICT strategies, the "future of ideas" (Lessig), and how much legal protection intellectual property may need in order to sustain continued innovation processes in our self-proclaimed modern knowledge societies. Admittedly, this chapter has dealt with a wide range of issues, such as copyright and intellectual property, in perhaps too unspecific a way (Palfrey 2011). However, the hypothesis at this point is that if modern democratic societies really wish to foster what experts call "participatory culture" (Gasser/Ernst 2006: 5), "free culture" (Lessig 2001), or "read-write culture" (Lessig 2006, 2008), they need to make sure not to perpetuate the prisoner's dilemmas in the wide range of cases mentioned above with respect to the regulation of knowledge creation and innovation. After all, the wide range of different aspects of regulation such as IP law, copyright, or patents, form a broader information ecosystem which is increasingly difficult to navigate and interpret.

However, as Gillmor (2012) points out, political debates on these issues have thus far been fairly disappointing because they have been characterized mainly by ideological divides and were mostly driven by the short-term financial interests of the incumbent companies in the content industries. Despite the fact that digital technologies have been enjoying mainstream success for a long while now, the public debate on digital policies is still in its infancy. Because of these normative uncertainties on which digital policies to pursue, it seems reasonable

to regulate intellectual property and innovation only very carefully and in such a way that decisions can be reversed if they turn out to be ineffective (Gasser 2012). What the political debate currently lacks is normative "orientation in thinking" (Kant) by way of open political deliberation. Instead, ICT companies have entered the regulatory vacuum and created facts by pursuing their strategies knowing that industry innovation frequently outpaces regulatory attempts at the national and international level.

From an integrative business ethics perspective, however, both political frameworks and republican corporate citizenship at the industry level need to support good corporate citizens in acting responsibly with respect to their core business models because said business models should be "in the service of life"(Ulrich), not merely in the service of shareholders. As Illich (1973) put it:

> "A convivial society would be the result of social arrangements that guarantee for each member the most ample and free access to the tools [i.e. ICTs] of the community and limit this freedom only in favor of another member's equal freedom."

ICTs, one could argue in a Kantian fashion, should not only be seen as ends in themselves, but as means of enabling a sustainable knowledge society by way of capability building. This latter reference brings to the fore Sen's (1999) broader perspective on human development, i.e. the fact that economic policy should focus on fostering citizens' freedom to live the lives they have reason to value. To that end, citizens need to be empowered in such a way that they have the means to develop the necessary capabilities to lead self-determined lives in today's (and tomorrow's) digital environment. Applied to the question of corporate citizenship and ICT strategies, this would mean that the actors most capable of changing the rules of the game should change them in a way that fosters the capabilities of their fellow citizens to lead self-sufficient lives. Simply put: capabilities in, capabilities out. It is the capabilities of ICT companies that largely determine the capabilities of citizens to lead self-determined digital lives.

The online messaging service Twitter is a company that frames its mission in exactly these benevolent terms, which is why I will describe and critically analyze its strategies in the following chapter.

3 Doing Well by Doing Good? Twitter and CSR

3.1 Abstract

This section examines the rhetoric that the microblogging site Twitter.com uses in order to describe its normative self-understanding, or ethos. From an integrative business ethics perspective, Twitter's self-proclaimed ethos will be analyzed in the context of recent debates on democratic communication and Corporate Social Responsibility (CSR). Twitter's CSR strategy is significant because it seems that the site has used it successfully in order to acquire the critical mass of users that is necessary to establish a robust, sustainable, and financially viable social networking site today. Despite its obvious success, however, the analysis shows that Twitter does not sufficiently address three ethical implications of its strategy: (1.) Twitter often seems to evoke an "instrumental CSR" ethos that fails to properly reflect on the moral rights, responsibilities, and strategic challenges that ICT companies face when interacting with their stakeholders. (2.) Because social networking sites today have taken on the role of quasi-governmental bodies, regulating what their stakeholders can and cannot do, this issue has become even more pressing because it raises concerns with respect to accountability and legitimacy. (3.) These developments can lead to a wide range of moral conflicts between the site and its many stakeholders, both today and in the future.

3.2 Introduction: Twitter & Corporate Social Responsibility

Social networking sites (SNSs) generally claim that they wish to enable their users to share information and participate in public discourse. Thus, they often promise to serve as public fora, connecting people from all over the globe so that they can discuss the issues that matter to them. However, the commercial imperatives behind Web 2.0 platforms have led them to increasingly enforce user participation through rather asymmetrical regulation, such as terms of service that often circumscribe users' rights. By directly managing the rights of their users within spaces that are framed as fora for public discourse, SNSs act as quasi-governmental regulators. The commercial contract law that they use in order to regulate their users frequently outpaces traditional governmental legislation on issues such as intellectual property and informational privacy. This aspect of online platform business models might be unavoidable to a certain

extent, but Web 2.0 companies nonetheless try to legitimize their regulatory role in various ways. Thus, they often implicitly or explicitly invoke the concept of Corporate Social Responsibility (CSR) as a way to gain or increase acceptance among their user base.

In this chapter, the microblogging service Twitter.com will be examined as an exemplary quasi-regulator that frames its mandate and corporate mission in benevolent terms through CSR rhetoric. From an ethical perspective, the rhetoric employed by SNSs in order to frame their "mission" and ethos actually is more interesting than their actions, as my research interest lies in studying the normative justifications of the regulatory acts ICT companies such as SNSs employ. For instance, Twitter's website features statements such as this one: "We believe that the open exchange of information can have a positive global impact." (Twitter n.d.) This is one example for the fairly generic truisms and positive marketing language Twitter uses in order to gain user trust. After all, who would not "believe" that "the open exchange of information," whatever that might actually mean in this context, "can" (not will, mind you) have "a positive global impact"? Marketing statements such as this one work well because they sound positive and do not hurt anyone's feelings. However, as a speech act, they are very vague in that they lack information on what a company really means at the content (semantic) level. This chapter will therefore analyze Twitter's outreach messages in order to be able to better understand the company's ethos.

Since ICT companies often have a far-reaching social, cultural, and economic impact on the online environment, it seems fair to assume that their CSR policies and statements such as the one mentioned above are supposed to reassure users that their rights as citizens, and not just as consumers, will retain some degree of institutional protection. However, ICT companies most of the time seem to use CSR as a mere marketing tool in order to gain their users' trust. User trust is an important factor for any company, of course, but it is especially vital for popular social networking sites such as YouTube, Facebook, LinkedIn, and Twitter because they all rely on user data and user-generated content (UGC) in order for their business models to work. That is also why they offer their users free access to their services. Thus, online social networks have enjoyed tremendous growth in recent years, and political trends toward deregulation and privatization have enabled Web 2.0 platforms to integrate UGC without much constraint from government legislation. Hence, terms of service contracts between Web 2.0

platforms and their users today regulate the appropriation of users' free labor, the collection and use of their personal information, and the licensing of their intellectual property.

Twitter serves as an interesting case study in this context: It highlights how the social networking site, initially praised for its promise to bolster democratic speech by offering users a free "real-time information network," has mobilized the CSR ethos as part of its corporate strategy. Examining the self-promotional language used on Twitter.com shows how the site has positioned itself as a benevolent social service. Despite this benevolent framing, however, some of Twitter's practices seem to be ethically problematic. For example, the company has been retaining a wide-ranging license over all content posted via its site, and it has profited from collecting and using its users' personal information for advertising purposes. Even though these are common practices in the industry, they still seem questionable from an ethical point of view, especially when contrasted with the site's self-proclaimed ethos. Empirically, Twitter's seeming benevolence has rendered the site hugely successful in terms of accumulating the critical mass of users necessary to sustain its business model. Like any social networking site, Twitter needs a continuously growing user base that contributes their free labor in order for the site's value to increase over time. Taking into account its ethos and undeniable success, Twitter might present a classic example of what business ethics literature calls the "business case for CSR", i.e. the theoretical assumption that a company will "do well by doing good," or by successfully pretending to do so, which implies that there is an economic incentive to having an ethically sound corporate image. (As a side note, this is yet another instance illustrating that even though the internet may be an exceptional space, many classic ethical issues, such as the business case for CSR, still remain relevant in this space. See chapters 1.3 and 1.4.)

In order to better understand Twitter's ethos and self-understanding, this chapter investigates the company's "About Us" (Twitter n.d.) and "hope140.org" (Twitter 2012a) pages as well as its terms of service and privacy policy. These pages have been examined in order to find normative claims describing how Twitter portrays its mission, ethos, and moral values. The statements found will be used to highlight Twitter's utilization and understanding of CSR in order to then apply Ulrich's (2008: 376-442) typology of business ethics approaches to evaluate the company's strategy from an ethical perspective. This typology, along

with relevant current business ethics literature, will be discussed in the following section. Subsequently, the results of the examination of Twitter's promotional language are presented, followed by a discussion of the growing importance of the regulatory role that online social networks have assumed in recent years. This role has increased the salience of corporate responsibility issues for online platforms. Hence, the final section of the chapter uses insights from the Twitter case to discuss corporate responsibility with regard to privacy, intellectual property, and online labor.

3.3 Framing CSR: Doing Well by Doing Good?

Corporate Social Responsibility (CSR) has been a buzzword in academia, politics, and the corporate world for more than two decades now. However, CSR still is not a coherent concept. Instead, the academic literature evidences a wide range of conflicting definitions of CSR (for an overview, see Garriga/Melé 2004; on the differences between U.S. and European interpretations of the term, see Matten/Moon 2008). The rather vague common theme of these definitions is that a company is supposed to "do the right thing"—but what that means is highly dependent on which normative framework business ethicists and practitioners choose to employ. Ulrich (2008: 376-442) thus maps out a typology of corporate ethics centered around four ideal-types, describing how academics and managers tend to think about the relationship between profits and ethics. Obviously, since these are Weberian ideal-types, they do not sufficiently describe every empirical case imaginable; instead, the typology aims at gaining insight into the normative principles informing each type.

The first type Ulrich identifies could be summarized as *functionalist business ethics*. This approach assumes that focusing on pursuing profits and maximizing shareholder value is ethically sound in itself—because in doing so, a company supposedly maximizes value for society as a whole. Thus, ethics is seen as a mere function of economic activity or, more specifically, of the market mechanism. This ties in to what De George (2009: 3) calls "the myth of amoral business," i.e. the assumption that ethical reflection on business practices is unnecessary simply because the market system neutrally and sufficiently takes care of ethical aspects. One could also, somewhat ironically, call this CSR type

"drive-by ethics,"[3] as proponents of this approach argue that the "invisible hand of the market" will take care of all necessary ethical aspects. Companies therefore need only pursue their strategic self-interest, and the market mechanism (competition, supply and demand, etc.) will supposedly take care of everything else. Even though the uncritical and apologetical use of Adam Smith's "invisible hand" metaphor has long been discredited by Smith scholars as not properly reflecting what the great Scottish economist originally intended to convey back in 1776 (Ulrich 2008: 116, 147-158), it is still widely used as a legitimization strategy for business not to actively engage in CSR. Nonetheless, this argument fails to recognize that a wide range of ethical problems are either not solved by market competition or even (directly or indirectly) caused by it, and thus it represents an ideological fallacy.

The second business ethics type could be called *instrumental business ethics*, or the "business case for ethics," because "ethics" is seen in this view as a company's instrument for making profits in the long run. The underlying assumption is that in order to build trust among its customers, a company sometimes needs to let go of short-term business opportunities if these are ethically questionable.[4] In the long term, then, this strategically earned trust supposedly will lead to more profits. Thus, this approach claims that there is a financial incentive to "morally sound" business practices. This financial incentive, however, is the sole motivator of "ethical" corporate behavior in this concept. From an ethical perspective, this approach represents at least four fallacies: First of all, this type of business ethics does not properly take into account the moral point of view because all it does is focus on teleological aspects, i.e. the consequences of corporate action from the strategic perspective of the company alone, not from the perspective of its stakeholders. Thus, instrumental CSR lacks legitimacy. Secondly, this approach assumes that a company can quantify "ethics." From that perspective, it sometimes needs to "invest in (more) ethics" in order to gain a long-term competitive edge. While this kind of thinking might be emblematic for the numbers-driven mindset of many companies, especially publicly traded ones, it does not make any

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[3] An adequate German translation would probably be "Ethik im Vorbeigehen," i.e. without making any explicit or conscious effort to engage in ethically sound behavior.

[4] Compared to the functionalist approach, instrumentalism is a little more progressive, as it at least acknowledges the fact that some corporate strategies can be ethically problematic. However, it draws inadequate conclusions from this fact.

conceptual sense from an ethical perspective. Thirdly, instrumental CSR implicitly assumes that a company either objectively knows what "the right thing to do" is, or that it just opportunistically does what its most vocal stakeholders want it to do. However, the right thing to do is not objectively given but needs to be established through the open process of unconditional multi-stakeholder discourse. Lastly, a company's motive for engaging in ethically sound behavior greatly matters. It determines whether a company will only try to engage in "CSR activities" (whatever that might actually mean) in order to bolster its reputation, or whether it will act in a dependable, thoughtful, and reasonable way when it comes to dealing with stakeholder claims. Thus, CSR is not merely an instrument or an "activity." Instead, it is a mindset, a perspective, or an ethos that pervades all aspects of a company's strategy.

The third ideal-type could be called *charitable business ethics* because it distinguishes between the way a company makes its profits and the way it spends them: A company's core business model, this approach suggests, should be free of moral considerations. Instead of taking into account morals, values, or stakeholder rights, a company should focus on maximizing profits. That way, the company will be able to use said profits to make substantial contributions to charity. Consequently, the more profit a company makes, the more money it has to spend on "good social causes." Therefore, maximizing profits is seen as a company's primary moral duty. From an ethical perspective, this approach has at least two major conceptual flaws: First of all, the division between the way a company makes its profits and the way it spends them is artificial and inadequate because almost all relevant corporate responsibility issues pertain to the core business model of a company, i.e. the way it sources, manufactures, and sells its products. Treating ethical aspects as a mere afterthought, or "add-on," does not do this justice. Secondly, this approach claims that there is an alternation between maximizing profits today and thus being able to maximize donations to charity tomorrow. Logically, however, this implies a trade-off: If the short-term goal is to maximize profits, the idea of spending those profits on charity constantly stands in the way of maximizing said profits. Why spend money on good social causes now if one could invest it into business opportunities instead, resulting in even more potential money to give away later? This pattern of delaying the actual charitable act in favor of short-term gains could go on endlessly. Thus, taken seriously, the strategic advice of the charitable approach would in fact result in no charity at all.

Ulrich identifies these three above-mentioned approaches as ethically questionable for a wide range of reasons. Hence, he proposes a fourth type, *integrative business ethics*. According to this approach, a company's responsibilities should not merely focus in one way or another on the profit principle alone, but on sound and critical ethical reasoning. From a Habermasian discourse ethics perspective, Ulrich (2008: 408-442) argues that a company needs to thoroughly reflect on the ethical legitimacy of both its core business model and the way its strategies influence the business practices and policies of its industry as a whole. Constant stakeholder dialogue, integrity, and transparency are seen as prerequisites for earning a reputation as an ethically sound company—that is, a company that pursues only those business opportunities which do not violate stakeholders' moral rights. (The reasoning behind this approach is explained in chapter 2.3.)

Integrative business ethics could be seen as part of a general trend over the last decade during which academic literature on business ethics has gone from framing CSR as a purely voluntary corporate strategy aimed at generating profits by boosting a company's social acceptance to much more elaborate ethical frameworks that include broader perspectives such as stakeholder deliberation, social justice, and human rights (Matten/Crane/Chapple 2003; Scherer/Palazzo/Baumann 2006; Palazzo/Scherer 2006, 2008; Scherer/Palazzo 2007; Kobrin 2009; Wettstein 2009, 2010, 2012). Echoing the academic state of the art, practically every major company today claims to act responsibly, or to be a "good corporate citizen." And very often, these claims are not mere rhetoric. At the same time, however, many companies still understand CSR primarily as a marketing tool or some philanthropic add-on to their business model that is "nice to have," thus shying away from openly discussing ethical critiques and moral claims brought forth by stakeholders (Parmar et al. 2010).

It is against the backdrop of these recent developments in business ethics literature that the following sections investigate Twitter's ethos, or normative self-understanding. In order to identify which type of CSR Twitter deploys primarily, the language used to construct the company's normative claims on its "About Us" and "hope140.org" pages, as well as its terms of service and privacy policy have been examined. The following two sections will detail the findings before critically discussing them against the backdrop of the aforementioned business ethics literature.

3.4 Twitter's Self-Understanding & its Deployment of CSR

Whenever new ICTs gain mainstream popularity, they instill a wide range of hopes in tech-savvy users, business people, activists, and politicians alike. For example, social networking sites have been getting a lot of celebratory press coverage in recent years for their supposedly democratizing effects. Twitter is no exception to this rule, as shown by a large-scale review of the mainstream press coverage the company received from 2006 to 2009: Arceneaux and Schmitz Weiss (2010: 1270) claim that the use of Twitter among decision-makers

> "symbolized the increased access to political information that Twitter allowed, … [e]mbracing the vision of an expanded participatory democracy (a hope which has been bestowed upon all previous forms of electronic media)."

A highly visible example for this kind of supposedly easy and transparent access to political processes is U.S. President Barack Obama's widely lauded Twitter presence. Thus, Twitter's positive mainstream media image represents a continuation of celebratory depictions of ICTs as tools of transparency and participation, and as extenders of political liberties. This holds especially true when looking at high-profile reporting on social media use of dissidents in Middle Eastern countries over the course of the past four years. For example, Time Magazine called Twitter "the medium of the movement" in the aftermath of the June 2009 Iranian elections because Twitter distributed "information from street level, in real time," thus supposedly enabling a "mass protest movement":

> "Twitter didn't start the protests in Iran, nor did it make them possible. But there's no question that it has emboldened the protesters, reinforced their conviction that they are not alone and engaged populations outside Iran in an emotional, immediate way that was never possible before." (Grossman 2009.)

In Grossman's view, Twitter apparently serves as a platform for dissenting voices that successfully countered Iran's "monologue of tyranny," as he celebrates the microblogging site's perhaps unintended political influence on the protests against authoritarian regimes. Thus, Grossman's portrayal does not acknowledge the pre-existing structures of political mobilization in the Middle East that might actually have enabled dissidents' subsequent use of Twitter. Furthermore, Grossman's success story fails to take into account the fact that social media were also used by the incumbent government in order to identify and prosecute dissidents. In hindsight, this so-called "Twitter Revolution" can therefore be identified as "largely the product of media hype" (MacKinnon 2012: 54).

Nonetheless, just two years later, the "Arab Spring" of 2011 was framed almost exactly the same way in the popular press, perhaps on an even grander scale. What makes these events interesting from a business ethics perspective is the fact that there are a wide range of normative implications at play when it comes to the public perception of social networking sites and their business models (Valtysson 2012). The positive image created by mainstream press coverage of the "Arab Spring" has—even when contested (Rosen 2011)—positioned social media sites such as Twitter and Facebook as key drivers of social change and political emancipation in a wide range of countries, such as Egypt, Bahrain, Libya, Syria, and Tunisia. Moreover, the success stories told by Western media portrayed civic use of Twitter in a rather one-sided and heroic fashion, suggesting that social change in the Middle East should in large part be attributed to online social networks rather than revolutionary mobilization of the people living in these nations. This view rests on an underlying assumption of technological determinism, i.e. the hope that technology would "naturally" liberate people if used correctly.

Just like Grossman during the "Twitter Revolution" of 2009, Sedra (2011) claimed with respect to the "Arab Spring" that Web 2.0 platforms like Facebook and Twitter "certainly aren't solely responsible for the growing wave of revolutionary ferment in the Arab world," but that they "helped to channel that frustration into action":

> "Short of shutting off the Internet and mobile phone communications, these states have been unable to contain the viral anti-regime activities of their wired citizens."

Western nations, Sedra argued, should support these "wired citizens" by "strengthening the Web 2.0 platforms that can facilitate the networking of activists, the sharing of ideas and the organization of movements"—as if social networking sites were government programs, not private enterprises. This last point illustrates one aspect of the role of online social networks as quasi-political institutions: As the "Arab Spring" has shown, the traditional division between private and public entities has become increasingly blurry in the online environment (Baym/boyd 2012), highlighting a wide range of normative issues with respect to corporate responsibility (chapter 4). This development rules out functionalist business ethics (chapter 3.3) as a useful justification for CSR, since political aspects such as the ones outlined above obviously cannot be regulated by market mechanisms.

Therefore, with respect to Twitter's CSR activities, the "Twitter Revolution" and the "Arab Spring" raise questions regarding the company's motives: How exactly does Twitter frame its ethos, mission, and self-understanding? And is the perception of Twitter as a key driver of social and political change just the result of somewhat biased mainstream media coverage, or did the company itself actively contribute to this image?

One central normative claim giving insight into the company's ethos can be found directly on the homepage of Twitter's "hope140.org" charity site (which is named after the maximum length of a tweet, 140 characters):

> "At Twitter, one thing that drives us is our desire to make a lasting impact as a company. Being a force for good is at the heart of that mission."

