



Centre for Air Power Studies (CAPS)

Forum for National Security Studies (FNSS)

84/16

# DISMISSAL OF LAWSUIT AGAINST TWITTER OVER ISIS RHETORIC: A MOOT POINT FOR CYBER JURISPRUDENCE

Gp Capt Ashish Gupta  
Senior Fellow, CAPS

The scourge of terrorism continues unabated worldwide, cutting across religious, sectarian, ethnic, and geographical lines and taking a toll of innocent human lives. The *terrorism thrives, multiplies and* gets its recruits by reinforcing the sense of victimization or by propagating untenable ideological agendas, indoctrinating millions of *young minds with hatred* and violence and radicalising youths for terror activities. The *terrorists retain* their potential for maintaining or heightening the level of violence and for propagation of their hateful and convoluted ideologies by relying on publicity. Modern communication technology enables terrorists to penetrate collective consciousness and to bring potential fence-sitters, sympathizers and ideologically aligned individuals into their folds. “Half of Jihad is Media” claims one of slogans posted on a jihadist website which, taken broadly, is wholly correct.<sup>1</sup> The jihadists seems to be affected by the *dichotomous paradox* -

*expressing a yearning* for returning to lifestyle based on the principles of early Islam, while using modern technology and internet with competence comparable to that of a trained computer expert.

The dreaded and perfidious ISIS has transformed the way the terrorist groups reach and recruit followers globally and has become an expansive enterprise making unsubstantiated and/or fraudulent claims of religious or political legitimacy. By fanning religious fervour, nurturing hatred, perpetuating violence and committing acts of unprecedented cruelty, the ISIS ensures that its ranks are filled with committed recruits. Besides, by putting up visual and graphic images of acts undertaken by its recruits, ISIS has been able to greatly amplify and propagate its convoluted but potent blend of ideology, history and politics.



The transformative power of new media and social networking platforms has been woven into the terrorist enterprise of ISIS almost from its inception. Since its appearance on Twitter in 2010, we have witnessed a burgeoning of ISIS accounts on Twitter and until recently, ISIS was able to maintain its official accounts unfettered. In the wake of ISIS offensive in June 2014, a number of Twitter accounts came up claiming to represent ISIS in Syria and Iraq. During the initial days of offensive, the various Twitter accounts were giving live updates and images of its advances in Syria and northern Iraq. The ISIS digital footprint on social media kept pace with its advances made in Syria and Iraq. The images of captured Iraqi security personnel went viral garnering an even wider online audience. In an attempt to fan the religious jingoism, the information including number of bombings, suicide missions and assassinations it has carried out was shared on the growing number of Tweeter accounts having large followings. In an attempt to expand its digital reach on social media, ISIS branched out to other platforms like YouTube, Facebook and Instagram. ISIS shocked and enraged the whole world when it posted the video of the beheading of American and British journalists and other innocent individuals.

*Al-Furqan*, ISIS's official media wing for ISIS's multimedia propaganda, maintained a dedicated Twitter page where it posted messages from ISIS leadership as well as videos and images of beheadings and other brutal forms of

executions to 19,000 followers.<sup>2</sup> Similarly, *Al-Hayat* Media Center, ISIS's official public relations group, maintained at least a half dozen accounts for the purpose of identifying, locating, enticing and recruiting the youth, especially from the West. A Twitter account, @ISIS\_Media\_Hub, had 8,954 followers as of September 2014. As of December 2014, ISIS had an estimated 70,000 Twitter accounts posting close to 90 tweets every minute.<sup>3</sup> The deliberate attempt of ISIS to take its social media strategy to a whole new level is stemmed from its belief that the overly shocking and terrifying events posted online attract maximum viewership and may accomplish the objectives of their propagandic campaign.

In a lawsuit filed in U.S. District Court for the Northern District of California, Twitter was alleged for knowingly permitting the ISIS to use its social network as a tool for spreading extremist propaganda, raising funds and attracting new recruits, enabling ISIS to carry out numerous terrorist attacks, including one in November 2015 Jordan in which two American defense contractors were shot and killed. The lawsuit was found to be legally tenable as the Plaintiff 'Tamara Fields' was a citizen of the United States and defendant 'Twitter' is a publicly traded U.S. company incorporated in Delaware.<sup>4</sup> In the law suit, the twitter was alleged of providing a recruitment platform to ISIS to recruit fighters particularly from Western countries. ISIS reaches potential recruits by

maintaining accounts on Twitter so that individuals across the globe may reach out to them directly. After first contact, potential recruits and ISIS recruiters often communicate via Twitter's Direct Messaging capabilities. According to FBI Director James Comey, "one of the challenges in facing this hydra-headed monster is that if (ISIS) finds someone online, someone who might be willing to travel or kill in place they will begin a twitter direct messaging contact." In addition to individual recruitment, ISIS members use Twitter to post instructional guidelines and promotional videos, referred to as "mujatweets."<sup>5</sup> ISIS also uses Twitter to fill its coffers in order to fund terrorism. The twitter was also alleged of knowingly permitting ISIS to use its social network and in spite of *explicit and undeniable evidences* refused to take any meaningful action to stop it.

In spite of such serious allegations and sordid outrage, Judge William Orrick in San Francisco on August 10, 2016 acquitted twitter of charges of enabling ISIS for providing a social network for the propaganda. The judge said that "as horrific as these deaths were... Twitter cannot be treated as a publisher or speaker of ISIS's hateful rhetoric and is not liable under the facts alleged" and further added that federal law protects the company from liability for the content that third parties publish on its platform.<sup>6</sup>

There were no immediate comments from attorneys and representatives of Twitter, but the judgment has created a stir in the whole of the world, which is slowly but surely coalescing and collaborating to decimate ISIS's hold on territory occupied by it. ISIS's *cyber prowess and sinister reach* is beyond question and *any dilution in collective efforts* to bring an end to ISIS's reign of terror will only delay the whole process. In the context of cyber jurisprudence, there are some notable lacunae and inconsistencies in provisions of law governing freedom of expression in cyber space and prosecution of perpetrators of the insidious propaganda. The cyber rules and laws need to evolve and applied contextually. This judgment has wider possible ramifications on the global efforts to rid the world of scourges of terrorism.

***(Disclaimer: The views and opinions expressed in this article are those of the author and do not necessarily reflect the position of the Centre for Air Power Studies [CAPS])***

---

#### Notes

<sup>1</sup>Patrick Cockburn, *The Jihadis Return, ISIS and the New Sunni Uprising*, (New York: OR books, 2014), p. 49.

<sup>2</sup>United States District Court Northern District of California, Case No. 3:16-cv-00213-WHO, Plaintiffs Tamara Fields V. Defendant Twitter, INC., p.2.

<sup>3</sup>Ibid.

<sup>4</sup>Ibid.,p.1.

<sup>5</sup>Graham Rayman&Rich Schapiro, "San Bernardino husband and wife killers used private messages to bond over commitment to 'jihad and martyrdom' — before they ever met", *New York Daily News*, December 16, 2015, <http://www.nydailynews.com/news/national/san-bernardino-killers-no-contact-jihadist-groups-article-1.2467680>, accessed August 15, 2016.

---

<sup>6</sup>Reuters, "U.S. Judge Dismisses Lawsuit Against Twitter Over ISIS Rhetoric", *NBC News*, August 10, 2016, <http://www.nbcnews.com/pop-culture/celebrity/justin-bieber-deletes-instagram-account-n631991>, accessed on August 15, 2016.

