

а именно культурный. На сегодняшний день массовая культура играет значительную роль в формировании общественного мнения, в связи с чем репрезентация права в культуре не могла не оставить след на правосознании как отдельных индивидов, так и общества в целом. По нашему мнению, особую роль здесь сыграл кинематограф. Такие фильмы как «Адвокат дьявола», «Линкольн для адвоката», «Лучше звоните Солу» и т.д., а также сериалы «Форс-мажоры», «Юристы Бостона» и т.д. получили широкую известность среди зрителей и рекомендуются самими юристами к просмотру для понимания тонкостей юридической профессии и правовой системы. В то же время сами юристы говорят, что в фильмах представлена местами правдивая, но все же идеализированная картинка, которая далеко не всегда соответствует действительности.

Подводя итог, хотим отметить, что юридический фетишизм еще предстоит изучить более детально. Однако сейчас мы можем сделать следующие выводы. У юридического фетишизма есть внутренние (психологические) и внешние (правовые, политические, социально-экономические и культурные) источники. Разнообразие источников юридического фетишизма обуславливает необходимость выработки комплекса разных способов борьбы с ним.

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## Cyberspace and Freedom of Expression: the Burden of Liability for Anonymous Defamatory Statements

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Internet can be considered as a new means of expression that links people, institutions, corporations and governments around the world [1, p. 21]. Due to the fact that this article focuses on the features of interaction of cyberspace and freedom of expression, it is crucial to mention the specific opportunities provided by Internet and related to the public dialogue. First of all, during the era of traditional

mass media this dialogue was challenged through the “filter”, that determined, which information could be selected for publishing or broadcasting, and which information could not.

Moreover, even now this system selection is necessary since the media cannot present all information and voice every public opinion [2, p. 237]. However, Internet provides us with new opportunities of communication means, where every individual can appear and express opinions. Hence, cyberspace holds potential for a stronger diversity of expressions, which leads to the development and strengthening of public discourse and sphere [1, p.13].

Based on this, we can notice obvious connection between Internet and freedom of expression, which is an inalienable human right enshrined in article 19 of the International Covenant on Civil and Political Rights [3]. According to the practice of the European Court on Human Rights, user-generated expressive activity on the Internet provides an unprecedented platform for the exercise of freedom of expression [4, p. 110]. Therefore, the cyberspace is not just related to the freedom of expression, but also acts as one of the main tools in modern society, with the help of which this right can be realized. However, as it was mentioned above, it is necessary to distinguish between Internet and traditional media, due to the fact that they have different characteristics in the context of the formation of public discourse. For that matter the electronic network, serving billions of users worldwide, is not and potentially will never be subject to the same regulations and control. Despite the wide positive opportunities provided by Internet, the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms is certainly higher than that posed by the press [5, p. 63].

In particular, one of the relevant problems, connected with the regulation of freedom of expression in cyberspace, is anonymous defamation. Firstly, it should be mentioned that anonymity can be considered as a cornerstone of democratic and free society, since it allows individuals to express their views online without fear of reprisals and public hostility. However, on the other hand, with this anonymity, cyberspace provides the means to perpetrate wide spread criminal activities with little chance of apprehension [6, p. 3]. In this regard, it becomes obvious that anonymity should not be absolute, since this completely hold the offender free from liability. For this purposes, solution to this problem is *pseudo-anonymity*, while the identity of the message sender may seem truly anonymous because it is not easily uncovered or made readily available by definition, but in certain circumstances, it is possible to discover this identity [6, p.6]. For example, domestic defamation law might order the relevant content provider to turn over identification information about the author of online defamatory statements [7, p. 3–4].

At first sight, it seems that the existence of such a “pseudo-anonymity” system actually resolves all the problems associated with anonymity on the Internet, and even introduces it into the plane of the real world, simplifying its regulation.

However, there are a number of difficulties associated with anonymity in cyberspace. Firstly, even if the relevant content provider turns over the IP address of the offender, it does not give the definitive assurance of revealing his identity, since the IP address can point to a public and multiuser computer. Secondly, offenders may use advanced anonymization tools, such as Tor, in order to evade liability for defamation in cyberspace [7, p. 4]. Therefore, mentioned examples illustrate situations, where it is virtually impossible to bring to the justice alleged perpetrators. Undoubtedly, this deprives the person, whose reputation has been negatively affected by defamatory statements, an effective remedy to protect his rights and, as a result, receive appropriate compensation.

However, ignoring this problem globally leads to the destabilization of national legal framework, since this tolerates the impunity for unlawful acts. Consequently, an important question arises: *how a system of this kind of liability is supposed to work?*

In order to answer this question, it is necessary to expand the interpretation of liability. This is derives from the fact that the “narrow” interpretation is limited only to holding the author of a defamatory statement accountable, which is not always practically possible. However, with a “broad” interpretation, the *content provider* is another entity on which the burden of liability lies. In this sense, the content provider is a kind of platform that exists on the Internet and allows users to express their opinions, which consequently might facilitate the harmful exchange [8, p. 4]. For example, according to the system established in Israel a claim against the anonymous alleged wrongdoer is *de facto* blocked, however, in certain cases, the plaintiff can file a lawsuit against the content provider [7, p. 12].

Such a system is called *exclusive indirect liability*, since it completely excludes the direct liability of the author of the defamatory statement, focusing on the liability of the content provider. On the one hand, such a system has the advantage that prosecuting a content provider is easier to implement, as it is less costly in terms of economy and time. On the other hand, *exclusive indirect liability* system can lead to a huge amount of abuse, as violators, feeling their impunity, will continue to commit the same violations, knowing that they do not bear the burden of responsibility. Secondly, the fear of responsibility can force content providers to establish strict control over the publication of statements, which, firstly, requires large resources, and secondly, leads to censorship [8, p. 30]. However, the presence of censorship on the Internet devalues the distinctive advantages of the Internet as a means of communication, which opens up wide opportunities for the realization of freedom of speech. For these purposes, the system of exclusive indirect liability loses its effectiveness, which makes it necessary to find a balance between *direct and indirect liability*.

In this case, it is precisely the *balance* between the two categories of liability, rather than the choice between the liability of the author and the content provider, since exclusive liability system, as has been proved earlier, is not effective. More-

over, in determining this balance, it is worth comparing the degree of the role that both subjects play in the occurrence of defamatory statement.

Thus, it is obvious that the role of the author will be more significant, since he intentionally created the defamatory statement, while the content provider acted just as a tool to publicize this statement. Therefore, according to our opinion, the burden of liability lies with the author of the defamatory statement, and only subsidiary, if for some reason the author cannot be held accountable, the burden can go to the content provider. This interesting combination of the content provider's liability and the ability to bring legal action against the online anonymous speaker is realized in the English model of *direct liability and residual indirect liability* [7, p. 18]. This regime actually eliminates the need for monitoring, incentivizes content providers to reduce the cost of identifying anonymous wrongdoers and does not raise the characteristic problems of multiple-defendants, such as excessive restriction of the freedom of expression or aggregation of costs [7, p. 46–47].

Therefore, we can conclude, *that Internet* as a new means of communication opening new horizons for freedom of expression, requires specific legal regulation, particularly in the sphere of liability for anonymous defamatory statements. And *direct liability and residual indirect liability regime* actually allows to create effective legal mechanisms in the field of anonymous defamation in cyberspace, while maintaining a harmonious balance between direct and indirect liability of author and content provider.

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