Clearly, this is a bold moral claim, and one could argue that it might refer solely to Twitter's charity efforts. However, the quote explicitly states that Twitter wants to make a lasting impact as a *company*, and it is precisely "that mission" which includes being "a force for good." Therefore, from a business ethics perspective, what Twitter offers through its "hope140.org" site might actually be seen as a refreshing take on framing a corporate mission, which usually consists of variations on the tired old theme of "our mission is to become global market leaders by creating added value for our customers, delivering high-quality goods and services." By contrast, Twitter's attempt to highlight the broader social value of its service might express the company's actual desire to contribute to fair global communications. At the same time, however, it blurs the boundaries between the company's business interests, its charity efforts, and the ideal of digital citizens coming together on Twitter in order to make the world a better place.

The language and imagery used on "hope140.org"—promoting Twitter's claim of "open exchange of information" alongside photographs of sub-Saharan African villagers—constructs a particular version of the *digital citizen*. Both mainstream media coverage of the "Arab Spring" and Twitter's self-portrayal suggest that access to technology is a prerequisite for civic participation today. Papacharissi (2010: 104) thus claims:

> "As a civic agent, the digital citizen is reified through his/her use of digital media, meaning that digital citizens enter the sphere of civic activity through digital media."

This perspective on citizenship was central to both mainstream news framings of the "Arab Spring" and apparently also to Twitter's own January 2011 blog post, boldly claiming that "The Tweets Must Flow" (Twitter 2011b):

> "The open exchange of information can have a positive global impact. This is both a practical and ethical belief. … Our position on freedom of expression carries with it a mandate to protect our users' right to speak freely."

This self-proclaimed mandate is a bold normative claim, both in terms of its semantic content and as an illustration of the way the company communicates its self-image. In order to substantiate this claim, Twitter partnered with Google at the time of the 2011 revolution in Egypt in order to create Speak2Tweet, a telephone-based program that lets protesters without internet access call a phone number and say something that will then be transposed into a real-time tweet that users can find on Twitter's website (*http://twitter.com/#!/speak2tweet*). Moreover, Twitter and Google very recently—specifically, on November 30, 2012—activated Speak2Tweet in Syria as a reaction to the Assad regime's deactivation of internet access. These actions are relevant in the context of this chapter not because I would like to either praise or condemn what Twitter does in Egypt or Syria, but because it shows that the company actively frames itself as a political actor:

> "In this way, Twitter's explicit framing of itself as a democratic, free-speech platform aligns with mainstream news coverage, offering the site as a stage upon which people are constituted as citizens through a romanticized, technologized version of the unfettered exchange of information and ideas as a central component of democratic social life." (Shepherd/Busch 2012.)

Indeed, ever since Twitter was founded in 2006, the normative claims made on its "About Us" page have, in one way or another and to varying degrees, invoked the rhetoric of digital citizenship and user rights. While Twitter initially introduced itself simply as "an interesting side project" of team members at Obvious, a podcasting and social media company from San Francisco (which today is the world's social media capital), it increasingly adopted political CSR rhetoric as the site quickly gained notoriety and public profile. For example, by September 2008, Twitter (n.d.) had positioned itself as something of a global village, stating that

> "In countries all around the world, people follow the sources most relevant to them and access information via Twitter as it happens—from breaking world news to updates from friends."

In 2009, Twitter reformulated its "About Us" page as a series of frequently asked questions (FAQs). Among others, one of the questions answered was "How do you make money from Twitter?" The response illustrates how the site framed its ethos in CSR rhetoric even back then already:

> "Twitter has many appealing opportunities for generating revenue but we are holding off on implementation for now because we don't want to distract ourselves from the more important work at hand, which is to create a compelling service and great user experience for millions of people around the world." (Quoted in Shepherd 2009: 160.)

Quite obviously, Twitter distances itself in this statement from being just any ordinary company, claiming that in their case, user experience trumps profit-making. This could be interpreted an instrumentalist CSR take on framing the company's ethos and business model, in the sense that the company would "invest in ethics" by forgoing profits in the short term in order to be even more successful in the long term. (Functionalist business ethics obviously does not apply here, and a charitable business ethics approach would imply maximizing profits in the short term in order to then spend said profits on charity.)

This logic apparently has continued into the present day. For example, in a section called "Twitter and the Community," the company's current "About Us" page states:

> "At Twitter, we believe that the open exchange of information can have a positive global impact. Every day we are inspired by stories of people using Twitter to help make the world a better place in unexpected ways." (Twitter n.d.)

As an example for the open exchange of information it promotes, Twitter's engineering blog highlights the company's use of open-source software (Twitter 2012c). Furthermore, the company both promotes and communicates its commitment to enhancing democratic communication globally through its charity site, "hope140.org" (Twitter 2012a), publishing statements such as this one:

> "At Twitter, one thing that drives us is our desire to make a lasting impact as a company. Being a force for good is at the heart of that mission. … The open exchange of information is just beginning to become an everyday part of how the world communicates. As folks like you spread positive knowledge through the platform, we'll be collecting it and highlighting good social movements that you might want to get involved in."

With this statement, Twitter once again presents itself as a platform that gives all kinds of activists a voice, acting as a curator, amplifier, and multiplier for

"positive knowledge." Therefore, it seems fair to state that the promotional language Twitter uses throughout its sites encourages a perception of the microblogging service as a public utility, i.e. a public space for socially beneficial and democratic communication.

The examples presented in this section demonstrate that Twitter very openly, publicly, and persistently makes use of stark CSR rhetoric when it presents its ethos as the core of its identity. Just like the mainstream media coverage of Twitter, the company itself uses imagery that references appealing ideals of democracy, suggesting that an increased number of voices translates to a more engaged citizenry (Hindman 2008: 17). The company also stresses its supposedly essential function for modern citizenship, framing itself as a crucial technology that enables political participation and alluding to an ideal of citizens who assume responsibility to act locally as political intervention (Schudson 1998).

Remarkably absent, however, at least most of the time, is the acknowledgment that Twitter is in fact not only a communication service and a political platform, but also a company. For reasons that one could only speculate on, Twitter seems to be less eager to address its strategy's commercial aspects in quite the same open way as its emancipatory political potential. Such reticence might suggest that the company strategically deploys the myth of the internet as a democratizing force in order to stake its private claims on networked publics (Hindman 2008: 138). For Papacharissi (2010: 137), this is an indicator for the fact that civic communication has been fundamentally re-situated within a "private sphere and through the use of private media environments". This type of private sphere is characterized by the commercial context in which companies, including both Twitter itself and the many companies who use its platform for their own respective promotional purposes, use CSR rhetoric for what one can only assume to be marketing or PR practices.

3.5 Web 2.0 Sites as Private Regulators of Public Discourse

As already alluded to above, social networking sites have to a certain extent changed our understanding of public space by relocating public conversation to private spheres. In these spaces, the everyday communication practices of citizens in digitally enabled democracies can be seen "both as an expression of distinct civic tendencies and as the tapestry upon which further tendencies form"

(Papacharissi 2010: 16). As the examples of the "Twitter Revolution" of 2009 and the "Arab Spring" of 2011 have illustrated, mainstream media coverage mostly shows these developments in a positive light. From a business ethics perspective, however, one could ask whether Twitter's relationship with its stakeholders is in fact as democratic as the site's emancipatory image suggests.

This raises the question of how Twitter regulates the millions of interactions taking place on its site every day.[5] Briefly put, it does so through corporate strategies, legal contracts and, as Lessig's (2006) famous statement emphasizes, the technological architecture of the site itself: "Code is law." While the notion of code as law is a crucial element of the way Web 2.0 platforms regulate public discourse, I will discuss that issue only later on in chapter 4 because it is even more relevant in the context of Facebook's regulatory role. In this chapter, I will instead focus on "regulation by contract," showing how Twitter regulates its users through its terms of service, which establish a rather asymmetrical regulatory role: While Twitter uses its terms to define what users can or cannot do, it tries to at the same time discursively legitimate its actions by framing itself as a benevolent platform, as described above. Before looking at the Twitter case, though, it is important to briefly address the background against which private companies regulate the online public sphere today.

The empirical observation that big companies, especially transnational corporations (TNCs), have a strong economic, political, and social influence on society is not new. As early as 35 years ago, for example, Ulrich (1977) claimed that transnational corporations should be understood as "quasi-governmental" institutions due to the massive influence they have on people's everyday lives all over the globe, and thus should be held more accountable for their actions. In recent years, business ethics and management literature has increasingly emphasized the public role of private corporations (Scherer/Palazzo 2007), popularizing concepts such as "corporate citizenship"—a term which, just like CSR, is often being used more as an umbrella term rather than as a specific concept (Matten/Crane/Chapple 2003). Vague definitions aside, a growing number of scholars today argue that companies should be understood not just as private entities, but as de-facto public actors (Scherer/Palazzo/Baumann 2006;

[5] Chapter 4 asks the same question with respect to Facebook's regulatory role, among other things.

Palazzo/Scherer 2006, 2008; Ulrich 1977, 2008; Crane/Matten/Moon 2008; Kobrin 2009; Wettstein 2009, 2010).

One common claim shared by these authors is that TNCs should focus not just on "extracurricular ethical activities," as some CSR approaches, such as the charitable one, would suggest. Instead, TNCs should be held more accountable for the consequences of their actual core business models and strategies, as those have massive economic, political, and social repercussions for citizens all over the globe. This trend "towards a new theory of the firm that emphasizes the public role of private business firms" is also reflected in current management literature on the role of TNCs in global governance, as Scherer and Palazzo (2011: 919) point out. Accordingly, when it comes to moral conflicts with stakeholders, transnational corporations cannot reasonably claim to just follow their "private" business models without being responsible for their public consequences. Thus, whether they like it or not, TNCs are under constant public scrutiny. And this also holds true for companies in the information and telecommunication (ICT) sector, as De George (2003: 5) points out. He coined the phrase "the myth of amoral computing and information technology" in order to illustrate the fact that ICTs are not ethically neutral. Instead, the complex nature and omnipresence of ICTs bring with it a wide range of accountability and responsibility issues.

This is emphasized by the underlying empirical trend that the lines between private companies and state agencies have become increasingly blurry even outside the field of ICTs: Transnational corporations have taken over many responsibilities that traditionally used to be associated with the nation-state (Matten/Crane/Chapple 2003; Crane/Matten/Moon 2008), while at the same time government agencies and other public institutions, such as universities, increasingly tend to operate according to business standards. Hence, today it is quite unclear what is meant by the terms "private" and "public" with regard to social institutions like companies or government. Ownership of these institutions might be narrowly defined from a legal perspective, but from a social and ethical point of view, the consequences of state and corporate actions have converged and become highly complex.

Transnational ICT companies, and especially social networking sites, illustrate this trend in their business models that aim to connect groups and individuals in many diverse ways. As such, private Web 2.0 companies today provide a "quasi-

public sphere" (York 2010). Therefore, their strategies have a direct and far-reaching impact on stakeholders' complex communication rights and practices (Lastowka 2010). For example, the recent trend to increasingly rely on tethered appliances and proprietary "walled garden" strategies instead of open ways to access content via the Web—as exemplified first and foremost by Apple's integration of hardware, software and content into one centralized environment, but also by online social networks and online gaming platforms—has drawn sharp criticism from ICT experts (Berners-Lee 2010), and it very well demonstrates the fact that ICT companies have become regulators. From an ethical point of view, one central question is whether ICT companies regulate their respective online spaces in a way that allows for openness and generativity (Zittrain 2008), or whether they exercise control over their stakeholders in a way that threatens their moral rights. Both Amazon and Apple, for example, have been criticized for "censoring" articles in their online stores and even deleting them from customers' devices post-purchase (Hodson 2008; Stone 2009), and online gaming networks like Microsoft's XBox Live Arcade drew similar criticism when banning players from its services for questionable reasons (Sapieha 2008). Since Web 2.0 companies like Facebook and Twitter have more users than most countries have citizens, the term "quasi-governmental" offers an apt description of the way they regulate their respective online spaces. Online social networks might therefore be the most obvious examples of private ICT companies fulfilling a public regulatory role, since they provide the technical and legal infrastructure upon which networked publics engage in discussions, exchange information, and produce networked goods. Because of this almost state-like structural role, MacKinnon (2012) calls online social networks "sovereigns of cyberspace" and ironically refers to "Facebookistan" and "Googledom" when discussing these companies' far-reaching power in today's online environment. This power of online platforms to determine what users can or cannot do on their respective online territories has led some critics to accuse companies such as Facebook and Google of a "new feudalism" (Clark 2011), or "digital feudalism" (Meinrath/Losey/Pickard 2011) that I will discuss in greater detail in chapter 4, using Facebook as an example. For the purpose of this chapter, suffice it to say that this new public role of online social networks brings with it new corporate responsibility issues. It is this complex background against which the corporate strategies and normative self-understandings of online social networks play an important role.

We can therefore characterize companies in the ICT sector today as "quasi-governmental" regulators on two levels: firstly, on the level of their core business models (i.e. how exactly do they make money?), which have a direct influence on stakeholders; and secondly, the way said business models interact indirectly with their stakeholders, for example by way of technical or legal industry standards, or by shared and agreed-upon business practices within the industry (Ulrich 2008).[6] While the core business model of any given individual company may be fully rational from its respective point of view, it might lead to unintended negative consequences for certain stakeholders, as illustrated by the digital divides discussed in chapter 2. In a globalized, digital economy, such negative consequences can easily cross national, legal, cultural, or moral borders, frequently resulting in protest or conflict. Due to the particularities of how competition works in the digital economy, ICT companies often feel they need to resort to proprietary business strategies that restrict competitors or customers from choosing certain options, relying on first-mover advantages, technical standards and restrictions ("code"), network effects, lock-in strategies and the like. From an individual business's perspective, such proprietary strategies make perfect sense when it comes to competing with other companies, but, as shown in chapter 2, they might harm public interest by threatening not-for-profit companies and open projects that rely on user creativity (Lessig 2006, 2008), commons-based peer production (Benkler 2006), or open access to information (Busch 2011). Yet even on platforms that rely on user participation, such as Twitter, this proprietary logic is made manifest through their terms of service, which are one of the key regulatory tools employed by Web 2.0 sites, as the following example shows.

In his analysis of YouTube, Gillespie (2010) points out that the practices of Web 2.0 sites that contravene the public interest might be understood from the point of view of these sites as "platforms." Gillespie's (2010: 348) discursive analysis shows how the term platform has been deployed in order to legitimize how YouTube integrates user content with commercial media products for its user base:

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[6] I use the term "stakeholder" in its broader sense as any group or individual who has a moral claim he or she wishes to address a company with, even if he or she is not directly affected by the company's actions. Thus, the term includes not only employees, customers, competitors, political regulators etc., but also advocacy groups and civil society organizations acting on behalf of third parties (Ulrich 2008; Parmar et al. 2010).

> "The term 'platform' helps reveal how YouTube and others stage themselves for these constituencies, allowing them to make a broadly progressive sales pitch while also eliding the tensions inherent in their service: between user-generated and commercially-produced content, between cultivating community and serving up advertising, between intervening in the delivery of content and remaining neutral."

Gillespie uses the phrase "broadly progressive sales pitch" to describe the way Web 2.0 sites frame themselves in a positive light as user-centric platforms designed for civic communication among peers, and this pitch certainly has contributed to the rise in popularity of Twitter. The term platform, as applied to Web 2.0 sites, thus seems to enact some kind of moral and rational legitimation (Van Leeuwen 2007) that online social networks use in order to depict their sites as neutral, peer-to-peer-driven level playing fields.

However, contrary to both popular belief and to what the company's marketing "stories" (Twitter 2012b) suggest, Twitter as a social web platform is not exactly an *agora*, i.e. one central place where citizens from all over the globe meet up in order to discuss the issues that matter to them in some sort of global village. Instead, it is a highly fragmented network of networks, with tens of thousands of separate communities exchanging information mainly among themselves, and with a wide range of commercial actors playing along because they need to be where their (potential) customers are. While a site like Twitter thus offers a certain version of a networked public—which boyd (2008: 125) defines as "the spaces and audiences that are bound together through technological networks"—this does not mean that all users of Twitter are part of the same community, actively exchanging information with all other users of the site; instead, user communities are fragmented into smaller publics.

The platform moniker also elides the fact that Web 2.0 sites such as YouTube, Facebook, and Twitter today play an increasingly important role as channels for industrialized content producers because Twitter's 200 million accounts (Rusli 2011), maintained by approximately 100 to 140 million active users who are sending 340 million messages every day, comprise an audience too large to ignore by many companies and public agencies alike.[7] Hence, over the last few years, a vast number of companies, groups, institutions, and individuals have joined Twitter as a means of more or less interactive communication, thus

[7] 100 million users is still the most recent official information Twitter has released on its user numbers, dating back from September 8, 2011 (Twitter 2011c; The New York Times Bits blog 2011). The New York Times (2012a) states that as of October 18, 2012, Twitter had 140 million active users.

introducing the necessity for the microblogging site to increasingly exert control over its users' rights. This has a great influence on the site's political economy. As a Web 2.0 platform fundamentally based on the appropriation of user labour and user data, Twitter makes money from advertising models directed toward its users. These models include the promotion of sponsored tweets, accounts, and trending topics—raising their profiles in keyword searches, for example—where user clicks and actions are compiled into marketing profiles for additional targeting of these sponsored products. Twitter also generates income by selling its tweets on particular topics to search engines, through which the site also might pick up additional users. The integration of Twitter across the web through search engines as well as various other websites pushes its regulatory role outward across diverse online spaces. Because Twitter's reach is so broad, its appeals to open and free communication are increasingly constrained by the profit imperative that shapes its content and approach to users as mere consumers.

For example, in January 2012, the site announced it would introduce the ability to selectively delete certain tweets by country. On Twitter's blog, this move was framed as an attempt to address hate speech. However, it could just as easily be used to regulate user communication in the private interest of its advertising partners, or, assuming the site will go public eventually, its shareholders. This is not mere speculation; instead, this kind of strict control over tweets is already happening to a certain extent: For instance, at a convention of the German political party CDU in December 2012, Twitter redacted the convention's official "event page" in order to present only "positive" content. Twitter apparently offered the service for free in this case, whereas it intends to market the same kind of event service to corporate clients in the U.S. for an estimated fee of USD 25'000 per event (König 2012). Thus, the site's apparent movement toward behavior that is increasingly driven by private interest while it still mainly frames itself through the language of social benevolence complicates the moral component of CSR in terms of regulation in the public interest and user rights (see section 3.6).

The way that Twitter manages and governs its growing network directly influences how its wide range of users can interact on the platform, regardless of where they are located physically, socially, or legally. Since the Twitter platform thus acts as a "quasi-governmental" regulator, it is no wonder that users,

bloggers, activists and citizens today tend to critically monitor the site, just as they do for Facebook or Google (e.g., MacKinnon 2010a/b, 2012: 221-250; Project VRM 2010), because of the growing concern that public interest issues might have been pushed to the margins through the discursive naturalization of Web 2.0 sites as egalitarian platforms when, in fact, they have become highly commercialized spaces today. These tensions between the civic, or user-centric, and the commercial aspects of Web 2.0 platforms provide an interesting case for studying the business ethics approaches outlined in chapter 3.3.

3.6 Ethical Problems Arising from Twitter's CSR Approach

The previous sections have shown how Twitter frames its ethos in benevolent terms, and they have illustrated why the company's normative self-understanding matters, as private companies today have become powerful entities regulating public discourse. Based on Ulrich's (2008) aforementioned typology of corporate ethics, Twitter seems to utilize CSR rhetoric mainly according to the type of instrumental CSR, even though its ethos does also seem to fit the integrative type in certain instances (chapter 3.3). Focusing too much on instrumental CSR is problematic from an ethical point of view, as many companies still see profit maximization as a prerequisite for doing the morally right thing, following the motto: "We would certainly like to do [insert good social cause here], but only if it is good for our marketing and reputation." This is what defines the so-called "business case for CSR": the belief that companies should "invest in ethics" because that supposedly pays in the long run. According to this belief, if stakeholders demand certain "social" or "ethical" activities, the company should abide, as long as that claim comes at a reasonable price. Contributing to social causes might be costly in the short term, but the long-term gains in reputation, or the preclusion of reputation risks, supposedly will outweigh such costs significantly. From this perspective, "ethics" is seen as an instrument for the financial success of a company.

At this point, in addition to the criticism of the concept briefly outlined in chapter 3.3, I would like to discuss at greater detail the fact that instrumental CSR suffers from at least two major conceptual problems (Ulrich 2008: 376-408; Nijhof/Jeurissen 2010): First, in modern societies, which are functionally, socially, legally, culturally, and morally fragmented, we cannot know beforehand what "the right thing to do" is in any given case. While material ethical theories

—such as virtue ethics, utilitarianism, or Kantian ethics of duties—give us regulative ideas on what a "good" action is, they are problematic for various reasons (Ulrich 2008: 11-110), not the least of which being that they are difficult to operationalize in, and translate to, a corporate context. Hence, Ulrich (2008: 408 ff.) claims that we do not need a material, but a *procedural* approach to corporate ethics. Building on Habermasian discourse ethics, Ulrich holds that a company in any given conflict needs to engage in open and unconditional discourse with all its stakeholders on a case-by-case basis in order to find out what "the right thing to do" could be. Hence, a "good corporate citizen" is a company that unconditionally respects the dignity and moral rights of its stakeholders, trying to take into account their conflicting claims by engaging in a process of deliberation—that is, a process during which stakeholder claims get to make the case that they are reasonable and fair to all parties involved, including the company itself. Multi-stakeholder dialogues are an effective practical tool used to operationalize this theory.

Secondly, even if a company is willing to engage in open discourse with its stakeholders, the result of such deliberation might turn out not to be profitable for the company. Some business opportunities are simply ethically illegitimate because they violate stakeholders' moral rights, no matter how much profit a company could make. The Mafia is a good metaphorical example for this argument because it illustrates the point rather drastically: If profitability were the only ethically relevant criterion for corporate ethics, the Mafia could be considered morally legitimate—after all, it has a moral code (ethos), shared values and norms (morals), and arguably a very successful "business model" (Gond/Palazzo/Basu 2009). Obviously, even though the Mafia supports a wide variety of good social causes, its business model could hardly be considered ethically sound. Accordingly, the litmus test for corporate responsibility claims is whether a company is actually willing to unconditionally discuss conflicts arising from its core business model, and whether it does in fact live up to its mission and principles instead of just occasionally straying from "business as usual" when instrumental CSR activities promise to present a good business opportunity (Nijhof/Jeurissen 2010).

This illustrates that, at its core, instrumental CSR theory does not take into account ethical claims at all—not necessarily because it does not want to, but because it simply lacks the conceptual means to do so. That is because

instrumental CSR is limited to using an underlying logic that only theorizes decisions in quantitative terms, with every corporate decision becoming a function of maximizing profit, and the idea of maximization conceptually does not leave room for framing the problem of profit-making as a *gradual* one. As a result, managers adhering to the instrumental CSR approach typically end up asking "how much CSR" a company needs to invest in for it to boost its reputation, or to retain its "license to operate" as granted by society. Thus, from a purely quantitative financial perspective, a company can only just weigh the financial benefits of "CSR activities" against their cost. This illustrates that economic rationality, as Wettstein (2008: 249) put it,

> "systematically lacks the moral vocabulary necessary to address [moral] problems not only in more adequate but also in more effective ways. The new vocabulary we need in order to find adequate and effective answers to these global problems … is the one deriving from the language of rights."

Understood this way, CSR is not about making smart business decisions solely based on self-interest and economic rationality. Instead, it is about respecting stakeholders' moral rights. This requires transparency as well as open and unconditional discourse with all stakeholders, especially in the case of online social networks such as Twitter, whose very business is communication—and who, quite ironically, often seem to be rather unwilling to openly communicate and comment on issues such as corporate responsibility. It seems reasonable, then, to expect Twitter to engage in this kind of open discourse with its stakeholders. As the next section illustrates, however, such discourse is highly complex.

3.7 Moral Conflicts: Privacy & Intellectual Property on Twitter

As stated in the previous section, a business ethics perspective on the normative tensions between Twitter's role as a civic, user-centric "platform" on the one hand and as a commercial service on the other invites a rights-based approach. Such a perspective focuses on issues such as users' privacy and intellectual property rights as they are circumscribed by Twitter's terms of service (Twitter 2012d) and privacy policy (Twitter 2011a).

> "These documents serve to delimit user rights through their function as binding contracts; in this way, as Lessig (2006: 185-7) explains, private law of contract in effect displaces government regulation on the internet according to the profit motive. While users can contribute some degree of input regarding the fairness of these

> contracts through traditional channels like the court system, or through new technological channels like the development of alternative internet architectures, private enterprise still dominates the platforms of Web 2.0. In this way, while users seem to be afforded ever more expanding participatory opportunities, terms of service contracts constrain user control—particularly with regard to rights of privacy and intellectual property—over cultural production on sites such as Twitter." (Shepherd/Busch 2012.)

In recent years, the way that privacy rights are defined in Web 2.0 sites' privacy policies has been subject to both civic and scholarly interrogation. In Canada, for example, the Canadian Internet Policy and Public Interest Clinic (CIPPIC) filed a complaint with the Office of the Privacy Commissioner (OPC) against Facebook in 2008, claiming that the social network violated privacy regulations as defined by Canadian privacy law. This case highlighted some of the key concerns not only for regulators, but also for users of social network sites, and thus the impact of online privacy's rising public profile has led to some recent changes in many Web 2.0 sites' privacy policies. Twitter's privacy policy also reflects these changes. For example, Twitter's privacy policy (2011a) now claims the following:

> "Our default is almost always to make the information you provide public but we generally give you settings to make the information more private if you want."

Stipulations such as this one position the site as affording user agency, and Twitter in certain cases goes to great lengths to protect its users' private tweets. For example, it has repeatedly tried to protect some of its users from over-ambitious law-enforcement agencies. As MacKinnon (2012: 84) reports, US government prosecutors in January 2011 had obtained a subpoena that was supposed to force Twitter to hand over "account information for five people who had been involved with WikiLeaks' publication of classified US diplomatic cables." Among other things, that information included private direct messages between users as well as their internet protocol (IP) addresses, which one can use to identify internet users. According to MacKinnon (2012: 84), the government

> "had not established a criminal case against any of these individuals. Twitter's lawyers fought in court for the order to be unsealed, and thus *[sic!]* able to be shared without breaking the law."

That way, Twitter was able to inform and thus protect its users, at least temporarily. In a similar case, Twitter's lawyers supported an Occupy Wall Street protester in May 2012 (Franzen 2012).

At the same time, however, privacy defaults on Twitter are still set to the most public level by the company. The site's privacy policy therefore retains an emphasis on making information public, but it frames this fact in vague wording that might enable Twitter to use personal and personally identifiable information for commercial purposes, such as ubiquitous behavioral marketing (Stallworth 2010). Such marketing practices, based on the commodification of personal information, contribute to the way user rights are compromised within commercial online spaces that support networked publics (Turow 2012).

While Twitter's privacy policy applies contract law to personal information, its terms of service (Twitter 2012d) expand those contractual obligations to any other form of user-generated content contributed to social networking sites. Boyle (1997: 90; emphasis in original) thus places the intellectual property rights as described or limited by terms of service contracts at the heart of internet law:

> "In terms of ideology and rhetorical structure, no less than practical economic effect, intellectual property is the legal form of the information age. It is the *locus* of the most important decisions in information policy. It profoundly affects the distribution of political and economic power in the digital environment. It impacts issues ranging from education to free speech. The 'value' protected (and in a sense created) by intellectual property in the world economy is in the hundreds of billions of dollars and growing all the time."

The immense value of intellectual property, as described by Boyle, explains why many ICT companies tend to favor proprietary strategies instead of focusing on user rights or, as shown in chapter 2, on alleviating digital divides by pursuing open and inclusive strategies. In order to protect the intellectual property of content producers, policymakers in recent years have introduced legislation that tends to focus narrowly on defining, and in fact criminalizing, activities that constitute "piracy" (Lessig 2008). Much in the same vein, Twitter's terms of service include stipulations that intend to protect copyright-driven industries and third parties on Twitter from what they frame as malicious illegal uses by the site's users. Accordingly, Twitter (2012d) states:

> "Twitter respects the intellectual property rights of others and expects users of the Services *[sic!]* to do the same. We will respond to notices of alleged copyright infringement that comply with applicable law and are properly provided to us."

Beyond the protection of third-party rights, the company's terms (2012d) also lay out the site's own explicit copyright claims under the section titled "Twitter Rights":

> "All right, title, and interest in and to the Services (excluding Content provided by users) are and will remain the exclusive property of Twitter and its licensors. The Services are protected by copyright, trademark, and other laws of both the United States and foreign countries."

Empirically, these kinds of strict copyright stipulations for users in terms of service contracts are standard practices in the industry, and thus the ethically more interesting issue is Twitter's de-facto appropriation of user-generated content through unrestricted licensing schemes. While the site pledges to protect commercial third-party content as well as its own content from copyright violations by its users, its licensing policy generously grants Twitter a wide range of rights:

> "By submitting, posting or displaying Content on or through the Services, you *[the Twitter user]* grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods (now known or later developed)."

This means that while user-generated content posted on the site may still be the intellectual property of its original creator, the broad licensing terms allow Twitter to use the content for free in any way, shape, or form that the company sees fit. Again, both the vague wording and the very broad provision for various uses of user-generated content are common elements of most online social networks' terms of service. Moreover, in Twitter's case, the terms also extend these provisions to "the right for Twitter to make such Content available to other companies, organizations or individuals," and they allow the site to "modify or adapt your Content in order to transmit, display or distribute it over computer networks and in various media and/or make changes to your Content" (Twitter 2012d).

These regulations lead to an interesting situation: On the one hand, Twitter protects professionally produced content from potential misuse by its users. On the other hand, however, users on Web 2.0 sites are also producers. Therefore, Twitter's licensing terms disfavor users twice: First, they restrict their user rights in the name of copyright protection, and second, their rights as producers are undermined by broad licensing terms. While user contributions of original and remixed content may be repurposed by Twitter in ways that presumably increase the site's profitability (Humphreys 2005: 303), users are criminalized for similar activities. Thus, even though Twitter does not claim ownership of user-generated

content, its licensing and archiving strategy represents a significant power imbalance with respect to users' intellectual property rights.

As questionable as these regulations may seem from an ethical perspective, they obviously have led to great financial success for the company. The company itself usually does not disclose financial information, but The New York Times (2012a) reports the following numbers:

> "Today, Twitter seems ubiquitous. Bankrolled by venture capitalists, it has grown into a multibillion-dollar enterprise with 140 million users worldwide. Although the company doesn't share its financials, it is estimated that it will have $350 million in revenue in 2012. In the summer of 2011, Twitter raised $400 million from private investors. The fund-raising effort, led by DST Global, the investment firm headed by the Russian billionaire Yuri Milner, valued the company at $8 billion. In December 2011, Prince Walid bin Talal of Saudi Arabia announced he had taken a $300 million stake in the company, representing roughly 3 percent. On paper, Twitter is valued at close to $10 billion. Its next big step is to go public on the stock market, and insiders say the current goal is to have an initial public offering in 2014. But those plans now are being discussed in light of a somber case study: Twitter's social media twin, Facebook, has already gone public, of course—and, so far, Facebook stockholders have lost billions, at least on paper."

Only three years ago, this comfortable situation was drastically different: "[A]s of mid-2009, the site operate[d] at a loss: 'While our business model is in a research phase, we spend more money than we make'" (quoted in Shepherd 2009: 151). Ever since the "Twitter Revolution" of 2009, however, both the site's user base and its public profile have grown tremendously, which in turn has led to strong network effects with respect to the amount of free user-generated content shared on Twitter—"free," that is, both in the sense of free labor (Terranova 2000) and in the sense of licensing users' intellectual property and private information not just for free, but also *ad infinitum*. Thus, drawing from Lessig's (2006) four ways of regulating ICTs—i.e. through law, markets, code, and social norms—, one could argue that contracts on social networking sites such as Twitter work to enshrine communication norms and rights within "legalese" (i.e. legal jargon) that legitimizes and prioritizes these sites' market-based imperatives over user rights. Featuring positive marketing statements such as "Our Services are primarily designed to help you share information with the world" (Twitter 2012d), Twitter's terms of service seem to be intended to consolidate the site's value to users in line with the way Twitter presents itself throughout its promotional material, i.e. using CSR tropes in order to frame its services as benevolent, civic, and user-centric.

It seems quite revealing, then, that Twitter does not seem to be willing to explicitly talk about its users' rights. Twitter instead tends to overemphasize the rights of copyright holders, for example in its terms of service, as discussed above. Moreover, Twitter does not openly state that it actually is a commercial enterprise; instead, it focuses its marketing messages on issues such as "sharing information among peers for free" and, as seen in the last three years during the above-mentioned political conflicts all over the globe, "exercising citizenship rights." The site thus seems to try to instill the image of a benevolent intermediary that does not follow its own agenda, but rather provides a totally neutral service. Yet, estimates of what Twitter might be worth if it decided to actually go public despite Facebook's recently failed precedent—i.e. between $8 billion (Rusli 2011) and $10 billion (The New York Times 2012a)—illustrate that there are serious commercial interests involved when it comes to its potential growth as a global communication platform.

Given these commercial implications, one could assume that Twitter makes use of CSR rhetoric in order to—not exclusively, of course, but to a large extent—obscure the predominance of private commercial interests protected by contract law on its online territory, which also presents political and ethical consequences for the internet as an architecture that supports networked publics (boyd 2008). Therefore, and due to the lack of an overarching, global policy framework that outlines the conditions of free speech online, intellectual property distribution in democratic countries is less about government censorship (even though that is still a big problem today) and more about private censorship (Boyle 1997: 89; Coombe 2004; MacKinnon 2012). In some instances, we can even observe public-private partnerships with respect to online censorship today (Benkler 2011a/b, DeNardis 2012). (More on this last issue in chapter 4.)

> "Especially when free speech implicates users' rights to copy and distribute proprietary content, the circumscription of these rights by terms of service contracts tends to supplant the fair use or fair dealing rights as provisioned in U.S. copyright law. Part of this has to do with the blurry jurisdiction for intellectual property rights online, especially when users from other countries contribute content to U.S.-based websites like Twitter." (Shepherd/Busch 2012.)

Such jurisdictional confusion and ambiguity is compounded by the aggressive stance toward litigation taken by the majority of the U.S.-based copyright industry, which "recognizes that risk-averse users will probably back down before taking on a well-financed lawsuit from a corporate entity"

(Murray/Trosow 2007: 76). Naturally, a company that is threatening legal action based on terms of service contracts encourages what one could call self-censorship among users, thus creating a chilling effect on free speech and the creative re-appropriation of culture industry products, for example via remixing content (Lessig 2008). Threatening legal action over the last years has also fit in well with a broader trend to position users only as consumers and not primarily as citizens (Livingstone/Lunt/Miller 2007). This trend not only obscures but actually prevents any proper consideration of users' rights, particularly the rights to privacy and intellectual property, because economic logic lacks the moral vocabulary necessary to grasp and positively deal with the concept of rights (Wettstein 2008).

> "In light of the appropriation and/or criminalization of users' online cultural production, new contractual and ethical frameworks for protecting user creativity are essential, since its ramifications extend beyond Web 2.0 and the internet itself; as Lessig (2008) asserts, read-write activity—adding to cultural works by creating and re-creating around them—is fundamental to democracy in that it employs access to ideas toward literacy, and literacy toward civic engagement. The copyright claims outlined in terms of service reflect narrow, proprietary attitudes around professionalized content that miss this larger picture of its public function. The web was in fact built for this public function, as a writable medium composed of layers of code. In this context, Lessig argues that terms of service contracts will soon lead federal regulation in order to fundamentally circumscribe user activity by controlling the architecture of online spaces because 'if code is law, control of code is power' (Lessig 2006: 79)." (Shepherd/Busch 2012.)

This "code"—i.e. the internet's technological architecture—to a certain extent determines the possibilities of both user participation and of the legislation that seeks to delineate it. However, user participation and legislation are not only contingent on this kind of code, but also on the traditional, offline architecture of political, economic, institutional, and moral configurations. With respect especially to the latter category, instrumental CSR offers a rose-tinted, corporate interest-driven version of these configurations—and from a business ethics perspective, this might lead to the unfortunate situation that commercial web platforms may for the foreseeable future remain exempt from serious accountability for the ways they shape user rights both on and beyond their respective online territories.

3.8 Discussion: Public Spheres & Private Regulation on Twitter

This chapter has illustrated three points: (1.) Using the company's promotional and legal material as empirical case study, it has shown that Twitter is very vocal when it comes to communicating its ethos, and that it to a very high degree makes use of CSR rhetoric when framing its own mission, mandate, and strategy. (2.) The site presents itself as a peer-driven, user-centric, civic platform while at the same time greatly downplaying its commercial role. This implies that, when making use of CSR rhetoric, Twitter often resorts to instrumental CSR. It thus seems to indicate that Twitter to a certain extent regards benevolent rhetoric as a strategy to gain user trust in the short term in order to be more successful in the long term. (3.) This introduces a normative tension between the site's CSR-tinted marketing language and its rhetoric when it comes to regulating user rights, especially with respect to privacy and intellectual property. While Twitter protects the intellectual property of its corporate partners, it seems to take commercial advantage of the data and content its users provide to the site for free.

Admittedly, this broad criticism from an ethical perspective is biased in certain ways: On the one hand, focusing on analyzing Twitter's rhetoric instead of also taking into account its entire track record when it comes to the company's actual behavior limits our perspective on the company's "moral performance," so to speak. This focus, however, is justified by the fact that (a) this chapter explicitly set out to only study the company's rhetoric because its research interest lies in the regulative ideas and normative justifications that Twitter itself wishes to emphasize, and (b) that a comprehensive empirical analysis of the company's actions actually escapes the grasp of any individual researcher, not just because of its sheer scope, but also because of the limited access to both the company's decision-making process and the contractual, regulatory, and legal processes involved, which are confidential in most cases. Even though the company has started publishing a transparency report which details government requests for user data (Twitter 2013), and despite the fact that the EFF lists Twitter as one of only two ICT companies who comprehensively protect their users' data from government access (Electronic Frontier Foundation 2013), most of the company's interactions with private-sector entities remain less than transparent. The most drastic bias thus created by focusing on Twitter's *rhetoric* is that the company in its messaging frequently reserves the right to take certain actions which seem

restrictive towards its stakeholders, but the analysis does not take into account whether the company actually *exercises* these rights. Furthermore, many of these provisions are being put into place by Twitter because the company is required to do so by laws such as the Digital Millennium Copyright Act (DMCA). For instance, re-tweets by law require a license. This implies that the divide between private and public regulation on Twitter is both less drastic and more complicated than an analysis of the company's rhetoric alone would suggest.

Nonetheless, the portrayal of Twitter as operationalizing CSR rhetoric in instrumental ways is, one the one hand, a case study that merely illustrates the empirical trend that ICT companies increasingly play a regulatory role in the online environment. At the same time, it is also meant as a provocation for thinking critically about the actual implications of the role of social media companies as quasi-regulators for notions of user rights. In addition to the Twitter's function as a regulator of rights in a top-down fashion through Lessig's four forces—i.e. the law, markets, code, and norms—it is important to point out that actual bottom-up (or on-the-ground) uses of a platform such as Twitter are often difficult to predict or control. For example, despite the positive reporting on the "Arab Spring" in 2011 that framed Twitter as a digital liberator, government security forces in the aftermath of the protests in Iran and Syria reportedly used the microblogging site to identify and prosecute protesters. More recently, participants in the London riots of August 2011 apparently used Twitter to help orchestrate looting and violence—in other words, activities that do not quite lend themselves to the site's celebratory promotional rhetoric. This illustrates that Web 2.0 sites as spaces of networked publics are regulated not only by top-down, but also (to a lesser extent, perhaps) by bottom-up communication practices—and both types of regulation do not necessarily present intrinsically positive pictures the way the media hype around the "Twitter Revolution" and the "Arab Spring" did.

> "In the context of everyday communication on social media platforms that are often vexingly immune to instrumental CSR logic and thus Web 2.0 regulation, what might be alternative modes for engaging user autonomy and bolstering user rights? One avenue suggested across the academic literature is government legislation, such as around proposals for policymaking in the public interest around issues of intellectual property (Boyle 1997), privacy (Office of the Privacy Commissioner of Canada 2011), and communication rights online (Raboy/Shtern 2010)." (Shepherd/Busch 2012.)

Because global political regulation will be hard to achieve in the foreseeable future, self-regulatory standards of behavior could be arranged for or strengthened by the ICT industry—as exemplified by successful initiatives such as the Global Network Initiative (2012; Maclay 2010). Multi-stakeholder dialog is an established tool for such processes, as it can help stakeholders have their say on the issues that matter to them while at the same time giving companies a chance to critically assess and legitimize their business models. One of the most important aspects of these processes is transparency (York 2010: 29), which is also one of the main criticisms Twitter will need to face: Its instrumental CSR approach is understandable to a certain degree from a strategic angle, but its lack of transparency about the fact that it is also a business, and not just a platform or social change, calls into question the company's motifs and trustworthiness. Stakeholders reasonably demand more of a company with such a distinct ethos than just mere rhetoric, and they have the option to leave any platform and join another one, which in turn creates regulatory competition among online platforms (Mayer-Schönberger/Crowley 2006).

Against this background, participatory design is an area that might offer a number of strategies for opening up the design process of social media platforms, fortifying their claims about communicative democracy through bottom-up approaches that involve users in building system architectures (cf. Mayer-Schönberger/Crowley 2006; Eubanks 2011). Additionally, another potential means of instilling public understanding of rights online might be through digital literacy policies that go beyond teaching practical “hands-on skills” in order to include education about contractual and legislative delineations of user agency (Livingstone/Brake 2010).

From an ethical perspective, the democratic appeals contained in the concept of integrative business ethics may hold promise for improving the transparency of Web 2.0 sites’ circumscription of user rights, along with supporting effective stakeholder dialogue and deliberation. However, while I would certainly like to be (at least cautiously) optimistic when it comes to the democratic potential of Web 2.0 sites, one should not ignore the fact that these platforms are run by businesses that adhere to the logic of economic self-interest—not exclusively, of course, but to a large degree. Thus, going forward, we will most likely observe a growing tension between Twitter's self-proclaimed “democratic” mission and the allegedly ambitious financial opportunities of the site. The real test of Twitter’s

integrity lies only just on the horizon, as rumors of the company going public in 2014 have fueled exaggerated expectations among investors already (The New York Times 2012a). Because investors have a habit of expecting financial results to improve year over year, we shall see whether Twitter will be able to maintain both its "civic" rhetoric and its "democratic" mission, even at times when stockholders insist on both growing profit margins and avoiding costly lawsuits over intellectual property infringement. While Twitter at present may be the most important player in the microblogging market, the value of both the service and its brand is highly dependent on user trust and the site's credibility. Going public, abandoning its mission, and becoming just an "ordinary," stockholder-driven company might hurt Twitter's brand and integrity in a way that eventually could prevent users from further cooperating via the Twitter platform. And today, as Benkler (2011c) has shown, cooperation might serve as a much more legitimate business model than the proprietary practices of the past.

The normative tension between being a supposedly civic, user-centric platform and being a corporate regulatory body also applies to Facebook, though in even more drastic ways. In the following chapter, I will use the social network as an example for the political role that ICT companies play in today's online environment, and I will argue that the metaphor of Facebook as a "privately owned networked virtual state" is useful in helping us to better understand digital business ethics issues.

4 CSR 2.0: Online Social Networks as Virtual States

4.1 Abstract

In recent years, the analogy of online social networks becoming nation-states has become increasingly widespread. The online social network Facebook, for example, has arguably become a “nation” (Baym 2011), a “sovereign of cyberspace” (MacKinnon 2012), or what I will call, somewhat convolutedly, a “privately owned, networked virtual state.” Facebook has a population of almost one billion people, it governs its own territory and economy, it is a platform on which individuals, consumers, associations, and companies come together in order to interact according to Facebook's rules and regulations, and it is an important forum on which politicians, political activists, and citizens engage in local, national, and international communication. However, Facebook has not established a proper separation of powers the way that liberal, democratic nation-states have.

Therefore, this chapter discusses a broad range of tensions resulting from the fact that today's online social networks represent public spheres regulated by private companies. The lack of a true separation of powers on these platforms has led some scholars and activists to accuse companies such as Facebook and Google of “digital feudalism,” raising questions of responsibility and accountability on a wide range of issues. Such issues can sometimes literally turn into matters of life and death, as in the case of Egyptian dissidents whose lives were threatened during the “Arab Spring” in early 2011 when Facebook attempted to enforce its real-name policy even though the Mubarak regime constantly had its agents check the social network site for dissident activities. Moreover, the development of the “networked virtual state” also highlights a wide range of far-reaching issues that might look less dramatic at first glance, but are very important nonetheless, such as privacy, security, and freedom of speech online.

Against the background of recent corporate citizenship and political CSR theories, I will therefore argue that online social networks have become not just “more political” private actors, but almost state-like political institutions in themselves. The article's main hypothesis is that we will be able to better understand corporate responsibility issues specific to such digital platforms if we study them through the metaphor of the virtual nation-state. It should be noted at

this point that a comprehensive empirical mapping of today's networked public sphere is still pending, and this chapter by no means claims that its findings are representative of the ICT industry or the networked public sphere as a whole. Instead, the following chapter merely presents a case study which tries to shed light on Facebook's relative role in the digital public sphere.

4.2 Current Debates: Corporate Citizenship & Political CSR

The political role of business has been discussed in business ethics literature for decades, and even more widely so in recent years (for a relatively early example, see Ulrich 1977; on the relationship between political philosophy and business ethics, see Ulrich 2008; Dubbink/van Liedekerke 2009; Edward/Tallontire 2009; Heath/Moriarty/Norman 2010). The underlying phenomenon is that companies, especially transnational corporations (TNCs), have become so influential that their business models and practices affect citizens all over the globe. Their increased influence has led to a wide range of criticism from academia and civil society, asking corporations to not just focus on profitability, but to address a wide range of questions regarding responsibility and accountability:

> "TNCs have become actors with significant power and authority in the international political system: they can set standards, supply public goods, and participate in negotiations; political authority should imply public responsibility." (Kobrin 2009: 350.)

According to Scherer and Palazzo (2007), globalization has been, and continues to be, the key driver for what they call the "politicization of the corporation." Today, they claim, corporations are "not just addressees of regulation but also authors of rules with public impact" (Scherer/Palazzo 2007: 1098; critically, Willke/Willke 2008). Companies increasingly engage in acts of self- and industry regulation in order to bridge regulatory gaps resulting from globalization, whether that be legal regulation, moral norms, or social standards (Scherer/Smid 2000; Beschorner/Müller 2007; Vogel 2008a, 2010). Therefore, Scherer and Palazzo (2007: 1115; italics in the original) claim that

> "[t]he global expansion of the corporation can be regarded as the driving force of … political CSR. The globalizing society erodes established ideas about the division of labor between political and economic actors and calls for a fresh view on the role of business in society. These phenomena need to be embedded in a new concept of the business firm as an economic *and* a political actor in market societies."

Thus, at a time when states and state agencies increasingly operate like businesses, competing for foreign direct investment and utilizing private-sector management practices driven by theories of "new public management" (Schedler/Proeller 2009; Schedler/Müller/Sonderegger 2011), private companies in turn have taken over roles that had traditionally been associated with the nation-state (Matten/Crane 2005; Wettstein 2009). Crane and Matten (2004: 69) use the term corporate citizenship (CC) to describe the resulting "corporate function for administering citizenship rights for individuals." They argue that in their worldwide operations—especially, but not exclusively, in developing countries and "failed states"—, TNCs manage citizenship rights for individuals on three levels: (1.) corporations often are providers of social rights, such as the right to education; (2.) they are enablers of civil rights, such as the right to own property, or freedom of speech; (3.) they act as a channel for political rights, a point referring to the fact that many citizens in modern liberal democracies tend to engage less in regular electoral and political activities of their nation-states, but instead more in NGOs centered on issues like human rights (Crane/Matten 2004: 67-70).

From this perspective, TNCs and (national as well as international) political frameworks are highly interconnected, resulting in a wide range of "mutual dependencies between public and private actors" in global governance (Knill/Lehmkuhl 2002: 58). The massive repercussions that corporate strategies have for stakeholders all over the globe have put corporations in a role where civil society frequently tends to view them as equally or even more powerful as nation-states, thus confronting them with increased pressure to legitimize their actions (Suchman 1995; Scherer/Palazzo/Baumann 2006; Edward/Tallontire 2009; Patriotta/Gond/Schultz 2011). Among the many ways of meeting these expectations are the engagement of corporations in institutions of global governance, such as the United Nations Global Compact, or engaging in partnerships with NGOs (Baur/Palazzo 2011; Palazzo/Scherer 2006). As a result of these developments, in their recent large-scale review of the academic literature on the role of transnational corporations, Scherer and Palazzo (2011: 919) identify a general trend "towards a new theory of the firm that emphasizes the public role of private business firms."

Thus far, the public role of private companies that is at the heart of the above-mentioned debates on corporate citizenship and political CSR has almost

exclusively been discussed with regard to the analog, offline environment of traditional industries in international business. In this chapter, however, I will argue that in the digital environment, especially when it comes to internet platforms, the degree to which some companies have become "public" or "political" is both significantly higher than, and fundamentally different from, the offline environment. I intend to show that internet platforms, such as the ones run by Facebook and Google, have become "sovereigns of cyberspace" (MacKinnon 2012) which today resemble classic nation-states (Baym 2011; Nakamura 2011), thus raising a wide range of accountability and legitimacy issues:

> "'Governance' functions, once carried out almost entirely by nation-states, are now shared increasingly by private networks and platforms. The lives of people around the world … are increasingly shaped by programmers, engineers, and corporate executives for whom nobody ever voted and who are not accountable to the public interest in any way." (MacKinnon 2012: xxii.)

4.3 ICT Companies as Regulators of Online Publics

The observation that ICT companies have become regulators draws from, and builds upon, the work of legal scholars Lawrence Lessig and Jonathan Zittrain. As Lessig (2006: 72) has pointed out, there are two (potentially conflicting) kinds of "code" that regulate information technologies: "East Coast Code" and "West Coast Code." By "East Coast Code," Lessig refers to the laws being made by Congress, such as copyright law. According to Lessig, however, technology does not merely adhere to the laws made in Washington, DC. Instead, technologies themselves shape behavior. He argues that "West Coast Code"—a reference to the digital source code of software, internet protocols, and technical standards created in Silicon Valley—enables or disables certain uses of technology, and these often interfere with existing laws. Lessig (2006: 121) summarizes "West Coast Code" as

> "the instructions embedded in the software or hardware that mak[e] cyberspace what it is. This code is the 'built environment' of social life in cyberspace. It is its 'architecture.'"

Examples for this kind of digital architecture include copy protection mechanisms on DVDs or MP3 music files, internet protocols regulating data traffic, such as TCP/IP, hypertext links on the World Wide Web, or the user interface of online social networks. On Facebook, for instance, users can only

"like," not dislike, content other users post. Or, in the field of copyright law, for example, it is rather obvious how disruptive file sharing technologies have been for the business models of both the music and film industries. But while Hollywood and the recording industry have been making increased lobbying efforts in order to sustain their business models, file sharing technology's architecture is designed in a way that makes it hard to control (Benkler 2006). This nicely illustrates a point made by Kranzberg (1986: 545):

> "Technology is neither good nor bad; nor is it neutral … technology's interaction with the social ecology is such that technical developments frequently have environmental, social, and human consequences that go far beyond the immediate purposes of the technical devices and practices themselves."

Against this background, Lessig (2006: 123) argues that the way we use technology is essentially governed by the net effect of four mechanisms: the law, markets, social norms, and architecture (in the sense of "West Coast Code," as described above). Because of the growing importance and the massive repercussions of the effects of "West Coast Code," Lessig claims that "code is law." And if we follow this assumption, being in control of code effectively translates to wielding power (Lessig 2006: 79).

The question that immediately arises from a business ethics perspective, then, is how ICT companies use such code-shaping powers in their strategies and business models, and how this affects their stakeholders. Zittrain (2008) identifies two fundamentally different kinds of strategies of digital platforms: They can either be open and promote "generativity," or they can utilize closed, proprietary technologies. Zittrain (2008: 70) defines *generativity* as "a system's capacity to produce unanticipated change through unfiltered contributions from broad and varied audiences." The generativity argument essentially refers to two sides of the same coin: user devices on the one hand, and the networks connecting them on the other. According to Zittrain's definition, any standard PC is a generative device because it can run a diverse range of software, no matter who produced it. Wikipedia also is a generative platform because anyone can contribute to it by editing an article. (Changes need to pass a peer-review process, though. For an in-depth look at the culture of Wikipedia, see Reagle 2010.) Likewise, the World Wide Web is an open platform because it enables anyone to set up a website and use hypertext in order to link to other websites. At the opposing end of the spectrum are closed, proprietary devices, such as "tethered appliances" like Apple's iPhone and iPad, and proprietary "walled

garden" platforms, such as Apple's iTunes Store or Amazon's Kindle store. With regard to the networks which connect communication devices, one central political debate over the course of the past decade has been the issue of net neutrality, which will be briefly discussed in section 4.7.3.

Strategies that position a single company in the role of a "gatekeeper" (Zittrain 2006; Hintz 2012) that regulates access to information, goods, or services in a way that promotes only proprietary uses of technology while crowding out generative, open alternatives have drawn criticism from leading academics in recent years (Benkler 2001, 2006; Lessig 2006; Zittrain 2008; Wu 2010b; Palfrey 2011). Political analysts, activists, and journalists have accused companies such as Facebook and Google of promoting a "new feudalism" (Clark 2011), or "digital feudalism" (Meinrath/Losey/Pickard 2011). The wide range of criticism put forth against these internet companies is also reflected in the fact that the Wikipedia (2012a) entry "Criticism of Facebook" is longer than the entry on Facebook itself (Wikipedia 2012b). Tim Berners-Lee (2010), the inventor of the World Wide Web, and Vint Cerf, currently Google's "Chief Internet Evangelist" and the inventor of the TCP/IP protocol that is one of the basic building blocks of the internet, criticized the "walled garden" strategies of online social networks because they force citizens and consumers to access information via closed, proprietary devices and networks instead of providing open ways to access content via vendor-independent platforms such as the PC and the Web (Sabbagh 2011). In addition to that, such strategies also discourage internet users from sharing information and knowledge online (Benkler 2005; Aigrain 2012) and prevent them from engaging in "commons-based peer-production" (Benkler 2006; Benkler/Nissenbaum 2006).

However, the phenomenon that a technology starts out open and revolutionary only to later be locked down by monopolists is not necessarily specific to the current online environment: Wu (2010b) calls this recurring pattern "the Cycle," illustrating that throughout history, technologies like the telegraph, the telephone, radio, and film have all undergone that same transition. This transition, however, is always a contested one that brings with it a wide range of moral, legal, and technical conflicts. The results of current conflicts over the institutional ecosystem of the digital environment, for example, are still unclear. They could, however, have far-reaching consequences, as Benkler (2001: 90) warned more than ten years ago already:

> "We are in the midst of a pitched battle over the spoils of the transformation to a digitally networked environment and the information economy. Stakeholders from the older economy are using legislation, judicial opinions, and international treaties to retain the old structure of organizing production so they continue to control the empires they've built or inherited. Copyright law and other intellectual property, broadcast law, spectrum-management policy, and e-commerce law are all being warped to fit the size of the hierarchical organizations of yesteryear. In the process, they are stifling the evolution of the distributed, peer-based models of information production and exchange. As economic policy, letting yesterday's winners dictate the terms of tomorrow's economic competition is disastrous. As social policy, missing an opportunity to enrich our freedom and enhance our justice while maintaining or even enhancing our productivity is unforgivable."

This situation, one could argue, has actually worsened over the course of the past ten years. Currently, one of the most striking examples for extensive gatekeeping by a single company might be Apple: The company integrates its hardware (increasingly dominated by tethered appliances such as iPhones and iPads instead of all-purpose computers), software (dominated by its App Store), digital content (such as music or books on iTunes), and advertising (iAds) businesses into one centralized digital environment that it controls in its entirety. Other companies, such as Google, Microsoft, Amazon, or Facebook, also try to capitalize on locking users into their respective proprietary services.

This development, Zittrain (2008) argues, is a threat to the open internet, as it denies users control over their own devices and the networks they access and share information with. On the one hand, this is a major drawback for users in their role as consumers whose data are being mined on a grand scale for commercial purposes by online marketing companies (Turow 2012), often without any regard or respect for consumers' actual needs (Searls 2012). On the other hand, the far-reaching consequences of these trends also directly or indirectly influence users in their role as citizens, potentially limiting both their political freedoms (MacKinnon 2012) and their ways of engaging in cultural production (Lessig 2008), and they determine the degree to which cooperation and sharing are possible online not just today, but also in the future (Benkler 2006).

These cases illustrate that companies in the information and communication technologies (ICT) sector today play an important political role in regulating users' and citizens' online interactions and behavior. Privately owned Web 2.0 platforms are an especially interesting subset of this category of companies because they take the public role of private companies even one step further:

Increasingly, they act as "curators of public discourse" (Gillespie 2010) and provide a "quasi-public sphere" (York 2010). With regard to the offline environment, business ethicists such as Crane and Matten (2005), Ulrich (2008), and Wettstein (2009) hold that corporations are socially embedded within a broader public sphere. This is one of the reasons, Crane and Matten (2005) argue, why companies today often assume a state-like role in managing citizenship rights for individuals. Online social networks, in contrast to offline companies, seem to reverse this role: They actually govern and control public spheres within the boundaries of their privately owned online territories. This shows that ICT companies have effectively become private regulators of public space today, and it presents us with an interesting theoretical conundrum: Are online social networks as companies socially embedded in a broader public sphere, or do they in fact encompass the public sphere which they regulate on their own online territories? Or could it even be both at the same time, like a Venn diagram where the public sphere intersects partially with online social networks as socially embedded corporate institutions?

This chapter will not be able to answer that question, unfortunately. As a starting point to this bigger debate, however, I will be claiming that online public spheres today seem to be embedded within an institutional network which, metaphorically speaking, one could call a "privately owned, networked virtual state." It is *privately owned* because it is run by companies; *networked* because it is a phenomenon in which network effects of various kinds play a vital role; *virtual* because it takes place in digital environments; and lastly, a *state* because such digital institutions govern a territory, borders, population, rules, policies, and an entire economy much the same way that a nation-state does. The term thus draws upon the fact that the strategies of Web 2.0 companies have a very direct and far-reaching impact on stakeholders' and citizens' communication rights and practices (Barney 2004; Lastowka 2010), which in turn raises a wide range of ethical questions with regard to the "political" corporate responsibility of ICT companies (Global Voices Advocacy 2012). As MacKinnon (2012: 148) puts it,

> "[ICT] companies … are at best benevolent dictatorships: creating and enforcing their own rules as they see fit. Because they obtain our de facto consent when we create an account and click 'agree' to the terms of service, our protests against their rules or how they choose to enforce them are considered invalid—and no law in any major democracy will back us up if we insist otherwise."

When it comes to the political role of online social networks, one fundamental question is: What makes a political decision *political*? This simple question has led scholars to offer a surprisingly wide range of answers over the course of 2,500 years of political thought (Dahl 1963; Warren 1999: 207). Today, most political science textbooks usually define a political decision as one that is binding for all citizens of any given state, province, or similar collective entity existing within certain boundaries. As Easton (1957: 389) put it, "political science is primarily concerned with the way authoritative decisions are made for a society." Applied to the context of online social networks, this chapter argues that it is the companies running said networks that increasingly make "authoritative decisions" today.

Of course, real-world politics and legal regulation still have a major impact on what can or cannot be done online, and political actors often cooperate with ICT companies, which may lead to ethically good or bad results (section 4.5). Moreover, online social networks increasingly become the monopolized fora in which digital citizen-consumers engage with real-world politicians, and vice versa. However, online social networks do not just mediate real-life political interactions, they have increasingly become state-like regulators themselves (4.6). On their platforms, they run and orchestrate complex political economies, which leads to a wide range of ethical problems (4.7). The unit of analysis presented in this article could therefore be described as privately-owned online social networks acting as regulators of public spheres, in the sense that they use some normative combination of legal, technological, and rhetorical means of making binding decisions for first and third parties on their online platforms. As it turns out, these decisions are often being made without any regard for stakeholders' moral rights, and the lack of any separation of powers raises the central issue of legitimacy (4.8).

4.4 Introducing Facebook & its Discontents

The social networking platform Facebook (2012a) currently has approximately 900 million monthly active users (MAUs; i.e. individuals logging into their

accounts at least once a month).[8] In line with the company's self-proclaimed mission of "making the world more open and connected" (Facebook 2012a), Facebook's millions of users thus far have established 125 billion "friendships" (i.e. direct connections between users); they upload an average of 300 million pictures and share 3.2 billion "likes" and comments with their networks of friends each day (Facebook 2012d). Based on the massive size of its user base, Facebook would be the third largest state in the world today, after China and India. While this does not necessarily mean that the company will maintain its massive role in today's fast-paced networked public sphere forever (as the decline of MySpace and other sites illustrates), it has been growing at a fast pace over the course of the last decade, resulting in a network of enormous size. However, sheer size alone is not the only reason why one could consider online social networks like Facebook to be a "nation" (Baym 2011), or to depict them as "sovereigns of cyberspace" (MacKinnon 2012: 115-165). MacKinnon (2012: 9) concisely sums up both recent developments and the challenges lying ahead when she states that

> "Google and Facebook are just two of the many companies whose products and services have created a new, globally networked public sphere that is largely shaped, built, owned, and operated by the private sector. Digital platforms, services, and devices now mediate human relationships of all kinds, including the relationship between citizens and government. Struggles to control and shape this sphere are intensifying around the world. These struggles will only escalate as the stakes continue to rise."

Indeed, privately owned digital platforms have changed the way we perceive politics today. This perception is largely framed by the "media hype" (MacKinnon 2012: 54) around the vital role online social networks supposedly played in the "Twitter Revolution" of 2009 and the "Arab Spring" of 2011. Twitter and Facebook themselves fuel this allegedly progressive image by stressing their not-for-profit rhetoric (Twitter 2012a/b), their geeky "hacker culture" (Facebook 2012u), and the fact that they use open-source software to handle the vast amount of data created and shared by their millions of users (Facebook 2012l; Twitter 2012c). The marketing message is clear: Online social networks are a force for good, and they have become indispensable tools for

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[8] Facebook has recently reported that it has surpassed one billion users (Zuckerberg 2012), but at the same time, it has been revealed that approximately ten percent of its users actually have more than one profile on the site. Therefore, those numbers might even each other out, and the 900 million users reported at the time of Facebook's IPO in May 2012 might reflect the actual numbers quite adequately.

anyone fighting for social and political change. In fact, Facebook has become so ubiquitous today that one might see it not just as a private company, but as a public utility. And as boyd (2010b) points out, “utilities get regulated” if they continuously challenge regulators' perception of the legitimacy of their service. Because of its ubiquity, Facebook is, for example, under constant political pressure to better respect its users' privacy, especially in Europe.

However, social networking platforms do not just reframe the political debate or get regulated if they fail to meet certain norms set by political actors. Instead, they increasingly act as digital regulators, creators of norms, policymakers, and even political systems themselves. The legal frameworks of online social networks play a key role in these cases. Facebook's terms of service, for example, require users to provide their real names. While this may not pose a threat to anyone living in a democracy that respects human rights, it can literally become a matter of life and death in countries such as China, Iran or Syria because government agents in those countries closely monitor, control, and censor internet traffic as well as activity on online social networks (Global Voices 2012; OpenNet Initiative 2012). Therefore, activists and dissidents understandably refrain from using their real names on Facebook. However, Facebook's regulations and their enforcement often make this impossible, as the following example illustrates.

Back in June 2010, when Hosni Mubarak was still ruling Egypt, “a young man named Khaled Said was brutally murdered by police in Alexandria” (MacKinnon 2012: 151). Using false names, Egyptian activists reacted by setting up a Facebook page called “We Are All Khaled Said,” which they used to organize protests. But just as the page hit its peak of activity before a long-planned protest in November 2010, Facebook took the page offline. It informed the group that the network's terms of service had been violated because the page's administrators had not provided their real names. This happened on Thanksgiving Day in the United States, making it hard to reach anybody at Facebook. Luckily, the Egyptian activists knew people in Silicon Valley who eventually were able to contact Facebook's Palo Alto headquarters. The case got resolved after 24 hours because an Egyptian friend of the activists living in Washington, DC was willing to disclose her real name to Facebook in order to formally become the administrator of the activist page. In an interview with MacKinnon (2012: 152), she later said about Facebook: “These guys are techies. I don't think they

understand the implications that their rules and procedures have for activists in places like Egypt."

It is these self-imposed, de-facto implications that form the basis of Facebook's regulatory role of being a networked virtual state. I use the term "networked" in this case in order to differentiate the concept from that of the "virtual state" put forth by Rosecrance (1996). Rosecrance referenced the then-en-vogue concept of the "virtual corporation," which describes transnational corporations and their decentralized supply chains, in order to claim that the nation-state, just like its corporate counterpart, would need to emancipate itself from the notion of territoriality and instead invest in people as a strategy of successfully coping with globalization. Thus, Rosecrance recommended that the "virtual state" copy corporate strategies. Despite the similar names of the concepts, however, my argument is an entirely different one: Online social networks have become privately owned "networked virtual states" because they regulate their online territory in ways that a nation-state usually does. The following sections will describe this phenomenon from an interdisciplinary perspective.

4.5 Interactions of Online Platforms with Real-World Politics

In a bit of a quasi-Luhmannian manner, Lessig's above-mentioned classification of West Coast vs. East Coast Code to a certain extent assumed that Washington, DC and the business practices of Silicon Valley were two rather monolithic systems—one political or legal, the other technological—whose respective decisions would affect the other system only after each system had made its own deliberate decisions with regard to its own code. Today, however, ICT companies and online social networking "platforms" (Gillespie 2010) increasingly interact with the real-world political systems beyond the boundaries of their own digital spaces, and they have learned to speak the respective other system's code. Therefore, technology companies today might make political decisions in ways that may aim at bolstering democratic public discourse, as in March 2010, for example, when Google stopped censoring its Chinese internet search engine. But, as MacKinnon (2012: 7) describes, ICT companies today also increasingly engage in much more self-interested political activities—that is, political lobbying:

> "Facebook … was not the first company to create a quasi-diplomatic corps. Since 2005, Google has been hiring executives with government and diplomatic experience for positions described internally as 'foreign minister' and 'ambassador'."

According to The New York Times (Sengupta 2012b), Facebook sent members of its PR team to Washington in order to show politicians how to communicate more effectively with their constituents via Facebook:

> "For nearly five years, Facebook has quietly and deftly befriended the nation's top lawmakers by giving them a little tech support. In a typical session behind closed doors on Capitol Hill, Facebook staff members have walked them through how best to use the site: what kinds of pictures to post on their profiles, how to distinguish between valuable constituents and the random gadfly, how to write compelling messages. Members of Congress have asked: How do I get more Facebook followers? The answers have come from familiar faces: former political aides from both Republican and Democratic quarters, now employed by Facebook."

These developments add a rather complex notion to the debate on digital citizenship (Barney 2007; Lastowka 2010). Today, civic engagement to a large extent takes place on online social networks. The "media hype" (MacKinnon 2012: 54) around the role of online platforms in the "Twitter Revolution" of 2009 and the "Arab Spring" of 2011 seems to perfectly symbolize this trend. In Western democracies, it has thus become the norm that political parties and their leaders, most prominently President Obama, use Twitter and Facebook to interact with their constituents more or less directly.

In the corporate online environment, however, the winner (usually) takes it all, so to speak, due to strong network effects, economies of scale and scope, as well as first-mover advantages. Thus, political engagement online often takes place in rather monopolized environments provided by the private sector. Starting a new social networking platform, and thus competing with a company that already has more than 900 million users, is a daunting task—as illustrated by the example of Google+, the online social network that the internet search and online advertising company Google has been trying to establish as a competitor to Facebook since 2011. As of September 2012, Google+ had presumably managed to attract 100 million monthly active users, even though the company is not fully transparent about the accuracy of these numbers (Fiveash 2012; Newton 2012). That may be an impressive number in and of itself, but it is only a small fraction of Facebook's user base. Moreover, many Google+ users continue having a Facebook account, as maintaining accounts for several social networking sites at the same time apparently does not get too time-consuming for a large number of people. Given

the fact that Facebook is the biggest, and thus most useful, Web 2.0 site, its users may occasionally give other social networks a try, but only very few of them will give up Facebook entirely. Due to strong network effects, it is still considered to be "the mothership" (Morell 2012).

This means that limited opportunities for competition mainly arise from network, scale, and lock-in effects that prevent users from simply leaving Facebook: If a user were to delete her account, she would immediately lose all connections to her friends, page subscriptions, and networks—and her alternatives, the smaller networks, have the disadvantage of not being able to bring all of her friends together on one central site the way Facebook can. Facebook thus has a distinct advantage of scale and can lock in its users due to strong network effects. As MacCarthy (2010: 221) points out: "Lock-in is a real restriction in social networks." Therefore, less than a handful of large online social networks can act as political gatekeepers today, and if a citizen, company, or politician does not have, for example, a Facebook account, they are almost non-existent in this increasingly important online space. Consequently, according to Barney (2004: 122), access to modern ICTs determines whether we will continue to see yet another digital and political divide:

> "The new politics is thus a politics of struggling over information management and control in the 'space' constructed by prevailing media of communication, as a necessary precondition of access to more material forms of power. Politics, in this view, is a contest to define the parameters of public discourse, and the symbolic and cultural codes through which norms and expectations are expressed and circulated. This means that a *minimum* condition of political action is access to, and presence and/or representation within, the arenas (i.e., mass communication media) in which these battles are engaged. It is for this reason that those who are systematically denied access to advanced information and communication media, or whose access to them is limited to passive consumption of commodified content, are not only economically disadvantaged in the network society, but also politically disenfranchised. The digital divide is, consequently, at once a technological, economic, and political divide, a divide which sets the terms of access to citizenship itself, both within technologically developed regions and between wealthy and impoverished areas in the global system."

Of course, politicians need to go where most of their constituents are, resulting in growing influence and power of the largest online social networks as these increasingly become the public fora that matter most. Therefore, MacKinnon (2012: 7) rightly asks, "will a codependency between politicians and social networking platforms result in ever more subtle manipulation of the public discourse?" Already, we can see internet companies more openly attempting to

gain political influence. As collective actors, ICT companies have been making an increasing impact on Washington in recent years, especially when they collaborated on key issues, as the following example illustrates:

In the first half of 2012, the massive online protests against the Stop Online Piracy Act (SOPA), the PROTECT IP Act (PIPA), the Anti-Counterfeiting Trade Agreement (ACTA), and similar bills discussed in Washington and Brussels highlighted, as The New York Times (2012b) called it, "a political coming of age for a relatively young and disorganized industry that has largely steered clear of lobbying and other political games in Washington." While Hollywood and the recording industry have always had a strong presence in Washington, resulting in legislation such as 1998's Digital Millennium Copyright Act, Silicon Valley's lobbying efforts have only become equally strong relatively recently. However, as illustrated by the anti-SOPA protests, Silicon valley's lobbying efforts today are on par with the content industry's. While Hollywood and the recording industry supported SOPA, internet activists and Silicon Valley companies such as Google successfully lobbied against the bill. Weisman (2012) thus claims that

> "the legislative battle over two once-obscure bills [SOPA and PIPA] to combat the piracy of American movies, music, books and writing on the World Wide Web may prove to be a turning point for the way business is done in Washington. It represented a moment when the new economy rose up against the old."

Much in the same vein, Sengupta (2012a) argues that "[t]he unlikely coalition of companies and consumer groups that … helped quash antipiracy legislation on Capitol Hill is now weighing the future of what might be called lobbying 2.0."

The fact that companies use lobbying practices in order to interact with real-world political systems is not new, of course, nor is it necessarily problematic (Weber 1996, 1997; Vogel 2008b). In addition to traditional lobbying, corporate self-regulation at the industry level is another way in which companies engage in, and interface with, political activities on a regular basis (Ulrich 2008: 414-418; Vogel 2008a, 2010). These practices do become problematic, however, if political systems get shaped by private-sector influence in ways that systematically and continuously distort policy outcomes—which, Lessig (2011) argues, is already the case in the United States—, or if privately owned companies become public regulators themselves, making far-reaching and collectively binding decisions without any regard to political legitimacy and public accountability (Ulrich 2008;

Wettstein 2009; MacKinnon 2012: 83). It is instances such as these which illustrate that

> "corporations decide on the development of a global framework and influence its general conditions without being authorized or controlled democratically. Their acts of self-regulation can impose a binding character on legally unregulated aspects of global corporate activities." (Scherer/Palazzo/Baumann 2006: 519.)

Certainly, "the new digital superpowers have begun to clash with conventional nation-states" (MacKinnon 2012: 7). However, policy-makers and ICT companies also quite frequently cooperate on a wide range of ethically problematic issues. For example, during the Wikileaks scandal in 2011 it was what one could rather cynically call a "public-private partnership" involving U.S. politicians and companies such as PayPal and Amazon that managed to take the WikiLeaks site offline without any respect for due process according to the usual standards of the rule of law (Benkler 2011a/b; DeNardis 2012). Moreover, filtering online content and preventing citizens from accessing the internet are common practices used by many democratic and non-democratic governments alike (Global Voices 2012; Google Transparency Report 2012), and these practices are often enabled by technologies that have been developed and supplied by Western companies (Faris/Wang/Palfrey 2008; Noman/York 2011). In many cases, ICT companies are legally required by their host nations to filter and censor information, thus endangering the lives of human rights activists, dissidents, and minorities (Palfrey 2007; Zittrain/Palfrey 2008a/b). As a result of this, corporate censorship and complicity in human rights violations have become increasingly pressing issues on the internet today (Brenkert 2009; Brown/Korff 2012; MacKinnon 2012; for a general normative framework on corporate complicity and human rights, see Wettstein 2012). The gains in political power that ICT companies currently experience reflect the fact that transnational corporations as a group have been gaining political power over the course of recent decades. Therefore, the increasing privatization of classical roles and tasks traditionally associated with the nation-state has been going hand in hand with the politicization of privately-owned companies (Matten/Crane 2005; Wettstein 2009; Scherer/Palazzo 2007, 2011). The next sections will illustrate this trend by showing how online social networks—in this case: Facebook—have turned into privately owned virtual states.

4.6 Online Social Networks as Virtual States

When describing a political system, political scientists usually distinguish between three interconnected dimensions: (1.) policy, i.e. the level of political content, such as foreign policy or health care policy. (2.) politics, i.e. the process level, such as conflicts over policies and political debates in parliament. (3.) polity, i.e. the institutional framework of a political community. When it comes to governance of online social networks, the companies running such digital platforms find themselves in institutional frameworks very similar to the ones that apply to a nation-state. The following sections will illustrate this fact by applying the three dimensions outlined above to the online social networking site Facebook.

4.6.1 The Policy Dimension

The policy dimension of Facebook acting as a regulatory body becomes apparent as soon as a new user signs up to the service. When signing up, Facebook's homepage greets users by informing them that “By clicking Sign Up, you agree to our Terms and that you have read and understand our Data Use Policy, including our Cookie Use.” The company's terms of service (Facebook 2012k, 2012m) and data use policy (Facebook 2012h) are rather long and difficult to understand, however, and hardly any user ever reads—let alone fully understands—them (Milne/Culnan 2004; “Terms of Service; Didn't Read” 2012). Therefore, it might be debatable whether users are in fact fully able to give informed consent when signing up to the service:

> “When we sign up for web services, social networking platforms, broadband service, or mobile wireless networks, and we click 'agree' to the terms of service, we give them false and uninformed consent to operate as they like.” (MacKinnon 2012: xxii.)

Be that as it may, from the point of signing up onward, Facebook considers these rules to be binding to all of its users.

Skeptics of the political role of online social networks might argue that Facebook's policies are not substantially different from those of, for example, a shopping mall that regulates what it considers to be acceptable behavior on its premises. However, there are major differences in both scope and scale between any such company and a social network site. In terms of scope, Facebook does not merely regulate some standards of behavior and politeness restricted to one

location, the way a mall would do. Instead, it regulates both its users' basic communication rights and their means of communication. As illustrated above, this has major political ramifications for both politicians and voters. On the other hand, with regard to its regulatory scale, Facebook obviously is not just a local business: The fact that its almost one billion users live all over the globe puts the company in a position that requires it to regulate on a much grander—and, at the same time, more granular—scale than any local business might need to. Therefore, whatever policy Facebook introduces has a much greater effect on a much broader range of stakeholders in many more countries than any comparative business model in the offline, analog world.

Because an online social network is not confined by national borders (at least in theory), its rules and regulations need to carefully take into consideration a wide range of issues, including culture, social class, ethnicity (Nakamura 2011; Nakamura/Chow-White 2011), gender, religious beliefs, moral and legal norms, business interests, and so on. In addition to its terms of service (Facebook 2012k) and data use policy (Facebook 2012h), Facebook therefore establishes and maintains general community standards (Facebook 2012c) and a set of so-called "Facebook Principles" (Facebook 2012n). Moreover, the company sets a wide range of highly granular standards of acceptable behavior within the boundaries of its online territory. These standards regard issues such as family safety (Facebook 2012b), user security (Facebook 2012j), copyright violations (Facebook 2012p), platform policies for third parties (Facebook 2012q), advertising guidelines (Facebook 2012r), regulations and permissions regarding the Facebook logo and brand (Facebook 2012t), and, lastly, terms for what the company calls "pages" (Facebook 2012s)—that is, public profiles which companies, organizations, and celebrities set up on Facebook in order to engage with their fans and followers. In all of these dimensions, Facebook unilaterally defines binding policies, norms, and standards of behavior which users need to accept in order to be allowed to use the service. Moreover, Facebook became a publicly traded corporation in May 2012, which is why it also publishes documents directed mainly at its shareholders, such as a "code of business conduct and ethics" (Facebook 2012e) as well as corporate governance guidelines (Facebook 2012f).

In order to briefly illustrate just how granular Facebook's regulations are, I will present a few examples of some of the rules the company has defined. For instance, the company's advertising guidelines (Facebook 2012r) require that

> "All components of an ad, including any text, images, or other media, must be relevant and appropriate to the product or service being offered and the audience viewing the ad. Ads may not contain audio or flash animation that plays automatically without a user's interaction. Ads may not position products or services in a sexually suggestive manner. Ads may not contain content that exploits political agendas or 'hot button' issues for commercial use. Additionally, ad text must include proper grammar and the use of all symbols, numbers, or letters must adhere to the true meaning of the symbol."

The guidelines then go on to request compliance with a wide range of highly detailed rules, such as the following:

> "Ads that promote or reference alcohol are prohibited in the following countries: Afghanistan, Brunei, Bangladesh, Egypt, Gambia, Kuwait, Libya, Norway, Pakistan, Russia, Saudi Arabia, United Arab Emirates, Yemen and any other jurisdiction where such ads are prohibited by law. … Lotteries run by government entities may advertise on Facebook, provided that ads must be targeted in accordance with applicable law in the jurisdiction in which the ads will be served and may only target users in the jurisdiction in which the lottery is available. … Ads that promote dietary and herbal supplements are generally permitted, provided they do not promote products containing anabolic steroids, chitosan, comfrey, dehydroepiandrosterne, ephedra, human growth hormones, melatonin, and any additional products deemed unsafe or questionable by Facebook in its sole discretion. … Ads may not promote a business model or practice that is deemed by Facebook in its sole discretion to be unacceptable or contrary to Facebook's overall advertising philosophy or to any applicable law, including but not limited to multi-level marketing schemes, or advertisements for scams. … Ads, or categories of ads, that receive a significant amount of negative user feedback, or are otherwise deemed to violate our community standards, are prohibited and may be removed. In all cases, Facebook reserves the right in its sole discretion to determine whether particular content is in violation of our community standards."

While none of these rules may be unusual by legal standards, they nicely illustrate how Facebook's regulatory ambitions affect individual users, third-party companies, and governments all over the globe in a very granular manner. They also show that Facebook is aware of both its regulatory role and the deliberate nature of its regulations ("Facebook reserves the right in its sole discretion to determine …").

In addition to the terms mentioned above, Facebook also determines how users and third-party companies may or may not use its brand: The network's Brand Permissions Center (Facebook 2012t) states that

> "4. You may not present or feature the Brand Assets [this refers mainly to the Facebook logo, the "like" button, etc.] on websites containing content associated with pornography, gambling, or illegal activities. 5. You must keep sufficient space around our Brand Assets so they appear clean and uncluttered. 6. You may not combine our Brand Assets, or elements of our Brand Assets, with your own name or mark or generic terms."

It seems rather remarkable that issues as different as pornography and typography get thrown together in such a short fragment of regulation, but I do not wish to speculate about the reason for that. Instead, it is worth pointing out that Facebook goes so far as to tell individuals and third-party companies how they are allowed to write about Facebook not only on their own websites, but even offline:

> "1. You can make a reference to Facebook (online and offline) to describe your presence on Facebook and your use of our products and services. Your reference must be truthful, and cannot suggest that you are affiliated with, sponsored, or endorsed by Facebook. 2. Textual references to Facebook should never be hyperlinked to anything but the Facebook.com login page. 3. Never combine your name with our name. 4. Facebook should be in the same font size and style as the other content. 5. When referenced in text, Facebook should be capitalized. 6. When inviting users to like your Page, say 'like our Page' or 'become a fan by clicking Like on our Page'. Do not invite them to 'friend' your Page—users can only become friends with other users. 7. Do not use Facebook, or any other of our trademarks, as a verb. And don't pluralize them either. Trademarks may not be modified in that manner. 8. When referring to Facebook as the method by which you are organizing an event, you must make it clear that you, and not Facebook, are responsible for the event." (Facebook 2012t.)

The examples shown here illustrate just a very small portion of the regulation unilaterally put in place by Facebook. As stated earlier, these regulations are far-reaching and highly granular, even though they are supposed to be universally applicable at the same time. This often results in conflicts, which leads to the politics dimension of Facebook's role a virtual state.

4.6.2 The Politics Dimension

The politics dimension of the virtual state is highlighted by the fact that Facebook's attempts to establish the same binding policies on such a wide range of issues and across many different cultures have caused both minor and major conflicts. This is not surprising, given the sheer size of the network and the large number of parties affected by the company's decisions. Facebook therefore not only establishes a wide range of policies, it also needs to publicize, defend, and

legitimize them. To that end, the company has set up dedicated pages on its own network, such as Facebook Safety (Facebook 2012g) and Facebook Site Governance (Facebook 2012i), which it uses to communicate with its users. The purpose of these interactive pages is not just to inform users about norms and policies, but also to gain legitimacy through stakeholder dialog. Unfortunately, Facebook does not always demonstrate clearly and credibly that it has a serious interest in open discourse with its stakeholders, leaving room for speculation that discussion with its users might just be an attempt to establish norms most efficiently and effectively. For example, in its data use policy, Facebook (2012h) grants its users the "opportunity to comment and vote:"

> "Unless we make a change for legal or administrative reasons, or to correct an inaccurate statement, we will give you seven (7) days to provide us with comments on the change. If we receive more than 7000 comments concerning a particular change, we will put the change up for a vote. The vote will be binding on us if more than 30% of all active registered users as of the date of the notice vote."

At first glance, this may look like an open, inclusive approach to the process of negotiating binding norms. However, engaging approximately 300 million people (30 percent of Facebook's user base) in a substantial debate on the pros and cons of any given Facebook policy change seems downright impossible—especially given the tight time frame the company sets unilaterally. It also is relatively unclear exactly how Facebook defines "30% of all active registered users." Moreover, voting on such issues is made even more difficult by the fact that the actual voting page is rather difficult to find.

It therefore seems reasonable to assume that Facebook is aware of the fact that its approach makes meaningful user engagement rather difficult, and that it deliberately set up this process in such a way. From an ethical perspective, however, the politics dimension is not, and should not be, a one-way street: Many stakeholders who are affected by Facebook's decisions would like to make their voice be heard. But since the company does not seem to be willing to fully commit to openly discussing such matters on its own site (with the exception of the aforementioned Facebook Site Governance page), critics often resort to other outlets, like online activist websites (such as the Electronic Frontier Foundation, for example), blogs, or more traditional online media.

Consequently, media critics have accused Facebook—in addition to other ICT companies in a relatively similar position, such as Google—of trying to establish a "new feudalism" (Clark 2011), or "digital feudalism" (Meinrath/Losey/Pickard

2011), respectively. It would seem that online social networks to a certain extent have become victims of their own growth and success, which today results in a wide range of ethical conflicts on internet platforms, regarding issues such as intellectual property rights (Boyle 1997; De George 2003; Humphreys 2005; Benkler 2006, 2011; Lessig 2008), privacy (Barney 2003; Nissenbaum 2004; Moore 2005; boyd 2010a; boyd/Hargittai 2010; Zimmer 2010; Papacharissi 2010; Fuchs 2011a), accountability (MacKinnon 2012), and fairness (Kuhlen 2004; Busch 2011).

It is important to note that Facebook's institutional and regulatory policies apply to more entities than just individual users (i.e. natural persons). The company not only has to regulate disputes between itself and its individual users (Facebook 2012c)—management literature calls this business-to-user (B2U) interaction; it also has to resolve issues that individuals might have among themselves—i.e., in the parlance of management scholars, user-to-user (U2U) interaction. For instance, Facebook (2012c) allows its users to report other users to the company if they believe that someone behaved inappropriately:

> "If you see something on Facebook that you believe violates our terms, you should report it to us. Please keep in mind that reporting a piece of content does not guarantee that it will be removed from the site."

In addition to that, the company's community standards (Facebook 2012c) also state that

> "Facebook does not permit hate speech. While we encourage you to challenge ideas, institutions, events, and practices, it is a serious violation to attack a person based on their race, ethnicity, national origin, religion, sex, gender, sexual orientation, disability or medical condition."

This rule, in combination with the reporting function, has led some users to rally for instances of group reporting, as in the case of activists opposing the German neo-Nazi party NPD, for example: In an attempt to remove all of the party's activities from the site, the Facebook group "Digitale Lichterkette: Kein Facebook für Nazis—NPD Seite [sic!] löschen" calls upon its approximately 501,000 members to report all NPD pages to Facebook. The NPD in turn claims that it is not an illegal entity and should as such be allowed to maintain its pages. This example highlights the fact that, when trying to protect minorities, Facebook as a virtual state needs to somehow find a regulatory balance that allows for freedom of expression without falling into the traps of either illegitimate censorship or taking an ignorant laissez-faire approach towards abuse and

discrimination. This gets all the more drastic when we look at the sheer number of complaints Facebook needs to process:

> "On any given week Facebook's 'hate and harassment' team receives two million reports from users who have identified content they believe is abusive, harassing, or hateful and should be taken down. The problem is that people who make abuse reports are not very 'accurate'. Only about 20 percent of these reports are for behavior or content that fit the definition of abusiveness according to Facebook's terms of service. Meanwhile, a lot of what the team would define as genuinely abusive never gets reported at all." (MacKinnon 2012: 154.)

In addition to the B2U and U2U relationships that the company needs to regulate, Facebook also is a platform on which a wide range of third-party companies run their business. Just like politicians, companies simply cannot afford not to be on Facebook today because that is where most of their customers are. Moreover, Facebook is not just attractive to traditional companies who use the social network as a new marketing channel by putting up representative pages. Instead, entirely new business models have been developed by third-party companies that are enabled by, and thus fully dependent on, the Facebook platform and its policies. These new business opportunities include certain forms of online advertising (Turow 2012), large-scale data-mining, or social games such as Farmville by social gaming company Zynga. Hence, there is a considerable amount of business-to-business (B2B) interaction that social networks regulate. A nation-state would govern these different levels via civil, public, and commercial law, but Facebook can do this via private contracts, licenses, its terms of service, and all the other highly granular regulations outlined above. And due to the size and bargaining power that Facebook enjoys as the platforms upon which these economic activities take place, the company itself can unilaterally determine the conditions of its regulations and enforce them "in its sole discretion."

4.6.3 The Polity Dimension

The polity aspect could be described as the institutional net effect resulting from the policy and politics dimensions of the virtual state that Facebook has become: Facebook unilaterally defines (policy dimension), communicates, and enforces (politics) a wide range of highly granular regulations, thus creating an institutional setting (polity) that determines the rules and procedures every user and every company on the network has to adhere to. As described above, this applies to Facebook's entire website—which, seen from the virtual state

metaphor, one could describe as its online territory. Based on the rather lengthy account given above on Facebook's regulatory role, the fact that the company is political in the sense that it regulates its own territory in a state-like way has hopefully been made sufficiently plausible.

Beyond that aspect, however, it seems worth pointing out that Facebook's regulatory role as a polity framework does not end at the borders of its own online territory. Instead, the company's omnipresent Social Plugins (Facebook 2012o)—that is, the iconic “Like” button on third-party sites—are featured on more than 600'000 websites, and they are being used to track internet users' behavioral data in order to enable targeted advertising, even though details on precisely what kind of information is shared with whom exactly remain undisclosed (Ghostery 2012). On its “Facebook for Business” (2012v) site, the social network does not even mention the “Like” button directly, perhaps because it has been subject to criticism for quite some time now (McCullagh 2010). The button implementation allegedly allows Facebook to identify a user's IP address and, in doing so, follow her every move on the web, even if that user is not logged into her Facebook account at the time of visiting a website that features said button. Social web platforms such as Facebook and Twitter are also political in the sense that they have opened up their application programming interfaces (APIs) to a certain extent so that researchers and third-party companies can make use of (supposedly anonymized) user data and user-generated content. In that way, social networks regulate companies and scholars while further taking control over user data away from its originators. As a result of the aforementioned concerns, formal complaints to privacy commissioners have been filed against Facebook, for example in the German state of Schleswig-Holstein and in Canada (McNish 2012).

Evaluating the policy, politics, and policy aspects of Facebook's regulatory roles outlined above from an ethical perspective, one central criticism immediately becomes apparent: In contrast to a democratic nation-state, Facebook has no division of powers and no mandate to make political decisions on behalf of its stakeholders. While Facebook effectively governs its online territory the way a state would do, it does so by assuming the roles of legislative body, executive branch, and judiciary all at the same time: As the equivalent of a state's legislative body, the company reserves the right to unilaterally define a wide range of policies, as described above. If a user violates these policies, she

might get penalized or even banned from the social network. In keeping with the virtual state metaphor, this is a decision that the executive branch of a state would enforce. Attempting to defend herself, the user could only complain and appeal directly to the social network itself, which would then take on the role of the judiciary in addition to the above-mentioned other two powers. In other words, the privately owned, networked virtual state lacks accountability and legitimacy:

> "The reality is that the corporations and governments that build, operate, and govern cyberspace are not being held sufficiently accountable for their exercise of power over the lives and identities of people who use digital networks. They are sovereigns operating without the consent of the networked." (MacKinnon 2012: xxi.)

Obviously, the one central difference between Facebook and a state, at least from a legal perspective, is that Facebook is a private entity. From a business ethics perspective, however, this is not a sufficient argument to release Facebook from the responsibilities arising from the results of its political regulatory roles. Facebook's ownership might be private, yet the repercussions of its actions are very public. Therefore, MacKinnon (2012: xxiii) rightly points out that

> "So far, most Internet and telecommunications companies have failed to accept responsibility—beyond cyber-utopian platitudes—for the rights of their customers and users, even as companies in other, much older industries, have long since begun to do so with their workers, shareholders, and broader stakeholders."

Against this background, the following section will examine some of the most pressing business ethics issues arising from Facebook's regulatory role.

4.7 Digital CSR Issues & Facebook's Business Model

Given the wide range of activities, stakeholders, and regulations described above, it comes as no surprise that Facebook's business model raises many ethical questions. In fact, the number of ethically interesting issues raised by Facebook is far too great to be discussed within the boundaries of the limited space available here. While, for example, the use of spyware and other surveillance tools, the safety of political activists, the proliferation of spam as well as a wide range of scams and security issues raised by third parties, new digital divides, or online bullying (Levy/Cortesi/Gasser et al. 2012) are all highly relevant and pressing issues from an ethical perspective, the scope of this study needs to be limited in order to be able to focus on the most relevant problems. From a

business ethics perspective, the following simple questions help determining these issues:

1. Which issues result directly and inevitably from Facebook's core business model?
2. Which issues affect the largest number, if not all, of its stakeholders?

Using this perspective as a filter, three main issues come into focus: (1.) Facebook's business model is based on user-generated content (UGC). Users provide data and content without any compensation and are even forced to license their content to Facebook under unfavorable terms, resulting in questions of fairness with regard to labor, creativity, and intellectual property. (2.) Personal data is provided by users and gets used in a variety of ways by Facebook. This results in a wide range of privacy issues. (3.) In the long run, Facebook would like to be the central hub through which users are supposed to experience content on the internet, thus controlling and regulating user access and potentially supplanting other means of accessing information, for example via the world-wide web. This raises issues of net neutrality—or, more precisely, content neutrality. The following sections will therefore describe Facebook's business model in a nutshell in order to then focus on its connection to the three aforementioned corporate responsibility issues arising from it.

4.7.1 Facebook's Business Model & User-Generated Content

After it had launched in 2004, it took Facebook four years of rapid user-base growth until its newly hired Chief Operating Officer held company meetings with the express purpose of seriously addressing a not-so-simple question: “What business are we in?” (Kirkpatrick 2010: 257.) In Facebook's defense, this question is indeed relatively difficult to answer because online social networks have a wide variety of options regarding their potential revenue streams:

> “Most social networking websites make their money from advertising. The sites offer individuals free membership and are supported by revenue generated from advertising. Advertisers are attracted to the wealth of information that users provide about themselves on social networking sites—including information posted and actions taken by users. Such detailed personal information permits highly targeted advertising: Advertisements are targeted to users on the basis of their demographics, affiliations, and expressed interests. For example, Facebook allows advertisers to search by criteria related to location, sex, age, education status, workplace, political views, relationship status, and keyword, so as to target ads to Facebook users. … Most social networking websites further increase their value by allowing third party

> application developers to host applications on their sites." (Canadian Internet Policy and Public Interest Clinic 2012.)

In Facebook's case, the company has decided to mainly focus on the advertising business (Kirkpatrick 2010: 270). Facebook collects user data for highly targeted advertising, it offers companies the opportunity to buy promotions for their pages so that more people will see their posts (Facebook 2012w), it provides a platform upon which a wide range of third-party applications run, such as Zynga's online games, and it is highly connected to third-party websites via its Social Plugins ("Likes"). If someone buys an item on Amazon, for example, the site offers its customers to immediately tell their Facebook friends about it. Facebook constantly modifies its business model in order to keep up not just with the competition, such as Google, but also with trends such as mobile computing as well as ever-changing user behavior and monetization streams (Dormandy 2012).

Without going too much into detail about Facebook's business model, the common theme of the above-mentioned revenue streams is that they all rely on user data, user-generated content, and third-party content shared by users. "Big Data" is the raw material for any social network's business model and in recent years has turned into a buzzword in both industry and academic circles (critically, Payne/Courseault Trumbach 2009; boyd/Crawford 2012). One of the most important aspects of the political economy of online social networks is that using these sites is free, but users "pay" for the service by providing their data, be they personal or trivial. Fuchs (2011b) uses the term "mass dataveillance" for the process of gathering user data on Web 2.0 sites. Such user-generated content (UGC) therefore is the foundation of the "platform economy" (Gillespie 2010) of online social networks. In order to be able to capitalize on user data, online social networks' terms of service typically require users to grant the respective site a wide-ranging license when they upload UGC such as text, pictures, or video. The following example is taken from Facebook's terms of service (Facebook 2012k):

> "You own all of the content and information you post on Facebook, and you can control how it is shared through your privacy and application settings. … For content that is covered by intellectual property rights, like photos and videos (IP content), you specifically give us the following permission, subject to your privacy and application settings: you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (IP License). This IP License ends when you delete your IP content or your account unless your content has been shared with others, and they have not deleted it."

From a user's perspective, sharing content with their friends is what uploading anything to a social network site is all about. Therefore, the provision stated in the last sentence above effectively extends the above-mentioned “IP License” ad infinitum. It means that even if a user were to delete her Facebook account, Facebook's license to her content would remain valid as long as at least one of her friends still shares content she uploaded. Users therefore are not in control of what happens with their content once they have shared it.

Moreover, one might ask how someone could possibly “own” digital content if he or she licenses it under terms that effectively take away all control over the “IP content” from its creator. Ownership usually implies that an owner can exclude others from using an item. For example, if a person owns a car, she can, under certain conditions, end a mutually agreed upon license for someone to use her car because there is only one physical version of it, and access to it can be restricted. In the case of a license for digital content, restricting access is difficult, if not impossible, due to the fact that the original file can be copied and redistributed an infinite number of times without any quality loss and, once shared, it is difficult to contain. From an ethical perspective, this raises the question whether Facebook's “IP License” does indeed need to be that extensive, taking advantage of the digital nature of shared online content. After all, Facebook could instead choose to protect users' content by giving them a wider range of choices to opt for different kinds of licenses which allow them to better control their intellectual property.

By obtaining such wide-ranging licenses, social networking sites thus take advantage of their users' input, which, given the fact that it is such an important production factor for online business models, could be understood as a kind of immaterial labor (Terranova 2000; Fuchs 2010a, 2011b, 2012). Shepherd (2012a) claims that the commodification of UGC may lead to violations of what she calls users' “persona rights”. At the same time, some users consider creating and sharing UGC to be a form of apprenticeship labor, which they hope will help them get recognition in order to one day be eligible for a proper, formal job in the “creative industries” (Shepherd 2012b). This specific group of young, tech-savvy cultural entrepreneurs sees providing UGC for free as an investment in their future. However, this group is not representative of Facebook's entire user base. These aspects therefore highlight the inherent normative tension between UGC as (non-economic) public discourse, a notion emphasized by the aforementioned

media hype around the "Twitter revolution" and the "Arab Spring," and UGC as a commercial product or service (Shepherd 2009). This inherent tension, however, does not seem to get recognized by Facebook's Chief Operating Officer, Sheryl Sandberg:

> "Our goals are, in order: How much does the world share information? Then, of equal importance, How *[sic!]* many users do we have? And revenue. Those are all really really *[sic!]* important drivers of the whole mission. But you can't do one without the other." (Kirkpatrick 2010: 271.)

This rhetoric seems either somewhat biased or naïve, the latter of which being rather unlikely in light of Sandberg's impressive professional track record and management experience. It can perhaps be explained by the underlying ideology that both internet search engines and online social networks frequently seem to adhere to, namely the assumption that gathering and mining massive amounts of user data effortlessly results in a win-win situation for both consumers and the companies running Web 2.0 platforms (Gillespie 2010; Fuchs 2010a, 2012; Mager 2012). Given the political and ethical implications outlined above, however, it becomes apparent that such a simplistic, consequentialist approach fails to recognize and address the deontological dimension of UGC: In Kantian terms, all stakeholders should be treated as ends in themselves, not merely as a means to an end. In this case, users are seen by social network sites as mere means to providing UGC, and the end is growth or profit.

From a deontological perspective, however, users of social networking platforms should be regarded not as mere consumers, but as "citizen-consumers" (Livingstone/Lunt/Miller 2007) instead. This term emphasizes the fact that the internet is not just a sphere for commercial activities, but also for civic discourse. Moreover, citizen-consumers do not just use social networking sites the way one uses a car or television. Instead, they provide the actual content that makes online social networks attractive and valuable in the first place. Nonetheless, citizen-consumers by and large do not get to adequately voice their concerns when it comes to the policies of the sites they provide value to. From a business ethics perspective, this is the first of three issues arising from Facebook's business model that affects each and every one of its users, and just like the issues in the following two sections, this one ultimately centers around the legitimacy of Facebook's decision-making process.

4.7.2 Privacy

As Facebook (2012a) states on its “About Us” site, its mission is “to make the world more open and connected.” From Facebook's perspective, “open and connected” means that the more data a user provides and shares, the more useful it is for both the user and the company's advertising-driven business model. Privacy, Facebook founder and CEO Mark Zuckerberg famously claimed in early 2010, allegedly is no longer a “social norm.” According to Zuckerberg, “people have really gotten comfortable not only sharing more information and different kinds, but more openly and with more people” (Johnson 2010). He even went so far as to promote “radical transparency” as a moral duty, stating in defense of Facebook's real-name policy: “Having two identities for yourself is an example of a lack of integrity” (Helft 2011).

Thus, over the course of the past few years the default privacy settings for pictures and other content that users upload onto Facebook have become more and more open (McKeon 2010). Facebook users can choose to share content with, for example, just their friends, friends of their friends, all other Facebook users, or the entire internet (via search engines). While sharing only with one's friends used to be the default setting in most cases, Facebook in recent years has frequently updated its privacy policy and changed the default to much more open settings (Meckel 2011). This is a problem because many users do not know exactly how these settings work. The settings change frequently and are sometimes hard to find. Moreover, the long and complex privacy policy and licensing terms that users have to accept when they sign up for the service are too complex and frustrating for the average user (Milne/Culnan 2004). Thus, Lessig (2006: 228) claims that

> “Cluttering the web with incomprehensible words will not empower consumers to make useful choices as they surf the Web. If anything, it drives consumers away from even attempting to understand what rights they give away as they move from site to site.”

In a similar fashion, former Apple CEO Steve Jobs (2010) laid out his understanding of privacy, claiming the following:

> “Privacy means people know what they're signing up for—in plain English, and repeatedly. … Some people want to share more data than other people want to do. Ask them. Ask them every time. Make them tell you to stop asking them if they get tired of you asking them. Let them know precisely what you're going to do with their data.”

As a result of the confusion about rights and security settings, to name just one small example, parents who upload pictures of their children to their Facebook account might find themselves in a situation where they accidentally share these pictures not just with their friends, but with all Facebook users—or even with all internet users, if they chose to allow search engines to index their profile. And all of this might happen without them even being aware of it.

One might argue that it is primarily the users' responsibility to educate themselves so that they better understand the consequences of privacy settings on online social networks. However, even if a user knows how to change individual privacy settings, there are mechanisms in place on social networking sites that dilute users' agency and control over their privacy (Lessig 2006: 200/232). For example, Facebook offers new users the option to upload their digital address books in order to easily find their friends who are already members of the network. Even if a cautious new user does not wish to provide his or her address book data, Facebook still manages to identify many of his or her friends already on the network. It can achieve this because other users have already provided their respective address books, and the new user's email address may have been included in those. In this way, Facebook is able to established a link between the new user and his or her friends, even though the new user never agreed to uploading his or her data. Said data was provided by a third party, and the new user never was in control of it. Even someone who does not appreciate online social networks at all and does not wish to ever become a Facebook member may already have provided data to the site via a friend who uploaded an address book. This highlights the fact that privacy is an issue negotiated not merely between Facebook and its users, but also among users themselves, because it is about users interacting with and influencing one another with regard to their respective normative understandings and expectations of privacy (Tufekci 2008). However, since it is Facebook that defines the rules and policies according to which users can negotiate privacy claims among themselves, the company is the main agent to be held accountable and the primary addressee of responsibility with regard to privacy on its online territory.

An example shows how problematic privacy settings on Facebook can become if they are not taken seriously. Until the end of March 2012, iPhone users could download a free geo-location app from Apple's iTunes Store that did exactly what its name suggests: “Girls around me” used the iPhone's GPS to find the location

of its owner and then displayed a map showing pictures of women in the vicinity (Brownlee 2012). Without their knowledge or consent, the app presented these women's publicly accessible Facebook photos and profile data, and it knew where they were because they themselves had registered their respective current locations via Foursquare, a location-based social networking app that also has a Facebook tie-in. “Girls around me” was able to read data provided by Google (maps), Facebook (photos and profile data), and Foursquare (location) via their respective public APIs, combining them in order to allow for what one could euphemistically describe as targeted dating strategies. The fact that this app could only be seen as a highly inappropriate stalking tool apparently did not bother the Moscow-based company that published it, but after media outrage and criticism mainly from Foursquare, who claimed the terms of their API had been violated, the app was removed from the iTunes Store.

This case may be somewhat extreme, but it shows that many users do not know just how far and wide their data get distributed if they do not control their privacy settings, and that the contextual integrity (Nissenbaum 2004) of one's online data is almost impossible to maintain today (Hull/Richter Lipford/Latulipe 2011). Moreover, Facebook increasingly tries to capitalize on its users' data instead of relying on its usual “Likes” (Greenfield 2012a), even going so far as to cooperate with advertising companies that can track whether a user who saw an online ad on Facebook ends up buying that product at a drug store (Greenfield 2012b). Facebook and other social networks also have third-party companies check their users' chat protocols and other data in order to identify inappropriate or illegal behavior, such as indicators for potential child molestation (Menn 2012).

Cases like these have led not only to strong criticism from activists and academics (boyd 2010a), but also to a wide range of lawsuits. In May 2012, for example, Facebook faced a $15 billion class-action lawsuit in the United States because it allegedly tracked its users' online behavior even when they had logged out of the network already (Protalinski 2012). This illustrates that, contrary to what Mark Zuckerberg might claim, users of online social networks do in fact care about privacy. And despite the widespread myth to the contrary, even youth care about privacy online (boyd/Hargittai 2010), and they are in fact more likely than older users to limit the amount of personal information available about them online (Madden/Smith 2010).

Most users today are well aware of the fact that privacy is not Facebook's main concern: 59 percent of the respondents participating in a May 2012 AP-CNBC poll stated that they have "little or no trust" that the social network site keeps their personal information private (CNBC 2012). 28 percent stated they "somewhat trust" Facebook, while only 13 percent stated that they "completely trust" the site to keep their information private.[9]

It is thus quite ironic that Mark Zuckerberg himself changed the privacy settings of his account on Google+, a competitor's online social network, to a more restrictive setting than what he seems to expect his own users to choose (Bennett 2011). Against this background, Google+ has been trying to take advantage of Facebook's reputation as a violator of privacy rights, trying to position itself as the privacy-friendly alternative to Facebook (Bosker 2011). (Given Google's track-record with regard to privacy issues, this also seems to be a rather ironic state of affairs.)

These cases illustrate two arguments: (1.) The way an online social network treats its users' data is a political issue, both in the sense that the use of said data interfaces with political and market mechanisms beyond the network's territory, and in the sense that a company which regulates data does so not only on its own behalf, but with significant consequences for user-to-user interaction and a wide range of spillover effects. (2.) From a business ethics perspective, privacy issues are not just consequentialist ones: Proponents of the "privacy is obsolete" argument, among them many economists and marketing researchers (such as La Blanc 2012), often claim that privacy concerns are irrational and will simply go away once users see the positive results of sharing data. They argue that the consequences of less strict privacy regulation would in fact be beneficial to all parties involved because the more information individuals share, the better the services provided to them by the private sector. Contrary to this simplistic view, however, the future consequences of today's privacy regulations are entirely unpredictable, thus creating systemic risks that, from an ethical perspective, should not simply be ignored. Rather, from a deontological view, privacy should be seen as a user right that is supposed to protect stakeholders—especially the weakest ones, such as children—against potential misuses of technology which

[9] CNBC (2012) states that "The AP-CNBC poll was conducted May 3-7, 2012 and reflects the views of 1,004 people surveyed by telephone. The poll has a margin of error factor of plus or minus 3.9 percent."

are unforeseen as of yet. Moreover, arguing that users who value their privacy should simply choose not to use social network sites at all is increasingly inadequate since these technologies will only become even more important for exercising citizenship rights and participating in public discourse in the future (Barney 2003, 2004, 2007; Livingstone/Lunt/Miller 2007; MacKinnon 2012).

From a business ethics perspective, one fairly obvious, yet nonetheless important, claim is that technology companies need to take their stakeholders' concerns more seriously. Even with regard to fundamental issues such as human rights, “most ICT companies remain fearful of stakeholder engagement and reluctant to discuss major impacts and human rights dilemmas openly with those outside the company” (BSR 2012: 14). With respect to privacy concerns, Pollach's (2011) comparative study of 95 international technology companies shows that privacy is still by and large ignored as a corporate responsibility issue today, as not even a third of these companies acknowledged privacy issues in their CSR reports. Therefore, Madelin (2011: 455) claims that corporate behavior on the internet is only “slowly showing movement from mere legal compliance towards responsible behaviour.” From an ethical perspective, instead of merely focusing on complying with highly complex, fast-paced, and internationally fragmented privacy law, online social networks should also take into account their own role as regulators. They should actively contribute to protecting their stakeholders' online data by establishing business practices that make it easier for information on the internet to be “forgotten” instead of being stored, distributed, and remembered ad infinitum (Mayer-Schönberger 2009: 132). And most importantly, they should engage in open discourse with their stakeholders instead of just making unilateral and arbitrary decisions on privacy regulation the way Facebook has been for years.

4.7.3 Personalized, Non-Neutral Access to Information

Facebook has become so ubiquitous and influential in recent years that it tries to capitalize on its market leader position by becoming the main lens through which people access information on the internet. From Facebook's perspective, a user should ideally never log out or leave the site. Thus, in order to prevent them from leaving for content on other sites on the World Wide Web, Facebook brings online content directly to its users: Via a range of feeds, Facebook presents its users with articles, photos, or videos which their friends or commercial pages

have shared, and it embeds these on its own site. To that end, Facebook caches third-party content which its users share on the social network. Understandably, in hopes of being able to widely distribute their content to a potential audience of more than 900 million people, many content providers, such as news media, willingly adapt to this distribution channel and its methods. In addition to offering access to third-party content, Facebook also provides its users with a wide range of functionality directly implemented into its site, such as email, chat, groups, events, or games. Just like Google with its wide range of services, Facebook tries to keep its users on its online territory for as long as possible.

This setting raises a concern, namely the potential for a "filter bubble" (Pariser 2011). In recent years, Google and many other ICT companies have personalized their products, be it online search search or similar online services. As a trivial example, the exact same Google search for "pizza" may deliver completely different results for different users, depending on their location and the respective background information Google has about them. Sites such as Google and Facebook collect a vast amount of user information and behavioral data, and they use these to customize their services in ways that make them feel tailor-made for each customer. This approach has many advantages for both companies and consumers because it can help users find the exact product or service that best fits their needs. However, it also has several downsides.

For example, users often do not know that they are using a personalized service, thus assuming they access neutral or unbiased information online. The highly personalized filter bubble contains only one person, after all, and that may result in a passive kind of censorship: Since information services are not (yet) perfect in their assessment of user needs, they will sometimes fail at recognizing them adequately and thus show or hide certain results. The opposite scenario is even more troubling, however: Personalized services can be so good at filtering information that users will only ever see content that fits their taste or prejudice, whether commercial or political. A Democrat or Republican might only care about his own political views—why not filter out arguments made by the respective other party, then?

> "Democracy requires citizens to see things from one another's point of view, but instead we're more and more enclosed in our own bubbles. Democracy requires a reliance on shared facts; instead we're being offered parallel but separate universes." (Pariser 2011: 13.)

Arguments such as these are not necessarily new (see Sunstein 2001, for example). In the case of Facebook, however, it is worth pointing out the political aspect of personalized social network sites: As shown in the sections above, Facebook already plays the role of a state-like regulator, and by personalizing its service it potentially influences civic interactions to an even higher degree. If its users only rely on Facebook's personalized feeds for information, the resulting filter bubble further increases the company's role as a political regulator—in this case, even beyond the scope of its own online territory. Interestingly, Facebook recently introduced a new feature that to a certain degree circumvents its own filter bubble: Users can "promote" one of their posts, which costs seven dollars, and thus make it appear higher on their friends' news feeds. This effectively overrides personalized feeds, possibly rendering the filters somewhat useless. The project is still at a relatively early stage, so it remains to be seen how exactly it will change Facebook's personalization strategy.

Another example for Facebook's attempt to becoming the pre-eminent content channel for internet access is Facebook Zero (0.facebook.com), a phone service that Facebook launched together with mobile carriers in approximately 45 countries back in 2010. The service grants users free access to Facebook on their mobile phones, but they need to pay for access to other internet sites. This of course constitutes a strong incentive to accessing information on the internet only via Facebook instead of, for example, the open World Wide Web, as the company tries to keep users attached to its site (MacKinnon 2012: 123 f.). The mobile internet market is strategically important for the social network since it is a strongly growing sector, and Facebook has been having problems with generating revenue through its mobile advertising business (Greenfield 2012a). Facebook Zero, then, raises questions of net neutrality.

At its core, the highly complex debate on net neutrality is about the question whether internet service providers (ISPs) should be allowed to discriminate against certain content, uses, users, or companies on their networks—but there are many facets to the debate (Sandvig 2007; Zittrain 2010; Marsden 2010). Briefly put, proponents of net neutrality argue that ISPs should not interfere with or censor data on their networks (Zuckerman 2010), whereas ISPs would like to be able to capitalize on different pricing tiers and strategies when transporting said data. For example, it is easy to imagine a search engine company being willing to pay a premium to any ISP that guarantees its users preferential

treatment—that is, faster search results—by slowing down access for users of a competing search engine company. Or, data originating from Africa could be sent at a slower speed than traffic from companies or other entities that can afford to pay for faster data delivery, such as Google or Microsoft (MacKinnon 2012: 122).

In Facebook Zero's case, mobile carriers take on the role of ISPs, offering their customers free access to Facebook while charging for regular mobile internet access. This raises two concerns: privacy and corporate censorship (MacKinnon 2012: 123-126). The former concern stems from the fact that all mobile devices have unique international mobile equipment identity (IMEI) numbers. Therefore, user behavior can easily be tracked and users can be identified relatively easily. This ties in to the second concern: For example, if political activists in a country with a questionable civil liberties record were to set up both a Facebook page and a blog on the World Wide Web, only the Facebook page would be accessible free of charge for mobile internet users relying on Facebook Zero. However, Facebook has a history of changing its privacy policy and terms of service frequently and without proper notice, so activists might find themselves in a situation where their identities might be at risk because of Facebook's aforementioned real-name policy. If activists need to choose between a freely accessible, yet unsafe Facebook page and an anonymous blog that reaches nobody due to its access cost, Facebook again takes on a regulatory role as a political entity. Against this background, however, political actors have intervened in order to hold Facebook more accountable with respect to issues such as privacy. One prominent example for this kind of intervention is the settlement that Facebook agreed upon with the Federal Trade Commission in the US (Federal Trade Commission 2011).

All three business ethics issues highlighted in this section—user-generated content, privacy, and personalized, non-neutral access to information—share three characteristics: (1.) They affect every single Facebook stakeholder due to the fact that they are inevitably tied to the company's core business model. (2.) They highlight the company's regulatory role as a virtual state. (3.) They all point towards one central issue, namely Facebook's legitimacy and accountability problems, which will be discussed in the following section.

4.8 Conclusions: Political CSR & the Virtual State Metaphor

In this chapter, I have described and critically discussed the political role of Facebook as a state-like regulator of both its own online territory and that of a wide range of third parties. One of the central insights of the virtual state metaphor is the fact that the concept of power, as well as its distribution and control, which have been a core issue in political science and political philosophy for centuries, play a large role in current debates on information technology and corporate responsibility. From a mainstream management perspective, however, power is a rather unpleasant problem that often gets sidelined by seemingly more rational, productive, and "morally neutral" issues, such as revenue streams or monetization models. Nonetheless, power is at the heart not just of Facebook's regulatory role, but of a wide range of issues regarding modern information and communication technologies. MacKinnon (2012: xx) therefore asks a crucial question regarding the political power of ICT companies: "How do we make sure that people with power over our digital lives will not abuse that power?" This raises the central issues of user rights on the one hand, and legitimacy on the other, as defined by Suchman (1995: 574):

> "Legitimacy is a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions."

Indeed, this relatively broad definition (which Suchman goes on to specify in great detail) already points out the central feature of legitimacy: In order for power to be perceived as legitimate, the people affected by it need to be given good reason to be convinced that it has been wielded in an appropriate way, and with good intentions. What kind of behavior is being perceived as appropriate may vary according to a wide range of culturally diverse standards, but it holds true even from an amoral, purely strategic, and rather historic perspective, as Easton (1957: 393) points out:

> "... a government may elicit support in many ways: through persuasion, consent, or manipulation. It may also impose unsupported settlements of demands through threats of force. But it is a familiar axiom of political science that a government based on force alone is not long for this world; it must buttress its position by including a favorable state of mind in its subjects through fair or foul means."

From a modern ethical perspective, this "favorable state of mind" obviously should not, and in fact cannot, be achieved through "foul means." This becomes apparent when taking into account the settlement Facebook reached with the

Federal Trade Commission (2011) after it had constantly been intransparent about its regulations, such as its terms of service and privacy policy, without informing its users properly and often without seriously attempting to take their concerns into consideration. Even though the company's policies often resulted in criticism by users, Facebook had only been willing to marginally change the way it interacts with its stakeholders until the FTC stepped in. Using a somewhat dramatic analogy, Facebook for years has been acting much like a king expecting his subjects to always follow orders without asking any critical questions:

> "Contrary to what some people may have hoped and believed, the Internet does not change human nature. We have begun to see how absolute power in cyberspace corrupts absolutely as it does in physical space. As with power in the physical world, power in the digital world must be constrained, balanced, and held accountable. The future of freedom in the Internet age depends on the choices and actions of everybody on the planet who creates, uses, and regulates technology. It depends on whether we assert our rights within the digital spaces we now inhabit—just as our forebears fought for their rights in the physical spaces once controlled entirely by sovereigns who claimed to have the divine right to rule as they pleased." (MacKinnon 2012: xxiv.)

Similarly, MacCarthy (2010: 220) states that

> "[Web 2.0] communities are not typically governed by democratic voting procedures that guarantee the consent of the governed. They are governed by contractual terms of service. Often prospective members of these communities have a simple take-it-or-leave-it choice when they decide to join."

As MacKinnon points out, in order for Facebook to become a corporate actor whose regulations could be perceived and acknowledged as legitimate, two factors play a key role: (1.) Facebook needs to realize and address the fact that it has become a de-facto political regulator whose legitimacy is constantly questioned and contested, whether it likes it or not. It then needs to engage in unconditional stakeholder dialog by way of ideal role-taking and "deliberative corporate policy-making" (Ulrich 2008: 418) in order to improve its decision-making process, reasonably balance stakeholder claims, and gain legitimacy that way. (2.) Facebook users need to actively speak out for their rights to be respected on online social networks, and they need to hold the companies running said networks accountable for their regulatory decisions. This aspect of moral legitimacy specifically points to "procedural legitimacy," as laid out by Suchman (1995: 580), which focuses on ethically "sound practices" and fair decision-making processes. Scherer, Palazzo, and Baumann (2006: 520) present a similar approach to legitimacy, also framing it by building upon Habermasian

thought while at the same time addressing the new public role of globalized private companies:

> "In his *deliberative model of democracy,* Habermas … outlines an alternative approach to the classical liberal model and unfolds a de-centered concept of democratic governance. While, originally, governance activities were linked to nationally contained processes of public will-formation, on the global playing field, this understanding of legitimacy has to be *reframed* in all its dimensions. Globalization is changing the object of legitimacy questions (from state actors to private actors), the output of legitimacy (from "hard" national to "soft" transnational law), and the input (from national polity to transnational civil society). In the global context, with eroding state power and the emerging political authority of corporations and civil society associations, the legitimacy question addresses these new political actors instead of the traditional state actors. The legitimacy of corporate acts of self-regulation and civic participation depends on *the political embeddedness* of … CSR activities in the … Habermasian sense. We would argue that corporate political legitimacy refers to the link between corporate decision-making and discursive processes of public-will formation that express the democratic sovereignty of the transnationally expanding civil society. Only the democratization of corporate activities, through continuous discourse participation and enlarged mechanisms of transparency, monitoring, and reporting, can close the legitimacy gap of the corporation as a political actor in a globalized economy …"[10]

As described above, this "legitimacy gap of the corporation as a political actor" is an issue online social networks need to face (no pun intended), whether they like it or not. It is worth pointing out that Habermas himself (2006: 420) seems to be rather pessimistic about the current state of political participation enabled by modern ICTs, whereas proponents of the "Twitter revolution" and the "Arab Spring" have been making exceedingly optimistic claims with regard to the civic opportunities provided by social network sites. Be that as it may, both perspectives stress the importance of the role that citizen-consumers and their basic stakeholder rights (Ulrich 2008: 432 ff.) should play when it comes to the moral legitimacy of online social networks, thus highlighting the value of fair and open deliberation:

> "As political decisions are characteristically imposed on all, it seems reasonable to seek, as an essential condition for legitimacy, the deliberation of all or, more precisely, the right of all to participate in deliberation. We must, therefore, challenge the fundamental conclusion of Rousseau, Sieyes, and Rawls: a legitimate decision does not represent the will of all, but is one that results from the deliberation of all. It is the process by which everyone's will is formed that confers its legitimacy on the

[10] My apologies for using such a lengthy quote, and indeed for the relatively high number of quotes used in this section, but I believe they are so poignant that merely paraphrasing them would not do them justice.

> outcome, rather than the sum of already formed wills. The deliberative principle is both individualistic and democratic. It implies that all participate in the deliberation, and in this sense the decision made can reasonably be considered as emanating from the people (democratic principle). The decision also proceeds from the liberty of individuals: those individuals deliberate together, form their opinions through deliberation, and at the close of the process each opts freely for one solution or another (individualistic and liberal principle). We must affirm, at the risk of contradicting a long tradition, that legitimate law is the result of general deliberation, and not the expression of the general will." (Manin/Stein/Mansbridge 1987: 352.)

Applied to the context of social networking sites as regulators, legitimacy could thus be described as "consent of the networked" (MacKinnon 2012) achieved through fair deliberation. Thus far, however, "the networked" have largely been ignored by the ICT companies who govern them. No wonder, then, that citizen-consumers and internet activists have begun promoting a *Declaration of Internet Freedom* (2012; see also Sottek 2012), much like a declaration one would use to defend traditional civil liberties against an authoritarian state. The brief text is centered around five principles:

> "We stand for a free and open Internet. We support transparent and participatory processes for making Internet policy and the establishment of five basic principles: *Expression:* Don't censor the Internet. *Access:* Promote universal access to fast and affordable networks. *Openness:* Keep the Internet an open network where everyone is free to connect, communicate, write, read, watch, speak, listen, learn, create and innovate. *Innovation:* Protect the freedom to innovate and create without permission. Don't block new technologies and don't punish innovators for their users' actions. *Privacy:* Protect privacy and defend everyone's ability to control how their data and devices are used."

These principles certainly do not facilitate a perfect system, and they may in fact contradict one another in quite a few instances, but they are important nonetheless because both technical design principles and online business models need to be contextualized and counterbalanced by ethical reflection. For example, the technical design principles of generativity (Zittrain 2008) or interoperability (Palfrey/Gasser 2012) certainly are highly valuable not just analytically, but also as normative guidance. However, they alone cannot guarantee civil liberties online, and neither does "the market." Instead, ethical reflection and constant stakeholder deliberation are required in order to define exactly what kind of access, openness, or innovation citizen-consumers deem worthy of their support, as all of these normative terms are by no means morally neutral or objective. Therefore, the deliberative democracy model lends itself

very well to framing and evaluating the political role of the privately owned, networked virtual state.

With regard to the corporate responsibility issues highlighted by the virtual state metaphor, one could interpret Facebook's difficult position between being a private company and a quasi-political regulator from two different perspectives: On the one hand, against the background of Berlin's (1958) "negative liberty," one could argue that Facebook as a political entity has a responsibility not to violate its users' rights. This requires the company to start thinking about its business model in terms of rights, and not just in terms of revenue (Wettstein 2008). This seems to be a daunting task given the fact that Facebook went public in May 2012. Nonetheless, from this perspective, an ICT company's primary responsibility should be to "do no harm" (Cerf 2011) and respect its stakeholders' rights, which need to be defined concretely through the process of stakeholder deliberation.

Beyond this minimum of corporate responsibility, however, Wettstein (2010) argues that corporations have a moral duty to promote just institutions, and I would claim that this becomes even more relevant when a corporation effectively becomes a political institution in itself, just as Facebook has. Moreover, online social networks have always been fueling the—somewhat utopian, or perhaps naïve—civic promise of deliberative democracy enabled by new communities without borders. This perspective emphasizes what Berlin (1958) called "positive liberty"—that is, not a citizen's freedom *from* having something done to him or her, but a citizen's freedom *to do* something, namely to realize civic hopes for participation and democracy. Sen's (1999) capability approach further develops this notion, claiming that every person should be empowered to develop capabilities that allow him or her to fulfill certain "functionings" needed in order to live the lives they have reason to value.

The metaphor of the privately owned networked virtual state may have quite a few shortcomings, not the least of which being the fact that social network sites such as Facebook are privately owned entities. Therefore, from a strictly legal perspective, the metaphor could be seen as irrelevant. From a business ethics perspective, however, I would argue that the metaphor's use lies not only in its analytical quality—that is, in recognizing the fact that there are a wide range of empirically valid parallels between online social networks and actual states. In addition to that perspective, one could argue that the metaphor might also allow

transnational corporations in the digital economy to learn from historic experiences and challenges that the liberal, democratic nation-state had to go through, such as the increasing recognition of the value of legitimacy, procedural democracy, deliberation, etc. The process of learning from historic experience may also offer certain predictive qualities, at least to a limited extent. For example, we might be able to predict from the historic philosophical debates on individualism and communitarianism that Facebook will experience similar conceptual tensions in the future—if it is not doing so already.

With regard to current scholarly debates, the virtual state metaphor presents recent political CSR and corporate citizenship theories with an extreme case that emphasizes potential differences between the political roles of corporations in offline and online environments. Whether we need to develop new theories or merely refine and adapt existing ones in order to grasp these differences between analog and digital business ethics remains yet to be seen. I hope this chapter will help generate a lively discussion on these issues, and I will briefly outline some of the challenges ahead in chapters 5.2 and 5.6.

Policy recommendations on regulation regarding Facebook are mere speculation at this point. Nonetheless, three general recommendations could perhaps be made: (1.) At the individual level, initiatives that help educate and train users about issues such as privacy and their civil liberties online should be supported, for example by teaching these skills in schools at a relatively early age. Better educated users could help Facebook improve its service instead of merely using the site to their own disadvantage or leaving it entirely. As boyd (2010c) put it: “Quitting Facebook is pointless; challenging them to do better is not.” (2.) At the corporate level, tools for improved stakeholder dialog, such as the Facebook Site Governance page, should be strengthened, and multi-stakeholder dialogue initiatives involving companies, citizens, and scholars, such as the Global Network Initiative (2012), can be seen as successful benchmarks. In early 2013, Facebook made a promising step in this direction by joining the Global Network Initiative. (3.) At the political level, improved consumer protection laws and better privacy regulation may be useful in order to help citizen-consumers make their case in protecting civil liberties online. However, as Gasser (2012) points out, since we cannot know how this fast-paced industry will develop over the next years, political regulation needs to remain open to

learning processes, allowing for decisions that may afford a high degree of interoperability in the future (Palfrey/Gasser 2012).

5 Conclusions: CSR in Digital Environments

This final chapter will, first of all, briefly summarize my dissertation's main arguments and illustrate its contributions to the research field of business ethics and ICTs (section 5.1). Furthermore, it will discuss four aspects which I believe are of special interest (5.2–5.4). These aspects will be discussed with respect to the conclusions which this dissertation offers on each. Moreover, each of the following sections will outline interesting and relevant research questions which will need to be addressed in future projects. Lastly, section 5.5 outlines some potential contributions necessary in order to establish a highly relevant business ethics sub-discipline which one could simply call *digital business ethics*.

5.1 Summary

From an integrative business ethics perspective, this dissertation has shown that transnational companies (TNCs) in the information and communication (ICT) industries today have taken on a wide range of regulatory roles that go significantly beyond their usual characterization as private actors in most mainstream business management and economic theories. It has analyzed this empirical trend with respect to three cases: (1.) The way that ICT companies regulate access to knowledge, and the way they could contribute to alleviating digital divides. (2.) The microblogging site Twitter, which frames its corporate ethos and mandate using bold civic and moral claims while at the same time regulating its users in a way that mostly favors its commercial stakeholders. (3.) The social networking site Facebook, which today features many characteristics of a nation-state, and which is thus confronted with a wide range of ethical criticisms due to its de-facto role of being a privately owned networked virtual state.

An analysis of all three cases shows that it is the corporate actors themselves that make significant use of moral claims in order to justify their strategies. In

each case, however, the benevolent CSR rhetoric used by ICT companies is counterbalanced by a dichotomy: On the one hand, the companies studied in this thesis claim to be platforms that primarily focus on digital citizens' communication needs; on the other hand, however, the regulations enforced by said companies seem to constantly favor commercial uses of their sites over civic ones. As chapters 3 and 4 have shown, the normative tension between the civic and commercial roles of online social networks does not get addressed properly by either Twitter or Facebook. Therefore, this thesis analyzed the aforementioned tension utilizing an interdisciplinary perspective that complements business ethics with information ethics, political philosophy, development economics, as well as some—admittedly minor—aspects of both sociology of technology and legal studies.

With respect to theory building, this thesis' main focus lies in making a contribution to current corporate citizenship and political CSR theories. Both of these strands of business ethics theory have been focusing on the political roles which TNCs play in today's globalized economy. What they have largely been ignoring thus far, however, is how the political role of TNCs in the ICT sector might differ significantly from the political role of companies in the traditional, offline economy. This dissertation aims at closing this gap—and this is where the debate on internet exceptionalism, as previously discussed in chapter 1.3, comes into play again.

5.2 Online Social Networks: Internet Exceptionalism Revisited

As stated earlier, corporate citizenship and political CSR literature thus far have largely ignored the online environment. One first step in closing this research gap could be taking into account the fact that ICT companies, and especially online social networks, have become regulators of both access to knowledge and of online publics, as chapters 2 through 4 have shown. However, that raises the question whether this is a new phenomenon that is specific to the online environment. And again, just as in chapter 1.3, my answer will have to be preliminary, and it will have to be “yes and no.”

On the one hand, the answer will have to be “yes” because it seems that there is indeed no equivalent actor in the offline environment that works exactly like a social networking site. What other type of company has its own territory that it

can govern according to its own policies and its own set of institutions that regulate what its "citizens" can and cannot do? What company judges its "citizens" according to its own standards and enforces the same set of regulations internationally, more or less independently from national legislation? What type of business is a company that regulates other companies, i.e. the ones that use its territory, and to what should we compare a company that governs an entire economy?

It would seem that online social networks can regulate their users more independently from the state as compared to "offline" corporate regulators because their monopolistic role has the potential to influence political decision-making—after all, there seems to be a significant co-dependency between social network sites and politicians, as there are only very few big social networks that politicians need to utilize in order to interact with their constituents directly. At the same time, regulation by social networking sites is more international than that of most TNCs because they set their own rules and only minimally take into account political regulation of the states they are in. Social networks need to adhere to the respective national laws of the countries they operate in, of course, but those are often quite unspecific and grant companies such as Twitter and Facebook relatively large freedoms when it comes to regulating their users' behavior, for example via licensing policies. Thus, social networking sites are relatively independent authors of the different levels of regulation presented here—and at the same time, they are the only addressee of all pleas and appeals by their stakeholders, which highlights the issue of legitimacy and the lack of a proper division of powers.

While it seems entirely possible to find an example for a company in the traditional, offline economy which shares some of the aforementioned characteristics, it seems rather difficult to imagine one that actually shares *all* those characteristics. And even then, it would seem that the factor of scale renders online social networks unique because strong network effects and user-generated content, which allow social networks to grow into huge monopolies, largely depend on factors specific to the online economy.

And yet, even if online social networks were an ontologically new type of actor that is specific to the online environment, this would not necessarily warrant the need for a new and specifically ICT-tailored business ethics theory because ethics, understood as philosophical reflection of moral practices, seeks to

justify *universal* principles in order for them to be applied to different contexts. As the debates on corporate citizenship and political CSR have shown, corporate actors and nation-states have become more alike in recent years: Privately owned companies have become more like public regulators, and state agencies have increasingly been incorporating market-driven decision-making processes into their everyday practices. Therefore, the idea of catering different business ethics theories to specific actors does not quite seem adequate. Instead, as Ulrich's integrative economic ethics has been suggesting for a long time already, any collective entity should be held accountable for its actions and the problems caused by them. We do not necessarily need a substantially new branch of business ethics theory in order to specifically come to terms with the new challenges brought forth by online social networks. What we do need, however, is for the discipline to pay close attention to new trends in the digital environment, and I believe that a new sub-discipline might be a good venue for moving toward that goal (see chapter 5.5).

5.3 Business Implications: CSR, Integrity & Deliberation

The previous chapters have shown that transnational corporations (TNCs) in the ICT sector are not mere private entities, as most mainstream management and economic theories would still suggest. Instead, they are embedded within a broader social context, which they in turn influence and regulate. In fact, regulation by digital TNCs has an impact on a much broader range of issues and stakeholders than just their immediate customers: It influences politics both at the local and the international level, offers or obstructs opportunities for economic development, and plays an increasing role in protecting or threatening civil liberties, both online and offline. Because of the great social impact of ICTs, questions of legitimacy, accountability, and corporate responsibility have been growing in importance in recent years.

This development is fueled to a significant degree by the widespread CSR rhetoric that companies such as Twitter and Facebook use themselves. They claim to run civic platforms that are designed for free communication among peers, but then often favor their commercial stakeholders. In the long run, one could argue critically, this kind of instrumental CSR rhetoric is unsustainable because it negatively influences both trust and credibility among the stakeholders of social networking sites. Beyond this merely strategic argument, however, an

ethical evaluation taking into account corporate citizenship, political CSR, and integrative economic ethics theories needs to also point out that just "doing no harm" is not quite enough when it comes to issues such as privacy, intellectual property, or access to knowledge. In each of these cases, one could make the argument that while avoiding harm is a crucial first step, ICT companies should also proactively make contributions toward improving the societies they are embedded in by respecting stakeholder rights. Because ICT companies contribute to sustaining prisoner's dilemmas with respect to problems such as digital divides (chapter 2) and insufficient protection of civil liberties online (chapters 3 and 4), they naturally are the addressees of accountability claims by their stakeholders. Conceptually, this means that ICT companies should, as a sign of both good will and transparency, be clear about their business priorities and the moral responsibilities they have for their stakeholders, and from an ethical perspective, this means prioritizing legitimacy over profit maximization. For example, as I have argued in chapter 2, since ICT companies are such powerful and capable entities, one could make the case that they have a moral duty to contribute to helping overcome persistent problems such as digital divides.

This does not mean that there are easy, ready-made ways to do this, nor does it mean that we could solve massive problems such as the ones outlined in this dissertation in a purely academic fashion.[11] Instead, a good practical starting point is the fact that almost all ICT companies already claim to be good corporate citizens—and if they wish to sustain credibility and trust, they will need to demonstrate to their stakeholders that these statements are not purely instrumental ones. Instead, if they do in fact wish to be perceived as companies of integrity, they will need to prove that they are indeed the civic platforms they claim to be, and they will thus need to engage in unconditional stakeholder discourse, for example via the Global Network Initiative (GNI) or similar collective institutions.

The GNI is an example for a successful "soft law" institution. A multi-stakeholder initiative on internet governance, it brings together ICT companies such as Google and Microsoft with actors from the fields of civil society and academia, all of whom are "committed to protecting and advancing online

[11] As stated in chapter 1.4, the ethicist's job is not to make decisions on behalf of some individual or group, but to give guidance on how said individuals or groups can make more legitimate decisions themselves.

freedom of expression and privacy." The GNI focuses on four key activities: It "provides a framework for companies, rooted in international standards; … ensures accountability of ICT sector companies through independent assessment; … enables opportunities for policy engagement; … creates shared learning opportunities across stakeholder boundaries" (Global Network Initiative 2012).

The GNI and a wide range of other similar initiatives are still relatively young institutions, and it remains an open question whether they are robust enough to solve the problems outlined in this dissertation. Soft law, however, is potentially flexible and can thus take on a wide range of forms: Some initiatives are based on material norms, such as ILO or human rights standards (e.g., SA 8000), others emphasize procedural aspects like dialog and reflexivity (e.g., AA 1000); some merely ask members to commit to certain principles (e.g., the Global Compact), some understand themselves as guidelines and management systems (e.g., ISO 26.000), while others include independent external audits and certifications (e.g., SA 8000 or the BSCI); some apply to all economic sectors (e.g., the Global Compact), whereas others focus on specific sectors or issues (e.g., the GNI) or try to combine both (e.g., the GRI with its general reporting framework plus sector-specific supplements). By the very nature of deliberation, the results of multi-stakeholder initiatives are unpredictable—yet such a process would help alleviate one of the great ironies of the ICT industry, namely the fact that companies whose very business is communication mostly just talk *at* their stakeholders instead of talking *with* them.

5.4 Policy Implications: Ethical Challenges of Innovation

In contrast to the relatively pragmatic approach to CSR as it has been discussed in the United States, many European approaches toward a critical reflection of economic activity have taken into account broader policy issues and political institutions. From these perspectives, business ethics needs to be complemented by a broader view on what is generally called *economic ethics*, as it goes beyond business ethics in that it also takes into account regulatory policy. From an *integrative* economic ethics perspective, this means that regulatory policy needs to ensure "the primacy of political ethics over the logic of the market," as "[i]nstitutional ethics begins beyond (or with a critique of) the elevation of the market mechanism to the highest regulatory principle." (Ulrich 2008: 350.)

The caveat that ethicists should not make decisions on behalf of other actors still applies to both corporate actors and the political process. Hence, this chapter will refrain from somewhat authoritatively giving specific policy advice from an ethical perspective before the actors affected by the issues discussed in this dissertation have even had the chance to go through the process of public deliberation on these issues. What I can and will do from an ethical perspective, however, is to criticize the fact that political processes of ICT regulation in recent years have not even remotely resembled the ideal of political deliberation, or "consent of the networked" (MacKinnon 2012). Instead, as the negotiations on international treaties such as ACTA and the 2012 World Conference on International Telecommunications (WCIT) have shown, political decisions on how to regulate ICTs internationally are often being made in an intransparent and undemocratic manner. Likewise, the general public has also by and large been excluded when it comes to national ICT policies, which are often being negotiated under the strong influence of corporate lobbying, and which in recent years have resulted in ethically problematic public-private partnerships on digital regulation, as illustrated by the WikiLeaks case.

This is problematic for various reasons, the most important of which being the fact that digital citizens increasingly have become subject to private regulation online, especially with respect to access to information (chapter 2), user rights (chapter 3), and civil liberties on digital platforms (chapter 4). Against this background, it would seem that political actors today play an insufficient role in helping digital citizens protect their rights online. Instead, NGOs, online activists, and scholars often take it upon themselves to raise awareness and provide pro-bono assistance on the above-mentioned digital issues. While this lack of state-level political engagement certainly is an ethically good thing when it comes to regulation attempts by undemocratic regimes, it is disappointing to see that not even democratic governments seem to be willing or able to sufficiently protect their digital citizens by counterbalancing private regulation.

To a certain extent, this lack of political engagement is understandable, as the speed of innovation in the ICT sector is often so high that state regulation is easily outpaced by technological developments. However, not every technological innovation is ethically good and socially desirable, and political regulators thus need to be ready and able to step in and protect their citizens in severe cases where ICTs threaten to violate citizens' rights. One future concept

for this kind of protection could be "economic citizenship rights" (Ulrich 2008: 225-227), understood as a regulatory attempt to provide citizens with the means to maintain fair living conditions in economic interactions with powerful entities. This applies to cases where political regulators would like to either protect citizens from corporate regulatory overreach—with regard to privacy and user rights, for example—, or where political regulators would like to institutionally support good corporate citizens when it comes to preventing moral free-riding in their industry. Again taking a cue from deliberative democracy, multi-stakeholder dialogue can yield ethically legitimate and socially accepted results in such cases, bringing together political, corporate, and civil society actors, which may then lead to hard or soft regulation.

"Soft law"—i.e. voluntary industry initiatives and standards—can be an effective result of multi-stakeholder deliberation, either in the sense that it may provide solutions faster than hard law could, or in the sense that it may pave the way for hard law in the long run. Such a process, however, requires at least three components: (1.) an engaged citizenry that does not shy away from long-term political engagement despite the very short attention spans prevalent in the online environment; (2.) good corporate citizens, i.e. companies of integrity and civic spirit, that share an interest in fair competition for both their industry and society as a whole, and not just in short-term gains for themselves;[12] (3.) political institutions that are willing to prevent today's self-proclaimed "knowledge societies" from being taken advantage of by corporate interests, enabling sustainable access to the digital commons for all citizens, for example by way of instituting fair economic citizenship rights.

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[12] The December 2012 case of Google justifying its elaborate tax evasion strategies by blaming its own apparent lack of integrity on "capitalism" stands as a great example of a company that—despite its moralistic motto, "Don't be evil"—seems to have no real interest in a level playing field when it comes to taxes and competition. Instead, Google chairman Eric Schmidt stated that the company was "proud" to cleverly have taken advantage of international tax law loopholes (Kavoussi 2012). This is a common rhetoric strategy for justifying both tax evasion at the corporate level and tax haven strategies at the national level: On the one hand, it claims that all other actors behave the same way. We could call this the *"Sachzwang" argument* or the *kindergarten justification* because, just like a young child, it argues that unacceptable behavior is not unacceptable as long as everyone else behaves just as badly. On the other hand, it argues that tax loopholes are there to be taken advantage of because that is good for everyone in the long run. This is the ideological, libertarian part of the argument, claiming that low taxes are always good, and what better taxes could there be than no taxes at all? Instead of referring to questionable arguments such as these, a good corporate citizen would recognize its civic duty to contribute to the common good, lobbying for fair taxation policies instead of taking advantage of legal loopholes—which most of the time are a direct or indirect result of corporate lobbying in the first place (Mintzberg/Simons/Basu 2002; Vogel 2008b).

5.5 Future Research: In Search of Digital Business Ethics

Currently, business ethics as an academic discipline addresses digital issues only marginally. At the same time, while the discipline of information ethics addresses moral problems in and of digital environments, it does so without explicitly focusing on corporate responsibility in these environments. Against this background, and taking into account the findings of this dissertation, it seems reasonable to close this research gap by developing a sub-discipline within the ethics field that shares a research agenda focusing on corporate responsibility issues in digital contexts. This does not imply reinventing the wheel, as scholars such as De George (2003) have already addressed the issue of ICT and business ethics. Nonetheless, a telling indicator for the ICT industry's fast-paced innovation is that De George's book was written well before Facebook and Twitter became relevant, and I believe that the rise of Web 2.0 (including catchphrases such as Web 3.0, etc.) sites in the last decade has brought with it genuinely new challenges with respect to corporate responsibility. Therefore, I believe it might be time to increasingly focus on these issues within a sub-discipline I would simply describe as *digital business ethics*.

While I do not necessarily believe that this sub-discipline needs a new methodology or new research questions (as already stated in the sections on internet exceptionalism in this dissertation), I do believe that there are significant new empirical developments in the digital environment that call for special conceptual attention from business ethicists. For the sake of brevity, I will list only a few of these potential issues in this last section.

At the level of regulative ideas, for example, the issue of digital sustainability (Grassmuck 2004; Kuhlen 2004; Fuchs 2010b) needs to be defined properly with respect to corporate responsibility. What kinds of moral rights and duties should ICT companies have when it comes to regulating access to knowledge? This is closely related to the ethics of innovation and, more generally, to the question of how we should define “progress” in the knowledge society. For example, should innovation be measured by the number of patents which a company (or state) generates each year, or should it be evaluated by broader digital literacy indicators? These are not just technical issues, nor are they “neutral” economic questions. Instead, questions regarding “the good life,” the meaning of economic ends and means, and the potential indicators of social progress are all collective,

political, and thus ethical questions (Ulrich 2008: 189-215). And in all of these instances, ICT companies play an important role.

As for the objects of study relevant to this sub-discipline, I would argue that the most pressing issues currently are the ones in which ICT companies act as quasi-governmental regulators of public space online. This includes companies such as Twitter and Facebook, as shown in this dissertation. It should, however, also include a wider range of companies in line with this research interest. For example, online gaming networks such as Microsoft's XBox Live Arcade and Sony's PlayStation Network need to strike a fair balance between taking a laissez-faire approach towards how their users interact with one another on the one hand, and regulating their users' online behavior rigorously on the other. This fine line has been highlighted in the past year by widely reported cases of "toxic gamer culture" (Consalvo 2012): For example, both feminist blogger Anita Sarkeesian (2012) and videogame writer Jennifer Hepler became the targets of large-scale online smear campaigns organized by misogynist gamers (Pearson 2012). These cases illustrate that online gaming culture is to a certain extent characterized by issues such as misogyny, racism, and a wide range of other questionable practices classified under the umbrella headings of "trolling" and "griefing." These practices take place both on online gaming networks themselves and on internet forums and discussion boards where player communities meet. Both gaming platforms and forums are owned, operated, and regulated by ICT companies and thus present interesting and increasingly relevant venues of digital business ethics research. In my postdoc research, I would therefore like to study these issues from an integrative business ethics perspective.

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